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Investigations into Corruption Held in Milan, 1992/1998

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Abstract

In February 1992, what had begun as a simple case of extortion ended up by revealing that corruption in Italy had been widespread and systematic. More than five thousand people were investigated in the course of the enquiries, including Premiers, Members of Parliament, Ministers, and public and private entrepreneurs among others. The successful outcome of these investigations was achievable due to the conjugation of a series of elements: strong public opinion and media support, the independency of the Magistrates, Public Prosecutors and Judicial Police vis-à-vis the political sphere, and the efficiency of the strategy followed by the judiciary. Hampering even better results was the ineffectiveness of international judicial assistance, given that corrupt exchanges do often involve transnational cleaning operations.

Keywords: (systemic) corruption, crime, judiciary, international judicial cooperation, Italian politics.

Resumo

Em Fevereiro de 1992, uma investigação que começara com um simples caso de extorsão, acabaria por revelar a natureza generalizada e sistémica da corrupção em Itália. Mais de cinco mil indivíduos foram inquiridos no decorrer das investigações, incluindo, entre outros, Primeiro Ministros, Deputados, Ministros, altos cargos públicos e homens de negócios. O sucesso destas investigações só foi possível devido à conjugação de uma série de factores: o forte apoio por parte dos média e da opinião pública em geral; a independência, face à esfera política, dos juízes, magistrados do ministério público e agentes da policia judiciária; e a eficiência da estratégia de investigação prosseguida pela magistratura. No entanto, um dos factores que mais terá condicionado a obtenção de melhores resultados foi a ineficácia da cooperação judicial internacional, dado que a maioria das transacções de natureza corrupta geralmente comportam operações transnacionais de branqueamento.

Palavras-chave: corrupção (sistémica), crime, sistema judiciário, cooperação judicial internacional, política Italiana.

PART I¹

1. In general

I am a Milan deputy Public Prosecutor and, together with my colleagues, have carried out large scale investigations into corruption. More than five thousand people have been investigated in the course of our inquiries, including four former Premiers, about 200 former and present Members of Parliament, Ministers (some of whom were actually in office at the time of their involvement), political and administrative secretaries, regional, district and municipal councillors, mayors, Fiscal Police officers, public and private entrepreneurs and even judges. Our investigations have revealed that corruption in Italy has been a widespread system.

We began thirteen years ago, in February 1992. We investigated various crimes against the Public Administration and others, for example, false accounting and embezzlement which were tied up with corruption. The most common crime against the Public Administration was to bribe public officials to abuse their office. Extortion (abuse committed by a public official to induce a private individual to hand over a sum of money) was a much less frequent crime. However, illicit financing of political parties was very common. In many cases, the proceeds from corruption were used, in part or completely, to cover election and party management costs.

Our investigations kicked off with a simple case of extortion. The manager of a Milan charitable institution asked the owner of a company responsible for cleaning the institution premises for a kickback to ensure that he would be able to keep his contract. The latter rebelled and reported the incident to the Carabinieri. The Carabinieri caught the manager red-handed as he was taking the money and arrested him.

Bank checks revealed that he had deposits far in excess of what could be supposed considering his declared income. We believed that this was not an isolated incident but common practice. We, therefore, checked out the contracts awarded to other businesses and questioned the owners. We discovered that, time and again, this public manager had received money from them in return for favours.

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We assumed that private managers had paid other institutions in exchange for favours. And so it proved. At that point we suspected that the managers of these other institutions had received money from other businesses and again we were proved correct. And so our investigations gathered pace, an ever-widening spiral involving more and more public officials, institutions and private businesses. By now, our inquiries had become public knowledge and many private managers and rather fewer public officials decided to come forward voluntarily, occasionally spurred by moral scruples but more often by the hope that they would obtain mitigating circumstances and thereby a less stringent punishment. They reported many crimes of which we had, as yet, no knowledge.

In many cases corruption did not take place directly between public and private managers. Very often a politician was the link between the two. He negotiated on price and favours and then gave the public officials or private managers instructions that certain businesses be treated favourably. Frequently the politician was representing not only his own party's interests but also those of other parties.

In 1994 another line of investigation developed when a Brigadier of the Fiscal Police reported that his superior officer had offered him part of a bribe received in checking a company. Roughly one hundred Fiscal Police officers were arrested, including a number of colonels and a general. In these cases corruption usually consisted in receiving bribes in exchange for avoiding checks on whether a company had not paid taxes, or had created black funds and so on. We discovered that a system had developed in this field too, as the tax police officers involved in checking used to share the bribes with each other and with their superiors.

