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IN MEMORIAM

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IN MEMORIAM

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CONFRONTING CORRUPTION IN GREECE AND ITALY

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1. The perception of corruption

According to the Corruption Perception Index (CPI) annually compiled by Transparency International, Greece and Italy are ranked as particularly corrupt, at least in comparison to other European states of long established democratic tradition.

If the CPI results for 2010 painted a grim picture for Greece and Italy, for example, those for 2011 are gloomier still, with Greece chalking up a score of 3.4 and Italy a marginally higher,which on this scale means cleaner 3.9 [1]. Yet just how valid are these claims? The CPI is based solely on the criterion of *perception,* and there may be well founded reservations as to whether this kind of assessment, widely seen as *subjective,* can, in fact, pass such a verdict on Greece and Italy. Thus, it could be argued, the CPI score is merely a reflection of how a qualified sample of people *perceives* corruption in a specific country, on the basis of several factors which may shape their opinion. One key factor, for example, is the frequency with which the mass media report instances of corruption in each country. Another is the stance of the media to corruption in a particular country, which affects just how far investigative journalism is prepared to go and how it angles its criticism.

To press the point, sociologists have shown that these factors can also deeply affect the way the public perceive crime levels, and their reactions of fear and insecurity can be manipulated accordingly. What is significant is the mismatch between the public's perception of crime levels and the real figures, which are often found to be considerably lower, even allowing for the dark number to be keyed in.

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1. See Corruption Perception Index 2011, available at the following URL: http://transparency.am/cpi.php

Besides, it is evident that the over-representation of violent, cruel but exceptional criminal cases or of petty offences against property perpetrated by aliens are often used to enhance the electoral consensus of those political parties which intend to promote 'law and order' campaigns. Similarly, corruption, economic crimes and white collar crimes in general may be overrepresented in the media, especially when they are to be used as improper forms of competition in the political arena. It follows that the frequency with which the media report instances of corruption in each country may also depend on the political balance or media strategies.

In short, the findings of the CPI, despite its purpose to focus the world's attention on the need to monitor corruption and to offer a map of corruption of the whole world, may not only be misleading in relation to the real dimensions of corruption in a country, but may also have a negative rebound effect on that country, as it can be used by foreign enterprises in an erroneous or even improper manner. Indeed, as the economic literature about corruption has explained to no small extent, corruption can also influence the economic growth of a country where direct foreign investments are concerned[2]. In these cases, the CPI runs the risk of giving distorted criteria to foreign enterprises to use as part of their decision-making process as to whether to invest in a specific country or not.

It would be better therefore, in our opinion, to base such crucial decisions, on a more complex index; one which would take into account a wider range of parameters measuring both corruption rates and the efforts in adopting anti-corruption policies at legislative and administrative level in a country. Parameters, for instance, such as the existing legal framework, the way in which this legislation is enforced (including cases of corruption revealed and/or brought before the courts), administrative *best practices* and the strategic guidelines a country uses to cope with its indigenous corruption. As a result, we believe that a *multifactorial corruption index* (MCI), based on up-to-date and comparable data, as well as on cross-referenced facts would be more representative and objective and, consequently, more accurate and ultimately fair to the countries in question.

2. Corruption: from a sociological, economical and criminological perspective

With a view to presenting an example of how to construct such a Multifactorial Corruption Index, let us examine a raft of data on corruption related practices in relation to Italy and Greece.

2. V. Tanzi, H.R. Davoodi, *Roads to Nowhere: How Corruption in Public Investment Hurts Growth*, International Monetary Fund, 1998, p. 1.

A good place to start is by recalling briefly the socio-economical and criminological dimensions, by means of which it is possible to identify at least *three different levels* of corruption[3]:

a. Administrative petty corruption[4]. The wider public comes face to face with this type of corruption on a daily basis and it is fairly rife and unremarked on, ranging from town-planning departments (for building permissions) and the settlement of outstanding claims at the local tax office, to the preferential treatment of patients in hospitals. Generally, the amounts of money exchanged in these kinds of bribery cases are not that large. Nevertheless, the effects on the collective welfare are serious, since the State seems to be as weak as the control devices are ineffective. Consequently it entails a high level of distortion regarding the application of rules, the economy and the market.

b. Administrative grand corruption. Here the perpetrators are high-ranking officials in their transactions with powerful domestic or international enterprises on deals relating to, among others, armaments, public works and pharmaceutical products, where the amounts of money involved are substantial. It mainly implies relationships between public officials or *political power* and firms or *organised crime*.

c. Political corruption. This is characterised by the presence of the so-called 'politically connected firms',[5] and includes every act which is able 'to *shape or affect the formation* of basic rules of the game (i.e., laws, regulations and decrees) through private payments to public officials and politicians'[6]. This is in contrast to *administrative corruption,* above, which 'refers to the (...) implementation of *existing* laws, rules and regulations'[7].

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3. See M. Arnone-E. Iliopulos; *La corruzione costa*, Vita e Pensiero, Milano, 2005, p. 22 ff.; see also J.S. Hellman, G. Jones, D. Kaufmann, *Seize the State, Seize the Day. State Capture, Corruption and Influence in Transition*, research by the World Bank, September 2000, available at the following URL: www.worldbank.org/research/workingpapers

4. Cf. Greece – 3rd Scientific Report, prepared by Effi Lambropoulou et al., *Sixth .Framework Programme of the European Commission, Specific Targeted Research Project: Crime and Culture*, in: www.uni-konstanz.de/crimeandculture/reports.htm (November 2008), p. 106.

5. According to a definition proposed by M. Arnone and E. Iliopulos, a politically connected enterprise is the one in which «uno degli azionisti di maggioranza dei dirigenti o degli amministratori è un membro del parlamento, un ministro (incluso il primo ministro), capo dello stato o persone "closely related" a un importante esponente politico (…); il 10% delle imprese italiane quotate in Borsa appare politicamente connesso». See M. Arnone, E. Iliopulos, *La corruzione costa*, cit., p. 44.

6. J.S. Hellman, G. Jones, D. Kaufmann, *Seize the State,* cit.

7. J.S. Hellman, G. Jones, D. Kaufmann, *Seize the State,* cit.

Although these three distinctions have been made in relation to emerging countries or to transitional economies typical of Eastern Europe[8], it is evident that some factors or characteristics of 'political-corruption-economies', exist in capitalistic countries where democracy has a consolidated tradition too[9].

In Italy, for example, during the phase of the so-called 'direct government' of white collar workers (the second Berlusconi government)[10], many laws which were seen as biased towards protecting the interests of firms of 'excellent defendants' were passed[11].

Moreover, according to S. Katsios, there is a significant interaction between a *shadow or underground economy,* so typical of countries having a transitional economy, and *corruption*. In particular, referring to the Greek experience, he has observed that:

> *'the strong and consistent relationship between the shadow economy and corruption in Greece is closely connected to the behaviour of those who are not willing or cannot afford to bribe central or local government bureaucrats, or who have no connections to these bureaucrats, systematically choosing the dark side of the economy as a substitute for corruption (bribery) and making the shadow economy complementary to a corrupt state'*[12].

Once more, the statistical data confirm that Greece, Italy but also Spain, the countries perceived as being more corrupt in comparison to the other western democracies, have the largest shadow economies: respectively, 28.2%, 25.7% and 22.0% of the GDP (gross domestic product)[13].

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8. For an investigation about the relationship between shadow economy and corruption see S. Katsios, *The Shadow Economy and Corruption in Greece*¸ in *South-Eastern Europe Journal of Economics*, 2006, pp. 61-80.

9. See P. Arlacchi, *La mafia imprenditrice*. Dalla Calabria al centro dell' inferno, Il saggiatore, Milano, 2007, pp. 270.

10. See G. Forti, *Impresa e giustizia penale: tra passato e futuro*, paper presented at the XXV Conference Enrico de Nicola, Milano, March, 14-15, 2008 (unpublished).

11. See the Italian reform of the crime of false accounting (Act n. 61/2002) or the reform of prescription (Act. n. 251/2005).

12. See S. Katsios, The Shadow Economy and Corruption in Greece¸ cit., p. 61.

13. See S. Katsios, *The Shadow Economy and Corruption in Greece*¸ cit., p. 67. The data refer to years 2002/2003.

3. Defining corruption from the perspective of international Conventions.

At this point it would be useful to establish a working definition of 'corruption'. A definition of corruption exists in Article 2 of the Council of Europe's Civil Law Convention on Corruption (1999)[14]. In a more simplified way, the definition of this legal instrument can be formulated as follows, '*Corruption* is the illicit and abusive behavior of a (*lato sensu*) functionary who, within the framework of his/her duties, promotes the interests of another person (a physical person or a legal entity) with the view of obtaining, for himself or for others, a direct or indirect economic benefit.'

Even the most recent convention against corruption, the UN Convention open to signature in Mérida (Mexico) in 2003, avoids proposing a formal definition of corruption on the assumption that such a term is polyvalent and variable[15]. In fact, corruption is a wide term including various behaviours, which may be qualified and understood from a different angle in each European Country. For example, corruption may include not only bribery, which is the mainstay of the legal hardcore of corruption, but also some types of embezzlement, abuse of functions and/or power, misappropriation of funds or other diversions of property. Moreover, corruption may occur both in public administration and in the private sector.

