



## DOSSIER: FIGHT AGAINST CORRUPTION: STATE OF THE ART AND ANALYSIS PERSPECTIVES

## Political corruption in Italy: many investigations, few convictions?

*Corrupção política na Itália: muitas investigações, poucas condenações?*

*Corrupción política en Italia: ¿muchas investigaciones, pocas condenas?*

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**Abstract:** At least since the 1990s, corruption has continued to be listed as one of the major shortcomings affecting old and new European democracies. In spite of that, measuring political corruption is still a tricky task. In this scenario, some recent studies proposed to turn the attention to the judicial actions to curb corruption, through criminal prosecution, shedding light specifically on the investigations involving high-level politicians (Popova and Post 2018; Dallara 2019). In this paper we aim to present data about judicial prosecution of political corruption in Italy, emphasizing how the number of investigations involving political actors seems rather high, although relatively few cases end with a conviction. Moreover, we aim to suggest some explanatory factors that could account for this situation. Among them: the salience of the issue in the political and public debate; the governance structure of the Italian judicial system and some characters of the Italian criminal law and procedure.

**Keywords:** Corruption. Prosecution. Italy. Criminal justice. Media.

**Resumo:** Pelo menos desde os anos 90, a corrupção continua sendo listada como uma das principais lacunas que afetam as antigas e as novas democracias europeias. Apesar disso, medir a corrupção política ainda é uma tarefa complicada. Nesse cenário, alguns estudos recentes propuseram direcionar a atenção para as ações judiciais para coibir a corrupção, por meio de processo criminal, esclarecendo especificamente as investigações envolvendo políticos de alto nível (Popova e Post 2018; Dallara 2019). Neste artigo, pretendemos apresentar dados sobre processos judiciais de corrupção política na Itália, enfatizando como o número de investigações envolvendo atores políticos parece bastante alto, embora relativamente poucos casos terminem com uma condenação. Além disso, pretendemos sugerir alguns fatores explicativos que poderiam explicar essa situação. Entre eles: a relevância da questão no debate político e público; a estrutura de governança do sistema judicial italiano e alguns caracteres do direito e do processo criminal italiano.

**Palavras-chave:** Corrupção. Ação judicial. Itália. Justiça criminal. Mídia.

**Resumen:** Al menos desde la década de 1990, la corrupción sigue figurando como una de las principales brechas que afectan a las viejas y nuevas democracias europeas. A pesar de esto, medir la corrupción política sigue siendo una tarea complicada. En este escenario, algunos estudios recientes han propuesto centrar la atención en acciones legales para frenar la corrupción, a través de procesos penales, aclarando específicamente las investigaciones que involucran a políticos de alto nivel (Popova y Post 2018; Dallara 2019). En este artículo, tenemos la intención de presentar datos sobre procesos judiciales de corrupción política en Italia, enfatizando cómo el número de investigaciones que involucran a actores políticos parece bastante alto, aunque relativamente pocos casos terminan con una condena. Además, tenemos la intención de sugerir algunos factores explicativos que podrían explicar esta situación. Entre ellos: la relevancia del tema en el debate político y público; La estructura de gobierno del sistema judicial italiano y algunas características de la ley italiana y el procedimiento penal.

**Palabras clave:** Corrupción. Enjuiciamiento. Italia. Justicia penal. Medios.



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## Introduction

Since the 1990s, corruption has continued to be listed as one of the major failings affecting old and new European democracies. In spite of that, measuring corruption is still a tricky task. In fact, data commonly cited in reports and debates on corruption are those, highly criticized, offered by international indexes, mainly based on individuals' perceptions and only rarely on direct experiences of corruptive practices.<sup>2</sup> In this scenario, some recent studies propose to shift the attention to judicial actions aimed at curbing corruption and, more precisely, to criminal prosecutions of corruption involving high-level politicians, to the timing of such investigations and to the following number of indictments and convictions (Popova and Post 2018; Dallara 2013, 2015, 2019). In this paper, after a short review of the literature, we aim to present data about judicial activity in prosecuting political corruption in Italy, emphasizing that, although the number of investigations involving political actors seems to be high, only few cases end with a conviction. We suggest some explanatory factors that could account for the situation: the high salience of the issue in the media and in political debates; the governance structure of the Italian judicial system and some specific traits of the Italian criminal law and procedure.