We also saw that sometimes kickbacks were paid in exchange for giving us wrong results to investigations we had asked the police to make. Similar discoveries were made about the behaviour of municipal police officers, who used to receive bribes in exchange for neglecting their official duties, and of army officers. The latter indeed in several circumstances received bribes for having allowed young men to avoid being called up.

In 1996, the last line of inquiry emerged. A woman voluntarily came to us and revealed some information regarding the corruption of a number of judges. Investigations were carried out, and some judges were accused of receiving bribes in exchange for being partial and unfair in their work, favouring the party who had paid

them. A number of trials followed, and some judges and bribers were convicted at first instance.

2. Factors facilitating our investigations

The following factors contributed to the success of our investigations:

a) the independence of the magistrates, both internally (there is no hierarchy) and externally (the magistrates do not depend on legislative and executive powers. Neither must they be influenced by public opinion, the media, financial powers and so on). An essential pre-requisite for the success of our investigations was the fact that the careers of prosecutors and judges are not separate. In this way, the prosecutors can participate in the judicial culture and the judges can appreciate the technical aspects of investigations;

b) the fact that the judicial police reported directly to us. We were, therefore, assured of the loyalty of the police and also that our orders would be respected. Likewise, the police were protected by our independence;

c) the secrecy of the first stages, about three months, of the investigations. In this way we avoided the risk of evidence being tampered with;

d) being able to order searches and seizures without any authorization from the competent judge;

e) being able to ask the judge for preventive detention (in this way, evidence couldn't be tampered with, the accused couldn't flee and the crime couldn't be committed again);

f) being able to ask the judge for permission to tape telephones and rooms, in order to gather evidence;

g) the complete removal of banking secrecy during investigations;

h) the possibility of having recourse to plea bargaining and summary proceedings. These lead to a relative reduction in the sentence and therefore the accused were more willing to assist in the investigations;

i) public opinion and media support, extremely prevalent in the first stages of our investigations, were highly beneficial. They did not influence us but rather disarmed the accused by highlighting the unlawfulness of their behaviour.

3. Office organization

In the spring of 1992 a full time investigation team was set up, composed of three deputy Public Prosecutors. Their responsibilities were not strictly divided. However, one was responsible for collecting evidence through interviewing witnesses and the accused and filing and organizing documents. Another was responsible for drawing up requests for arrest warrants from the judge or for parliamentary authorization to investigate Members of Parliament (until November 1993 this was needed in order to prosecute M.P.s) and so on. I was one of the three members and my task was to gather documental evidence. Over the years four more deputy Prosecutors joined the team for limited periods.

Our team was backed up by about thirty judicial police officers who reported directly to us. They worked in our offices, filing, writing statements, questioning and so on. Initially the Carabinieri carried out orders, searches and seizures, writing reports, making arrests and so on. The State and Fiscal Police then carried out most of the work because of their specialist qualifications. When documents and incidents needed specific analysis we brought in external consultants.

Information technology played an important role, permitting documents to be filed and cross-referenced easily and quickly.

4. The System of investigation

Rather than follow just the one path, we pursued any lead which might turn out to be useful. We gave equal importance to statements and documents, cross - referencing what we were progressively bringing to light and then going on to new targets. Investigations could begin by taking statements which led to the acquisition of documents, the analysis of bank and company accounts and so on. Or they started from the analysis of accounts which led people to give evidence.

The search for black funds, usually used for paying bribes, and reconstructing bank transactions were two important aspects of our inquiries. For example, we uncovered many payments of bribes by analysing black funds unearthed whilst looking into the payment of one single bribe. Likewise with bank checks, as the discovery of current and deposit accounts and government bonds used to pay bribes led us to unearth other bribes.

Searching for and discovering the systems used to mask the creation of black funds further aided our investigations. We often found false consultancy contracts and invoices which aimed to conceal the true reason for financial transactions.

As investigations progressed, bank and company checks revealed associations between our accused and foreign banks and companies, the latter normally off-shore. We had to make many requests to foreign courts for assistance and to devise ways of obtaining information through domestic channels regarding foreign connections. Unfortunately we have to note that international judicial assistance is not effective. The requested states, indeed, only answered roughly 50% of our 700 requests, refusing them openly less than 20 times.

5. Some considerations about our discoveries

We unearthed a plethora of illicit behaviour. Tens of thousands of crimes came to light and many more would have been discovered if we hadn't been hindered by the problems referred to before.