4. Corruption in Greece and Italy: a comparative legal framework

With a view to putting forward a fairer, more reliable method of evaluating corruption, country by country, an overview of the legislation concerning corruption in Greece and Italy (bearing in mind the assumption that a country's legislative framework affects the extent of corruption itself) will be examined in some detail. In fact, as previously mentioned (§1), the level of law enforcement, and the presence of genuine efforts to combat corruption at an administrative level, plus the improvement of best practices and the adoption of more efficient anticorruption policies, may also affect the extent to which corruption is present in a country and thus promote a more global and realistic evaluation of this problem.

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14. Art. 2 of the Civil Convention against Corruption states: «For the purpose of this Convention "corruption" means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof».

15. Also the Inter-American convention against corruption (1996) includes, in the section «Acts of corruption», a variety of relevant behaviours.

4.1. Greek legislation

Greece signed (without significant reservations) and promulgated into laws with increased formal validity[16] all important international and European Conventions. In particular, Greece has given full legal force to the following conventions: The Organization for Economic Co-operation and Development's (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17.12.1997[17]; the European Community's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 26.5.1997[18]; the Council of Europe's two Conventions on Corruption in Criminal Law and in Civil Law of 27.1.1999 and of 22.7.2003 respectively[19]; and finally, the United Nations' Convention against Corruption of 31.10.2003[20].

In addition, Greece has brought its interior legislation in line with that provided by the aforementioned legal instruments, given that this interior legislation is based on the 'typical' provisions on active and passive bribery (Article 236 and 235 of the Criminal Code):

(i) Article 236, 'Active Bribery', provides and punishes in principle the case of *a person who promises or offers to an official*, either directly or through the mediation of a third party, any kind of benefits for himself/ herself or for a third party, for future or already completed act or omission on his/her part which pertains to his/her duties or is contrary to them (penalty: 1-5 years of imprisonment, also incarceration of 5-10 years if the value of the benefits is more than 73.000 Euros).

(ii) Article 235, 'Passive Bribery', has to do with the case of *an* official *who, in contravention of his/her duties, asks for or receives*, either directly or through the mediation of a third party, for himself/ herself or for a third party, any kind of benefits or accepts the promise thereof, for future or already completed act or omission on his/ her part (penalty: imprisonment of 10 days to 5 years, and, in case that the value of the benefits is more than 73.000 euros, incarceration of 5-10 years).

(iii) Apart from these, there are also provisions for specific cases, i.e. when bribery is committed in favour of:

- a judge or a referee (Article 237 of the Criminal Code, punished as a felony);
- a member of Parliament or of Prefecture or Municipality in relation to elections or voting (Article 159 of the Criminal Code);

16. See Article 28, Paragraph 1, of the Greek Constitution.
17. Law-Number 2656/1998.
18. Law Number 2802/2000.
19. Law-Number 3560/2007 and 2957/2001.
20. Law-Number 3666/2008.

- a member of the European Parliament and/or functionaries, judges et cetera, of member-states, of international or, of supranational organizations[21], as well as when
- foreign functionaries (for example judges) are bribed by a legal person engaged in international business transactions[22].

(iv) Furthermore, the provisions on bribery are equally applicable to cases of private-to-private bribery[23]. Finally, the related case of 'trading in influence', is also punishable in Greece, principally on the basis of an old Law-Number 5227/1931 on intermediaries, but, also, on the basis of Article 6 Law-Number 3560/2007 and Article 16, Law-Number 3666/2008.

4.2. Italian legislation

Corruption is dealt with by the Italian Criminal Code (enacted in 1933, hereinafter c.c.) according to a rather complex range of norms which were substantially maintained in their original formulation till 1990, when a reform of the whole group of crimes against the Public Administration was introduced to enlarge the class of authors of corruption (to include not only public officers but also those who are charged with a public service) and to isolate the crime of 'judicial bribery', from the general heading of 'common' bribery.

Since 2000, according to a specific request issued by the OECD's Convention, the Italian criminal code has introduced the crime of corruption of European and international officials, by extending the application of the norms of internal corruption through the so-called technique of assimilation[24].

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21. See Article 3, 4 of Law-Number 2802/2002 and Article 3, 4 of Law-Number 3560/2007.

22. Article 2 of Law-Number 2656/1998, as it was replaced by Article 9, of Law-Number 3090/2002.

23. This happened mainly by virtue of Article 5 Law-Number 3560/2007. Besides, according to the Explanatory Report of this Law (nr. 7), the ratification of the Convention by the Greek Parliament also constitutes a fulfillment of the obligation that Greece has undertaken, as a member of the European Union, to adopt the Council Framework Decision 2003/568/JHA of 22.7.2003 on combating corruption in the private sector.

24. It is well known that the technique of assimilation, in conformity with the Treaty of Maastricht, presupposes that a criminal treatment of the facts bringing damage to the Union' s budget, is considered as similar to the one used in the internal law for sanctioning the fact of bringing damage to the national financial interests. On the relationships between Europe and domestic legislation, from the Italian point of view, see. C. Sotis, *Il diritto senza codice*, Giuffrè, Milano, 2007.

In short, nowadays, the Italian Criminal Code provides the following criminal norms against corruption:

(i) (Article 318 of the Italian c.c. provides the acceptance or the promise of acceptance by a public official or a person who performs public functions, of money or other advantages in exchange for any act or omission *in the performance of his public functions*. Either the public official or the briber are liable to imprisonment for between 6 months to three years. This is the *least serious* form of bribery.

(ii) Article 319 c.c. provides the acceptance or the promise of acceptance by a public official or a person who performs pubic functions, of money or other advantages in exchange for any act or omission *in breach of his functions or duties*. Either the public official or the briber are liable to imprisonment for between two to five years. This is the *most serious* form of bribery. In short: bribery can be divided into *two basic categories* of offences on the basis of the *nature of the act* that the public official performs (or omits to perform) in return for the bribe.

(iii) Article 317 c.c. provides also the offence of *concussion* (*concussione*), which is similar to extortion. According to this provision, a public officer or a person charged with a public service who, by abusing his position or his power, compels or induces anyone to give or promise, to himself or to a third person, money or other thing of value, are liable to imprisonment for between four and twelve years. The so called 'concussion' is *the most serious crime* in the context of crimes against public administration and even among white collar crimes. Its punishment is even harsher than the one provided for the 'basic' incrimination of organised crime. As the Italian Criminal Code was enacted before World War II, the breach of duty by a public officer was perceived as a behaviour that seriously menaces the correct course of public administration. In the case of concussion, the private person who is *compelled* or *induced* to give or promise money is a *victim*. Normally the victims of concussion pay money or offer other advantages to the pubic officer to avoid unjustified damage by him/her. Nevertheless, it may happen that victims may also derive an advantage from this payment or offer. But, from the point of view of the criminal justice system, they are considered as victims even if they gained from an improper payment to a public officer.[25] This is the reason why many private persons or businessmen had presented themselves *as victims of concussion instead of bribers* during the wide investigations of '*Clean Hands*' (Mani Pulite) carried out in Italy during the early 1990s. It should be underlined that the distinction between *bribery* and *concussion*, although seemingly clear on the level of the *law in the books,* since it relies on the

25. See, among several decisions on this issue, Italian Penal Court of Cassation, decision n. 41360 of 21/10/2010 Rv. 248750.

presence of coercion or real imbalance of powers between the parties, is often nebulous in practice and has created numerous interpretative issues also related to the burden of proof.

(iv) Article 322 c.c. extends the application of norms on internal corruption to cases concerning corruption of European or international officials.

(v) Finally, there are some norms, collocated outside the criminal code, that intend to repress specific cases of corruption in the *private sector;* these cases are most likely to occur in the medical sector and in the field of auditing of companies or enterprises.

From the point of view of compliance with the international Convention, Italy has had some delays in comparison to Greece.

Italy has ratified the UN Convention concluded in 2003 and the OECD Convention, which introduced norms concerning bribery of foreign public officials in international business transactions and the penal liability of legal persons.

At the time of writing this essay:

- Italy is going to ratify the Council of Europe's Criminal and Civil Law Conventions on Corruption.
- Italy has not adopted the European Council's Framework Decision 2003/568/JHA of 22.7.2003, which expressly asks for the implementation of a general norm against corruption in the private sector either. It should be noticed that although the distinction among the three pillars of the European Union has now been left behind by the Lisbon Treaty, the existing juridical acts introduced according to the third pillar rules (i.e the so- called 'frame decisions') are still in force. Thus, Italy's penal legislation should conform to the 2003/568/JHA Framework Decision by introducing a general norm about corruption in the private sector. It is worth noting that the incrimination of corruption in the private sector is already part of the legislation of Sweden and the UK, the latter having been radically amended by the Bribery Act 2010.