## Mapping investigations involving high-level politicians: a (tentative) state of the art

The conduct of high-level politicians' influences public opinion and citizens' behavior, playing a crucial role in the struggle against corruption. In fact, as stated by the World Bank's<sup>3</sup> (2000, 75), "a serious anticorruption program cannot be imposed from the outside but requires committed leadership from [...] the highest levels of the

state". Then, top-politicians' ethical integrity is a prerequisite in both implementing good public policies and shaping good societies. Furthermore, high-level politicians tend to be more responsive and accountable if their power is restrained through a good system of checks (Persson and Sjöstedt 2012). In fact, politicians are increasingly sued in relation to cases of political corruption.<sup>4</sup> High-level corruption can prompt a downward spiral leading to low trust in political institutions, creating a political environment in which it is more difficult for the political class to preserve political support. However, the reputation of the judicial system plays a key role in influencing citizens' judgment of corruption allegations.

The country on which complete, although outdated, data of judicial investigations on high corruption are available is France. Fay and Ollivier (2002) collected information from national and local press, publications and judicial sentences considering the period from 1992 to 2002. Their data shows that 882 high-status politicians have been under investigation with the total number of investigations amounting to more than 1,500. Among the politicians under investigation Fay and Ollivier mentioned several ministers, a Prime Minister, Presidents of the National Assembly and the Constitutional Council and more than 100 members of Parliament. The 549 cases closed by December 1st 2001 saw nearly 70% of provisional or final decision of conviction.

Data on other European countries are not systematic. They often refer to local politicians and, more important, often it is not clear the percentage of convictions on the total amount of investigations. For instance, judicial inquiries against top-level politicians involved in corruption scandals represent a trait also of Spanish politics. Under Franco's authoritarian regime "corruption

<sup>2</sup> But see the Special Eurobarometer n. 470, Corruption, October 2017. The data there seem to suggest direct experience of corruption to be much lower than perception. Accessed Jan. 12, 2019. <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/81008>.

<sup>3</sup> World Bank. 2000. *Anticorruption in transition: a contribution to policy debate*, Washington, DC. Accessed on June 2019. <http://documents.worldbank.org/curated/en/825161468029662026/pdf/multi-page.pdf>.

<sup>4</sup> Fish, M. Steven, Katherine E. Michel, and Staffan I. Lindberg. 2015. Legislative Powers and Executive Corruption, *Working Paper, Series 2015:7*. The Varieties of Democracy Institute. Accessed on Sept. 2019. [https://www.v-dem.net/media/filer\\_public/a4/5a/a45a57e4-5634-4510-8284-79bbba348484/v-dem\\_working\\_paper\\_2015\\_7.pdf](https://www.v-dem.net/media/filer_public/a4/5a/a45a57e4-5634-4510-8284-79bbba348484/v-dem_working_paper_2015_7.pdf)

was widespread but hidden",<sup>5</sup> because only a few cases were publicized. Since the demise of Franco, corruption has surfaced. In 2009, the then Spanish Attorney general - Cándido Conde-Pumpido – revealed to Parliament that 730 judicial proceedings for corruption were undertaken against Spanish politicians. Among them, 266 belonged to small and regional parties and 464 to the biggest parties, with respectively 200 investigations for the Popular Party (PP), and 264 for the Socialists (Psoe).

Political scandals represent now a standard feature of political life also in Nordic countries (Pollack et al. 2018). In such a scenario, Allern et al. (2012) had observed an increase of political scandals in Denmark, Sweden, Norway, and Finland in the period between 1980 and 2009. The authors point out that the most important category of political scandals concerns transgressions of norms and laws in the economic field, such as attempts at tax evasion, embezzlement or corruption. They focus the analysis on scandals involving Government members (minister or secretary of state); members of the national leadership of a political party; members of Parliament; mayors or political leaders of the towns, leader of a national interest organization like Trade Unions. Their data show that, of 154 politicians involved, 55% are members of government. As for the political affiliation of politicians involved, 44% of the scandals involve Left politicians, while 38% involve the Right. In any case, they emphasize that "one-third of the 66 economic scandals throughout the three decades were based on accusations of corrupt behaviour" (Allern et al. 2012, 40). Pollack et al. (2018) have continued the work of Allern et al. (2012) by considering the scandals emerged from 2010 to 2016. They spot a general increase in corruption cases in comparison to the previous period (1980-2009) and emphasize that almost half of the

politicians involved were in a government position.