Some considerations can be drawn from the nature and number of cases:

a) Not only criminal law but also economic and technical regulations were breached. Relationships between the business world and public administration were regulated almost entirely by agreements involving bribes which constantly disregarded criteria such as limiting spending, improving efficiency and - sometimes - serving the public. So much so that the suspicion that public works were effected not to meet public needs but to line private pockets proved well-founded. This situation led to grave distortions of public and political functions. Public officials and politicians pursued personal ends which actually went against public needs;

b) The awarding of public contracts was often meaningless. The winner was chosen before the assessment of requirements, through agreements between the company and the public official. The award was apparently above board but the public official had given the company prior information so allowing it to make the most appropriate tender. Sometimes clauses were inserted in the call for tenders to favour this company;

c) Sometimes the competing companies agreed on how a contract was to be awarded by arranging which company would propose the best tender.

A sum of money was paid to the excluded companies. Public officials and politicians ensured that everything went according to plan;

d) Very often, and most certainly for the important contracts, the businesses and politicians agreed on the deal rather than the public officials. The latter were completely under the politicians' thumbs, receiving personal benefits both in financial and career terms. We uncovered many deals fixed between a number of political parties to arrange and share kickbacks. One politician would be delegated by the others to negotiate with businesses even for kickbacks intended for another party. He collected the whole sum and shared it between the parties concerned;

e) It was the public institutions and not the businesses which bore the cost of the bribes as the latter transferred it to the former using a variety of systems. For example, by renegotiating prices or altering the project whilst work was in progress the firm was able to bump up the costs of the tender. Some firms also recovered the bribe by carrying out less costly work than had actually been agreed on;

f) The sum total of the bribes went in part to the personal feathering of nests and in part to covering expenses for day-to-day party management and elections. The annual sum total, at present, amounts to hundreds of millions of euros;

g) When police officers had been corrupted, the bribes went (or are assumed to have gone) in part into their personal pockets and in part to their colleagues or superiors; in the case of judges to middle-men with the task of connecting the judge to the corrupter;

h) Our investigations frequently uncovered international middle-men who were responsible for creating the funds from which the bribe was taken and for paying the bribe. They supplied their clients with a complete service of fund creation, financial transactions, the concealment of both by false invoicing and other devices, masking bank relationships through the use of transit and trust accounts as well as trust companies. We got the impression that some of these international middle-men acted like a decompression chamber interposing themselves in many transactions deriving from different illicit markets.

6. The length of investigations and trials

Material pertaining to our investigations increased steadily as we gathered together statements and documents. These documents came from companies and banks and from a multitude of international rogatories (more than 700 requests were sent). Despite this abundance of material, our investigations proceeded rapidly with the exception of those dependent on international assistance. These, on the other hand, took an extremely long time. Generally six to twelve months passed from the very first step of writing the suspect's name in the appropriate register to the final stage of committal for trial. In any case not more than two years went by as this is the deadline by which investigations must be concluded.

Although investigations were rapid, the preliminary hearing and following trial were not. The situation might best be described as a pyramid. The base, which represents the investigative stage, was extensive. However, the more the decision stage neared, the more the pyramid narrowed. A number of prosecutors worked together but the judge appointed to examine the case worked alone. His tasks were immense. He was responsible for issuing authorization orders and preventive remedies, leading preliminary hearings, judging alternative procedures and so on. The swift work of the prosecutors was brought before an individual already inundated with formal duties which held up his decisions on the cases.

The situation as regards the trial stage was even more serious. Only very rarely is a court able to decide quickly. Evidence needs to be brought together in the trial in order to be used in making a judgement and this takes a long time. Because of this, the Statute of Limitations was often in danger of expiring before the final ruling.

Alternative procedures were seldom resorted to and this also worsened the situation. The percentage of charges covered by the Statute of Limitations is at present about 35%, and it is destined to increase.

PART II

7. International judicial assistance

As mentioned previously, many financial transactions consisting in the payment of bribes had been carried out abroad. So we had to ask foreign magistrates for their assistance in discovering and gathering evidence.

As international judicial assistance is not completely effective, we only received roughly one out of two complete replies to our rogatories. The following table shows the details of the five crucial years of our requests for documents or statements.

In the table the answers are updated to December 1999; 1992 and the years following 1997 statistics about requests have been removed because they are not particularly significant and could possibly be misleading.