5. The evaluation of Greek and Italian anticorruption legislation

5.1. Greece

According to the Third Evaluation Report adopted on 7-11.6.2010 by GRECO (**Gr**oupe d' **E**tats contre la **Co**rruption), an institution of the Council of Europe, the Greek legal framework 'appears to be fairly comprehensive', since 'Greek criminal legislation deals with all forms of corruption and trading in influence offences incriminated by the criminal Law Convention on Corruption and its Additional Proto-

col'[26]. There are, nevertheless, in the same Report some *recommendations* with a view to *improving* this legislation and making it more efficient. Among others, it recommends, 'to reformulate all relevant provisions in a uniform manner and to insert them into the Criminal Code, to make it clear that active and passive bribery are autonomous and do not necessarily need an agreement between the two parties (i.e. the one who offers the bribe and the other who accepts it), and also to punish acts of bribery which are beyond the scope of the officials' competences. Other measures which should be taken are also, 'the express penalisation of the so-called 'investive' corruption' (i.e. gifts or other benefits which are offered to the functionary merely in order to cultivate a climate of good will in relations with him/her, easing the way, subsequently, to ask for his/her support later), and the express penalisation of acts which are committed by legal entities, for instance, corporations'. It should be underlined that in Greece such a penalisation is not yet foreseen expressly by the country's legal system; however, since Greece has already ratified international legal instruments inviting other countries to take measures in this direction, for example Article 2 of the OECD Convention against Corruption and Article 28 of the U.N. Convention against Corruption, Greece should comply too.

Regarding the *enforcement of this anti-corruption legislation*, GRECO's Evaluation Report states that, 'Greece should carry out a proper assessment of the effectiveness of the provisions concerning bribery and trading in influence'.[27] Nevertheless, during the last decade there have been intensive efforts on the part of the police, the judiciary and other public authorities to discover and bring to justice persons who have been allegedly engaged in acts of bribery, irrespective of the level of their socioeconomic position[28].

Consequently, there have been cases where judges and their accomplices have been sentenced to many years of incarceration[29]. Similarly, control measures and penalties have been applied to a general director of the Committee on Competition

26. See GRECO, Third Evaluation Report adopted on 7-11.6.2010, p. 22. Document available at the following URL

www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)9_Greece_One_EN.pdf

27. GRECO, Third Evaluation Report adopted on 7-11.6.2010, p. 25.

28. Unfortunately, this information was not communicated to the OECD Working Group on Bribery, which, as a result, in its Annual Report 2010 (www.oecd.org/dataoecd/7/15/47628703.pdf) had no data about Greece (see page 17 of the Report) and also no comments or recommendations.

29. See www.grreporter.info/en-2.2.2010. The court cut the sentences of judicial officers to 'favourable' attitude towards defendants against payment.

(i.e. the Independent Anti-Collusion Committee of Greece), and his colleagues, who attempted to compel the owners of a dairy company to offer them a monetary bribe, in order to dissuade the Committee from imposing a huge fine on this company.[30]

Moreover, there is a plethora of ongoing investigations and –in some cases– penal prosecutions, against, highly ranked officials of Siemens Hellas S.A. (Siemens in Greece), and against C-level employees of the Hellenic Telecommunications' Organization (OTE)[31], against persons who ordered submarines from the German company Ferrostaal[32], and also against those persons, who have allegedly fixed football games[33].

These *criminal or administrative investigations* are mainly conducted:

- By senior ranked and competent prosecutors (Recently a vice-prosecutor of the Greek Supreme Court [in Greek: `Areios Pagos'] was nominated as the special prosecutor responsible for Economic Crime);
- By the Greek Police (There is a special division, charged with the investigation of economic crimes);
- By the so-called S.D.O.E. (i.e. Σ.Δ.Ο.Ε.), also known as the Corps for the Prosecution of Economic Crime[34];
- By the Corps of Inspectors and Auditors of Public Administration;
- By the General Inspector of Public Administration;
- By the Police's Bureau of Internal Affairs (tasked to investigate cases of intrinsic department corruption, i.e. amongst functionaries of the police), et cetera.

As a consequence of the competent efforts of the foregoing authorities (while combating corruption on various levels and sectors of the Greek society), in recent years, it seems that these efforts are intense and –to a cetain degree– effective. This tendency will, most probably, be augmented in the coming months, as a part of the Greek Government's strategic plan to pre-emptively counterbalance the probable

30. See www.ekathimerini.com-25.11.2008: New revelation in Mevgal case.

31. See: www.greekreporter.com-25.1.2011: Greece seeks restitution from Siemens' bribes scandal, 30.3.2011: Greek Minister claims German firms encouraged corruption.

32. See: www.ekathimerini.com-30.3.2011: Submarine bribes reached 100 million euros, report says/www.athensnews.gr-20.2.2011: Submarine scandal resurfaces.

33. See: www.goal.com-12.3.2011: The Greek Government backs fighting corruptions in the Super League.

34. Cf. The Greek newspaper "Kathimerini" of 6.3.2011, page 12, mentioning close to ten cases of corruption which are currently being investigated by S.D.O.E.

multiplication of corruption-related cases in the future, which may come to bear, as a result of the existing economic recession.

5.2. Italy

The Italian anticorruption legislation was evaluated by GRECO and also by the OECD as regards to the enforcement of the Convention.

In the Join First and Second Evaluation Round[35], as first, it stressed out that Italy has not yet ratified the Council of Europe's Criminal and Civil Law Conventions on Corruption.

The Report underlines also that the crime of «trading in influence» is not criminalized in Italy, although there are some penal norms through which some aspects of trading in influence can be prosecuted (for example the one characterized by the fact that a private person makes a show of his/her influence with a public officer or a public employee, as provided by Article 346 of the Italian c.c.).

One more problem is the lack of criminalization of bribery in the private sector on a general level.

The Reports states: «The GET wishes to emphasise that criminalizing all forms of corruption in accordance with international standards would send a clear signal to the public and the international community that corruption is unacceptable in Italy»[36].

Concerning the articulation fo anticorruption policy and the effectiveness of the general administrative system designed to help prevent and detect corruption in Italy, GRECO, in the Compliance Report on Italy 2011, has observed that «more remains to do in this area» [37].

Nevertheless, certain progress has been made to tackle some of the 22 recommendations issued to Italy: i.e. concerning money laundering, the enhancement of transparency and effeiciency in public administration and the developing of central databases to facilitate the knowledge of corruption. Yet, it is declared that there is room for improvement in other sectors, as for example, concerning «the development of a national anticorruption plan, a national anticorruption network and an observatory of corruption phenomena»[38].

35. Joint First and Second Evaluation Round adopted by GRECO, Strasbourg, 29-2 July 2009. Greco Eval I/II Rep (2208) 2E.

36. Joint First and Second Evaluation Round adopted by GRECO, cit., p. 8.

37. Joint First and Second Round Evaluation. Compliance Report on Italy, adopted by GRECO at its 51st Plenary Meeting, Strasbourg, 23-27 May 2011, Greco RC-i/II (2011) 1E, p. 4.

38. Joint First and Second Round Evaluation. Compliance Report on Italy, p. 24.

Moreover, GRECO regrets that certain areas have received no or little attention so far, notably, with respect to, inter alia, the adoption of codes of conduct for members of Government, the prevention of conflicts of interest, the protection of whistleblowers, and the strengthening of anticorruption provisions in the private sector[39].

The OECD, for its part, has made various remarks concerning the conflict of competence among courts, the tax amnesty programmes, and the lack of strong measures to protect employees who report suspicious incidents involving bribery. Furthermore, it has underlined that from the incrimination of 'concussione', several concerns have arisen, previously mentioned above: firstly, that the distinction between bribery and concussion is often nebulous in practice, and secondly, that the scope of the defence of concussion appears to be broad and not well-defined[40].

One of the main weaknesses of the Italian anticorruption legislation is the existence and the structure of 'prescription', an equivalent of the 'statute of limitation', typical of common law countries. The norm concerning prescription, provided by Article 157 of the Italian c.c., establishes the amount of time after which a committed crime must be declared extinguished at any stage of the proceeding.

Although the OECD Convention requests that the statute of limitation shall allow a period of time adequate for the investigation and the prosecution of corruption, the Italian Act n. 251/2005 has modified the prescription rules in such a way that nowadays prescription shall extinguish corruption after only *six* years instead of *ten* years. It is very hard to find a rationale for this option, bearing in mind that the Italian criminal trials normally last many years. Reducing the prescription time does seem to suggest that many crimes, of which there will be corruption cases, will probably go unpunished even if the perpetrators were condemned by a Criminal Court of the first instance. Consequently, the duration of criminal process remains an issue in need of review.

In a similar vein, the existing link between corruption and the crime of false accounting (black funds created by entrepreneurs in order to pay bribes) requires that the crime of false accounting has to be incriminated and be treated as a serious crime, according to the provisions of Article 8 of the OECD Convention. Despite this provision, the Italian Act n. 61/2002 has radically modified the crime of false accounting. Now it is considered as a misdemeanour instead of a felony and can be prosecuted merely upon demand or petition (right of compliant), and is subjected to a prosecu-

39. Joint First and Second Round Evaluation. Compliance Report on Italy, cit., p. 24.

40. For further observation see OECD Report on the application of the Convention on Combating Bribery of Foreign Public officials in International Business Transactions, adopted by the Working Group on Bribery in International Business Transactions on 29 November 2004.

tion time of only three years, a length of time somewhat incompatible with any realistic regard for investigation.

Despite the objective difficulties which characterise the Italian legislation under the perspective of its effectiveness in combating corruption, many efforts aimed at investigating corruption cases were made in Italy during the last decade. The following list illustrates the range of some of the main investigations.