Although with different methodologies and data – a fact making impossible a veritable comparison – all studies tend to show that, in recent years, corruption has been increasingly discovered and prosecuted, involving politicians of different political parties. In this context, the research carried out by Popova and Post (2018) represents an important effort at analyzing in an empirical and comparative way judicial investigations of political corruption. They analyze all prosecutions for corruption brought, from 2000 to 2012, against members of the executives in seven Eastern European democracies: Bulgaria, Croatia, the Czech Republic, Macedonia, Poland, Romania, and the Slovak Republic.<sup>6</sup> The analysis highlights that 56 cabinet ministers out of 927 have faced corruption-related criminal charges. Observing the indictments rates by country, they found that Bulgaria and Romania have roughly the 10% of cabinet ministers indicted; Macedonia, Croatia, Poland and the Czech Republic show 5-7% of ministers indicted, while in Slovakia only two ministers have been indicted. Furthermore, they emphasize that most indictments take place while ministers are no longer in office, with an average lag between ministers' end of term in office and indictment of 21 months.

The authors initially formulate several hypotheses on what leads to corruption indictments:

- 1) fewer ministers from cabinets that include a former Communist party get indicted for corruption;
- 2) countries with weaker democratic institutions indict more ministers for corruption;
- 3) ministers in portfolios with greater corruption opportunities get indicted more often; and
- 4) ministers from junior coalition partners are more vulnerable to a corruption indictment (Popova and Post 2018, 232).

<sup>5</sup> Robles-Egea, Antonio, and Santiago Delgado-Fernández. 2014. *Corruption in democratic Spain. Causes, cases and consequences*. Paper presented to the ECPR Conference: Glasgow. Accessed on July 2019. <https://ecpr.eu/Filestore/PaperProposal/14c542ea-385a-40dc-b-146-7c4d6103b853.pdf>.

<sup>6</sup> To this end, they have built the Eastern Europe Corruption Prosecution Database which contains information on all (927) cabinet ministers in the selected countries. The database includes portfolio, tenure (starting and ending), party membership, gender, and the corruption prosecution experiences, i.e. whether the minister was indicted and, in this case, the conclusion (distinguishing between dismissal, acquittal or conviction).

They do not find strong evidence that EU conditionality or membership leads to more indictments. On the other hand, party politics seems to affect the frequency of corruption indictments more than the structure and behavior of legal institutions. Indictment rates are lower when a former Communist party controls the government, while individual ministers from junior coalition partners are more vulnerable to indictment than other ministers. Finally, ministers in portfolios with greater corruption opportunities get indicted more often, while the existence of a specialized anti-corruption prosecution or a more independent judiciary do not seem to lead to more indictments.

### The case of Italy

Among consolidated democracies, Italy has been traditionally considered a country with a high level of political corruption (Vannucci 2013). In fact, almost 90% of Italians think that corruption in their country is "widespread".<sup>7</sup> It is therefore significant to analyze the extent to which the judicial system is contrasting the phenomenon. Taking inspiration from Popova and Post (2018), a mapping exercise of judicial investigations for corruption against ministers, deputy ministers and undersecretaries has been carried out (Dallara 2019). The goal was to map out the entire prosecution process, from the emerging – in the media – of the first allegations to the opening of a formal preliminary investigation (from now on we will use only 'investigations'), to the filing of an indictment and to the final court decision. At first, we focused on two hypotheses: ministers with portfolios having greater corruption opportunities get indicted more often; ministers from junior coalition partners are more vulnerable to corruption indictments.<sup>8</sup>

The time span analyzed covers the period from 2006 to 2013. In these seven years, three governments, with three different political

outlooks, were successively in office. The first was the center-left Prodi II government, in office from 17 May 2006 to 8 May 2008. It was followed by the center-right Berlusconi IV government, in office from 8 May 2008 to 16 November 2011, and finally, from 16 November 2011 to 28 April 2013, by the "technical" (i.e. non-partisan) government headed by Monti. Therefore, a cabinet composed mainly by experts without a political affiliation followed two cabinets with different political orientations.