Rogatories Requested	569	
Pending	235	41.30 %
Partially answered	19	3.34%
Answered	315	55.36 %
Negative or declined	19	3.34 %

Year	Requested	Pending	Part. Ans.	Ans.	Neg. or Dec.
1993	112	66	06	46	//
1994	126	46	03	67	13
1995	43	14	02	27	02
1996	52	19	04	30	03
1997	236	90	04	145	01
Total	569	235	19	315	19

Countries applied to

Country	Req.	Ans.	%	Country	Req.	Ans.	%	Country	Req.	Ans.	%
Algeria	01	01	100	France	06	04	66	Princ. of Montecarlo-	17	16	94
Austria	06	02	33	Germany	09	04	44	Rep. of San Marino	08	02	25
Bahamas	06	//	00	U.K.	29	08	28	South Africa	01	//	00
Belgium	01	01	100	Hong Kong	02	//	00	Singapore	01	//	00
Brazil	01	01	100	Liechtenstein	32	10	31	Switzerland	409	249	61
SCV	02	02	100	Luxemburg	31	17	55	Tunisia	01	//	00
Costa Rica	01	01	100	Malta	02	//	00	U.S.A.	09	07	77
Croatia	01	//	00	Mexico	02	//	00	Venezuela	02	//	00
Egypt	02	02	100	Holland	01	01	100				
Ireland	02	01	50	Pakistan-	01	//	00				

These are the figures. As regards the content of our requests, the following arguments are to be considered. Generally speaking, the first rogatory usually depended on the discovery of a bank account abroad. If the account belonged to the bribed party, the documentation given us by the foreign bank in reply to our request frequently showed other suspect transfers, which we investigated (through another rogatory) to check whether it was money received as a bribe. In several cases it proved to be so.

If the account belonged to the briber, and he was an individual, we could possibly discover the further payment of bribes to other civil servants or politicians. If the briber was a company, we usually discovered black funds secretly owned by the company, and consequently many further kickbacks paid by it. Black funds, in fact, are generally created also to pay bribes.

As the most common system for creating black funds involves shell companies usually resident in an off-shore country (and generally owned by the briber), our requests for international judicial assistance were also connected to the need for information about the owners of those companies and of links between the latter and Italian companies involved in corruption.

We met several difficulties in our relationship with our foreign colleagues, due to:

- company and banking secrecy still in force in the off-shore countries and at times also in some E.U. countries;
- professional secrecy claimed by the managers of those companies, particularly when at the same time they were lawyers or accountants;
- lack of international treaties (even though on several occasions countries not bound by international conventions answered us more rapidly than signatory states).

Apart from absolutely exceptional cases, answers arrived at a very long delay. This was generally due to various reasons, usually depending on internal procedures, and sometimes on a lack of co-operation. In the first case, for instance, the rules of the State applied to allow a number of appeals against the decision in favour of the requesting State. In the second case investigators can be inundated with many requests for further information, more details and so on.

PART III

8. Corruption of members of Parliament, of the Government, and of representatives of political parties

Corruption of members of Parliament, of the Government and of representatives of political parties has been discovered time and time again, as previously mentioned.

Just to give you an idea of the involvement of politicians in the system of corruption, I will now quote some parts of the first instance decision of the “Metropolitana Milanese” (the Milan underground) corruption trial. <<To (try) to understand the source and establishment of this system of corruption, the political and economic context in which these incidents happened needs to be reconstructed. A meeting of the different and qualified interests of political parties on the one hand, and companies on the other, is at the basis of this phenomenon... Political parties needed huge sums of money in order to bear “political costs”, which in the last decade had increased enormously, up to tens of billions of lira...Regarding costs, explained Mr ..., there were at first the fixed ones, related to the carrying out of day to day activity and the maintenance of party structures... Then, there were very high extraordinary costs linked to electoral campaigns, carried out through TV advertising, propaganda (such as posters, leaflets), electoral meetings, conferences and so on...>>.

Official income (public financing of political parties and party membership contribution), helped parties bear their costs, but it was absolutely insufficient.

So, to collect money, political parties <<made use of illicit tools... [and] through the system of <bribes> or <voluntary contributions> from entrepreneurs the system of parties found the sole way to survive>> their expenses.

<<The development of the Milan underground had been the opportunity for the traditional Milan political parties to find financing for their needs>> and <<it has to be highlighted that the M.M. case is not an isolated one, but is part of a general context, involving other companies owned by the municipality of Milan, as well as the public transport company, the airport company, the electric energy company...the transport system gave the party system more than 30 billion lira>>, in bribes, in about twelve years.

A politician, the <<vice-president of the M.M. also guaranteed that its management would not hinder the contracts to be shared between the companies which usually paid bribes according to the plan>>.