The lodo Mondadori case, involving the former Italian Premier Silvio Berlusconi. This criminal trial resulted from an investigation started in 1996 by Gherardo Colombo and Ilda Boccassini, two public prosecutors in Milan, regarding corruption in judicial acts or proceedings[41]. This was followed by a civil action that led to the payment of 560 million Italian Lire in compensation.

- The case concerning the deputy head of the regional council of Lombardy. In July 2011, this politician was among 15 people placed under investigation in a corruption probe which, police said, centred on suspected corruption, embezzlement and illegal party-financing in projects to convert a huge former steel works at Sesto San Giovanni outside Milan. This investigation is bringing to light a system of corruption similar to the one discovered through the 'Clean Hands' corruption probes in the early Nineties.
- Some corruption cases are linked to the role of the so-called intermediaries or 'go-betweens' in political corruption. Sometimes, the roles of these intermediaries are also linked to the activity of secret organisations. Such is the case of the 'P4 corruption investigation', where P4 is the name of a new organisation that has inherited the mentality and methods of the shady Propaganda 2 or P2 masonic lodge. The latter is a lodge whose members included the former Italian Premier Silvio Berlusconi. It functioned from 1945 to 1976, when it became illegal. However, the P2 continued to operate behind the scenes until investigations brought it to an official end back in 1981.
- Very often investigations concern corruption in public building contracts. Florence prosecutors found evidence of corruption in public works contracts in the

41. It was established beyond doubt that the lawyer of an enterprise belonging to Silvio Berlusconi (Cesare Previti) acting on behalf of the company together with lawyers Attilio Pacifico and Giovanni Acampora, had delivered to judge Vittorio Metta 400 million lire, which was part of the three billion lire that Fininvest's All Iberian and Ferrido offshore accounts had paid to Previti's Mercier offshore account. The money was in payment for a verdict that annulled the ruling of the Rome Civil Appeal Court regarding the "Mondadori award", a decision of an arbitration panel of three jurists chosen by the parties to settle a dispute over the interpretation of agreements between Silvio Berlusconi and the Formenton family, who had inherited the shares once belonging to Arnoldo Mondadori's son-in-law.

form of cash payments and sexual favours in connection with the construction of the 327 million euro 2009 G8 complex at the seaside town of La Maddalena, Sardinia, and similarly in contracts for the reconstruction of L'Aquila, regional capital of the Abruzzo region devastated by an earthquake the same year.

These investigations show that Italian prosecutors are working steadily to let corruption cases come to light from the dark number, despite wide and complicated groundwork that is all too often stopped or hampered by prescription. Moreover, they prove that in a system where anticorruption legislation is not correctly implemented, the judiciary power assumes a substitute role, in order to find a remedy to the objective inadequacies of the anticorruption legislation.

Within the scope of this study, it also means that the existing gap between the status of an incomplete anticorruption legislation and the intensified efforts made by the prosecutors should be taken into account in order to create the correct image of the actual corruption level in a country.

6. The causes of corruption: an overview

It is evident that an effective fight against corruption depends not only on the zeal of its prosecution, but also on other *preventive strategies.* Once armed with these *preventive strategies,* it becomes possible to focus on and tackle the *principal factors* which provoke, facilitate, or enable this ubiquitous phenomenon directly. In the remainder of this paper, we shall focus on these principal factors and, consequently, outline some concrete and mainly cost-effective measures, the majority of which are already keyed into the Greek and Italian social fabric, to lessen the influence of these negative factors. Additionally, this analysis can also be useful as a general discussion of ways to combat corruption in a developed Mediterranean Country.

Bearing in mind the causes of corruption and taking into account that corruption implies a violation of duties by officials or functionaries, it becomes evident that corruption can be favoured or facilitated in societies and countries where certain conditions exist, for example:

(i) in countries or societies where there is a relaxed climate of tolerance towards corruption, usually as a result of an individualistic mentality and materialist orientation which gives priority to consumer goods and underestimates other values. The socio-economic and political characteristics of a society play a preponderant role here.

(ii) where legal provisions are in place, but are complicated and need interpreting by functionaries, or where the provisions are unnecessary and create delays when they are applied.

(iii) where functionaries in certain areas of policy domains enjoy a wide field of discretionary power to interpret legal provisions and, what is more, where they do not have sole responsibility to take decisions and to sign an act, thus enabling their asking for direct or indirect economic benefits in order to interpret these legal provisions in favour of the applicant (for instance, in order to issue a license).

(iv) where functionaries are appointed and/or promoted to a position of the public sector not on the basis of a meritocratic system of selection, but according to criteria of nepotism and favouritism, being therefore dependent on politicians and on clientele-relations and having, as a result, a predisposition for trading in influence or even for corruption.

(v) where there is direct contact between functionaries and private persons involved which facilitates clientele-like practices.

(vi) where there is lack of transparency at the level of formulation of administrative acts. This situation can evidently favour an atmosphere of immunity and arbitrariness on the part of the functionaries and can offer, as a result, opportunities for corruption.

(vii) where there is a lack of well-coordinated mechanisms of control, of law-enforcement and repression, which renders the way that legal provisions are applied ineffective.

7. How to deal with the causes of corruption

7.1. Greek proposals and solutions

Now, it would be interesting to know in *what way* and with *what measures* Greece has tried (or might try harder in the future) to reduce the negative influence of these seven main factors, which nurture the growth of corruption.

(i) Reconsidering the more general *climate of tolerance towards corruption*, which appears mainly in individualistic and consumer-oriented societies, such a climate is not unknown in modern Greece. In fact, it is also corroborated by the results of the Transparency International Global Corruption Barometer[42]. In particular, situations where corruption is commonly encountered are frequently tolerated by many Greeks in the belief that promoting their own personal interests is a priority. As a consequence, some Greeks may purport that in order to achieve this objective, it is indispensable to have good relations with politicians and with functionaries in 'investive corruption'. Yet this mentality is not only a Greek phenomenon; it is widely

42. www.transparency.org/policy_research/surveys_indices/gcb/2010

spread all over developed countries. The cardinal difference is that in Greece, the climate of implicit rather than explicit tolerance towards corruption is fomented by a strong bureaucratic system. This system causes serious hardships to citizens and dominates almost every domain and facet of their lives and to eliminate it would take considerable effort at various levels. Specifically:

(aa) in schools, so that children can learn the importance of being less individualistic and more mission-oriented at a formative stage. There are already *schoolbooks* prepared by the Transparency International Hellas-Greek Branch, aiming at sensitizing schoolchildren against corruption. It should be underlined that this association is by far the most important NGO in Greece to cope with the problem of corruption;

(bb) in society in general, with campaigns promoted by the Government or NGO's, for example advertisements in the *mass media*;

(cc) by NGOs and by volunteers who would direct campaigns and relay messages against corruption in the pages of *social networks*, such as Twitter and Facebook;

(dd) and finally, at a political level, by means of the clear and steadfast *example* that the Prime Minister, Ministers, Parties, Members of Parliament, Municipal Officials (i.e. of villages, towns, and prefectures, where according to research, the corruption is sometimes deep-rooted and all-encompassing) and others in power, would set to society. In other words, it is important that these persons in power give the good example that they inexorably condemn corruption not only verbally, but also through concrete actions in their public and private lives.

(ii) Regarding the problem of *complicated legal provisions and excessive formalism in law*, open to fresh interpretation according to the 'needs' and 'wants' of each specific transaction, this is again a widely distributed, more general problem, not confined to Greece, but present in every developed country which tries to cope with complicated social and economic situations by legislative means. Evidently, the more a legal enactment fails to make distinctions which could concurrently cover several aspects of a problem, the more it resembles the mythological bed of Prokrustes, where all kinds of bodies, tall or short, had to be adapted to size, by brute force: by pulling the shorter, or by dismembering the longer! Hence, a law's anti-bureaucratic simplification should retain, in my opinion, a fundamental case-by-case structure. Concerning Greece, it is true that in many cases of existing legislation there are provisions which are self-contradictory or cover the same material in a different way, and are thus, in need of interpretation. This is particularly prevalent in the enforcement of tax legislation and town-planning legislation. A solution could be the prom-

ulgation of clear directives by means of circulars as to how a solid interpretation of these provisions can be attained for all cases[43]. Similarly, concrete legislation aimed at accelerating and simplifying some sluggish bureaucratic procedures should be implemented. Such an undeviating legislation would additionally specify the proper conditions for public tenders more transparently and accurately than at present. However, apart from these solutions, which could be manipulated on occasion, by a shrewd functionary capable of finding a way to exploit the law's weaknesses and loopholes, it would be equally advisable, as it is mentioned below [cf. (v)], to distance the functionaries from the implicated private persons, in order to abolish the opportunity to trade influence and/or to enact illicit transactions through this contact.

(iii) Regarding problems stemming from the *wide discretionary power of the functionaries*, and from the *diffusion of responsibilities*, the state needs to establish a clear job-description for each functionary and, in particular, to empower only one designated functionary as responsible for having to sign a license or a certificate (obviously division of labor *and* of responsibility is in such cases indispensable - the director of a public agency should hence sign *only the most important* documents). In Greece, while there are Regulations of Services for each public agency, they fail, however, to clearly describe the duties of each functionary in detail, except for those who are heads of departments. In any case, there are already steps being taken to reduce the necessary signatures needed for the enforcement of an administrative act. Needless to say, such a restriction of responsibilities and consequent reduction of signatures would also diminish the delays of any bureaucratic procedure, which behooves the system and citizens alike.

