

# DEBATS D'IDEEES

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*Contribution à la formation de magistrats des cours administratives et de la Cour Suprême en matière de lutte contre la corruption. Le séminaire intitulé "Anti-corruption perception and actions in Administrative Law" était organisé par le Max Planck Institute for Comparative and International Law du 24/11 au 30/11/12.*

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## **Legal Instruments to Overcome Administrative Corruption Or Transparency, Ethics treated by Law to fight Administrative Corruption**

### **As an Introduction**

Why did I choose to add to the topic and deal with two concepts that do not appear on the same level, talk about concepts which are different?

These concepts are frequently mentioned together about the public sector, particularly in regard to administrative practices, and more generally on what is so often called "governance". This speech will be focused on this public sector and especially on Administration, not that there is no corruption in private sector, but Public Environment often serves as a reference and is ultimately led by the private or leads private sector towards corruption.

These two concepts refer respectively to different areas, which are respectively management, moral values and finally actions against malpractices. It could also be said

about governance that there are 4 types of interventions that could be discussed: technical administration (transparency), intervention of legal standards (responsibility), social norms (ethics) and organizational culture (ethics).

Of course, talking about this might be done through different points of view but ultimately, the concepts are the same and no approach is really orthodox and traditional; the result is often similar, the only pitfall to be avoided is that the issue of corruption must not be addressed only through one aspect (e.g. legal) and it's very often the way chosen by the authorities to deal with it.

Some figures to start: the World Bank gave some data about corruption the total amount is around 1000 billion dollars each year, about 9% of world trade, or 10 times the world's development aid. Apart from a few countries where corruption is very limited as Denmark for example, most countries are affected (including, of course, France).

Corruption is a global phenomenon, bringing UN to propose the United Nations Convention against Corruption, signed on 31 October 2003 entered into force on 14 December 2005. France has signed on 9 December 2003 and ratified on 11 July 2005, while Iraq's date of accession is 17 March 2008. If we have a look at the rankings of Transparency International's 2010 Corruption Perception Index, France was ranked 25<sup>th</sup> out of 178 countries, Iraq was 175<sup>th</sup>. For 2011, France and Iraq stayed 25<sup>th</sup> and 175<sup>th</sup> but out of 183 countries.

According to World Bank and Transparency International, Corruption (in public sector) is the abuse of public office for personal enrichment. This definition has the merit of being clear if one refers to the most frequent cases (passive bribery, active bribery, extortion, illegal taking of interest) but that does not necessarily cover all cases (for instance misuse of public funds without enrichment).

But aside, may I ask an iconoclast question? Why is corruption wrong? Justice, equality, truth, freedom, work, rationality and efficiency, human rights, the common good, responsible exercise of power ... so many reasons mentioned by many authors explain why.

Findings and observations were made about corruption; corruption is sometimes seen as a symptom of dysfunctional Administration but also as a problem due to poor management of the Public Service.

### **On corruption as symptom of malfunctioning Administration**

OECD's work led to the classic view that corruption is present when the Administration is malfunctioning, poorly structured or if the Administration is disorganized. This malfunction (sometimes referred to by the authors of "maladministration") can be seen through:

- the Budgetary burden of the Public Service;
- the type of public service (career or contract);
- by the dissatisfaction of users;
- the weight and size of the public sector;

These are "traditional" areas that need reforms, reorganization or reduction. But mere downsizing of Civil Service in absence of an integrated reform program might not work well.

### **Corruption as a result of poor public sector management**

There's a Public Sector mismanagement reinforcing factors of corruption, encouraging or at least permitting corruption. In a few words, the grievances alleged against a public sector that is too broad, and inadequate in its management methods (referring to a longstanding criticism formulated by the OECD and the World Bank):

- State is not conceived to be an entrepreneur (forgetting the role of the state has saved many sectors during economic or financial crises);

- State cannot manage to be convinced just look at budget deficits (often forgetting that these deficits have widened also because of the inability of the market to produce goods of interest);
  - State does not know to manage HR and one just have to look at the Civil Servants' statutes which are sometimes overprotective (forgetting the social role of the state intervening in the labor market in difficult times);
  - State does not meet its primary mission: satisfaction of citizens (often forgetting schizophrenia citizen-taxpayer-user satisfaction which makes it difficult at all levels).
- The result is, for these institutions and other proponents of unbridled liberalism, that the State must be reformed, and thus minimize the corruption resulting from the mismanagement of the public sector will disappear.