Generally speaking, <<administrative proceedings appeared correct on the surface, just to avoid irregularities being suspected... In fact, this apparent compliance with procedure had been supporting the survival of that system. The “trick”, indeed, was usually carried out before contracts were awarded, selecting “friend companies” at the pre-qualification stage>>.

The bribes (about 4% of the total value of each contract) were shared generally as follows: <<17% to the Social Democratic Party; 8% to the Republicans; 37.5% to the Socialists; 18.75% to the Christian Democrats and 18.75% to the Communists>>.

On the other hand, <<companies needed to secure a protected market share, aiming at being busy also in times of economic recession...bribing political parties “these entrepreneurs, who, by nature, are not philanthropic, proposed the goal to themselves to get on the right side of the mentioned parties”>> and receive public awards in exchange.

Usually, one manager collected the bribes from the involved companies, and one politician shared them between the political parties. Part of the money was spent at local level, part was used at national level to meet their own costs, and part feathered the nests of the involved people. Obviously, the top administrative management used to receive and spend that money, and with them – sometimes – other representatives of the parties and often their national political secretaries (in other words, their bosses).

The system of bribing parties had been repeated, with no great changes, both at local and central level, involving all kinds of politicians, including MPs and members of the Government.

Until November 1993 Parliamentary authorization was required to investigate its members. So, in the first year and a half of our inquiry we had to send dozens of such requests to the Senate and the Lower Chamber. After November, a Constitutional law enabled Prosecutors to prosecute MPs. This task took up all the time of one of our team. After the change of the relevant section of the Constitution, our work became easier.

9. Destination of money

It is necessary to distinguish financing which came about through the co-operation of a public official (generally bribed), financing obtained through the co-operation of low or medium level political figures (such as chairmen of municipal

enterprises, town councillors and so on, who are also generally bribed) and financing paid directly to top politicians.

In the first case, part of the money received was kept by the official, which he appropriated to feather his nest; the rest was paid to politicians. In the second case part of the money was kept by the low or medium level politician and was used in two ways: again we have personal enrichment on the one hand; and money used to promote oneself personally within the party on the other (acquisition of favours from above through personal donations of money; the acquisition of representation in the party through the purchase of membership cards). In the third case politicians sometimes used the money they received for personal enrichment, but more generally to pay their own and their party's electoral expenses as well as party management costs. Moreover, by allotting money to the electoral campaign of one candidate rather than another; by allotting money to public initiatives of this or that member of the party, they could choose a company and, within it, an absolutely reliable and loyal management, regardless of their ability or whether or not they represented the true interests of the electorate.

10. Corruption of civil servants

We ran into different kinds of corruption of civil servants. These different types can be listed according to their seriousness. At the highest level there are the bureaucrats closely connected to leading politicians. The top management of some state companies (the national oil company, electric energy company, railway company and so on) has to be included in this category, as well as the chairmen of watchdog bodies (e.g. the Italian equivalent of the U.S. S.E.C.) and the top officials of some Ministries. Depending on the features of their own offices, these people used to receive bribes:

- in order to make contracts between their state company and other companies, and receive bribes a large part of which was intended for politicians and a smaller part for themselves;
- in order to carry out the orders of politicians with regard to favouring companies in their contractual relationships with public bodies (ministries, schools, hospitals, and so on), in exchange for bribes to share with the politicians;
- in order to favour entities subject to public checks, or to avoid such checks.

The same pattern is reproduced just a step below by civil servants connected to local politicians, who received bribes in order to “help” politicians sell the roles of public bodies. Corruption affecting the lowest ranks of public servants is a little different. They asked for and received very low bribes for themselves, and at most shared the kickback with their direct superiors, day by day, in exchange for small favours.

11. Corruption of judges and police officers

In this general framework we also discovered, as previously stated, crimes of corruption committed, or that were believed to have been committed, by police officers and judges.

In Italy the tax police have the task of checking periodically company accounts. They also have to carry out investigations (generally connected to financing) assigned by the prosecutors. So, in 1994 a brigadier of the Milan tax police went to his chief and revealed to him that a colleague of his had offered him some money. This money, the colleague had said, was part of a larger sum that a company had offered him “to thank the tax police for their kind behaviour in checking the company”. The chief immediately informed the prosecutor, the colleague of the honest brigadier and his home were searched and a lot of cash was found. We supposed that he had received that money as bribes, investigations took place and the directors of many companies, which have been checked in the past, were interviewed to discover if they had paid bribes. The majority confessed, and in a brief time some of the policemen confessed too. In the meantime we checked their bank accounts and in several cases discovered the accused had much more money than their licit income could allow. A very deep-rooted system of corruption was so unearthed involving a large part of the tax police body in Milan.

