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COORDENAÇÃO

ANABELA MIRANDA RODRIGUES
MARIA JOÃO ANTUNES

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COORDENAÇÃO
Anabela Miranda Rodrigues · Maria João Antunes

EDITORA
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DA UNIVERIDADE DE COIMBRA

PROGRAMA

4 FEVEREIRO (6.ª FEIRA)

MANHÃ

9h30 • 10h30 Abertura
Jorge de Figueiredo Dias • Universidade de Coimbra
Anabela Rodrigues • Universidade de Coimbra
Jónatas Machado • Diretor da Faculdade de Direito da Universidade de Coimbra
Entrega da Bolsa de Investigação IDPEE 2022

10h30 • 11h00 Fighting corruption in Italy: political and judicial trends in the reforms era
Gian Luigi Gatta • Università degli Studi di Milano

11h00 • 11h15 Pausa

11h15 • 11h35 Certezas y desafios sobre la tipificacíon penal de la corrupcíon en el deporte
Javier Sánchez Bernal • Universidad de Salamanca

11h35 • 12h00 Implicações e impacto da Convenção de Saint-Denis no regime jurídico da segurança e do combate à violência no desporto
Alexandra Ferreira da Silva • Autoridade Prevenção Combate Violência no Desporto

12h00 • 12h45 Debate

TARDE

14h30 • 15h00 A Model for a Dual Level of Protection in European Arrest Wanted (EAW) Procedures.
André Klip • Maastricht University (ZOOM)

15h00 • 15h20 La responsabilidad penal de las personas jurídicas en España: cuestiones actuales y compliance penal.
Julio Ballesteros • Universidad de Salamanca

15h20 • 15h40 O paradigma de compliance e a responsabilidade penal das pessoas coletivas: quo vadis?
Tiago Magalhães • Advogado

15h40 • 15h55 Pausa

15h55 • 16h15 Sobre o princípio da legalidade penal na jurisprudência do Tribunal Europeu dos Direitos do Homem
Bruno de Oliveira Moura • Universidade Lusófona

16h15 • 16h35 Infidelidade ou abuso de confiança: o caso paradigmático da apropriação ou descaminho dos bens da sociedade pela sua administração
Inês Magalhães • Advogada

16h35 • 17h30 Debate

5 FEVEREIRO (sábado)

10h00 Conferência de Encerramento / Conferência de Abertura do XXV Curso de Especialização em Direito Penal Económico Internacional e Europeu

Towards European harmonization of economic and financial criminal law: needs and challenges
John Vervaele • Utrecht University

FIGHTING CORRUPTION IN ITALY: POLITICAL AND JUDICIAL TRENDS, IN THE REFORMS ERA

GIAN LUIGI GATTA
University of Milan

1. My purpose is to give you a brief overview of the main Italian trends and developments in the fight against corruption. I will discuss the legal framework, the main trends in case law, and the debate within the academic doctrine. My reflections will not go into a great number of details and will attempt to highlight the main lines and trends of the political and judicial strategies in the last few years. I hope that the framework I provide will be of interest to you and give you some useful insights for comparison with the Portuguese situation.

2. First, it is important and useful to describe the Italian context, which is marked by two anniversaries this year.

Thirty years have passed since the beginning of the largest corruption investigation, called *Mani pulite* (Clean Hands) or *Tangentopoli* (Bribestown), which disrupted the political system in 1992, contributing to the end of the First Republic.

And it is also ten years since the enactment of Law 190 of 2012, which introduced significant changes to crimes related to public administration and introduced a comprehensive system of administrative law, aimed at the prevention of corruption. That Law is known in Italy by the name of the Minister of Justice who promoted it: Prof. Paola Severino. The Severino Law inaugurated a season of reforms that followed one another in the last ten years, which has significantly changed the configuration of the legal framework for preventing and combating crimes of corruption and wrongdoing in government.

After Law 190 of 2012, Law 69 of 2015, Law 3 of 2019, and finally Decree Law 76 of 2020 were enacted. It can certainly be said that the structure of the legal framework regarding crimes against the government, in Italy, has changed in many respects in the last ten years. As we will see, this can be said for both the substantive and procedural laws.