To address the first hypothesis, concerning the type of portfolio, we have employed the same criteria of Popova and Post (2018), while, in order to verify the second, we had to adapt their methodology to the traits of the Italian political system. The concept of 'strong' or 'post-communist' party, as operationalized by the two authors, cannot be adequately transposed into the Italian party system. Thus, for the Italian case, we propose to test the hypothesis by verifying the extent to which the individuals belonging to the major parties of the governmental coalitions have been investigated. Our mapping was conducted on 240 subjects who served as Minister, Deputy Minister and Undersecretary, from 2006 to 2013 (see table 1). Among them, 60 individuals (out of 240) have been investigated for one or more of the following offences: corruption, embezzlement, fraud, criminal association (*associazione a delinquere*), loss of revenue, defamation, vote trading, facilitation, market manipulation, fraudulent misrepresentation, slander and threats, bid rigging, illegal financing, induction by compulsion, fraudulent misrepresentation, false accounting, improper influence, fraudulent bankruptcy and false reporting.

Following, as Popova and Post (2018), the Transparency International Bribe Payers Index we considered as corruption-prone the following portfolios: 1. Ministry of agriculture; 2. Ministry of transport/ communications; 3. Ministry of economy and/or Industry; 4. Ministry of

<sup>7</sup> See Special Eurobarometer 470, Corruption, October 2017, p. 18. The data seem stable over time. [https://data.europa.eu/euodp/en/data/dataset/S2176\\_88\\_2\\_470\\_ENG](https://data.europa.eu/euodp/en/data/dataset/S2176_88_2_470_ENG).

<sup>8</sup> As for the influence of an anti-corruption authority, it is not directly applicable in our single case study. In fact, the Italian anti-corruption authority was officially in place only from 2014. It is functionally independent from the executive, but it is only entrusted with supervision and prevention of corruption within the public administration. However, as we are going to see, public prosecutors in Italy enjoy strong guarantees of independence.

Defence. In the case of the Prodi II cabinet of 32 investigations, 6 were related to activities involving the Ministry for economic development, 3 the Ministry for Infrastructures, and 2 to the Defence Ministry. In both Berlusconi IV and Monti cabinets the portfolios with the highest number of investigations are the Ministries of economic development, followed by Infrastructures and Finance. The Ministry of Agriculture presents high scores only for the Berlusconi government. Therefore, the hypothesis seems validated.

**Table 1 – Members of government (2006-2013)**

<b>Government</b>	<b>Ministers, Deputy Ministers and Undersecretaries</b>
Prodi II (2006-2008)	105
Berlusconi IV (2008-2011)	83
Monti (2011-2013)	52
<b>Total</b>	<b>240</b>

**Source:** own elaboration from the project dataset

**Table 2 – Investigations of government members**

	<b>Prodi II (23 months)</b>	<b>Berlusconi IV (42 months)</b>	<b>Monti (17 months)</b>
<b>Ministers</b>	18	251	3
<b>Undersecretaries</b>	14	18	4
<b>Total</b>	32	43	7
<b>Number of investigations normalized for the months in office</b>	1.4	1.32	0.4

**Source:** own elaboration from the project dataset

<sup>1</sup> Data do not consider the 11 investigations against Berlusconi.

<sup>2</sup> Here we considered also the 11 investigations against Berlusconi, leading to a total of 54 investigations. The other members subject to more than one investigation for corruption related charges were 7 in the Prodi II cabinet (5 Ministers and 1 Undersecretaries) 9 (6 Ministers and 2 Undersecretaries) in the Berlusconi IV cabinet and none in the Monti Cabinet.

The second hypothesis is not validated. In fact, the data collected testify a strong judicial attention on the members of major political parties, both in the center-left and the center-right governing coalitions. In both executives, the major parties of the governing coalition were interested by judicial

investigations for corruption-related crimes. On the other hand, the Monti government was definitively less investigated. As for the later phases of the proceedings, the number of indictment seems to be relatively low if compared to the number of investigations opened (see table 2 and 3).

