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## *Il "dilemma" etico dei whistleblowers nell'ordinamento giuridico italiano*

## *El dilema ético de los whistleblowers en el ordenamiento jurídico italiano*

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Corruption | Corruzione | Corrupción

## Abstracts

The success of whistleblowing practice resides both on law enforcement and on cultural attitude towards the disclosure. Therefore, only a balanced and comprehensive approach could face the whistleblowing's dilemma (and fear) when deciding whether or not reporting wrongdoings. In this way, we will first explore the evolution of the Italian legislation on this topic and then we analyse whether the Italian legislative efforts where effective and tailored to the specific characteristic of the Italian legal and cultural environment. Finally, in the conclusion of this paper, we consider the possibility of a different approach in preventing corruption, emphasising good practices and nudging positive behaviours within the Public Administration, which could also lead to a more precise and well-intended disclosures and curb the 'egoistic-blowers' issue.

Il successo della pratica del whistleblowing poggia su una robusta tutela legislativa e sull'attitudine culturale verso la collaborazione attiva. È dunque necessario un approccio bilanciato e trasversale per 'temperare' il dilemma del whistleblower nel decidere se segnalare o meno le condotte illecite di cui è testimone. Per tali ragioni, si analizzeranno in primo luogo l'evoluzione della disciplina del whistleblowing e la sua efficacia nel contesto culturale e giudiziario italiano. Nelle conclusioni, si proporrà altresì una differente strategia di prevenzione della corruzione, basata sul c.d. *nudging* delle *best practices*, capace di migliorare la qualità delle segnalazioni e, più in generale, l'efficacia del sistema anticorruzione.

El éxito de la práctica de whistleblowing de irregularidades reside tanto en el diseño normativo como en la actitud cultural hacia la divulgación. Por lo tanto, sólo un enfoque equilibrado y global podría hacer frente al dilema (y al miedo) de los denunciantes a la hora de decidir si denuncian o no las irregularidades. De este modo, revisaremos la evolución de la legislación italiana sobre este tema, y luego analizaremos si los esfuerzos legislativos italianos fueron eficaces y se adaptaron a las características específicas del entorno jurídico y cultural nacional. Por último, en la conclusión de este trabajo, consideramos la posibilidad de un enfoque diferente en la prevención de la corrupción, haciendo hincapié en las buenas prácticas y fomentando los comportamientos positivos dentro de la Administración Pública, los cuales también podrían conducir a una divulgación más precisa y bien intencionada, así como frenar el problema de los "soplones egoístas".

**Sommario**



# 1. Italian anticorruption policies[1]

Italian anticorruption policies offer a particularly interesting case study within the European scenario in terms of the question of how fighting antisocial behaviours through the law may actually lead to crime[2] when the introduction of measures, rules, and new offences is not perfectly tailored to the specific characteristics of a given country, and the phenomenon is deeply misconstrued by the citizenry[3].

This is particularly true in relation to the establishment of anticorruption measures. As the Italian example will demonstrate, good quality laws are not automatically effective laws, as their creation may lead to more complexity and uncertainty, which increases the possibility of wrongdoing and hinders decision-making processes within the public administration.

Indeed, over the last nine years three anticorruption laws have been enacted in Italy, all of them driven (sometimes exclusively) by the aim of creating new offences and increasing the severity of sanctions.

On the other hand, massive administrative rules were put in place in order to limit discretionary powers within the public administration. As a result, Italy has been referred to as the "Country with over 200 thousand laws, many of which are useless"[4].

Together with a stifling bureaucracy, these "law & order" campaigns against corruption have increased the number of criminal proceedings, due to the constitutional principle of mandatory prosecution that requires prosecutors to investigate any potential violation of criminal law, and they have laid a cloud of suspicion over the public administration, which has led to some paradoxical misrepresentations, as follows:

a) *The Kafka paradox*, which arises when too many rules, created to limit the decision-making powers of public officials, cause uncertainty among the civil servants that are unable to clearly establish whether a decision they make is compliant with the law or represents a breach of law. Consequently, public officials are less willing to take prompt decisions for fear of being involved in criminal proceedings. In other words, it creates a "pass-the-buck" attitude, which leads to systematic laxness, over-bureaucracy, and slowness in the public administration processes.

b) *The Pinocchio paradox* arises when overregulation and severity regarding a specific issue spreads the perception of public officials as being incompetent or, in the worst cases, corrupt. On the contrary, it is overregulation itself that creates unpredictable risk and thus mistakes. Hence, the contemporary Pinocchio, alias the public official, becomes the first 'victim' of anticorruption penal policies.

c) Lastly, those misrepresentations lead to the *Penelope paradox* with regard to anticorruption strategies, due to "the growth of a populist sense of punitiveness to answer the public call for security (which appears to be jeopardised by a distorted perception of the phenomenon)" and "the consequent increase in criminal proceedings and pre-trial detention (…)", added to the "the alarming perception that the phenomenon is growing" (due to daily crime news coverage emphasised by the media). Lastly, in the mid-to-long term, the circle will be closed by further legislative measures enacted to placate public opinion on corruption. So, as Penelope wove her web during the day and undid it during the night, the Italian anticorruption system empathises, or creates itself an enemy, and then tries to fight it in a never-ending vicious

[1] Fabio Coppola contributed to this paper writing from paragraph 1 to 4 (pp. 1 – 15) and Andrea Castaldo contributed to it writing paragraphs 5 and 6 (pp. 16-20).
[2] Passas (2000) p. 17; Pasculli (2017), p. 189.
[3] Camargo and Passas (2017), p. 10.
[4] Cassese (2018), p. 1.

circle"[5].