3. Let us begin our overview by discussing *Tangentopoli*. The *Mani pulite* (or *Tangentopoli*) judicial investigation was launched in 1992 in Milan. The investigation began with the arrest of a public official who demanded bribes from a minor businessman for a procurement contract concerning a hospice. The businessman, tired of paying bribes, denounced the fact and the public official was arrested after the police had marked with a pen the banknotes delivered by the businessman. The public official, once discovered, tried to throw the money into the toilet. From that minor episode of corruption, thanks to a very capable group of prosecutors, the largest corruption investigation in Italian history was initiated.

The entrepreneurs began to reveal the requests for bribes from public officials and a complex system of corruption was discovered that was widespread not only in Milan but throughout Italy. It soon became clear that almost the entire system of party financing was based on the payment of bribes, at all levels: from the municipalities to the regions to the central government. All parties, including the opposition parties, were involved in the system, and received bribes in different percentages, depending on their political power. A recent book by a well-known journalist — Goffredo Buccini — entitled *Il tempo delle mani pulite* (The time of clean hands), reconstructs concisely and accurately the investigation and the atmosphere in Italy in those years.[1]

The discovery of a system of widespread corruption, linked to the main parties and political figures, led to a crisis in the political system and, together with other concomitant factors — in particular, the fall of the Berlin Wall — to the end of the traditional parties that had governed the country from the post-war period to the early 1990s.

The investigation involved thousands of suspects and, also, had dramatic moments on the occasion of some suicides in prison of businessmen and politicians.

Mani pulite shocked Italy in the same year in which the Sicilian Mafia carried out the notorious attack in which the magistrates Falcone and Borsellino were killed in Palermo. The country, in the following years, was able to recover and emerged from a very deep crisis.

The judiciary had in those years great and unique support from public opinion, which saw in the prosecutors the champions of justice. Never in Italy has the judiciary enjoyed such widespread popular support as in those years. However, the critical reviews that we can do today showed that such support hid some critical excesses at that time. Among these was the abuse of preventive detention, used as a tool to facilitate confessions. Judicial measures were served every day on different politicians and businessmen. Some trials were shown on television, exalting the prosecutors, who were seen as popular heroes. For many of the defendants of *Tangentopoli*, the real punishment was preventive detention or the investigation, the trial, and the media exposure, which alone could destroy lives and careers.

A book published in 2007 by Prof. Grazia Mannozzi, together with one of the prosecutors involved in the investigation, Piercamillo Davigo,[2] revealed that in most cases the trials ended without a conviction, mostly due to the statute of limitations for the

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[1] G. Buccini, *Il tempo delle mani pulite*, Laterza, 2021.

[2] G. Mannozzi, P. Davigo, *La corruzione in Italia. Percezione sociale e controllo penale*, Laterza, 2007.

crime, which in the Italian system can occur even after the trial has begun (a recent reform, however, a recent reform, however, has excluded that offences can be time-barred in appeal and supreme court judgments).[3]

Another abuse made during *Mani pulite* involves the "procedural" use of the crime of "*concussione"* provided for in Article 317 of the Italian Criminal Code. "Concussione" is a special form of extortion, committed by a public official. It is the most serious crime against the public administration (together with corruption of a judge) and differs from corruption for this reason: while both the bribe-giver and the corruptor are criminally responsible for corruption — those who ask for or receive the bribe and those who promise or give it — only the public official is criminally liable for concussione. The difference between the two offences may be subtle: the decisive factor is whether the bribe was paid or promised based on an agreement or the basis of a threat of unlawful harm; in other words, through an abuse of power. If the latter is the case, the private citizen, who is a victim of extortion, is not guilty of a crime. Where was the abuse during *Tangentopoli*? In the fact that the confession not only allowed those who had been arrested to get out of prison, but also to resolve the problem with the criminal justice system because the situation was often classified as extortion. Whoever made a full confession, thus, became a victim.

It is interesting to note how this improper use of the crime of concussione was made at a time when the Italian Criminal Code did not provide immunity from prosecution to persons who cooperate with the prosecution. Such immunity was introduced only in 2019, in the new Article 323 *ter* of the Italian Criminal Code.