(iv) In the case of functionaries being appointed and/or promoted to a public position as a result of *nepotism and/or of political clientel and/or favouritism*, it must be said that since 1994[44] initial access and appointments to public service in Greece are designated according to a system of written competition, also known as A.S.E.P. (Α.Σ.Ε.Π.) for a number of administrative positions. By virtue of this system, the names of the candidates on their essays are concealed, so that the examiners and evaluators are not in a position to know the identity of each candidate and to thenceforth, illicitly promote some of them (by giving them better marks for example). More recently, the system of written examinations was supplemented by the provision of a

43. For example there exists already legislation which provides 'objective criteria' or a commonly-accepted formula, on *how* to justly estimate the value of a real estate, in order to juxtapose the analogous tax levy- cf. art. 41 of Law-Number 1249/1982 and art. 14 of Law-Number 1473/1984.

44. See Law Number 2190/1994.

verbal interview assessing the personal capabilities of each candidate[45]; that addendum however, made room for subjective, preferential, and thus unsustainable evaluations. Most probably that was the reason that the above provision was later abolished[46]. From a general point of view, the A.S.E.P. system has been credited as meritocratic as far as access to the civil service is concerned and no serious complaints against it have been raised so far.

In a similar vein, the system of promotions in the public sector has sufficient formal guarantees to be considered as one which is based on objective evaluations (for example, the evaluation committee for high-ranked functionaries, in particular for General Directors of Ministries, until recently was presided over by an ex-judge). Recently, in accordance with Law-Number 3839/2010, the system was further improved by placing it under the wing of the ASEP and of the Greek Ombudsman (Synigoros tou Politi).

(v) Concerning *the problem of direct contacts between functionaries and implicated private persons*, it is noteworthy that since 2002 offices of the State and of Municipalities which are called Centers for Serving the Citizen (ΚΕΠ or KEP in English) have been introduced to function as intermediaries between public services and citizens. So, if a citizen needs a certificate, he/she can directly make the request at the local KEP, instead of going to the competent public service division. In this way, there is no contact between a citizen and a public functionary who might ask for a bribe in order, for instance, to 'accelerate' the issuance of a certificate or document. It takes only a small leap of the imagination to see that this system could be expanded to perform services such as the issuing of building permissions from the town-planning department (cf. art. 3 and 4 of Law-Nr. 4030/2011), or to the settling of tax issues, usually the domain of the tax office, given that these cases (together with the cases of bribery in hospitals) are the main categories of petty-corruption in modern Greece.

(vi) Regarding *transparency in administrative acts*, transparency itself is a kind of self-evident antidote or possible guarantee against corruption. Indeed, the more transparency can gain ground in public life, the less corruption can flourish there. An important step in this direction has been made by the Greek Government's introduction of the project 'Transparency', (in Greek: Diavghia) (Law Number 3861/2010). According to the principals of this project, no state-act bearing any cost to the budget can be valid or executable, unless it has been made public knowledge, via the internet site of 'Transparency', (et.diavgheia.gov.gr), and has received a code number as evi-

45. See Law-Number 3320/2205.

46. cf. Law-Number 3812/2009.

dence that it has been publicly announced as such. Thanks to this project, any citizen with access to a personal computer can find out what is going on in the public sector and thus armed, can act and react against illicit administrative actions, such as illegal appointments and promotions of functionaries, signing of contracts for public works, and so on.

(vii) Finally, pertaining to the repression system and *the need for trustworthy and coordinated mechanisms of control and law enforcement*, Greece (cf. Paragraph 5.1) has a plethora of such mechanisms functioning at various levels of its Justice System, its Police Administration and of its General Public Administration. Yet, it lacks a coordinating and overarching mechanism which would bring together all the various and diverse measures already in place to fight corruption. An interesting solution to this conundrum would be to establish an Independent Authority to take the role of the 'upper hand' in the anti-corruption campaign. A similar experiment was successfully undertaken in Hong Kong, with the implementation of the so-called 'Independent Committee against Corruption', (ICAC). This generously funded committee (USD 90 million per annum) enjoyed legal and administrative autonomy to the extent that it had the power to investigate bank accounts and implement other operations of a similar nature, answerable only to the Government of Hong Kong. Of equal importance to establishing this kind of watchdog body, it would be beneficial to secure a better system of law enforcement, specifically for disciplinary and judicial procedures[47]. According to several reports produced annually by the General Inspector of Public Administration in Greece, the Disciplinary Councils show considerable leniency towards functionaries for whom there is evidence of bribery. Moreover, Greek Courts proceed to the trial of allegedly corrupt functionaries with great delay, where they are either acquitted (as a result of the difficulties to obtain evidence or to secure witnesses who could testify against a functionary), or given a light sentence, usually suspended, with probation up to 5 years or convertible up to 3 years to a fine (articles 100 and 82 of the Greek Criminal Code, as the former article was modified by Law-Nr. 3904/2010). This phenomenon of 'restricted immunity' is further connected with the criminal sanctions for bribery, mainly punished as a misdemeanor, which are foreseen by the Criminal Code, and which, (cf. Paragraph 4.1) are indeed rather lenient. Yet, this problem is not particularly worrying, because in serious cases, accusations of bribery are usually combined with other, more severe offences such as breach of

47. However, a new disciplinary law for employees was recently promulgated (Law-Nr. 4057/2012), with an emphasis on greater objectivity (a higher number of judges will be participating in the composition of the disciplinary boards), and on the accurate description of the disciplinary offences and the severity of the disciplinary sanctions, so that in future, public officials will be judged for their disciplinary offences in a fair yet rigorous way.

trust in office, money laundering, false certification, fraud, or embezzlement of public money.

With this in mind, the way forward seems to suggest strengthening Greek disciplinary and judicial law enforcement mechanisms, while simultaneously promoting witness protection schemes. Besides, there may be many who would like to testify against corruption, but who fear a backlash if they did, for example, of being considered as authors in the related active bribery (cf. Article 236 § 2 of the Greek Criminal Code), or of suffering ramifications in their future administrative transactions.

7.2 Italian proposals and solutions.

In the following overview we will examine the Italian proposals and solutions for coping with the causes of corruption in Italy.

(i) Any discussion about the *climate of tolerance towards corruption* in Italy is best approached from the socio-anthropological web behind the corruption and clientism peculiar to that country. This frequently investigated web is characterized, according to the hypothesis elaborated by the American political scientist Edward Banfield, by the so-called 'amoral familism'[48], where conditions of backwardness, asymmetric social relationships and excessive trust in family ties seem to encourage *clientelistic social relations and exchanges.* The stabilisation of those types of relationships implies a wide individual and social indulgence toward corruption.

Hence, understanding the moral, economic and political characteristics[49] of a specific community is key to unravelling those levels of interpersonal cooperation which may favourably dispose its members to establishing clientelistic ties and/or corruptive behaviours.

Besides, it should not be overlooked that the Clean Hands investigation demonstrated that there was, indeed, a sort of tacit acceptance of corruption either by politicians or by businessmen and entrepreneurs. As for politicians, Alberto Vannucci wrote, 'Thanks to the evidence provided by the judicial inquiries, Italy can be seen as a model of the failure of ordinary institutional mechanisms to control corruption in an advanced democracy. Political competition has proved to be ineffective. On the contrary, corruption has been practiced (…) as a means whereby parties have satisfied the need for financial resources generated by democratic processes, or have acquired support by sustaining clientelistic machines'.[50]

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48. E. Banfield, *Le basi morali di una società arretrata*, Il Mulino, Bologna, 2006.

49. D. Torsello, *Potere, legittimazione*, cit., p. 167 ss.

50. A. Vannucci, The controversial legacy of '*Mani Pulite'*: A Critical Analysis of Italian Corruption and Anti-corruption Policies, in Bulletin of Italian Politics, 2009, p. 234.

On the political level, there is the unresolved problem of the so-called 'conflict of interests', which, generally speaking occurs when an individual organisation is involved in multiple interests, one of which could possibly lead this individual to acts of corruption. This issue, mainly related to the Berlusconi government, is sharpened by the existence of politically connected enterprises.

The civil society in Italy seems not to have a real and effective control over the widespread illegalities linked to corruption. There is evidence of this in the largely indifferent reaction of the general public toward corruption scandals, and even the markets seem to exhibit scant resistance.

Nevertheless, in order to cope with this problem, some associations have been created to combat corruption and mafia-type organizations, (phenomena which are very often interconnected) and they are doing very interesting work inside the civil society.

The first, at least from a chronological point of view, is the association "Libera"[51], created in 1995 by the priest Don Luigi Ciotti. It pursues several goals such as promoting best practices in the administration of houses and lands of enterprises which were confiscated from mafia leaders or families; improving participation; promoting and improving training and education (at universities or high schools) and preserving the memory of mafia crimes. "Libera" also coordinates several minor associations which fight organized crime.

Perhaps more actively involved with corruption issues is the association 'Avviso Pubblico. Enti locali e Regioni per la formazione civile contro le mafie'.[52] Created in 1996, 'Avviso Pubblico' endeavors to establish a network of public administrations (regions, districts, municipalities) which intend to improve the respect of democratic rules, promote democratic culture and contribute to the adoption of best practices in public activities, contracts, services. 'Avviso pubblico' also promotes training courses and activities addressed to civil servants and public officers.