In this scenario, 2012 represented a "new era" in Italian anticorruption strategies. In fact, in addition to the legal measures in place, public officials themselves were asked to blow the whistle should they witness wrongdoing, and, at the same time, the legal framework included protective measures against retaliation in the workplace. In other words, public officials metamorphosed from "rats" into heroic partners in fighting corruption.

## 2. Reasons for the "call for help" in fighting corruption

As corruption is a widespread and globalised phenomenon[6], it is widely believed that the bribes that come to light are just the tip of the iceberg[7] and that there is a "deep dark number" that it is difficult to discover.

This view seems to be confirmed by the discrepancies between subjective and objective indicators for measuring corruption. Indeed, while subjective indicators, based on the perceptions of the phenomenon expressed by respondents taking part in the annual Transparency International survey, place Italy consistently at the bottom of the European ranking[8], objective indicators, related to judicial data, present a diametrically opposed picture.

In fact, the number of corruption-related convictions has remained both relatively low and stable over the years[9]. Moreover, only 7.9% of Italian families have personally witnessed or experienced corruption[10].

Naturally, perception of corruption may easily be affected by external factors[11] and the specific characteristics of a country's judicial system, as in the case of Italy, where prosecutors are obliged to prosecute all crimes, which leads to greater media interest during investigation. Conversely, judicial data may well underestimate the phenomenon, depending on the attitude of the citizenry towards reporting crime. Thus, none of these indicators perfectly represents the true face of the phenomenon, which has led a number of scholars to work on a common scientific indicator to be shared at least on the European stage[12].

It should be underlined at this juncture that it was the above-mentioned gap between judicial data and perceived corruption that triggered the 2012 "call for help" addressed to public officials in situations of emergent corruption, encouraging them to 'blow the whistle' if they witnessed wrongdoing.

Thus, anticorruption strategies have entered a new era of corruption prevention within the public administration. In truth, this approach is far from new, as even in Ancient Greek and Roman times the importance of anonymous disclosure of others' malfeasance was already recognised. In fact, in classical Athens, it was common to practise "ostracism", which involved citizens writing the names of untrustworthy people or corrupt people, who would then be expelled from the city. Also in Greece there existed the figure of the so-called "sycophant", someone paid to do the 'hard work' of supporting the allegation at trial[13].

### 2.1. *Why is corruption under-discovered?*

It is widely recognised that one of the main problems in fighting corruption is people's attitude to reporting crimes of this type. The disclosure gap might be explained by the deep-rooted normalisation process connected with corruption crimes, which includes denial of responsibility ('everybody does it'), denial of the harm ('it does not hurt anybody'), denial of the victim ('they deserve it' or 'they agreed to it') and, significantly, the belief that a corrupt practice is not actually illegal ('if the law does not forbid it, then it is permitted') or denial of

[5] Castaldo (2019).
[6] Pasculli and Ryder (2019), p. 4.
[7] Forti (2003), p. 90.
[8] Transparency International (2020).
[9] Castaldo (2018), p. 1.
[10] ISTAT (2017), p. 1.
[11] Duffy (2018), pp. 220-230.
[12] Tartaglia Polcini (2018), pp. 153-157.
[13] Coppola (2018), p. 475.

the legitimacy of the law and legal authorities ('the law is wrong' or 'they are all corrupt')[14]. Those pervasive factors may also be linked to others, such as the mutual interest of the parties involved in keeping quiet about bribes[15]. Indeed, in an over-regulated system, which does not allow citizens to easily obtain what they need, the circumvention of legal requirements seems the most attractive option. Secondly, the attitude to reporting is undermined by the systemisation of tolerance vis-à-vis corruption through the passive acceptance of a phenomenon seen to be endemic and widespread.

A role in all this also seems to be played by an attitude of distrust of Justice Systems. The unpredictability of judicial decisions, the chance of being involved in long-lasting criminal proceeding, and the fear of being involved in an endless defamation case arising from said disclosure are more than likely to dissuade anyone from having the courage to stand up and speak out.

Focusing on the Italian model, it is no mere chance that only 33% of Italian respondents when asked whether or not they have faith in their justice system answered in the affirmative[16].

Lastly, other disincentives to reporting corruption reside in the negative effects on the social and employment context of those who blow the whistle.

It has been said that fear of personal and economic consequences, silent treatment in the office, and blacklisting could have a negative influence on whistleblowing[17]. Furthermore, the adage "speech is silver, but silence is golden", is not only an age-old proverb but a common and safe approach in the workplace.

A certain Mr. Sabato could certainly subscribe to this view: he is one of the most famous whistleblowers in Italy, and, in 2007, he reported irregularities in the allocation of over 2 million euros of public money. The case went before a Criminal Court but was eventually time-barred because of the undue length of the proceedings. Consequently, Mr. Sabato was promptly isolated in the office and forced to perform mundane tasks[18].

For all these reasons, the regulation of whistleblowing practice is no easy task, as it requires the balancing of various interests. On the one hand, in order to encourage whistleblowing, it is necessary to be endowed with strong moral suasion and set up robust protections capable of outweighing the fear of consequences for the private lives and careers of those who risk blowing the whistle. On the other hand, wise legislation must consider and protect the reputations of those accused by whistleblowers from the risk of false or fraudulent reporting.

## 2.2. *Why evaluations of the adequacy of anti-corruption regulations must be perfectly tailored to a country's specific legal environment*

In line with the aims of this chapter, we have stressed the need to evaluate the effectiveness of the rules, protection, and rewards relating to whistleblowing (more broadly relating to anti-corruption strategies) exclusively in the context of a specific legal environment. This is because no rules have the same impact when decontextualised. For example, when implementing anti-corruption measures, we cannot ignore the obligation incumbent on Italian prosecutors to investigate any fumus delicti, which in turn means greater media interest during investigations. This, on the one hand, may lead to an increased perception of a widespread phenomenon and, on the other, may bring about a reduction in the number of voluntary disclosures due to the aforementioned acceptance of malpractice ('everyone does it').

