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# Corruption and Policy-making. How Corruption Models Favor Mafias. The Case Study of Italy

*Giacomo Di Gennaro and Roberta Aurilia*

## Abstract

Based on empirical research focused on the phenomenon of corruption in Italy. The purpose of the contribution is to show the different models that are made of corruption pacts according to the actors who regulate them. The basis of the judicial documents was provided by the National Anti-Mafia Directorate (DNAA), the Court of Auditors, and a sample of Courts of Appeal from different jurisdictional districts. The information collected offers an account of the influence that the various mafias have on public policies and the ability to circumvent current legislation. The contribution underlines the existing interpretative limits and why they do not explain to what extent great and small corruption are related.

**Keywords:** corruption, mafia, policy-making, crony capitalism, maladministration

## 1. Introduction

Corruption represents a social problem, a public evil, which unites all the countries of the world, albeit with different proportions and manifestations.<sup>1</sup> It is a karst river which, unlike contemporary climatic trends, is not eroded by pollution but expands, and as the attention of the *media* fluctuates, the moral impact of public opinion wavers, affected by the clamor connected with some scandal or case of a political nature.

Although the issue of corruption is addressed from different perspectives and areas (such as law, sociology, political and social sciences, etc.), due to its multifaceted character, the awareness is that no discipline can alone provide a complete definition of the phenomenon, let alone contain it or prevent it except through synergistic cooperation. Furthermore, the nature of this phenomenon, based on a *pactum sceleris* which must remain hidden, allows it to grow and operate in a silent and submerged manner.

There are many aspects related to corruption that remain obscure, and these are not limited to the mere actual number of acts of corruption committed. The phenomenon, in fact, is essentially "invisible", as it occurs under the radar, whilst requiring

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<sup>1</sup> The contribution is the result of a joint research and reflection of the authors who drafted the introduction and conclusions together. The par. 2; 4.1; 4.2 e 4.4. they were written by Roberta Aurilia; of par. 3 and 4.3 is responsible Giacomo Di Gennaro.

intense and secret investigations. What we know or intercept from official statistics is the result of cases ascertained, reported, or examined *ex officio* and if these emerge it is because they attract the attention of the *media*, due to intense thematic *coverage*, or because they are concentrated in sectors of the public administration, especially in services potentially subject (as in the case of healthcare during the pandemic) to significant judicial investigations. It is no coincidence that even these only intercept striking facts connected to intertwined entrepreneurial events or mafia-type organized crime, or linked to political figures or professional, administrative networks identified and framed as they violate the direct interests of third parties, besides clearly breaking the law and the prescribed duties, thus subverting the public interest.

Anyhow, corruption is not identified only with major corruption: the evident forms of the so-called visible or emerged corruption in its macro-systemic version (*grand corruption*) are contrasted by the micro-systemic dimension (*petty corruption*) that affects all aspects of everyday life; that invisible corruption which manifests itself when antisocial behaviors prevail over civic duty and ethical-institutional responsibility, feeding particularisms and the system of favors, while undermining the impartiality of bureaucratic-administrative action.

The economic and political costs of this *modus agendi* inevitably affect every aspect of the socio-economic-cultural life of the country. Such a system, which moves between the loose meshes of the law, favors the infiltration of criminal organizations. The actions of "Mafiaccorruzione", which is the intertwining between the mafia and the market (*latu sensu* understood), represent not only a serious problem of public order but also a factor that strongly affects the economy of countries, subtracting economic availability and correct allocation of resources from the community, services, public works and investments. Therefore, the common goal of every institution, both national and international, is to counter the corruption phenomenon through differently extended, oriented, and calibrated strategies and public policies.

In Italy, the "emergency" season that characterizes the reform interventions on corruption, starting from Law n. 190 of 6 November 2012, strongly influenced in 2015 by Law n. 69 and, most recently, amended by so-called "Spazza-corrotti" Law n. 3/2019, cannot yet be said to be over. The reform of corruption crimes never seems to be ready to work "at full capacity", even though the numerous gaps in the 2012 reform have been filled over the years. Wanting to draw up a preliminary balance [1], it seems clear that the path taken in the field of anticorruption, reflecting current trends in the Italian criminal system with continuous tightening of sanctions on the one hand, as in the law named "Spazzacorrotti" [2], and the so-called "legislative nomorrhoea"<sup>2</sup> on the other, is not very effective in the fight against this phenomenon considering that Italy is still under special surveillance by European institutions due to its connotation as a "highly corrupt country".<sup>3</sup> More in line with the objective is the trend promoted by the National Anti-Corruption Authority (ANAC) involving various stakeholders, aimed at developing preventive actions and policies that act "upstream" of the problem and not just repressive actions that come into play "downstream"

<sup>2</sup> That is, the tendency to adopt new reforms for raising institutional quality which, however, are substantially unsuitable for modifying a certain *modus agendi* and which, rather than containing the phenomenon, have the opposite effect of providing fertile ground for corrupting plots.

<sup>3</sup> See the 2019 Report from Transparency International. Although, in fact, there has been a slight improvement in the world ranking, at European level Italy is the sixth most corrupt state since, even today, there is talk of organized crime dominating from North to South and of the "White Collar Mafia" who prefers the use of corruption.

when the phenomenon has already occurred. However, the fight against corruption, a phenomenon intrinsically multidimensional, cannot be achieved through instruments revolving around exclusive punishment and sanctioning, but must be carried out, on the one hand, through a more widespread cure of civic conscience, and on the other, by means of greater transparency and better organization of the public administration. Indeed, despite the action of the ANAC and the intense professed simplification, legislative interventions are moving in the opposite direction. Although formally these are all based on prevention and have transparency and simplification as their basic philosophy, since 2014 the problems have remained unchanged as, in substance, these regulatory interventions have not affected the underlying mechanisms that guarantee the production of corruptive agreements.

Some aspects represent the *fil rouge* in the study of the corruption phenomenon: is there a relationship between corruption and *policy-making*, and what is it? This point is linked to the persistently debated problem of the tools for measuring corruption to reduce the gap between actual and perceived corruption. The frontier in measurement techniques is represented by a multiangular approach that combines micro and macro data on corruption, in a two-faceted perspective, both preventive and repressive. In this sense, the centrality assumed by ANAC needs to be highlighted, also with reference to the selection and promotion of methodologies for analyzing and measuring the phenomenon, in line with the tasks entrusted to this agency of implementing prevention policies [3]. A further aspect concerns the so-called "Geography of corruption", with the phenomenon of the so-called "Mafias in motion" posing the question about the possibility of identifying a greater concentration of corruption in the South rather than in the North. That is, whether the phenomenon of the delocalization of mafias operating in new nontraditional geographical contexts impacts corrupt circles in a different way. Finally, another point of the debate revolves around the question of whether, following the SARS-CoV2 virus epidemic and the financial instruments made available by the European Commission, we might expect an increase in the strategic use of corruption by the various criminal organizations and *lobbies*, to intercept large sums of money. The problem is that alongside the economic need to restart, there is a risk that these funds will be diverted or misallocated due to the infiltration of organized crime into the legal economy through the alliance with the so-called "gray area" of society.

