

Preventing corruption through administrative measures

Handbook edited by Enrico Carloni
in collaboration with Diletta Paoletti

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REGIONAL
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INITIATIVE



CENTRO STUDI VILLA MONTESCA
FONDAZIONE

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Preface

Strengthening the prevention of corruption: sharing “good practices”, learning by experience

Is corruption an invincible enemy or is it more simply a very difficult enemy to defeat, to be faced with new strategies, without abandoning the old ones? Despite all the difficulties, many countries have developed – and are developing – new approaches to fighting and preventing corruption: it is precisely the logic of prevention that today appears to be the most advanced frontier of anti-corruption policies.

Corruption, as we know, is not absent from the Italian institutional scenario: it is a major problem, that characterized the political and administrative system.

Today Corruption is the subject of a highly articulated anti-corruption policy in Italy, developed during last few years, since Law no. 190 of 2012. As in other fields (for example in the fight against *Mafia*), Italy is an interesting “laboratory”, experiencing problems and attempting to solve them, focusing on measures of administrative prevention, rather than on the traditional repressive responses entrusted to the criminal prosecutor.

Corruption prevention strategies have recently been proposed in several European countries, and in particular in those that, like Italy, share an unsatisfactory position in the main international corruption rankings (as the one published by Transparency International).

The need to develop a more effective fight against corruption is well perceived at international and European level, and the new prevention policies are part of a regulatory framework that is strengthened thanks to international conventions and European solicitations.

The improvement of Italy in the rankings of perception of corruption shows (albeit taking into account the limits of classifications based on “perception”) seems to confirm the usefulness of the new approach. The progress of Italy international ranking between 2012, the year of adoption of the law that founded the new prevention strategy, and 2018, supports the idea of an

Italian “good practice” on the prevention side corruption that deserves to be widespread, and compared with similar experiences in the European scenario.

Moreover, the importance of a more effective fight against corruption is increasingly perceived, not only thanks to the international solicitations (starting with the UN Convention against Corruption). Corruption contributes to undermining confidence in public institutions, distorts competition in the economic sphere (in particular, with regard to public contracts), causes an enormous increase in average costs (and delays) for the provision of infrastructure, favours the poor quality of public works, and constitutes an untenable economic weight. From the European point of view, for the States belonging to the Union or aiming to join the EU, corruption hinders the good functioning of the European administration, which is largely indirect administration, operated through the States.

Compared to the approach adopted twenty years ago, the recent reforms appears to be more effective and incisive.

The mentioned legislation reflects comparative models, at least in terms of the basic concept of the adaptation of a broad spectrum of policies to the specificities of each administration, and the revival of the role and importance of codes of conduct, in this case tailored to the characteristics of various administrative contexts.

The comparative influence, and the equal importance of international demands (among other things, the law implements two international anti-corruption conventions signed by Italy), can not be overlooked.

The 2012 law is developed along two fronts: the traditional one, in terms of penal sanctions, and the innovative one, in terms of administrative prevention. Referring to the reinforcement of repressive mechanisms, the law represents an important, though not entirely satisfactory, step: penalties for corruption offenses are strengthened by the legislation, while new offenses are provided for.

The most interesting and innovative aspect of the law does not, however, regard the amendments to criminal legislation, but rather the development of a comprehensive administrative approach to preventing corruption: the phenomenon of corruption is redefined in administrative terms, as a set of behaviours that are the expression of maladministration, which are more extensive than those configurable as relevant from the perspective of their criminal sanction.

In terms of the administrative dimension of the fight against corruption, and the use of preventive measures, rather than the repressive mechanisms of criminal prosecution alone, the new approach provides a range of instruments, both general and sectoral, which have a “systemic” (involving the en-

tire administration) or circumscribed impact: for example, the requirement of the rotation of managers, the protection of whistle-blowers, post-employment limits, etc.

These reforms developed a new anticorruption strategy, producing an organic and wide ranging attempt to provide the administrative system with a number of “auxiliary precautions” for the prevention, containment, and uncovering of corrupt behaviour and, more generally, the phenomena of maladministration.