Moreover, the length of criminal proceedings is another important factor to assess when establishing incentives for whistleblowing. It may even be argued that cost-benefit calculations when deciding whether or not to report an unlawful act also imply the possibility of being involved in a "long-term relationship" with the justice system (to prove the guilt of others or to defend oneself from retaliation or, in the worst case, from a charge of defamation or libel).

Failure to consider the peculiarities of a given country's judicial system, as we seek to demonstrate below, would render even the best of intentions and the strictest legislation inef-

[14] Pasculli and Ryders (2019), p.14.
[15] Castaldo (2018), p. 1; Coppola (2018), p. 476.
[16] Coppola (2017), p. 123.
[17] Dipman (2012), pp. 58-60; Waytz *et al.* (2013), p. 1032.
[18] Coppola (2018b), p. 166.

fective or, in the worst-case scenario, actually lead to crime.

## 3. An overview of the Italian legislation on whistleblowing practice

Although the Italian law on whistleblowing regulates both the public and private sectors, we will focus in this contribution exclusively on the former.

In 2012[19], Italy made its first great effort to prevent rather than fight corruption[20], introducing an independent National Anti-Corruption Authority (ANAC) with the task of supervising and controlling the Public Administrations, for which the law also envisaged the creation of an Anticorruption Plan in line with ANAC guidance.

The innovations saw, for the first time, the introduction of a comprehensive and complex system of protection for public employees who blow the whistle. After a test period lasting five years, the law was implemented in 2017[21], establishing today's whistleblowing legislation, according to which we can now answer these fundamental questions: Who blows the whistle? What does one blow the whistle on? Why blow the whistle? Who receives the report? What protections are in place for the whistleblower? What protections are there for the accused?

### 3.1. *Who blows the whistle?*

First of all, it is essential to establish a secure channel for whistleblowers as well as other protective measures tailored for employees working for the public administration, since, as insiders, they may be precious witnesses to malpractice.

In 2017, whistleblowing legislation was also extended to private employees and, most importantly, to the employees of external companies who work with, and for, the public administration.

The latter was an interesting innovation since it may be able to break the sense of complicity within the same office, which, when present, may undermine spontaneous disclosure. External witnesses are indeed less likely to change their attitude towards disclosure than workmates, as the latter only have sporadic work or social contacts with public employees who might be guilty of improper behaviour.

### 3.2. *What does one blow the whistle on?*

The major concern of the Italian anticorruption laws was to be effective and stimulate spontaneous and prompt disclosures. Therefore, whistleblowers are not legally required to produce a complete and detailed analysis of the facts they report, as the law only requires them to report any "unlawful practices". To clarify, the ANAC guidelines include by way of explanation any "circumstances in which the abuse of power to obtain private advantages by a person in a position of responsibility may be noted in the course of an administrative act. Examples include: nepotism, unclear recruitment choices, accounting irregularities, false declarations, etc."[22].

Moreover, the new guidelines clarify that not only completed activities but also illicit action at their inception or in progress may be reported through whistleblowing channels[23].

Public officers are under no obligation to report unlawful conduct under the whistleblowing law[24]. However, it is compulsory to report such conduct if the actions in question taking place in the course of – or because of – their duties constitute a criminal offence.

The current solution is commendable as it prevents omission by a public official leading to

[19] Law 6 November 2012, n. 190.
[20] Della Bella and Zorzetto (2021).
[21] Law 30 November 2017, n. 179; Cantone (2020), pp. 17-20.
[22] ANAC (2015), p. 5.
[23] ANAC (2021), p. 13.
[24] Criminal Supreme Court, Section V, no. 35792/2018.

incrimination for the crime of abuse of office[25].

Nevertheless, difficulties regarding enforcement may arise as public officials may not always be able to distinguish between "unlawful conduct" and "criminal offence" and therefore to assess whether they have a right or indeed an obligation to report what they know.

## 3.3. *Why blow the whistle?*

Italian legislation on whistleblowing limits its scope and protection to disclosures made "in the interest of the integrity of the Public Administration". This point, added in 2017, is designed to dissuade egoistic whistleblowers, who report abuse in pursuit of their private interest or to satisfy their personal resentment. An evaluation of whether this addition had any effect on whistleblowing in 2018-2019 follows later.

This addition offers various points for discussion. Firstly, who decides whether a disclosure has been made in the public interest or not? Moreover: what if private and public interest coexist? We might imagine the case of a public official who has been discriminated against by his line manager. In such a case, the employee blows the whistle because he wants justice for himself, and, at the same time, the manager's behaviour may also be proven to be illegal or criminal in the light of the Italian Misconduct of Public Office Act. In this case, it is worth discussing to what extent the law protects the whistleblower.

With regard to the first point, the new guidelines clarify that the decision depends on an evaluation of those to whom the law is addressed, according to generic criteria such as the presumed intentions of an ordinary person, the existence of some private interest, and any other objective indicator of illicit behaviour.

We believe that the accuracy of the reported circumstances and the result of the subsequent investigation will determine the "treatment" that the legal system will reserve to whistleblowers.

In the event of an ambivalent disclosure characterised by both intentions, the new guidelines suggest balancing private and public interests and attempting to evaluate, on a case-by-case basis, which of these effectively triggered the decision to blow the whistle[26]. In practice, this might be more difficult to evaluate and, if there is a large number of disclosures, might justify a rush dismissal.