The *Mani pulite* investigation also caused a deep and never fully-resolved crisis in the relationship between political power and judicial power. This can explain why politicians in Italy tend to view with suspicion the judiciary's control over administrative activity. This also explains why, after the abandonment of public financing of parties, accomplished only in 2013, comprehensive regulation of lobbying is still lacking and, on the other hand, even the regulation of whistleblowing is viewed with a certain diffidence by some political groups.[4] In this regard, whistleblowing laws were introduced in Italy only recently (Law No. 190/2012 and Law No. 179/2017) and must be adapted in the near future to a European directive.[5]

Finally, the complex relationship between judicial control and political and administrative activity is also evidenced by the laws on the crime of abuse of public office in Article 323 of the Italian Criminal Code ("abuso d'ufficio"). The Italian Parliament, in 2020, limited the application of this offence by excluding criminally relevant abuse where there is a violation of administrative regulations. The crime captures only the

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[3] See Article 161 *bis* of the Italian Criminal Code, introduced by Law No. 134 of 2021.

[4] See R. Alagna, *Lobbying e diritto penale. Interessi privati e decisioni pubbliche tra libertà e reato*, Giappichelli, 2018; M. C. Ubiali, *Attività politica e corruzione. Sull'opportunità di uno statuto penale differenziato*, Giuffrè Francis Lefebvre, 2020.

[5] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. See A. Della Bella, *La direttiva europea sul whistleblowing: come cambia la tutela per chi segnala illeciti nel contesto lavorativo*, in *Sistema penale* (www.sistemapenale.it), 6 December 2019.

violation of specific laws that do not attribute discretionary power to the public official. In other words, in Italy today where there is administrative discretion there can be no abuse of public office under criminal law. During the press conference in which this reform was announced, the Italian prime minister at the time, Giuseppe Conte, said that it was necessary to stop the fear of signing by public officials called to restart public works after the pandemic and, thus, restart the public economy. This political purpose of the intervention was considered legitimate by the Italian Constitutional Court (sentence No. 8 of 2022).[6] While case law has traditionally attempted to broaden the scope of abuse of office — a crime that has a long history in Italy — the legislator has done exactly the opposite.

If this is true, it must also be said that there is no lack of court decisions that sometimes restrict the scope of crimes against the government, to respect the principle of legality and protect the sphere of lawful action of politics.

This is the case of two recent rulings of the Supreme Court of Cassation on the subject of undue influence ("traffico di influenze illecite"). This crime, added to Article 346 *bis* of the Italian Italian Criminal Code in 2012 and reformed in 2019, punishes forms of illicit mediation between private individuals and public officials: it, therefore, punishes mediators, whether de facto or professional. According to these recent Supreme Court of Cassation rulings, mediation is criminal only if aimed at committing a crime, not any unlawful act.[7]

4. The 2012 reform has largely modified the structure of the laws on corruption offences, the core of which dated back to the 1930 Italian Criminal Code. The reform was adopted under the pressure of the organizations called upon to monitor the implementation of international conventions: in particular, the GRECO (Group of States against Corruption), within the Council of Europe, and the WGB (Working Group on Bribery), within the OECD (Organisation for Economic Co-operation and Development).

It is interesting to note that, twenty years after *Tangentopoli*, a comprehensive reform was approved when corruption no longer appeared to be an internal problem within Italy, but rather a problem with a European and international dimension, capable of adversely affecting the reputation of the country and its economy: the rate of perceived corruption, measured at the international level, is notoriously an index which investors look at before deciding to transfer financial assets and business activities to a given country.

Many innovations were introduced by the Severino Law. The general provision on corruption was expanded. The crime of corruption for an official act (Article 318 of the Italian Criminal Code) was converted into the crime of corruption for the exercise of a public function. It is no longer necessary to prove that the promise or giving of money or other benefits are directed towards the performance of a particular act by the public official. The proof of the crime is therefore made easier. It is sufficient to demonstrate

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[6] About this decision see M.C. Ubiali, *Emergenza Covid e riforma del delitto di abuso d'ufficio per agevolare la ripresa del Paese: brevi note alla sentenza n. 8/2022 della Corte costituzionale*, in *Giurisprudenza costituzionale* 2022, no. 1, p. 120 *et seq.*