In comparison with other eras, over the last years the widespread perception of the phenomenon of corruption, albeit including uncertainties and, above all, afterthoughts and contradictory attitudes at the level of policy and legislative guidelines, has involved the definition of a system for preventing and combating the phenomenon through administrative measures.

To this challenge, the administrations are approaching by sharing good practices, but also, sometimes, in an improvised and disorganized way, neglecting the lessons that can be derived from the experiences of other countries. Sharing good practices, learning from the mistakes of others, building a network of corruption prevention experts, were some of the objectives of the training activity, funded by the OLAF’s Hercule III program, coordinated by Professor Enrico Carloni, which is the starting point for this volume of lessons.

The project, which completes this volume with this volume, is fully part of the activities that the Italian National Anti-Corruption Authority has supported and developed over the years, with particular and specific attention to the development of collaborations with universities, to support the dissemination of models and good practices to combat corruption, to support anti-corruption policies in the Balkan countries. It is therefore in some way a point of arrival, of a broader planning, but also a starting point, because the battle against corruption is extraordinarily complex and difficult and requires constant action, a support network, collaboration and sharing of good practices.

The anti-corruption winter school, was run by the University of Perugia in January-February 2018 with the support and participation of the OLAF (European Anti-Fraud Agency) that funded it, of the ANAC (Italian National Anti-Corruption Authority) that has supported and promoted it, by the RAI (Regional Anticorruption Initiative, based in Sarajevo), by the Centro Studi Villa Montesca Foundation (which hosted the lessons). It has seen the participation of thirty students, anticorruption experts from twelve European countries with a large prevalence of the Balkan area: in this sense the school is fully part of the initiatives supporting the Berlin Process, aimed at joining the European Union of the Western Balkan countries.

Raffaele Cantone

Introduction

Fighting corruption through administration, and prevention, rather than through judicial and criminal prosecution: an ambitious goal, central for democratic systems. An embankment to populism, an instrument of legitimisation of institutions, a central need for the improvement of the quality of life and the efficient use of public resources: the fight against corruption is today, perhaps more than yesterday, one of the central challenges for contemporary public institutions.

The project “Preventing corruption through administrative measures” was carried out in 2018 by the Department of Political Sciences of the University of Perugia, which has a specific vocation in the field of interdisciplinary studies on public administration and has gained experience in the field of anti-corruption. Within the department, study programs have been designed in terms of public ethics, transparency of institutions, prevention of corruption; scholars of the department have conducted national and European research on these issues (in particular, we note the participation in the project AnticorrP, funded by the European Union in the VII Framework Program, under the direction of Prof. Paolo Mancini). The Department has recently been funded by the Italian Ministry of Education and University as a “department of excellence” for research in the field of legality, with a specific focus on the quality of institutions and anti-corruption policies.

The fact that this project is born within a department of Political Science is not indifferent to its contents: the interdisciplinary approach is central in the Department’s activity and is reflected on the methods of analysis of the phenomenon of corruption and related contrast strategies. Economists, political scientists, sociologists, psychologists, statisticians, jurists (mainly, especially scholars of administrative law), contribute together to deepen the theme, and to enrich the tools of understanding and prevention.

The structure of this volume reflects the contents of the winter school, of which it collects a series of lessons: the theme of prevention of corruption is therefore analyzed from several points of view.

The volume opens with some experiences of contrast and prevention at the international level (Joksimovic, with reference to the area of south-ea-

stern Europe and experiences of supranational cooperation), with particular attention to the Balkan area (Cvetkovic, Bozanovic). (“Part 1 – P Share good practices. Support for the development of anti-corruption policies”).

The comparative perspective makes it possible to place the issue in the context of the main trends in the international and European scenario: both in terms of policies for integrity and good administration (Ponce), and in terms of administrative transparency (Cerrillo-i-Martinez) (“Chapter 2 – Preventing Corruption And Promoting Good Government And Public Integrity: A Comparative Overview”). Public contracts are one of the most important sectors in terms of anti-corruption, both for the economic dimension and for the critical issues it presents. Hence the need to devote specific attention to the problem of corruption in the field of public contracts: a “laboratory” of innovation (in the perspective of new forms of control, strengthening of impartiality, transparency), in which, both at a supranational and national level, the need for specific measures to prevent corruption is strongly felt (Racca, Rinaldi) (Chapter 3 – “Public Procurement And Corruption”).