(ii) It has to be admitted that the issue of *complicated legal provisions* and excessive formalism in law, is an age old problem in Italy. Ever since the Age of Enlightenment the idea that a restricted number of laws have inner consistency has been promoted. Ideally, even criminal legislation should be drawn up according to the idea of reason in that it should be formulated in short norms, it should be clear, it should allow for unambiguous interpretation and should also be straightforward to prove.

51. See at the following URL: http://www.libera.it/flex/cm/pages/ServeBLOB.php/L/IT/ IDPagina/1.

52. See at the following URL: http://www.avvisopubblico.it/.

The same regulatory principle should affect civil and, above all, administrative legislation.

Unfortunately, Italy's legislation is suffering from a prolonged bout of hypertrophy. Since Italian Unification 1861, more than 261.000 laws have been passed,[53] and nobody can say for sure what is still valid or what has been abrogated.

An example of the uncertainty of Italian legislation, both from the perspective of criminal and administrative law, can be found in its environmental legislation. For example, Law 152/2006, part III, section II, regulates water protection. It allows that each Italian region can modify its field of application of the penal norm on a territorial basis. Thus, conditions which are legally considered as authorized in relation to industrial or domestic water discharge may vary from region to region[54]. This kind of uncertainty and variety of legislation may encourage corruption opportunities.

(iii) It has been observed that the high level of corruption could be explained not only on the basis of a typically Latin attitude toward corruption (corruption in the private sector is probably at the same level as in the other European countries), but also on the basis of the *operational mechanisms of the Italian public Administration*[55].

This consideration, made by an external observer of Italian corruption, is based on the assumption that the Italian public Administration is inefficient and seems to be paralysed by an excessive legalism.

According to Killias, in Italy there is a little discretion in the public Administration and the amount of boundary norms provided by the Italian legislation to guide the discretionary power of the public officers could encourage corruption. These norms have no equivalent in Northern European countries, where they believe that a significant amount of discretion is indispensable to the just exercise of public power.

Yet, 'conceived to bind administrative decisions in a rigorous (and thus predictable) way, what this system actually does is lead to situations where the more logical option is often directed to completely disregard the legal frame and to invent and develop solutions in exchange for services or activities conceived as *convenient*'.[56]

53. Data from the Centro Elettronico di Documentazione of the Italian Court of Cassation. See G. Tarli Barbieri, *Le delegificazioni* 1989-1995, Giappichelli, Torino, 1996; U. De Servio, G. Tarli Barbieri, *Le fonti del diritto italiano: appunti*, Giappichelli, Torino, 2004.

54. See Atricles 74, comma 1, lettera (h) and Article 101, comma 7, lettera (e) Law. 152/2006.

55. M. Killias, *La criminalità in Italia: uno sguardo dall'esterno*, in M. Barbagli e U. Gatti (edited by), *La criminalità in Italia*, pp. 275 sg.

56. *Ibidem*, pp. 276 sg.

Similarly, Alberto Vannucci goes on, 'The strength and durability of Italian corruption have traditionally been explained as the effect of the combined influence of several macro-variables'. Among them, 'the structural inefficiency of Italian public administration; the de-facto arbitrariness of many decision-making processes, where excessive formal regulation coexist with the attribution of special derogatory or emergency powers; the extent of state intervention and the over-regulation of economic and social activities; the formalism of administrative procedures and controls' play preponderant roles.[57]

In order to determine the duties and responsibilities with regard to the activities of public administration, Act n. 241/1990[58] was passed. It concerns rules which should promote efficacy, transparency and responsibility in public Administration.

(iv) As for *nepotism and favouritism based on political clientele*, the Italian context is characterized by the 'existence of particular relationships, the lack of a sense of the state and of universal attitudes in the public service'[59]. This phenomenon can be observed at various professional levels as it may involve many different sectors: for example political life, the health care system and university administration[60].

In order to prevent this kind of lack of moral and legal sensibility in dealing with public employment or assignments, and it is a phenomenon which the civil society seems to be paying growing attention to, there are some initiatives in place aimed to limit the assumption of people having family ties. Tuscany was the first region which modified its legislation: in particular, Article 55 bis of Regional Law 40/2005 was amended in such a way that, nowadays, the Head of Regional Health Care System takes steps to avoid situations where employees having family ties or personal relationships work in the same department or operational unit, according to a hierarchical relation[61].

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57. A. Vannucci, *The controversial legacy of 'Mani Pulite'*, cit., p. 243.

58. Act 241/1990 (Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi), amended by Act 15/2005, Law Decree 35/2005, Act 40/2007, Act 69/2009, Law Decree 78/2010 e Act. 104/2010 e dal Act. 70/2011.

59. A. Vannucci, *The controversial legacy of 'Mani Pulite'*, cit., p. 243.

60. As for nepotism at university see N. Luca, *Parentopoli. Quando l'università è un affare di famiglia,* Marsilio, Venezia, 2009; F. Fiorio, *Le mani sull'università*, Editori Riuniti, 1996; R. Perotti, *L'università truccata*, Einaudi, 2008.

61. Tuscany Regional Law 24 February 2005, n. 40 (Disciplina del servizio sanitario regionale): Artiche 55 bis: «Art. 55 bis- Criteri per l'assegnazione del personale nelle strutture organizzative. 1. In sede di assegnazione del personale, la direzione aziendale adotta le misure necessarie ad evitare che dipendenti legati da vincoli di parentela o di affinità sino al terzo grado, di coniugio o convivenza, prestino servizio in rapporto di subordinazione gerarchica nell'ambito

(v) As to the problem of *corruption opportunities which may arise from direct contact* between functionaries and implicated private persons, it is just as relevant in Italy as it is in Greece.

In a wider and more general perspective we can mention a recent initiative aimed at promoting and improving correctness, transparency and impartiality of public functionaries. It is the Code of Ethics for public functionaries (at different levels: municipality, districts, regions), formalised by the Association 'Avviso Pubblico' at the beginning of 2012. This Code of Ethics can be adopted by a formal decision or act taken by the whole local public administration or, individually subscribed to by the Major or by the President of a District or a Region.

The Code has several goals: improving transparency (also from the patrimonial and the estate perspective), allowing access to administrative acts or information, ensuring democratic participation in administrative proceedings (i.e. allowing knowledge of); and reinforcing prohibitions (including the acceptance of gifts, applying undue pressure on someone and situations characterised by conflict of interests, clientelism, plurality of offices and so on).

Concerning direct contact between functionaries, Article 16 of the Code of Ethics provides that the public functionary should answer any reasonable request expressed by citizens and related to his/her duties accurately; should encourage any initiative or measure which favours transparency of his/her duties, of their practice or of the services he/she is charged with.

(vi) As for the need for *transparency in administrative acts*, we have to recall the above mentioned considerations concerning the Code of Ethics for public functionaries.

One of the weak points of this Code of Ethics is that although it provides that the public functionaries who have adopted or subscribed to the Code must take all measures to sanction persons violating prescriptions of the Code, its authority over boundaries is weak.

In order to encourage transparency and accountability, Act. 241/1990, which established the so-called 'officer responsible for administrative proceeding', should be mentioned. Under this act, the citizen does not have to cope with an impersonal en-

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della medesima struttura organizzativa, come definita ai sensi degli articoli 60 e seguenti. 2. Il personale che, a seguito dell'assegnazione, venga a trovarsi in una delle condizioni di cui al comma 1, è assegnato ad altra struttura organizzativa già esistente presso la stessa azienda sanitaria in posizione compatibile con i requisiti professionali posseduti. 3. Per le finalità di cui al comma 1 possono essere attivate anche procedure di mobilità interaziendale nel rispetto delle disposizioni contrattuali vigenti».

tity such as the Public Administration, but with a specific officer assigned to supervise the administrative proceedings overall.

(vii) Finally, in Italy there is a real lack of an independent *Authority charged with monitoring* Corruption. In particular, Italy does not have a special prosecutor or specifically appointed agency to investigate corruption or white collar crime, and this in spite of the fact that the Public Prosecution Offices are organised so that specific types of crimes are dealt with by a particular prosecutor. The Service for Anticorruption and Transparency (Servizio Anticorruzione e Trasparenza - S.A.eT.), created within the ambit of the Department of Public Function (Dipartimento della Funzione Pubblica), has only the competence of carrying out internal auditing at the level of Public administration[62].

With regard to criminal investigations, it should be pointed out that they are carried out by the Public Prosecution Office, given that the law enforcement agencies (Polizia di Stato, Carabinieri and Guardia di Finanza) do not usually investigate on their own initiative as they lack the guarantee provided for prosecutors. Nevertheless, a prosecutor can delegate sectors of investigations to these law enforcement agencies.

Besides there is plenty of room for improvement where *the system of repression in Italian legislation* is concerned. This could be implemented in several ways and through different devices, among which are:

(a) adopting a clearer distinction between bribery and concussion, as requested by the OECD Evaluation Report. This could help to avoid procedural difficulties in the formulation of criminal charges.