[7] See M.C. Ubiali, *L'illiceità della mediazione nel traffico di influenze illecite: le sentenze della Cassazione sui casi Alemanno e Arcuri*, in Sistema penale (www.sistemapenale.it), 31 January 2022.

that the promise or giving of the bribe is directed to a generic availability of public powers, in favour of the private individual, who therefore buys the favour of the public official, who is no longer impartial and concerned only with the public interest. On the other hand, the special provision on corruption for an act contrary to the duties of public office, provided for in Article 319 of the Italian Criminal Code, has remained in force. If the judge demonstrates that the corruption has as its objective the performance of a specific act contrary to the duties of office, the offence is more serious. This is not an aggravating circumstance of the crime but an autonomous and special type of crime.

In addition, the penalties for corruption offences have been increased by the Severino law. Corruption for an act of public office, for example, was punished before 2012 with imprisonment from six months to three years. The reform raised the minimum imprisonment to three years and the maximum to five years. A subsequent reform in 2015 further increased the maximum penalty. Today, corruption for the exercise of a function is punished with imprisonment from three to eight years: it is therefore a serious crime for which custodial measures and telephone, electronic and ambient wiretaps are permitted.

Again, before the 2012 reform, the most serious offence of corruption for an act contrary to official duties was punished with imprisonment from two to five years. For this crime as well, the penalty was made more serious by the Severino Law: from four to eight years imprisonment. The subsequent 2015 reform further increased the punishment for this crime, set forth in Article 319 of the Italian Criminal Code, for which the punishment is now six to ten years imprisonment. I emphasize the importance of such a high minimum, which makes it more difficult to plea bargain (possible for sentences of up to five years and, therefore, only in the presence of mitigating circumstances).

A core point of the 2012 reform was the reconfiguration of the crime of extortion. For international observers, the risk inherent in this crime was clear, which I highlighted earlier when discussing what happened during the *Mani Pulite* investigation: the risk is that a corruptor is not punished because the law provides that he or she is the victim of "concussion" (an extortion). The risk is that concussione may improperly be used to grant immunity from prosecution.

The reform of 2012 did not abolish the crime of concussione — as some had proposed — but significantly limited its scope of application.

Before the reform, concussione could be committed in two different ways: violence—in the form of physical and physical violence (such as threats)—and inducement, achieved through non-violent forms of pressure, which are characteristic of contexts where corruption is so widespread that implicit requests are sufficient to ask for bribes.

Today, concussione is punished with imprisonment from six to twelve years and presupposes an abuse of power and violent oppression by the public official: normally, the threat of unjust harm, which must be demonstrated in court. The private individual promises or pays the bribe not to obtain an advantage, but to avoid unjust harm. Concussione is thus defined as a violent crime, as a form of extortion.

Case law has followed this trend, in particular with a ruling of the United Sections of the Supreme Court (Maldera ruling of 2013). The extortion by a public official has returned to its origins suggested by the etymology of the term "concussione" which, as Francesco Carrara recalls in his famous Treatise, derives from the Latin verb '*concutere*',

which recalls the idea of shaking a tree to make the fruit fall to be collected. The private individual who promises or pays the bribe, to be considered a victim of the crime of extortion and not a participant in the crime of corruption, must be like the tree shaken to make the fruit fall. He or she must be a real victim. In fact, in extortion the offence is double: it is not only a crime against the government but also a crime against the person. This explains the severe punishment imposed by law, as well as the impunity of the private individual.

The non-violent inducement to promise or pay money or benefits to a public official—previously the subject of the offence of extortion—was in 2012 framed in a new offence, provided for by Article 319 *quater*. The great innovation is that a private individual who, without actual coercion or threat, promises or gives money or other benefits to a public official is also punished. The public official is punished with imprisonment of six to ten years; the private citizen is punished with imprisonment of up to three years. For the private individual, this is not a serious offence but is still a crime. The minimum prison sentence is 15 days (under Article 23 of the Italian Criminal Code). The cultural message of the 2012 reform is that the private individual, even if induced to do so by the public official (without a real threat), must not promise or give money or other benefits. This form of corruption, compared to private individuals, is a lesser offence but still a crime. A person who pays even a small bribe to be examined first by a doctor in the national health service, thus moving to the front of the line, is liable. Here the private individual pays the bribe not to avoid unjust harm but to obtain an undue benefit.