**Table 3 – Investigations and indictments in Italy**

<b>Government</b>	<b>Investigations opened</b>	<b>Ministers' indictments</b>	<b>Undersecretaries' indictments</b>	<b>Total indictments</b>
<b>Prodi II</b>	32	9	9	18 (56%)
<b>Berlusconi IV</b>	43	23	12	35(81%)
<b>Monti</b>	12	8	2	10 (83%)
<b>Total</b>	87	40	23	63 (72%)

**Source:** own elaboration from the project dataset

Data about the outcome of the investigations are obviously extremely relevant, but difficult to assess. This is due to the limits of official statistics, but also to the Italian media system and its attitude in reporting judicial cases of corruption. In fact, it is quite easy to find information about the beginning of the investigations, while it is often difficult to trace their final steps. For the Prodi II cabinet, due to the time elapsed, we were able to find a good number of final decisions. In the case of the Berlusconi IV cabinet, we encountered more difficulties due to the high number of cases still pending. Since often no official information can be found in the judicial decisions official

database, data on cases ended due to the statute of limitations are difficult to find out, as this information is not frequently spotted in the media, except for the cases that catch permanently the public opinion attention, such as those involving Berlusconi. Thus, data presented in table 4 have to be read with caution, especially those referring to cases pending and to the statute of limitations, as some cases that we codified as still pending could then be terminated due to the statute of limitation.<sup>9</sup> On the contrary, data about dismissed cases, acquittals and convictions tend to be more reliable, as we were able to find detailed news or the final decision in the official databases.

**Table 4 – Outcome of investigations in Italy (Ministers)**

	Ministers	Indictments	Convictions	Acquittals	Missing/Ongoing
Prodi II	29	9	2	3	4
Berlusconi IV	30	23	11	12	0
Monti	20	8	2	6	0
<b>Total</b>	<b>79</b>	<b>40</b>	<b>15</b>	<b>21</b>	<b>4</b>

**Source:** authors

Before trying to explain the Italian results presented above, some cautions are necessary. The data do not provide direct and systematic insights on political corruption as a whole, since the mapping exercise covers only charges of corruption against cabinet members.<sup>10</sup> Therefore, they cannot be extended to the broader political corruption scenario. However, cabinet members are not the only perpetrators of grand political corruption, but they provide a good starting point for the analysis: they represent the tip of an iceberg of corruption investigations. The rationale for this choice is both pragmatic – it is easier to find complete information on these type of politicians – and analytical – it allows mapping the entire universe of cases and not only a sample. Our database contains, in fact, information on every cabinet member (240) who served from 2006 to 2013, data rarely at disposal of

policy makers, academics or experts participating in the public debate on political corruption. The monitoring exercise offers some interesting insights:

1) it provides an empirical assessment of a massive judicial activity on corruption crimes involving high-level politicians, in this way confirming the interpretation offered by other scholars (Sberna and Vannucci 2013; Mungiu-Pippidi 2018) emphasizing the strong tendency by the Italian judiciary to prosecute high-level politicians' corruption, especially after the "Clean Hand" phase (1993-1994);

2) It shows also the huge attention by the judiciary on all cabinet members, independently from their party membership. More than a partisan justice – as it is frequently claimed by some political party – the mapping exercise offers a picture of a "bipartisan" prosecution of the governing coalition members, independently from their political orientation;

<sup>9</sup> Cases terminated because of the statute of limitations are frequent in Italy. According to official statistics, they were 176.331 in 2017. A large part of them (almost 70%) occurs before the end of the first-instance trial, a likely signal of the lack of interest by the prosecutor in pursuing them.

<sup>10</sup> However, analyses of investigations on the presidents of Regions between 1990 and 2015 and on the leaders of political parties have reached results very similar to our study. See Rullo (2019).



3) it offers an overview on the effectiveness of the judicial prosecution activity concerning corruption crimes.

### Explaining Italian exception: Some caveats and a tentative explanation

The phenomenon described in the previous section – massive judicial activity with seemingly limited results – places Italy in a rather particular situation in Europe. In order to explain this specificity we propose to focus our attention on three elements characterizing the Italian case:

1. the changing nature of political competition and the new role of the mass media: all leading to the increasing political salience of corruption;
2. the structure of the criminal process entrusting investigating magistrates with a wide amount of resources that can be employed in the investigation of corruption;
3. the institutional setting of the judicial system recognizing strong guarantees of independence to judges and prosecutors, allowing them a room for manoeuvre much greater than that enjoyed by magistrates in other European countries.