(b) Introducing a general norm about corruption in the private sector to comply with the Frame Decision 2003/568/JHA, which is based on the necessity of dealing with corruption cases linked to the process of privatisation of big public companies.

(c) Introducing a way of graduating corruption so that the abstract punishment ranges could better reflect the different seriousness of the concrete offences. According to the Italian experience, the same norm (art. 319 of the Italian Criminal Code) is used to repress either *petty cases of corruption*, where kickbacks are of a small amount and involve low-ranking public officials or failure to perform relevant acts, or *serious corruption cases* such as the Italian Enimont case and trial during the early 1990s. The huge 167 thousand million lire proven kickback involved in the case earned the dubious distinction of 'the mother of all bribes'.

Measures to enhance the certainty and the severity of sanctions may also have positive effects in fighting corruption. Both of these factors may influence not only

62. Prohibited by Act 3/2003 under the name "Alto Commissario contro la corruzione", it became the "Servizio Anticorruzione e Trasparenza", in 2008.

the efficacy of sanctions with regard to its natural target (the white collar workers), but may also strengthen collective moral standards. But what are the alternatives? If corruption is not punished by proportionate, adequate and dissuasive sanctions, a trend will set in where people distrust the whole public system and lose interest in politics. Consequently, this indifference might also cause a slow change in the ruling class, which can continue to take advantage of corruption, and won't be substituted by popular disappointment.

8. The problem of political corruption

The seven anti-corruption measures analyzed above refer to all kinds of corruption. Consequently, these measures can be applied, according to the distinction made above (cf. Paragraph 2), not only to cases of *petty-corruption*, such as building permissions from town-planning departments, dealings with tax-agencies and preferential hospital treatment, but also to cases of *grand corruption*, with transactions related, among others, to armaments, public works and pharmaceutical products. However, in both Greece and Italy, tackling grand corruption is connected to the following important parameter, which is not usually the case in petty corruption: In cases of grand corruption a great proportion of the economic benefit acquired by the corrupted functionary, ends up in the coffers of one or more political parties. In Greece, the two major parties which have governed since 1974 are apparently implicated in this kind of *political corruption*.

As the political philosopher Michael Walzer observed in an article (also published in Greece[63]), politicians and electoral mechanisms have become very expensive, not only in the U.S.A., but in the whole of the western world. This is the rather predictable impact which television and the mass media have had on electoral campaigns, which force candidates and their teams to maintain high electoral publicity over the whole electoral campaign, run endless polls, make numerous television appearances, and run the whole gamut of the mass media machine as part of electoral strategy and tactics. This kind of operation guzzles obscene amounts of money and puts pressure on politicians to seek the support of those who control the sources of their financing. Not surprisingly, political parties are more or less obliged to search and secure 'dirty' money. This funding is procured, for example, by ordering unnecessarily expensive, or unnecessary altogether, military equipment (cf. the Siemens and Ferrostaal corruption cases in Greece – cf. above, Paragraph 5.1). This abundant cash flow and the ensuing monetary kickbacks, allow the politicians to preserve their 'devoted' party-

63. Cf. newspaper Kyriakatiki Eleftherotypia, 6.7.2008, page 26 and "Thinking politically: Essays in political theory", Yale University Press, 2007, pp. 282 ff.

followers either by staying at party offices all over the country or being transported around the country to show 'sincerely fervid' support to the party, for example at a candidate's speech. It also allows politicians to be active players in the jousting for position in this self-aggrandizing and solipsistic political system.

8.1. Political parties and corruption in Greece

Where *Greece* is concerned, party expenses in the last years have been so high that almost all political parties are in debt. In particular, the two main parties have already cashed, in advance, all state grants intended for them until the year 2017 (!) and have even mortgaged these grants for loans from banks, amounting to the staggering sum of almost €234 million. To say there is a need for the politicians to simply change the formal rules of engagement in this decadent political system is clearly understating the case. What they need to do is to agree on a maximum ceiling for their annual expenses, to promote a sincere restriction in competitive practices concerning their electoral expenditures and their media publicity, as well as a bona fide effort to abolish the existence of the anachronistic 'party-followers'. It is true that a regulation for restricted party expenditures does exist in Greece by virtue of Law Number 3023/2002. However, this law is neither really respected nor seriously applied. Hence, it would be an important step forward if the annual maximum amount of expenses (per politician and per Party) became part and parcel of the rules accepted by the parties, and that every violation of this maximum amount should result in severe and enforceable sanctions.

8.2. Political parties and corruption in Italy

In *Italy*, the Clean Hands investigation revealed that political parties had enjoyed huge amounts of illicit funding. Coming hot on the heels of so many other corruption scandals the Italian people clearly expressed its will by voting 90.1% in favour of completely abolishing public funding for political parties in the ensuing referendum. Even then, and in spite of this overwhelmingly decisive vote, the Italian legislator introduced a 'voluntary' contribution which allowed tax payers to donate some 4 % of their income tax to political parties[64]. After disputes about the possibility of adopting such a system after the referendum, a subsequent law reformed the whole matter and expressly reintroduced public funding of political parties, but only in the case of financing election campaigns[65] (the so called 'reimbursement' that limited the

64. See Article 1 Act 2/1997.

65. See M.C. Pacini, Public funding of political parties in Italy, in *Modern Italy*, 14, 2009, pp. 183-202.

amount of public funding). This proved to be a very expensive option, given that the current reimbursement system costs the State more than 250 million euros a year[66]. A more recent reform, enacted by Law Numbers 156/2002 and 51/2006, introduced the payment of such reimbursements in annual installments, with the result that in many cases political parties continue to receive funds even though they are no longer politically active. Another problematic area is party fragmentation. Reimbursements are paid out at different levels of electoral competition (European, general and regional), effectively providing parties with different channels of funding. However, all these legislative options did not limit occasions for corruption. Political parties are still perceived as deeply corrupt, as showed by the data collected by Transparency International in Global Corruption Barometer 2010 [67] (cf. above, Paragraph 1, note 1).

9. Control and Sanctioning mechanisms for politicians' offences

A further problem of the political systems in both Italy and Greece concerning corruption, is that the *control* and *sanctioning mechanisms* for politicians' offences (mainly for ministers and members of Parliament) are *almost non-existent*, thus allowing them to shelter under the umbrella of a 'scandalous' immunity.

9.1. The situation in Greece

Concerning *Greece* in particular, despite the fact that every year since 1964, MP's and ministers have been obliged to submit a declaration regarding their assets, in practice there has been no control or verification of it. However, according to a new provision, art. 56 of Law-Number 3979/2011, these declarations must henceforth be uploaded on the internet.

On the other hand, in the case that a politician in Greece commits a crime, even a serious one, he/she does not have to follow the procedure foreseen for similar cases by the Greek justice system. This happens primarily because of the existing distinctly short prescriptions and secondly, because the Hellenic Parliament is the only organ which is competent to exercise penal prosecution against its own members. (NB. As a rule, such prosecution is avoided due to a tendency of politicians to protect their own as a manifestation of an "esprit-de-corps"). Nonetheless, this practice has already been roundly condemned by the European Court of Human Rights (cf. Syngelides v. Greece, 11.2.2010), as it violates the elemental principle of equal treatment

66. See the difference between the real cost and the reimbursement at the following URL: http://youngpolitic.altervista.org/blog/?p=66

67. See also the data collected about the sector perceived as mostly corrupted, available at the following URL: http://www.transparency.it/upload_doc/GCB2010_ITA.xls

before Justice, and, furthermore, has been disputed repeatedly by GRECO (cf. Paragraph 5.1 GRECO Evaluation III, Rep. (2009) 9E, Theme II).

Recently, a draft of law was promulgated and enacted as Law-Number 3961/2011[68]. This new Law attempts to correct some of these incongruities and extravagances, allocating more responsibilities to the judicial power pertaining to the control of politicians' offences. Yet, the amendments are restrictive, since the whole issue is regulated directly by the Greek Constitution (Articles 61-62 and 86 of the Greek Constitution[69]), which cannot be revised in the near future; besides, its revi-

68. See also Law-Number 4022/2011 concerning the acceleration of the procedure in cases of state officials and ministers or MP's.

69.*Article 61 of the Greek Constitution*:

1. A Member of Parliament shall not be prosecuted or in any way interrogated for an opinion expressed or a vote cast by him in the discharge of his parliamentary duties.

2. A Member of Parliament may be prosecuted only for libel, according to the law, after leave has been granted by Parliament. The Court of Appeals shall be competent to hear the case. Such leave is deemed to be conclusively denied if Parliament does not decide within forty-five days from the date the charges have been submitted to the Speaker. In case of refusal to grant leave or if the time-limit lapses without action, no charge can be brought for the act committed by the Member of Parliament. This paragraph shall be applicable as of the next parliamentary session.

3. A Member of Parliament shall not be liable to testify on information given to him or supplied by him in the course of the discharge of his duties, or on the persons who entrusted the information to him or to whom he supplied such information.

Article 62 of the Greek Constitution During the parliamentary term the Members of Parliament shall not be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by Parliament. Likewise, a member of a dissolved Parliament shall not be prosecuted for political crimes during the period between the dissolution of Parliament and the declaration of the election of the members of the new Parliament. Leave shall be deemed not granted if Parliament does not decide within three months of the date the request for prosecution by the public prosecutor was transmitted to the Speaker. The three month limit is suspended during the Parliament's recess. No leave is required when Members of Parliament are caught in the act of committing a felony.