Moreover, a recent reform carried out in 2020 in the implementation of a European directive provided that the maximum penalty for this crime is four years when the act offends the financial interests of the European Union and the damage or profit is more than 100,000 euros.

Finally, the Severino Law of 2012 also added to the Italian Criminal Code the new crime of undue influence (Article 346 *bis* of the Italian Criminal Code), which I mentioned earlier. This crime, which was amended in 2019, punishes with imprisonment from one year to four years and six months anyone who, without being a participant in the crime of bribery, exploits real or fake relationships with a public official to be promised or given money or other benefits as the price of his or her illicit mediation or to pay the public official. The mediator is thus also punished. Judicial investigations and studies in sociology and criminology have shown that corruption today does not simply involve two parties—the corrupted and the corruptor—but follows more complex patterns, often involving third parties as mediators. Punishing the buying and selling of illicit influence on the public official represents a significant anticipation of criminal protection. This is even more so if one considers that the law in Italy continues to punish incitement to corruption as an autonomous crime, which is a different hypothesis still, set forth in Article 322 of the Italian Criminal Code.

As I mentioned earlier, this anticipation of criminal protection is problematic, however, in the absence of laws that clarify the limits within which lawful influence can be exercised on public officials. Within certain limits, entrepreneurs and politicians must be able to lawfully exert pressure to achieve their own interests. I am referring to the pressure groups characteristic of lobbying. The lack of regulation of this phenomenon is seen in Italy as one of the main problems in this area. Some bills have been under con-

sideration by Parliament for some time, but with no prospect of enactment in the short term. In GRECO's latest report on Italy, the focus is on parliamentary corruption: a phenomenon for which regulation of lobbying is necessary.

In regard to GRECO, it should be emphasised that one of the main problematic aspects of the Italian system of anti-corruption is the high number of criminal proceedings that cannot proceed due to the statute of limitations for the crime. The average times of criminal trials in Italy are much longer than the European average. For this reason, the Draghi government and the Minister of Justice Marta Cartabia, as part of a wide-ranging reform of criminal justice, have promoted a reform, which was approved by Parliament in the summer of last year (Law No. 134/2021), which aims to reduce trial times. This is a national objective under the NextGenerationEU plan.

The slowness of trials results in many cases in the statute of limitations barring prosecution of the crime which, as I said, is possible in Italy even when the trial is in progress.

In Italy, the statute of limitations for the crime is equal to the maximum of the sentence provided for the crime.

One can then better understand why the penalties for corruption crimes have increased in recent years: not only for a stronger response to this form of criminality and to allow for preventive measures and investigative tools but also to lengthen the statute of limitations for the crime. If the crime is time-barred the facts are not definitively ascertained and the perpetrators are not punished. The certainty of the statute of limitations is the certainty of impunity and deprives the criminal law of its deterrence effect. This is why international observers have evaluated as positive not only the stricter regulation of corruption introduced in Italy but also another reform, enacted in 2019, which, as I have mentioned, has prevented the crime from becoming time-barred in the advanced stages of the criminal process: when it is under appeal and being heard by the Supreme Court of Cassation.

Before concluding this brief explanation of the Severino law, I must return to underscore the importance of that part of the law dedicated to administrative law: for the first time in Italy the fight against corruption has been set, with the Severino law, not only in the perspective of suppressing crime but also in the different perspective of prevention through administrative law tools, aimed at a more transparent, impartial and efficient organization of work in government.

The Severino law, in part through the establishment of an independent national agency—the national anti-corruption authority—and the provision of a system of controls and interdictory measures of an administrative nature, has brought about a paradigm shift in the strategy to fight corruption, which focuses on prevention and administrative law. We are well aware that criminal law always comes in late and in itself the preventive effectiveness of the threat of punishment is undoubtedly insufficient.

5. In regard to criminal law, the 2012 reform resulted in a general increase in penalties for corruption offences, on the one hand, and an increase in offences, on the other hand. The Italian system is characterized by multiple corruption offences and therefore by a fragmentation of the discipline.

A technique has been chosen that favours not a few general norms with a broad scope of application, but many special norms. This ensures greater respect for the precision of the

criminal law and, therefore, for the principle of legality, but creates various problems both at the level of proof of the facts and the existence of the elements of the crime and at the level of distinguishing between one crime and another.