## 3.4. *Who receives the report?*

The law provides three alternative options for reporting malpractice. The first, closer to the workplace, is to report to the person in charge of anti-corruption measures within the public office. Another option is to address the disclosure to the ANAC. Thirdly, the leak could also be sent to authorities such as the Prosecution Office if a public employee reasonably believes he has witnessed criminal behaviour. By indicating these disclosure options, the law seeks to minimise the risk of leaks regarding the identity of the whistleblower and the content of the disclosure. In this way, the disclosure will be handled by people whose role it is to investigate the validity of the report. Their names and roles will be provided in the "whistleblowing etiquette", a paper that all administrations must draw up and publish containing practical guidance relating to whistleblowing.

It has to be mentioned that the new law, enacted in 2017, removes the previous possibility of addressing the leak directly to the line manager. This way of reporting would have increased ethical questions in the event of malpractice on the part of the whistleblowers' managers and might also have increased the chances of identification.

Another point for discussion is whether or not anonymous reports should be considered as valid so to lead to further investigations. Firstly, it is necessary to distinguish between anonymous reports and those whose author enjoys "reserved identity". In the first case, there is no indication of the author's identity, but in the second one this information is known only to the addressee, who has to protect and anonymise it through a variety of measures (such as

[25] Coppola (2017b), p. 11.
[26] ANAC (2021), pp. 14-15.

cryptographic processes).

Obviously, according to the law, which refers to specific figures like the whistleblower, protection can only be given to those who reveal their identity through whistleblowing channels. Nevertheless, the ANAC guidelines allow the use of anonymous reports, which may be taken into account regardless of whether they are specific and detailed, although they cannot be processed through whistleblowing channels[27].

Furthermore, professional experience suggests greater flexibility. Allowing anonymous reports at the first stage of the whistleblowing process might increase whistleblowers' confidence in their interlocutors. However, once trust is built, for disclosure through whistleblowing channels to take place, whistleblowers will have to reveal their identity.

Moreover, the guidelines offer a wise solution in cases of discrimination in the workplace. Here, disclosure should be addressed directly to the ANAC[28], since the internal channel may be risky and receive a superficial – and perhaps ill-intentioned – dismissal from someone in charge of anticorruption measures, who has to evaluate, for instance, a leak related directly to an illicit conduct allegedly perpetrated by the head of the office.

We suggest taking this positive measure further and providing for the possibility of the ANAC double checking dismissals, giving them the power to evaluate whether or not the disclosure through internal channels received a proper and thorough investigation before the decision to dismiss was made.

## 3.5. *What protection for whistleblowers?*

If whistleblowers divulge information through whistleblowing channels, and the person receiving and investigating the disclosure gives a "green light" regarding the public interest and the reasonableness of the disclosure, a sort of "legal protection shield" is put in place for the whistleblower. Specifically, whistleblowers may not be sanctioned, downgraded, fired, transferred, or subjected to any other measure with direct or indirect negative effects on their working conditions on account of the disclosure. Should any of these circumstances occur, the public administration has to prove that any measure adopted against the whistleblower after disclosure was implemented for other reasons. Consequently, any unjustified measure will produce no effects.

On the one hand, placing the burden of proof on the employers appears to be quite a solid and balanced safeguard. On the other, the law does not establish a deadline after which this protection should no longer be considered.

In theory, this could lead to prefabricated or egoistic disclosures at the first sign of otherwise justified measures that could have a negative effect on the whistleblower's career.

It is arguable whether or not a time limit could make a difference to this eventuality, considering that a cunning employer might always wait for the time limit to expire before engaging in retaliatory measures.

Furthermore, there is no evidence that antiretaliation remedies would incentivise whistleblowing practice. Indeed, one study has suggested that legislation is fairly ineffective[29]. It is self-evident that the perspective of returning to a place where he or she will experience retaliation will be somewhat unappealing to a whistleblower.

To minimise the risk of criminal proceedings proliferating as a result of disclosure, the law provides a specific justification clause for those whose disclosure breaks the confidentiality agreement or the obligation for official secrecy. This provision applies only to disclosures made through whistleblowing channels, which guarantee privacy mechanisms regarding the information – at the moment, for example, it does not apply to media leaks – and on condition that disclosure pursues the public interest.

Another important aspect of encouraging whistleblowing is related to privacy safeguards for whistleblowers. Italian law therefore establishes different forms of privacy protection. If the allegation concerns a criminal offence, the whistleblower's identity is always revealed at the end of the investigation, to allow the person who has been reported an adequate defence

[27] ANAC (2021), p. 16.
[28] ANAC (2021), p. 12.
[29] Callahan and Dworkin (1992), p. 277.

before a Criminal Court (art. 54-bis, para. 3, d.lgs. 30 March 2001, no 165). Despite the reasonable objection regarding the uncertainty surrounding whistleblowers at the moment of the disclosure, privacy safeguards have to accommodate the defendant's constitutional right to a proper defence in court, which depends on knowing the identity of the accuser.

On the contrary, the provision relating to disciplinary matters is less convincing. If disclosure refers to a disciplinary matter, whistleblowers could find themselves faced with another ethical dilemma. In fact, if the case is based totally or partially on the disclosure (i.e., there is no other evidence), whistleblowers have to make a difficult decision: either to withdraw from the case without revealing their identity or to make a formal report, revealing their identity. In other words, the sacrifice of the whistleblower's privacy is necessary to assure that the case goes ahead. Thus, to obtain certain privacy protection, whistleblowers are required to become contemporary Whistle-Holmes figures, seeking evidence in support of their disclosure!

Since whistleblowers are not qualified police officers or investigators, the question arises as to what happens when they make a mistake or, in the worst case, commit a crime during their investigations. As an example, we can cite the case of a public official who, before blowing the whistle on the creation and transmission of fake documents within his public office, gains access to the IT system used in the public administration using the credentials of another employee in order to verify the misconduct and collect evidence. Is this criminal behaviour somehow justified because of the well-meaning aim of the whistleblower?