Article 86 of the Greek Constitution

1. Parliament shall have the right to prefer charges on serving or former members of the Cabinet and Undersecretaries before an ad hoc court, according to the statutes on the liability of Ministers. This court is presided by the President of the Supreme Civil and Criminal Court and shall be composed of twelve judges chosen by lot by the Speaker of Parliament in public sitting from among the members of the Supreme Civil and Criminal Court and the Presidents of Civil and Criminal Courts of Appeal who held office prior to the accusation, as specified by statute.

2. Prosecution, judicial inquiry or preliminary judicial inquiry of the persons specified in paragraph 1 for actions or omissions committed during the discharge of their duties shall not be permitted without a prior resolution of Parliament.

sion is a competence of the ministers and members of Parliament themselves – a case-in-point regarding conflict of interest, or as Juvenal remarked millennia ago, 'Who watches the watchers?[70]'.

9.2. The situation in Italy

The problematic aspects concerning *control* and *sanctioning mechanisms* for politicians' offences with regard to Greece are rather similar to those of the *Italian legal system*. Italian Ministers and members of Parliament are obliged to submit a declaration regarding their assets. The information is available on internet and widely reported by newspapers.

As for the commission of crimes, we should distinguish the position of Government members, included the Prime Minister, from the one of members of Parliament.

Article 96 of the Constitution of the Italian Republic states that, 'The President of the Council of Ministers and the Ministers, even if they resign from office, are subject to normal justice for crimes committed in the exercise of their duties, provided authorization is given by the Senate of the Republic or the Chamber of Deputies, in accordance with the norms established by Constitutional Law'. This norm was modified by Law 1/1989, which assimilated the so called 'political justice' (a complicate procedure characterized, for example, by issues of political immunity) and the 'ordinary justice'[71]. Despite this reform, there are still grey areas: For example it is not easy to decide when a crime may be considered to have been committed in the course of "duty" or not. Moreover, the concession of such authorization may be problematic especially in cases where political intrigue is suspected as being behind the charge.

As for crimes committed by members of Parliament we should first mention Article 68 of the Italian Constitution, according to which,: 'Members of Parliament

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If in the course of an administrative inquiry evidence should arise which may establish responsibility of a member of the Cabinet or an Undersecretary in accordance with the provisions of the statute on the liability of Ministers, those in charge of the inquiry shall, after its termination, forward the evidence to Parliament through the competent Public Prosecutor. Only Parliament shall be entitled to suspend criminal prosecution.

3. Should the procedure on a motion against a Minister or Undersecretary be discontinued for any reason whatsoever, including the lapse of prescribed limitation, Parliament may, at the request of the accused person, decide the establishment of a Special Committee of Members of Parliament and senior judicial functionaries to investigate the charges, as specified by the Standing Orders.

70. Quis custodiet ipsos custodies? Juvenal, Satire VI, lines 347-8.

71. See Roberta Aprati, Il procedimento per i reati ministeriali: i conflitti di attribuzione per "usurpazione" per menomazione" fra giudici ordinari e assemblee parlamentari, in *Diritto penale contemporaneo*, 2011.

cannot be held accountable for the opinions expressed or votes cast in the performance of their function. In default of the authorization of his House, no Member of Parliament may be submitted to personal or home search, nor may he be arrested or otherwise deprived of his personal freedom, nor held in detention, except when a final court sentence is enforced, or when the Member is apprehended in the act of committing an offence for which arrest flagrante delicto is mandatory'. This norm is the result of a radical reform implemenented in 1993, when the Italian Parliament abolished the so called 'authorization of House' for the prosecution of crimes which were maintained only for personal or home search, arrest or otherwise deprivation of personal freedom.

In the case of authorisation being denied, prosecutors can propose the so called "procedure of attribution conflicts arising from allocation of powers of the State" before the Constitutional Court [72].

The prosecution of members of parliament for the crime of corruption needs very careful handling indeed. Given that, according to Article 67 of the Italian Constitution, each Member of Parliament represents the Nation and carries out his duties *without a binding mandate*, it is impossible to prosecute deputies and senators for corruption over the way they vote. On the other hand, corruption cases related to acts different from the act of voting can be prosecuted under the provision of Article 68 of the Italian Constitution, as can happen with any other common crime. However, it would be very difficult to identify whether a vote constitutes a violation of duties, as required by article 319 of the Italian criminal code, which is indeed the most serious provision on corruption. Furthermore, it should be observed that the prior autorization which is necessary to be given to the procecutors by the Parliament in cases of corruption involving deputies and/ or their accomplices may vanish the results of the relevant investigations. As the GRECO Evaluation report on Italy 2009 observes, 'During the on-site visit, the GET heard that the requirement for prior authorisation is an important constraint on the investigation of some cases of corruption and that it can impede not only the investigation of crimes suspected to have been committed by parliamentarians, but also the investigation of crimes suspected to have been committed by other people who have associations with parliamentarians. The GET was told that prosecutors do not consider it useful to make such applications because to do so would disclose the existence of an investigation and prejudice the outcome and also because such applications are invariably refused. The GET was also told that this

72. See the following judgements by the Italian Constitutional Court n. 410 of 18 November 2008 and n. 330 of 8 July 2008, respectively concerning immunity permitted by the Chamber of deputies and the Senate of the Republic.

issue arises on a small number of occasions - the figure quoted was "less than 10" in each five-year term in the House of Deputies and less than that in the Senate) (§ 63)'.

10. Drawing conclusions

10.1. In conclusion, the following observations can be made as concerns Greece:

13.1. In *Greece* legislation against corruption is almost complete, but there is still a climate of tolerance towards petty corruption, due to cumbersome bureaucratic procedures, which almost force citizens to look for 'oblique ways' to advance their cases and surmount these hurdles. However, the public's attitude towards important cases of grand corruption, which are being fervently discussed in the media and investigated in depth by the prosecuting authorities has not been so tolerant in the last few years. What is more, in many of these cases, penal prosecutions have been exercised, and even penal convictions have been imposed for serious cases of corruption (cf. Paragraph 5.1). Important steps have also been taken towards a more efficient administrative fight against corruption: a 'Transparency' programme has been introduced for every state-act on the internet; measures to objectify the criteria to correctly estimate, for example, the tax value of a real estate, have been adopted; and measures to disconnect direct contact between functionaries and private citizens have been further promoted (i.e. KEP). Yet, one central problem which gives rise and growth to grand-corruption still remains; that of the immunity of persons who belong to the so-called 'political system', such as ministers and members of Parliament who try to ensure legal but also illegal sources to finance their electoral campaigns.

10.2. In Italy efforts to fight corruption seem to be rather weak in several areas:

(a) there is a real lack of a dedicated, independent Authority charged with monitoring corruption and elaborating efficient strategies to prevent it. The S.A.e.T (Servizio Anticorruzione e Trasparenza) is under the Department of Public Function, so it is strictly related to government;

(b) there is a lack of resources devoted to the education and training of state and local officers (the ad hoc public funds received a 80% cut).

(c) the propensity of citizens to report corruption cases has not been encouraged enough, and although the public utility phone number 117 has been introduced (operational at the Guardia di Finanza, a fiscal police), other, more efficient measures have not been adopted. We are referring, for example, to the measure of a reward mechanism which could be introduced for those who report crimes of corruption. As an effort in this direction we could mention the Italian 'Progetto Cernobbio', a project elaborated in 1994 by magistrates and criminal law professors, but finally not ap-

proved. It provided a specific clause of 'non punishability' for anyone (public officer or private person) who would report crimes of corruption within three months from the act of corruption itself, and/or who would also give information about potential co-authors or other people involved to the prosecutors and return the bribe. That project was based on the assumption that it would be useful to break the 'bond of silence' between the corruption partners from the inside, by using a device similar to the 'prisoner's dilemma', derived from 'game theories'.

(d) the lack of anti-whistleblowing legislation [73];

(e) the lack of 'naming and shaming' tactics for both individuals and organisations and a blacklisting system;

(f) Last but not least, Italian anticorruption policy seems unable to cope with its growing link to organised crime. Mafia-controlled enterprises are evolving into forms which use corruption to enter the legal markets. They have started to erode market sectors (for example, construction, waste and recycling enterprises) then territory, and finally packages of votes. In this way Mafia leaders are making use of corruption tactics to approach politicians and gain 'power'.

In short, a good criminal and administrative legislation is an indispensable device to prevent and combat corruption, but very much has to be done in terms of education and training at school and social level to promote a different culture of social relationships and to improve a deeper respect of democratic rules and public goods.

Indeed, recourse to law may reveal itself as a double edge sword. As Tacitus wrote in the first century AD, '*Corruptissima re publica plurimae leges'*.

The observations above go some way to showing how a Multifactorial Corruption Index for a certain country could be constructed, taking into account all important parameters of corruption in that country (cf. Paragraphs 1 and 2). In fact, corruption is a matter that needs a multifactorial approach and thus a complex method of quantitative measurement and qualitative evaluation.

73. See, widely, G. Fraschini, N. Parisi, D. Rinoldi, *Protezione delle "vedette civiche": il ruolo del whistleblowing in Italia,* Transparency International Italia, 2009.