The difficulties in distinguishing between corruption, concussione, and undue inducement to give or promise benefits are emblematic.

On a political level, the establishment of the National Anti-Corruption Authority has contributed to increased awareness in government and in the public debate of the theme of fighting corruption, which has increasingly become a strategic priority for the country. After the infamy of *Tangentopoli*, the fight against corruption was for years a theme in the background of public debate, destined to emerge on the occasion of individual scandals, which have never stopped involving public officials. After the 2012 reform, there has been an increasing awareness of the issue, which has become central during the realization of major public works, as was the case for the universal exhibition in Milan in 2015.

As often happens, the centrality of the theme in the public debate has favoured some excesses. The idea of linking anti-corruption with anti-mafia legislation has become popular, which has led, as I will say, to the extension to crimes against the government of exceptional provisions such as those providing for special regimes for the application of sentences.

Moreover, some populist movements have considered anti-corruption as a symbol of a political stance particularly dedicated to the implementation of legality. The clearest expression of this populist tendency, which has only recently been overcome, is represented by Law No. 3 of 2019, known by the name of *spazza-corrotti* (varrer-corrupto). This law has made the criminal law combating corruption stricter by following four guidelines.

The first guideline concerns accessory penalties, which have been made more severe. These are penalties of a prohibitive nature in addition to imprisonment, namely, interdiction from public office and the inability to do business with the government. The number of cases in which these accessory penalties have been imposed as a result of conviction has been increased, as has their duration, which in a greater number of cases is expected to be permanent.

As an exception to a general rule, it has been provided that for bribery offences the suspended sentence may not extend to accessory penalties. The conditions for obtaining rehabilitation have also been made more stringent. The idea, in media communication, is that just as violent soccer fans are banned from entering the stadium, so are the corrupt subject to a ban, even a permanent ban, on being employed in public office.

An effective message, from the point of view of communication; a policy that in principle can be shared, insofar as it invests in penalties other than imprisonment, of an interdictory nature; a policy, however, that has led to some excesses and provisions that in some cases lead to penalties that are disproportionate to the gravity of the offence.

A second guideline of the 2019 reform concerns the tools of investigation. Provision has been made for the first time for the possibility of using agents provocateurs, as in the case of combating drug trafficking. However, the use of the entrapment technique concerning corruption is very problematic, as the case law of the United States Supreme Court and the European Court of Human Rights teaches us.[8]

It is one thing to impersonate a drug buyer to see if the suspect is selling the drugs in his or her pocket; it is quite another to impersonate an entrepreneur to test the degree of

[8] See B. Fragasso, *Provocazione di polizia e responsabilità penale*, in *Rivista italiana di diritto e procedura penale*, 2022, no. 2, p. 707 *et seq.*

resistance to corruption of a public official who, before that moment, was not thinking of committing a crime. The risk is twofold.

On the level of substantive law, entrapment entails the risk of sliding towards a criminal law focused on the person rather than on the offence considered on an objective level. There is a risk of punishing the person for his or her inclination to commit crimes—for his or her dangerousness—and not for having undermined or damaged a legally relevant interest.

On a procedural level, then, the risk is of violating the principles of due process to the extent that the evidence used is obtained by the agent provocateur by creating a crime that otherwise would not have been committed. It is precisely this latter test that the decisions of the supreme courts, which I have referred to, uses to place a limit and a brake on the use of agents provocateurs.

A third guideline concerns the strengthening of the discipline of criminal sanctions application. Here we can see the equation between mafia and corruption, which seems exaggerated in terms of the criminological dimension of the phenomena and their dangerousness and gravity. In Italy, anyone who has to serve a sentence not exceeding four years of imprisonment can, without entering prison for even one day, ask to serve the sentence in an alternative way, from forms of probation to social services. If, however, the crime is linked to organized crime or—and here is the innovation—to corruption and generally to wrongdoing in government—the convicted person must enter prison and can ask for an alternative measure only if he or she cooperates with the prosecution. This is what Article 4 *bis* of Law No. 354 of 1975 (Penitentiary Regulations) states. The objective of the collaboration is to put an end to the crime, ensure the evidence and the identification of the perpetrators, and seizure of money or benefits. Considering that this discipline is common to serious crimes such as mafia association and embezzlement, there are many doubts about constitutional legitimacy due to violation of the principles of equality, reasonableness, and proportionality. In fact, for these reasons, too, a bill currently before Parliament is aimed at amending the regulations of the aforementioned Article 4 *bis*.