An inquiry started into some municipal police officers, following statements from shop owners claiming they were obliged to pay bribes to avoid checks into their business, the authorisations they had obtained and so on. The most important difference between the two situations depends on the size of bribes: a lot of money was received by tax police officers, small sums by municipals.

As also stated, in 1996 a woman voluntarily reported to the prosecutor’s office very odd behaviour she had seen several years before. While she was at a party at a lawyer’s home, she saw a lot of money on a secluded table: somebody explained to her that the money was for a judge. Having received further information about the financial

relationship between some lawyers (including the first) and some judges, she decided to report these facts to the prosecutors. Two years of investigation followed, and extremely sophisticated tools were used to discover the crimes we supposed the money was connected to. Among other things, we discovered that some judges had opened bank accounts abroad, and a lot of money had been deposited in those accounts by the lawyers the woman had spoken about. At present the first degree proceedings have been completed, and some judges and lawyers convicted.

In our inquiries we did not discover corruption committed by prosecutors, but it is likely that it was discovered in other prosecutors' offices in Italy.

Part IV

Prevention and remedies for corruption

12. Prevention of corruption connected to illicit financing of political parties.

To curb illicit financing of political parties some considerations need to be taken into account. It is evident that managing a party costs money, often particularly large sums. If we want to prevent politics from being reserved for people who possess particularly large fortunes, parties or political figures must be allowed to receive money through financing. Financing can therefore be justified by the need to guarantee democracy.

However for democracy to function, financing must have some basic characteristics. In essence financing can only be admissible when it does not favour the subject making the contribution; it is obvious that the donor intends to gain an advantage from his donations, but such advantages can only concern the general consequences of asserting one line of politics rather than another, and the realisation of general, abstract regulatory provisions of this line of politics.

In order for this to happen there must be a limit on the funds that parties and political figures can receive. Financing must be transparent, and therefore controllable by public opinion. It cannot come from public organisations unless it is donated in a completely impartial manner, and that means to say that it was carried out so that each party involved on the political scene could benefit from it. A time limit could be added

which is valid in all circumstances: financing cannot be awarded by parties interested in adopting or refusing a provision when it is being discussed by the competent body.

The following points facilitate transparency:

- public financing in proportion to the numbers represented by the party;
- tax relief on financing.

Measures which can directly obstruct illegal financing, generally speaking, consist of the imposition of obligations which make the raising and/or use of funds subject to monitoring. Sometimes investigations into a politician wealth may be provided.

Repressive measures can be of a penal or administrative nature. The former could consist of sanctions of a personal (as in Italy, where there is imprisonment) or financial nature.

The choice of which measure to use depends on the assessment of the detriment caused by illegal financing. If this is taken into account - as I believe it should be on the basis of the considerations made as to the effects of illegal financing - systems of dissuasion, monitoring and sanctioning appear appropriate since they are proportional to the negativeness of the illegal financing and the damage that it causes.

All the things we have spoken about so far regard the punishment of illicit financing at a criminal level.

Another way of preventing the parties receiving illicit sums can be found. It is common knowledge that the cause of illicit financing is the enormous sums needed for electoral campaigns. The more the amount the candidates can spend is limited, the more illicit financing is curbed.

13. Possible remedies for the corruption of public officials.

I wanted to give a general picture of investigations and their outcome so that you could understand the particular point of view of someone who has experienced the Italian situation. You can see that the Italian experience is particular, as corruption has become a system. In other countries the situation is not so serious, whilst in others it is much graver. My suggestions are based on the system we have discovered.

In my opinion the best way to reduce corruption and move it onto the fringes, is to spread a culture of respect for the law. Only if people learn to abide by the law, will

corruption be pushed to the sidelines. If we feel that this solution will take too long, I think the following points are crucial:

- considering that every social level is involved in systematic corruption, accountability based solely on checks is difficult to realise, as even monitors are corruptible;
- some countries have tried to combat corruption by increasing the salaries of their public employees. However, this is of limited effect, because we found even people with large incomes were open to corruption;
- it is very important that public decision makers be independent. In this way they cannot be influenced by politicians or given orders from above;
- having taken all this into account, I still believe checks are important. However checks must be substantial and not formal, and possibly extended to the lifestyle of public decision makers.