We quote the reasoning of the Italian Supreme Court in a related judgment: "it is clear that the above-mentioned legislation (on whistleblower protection) establishes its limits insofar as it prevents retaliation against a whistleblower who, while at work, acquires information pertaining to malpractice, but it does not authorise improper investigation activities in breach of the limits established by law". The whistleblower was therefore found guilty of a criminal offence for unlawfully entering the IT system of the public administration[30].

## 3.6. *What protections for the accused?*

Notwithstanding the privileged role of whistleblowers in Italian legislation, there exists a reasonable case for affording protection to the person who has been accused. There is a clear need to avoid a witch-hunt based on false allegations.

Consequently, none of the legal protections mentioned above apply where a whistleblower has been convicted for slander or defamation by a trial court (art. 54-bis, para. 9, d.lgs. 30 March 2001, no 165).

To correctly assess the effectiveness of the legislative framework to hand, we should consider the legal environment in which it will operate. Given the peculiarities of the Italian criminal justice system, where the average length of a criminal trial in 2018 was approximately three-and-a-half years for the two tiers of proceedings on the merits [31], it was deemed opportune to set a time limit during which to ascertain whether the whistleblower is a slanderer or a hero.

However, the possibility of removing the whistleblower's protection through a judgment against him handed down in court could set up a vicious circle where the accused will naturally bring a libel or slander case in order to try to expose the whistleblower. Indeed, the chance of winning in a "one-shot judgment" is greater than in a three-tier case. Also, the constitutional presumption of innocence of the defendant until final judgment (art. 27 Cost.) would seem to suggest waiting for the full three tiers of judgment. This is a typical example of where pragmatic reasons collide with theoretical assumptions, with the former prevailing.

The new ANAC guidelines appropriately specify that, in the event of acquittal at the subsequent levels of judgment, "the reporter (...) will be protection, even if belatedly, from any retaliation suffered as a consequence of the report"[32].

[30] Criminal Supreme Court, Section V, n. 35792/2018.
[31] Mammone (2019), pp. 21-22.
[32] ANAC (2021), p. 25.

# 4. Whistleblowing at stake: the analysis of statistical data collected by the ANAC

Since 2014, the ANAC has carried out an annual quantitative and qualitative disclosure analysis within the public administrations, the results of which are quite interesting for two major reasons: a) ANAC data allow scholars to analyse the appeal of the means and to evaluate its advantages and disadvantages, contributing to the evolution and reform of the system; b) collecting a qualitative analysis of whistleblowing practice is really helpful to provide an updated image of the criminological form of corrupt practices, especially small-scale corruption, which is the most endemic and submerged form.

The ANAC reports carried out over the years offer some cause for reflection. Firstly, the period from 2014 to the first half of 2019 has seen a constant increase in the number of disclosures. The peak in disclosures came in 2018, when the numbers doubled compared with the previous year (783 in 2018, while 2017 registered 364 reports).

Nevertheless, most leaks continue to be anonymous. For example, according to the last report [33], out of 378 disclosures, 209 where anonymous reports, which, as mentioned, cannot be handled through whistleblowing channels.

Another relevant aspect arising from the reports is related to the status of the whistleblowers. In fact, quite consistently, disclosures come from public employees and private employees working with Public Administrations. Moreover, southern Italy ranks at the top in terms of the number of disclosures, followed by northern Italy and then the central regions.

Unfortunately, qualitative analysis of the disclosures collected in the reports reveals a remarkable percentage of egoistic whistleblowers pursuing their private interests or driven by resentment.

For example, in one case an individual blew the whistle on an employee who had posted a photo on Facebook showing him aboard his private car at a time when he was supposed to be awaiting the visit of the health inspector as he was known to be on sick leave. The allegation was dismissed because there was no evidence that the picture had been taken at the same time as it was posted on the social network. Perhaps this is something that a well-meaning whistleblower should have considered before reporting. In another case, the whistleblowing channel was used to point out that a printer in a public office had a malfunction.

Reports through whistleblowing channels came from two Italian City Councils denouncing infringement of the "no smoking law" in public offices, which in one case led to the creation of a task force of six people to control compliance with the law. This is certainly a great result, but is the anticorruption system really meant to ensure the respect of a basic rule of conduct?

A disclosure from another City Council regarded the lifestyle of a specific employee. According to the whistleblower, the standard of living of the employee was "superior to the incoming deriving from public employment"[34]. As before, the mere possibility that the disclosure was not the result of a more detailed analysis regarding the legitimate basis of the employee's higher standard of living (a substantial inheritance perhaps?) could be seen as a confirmation of the presence of a highly dangerous "cultural virus" that afflicts whistleblowing, namely the subtle 'suspicious approach'[35] whereby 'peering into a colleague's pocket' is not a violation of privacy but a 'due diligence' to be reported to the Anticorruption Authority[36].

Yet, as mentioned, ANAC Reports also help scholars increase their knowledge of unlawful activities within the public administration. Indeed, a qualitative analysis of the latest report paints a picture of misconduct in public offices, misuse of public goods, irregularities on the work timesheet, unlawful access to IT systems, and irregularities regarding public procurement.

We shall return to these data for our final observations. For now, suffice it to note the contribution of ongoing qualitative analysis in shedding light on undiscovered corruption and serving as a basis for drafting modern anti-corruption strategies. It is necessary to know the enemy better in order to fight it.

[33] ANAC (2019), p. 11-41.
[34] ANAC (2019), p. 25.
[35] Castaldo (2016), p. 133.
[36] Coppola (2019), p. 1.