These aspects will be the subject of this contribution whose intent, moreover, is also to outline—with respect to the interpretations of the phenomenon present in the literature—a different explanation that reconciles micro and macro dimensions, or the reasons underlying both great and small corruption.

## **2. The relationship between corruption and policy-making**

Except for a few rare cases, the analysis of public policies has only recently shown interest in the system that is created between dishonesty and collusion of politicians, administrators, and private participants in *policy-making*. Illegal or even illicit behavior and corruption have only to a marginal extent been considered as essential variables in the planning and evaluation of public policies aimed at preventing and combating the phenomenon [4, 5]. This is especially true for corruption, which although considered on paper a factor of deviance and disturbance with respect to the implementation of the regulatory program, is treated as a marginal constant or as a residual or contingent explanatory factor. Indeed, when evaluating the processes

and results of a public policy, the possibility of illegitimate pressures and transactions is rarely taken into consideration, and attention is focused on more visible and "controllable" aspects of the governance process. The analysis of public policies has taken on the issue of corruption and the markets of authority in weak forms, paying attention in discontinuous ways to the illicit use of influence and discretion in public administrative systems which, on the other hand, are often a great source of abuse of power and collusion. We do not know, for example, if the codes of ethics or conduct, which should include the degenerations coinciding with corruption and bad administrative behavior, effectively represent tools for guiding and controlling the behavior of public officials. Codes of ethics, in fact, define a system of moral and reputational incentives, in addition to criminal and administrative sanctions, and are aimed at increasing the ethical capital of administrations whilst guarding against "gray areas" that are not adequately regulated by contracts. These codes should foster "responsible discretion" and their proper implementation and fair application should be supported by independent bodies. In any case, their integration should be part of a more general strategy of administrative reform based on positive incentives and sanctions.

It is now clear that in *policy-making* there are opportunities and incentives to systematically break the rules through the illicit use of influence. All theories centered on *crony capitalism*, or the degenerate inextricable interweaving of business and politics that favors *rent-seeking* countries and sectors, such as those significantly dependent on political regulation (i.e., mining, oil and gas, banking, and gambling), underlined how this intertwining stifles dynamic businesses, competition and the drive for innovation whilst resulting in poor regulation, the formation of trusts, and false myths about long-term growth [6, 7]. Many corrupt situations, for example, are traced back, by the public agent, to *maladministration* (political and administrative malpractice) which is certainly associated with corruption but does not completely overlap with it, since maladministration (a sort of "cobweb legislation" that does not facilitate transparency) is very often also the result of poor work organization. That is, a bad organization is not the result of someone abusing public power for private purposes, but it is an intrinsic factor, and this disorganization offers the perfect excuse for the pursuit of self-interest.

The analysis of the relationship between corruption and policy-making cannot overlook the fundamental aspect stemming from the role of local and territorial bodies and from the services they must provide in the area of local welfare (above all health and social assistance services). The *policy-community* now revolves around a *cluster* of services that has transformed local welfare and made local administrators and politicians the main players in the diversified supply of services and redistribution of local wealth (local public services, the water sector, waste, public transport, etc.), as well as responsible for curbing public spending through compliance with the internal stability Pact. Very often the network of relationships associated with this *cluster* is transformed where corruption is widespread. Poor management of functions within the responsibility of the local authority and a nonexistent or inadequate *governance* (an aspect of which is managerial control) or consolidated *accountability* of the subjects called to manage and direct the administrative machine, exposes the body or services offered to perverse opportunities of corruption. Or at least to satisfy some exclusive categories of interests or lobbies.

Insisting on transparency and the simplification of administrative procedures is important but these alone are not sufficient as a solution to the degeneration that lobbying activities of various stakeholders produce toward the interception of public resources. The results of a research carried out in Campania in 2009 on 29 municipalities in the province of Naples and Caserta show that an important game is being played on the administrative and governance grounds of local authorities to hinder

or facilitate corrupt exchanges [8]. If the concrete activity of the public administration is not based on a separation between the levels of planning, management, and control in order to avoid what in the literature is called "*State capture*"—that condition of systemic corruption connected to bad management of old and new functions of the local authority, from the consolidation of particularisms, clientelisms and a low transparency of public action [9, 10]<sup>4</sup>—there happens to be an underground and incisive influence of interest groups or people who end up seizing control of sectors and services by "Capturing", through bribery, the regulation and the regulator itself to the benefit of individuals or groups. When this process of enslavement of the rules, of subordination to the interests of influential circumscribed networks or people (be they private beneficiaries, external companies, or criminal groups), reaches regulations, decrees, and procedures, bending them to generate nontransparent private benefits in exchange for advantages for public officials, then it means that control and power subordinated to the private interests of individuals, groups or organizations have taken root (as in the case of waste management in Campania; or of the "tavolino"<sup>5</sup> in the regulation of procurement contracts in the Casalesi syndicate).

An antidote, then, must be not only the efficiency of the levels indicated with the aim of averting state capture, but the "systemic complementarity between politics and bureaucracy because it permits, instead of unequivocally distinguishing, to separate the functions of direction and control from those of management, inducing each one to carry out their own role with clarity, competence, professionalism and above all responsibility for one's actions" [8]. Furthermore, all the organizational components, including the political one, must rest their foundations on solid *accountability* systems, understood as "*the duty to give an account of one's work by a subject towards another subject in order to define responsibly and credibly the existing relationships between planning - decision - action - control*" [8], that is to give adequate account of one's actions as a moral and social obligation towards the various *stakeholders* to generate trust, institutional credibility and build consensus on a continuous evaluation of the positive *outcomes* actually produced to meet the interests of the community. If all this is not affirmed as an operational and cultural principle, the likelihood that corruption will continue to spread remains very high.

Only recently have data on the interactions between corruption and public policies come to the attention of *policy analysis*. This lack of attention has not prevented much information from being presented in studies carried out on corruption itself and not from those on policy formulation and implementation. Failure to integrate these variables, the role of corruption and illicit behavior in the formulation and implementation of public policies, risks making the possibility of designing policies capable of dealing with the spread of the collusive phenomenon between corruption and mafias ineffective. Nevertheless, it must be reiterated, corruption is not linked to the exclusive presence of the mafias, because there is direct corruption governed by the mafias, but there is corruption independent of the leading role of the mafias. This implies that factors originating corruption are also independent of the pressure and interests of the mafias.

<sup>4</sup> When private organizations, lobbies, restricted networks of businessmen, private actors create corrupt exchanges or collude with public officials or politicians to obtain a mutual private benefit, a "capture of the state" occurs, in the sense that the various powers are subject to the pursuit of private interests. Many authors interpret modern corruption precisely as a consequence of managerial degenerations related to procurement, to the management of local public services, to the cultivation of bad practices.

<sup>5</sup> This is an illegal form of pact guaranteed by the syndicate whereby procurement contracts are only given to firms chosen periodically from a certain set.