The development of stronger relationships with the media has multiplied the impact of judicial decisions on the political system (Calise 2016; Guarneri 2015). As it has been argued (Pizzorno 1998), judicialization is also related to long-term changes in democratic political systems. The traditional "programmatic" politics, in which parties compete on the basis of different policy programs, has given way to a kind of "moralistic" politics, in which the personal attributes of candidates play a major part. The weakening of ideological ties between citizens and party organizations lead the former to attach strong importance to the individual characteristics of politicians. In this new situation, the check on candidates' moral qualities – the so-called "*controllo di virtù*" (virtue check) – can no longer be effectively performed by opposition parties that are often caught up in a web of transactions and compromises with the governing parties.

Thus, in several countries, criminal courts – judges and public prosecutors – thanks also to their

stronger prerogatives, tend to play a significant part in the political process by checking the "morality" of politicians and frequently triggering the explosion of political scandals (Adut 2004). The converging interests of the media and public prosecutors or instructing judges have further supported these developments (Garapon and Salas 1996). In fact, thanks to their investigations, magistrates can supply the media with significant and newsworthy stories while the media can reciprocate by supporting judges and prosecutors facing political pressure. This trend has recently emerged most noticeably in Latin and East Europe – and especially in Italy – where judicial autonomy has been strengthened and opposition parties sometimes seem incapable of exposing the real or perceived corruption of the governing class. Generally, courts tend to enjoy the trust of the public. Opinion surveys in the European Union regularly show that citizens trust courts much more than parliament and government, not to mention the political parties that always rank at the bottom of the list: for instance, in Italy in 2019 only 19% of those surveyed expressed trust toward political parties against the 39% expressing trust toward the justice system (Eurobarometer 2019, 47).<sup>11</sup>

A recent and in-depth analysis on the communication of news related to corruption seems to support this interpretation (Mancini et al. 2017, 67-91; Mancini 2018, 3067-3086). In countries considered to be established Western democracies (France and the United Kingdom) "newspaper coverage of corruption tends to focus on cases occurring in international and foreign arenas, highlighting the involvement of foreign politicians and officials while national corruption seems to be less important" (Mancini 2018, 3072). On the contrary, in countries considered as new (Central and Eastern European Countries) or transitional (Italy) democracies, "coverage of corruption scandals focuses almost entirely on internal cases of corruption that primarily involve local politicians and officials" (Mancini 2018, 3072).

The newspapers in France and United Kingdom allocate to cases of corruption at a national or

<sup>11</sup> Standard Eurobarometer 91. 2019. [https://data.europa.eu/euodp/en/data/dataset/S2253\\_g1\\_5\\_STDg1\\_ENG](https://data.europa.eu/euodp/en/data/dataset/S2253_g1_5_STDg1_ENG).

local level slightly more than 20% of the space. On the contrary, in the newspapers published in Slovakia, Hungary, Latvia and Romania cases of corruption receive more than 60% of the space. In the case of Italy, the space reach almost 80%. Here, the media show an obsessive attention to the first phases of the investigations. Frequently a large amount of information is provided on all the political actors involved, even if not directly investigated. For instance, often politicians only mentioned in telephone tapping are considered in some way involved in the investigations. It is possible that the higher number of articles dealing with corruption cases in those countries can simply derive from high levels of corruption. However, Mancini (2018, 3072) believes that

two completely different representations of corruption emerges from these data: in new and transitional democracies of Eastern Europe and in Italy, corruption is a subject that is strictly related to domestic politics and public administration; the established democracies of France and the United Kingdom do not seem to be touched by this 'plague'.

Furthermore, most articles reported the result of judicial activities (47%) and only 5.4% were the result of investigative journalism (*ibid*). Often the data highlight the existence of "dubious sources of coverage of corruption that tends to derive from 'interested' leaks and from unidentified sources (often secret service agents)" (Mancini 2018, 3072).