As stated previously, the money obtained by corruption has been used to cover expenses for political parties and to enrich the civil servants or politicians involved.

At least two people need to be involved to corrupt: the person who pays and the public official who receives the money for carrying out the act contrary to his/her duties. In general that act appears licit. Therefore to prove the corruption we followed two different paths: indirectly, by checking if the act is inconsistent with its aims; directly, by interviewing the parties who committed the crime (or the rare possible outsiders who were aware of it), or by investigating the financial transfer of money between the corrupter and the corrupted. Very often the latter leaves traces in bank documentation between the two subjects, or corruption can be supposed on the basis of the excessive living standards of the corrupted civil servant (or politician).

14. Ways to prevent corruption

It is an illusion to think that systematic corruption can only be repressed penally. This kind of repression is always useful, but not sufficient. We must change people's way of thinking so they believe that corruption is not acceptable. Preventing corruption makes corruption less appealing.

There are various ways to prevent corruption. A salary adequate to the level of the office is not sufficient to dissuade the public official from falling into temptation. In fact, unlawfully received money is used for unnecessary expenses or even to acquire power and so - regardless of the outcome of a trial -it is necessary to verify the actual financial means which have come to the public decision maker directly or indirectly. The risk of being called to justify goods owned and one's standard of living is in fact a suitable deterrent against corruption. It would be better still if, at the same time, it was possible to confiscate sums of money or goods whose origin cannot be justified by the public decision maker or politician.

15. Ways to repress corruption

The repression of corruption consists in discovering crimes already committed and punishing the guilty parties. As mentioned previously, simply analyzing papers officially drawn up by the public decision maker rarely shows that an unlawful pact has been agreed between the corrupt and the corrupted party. If anything, it is the effects of the documents in question which can be of indirect probative importance. In this way, if corruption concerns - for example - the sale of a building by a public body to a private person, the fact that the price paid was much less than the market value (or vice versa) is of particular importance.

Corruption is a crime generally surrounded by discretion or secrecy and it is not easy for a person guilty of corruption to talk about it, for he too would suffer sanctions - in Italy the corrupted party and the corrupter receive the same punishment - and he would lose the possibility of corrupting or being corrupted again in the future.

If corruption is systematic, it is also exceptional for the crime to be brought to light by watchdog bodies. In fact they are themselves sometimes corrupted, or rather they are superficial in their monitoring, or their monitoring instruments do not allow effective verification. Of decisive importance therefore is the evidence which can be deduced from the financial transactions of the corrupter and the corrupted and the corrupted party's availability of assets. A check into his assets and standard of living would therefore also be useful in repressing corruption already committed.

16. Control of the availability of assets

The effectiveness of monitoring the availability of assets depends on the completeness of information on said assets, and the effective independence of the monitoring bodies.

There are various instruments which can be used to thwart the acquisition of complete information. On a national level in fact, assets can be registered in the name of third parties (relations, close friends and so on) so that the person under examination does not appear to be the owner. Practices of this kind are very simple where the national laws permit anonymity. If the national rules are different, it is still very easy to obtain the same results by establishing international relationships.

So the problems are the following.

Firstly, the breadth of monitoring. The financial means of persons with strong family or marital ties to the public decision maker must also be monitored. Whoever receives money unlawfully exercises at least minimum caution, making it seem that the money or property resulting from the crime belong to people close to him. Checks should be extended therefore to verify whether relatives of the public decision makers are covered by fiduciary companies.

Secondly, the protection of third party privacy. This regards identification of the latter and the compatibility of monitoring with the right for privacy. Simply fishing for possible banking or financial relationships which are falsely held in the name of third parties cannot be useful, effective or legitimate, if we don't show some indications that said relationships hide funds or assets linked to the person to be monitored. A case by case evaluation must be made, concretely monitoring the link and consequently determining which need is greater, the needs for monitoring or the need for privacy.

Lastly, assets abroad. For monitoring to be reliable and effective it must also be carried out with reference to what could possibly be owned abroad, because very frequently money and assets unlawfully received are kept by foreign banks, or off shore companies used for the false registration of property. Checks at international level are very difficult because of banking and company secrecy. Consequently the effectiveness of monitoring depends on the modification of international conventions and relationships so that public decision makers can be investigated. Otherwise monitoring would often be inefficient because it would be partial and therefore not meaningful. There is an alternative as we shall discuss further on.

For monitoring to be effective the watchdog body needs to be completely independent, and not subject to the same risk of corruption. In countries

where corruption is particularly widespread that risk is high, because there is the possibility of corruption inside itself. In such cases we need help from international monitors on the efficiency and correctness of the internal monitoring bodies.