The Councilor of State Pajno has repeatedly stressed that without a strong civic spirit (and here the reference is to article 11 of Legislative Decree n. 33/2013) it is difficult for transparency to take root. He also added that the fight against administrative corruption must be based on a more systemic approach by lawmakers to the issue of transparency which includes incentives and sanctions, indicates timings in the implementation of a reform process and does not transform the reformed institutions of transparency (for example, the obligations of drafting-publication of both general and specific information) in “an increase in that ‘opacity due to confusion’ which is typical of the excess of forecasts and information”, the paradox of which would come about because rather than a reorganization of the provisions on transparency obligations aimed at generating simplification, there would be a “publicity system which, being based on a meticulous series of related obligations, creates a real regulatory inflation, thus increasing the complication rate of the legal system” [11].

To date, it is possible to state that the "ethical question", which is the plethora of problems linked to the deviation from legal and moral standards of market players (whether they are public officials, politicians or administrators, and their social interlocutors), having great resonance in the agendas of various governments, represents a strategic node for public and private organizations. Therefore, in all democratic countries, there is the development of anticorruption strategies and policies to limit the negative impact of collusive, criminal or illegal practices on economies and institutions, which damage the state economy and inevitably increase popular distrust of public action and the integrity of the system [4].

### 3. Models of corruption

Awareness of the multifaceted and systemic nature of the corruption phenomenon has led Italian lawmakers to prepare not only repressive but also preventive instruments, not only of a criminal but also of an administrative nature, in the knowledge that legal instruments can only be truly effective if they tackle the problem upstream before the seeds of corruption take root in the social *humus*. In terms of the prevention and repression of corruption, as a result of the thrust of international conventions aimed at combating this phenomenon, as suggested by the various international organizations involved in the fight against corruption, the path has been undertaken based on a necessary integrated strategy aimed not only at repression but above all at prevention, hindering the problem in the bud, thus avoiding facing it only at the pathological moment, or when an offense has already been committed but at the physiological moment, *ante* corruptive agreement.

Italian laws, which are too detailed, unclear and poorly coordinated with each other, often lead to a mere bureaucratic fulfillment of the legislation that inevitably lacks effectiveness; therefore, it is necessary to promote a culture open to transparency, simplification, information and collaboration in a synergistic way between citizens, public officials, entrepreneurs, governmental and nongovernmental institutions to combat the complex corruption phenomenon. However, to do this, it is necessary to consider the impossibility of analyzing and studying the phenomenon without considering the various ways in which it manifests itself.

The hidden exchange, in fact, is no longer only bilateral but can take different forms, especially that of the cartel. Furthermore, corruption increasingly assumes a systemic form, that is, it reaches such a level of diffusion that the guarantee of success is given by the unitary agreement. The so-called socialization of connivance, among

many people whose reputation is not undermined by leveraging the *cliché* of "everyone does this" which is concretized in the so-called social circle of recognition where the identity of the participant is built on the mutual strengthening of a sense of solidarity and mandatory responsibility towards existing ties and coverage obligations [12].

The moral faculty to deceive the state comes from the norm of moral recognition shared within the circle. Corruption is systemic because it is not only "organized", or because does not only belong to a specific group, or has a criminal group as its protagonist, but because it is based on a plurality of "government centers", fixers, facilitators, officials, professional politicians and other players, who "ensure the stability of equilibria that have taken root over time, with respect to which any reform runs the risk of turning into nothing, due to strategies of adaptation, avoidance and learning of the protagonists" [13].

Furthermore, the illicit pact can see the setting up of real "business committees" made up of professionals, public officials or politicians, and administrative agents. This organization shows the ability to direct the interactions between the variety of players involved (public and private) towards increasingly new opportunities for illicit gain in different fields of public intervention [14].

Taking into consideration what has been said with respect to the forms of corruption, it is possible to hypothesize distinct relational types and regulatory mechanisms which, based on their combination, generate the profile of the exchange by configuring the relationship. By way of example, without claiming to be exhaustive, it is possible to identify: (a) the condition corresponding to the presence of one or more political subjects directly supported by and colluding with a criminal organization; (b) the condition corresponding to the presence of one or more officials/bureaucrats of the public administration directly colluding or affiliated with the criminal organization; (c) the condition corresponding to the presence of one or more entrepreneurial subjects active as referents of the criminal organization; (d) the condition corresponding to the presence of criminal organizations that produces and regulates the corruption pact also through agreements between groups operating in different territorial articulations; (e) the condition corresponding to the presence of active entrepreneurs who bribe officials and criminal organizations that intercept or ask for the collection of untitled amounts of money as a commission for subsequent procurements. This typification is useful to understand if the *modus operandi* is different in relation to elements such as the type of organization, the territory where the opportunity falls, the sector in which the opportunity is created, the condition that determines the opportunity and whether the criminal organization is a player, promoter or regulator, if all the actors (PA, business owner, and third parties) are present in the exchange or if the relationship is direct between the criminal organization and the PA, or if it is configured in a given way regardless of the presence or co-presence of one or more factors [15]. This analysis is not insignificant, as it helps to study the *modus agendi* of criminal organizations and therefore contributes to not only contrasting but above all preventing mafia infiltration into the PA and the legal economy.

## 4. The case of Italy

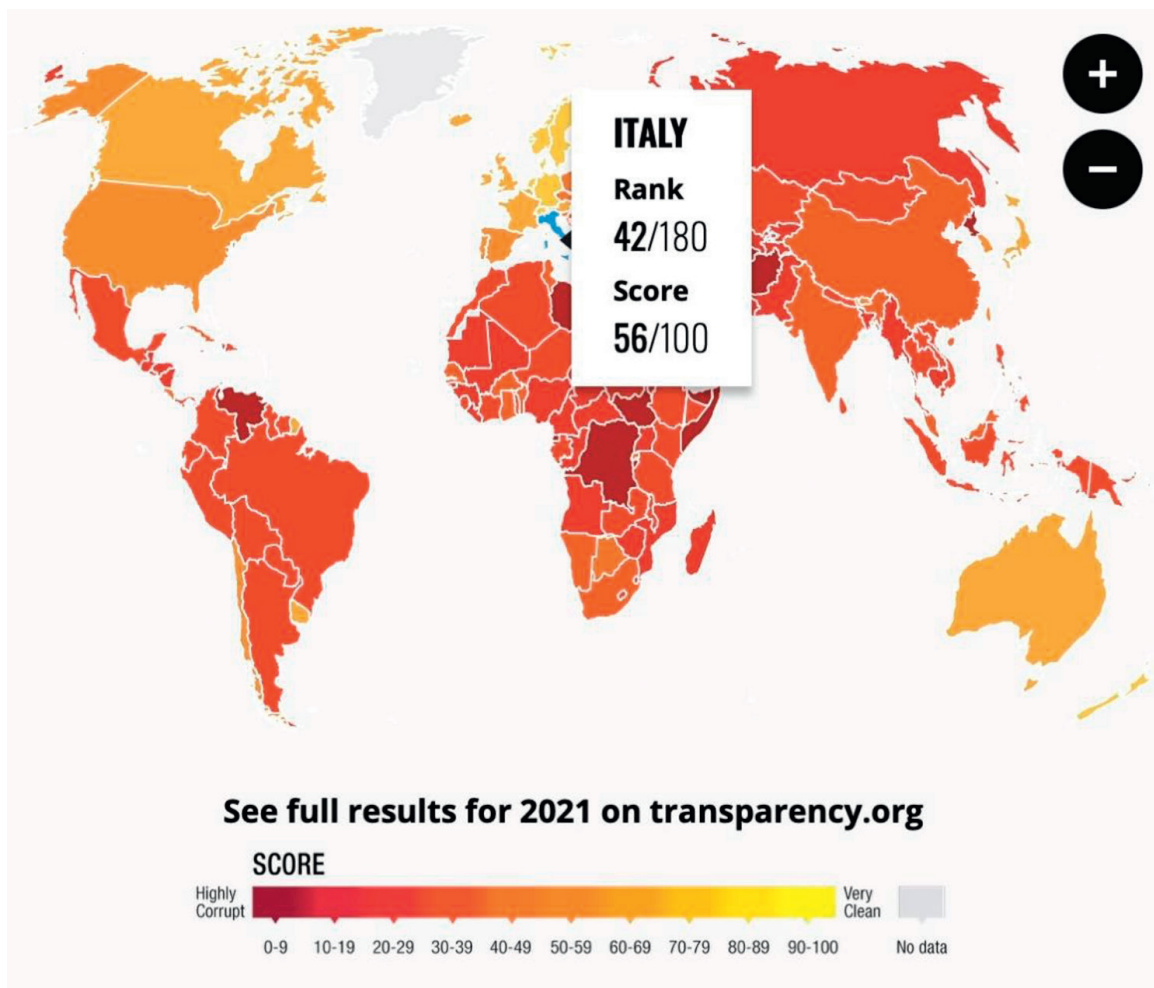
### 4.1 Estimated size of the corruption phenomenon: Perception indices