This simplistic finding could seduce, in fact, the fewer employees there is, the less corruption there is or the less power there is, the less reasons to corrupt there are. Fifteen years of questions on the subject have not resulted in a vision accepted by all even though reforms have already been initiated in most countries. Indeed, whether fewer public officials, budget cuts (in the form of a reduction in deficits in particular) and further privatization of entire sectors (particularly on the grounds that the state contractor has including breaking competition with monopolies), faced with financial crises affecting the brunt of the States have complied with these requirements as laid down absolute rules which will, among other things, reduce or disappear to corruption according to the promoters these principles.

## **Reflections**

It is obvious that these principles were not formulated as such only as related to the fight against corruption. But if they were used as a means of fight against corruption, fight against corruption has been an argument for applying these principles and thus implement this policy to reduce the role of the state.

That said, it is true that the Administration does not always work very well and this for several reasons favoring corruption:

- Administrative operations are sometimes opaque, not clear;
- There is often a lack of significance of the principle of responsibility;
- Administration behaviors sometimes at odds with the expectations of agents.

The main reasons are organizational, financial, cultural, and environmental.

On the other hand, there can be no transparency or accountability when:

- There is dissatisfied personal;
- Principles of Public Service are not clearly defined;
- There are no rules of Civil Service;
- There is no justification for selection, management and actions.

## **Some proposals**

Proposals have been made on several grounds such as information, law enforcement, management and recognition agents.

### **Information on administrative action**

It is a global information both by the publication of official documents (with access to administrative documents for citizens), by setting objectives, work standards, quality standards, performance.

### **Direct action and effective management**

Empowering agents (functions, missions, and delegation) is a way to enhance civil servants and make them feel their role and values they must defend. It also helps to use their initiative and allows them to contribute to the implementation of new practices or new policies. One of the effects is also to promote Leadership and Performance that are expected.

### **Recognition and legitimacy**

Recognition goes through upgrading salaries and career of agents, including agents of the lower classes because corruption actually is brought by poverty which particularly affects those categories. It should also be promoting the best people, those who are most efficient from an impartial assessment of their merits and their performance.

In parallel, one should also recognize the actions of citizens and especially against the Administration, both with regard to information about the actions and in terms of litigation.

### **This all goes through a better Law enforcement**

It is the application of codes and statutes in the first place but also the implementation of controls (and body control) internal and external agents and procedures with publication of sanctions that must be copies.

Legislation which provides for the tracing, freezing, seizing and forfeiture of funds or other assets which are derived from the proceeds of corruption are a powerful weapon in anti-corruption strategies because they target the essential motivation of corruption, the economic gain.

Criminal offenses must be created and defined in a manner which is clearly understood by the population, who will be presumed to know the law and expected to comply with it. Publication of codes or statutes should allow enforceability of such codes of conduct for agents or status of the user (users' charter).

Offenses to address specific forms of corruption may include:

- Passive and active bribery and similar conduct,
- Extortion, the solicitation of bribes or other rewards, and similar conduct,
- Some forms of fraud, particularly those which exploit public positions or offices,
- Improper practices in the allocation of public resources, including public employment,
- Misuse of public property or information for private gain, advantage or other purposes,
- Private sector malfeasance such as price-fixing and insider trading.

This could be also done as preventive or controlling actions through:

- internal hierarchical control,
- expenditure control,
- financial disclosure, declarations of interest (as Transparency International recommended to France)
- open budget process,
- distinction between authorizing officers and paymasters with financial liability,
- Anti-corruption agency, ethic commissions, codes of conduct,
- disciplinary (administrative) actions,
- public agents' status, job rotation, job mobility,
- Law concerning Prohibited Activities of former Public Servants
- More judicial independence (as, again, Transparency International recommended to France).

### **As a kind of conclusion**

These points illustrate the malfunctioning Administration and give some ideas for better administration. No doubt that the civil servant who feels satisfied and fulfilled in his daily work, which feels socially recognized and finds a financial recognition as well as in terms of career, is less likely to accept corruption. Far from all economic theories, it is a simple matter of financially upgrading its agents that the State must take into consideration, but it is primarily a cultural issue which must pass through the education of all, public officials as well as citizens first and foremost children. This is probably the most effective; it is also the most difficult.