In another research, based on the collection and analysis of Italian newspapers, it emerged that 41.1% of the articles published in a set of national and local newspapers were based on information coming from the offices in charge of the investigations (the Public Prosecution or the Judicial Police); 20.7% were based on offices' files and a further 6.6% got the news from both investigative sources and offices' files. Summing up, 68.4% of the judicial news published by the Italian newspapers considered had as source the offices of the Public Prosecutor, the Police or some judicial documents that the journalist had managed to find. There were no elements

calling into question the secret services, but a high level of collaboration seems to emerge between the media and justice officials (Sapignoli 2016, 47). These considerations suggest that the work of the media in Italy has contributed, more than in other Western European countries, to keep the salience of corruption high among citizens.<sup>12</sup> Therefore, the salience can explain, at least in part, the high number of investigations: on the one hand, it is likely that it will trigger a relatively high number of complaints; on the other, it will support the propensity to investigate by the judiciary. However, in order to better understand the last element, we should take into account the structure of the criminal process as well as the status of Italian judges and, above all, prosecutors.

As it has been pointed out, (Guarnieri and Pederzoli 2020) the public prosecutor, in modern democratic systems, performs several important functions within the judicial system. Above all, it should be considered the gatekeeper of the criminal process: by prosecuting crimes, it takes the crucial decision to trigger the criminal proceeding. In most countries, the way this function is exercised is subject to different forms of – political and professional – checks. Italy is characterized by the principle of mandatory prosecution – inserted also in the Constitution – that excludes, at least formally, margins of discretion on the part of the public prosecutor, who is required to prosecute all the crimes of which he becomes aware. However, the high number of crime reports that the public prosecutor's offices are called to investigate tends to exceed their investigative resources. So, it becomes "difficult, if not impossible, to avoid some sort of selection among all the cases likely to assume criminal significance" (Guarnieri and Pederzoli 2020, 81). Therefore, it is impossible, as in other countries, for the democratic process to establish priority criteria for investigation and prosecution, with the consequence that "differences to occur in the use of those criteria not only by the various prosecutor's offices but also by the different deputy prosecutors within the single offices" (Di

<sup>12</sup> Recently, almost 80% of those surveyed think corruption "inacceptable", well above the EU average of 70%. Cfr. Special Eurobarometer 470, Corruption, October 2017, 14. As we have already pointed out, almost 90% think corruption "widespread" in Italy.



Federico 2014, 182).<sup>13</sup> Therefore, prosecutors can perform their function without being subject to significant accountability mechanisms.

However, in order to better understand the role of the prosecutor, it is necessary to take into account also some other elements. First, the fight against terrorism and organized crime in the recent past has pushed the judiciary to take a more proactive stance, by directly leading the investigations. In this way, the magistrates have been able to improve their investigative skills and to exert a growing influence on the police. Moreover, in 1989, the traditional inquisitorial setting of the criminal process was reformed and a sort of accusatorial process was introduced: thus, the investigating judge was abolished and the investigation entrusted to the public prosecutor, whose role in the criminal process has been further enhanced. We should also take into account that, since 1993, the immunity of members of parliament from prosecution – and in a parliamentary system like Italy most ministers are also parliamentarians – has been drastically circumscribed, only preventive arrest being subject to Parliament's authorization.

Finally, Italian prosecutors and judges belong to the same organization and they govern themselves through an institution – the CSM – two thirds of whose members are directly elected by all magistrates. The outcome is that the influence of the public prosecutor is actually strengthened, since it can enjoy a privileged relationship with the judge (at least in confront with the defence attorney). Another consequence of this setting is that Italian prosecutors enjoy the same independent status as judges, also their career being governed by seniority. As for appointments to important positions – as chief prosecutor or judge – they tend to depend on the alignments inside the CSM, i.e. among the different judicial and political groups there represented. However, although political parties can exert some influence

on the process, it should be taken into account that the CSM is composed by two thirds of magistrates elected by their colleagues: the judicial factions – the so-called “*correnti*” – are exerting a decisive influence: although they are sometimes divided on issues of judicial policy, all of them strongly defend judicial and prosecutorial independence.

Therefore, Italy presents a situation in which public prosecutors are entrusted with significant investigative resources<sup>14</sup> – also thanks to their influence on judicial police – and are located in a loosely-held structure with limited hierarchical or external controls. These factors should be taken into account when considering the presence in Italy of a number of investigations against political corruption greater than that found in other European countries with different – i.e. more hierarchical and/or less autonomous – organizational structures of the public prosecution.