The phenomenon of corruption in Italy is constantly growing and its presence permeates all areas of life, including daily life, so pervasively that it is accepted and tolerated by society almost as a consubstantial element with it.

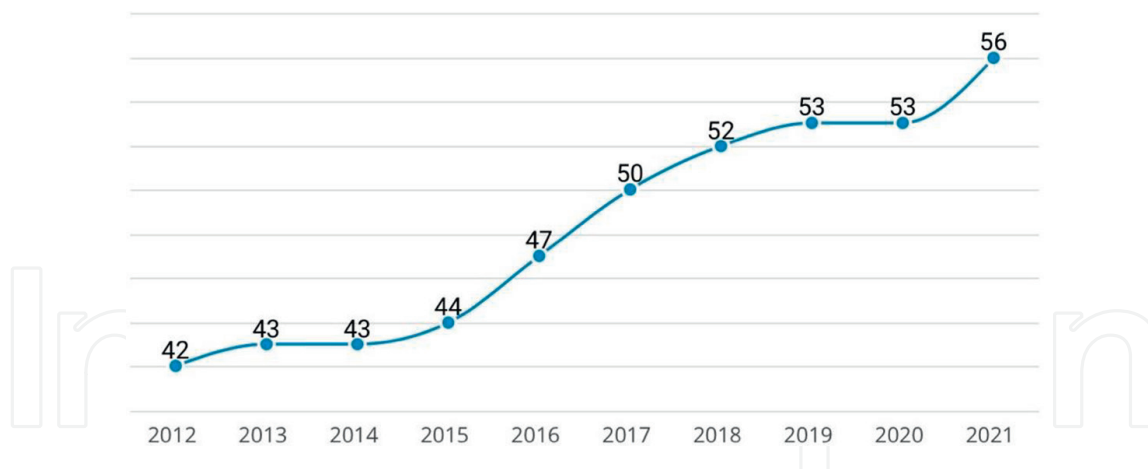


An important contribution for the purpose of carrying out significant research activities aimed at comparing and evaluating the legislation of the various countries to provide data on the phenomenon and promote increasingly suitable law enforcement and transparency measures and increasingly efficient controls, is that provided by governmental and nongovernmental international organizations. Among nongovernmental organizations, of particular importance is the contribution offered by *Transparency International* which publishes studies, global and regional annual reports, and a global barometer on corruption. Their *Source Book* on the fight against corruption is also of great interest. Through the latter, in fact, a new methodological investigation tool was developed based on the concept of "National Integrity" aimed at analyzing all the sectors that affect the socioeconomic life of the country and the relationships between them. The results that emerge depict a reality in which the high rate of corruption affecting political life, society, the economy and the culture, combined with the total or partial absence of transparency and integrity of the institutions (represented by a heterogeneous range of areas of public and private life), leads to a worsening of the general system. Due to the dynamics of intersection between the various sectors, anti-corruption reforms should be at the macro-systemic level of a general and all-encompassing nature and then become specialists in nature once they have passed on to the micro-systemic level.

In *Transparency International's Corruption Perception Index 2021* [16], which reports the assessments of international observers on the level of corruption in 180 countries



**Figure 1.**  
*Transparency International, Corruption Perception Index 2021.*



**Figure 2.**  
*Trend in the Corruption Perception Index (CPI) from 2012 to 2021.*

around the world, Italy recorded a perceived corruption index in the public sector of 56 (on a scale from 0 to 100, where 0 is highly corrupt and 100 is maximum transparency) holding the 42nd position (**Figure 1**).

Over a period that goes from 2012 to 2021, Italy, despite having arrested its disastrous descent in the ranking, nevertheless remains behind the Western states in terms of position and perceived level of corruption in the public sector compared to other countries in the index. In fact, to date, its score of 56 (despite the trend of slight but constant improvement recorded over the years, with 14 points gained since 2012) remains above the world average (42); nevertheless, this figure is still significantly lower than the European average of 66 (**Figure 2**).

The corruption phenomenon is not only difficult to define but, due to its pervasiveness, it is even more difficult to measure given the huge number of manifestations of this phenomenon which cannot be counted in the judicial quota. The modern mechanisms for measuring corruption, which use data and tools from the experiences of the various States, permit, though with the awareness of a margin of imprecision of the results achieved, to analyze the phenomenon of emerged corruption dynamics to then discover the submerged ones too. A decreasing number of cases of criminally prosecuted and convicted corruption is contrasted by an increase in the perception of this phenomenon at a macro and micro systemic level. The result of this mismatch is, of course, a strengthened expectation of impunity of the subjects involved in the corruption mechanism and, as a counterpart, the growth of mistrust towards the judiciary involving a decrease in police reports which, too often, are resolved in inconclusive manner.

However, the perception of the phenomenon on a collective level tends to strengthen around the so-called gray areas of administrative activity in which "friendships, acquaintances and help" prevail over the rights and duties enshrined in the Constitution and in the laws or regulations of the sector.

In 2019, Eurispes<sup>6</sup> conducted research based on the "econometrics" of corruption in Italy. This study focuses on the relationship between the real size of the corruption phenomenon and its representation, and how the value attributed to this relationship can alter the reputation of a country.<sup>7</sup> In fact, labeling a country as corrupt or more

<sup>6</sup> Eurispes, Institute of Political, Economic and Social Studies is a private entity that has been operating in the field of political, economic and social research since 1982.