Approaching the theme from a different angle, our research team carried out another domestic survey by asking employees from the Campania Regional Administration about their knowledge and perception of whistleblowing channels and rules. Space does not permit a detailed analysis of the results, but – in brief – they reveal a lack of knowledge of the proper functioning of whistleblowing channels, which – as seen above – could lead to their misuse for purposes related to self-interest. Moreover, there is also a certain lack of confidence in the privacy mechanisms and protection rules in place. In conclusion, these data confirm the need to look beyond legislative reforms. It is now time for an integrated cultural approach that would envisage the incentivisation of whistleblowing in the workplace and running whistleblowing courses and training in favour of public and private employees.

## 5. Perspectives on Reform

The reader will already have noticed a significant flaw in Italian whistleblowing legislation. While protection for whistleblowers seems unable to counteract social ostracism, informal blacklisting, and subtle discriminatory methods, which also jeopardise future employment opportunities for whistleblowers, one might at least expect to find some incentives or reward in place to encourage whistleblowing. Neither the 2012 or the 2017 law set up a rewards programme for whistleblowers. It is our view that the introduction of reward programmes for whistleblowers within the Italian legal environment would create more problems than benefits.

It has already been stated that rewards programmes could be a promising tool to encourage the decision to blow the whistle[37], albeit only in countries with high moral standards and a judicial system of sufficient quality. Otherwise, there may be the risk of false reports being fabricated in the hope of receiving a reward[38]. This is particularly true in countries like Italy that are already familiar with the egoistic whistleblower issue.

In addition, for the following reasons, we contend that this implementation may also be insufficient, particularly in countries with a distorted perception of corruption:

1. If a place is seen as profoundly corrupt, people may develop more tolerance towards individual actions, which may negatively affect their propensity to adopt whistleblowing behaviour.
2. If a place is seen as profoundly corrupt, it usually implements greater institutional anticorruption enforcement, which could decrease people's voluntary contribution through whistleblowing channels, as they feel less pressure to do so. In other words, it creates a sort of "pass the buck" attitude[39].

It is worth underlining that, despite there already having been three anticorruption laws within the last six years, some of them particularly severe in terms of sanctions, the perception of Italian respondents concerning the spread of corruption in Italy has remained quite high and constant throughout the years[40]. However, a different perspective in relation to encouraging whistleblowing is possible through the adoption of a cultural and risk-based approach[41].

Lastly, after a national scandal concerning alleged corruption practices within the judicial body, a new channel has been proposed through which lawyers can report dubious conduct by prosecutors and judges. In theory, once again, this might be seen as a major enrichment of the Law, as lawyers could also report any inadequate performance of the judicial functions[42]. Indeed, the independence of judges and their trustworthiness is a crucial element in the overall effectiveness of the judicial system[43]. Moreover, research carried out by the Council of Europe in 2013 underlined that only 22% of Italian respondents actually believed in the independence of the courts and judges[44]. Nevertheless, it might be argued that the reform exacerbates the adversarial role lawyers and magistrates already have in the constitutional architecture of the

[37] Della Bella (2020), p. 1431.
[38] Nyreröd and Spagnolo (2017), p. 2.
[39] Xuhong Su and Xing Ni (2018), p. 2.
[40] Disegni (2018), p. 11.
[41] Turksen (2018), p. 364.
[42] Negri (2019), p. 1.
[43] Ferrajoli (2009), pp. 10-13.
[44] Coppola (2017), p. 124.

adversarial trial, and it is necessary to consider the risk of handing lawyers a 'weapon' that, in the absence of a truly balanced approach, might well become a dangerous tool for revenge.

Lastly, ratification of European Directive 2019/1937, expected by the end of 2021, will update the rules on whistleblowing with some significant additions, including a hierarchical order in the choice of recipients of the report, specific time limits for acknowledging receipt of the report, the possibility to report to the media in the event of unjustified inaction, and support measures for legal costs incurred by whistleblowers due to the report.

## 6. Conclusion

In this study we have analysed Italian legislative efforts to encourage and protect public whistleblowers. Generally speaking, with the exception of rewards programmes, current Italian legislation meets the international standards[45], and it appears to constitute one of the most advanced legal schemes in the European scenario[46]. Nevertheless, as the data on whistleblowing practice have shown, progress has yet to be made, and the results of the practice are still far from encouraging. In our view, however, significant change in the short/medium term is to be avoided, due to the risk of fostering yet more crime, regardless of whether new legislation is perfectly tailored to the peculiarities of the Italian legal environment or not. First of all, a profound knowledge of corruption would be necessary, but, as stated at the beginning of this paper, there are still a large number of (even diametrically opposed) metrics regarding the phenomenon. In particular, as whistleblowing requires a specific moral fibre and a particular psychological bent, what is required is not so much the creation of new laws as a change in the current misperceptions regarding corruption, which is an element that has a restraining effect on an individual's decision to stand up and speak out.

In the light of the above, the efforts of scholars to establish common European indicators capable of measuring the phenomenon in order to increase international knowledge, comparability, and prevention are particularly laudable[47].

Moreover, the time is ripe to start a cultural revolution with regard to voluntary disclosure, creating an environment where the germ of corruption may by neutralised[48]. To bring this about, we might make use of psychological studies on the power of cognitive nudging in the decision-making process[49].

A practical example of this is the habit of littering: it appears more likely that people will not drop their litter in the street if there are plenty of bins all around (i.e., if the environment makes it easy to comply with legal requirements), rather than if there are none in sight (making it harder to comply). Even the simple desire to consult a book to quote from in a library could result in breaking some rule, as the rules for consulting a book are too strict and cumbersome, and the procedure to cumbersome, which becomes an obstacle to harmless activities.

In this way, a cultural nudge related to whistleblowing ought to start from the beginning, encouraging the disclosure of harmless activities such as the efficiency of public transport or some public office. One idea might be to put up notices and labels with a phone number and email, asking people to inform the supervisor about any shortcomings regarding the performance of a public office or service. This might help to familiarise the public with disclosure itself, before taking this approach a step further, namely reporting malpractice or corruption.