It is therefore the phenomenon itself that is brought to the attention: corruption as a distortion of public ethics, an ancient but ever-present problem that challenges the reflection of the classical and modern philosophers, which requires to be deepened in the framework of the most up-to-date analysis of the political science (Vannucci), paying particular attention to the problem of the relationship with the dynamics of organized crime (Segatori) and to the role of mass media as “watch dog” (Mancini), always within the framework of citizens’ right to good administration (Mannella) (Chapter 4 – “Public Ethics And Corruption”).

The prevention of corruption is therefore analyzed through the study of corruption prevention plans (Monteduro and Moi, Tubertini) (Chapter 5 – “Preventing The Risk Of Corruption”). The logic of risk prevention (understood as mapping of processes, risk analysis, treatment of corruption risk with the most appropriate measures) is central to the new approach and is at the heart of the most recent and innovative policies to prevent corruption.

The volume deals with the relationship between public management reform policies, the promotion of integrity and the fight against corruption, both from a theoretical and operational point of view (Pioggia, Gardini, Bianconi). Being able to count on a bureaucratic leadership careful to combine the requirements of impartiality and those of efficiency is a decisive challenge for contemporary public administrations (Chapter 6 – “Enforcing Public Management To Fight Corruption”).

The volume therefore dedicates attention to the question of the “measurement” of corruption and the “risk” of corruption. The same ability

to understand the phenomenon in quantitative terms is deepened in light of the available indicators (both subjective and objective) and the ability to analyze an “occult” phenomenon through economic-statistical sciences (Galli, Pieroni, Gnaldi). The analysis deepens the problem, showing in particular the usefulness of having indicators able not only to represent the phenomenon, but also to alert against the risk of corruption present in a specific context (“red flags”) (Chapter 7 – “Knowing Corruption: Measures Of Corruption And The Public Datasets”).

The volume continues by analyzing specific aspects of corruption prevention: in particular, issues of behavioral rules, integrity and the search for ethics in the behavior of officials are studied, with a legal (Falcone) and psychological (Pacilli, Spaccantini and Giovannelli) approach. (Chapter 8 – “Public Duties And Code Of Ethics To Prevent Corruption”). As the two writings show, that of “deviant” behaviors is an area in which an interdisciplinary approach is particularly useful, and in particular the integration between the legal and psycho-social analysis tools.

Among the specific prevention tools, the issues related to digitization (Donati, Piras, Ponti) (Chapter 9 – “E-Government Strategies And The Preventing Of Corruption”), which presents itself as a potentially decisive tool for strengthening the institutional capacity to combat and prevent corruption.

A particularly interesting study is then dedicated to one of the main tools to combat corruption: transparency (confirming the thesis that sunlight is “the best disinfectant”). Administrative transparency is analyzed both in overall terms (Di Mascio, Dominici) and with reference to the specific issue of the protection of whistleblowers (Maneggia) (Chapter 10 – “Public Transparency And The Prevention Of Corruption”).

The final chapter 11 (“Eu and national strategies to prevent corruption”) is dedicated to the European approach, in particular paying attention to European policies for the good management of European funds (Parisi, Rinoldi, Raspadori).

The volume concludes with a series of reports on specific experiences, the result of the work of some of the experts who took part, as learners, in the winter school. It is a synthetic and operative part, but certainly interesting to understand the current dynamics in the field of corruption prevention in South-East Europe (“Annex: National Reports On Anticorruption”).

The volume aims, therefore, to provide tools, theoretical and operational, to address the challenge of preventing corruption. This is an ambitious work, which is hoped to meet the challenges that public institutions face in the new season of preventing corruption through administrative measures.

Enrico Carloni