<sup>7</sup> This research, curated by G.T. Polcini for Eurispes, has set itself the goal of verifying the validity of the opinion expressed towards Italy by the most common perceptual indicators at global level.

corrupt than it really is, can have effects on the economy. For this reason, to control, prevent and counter the corruption phenomenon, it is necessary to represent it in its various aspects having a multiform nature. According to the World Bank, corruption is the main obstacle to the economic and social development of countries. The Organization for Economic Cooperation and Development (OECD) itself, based on the above-mentioned *Corruption Perception Index* developed by *Transparency International*, wanted to study the consequences of the corruption phenomenon on the economy. A low index, that is, closer to the value indicating a high degree of corruption, corresponds to lower attractiveness for investments, lower reliability, higher interest rates, damage to image and reputation.

Within the OECD, Italy is the country with the highest perceived corruption, even though trust in institutions is much higher than in other countries where, on the other hand, little or almost no trust in institutions corresponds to a much lower perception of corruption. The same happens in international indices, where Italy ranks much lower than it would as a democratic country and one of the top 10 countries in the world by per-capita GDP.<sup>8</sup> The mismatch between the actual existence of the corruption phenomenon and its perception can be seen in the comparison between data from the latest ranking of *Transparency International* highlighting a high degree of perception of the corruption phenomenon and the results of a sample survey carried out by Eurispes which depict a very different reality regarding the actual existence of the phenomenon, in line with other developed nations.

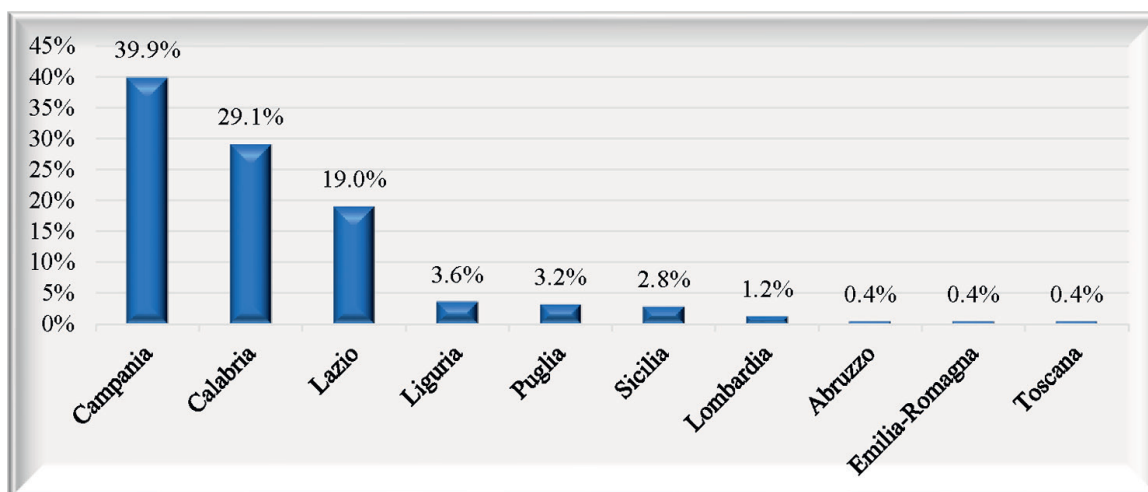
Given the full autonomy of the ANAC, to effectively combat the corruption phenomenon, both preventive and repressive measures are taken. This intervention, however, generates a distorting effect that has been defined as the so-called "Trocadero paradox": the more corruption phenomena are pursued in terms of prevention and repression, the greater the perception of the phenomenon. Therefore, a legal system like the Italian one, which is sensitive to the fight against corruption, is more affected by this distorting effect. To carry out an analysis of this type and avoid the mistake of comparing completely inhomogeneous systems, it is necessary to use homogeneous measurement indices of an objective and subjective nature. Therefore, to be able to use data at a European and international level, it is necessary to redefine the indicators used up to now in favor of a single composite indicator. Indeed, the real problem that emerges from this research is that of the poor reliability of perception indices as these, in fact, measure the impression one has of this phenomenon, but not the phenomenon itself. This statement is serious, and even more so when keeping in mind that the corruption rate of a nation affects not only the credibility of its institutions, both internally and externally, but above all the economic aspect.

#### **4.2 The "geography of corruption" of criminal organizations in Italian regions: the result of a research on the analysis of judicial records of the National Anti-Mafia Prosecutor's office (DNA)**

In contrast to what has been stated in recent years with respect to the data reporting almost total impunity for real corruption, a study was conducted and reported in the recent *Report on Criminality and security in Naples* [15], dedicated in its third and fourth parts to the issue of corruption, demonstrating that corruption cases are

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<sup>8</sup> This effect is the so-called phenomenon of the Botswana syndrome, that is, the tendency to compare Italy to states that are quite different from Italy in terms of well-being and wealth.

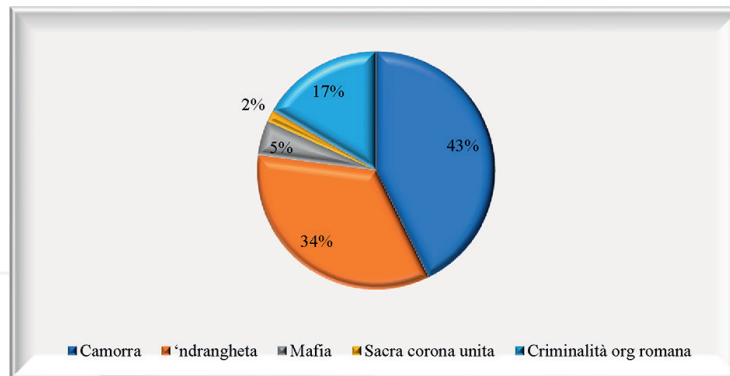


**Figure 3.** Geographical distribution of the events analyzed. Percentage values. Years 2013–2020. Source: DNA data processing of the research group “Crime and security in Naples”, Third report.

not only identified but also punished. Starting from the analysis of judicial cases,<sup>9</sup> it has been concluded that the use of corruption by mafia organizations is massive and spread throughout the country. Regarding the so-called "Geography of corruption", the highest concentration of events is recorded only in some of the regions traditionally associated with the presence of mafia-type organizations, especially Campania and Calabria, with 39.9% and 29.1% of cases respectively, while the weight of Sicily and Puglia is marginal, as these two regions taken together barely reach 6% of the total. As regards those territories where mafia infiltration is more recent, the data show a significant presence in Lazio with 19.0% of cases, mainly for events related to the so-called "Mafia Capitale". The other regions of the center-north have a negligible weight, with percentages of less than 5% (**Figure 3**).