Furthermore, a nudge might also consist in simplifying administrative rules on how public offices operate. This would make the circumvention of rules – sometimes perceived as too strict, treacherous, or vexatious – less attractive.

This first step would be particularly suited to countries like Italy with its so-called 'defensive bureaucracy', which has been defined as one where the public officials require pointless formalities and multiple advice before taking any decision in order to avoid accountability[50].

Indeed, interesting research conducted by the FPA (Public Administration Forum) underlines how widespread this approach is in Italy, primarily due to the excessive number of rules

[45] OECD (2011), pp. 7-14.
[46] McGuinn *et al.* (2017), p. 69.
[47] Tartaglia Polcini (2018), p. 155.
[48] Castaldo (2019), p. 43.
[49] Calo (2014), p. 783; Brunon-Ernst (2018), p. 121.
[50] FPA (Forum Pubblica Amministazione) (2017), p. 3.

disciplining the operation of the Public Administrations (67.1% of public officials taking part in the survey), confusion between different rules on the same topic (62.6% of respondents), and constantly changing rules (57.9% of respondents). Thus, the complexity of rules within the public administration not only makes infringement more attractive but also undermines the efficiency of the public administration by deterring public officials from taking prompt decisions.

The second step within the cultural revolution might be to sponsor good practices and whistleblowing as forms of moral behaviour throughout the Public Administrations[51] and above all in the media. One idea could be to set up a public administration white list[52] or a best practices ranking website. Another not-too-demanding solution could be to affix messages and posters in public offices as an aid to complying with (simplified) legal expectations, as well as providing periodic training (including online) on anti-corruption practices and the performance of public officials' specific tasks or functions.

Thus, the environment itself could create a virtuous circle capable of increasing public administration performance through a 'common effort' to avoid unlawful activities and increase the quality of whistleblowing disclosures.

In this way, the most important mission of any organisation should be to promote mutual self-interest between employers and employees[53] in order to obtain spontaneous compliance and better performance. As a first stage of this cultural-revolutionary process, we would suggest reinforcing the psychological nudging approach with regulations, such as calibrating employees' career growth in relation to the performance of the public administration they work for, without exacerbating competition and antagonism between different offices. In this way, the self-interest related to earning a better salary would coincide with the public interest in receiving better performance and might represent a more attractive incentive from the point of view of compliance. An enmeshed solution combining extrinsic (salary growth) and intrinsic (nudge) motivation would most probably maximise the effectiveness of the hoped-for result in the short term. Nevertheless, a long-range policy, which implies cultural enforcement, is both desirable and necessary. Indeed, psychological research has demonstrated that extrinsic rewards, such as money, are likely to undermine the intrinsic motivation to perform as required[54].

Once those fundamental changes have taken place, and extrinsic and implicit rewards for performance have proved successful, there might be room for legislative reform to introduce a rewards programme for whistleblowers, following the US example.

In addition, a different kind of reward could be introduced for companies, namely the introduction of immunity from penalties for companies where a crime or some wrongdoing has taken place, but where the company can demonstrate strenuous efforts to combat wrongful practices, perhaps through adequate whistleblowing channels or organising specific courses and training for employees. A company that can demonstrate its efforts to combat wrongdoing cannot then be suspected of collusion with the perpetrator of the infringement.

Clearly, there are many more aspects to discuss, and the solutions proposed here are not a points system for the anticorruption strategies described. This discussion has only suggested some starting points that might help trigger a move in the right direction vis-à-vis the Hamlet-like dilemma faced by anyone witnessing inappropriate behaviour: "*To blow or not to blow the whistle: that is the question!*"

## References

ANAC (2015): "Linee guida in materia di tutela del dipendente pubblico che segnala illeciti (c.d. whistleblower), Determinazione n. 6", 28 April 2015.

ANAC (2021): "Linee guida in materia di tutela degli autori di segnalazioni di reati o irregolarità di cui siano venuti a conoscenza in ragione di un rapporto di lavoro, ai sensi dell'art. 54-bis, del d.lgs. 165/2001 (c.d. whistleblowing)", 9 June 2021.

[51] Vega (2012), pp. 525-526.
[52] Grasso (2019), p. 1.
[53] Vega (2012), p. 525.
[54] Callahan and Dworkin (1992), p. 287.

ANAC (2019): "4° Rapporto annuale sull'applicazione del whistlebowing", 16 July 2019.

Brunon-Ernst, A. (2018): "Use of Social Norms in the Production of Legal Norms: A Genealogical and Critical Approach to Nudges", *Les Cahiers de droit*, 59(1), pp. 117–142.

Callaham, E. – Dworkin T. (1992): "Do good and Get Rich: Financial Incentives for Whistleblowing and the false claims act", *Villanova Law Review*, 37 (2), pp. 273-336.

Calo, R. (2014): "Code, Nudge, or Notice", *Iowa Law Review,* 99 (2), pp. 773-802.

Cantone, R. (2020): "Il dipendente pubblico che segnala illeciti. Un primo bilancio sulla riforma del 2017", *Sistema penale*, pp. 1-20.

Camargo, B. C. – Passas, N. (2017): "Hidden agendas, social norms and why we need to re-think anti-corruption", *2017 OECD Global Anti-Corruption & Integrity Forum.*

Cassese, S. (2018): "Troppe norme, spesso inutili: 200 mila leggi dal 1861 in poi", *Corriere della Sera*, 11 February 2018.

Castaldo, A. R. (2016): "Se il sospetto diventa regola del legislatore, in Id. (editor): *In ordine sparso. Il diritto penale, oggi*, (Torino, Giappichelli), pp. 133 ff.