A fourth guideline, finally, is always inspired by the idea of enhancing collaboration. After conviction, as I have said, collaboration serves to obtain an alternative and different measure from prison. Before conviction, as a result of the aforementioned 2015 reform, which introduced Article 323 *bis*, paragraph 2 of the Italian Criminal Code, collaboration can be useful to obtain a mitigating circumstance of the crime, with a decrease in the sentence from one-third to two-thirds. Before the start of the investigation or in the initial stages—and this is the innovation introduced in 2012 in a new Article 323 I of the Italian Criminal Code—collaboration affords immunity from prosecution. For the first time in Italy, this basis for immunity was introduced only in 2019.

For at least thirty years—since *Tangentopoli*—there has been discussion of this basis for immunity, which had never been introduced before.

It is provided that the perpetrator of corruption offences is immune from prosecution if, before being informed that investigations are being carried out against him or her and in any case within four months of the commission of the offence, he or she voluntarily reports it and provides useful and concrete evidence to ensure evidence of the offence and identify those responsible.

However, the law provides that to obtain immunity, the person who reports must make available the benefit received or a sum of money of corresponding value. The crime must not befor one's own profit; there must be no residual profit. Finally, to avoid abuses, the immunity from prosecution cannot be applied to agents provocateurs.

There are no reports of concrete applications of this basis for immunity, about which many are sceptical. It is doubtful that corruption can emerge by offering immunity to persons who, being party to the illicit and secret agreement, report it promptly. There does not seem to be a valid incentive. The real incentive for the corrupt or corrupting party to cooperate is the prospect of avoiding imprisonment once discovered. For this reason, some believe that it would have been more appropriate to reduce the penalty even further, such as to concretely remove the risk of imprisonment. However, the reform is still too recent. The future will tell whether this solution will be a useful tool for combating corruption. Many in Italy doubt it.

6. Before concluding my brief remarks, I must mention the increasingly important role that is given to economic sanctions in Italy in the fight against crime. I refer in the first place to the confiscation of the bribe and, in any case, of the profit of the crime, provided for by Article 322 *ter* of the Italian Criminal Code, in direct form or the equivalent. In the latter case, when it is not possible to confiscate the assets that constitute the direct profit of the crime, money or assets of equivalent value, which the convicted person has at his or her disposal, can be confiscated.

In addition to confiscation, in 2015 an extra sanction, called pecuniary reparation, was included in the new Article 322 *quater* of the Italian Criminal Code. A person convicted of crimes of corruption and other crimes against the government must always pay an amount equivalent to the profit of the crime for the benefit of the governmental agency harmed by the crime. This does not preclude compensation for damages, under civil law, and confiscation. It is clear that there is a risk of disproportion in the overall penalty, since confiscation, compensation for damages, and pecuniary reparation may be combined.

7. I hope to have provided an interesting picture, for comparison purposes as well. I have outlined the main changes in Italian law against corruption through the historical periods and the main reform laws of the last ten years. A serious assessment of the reforms requires an evaluation of their effects over time, from the point of view of their effectiveness in combating the phenomenon of corruption, which certainly cannot be eradicated only through criminal law and the threat of punishment. The concern, which I indicated in my speech, about possible excessive severity on the part of the legislator should not come as a surprise. The history of my country, which has been called to fight serious phenomena such as mafia and terrorism in the last fifty years, teaches us that even in the face of such serious phenomena we must never forget respect for the fundamental principles of criminal law, starting with constitutional principles.

In fighting corruption, it should not be forgotten that it is a serious and odious phenomenon—a cancer that alters the rules of democracy and undermines the sound performance of government, the economic system, and the trust of citizens in the State. The task of legal commentary is to keep attention focused, even when it may seem uncomfortable to do so. This is imposed by fidelity to the penal principles of liberal Europe, in which we all believe and which we want to defend and pass on to future generations.