In 44.3% of cases, it is corruption for acts contrary to official duties and in 8.3% corruption due to the exercise of the function, while the induction to corruption has reached values of less than 5%. The presence of a mafia-type network directly coincides with those crimes that presuppose the identification of an opportunity that the associates manage directly, or as guarantors of agreements, or as middlemen enabling the hidden exchange to always produce a positive result for all stakeholders. The breakdown of events by mafia-type organization provides some clear information: a comparison between regional area and type of criminal organization tells us that the difference between the Camorra and the 'Ndrangheta is equal to 8.3%, a lower figure than that found between Campania and Calabria, equal to 10.3% (**Figure 4**). This data suggests, based on the documents acquired, that the territorial extension of the Camorra and the 'Ndrangheta does not end in the territories of origin but, as many investigations have already shown, according to the so-called phenomenon of "mafias on the move", the penetration of the 'ndrine in central-northern territories has been growing for years—through their use of corruption to make the process of expansion towards new areas latent and invisible—and, for many aspects, more effective, since they gather around themselves local administrators and politicians, entrepreneurs,

<sup>9</sup> The study was conducted by analyzing: (a) the rulings of the Court of Cassation; (b) those relating to six districts of the Court of Appeal; (c) the judicial material of the SIDNA database; (d) the judicial acts of the DNA; (e) the rulings of the Court of Auditors.



**Figure 4.** Percentage of incidents by criminal organization. Years 2013–2020. Source: DNA data processing of the research group “Crime and security in Naples”, Third report.

public officials, professionals, intermediaries, precisely by corrupting other subjects engaged in illegality [17].<sup>10</sup>

As regards the relationship between the territory and corruption events, this is even more interesting if the data on the distribution of corruption events in the sectors of activity is crossed with that of specific mafia-type criminal organizations. Given the confirmation of the hypothesis that the southern regions where mafia organizations are traditionally rooted are those with a dense corrupt activity, the expansion of mafia organizations towards newly settled areas is worrying. In fact, many investigations have revealed a strong presence of Camorra, 'ndrangheta and Sicilian mafia groups in Central and Northern areas, whose expansion has often been determined either by criminal migration chains or by the phenomenon of forced displacement. These two factors explain the establishment of mafia networks and illegitimate powers in territorial realities other than the Mezzogiorno. From expansion, we are now faced with a genuinely new territorial entrenchment where tacit agreements are generated between mafia structures favored by recourse to corrupt activity rather than the use of violence [18]. The results that emerge depict a reality where the high rate of corruption affecting political life, society, the economy and culture, combined with the total or partial absence of transparency and integrity of the institutions and the strong relocation of the mafias, leads to a worsening of the general system. In light of this, in a country like Italy, where mafia criminal organizations are strongly rooted in local areas, it can be said that corruption has an endemic character as it is now an operational tool preferred by the mafias. Yet it should be noted that not all corruption is attributable to the presence of the mafias. Nevertheless, since not all corruption is of mafia origin, the dynamics of intersection between the various economic sectors and the public administration (not to mention corruption between private individuals), requires that anti-corruption reforms are geared towards two types of contrast: (a) at a macrosystemic level, i.e., of a general and all-encompassing nature, coinciding with effectiveness of the sentence, the reduction of subcontracting, greater simplification of competitive administrative procedures, rationalization of the existing regulatory system, etc.; (b) at the microsystem level, coinciding with the

<sup>10</sup> This strategy enhances and consolidates the different types of social capital that are endowed to and produced by mafia organizations.

strengthening of the *Stand Still* clause,<sup>11</sup> the implementation of gradual interventions aimed at restoring the legality of entrepreneurs' action, more effective protection nets for *whistleblowers*. This two-pronged approach is decisive because corruption intrinsically has a double meaning: it is a modality that allows the exercise of power and at the same time it benefits the corrupt materially and immaterially.

Confirming the strong micro and macro character of the corruptive dimension present in the country, based on judicial materials and documents pertaining to the database of the National Anti-Mafia Prosecutor (DNA), the Court of Auditors and a limited number of documents coming from three Courts of Appeal (Lombardia, Lazio, and Campania), the research cited quantified the amount of diverted public resources representing the "loot" of the various corruption pacts. Overall, from the examination of 536 judicial documents, 673 corruption events were found, totaling almost €260 million stolen from the community over the period 2005-2017 [15].<sup>12</sup>

The situation that emerges offers an account of the action of the mafias and of entrepreneurs, politicians, administrators and *civil servants* who, in cohesive units, individually, or in specific relationships with some of the agents, plunder public resources by diverting significant shares that could, conversely, benefit the community because deviating from government practices is the exercise of power and not necessarily the result of administrative dysfunctions [19].

The criminal tools used by the mafias must be fought with *ad hoc* regulatory instruments, with a special repression reserved for these forms of crime. Although Italy is preparing all possible tools to make the fight against corruption effective—from the innovations introduced by law 3/2019 to the strengthening of the sphere of intervention of ANAC in favor of promoting a culture of prevention of corruption, while maintaining its function of supervision and regulation of public contracts—there are still several obstacles to overcome. For instance, the failure to adopt a general law on *lobbying* and the rules on conflict of interest has been repeatedly highlighted as fundamental elements in the fight against corruption by *Transparency International Italy*. Furthermore, repressive measures tend to be hampered by the excessive length of criminal proceedings.

### 4.3 How to interpret micro and macro corruption

That multidimensional character of corruption recalled precisely because it is the object of analysis by various sciences, undergoes interpretations that emphasize one

<sup>11</sup> With this instrument, governed by Article 32 of Legislative Decree 50/2016, a temporary impediment to the conclusion of the contract is determined after the definitive award. In this way, minimum standards of substantive and procedural protection are guaranteed to the economic operators involved in the procurement process, to prevent their reasons from being frustrated by the signing of a contract resulting from an allegedly flawed award.

<sup>12</sup> As can be understood, the sources of the survey were different and each made it possible, based on the total of the rulings examined, to extract the number of events characterized by exchange of money. The other utilities have not been examined for the purposes of the total calculation. The SIDNA database (of the National Anti-Mafia Prosecutor's Office) showed for the years 2013-2020 a total of 102 judicial acts including 253 events of mafia corruption. From the examination of the acts of the Courts of Appeal (217 rulings) for the period 2002-2019, 348 events of corruption can be found and finally, from the database of the Court of Auditors for the period 2015-2018, out of 217 second instance rulings, there were 72 cases of corruption where the exchange is characterized exclusively by money. Besides these, 96 other cases must be added (whose usefulness was material but not in money) and 49 whose usefulness was found to be immaterial.

aspect or another. Quite a few authors point out that the most appropriate explanation is linked to profound subjective immorality, while others consider the malpractice of corruption originating from administrative inefficiencies and deficits of public organizations (of which crimes against the public administration are an indicator), or coinciding with the capacity of particular circuits of actors (political, economic, administrative, criminal) who, using “illegal skills” and sophisticated regulatory mechanisms, intercept shares of public resources to exclusively pursue private interests [12]. In addition, others see in corruption a degree of circulation of resources functional to oiling the procedures of the public system and necessary to balance differences in status and reputational imbalances due to the different roles of *civil servants*.