17. Monitoring of living standards

It is ineffective to indiscriminately subject any public decision maker to checks because, despite the widespread nature of corruption, not all are dishonest. In addition, carrying out extensive monitoring, would lead to such an enormous accumulation of information as to be unmanageable. Checks must be targeted through an initial screening. In my opinion the standard of living is the fact which indicates the situations to be monitored. The corrupted public decision maker receives money, and obviously aims to spend it. The use of money is highlighted through his living standards or those of persons close to him, which is excessive compared to his lawful income.

All this presupposes firstly the carrying out of elementary investigations into the living standards, aimed at verifying the excess. The indexes of living standards are the following:

- residential homes either owned or rented, even for holiday periods;
- cars, boats, planes;
- holiday trips;
- living expenses (for example restaurants);
- clothing expenses;
- the purchase of works of art and antiques;
- the purchase of jewels;
- medical expenses;
- unnecessary large expenses in general.

Anomalies in the public decision maker's assets can emerge from other sources. But, as this is exceptional, it can be negligible in drawing up an effective control system in the majority of cases. The exceptional cases are to be dealt with by particular measures.

18. How to verify living standards and financial means

Living standards can be verified by the parameters listed in the preceding point, and any other parameter. The discrepancy between living standards and lawful income can be evident, or it has to be investigated, examining public registers and contracts which in some way, testify to the use of excessive financial means (i.e. the lease of a particularly expensive house), or observing concretely the use of goods or money by the public decision makers or persons close to him.

19. Identification of the field of intervention

If living standards are not evidently excessive, investigations are particularly complex, costly and open to high risks of failure if carried out on a large scale. In order to make it more simple, effective and less expensive, some limitations must be introduced.

a) Subjects. The definition of a public decision maker who must be monitored may include anybody with a public function having the power to make decisions with external consequences. Not only public or civil servants (as traditionally defined), but also politicians who are able to influence their decisions, and private employees exercising public functions. We may exclude those who exercise their functions without great financial rewards or are not suited to inducing corrupt behaviour. However, there need to be specific investigations into the categories consisting of a very limited number of people holding particularly incisive powers (i.e. some monitoring bodies and magistrates);

b) Monitoring. Do investigations have to include all public decision makers? An initial screening is made on the basis of living standards, so that the evident disproportion of the latter must be assumed for monitoring assets. In the other cases there are three possible alternatives: a generalised check on living standards by the acquisition of all elements for deducing them; simple random samples, namely the investigation of some public decision makers regardless of any prior screening; or a generalised monitoring based only on some indices of living standards, with consequent in-depth monitoring of suspect cases. The last solution gives good and inexpensive results, only if the most useful indices are chosen as normally a type of hierarchy of expenses exists. The parameters to be used should be those which regard assets which have priority over others (i.e. the home, means of transport, expenses for the education of children etc.); we

have to limit investigations to the data (especially relating to close relations) contained in public registers, information from direct observance is preferable to the acquisition of data, because it is more realistic (i.e. the practical verification of the house which is actually lived in, the car which is actually driven etc.).

Once the suspect cases have been identified, the range of subsequent checks depends on how many cases there are. If the suspect situations are limited they can all be investigated in depth; if there are too many, only the most anomalous situations must be controlled, because prevention does not depend on the number of cases monitored, but on the effectiveness of the results.

20. Characteristics of the monitoring authority

Monitoring can work effectively only if the monitoring body is not simply independent, but also streamlined and non-bureaucratic. But for such a body to work successfully only a limited number of cases can be brought to its attention.

The characteristics which I have indicated come from experience: the world is full of institutions, authorities and committees whose results are negligible compared to the size of their budget and dimension, because they dedicate a great deal of their time and resources to their own management.

21. Alternatives to the monitoring of financial means

Checking assets cannot be carried out effectively in countries where banking secrecy and company secrecy are inviolable. For these countries it would often be a problem to modify the provisions of law and allow effective monitoring because of their dislike of the general judiciary principles. Other countries would find insurmountable difficulties every time they have to extend their monitoring of assets, to countries where banking and company secrecy is impenetrable.

There is an alternative. Once it has been observed that the living standards of the public decision maker are excessive compared to his known lawful income, he could be asked to justify this discrepancy. He is required to produce documentation which gives proof of such other lawful income as to explain the imbalance, and not the monitoring body to do the opposite. For the system to work it is necessary for particularly heavy sanctions to be provided should he refuse to cooperate.