## Conclusions

The results of our analysis highlight the high level of judicial activism in Italy. It is therefore confirmed the trend emerged since the “*Mani pulite*” scandals in 1993-1994 (Sberna and Vannucci 2013; Mungiu-Pippidi 2018). In fact, in the period here considered (2006-2013) 60 cabinet officials out of 240 have been investigated (see table 2), with a total of 82 investigations. When compared with the seven Eastern European countries analyzed by Popova and Post (2018) the Italian data seem to show a higher propensity by Italian courts to indict and try high-level politicians (see table 5). The data are even more significant if the high number of investigations not leading to an indictment is taken into account, also because it is likely that the data gathered have underestimated the real number of investigations.<sup>15</sup> In any case, the news that some high level politician is under judicial investigation cannot but have a significant impact on his<sup>16</sup> reputation and therefore on his political career.

<sup>13</sup> Recently, some offices have introduced “priorities” in prosecution. However, so far, they seem still too vague to allow for effective accountability.

<sup>14</sup> In 2015 and 2019 the legislation against corruption has been further strengthened. However, it is still too early to assess the impact of the reforms.

<sup>15</sup> Since we employed the media as a tool it is likely that some – likely a limited number – pre-indictment investigations have not been recorded. No data on pre-indictment investigations seem to exist for Eastern European countries.

<sup>16</sup> Almost all politicians investigated were male.

**Table 5** – Indictments, convictions and acquittals of ministers

Country	Ministers	Indictments	Convictions	Acquittals	Missing/Ongoing
Bulgaria	107	11		11	
Croatia	135	7	5	2	
Czech Rep.	126	4	0	4	
Macedonia	129	8	4	4	
Poland	167	4	2	2	
Romania	179	14	11	3	
Slovakia	84	0	0	0	
<b>Total<sup>1</sup></b>	<b>927</b>	<b>56 (6%)</b>	<b>22</b>	<b>26</b>	<b>8<sup>2</sup></b>

<sup>1</sup> 2000-2012.

<sup>2</sup> As for June 2017.

**Source:** adapted from Popova and Post (2018) and Dallara (2019).

However, the data show that the high number of investigations are independent from the political orientation of the cabinet. Therefore, the emerging image is not of "red judges" persecuting political foes – for two decades the target of Berlusconi rhetoric (Dallara 2015; Ceron and Mainenti 2015) – but rather of a "bipartisan" prosecution of cabinet members, independently from the political orientation. Another main point to emphasize is that, in spite of a high number of investigations we found out a limited amount of convictions (table 5). In fact, a high number of inquiries ended with some form of dismissal, a result denoting a systemic difficulty to reach a final judgment in court, especially with a conviction. This conclusion shows, once again, a persistent weakness in the repressive action punishing political corruption and suggests further reflections on the effectiveness of the criminal process.

As we have suggested, the reasons behind this situation can be several. First, the study supports the echoing role played by the media when dealing with political corruption. As Mancini et al. (2017) find out, Italian press tends to emphasize and dramatize corruption cases involving domestic public administrators and, in particular, politicians. Above all, generally speaking, the media seem, on the whole, supportive of the investigations. The institutional setting of public prosecution

must also be taken into account. As we have seen, in comparison with their colleagues of other democratic countries, Italian prosecutors enjoy wide investigative powers – they are in charge of police investigations – while being also well shielded from political pressure. Therefore, they can pursue their investigations without fearing reprisals from the political environment, also because they usually enjoying support in the media and public opinion.

Which are the effects of such a situation in term of political and electoral accountability? An effective and impartial prosecution against corruption of high-level elected politicians could foster accountability. More specifically, prosecution of corruptive practices might foster electoral accountability if effective prosecution turns finally into convictions. If not, the risk is the opposite. Sberna and Vannucci (2013) emphasize the risk of politicizing anti-corruption. Political actors would start to profiling themselves as victims, increasing the intensity of the debate by strongly criticizing the judiciary. Party leaders will tend to systematically "absolve" members of their party to minimize the feared electoral drawback. In fact, the scarcity of convictions negatively affects the legitimacy of the judicial action and corroborate the polarization of the political debate on a supposed politicization of the magistracy. In any case, if most of the time investigations end

without convictions, the perceived effectiveness of the anti-corruption prosecution tends to wane and consequently the incentives for those denouncing or refusing corruptive activities can also wane.

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