Indeed, the corruption market is considered as such by virtue of the perverse effect, especially in Italy, that slow justice produces in rendering criminal proceedings ineffective, without final convictions or with weak criminal effects. This reinforces the sense of impunity and encourages the entry of entrepreneurs, politicians and bureaucrats into the networks of corruption [20]. Although the central aspect, from a criminal law standpoint, is the deviation from official duties that the public role entrusts to the person, whether elected or appointed, it is the pursuit of the private interest (even if it extends to family, kinship or subjects with which you have specific relationships) or of some form of utility, that represents the trait characterizing it subjectively. This angle, however, fades or becomes integrated if we observe corruption as a violation of a collective interest versus the private one, where the public interest becomes connotative of the phenomenon.

Nevertheless, moving on to interpreting the reaction of the public opinion, the corruptive fact is condemned to the extent that the affair arises public indignation; although there is a risk that corruption ends up being associated with acts that have nothing to do with it (i.e., clientelism, favoritism, forms of *ex post* authorization, familisms, particularisms, etc.). Therefore, considering corruption—even if it runs through the history of many countries—as a constitutive phenomenon of the political class and a propensity for entrepreneurial action characterized by a weak or absent sense of the state and *civicness* raises the problem of how these ethical principles are produced and preserved and who is the actor from which they originate.

Interpretations that move along the more culturalist or institutional axis [21] explain some correlations and consequences (in this case the civic deficit) that stem from the spread of corruption, but they tell us nothing about their genesis. The *path-dependent* explanation of the inherited culture (i.e., the historical rooting of a cultural connotation) is itself the harbinger of an explanatory circularity that ends up ignoring where it originated [22]. Given the whole debate on the measurement of interinstitutional trust and the construction of social trust, the culturalist and institutional interpretation promotes the rank of widespread experience that instead belongs to restricted circles or elites that mutually reinforce each other. This approach does not depart from the idea already expressed by Sutherland and from the concept of “differential association”, indicating a set of agents who give themselves their own rules and sanctions while sharing a symbolic repertoire strengthened by the “closed” structure, characterized by a veil of silence, as well as by the various utilities distributed, which holds this submerged world together [23, 24]. Indeed, recent integrative criminological theories [25, 26] have repeatedly stressed that socialization with illegitimate opportunities generates a subcultural climate of sharing dishonesty, fraudulent behavior and self-absolution that especially if exempt from social reprobation and stigmatization, which is connected to the perception of social shame, feeds the subjective willingness to use illegitimate means to achieve one's ends and build a

social position while generating a conformity to transgressive action by increasing deviant behavior, especially if the groups or social circles of reference tend to separate the negativity of the act from the personality of the criminal.

Since corruption has historically always been present everywhere in the world, the question is whether it has really increased over time and why. In fact, corruption has been a regulatory tool of the ruling classes precisely because it has allowed either their consolidation or access to power. The contemporary process of globalization, which increased inequality, has in fact reduced the initial capital of resources (monetary, intellectual, technical) with which those belonging to the lower and middle classes begin their careers. The social elevator has stopped, the expectations of improvement and social ascent have been betrayed and the gaze toward the use of illegal opportunities has become broader and more concrete. Moral barriers to corruption have disintegrated. The constant internal crises of economic cycles (three recessions in the last decade) have made it more difficult to support growth, full employment and the production of a sense of social identity in people revolving around a common regulatory structure. The financialization of global markets and the "absolute power" they exert through returns and the introduction of new mechanisms that increase global inequalities of income, opportunity and wealth [27, 28], are putting meritocracy values under pressure, alongside individualism and even cynicism, to the point of producing ideological barriers against the principles of justice on which modern democratic societies are founded.

Economic action from within the capitalist market vision has been annihilated by the financialization of the economy. Entrepreneurs bypass the inefficiencies of the state bureaucracy and the inability to find the right balance in company management between the pursuit of short and long-term objectives and give excessive attention to maximizing their own objective functions exclusively in the short-term [29–31]. This short-term pressure pushes shareholders to make immediate rather than deferred gains, influencing the strategic action of management and thus supporting the entrepreneurial culture and business performance on *short-term* results. This pressure, search for absolute and immediate profit, and sovereignty of the venture market have eradicated the interest of entrepreneurial action in pursuing self-esteem by acting within a territory and perceiving one's role as highly responsible for growth and diffusion of economic development. As a result, the corruptive exchange is consolidated and recognized as the most advantageous and immediate way to profitability, entrusting to it, and to rent-seeking actions, the results and the success of economic activity, thus feeding a vicious circle. Political action geared towards short-term results - in a vicious circle fueled by government instability, the reduction in the growth rate, the high level of public debt and inflationary dynamics - tends to maximize earnings. Crony capitalism has expanded because the condition of weak growth and political fibrillation makes political-administrative positions and statuses precarious. This condition is associated with the global networks of parasitic finance not at all interested in extracting value from the real economy but seeking to transfer wealth from low and middle classes to high-income individuals. A short circuit has occurred and in this perverse vicious circle a willingness to corrupt negotiation agreements matures that is transversal to class segments, professional middle class, economic agents and entrepreneurs, social groups, white-collar workers and individuals for whom the secret corruption pact and hidden exchange configures that utility or advantage whose benefit transforms a condition, allowing the achievement of an objective that would otherwise not be possible, or which would require high subjective costs and a long-term vision.



The complicated thread of corruption seen in hidden exchanges, i.e., in large and small corruption, the solution undertaken by an increasingly large number of people and groups who grab public resources, acquire different advantages or utilities to reach or safeguard private interests, defend themselves from processes that appear ineluctable, or maintain social positions, acting with drug addiction rhythms and consolidating the *pitfall of corruption*.

#### 4.4 Corruption and Covid-19

It is now known that the mafias are increasingly making use of corruption to penetrate the legal market and that, among other things, it is the emergency conditions following disasters that revive that "disaster capitalism" recently coinciding with Covid-19 [32].

Based on the premise that the *modus agendi* of criminal organizations adapts to the historical moment in which they find themselves operating and to the economic-social context of reference, starting from the lockdown and throughout the subsequent period of emergency, the activities of the mafias also changed. They continued to act under the radar, abandoning the so-called first-level criminal activities (drug trafficking, extortion, receiving stolen goods, robberies), and promoting money laundering and corruption.<sup>13</sup> The large availability of money, from the European financial instruments launched to face the crisis and aimed at reinvestment in legitimate activities, becomes a tool for laundering and re-using illicit capital. For decades now the mafia has been increasingly morphing into a business, showing a fervent ability to operate in an entrepreneurial manner in the medium-long term, without sector or geographical boundaries, especially in relations with Public Administrations. The *permanent monitoring and analysis body on the risk of infiltration into the economy by mafia-type organized crime*,<sup>14</sup> when examining the phenomenon of mafia contamination in the economic and social system, outlined the existence of "potential risks, identifying the economic sectors that have always been of interest to the mafias and the new areas connected to the production chains or services linked to the pandemic", the so-called *Covid economy* [33].