Castaldo, A. R. (2018): "Measuring, preventing and counteracting corruption in Italy", *Criminal Justice Network*, 26 October 2018.

Castaldo, A. R. (2019): "A different perspective on fighting corruption", *International Symposium on Global Governance over Corruption and Terrorism. Collected Papers*, Beijing, 28-29 March 2019, pp. 41-44.

Coppola, F. (2017): "The lack of perceived legitimacy in Italy toward the Italian Criminal Justice System. Lessons from England", in Castaldo A. R. (editor): *Il patto per la legalità. Politiche di sicurezza e integrazione* (Padova, CEDAM), pp. 123 ff.

Coppola, F. (2017b): "La persistente ambiguità dell'abuso d'ufficio. Alcune (amare) riflessioni a margine del 'caso termovalorizzatore'", *Diritto Penale Contemporaneo*, 4 April 2017.

Coppola, F. (2018): "Il whistleblowing: la "scommessa etica" dell'anticorruzione", *Diritto Penale e Processo*, 4/2018, pp. 475 ff.

Coppola, F. (2018b): "Ricompensare chi segnala condotte illecite: pros & cons di una possibile riforma del whistleblowing", in Castaldo A. R. (editor): *Migliorare le performance della Pubblica Amministrazione. Riscrivere l'abuso d'ufficio* (Torino, Giappichelli), pp. 162-172.

Coppola, F. (2019): "Whistleblowing: IV rapporto annuale Anac, successo o insuccesso?", *Il Quotidiano Giuridico*, 1 August 2019.

Della Bella, A. (2020): "Il whistleblowing nell'ordinamento italiano: quadro attuale e prospettive per il prossimo futuro", *Riv. it. dir. proc. pen.*, fasc. 3/2020, pp. 1403 – 1432.

Della Bella, A. - Zorzetto, S. (2021): *Whistleblowing e prevenzione dell'illegalità (*Milano, Giuffrè).

Dipman, F. D. (2012): *Whistleblowers: Incentives, Disincentive and Protection Strategies* (Wiley Online Library).

Disegni, S. (2018): "Cibo, salute, criminalità, disoccupati. E' l'Italia il paese che sa meno di sé", *Corriere della Sera*, 31 August 2018, p. 11.

Duffy, B. (2018): *The perils of perception* (Atlantic Books).

Ferrajoli, L. (2009): "Giurisdizione e consenso", *Questione Giustizia*, 4, pp. 1 -13.

Forti, G. (2003): "Il diritto penale e il problema della corruzione, dieci anni dopo", in Id. (editor): *Il prezzo della tangente. La corruzione come sistema a dieci anni da 'mani pulite'* (Milano, Vita e pensiero), pp. 71-156.

FPA (Forum Pubblica Amministrazione) (2017): "Burocrazia difensiva. Come ne usciamo? Una ricerca FPA", *FPA – Collana Ricerche*.

Grasso, C. (2019): "Anti-corruption corporate white list: A further step towards the establishment of good corporate citizenship?", *Law, Business, Social Science, and Policy*, 5 August 2019.

ISTAT (2017): "La corruzione in Italia".

Mammone, G. (2019): "Relazione sull'amministrazione della giustizia nell'anno 2018" (Roma), 25 January 2019.

Mathis, K. – Tor, A. (2016): *Nudging – Possibilities, Limitations and Applications in European Law and Economics* (New York, Springer).

Mc Guinn, J. – Rossi, L. – Fernandes, M. (2017): "Estimating the Economic Benefits of Whistleblower Protection in Public Procurement. Final Report", *European Commission*.

Negri, G. (2019): "E ora l'avvocato può fare il whistleblower", *Il Sole 24 Ore*, 14 July 2019.

Nyreröd, T. – Spagnolo, G. (2017): "Myths and Numbers on Whistleblower Rewards", *Stockholm Institute of Transition Economics*, Working Paper, No. 44, 1 December 2017, 4-5.

OECD (2011): "Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation", *G20 Anti-Corruption Action Plan. Protection of Whistleblowers* (Cannes).

Pasculli, L. (2017): "Corruptio Legis: Law as Cause of Systemc Corruption", *6th Annual International Conference Law, Regulations and Public Policy (LRPP 2017)*, 5-6 June 2017 (Singapore), pp. 189-197.

Pasculli, L. – Ryder, N. (2019): "Corruption and globalisation: towards an interdisciplinary scientific understanding of corruption as global crime", in Id. (editor): *Corruption in the global era. Causes, sources and forms of manifestation* (London, Routledge), pp. 3-24.

Passas, N. (2000): "Global Anomie, Dysnomie and Economic Crime: Hidden Consequences of Neoliberalism and Globalization in Russia and around the World", *Social Justice*, Vol. 27, N° 2, pp. 16 ff.

Tartaglia Polcini, G. (2018*), La corruzione tra realtà e rappresentazione* (Bologna, Minerva).

Transparency International (2020): "Corruption Perception Index 2020".

Turksen, U. (2018): "The Criminalisation and Protection of Whistleblowers in the EU's Counter-Financial Crime Framework", in Ligeti, K. – Tosza, S. (editor): *White Collar Crime - A Comparative Perspective* (Hart Publishing), pp. 331-366.

Vega, M. A. (2012) "Beyond incentives: Making corporate Whistleblowing moral in the new era of Dodd-Frank Act Bounty Hunting", *Connecticut Law Review*, 45 (2), pp. 483-548.

Waytz, A. – Dungan, G. – Young, L. (2013), "The whistleblower's dilemma and the fairness-loyalty tradeoff", *Journal of Experimental Social Psychology*, pp. 49 ff.

Xuhong Su - Xing Ni (2018): "Citizens on Patrol: Understanding Public Whistleblowing against Government Corruption", *Journal of Public Administration Research Theory*, pp. 1-17.


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