The trend of the corruption phenomenon is constantly on the rise, with criminal organizations increasingly resorting to corrupt systems to achieve their goals and taking advantage of emergency situations to a great extent. It is no coincidence that the devastating effects of the recent economic crisis and of the pandemic on the economic system and on healthy businesses, have mobilized the mafias in the support of families and businesses through the offer of money at low interest rates, competitive to the banking system, or with an offer of illicit credit made exclusively to launder and make profits from emergency situations that represent an extraordinary opportunity.

<sup>13</sup> The 2020 Corruption Perceptions Index (CPI) prepared by Transparency International highlights how corruption affects the ability of states to effectively deal with emergencies. In a context such as that caused by the SARS-COV-2 pandemic, which brought about a double crisis, health and economic, corruption has diverted funds from essential services leaving countries unprepared to respond promptly to the public health crisis. Furthermore, it has generated a distorted allocation of resources which has led to a general violation of the minimum standards of protection of human rights in the management of the pandemic.

<sup>14</sup> Established in April 2020, set up at the Central Directorate of the Criminal Police, of a joint nature, composed of representatives of the State Police, the Carabinieri, the Finance Police, the Penitentiary Police, the DIA, the Central Directorate for the anti-drug services and the Postal Police Service.

The issue is even more topical as the most suitable tool to overcome the Covid-related crisis was found in the massive operation of public investments aimed at public works, infrastructures, and digital modernization through what has been called an "infrastructural shock", that envisages fast times to face the post-pandemic economic slowdown. To carry out work quickly, the "Decreto Semplicifazioni" n. 76/2020 was issued and then converted into law 120/2020, which provides for a series of "Simplifications in the field of public contracts" of a two-faced nature: extraordinary and transitory. The problem lies in failing to consider the corruptive matrix that has affected and still affects our country, which could draw new life from such a system.

At the international level, too, the problem of the diversion of public funds is a cause for concern. In a speech to the European Parliament, the President of the European Commission Ursula von der Leyen said that *"we will ensure that money from our budget and NextGenerationEU is protected against any kind of fraud, corruption and conflict of interest."* Again, Europol raises the alarm on the risk of infiltration by syndicates: *"The mafias are aiming for the money from the Recovery Fund, we need to watch out for the funds arriving"*. Finally, the Council of Europe's Group of States against Corruption (GRECO) has published guidelines aimed at its 50 member states for preventing corruption in the context of the health emergency caused by the Covid-19 pandemic. *"As countries face undeniable emergencies, the concentration of power, the waiver of rights and freedoms, and as large amounts of money are infused into the economy to alleviate the crisis, the risks of corruption should not be underestimated"* said the president of the GRECO [34].

To date, it is undisputed that if on the one hand the emergency required the need to identify tools for accelerating and simplifying procedures, on the other the legislator is obliged to provide for measures that strengthen legality.

Based on the premise that the corruption phenomenon is assuming an increasingly expansive trend, it is necessary to act on a double front, in the common perspective of transparency: on the one hand, it is necessary to strengthen transparency in procedures and simplify them, by accurately tracing the responsibility of acts, the digital sequence of the process and the decision-making locations in organizational procedures; on the other hand, we need transparency in the field of corruption prevention strategies. This means *accountability* and participation of the various *stakeholders* must be integrated and pursued in all anti-Covid-19 plans and *policies*.<sup>15</sup> The pandemic has shown, once again, how important the prevention of corruption is even before the fight against it, and that the instrument of derogation from the regulations set up precisely to contrast and significantly reduce the risk of corruption, would generate a laceration in and of the law with a very strong risk of infiltration by criminal organizations.

## 5. Conclusion

This contribution invariably emphasizes the serial character assumed by corruption which has infected a large part of the public sphere and private companies and

<sup>15</sup> According to GRECO, transparency, control and responsibility must be better implemented, given the delicacy of a situation in which large sums of money are quickly made available to the sectors most in trouble, such as the health sector, where there are critical issues related to large-scale public procurement, an insufficient number of vaccines and a vaccination passport, see Council of Europe, GRECO, Corruption Risks and Useful Legal References in the context of COVID-19, Strasbourg, 15 April 2020, available at: [www.coe.int/greco](http://www.coe.int/greco).

anesthetized the collective conscience, generating a general addiction and a sense of resignation towards the phenomenon. This resignation is a symptom of a profound crisis affecting the field of legal certainty that characterizes our age and the life of every citizen.

This crisis derives from the problem that has been affecting our legal system for a long time, namely that of the legislative nomorrhoea: in fact, our regulatory system is characterized by an over-production of easily circumventable norms, by legislation rich in precepts where it is difficult to describe into more and more specific rules certain nuances that a multifaceted and chameleonic phenomenon like corruption can take on, therefore unable in reality to really tackle the problem. Moreover, it has now become common practice for jurisprudence to fill the legislative gaps. As a matter of fact, the actors of corruption exploit to their advantage this gap between the incompleteness of the laws and the interpretation of jurisprudence. This generates constant "updating" of the criminal rules hand in hand with the strategies prepared to counter the corruption phenomenon, relying above all on the silence of the actors who participate in the *pactum sceleris*, on the silence of the socio-cultural context in which they operate and exploiting the greater impunity guaranteed by invisibility in the eyes of society.

The sense of distrust engendered by this mechanism in the population leads to a victory for corruption over legality. Therefore, the new challenges that international and national organizations are facing must be fought by using not only the weapon of criminal sanctions but also of administrative tools which, used in a coordinated and synergistic way, can give an effective response to the fight against corruption by attacking the system upstream through preventive action and downstream through prosecution when prevention was not effective.

It is now a widespread mentality to answer the question about the reasons for getting involved in certain corrupt mechanisms with the phrase "because everyone does it". This statement is only partially true, as it is not fair to say "everyone does it" but "many do it". However, until those "many corrupt" do not become "all corrupt" it means that there is still a part of public officials, entrepreneurs or private citizens who are fighting this silent war against corruption and suitable tools must be guaranteed so that, in the opposite sense, "many not corrupt" become "all not corrupt".

It should be emphasized that anti-mafia measures need to be implemented. It would be appropriate, like we do when referring to mafias in the plural, to speak of "anti-mafias" [35]. Therefore, in order to fight this system and break the link between the mafias and the economy, it is advisable to know more about the different organizational dynamics, to use existing tools while avoiding burdening a system that already possesses a gargantuan normative production, and to use differentiated instruments of action of a repressive, preventive and "curative" type for the social fabric, so that this does not act as a breeding ground for the proliferation of such practices harmful to the national economy, thus decreasing the real risk of corruption and infiltration of criminal organizations, especially in *subiecta materia* [36].

We hope that, both in terms of *de iure condito*, and *de iure condendo*, a reform is carried out to reconcile the tools provided by the current regulatory system with a legal system that quickly restores dignity and trust in justice. Corruption damages the community but those who pay the highest price are always the most disadvantaged groups who use services that become increasingly poor. The effect is the exclusion and nonrecognition of rights, as well as the mortification of the dignity of those who cannot afford to resort to private services delivered by private professionals.

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