

THE NATIONAL ANTI-CORRUPTION AUTHORITY (ANAC)¹**A AUTORIDADE NACIONAL ANTICORRUPÇÃO (ANAC)**Margherita Ramajoli²

ASBTRACT: This article aims to analyze the National Anti-Corruption Authority (ANAC). In order to carry out this study, the fight against corruption in the Italian system is first approached. Secondly, the research for the understanding of the National Anti-Corruption Authority (ANAC) as an independent authority for analysis of the problematic approached is verticalized. It then addresses ANAC's institutional missions and its wide range of powers. This study is finalized by analyzing ANAC's responsibility.

KEYWORDS: ANAC; Corruption; Italia.

RESUMO: O presente artigo tem por objetivo analisar a Autoridade Nacional Anticorrupção (ANAC). Para a realização deste estudo, aborda-se primeiramente a luta contra a corrupção no sistema italiano. Em um segundo momento, verticaliza-se a pesquisa para a compreensão da Autoridade Nacional Anticorrupção (ANAC) como autoridade independente para análise da problemática abordada. Aborda-se então as missões institucionais da ANAC e a sua ampla gama de poderes. Finaliza-se o presente estudo por meio da análise da responsabilidade da ANAC.

PALAVRAS-CHAVE: ANAC; Corrupção; Itália.

SUMMARY: **1.** The fight against corruption in the Italian system; **2.** The National Anti-Corruption Authority (ANAC) as an independent authority. **3.** ANAC's institutional missions.; **4.** ANAC'S wide range of powers; **5.** Conclusion: The question of ANAC's accountability

¹ Trabalho submetido em 01/08/2019 e comunicação aprovada em 27/09/2019.

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1. INTRODUCTION: THE FIGHT AGAINST CORRUPTION IN THE ITALIAN SYSTEM

Corruption has many causes and particularly flourishes in cultures with obscure and abundant legislation and a general lack of ethics. (MATTARELLA, 2007, s/p).

The consequences of corruption are manifold: it yields negative effects on society and the economy, decreases investments and international accountability, and undermines the legitimacy of democratic institutions and the equal enjoyment of rights and opportunities by citizens. (ARNONE; BORLINE, 2014, s/p). (MERLONI, 2018, p. 9).

However, there are many possible remedies for corruption. In recent years, especially, several countries have developed very articulate policies to fight corruption.

Among them, Italy is often used as a point of reference for having created a real “system” with which to fight corruption within the country’s public administration.

In this system, the law must intervene not only in a repressive manner, on a criminal level, by using the sanctioning tools of criminal law, but also in a preventive manner, by taking an approach that enhances the role of administrative law and regulations to reduce the opportunities for corruption.

Fundamentally, this legislative policy approach defines corruption broadly, and it diverges from the notion of corruption as found in criminal law. In this broad sense, corruption is essentially attributed to so-called “maladministration,” that is, to all those situations in which there is a malfunction of the administration due to the exploitation of institutional functions for personal gain, regardless of criminality. Therefore, corruption is considered an abuse of public functions for the benefit of

private interests. In this sense, corruption is not just a crime, but also improper administrative conduct. Corruption must be fought even before it arises by creating the conditions for public authorities to act impartially, thereby ensuring the absence of conflicts of interest. (THEOBALD, 1990, s/p) (AUBY; BREEN; PERROUD, 2014, s/p) (ROCK-ACKERMAN, 2018, p. 98).

2. THE NATIONAL ANTI-CORRUPTION AUTHORITY (ANAC) AS AN INDEPENDENT AUTHORITY

The normative basis of the Italian system of preventing corruption in public administration (it must never be forgotten that the discipline under examination concerns only civil servants and not politicians) is recent and the result of measures that have stratified over time. The fundamental law is Law no. 190/2012, known as “Severino,” named after Minister of Justice Paola Severino who was instrumental in its passing. This law was approved during a particular phase of Italian political life under a technocratic government led by a well-known economist, Mario Monti, following a serious economic and financial crisis. (SEVERINO, 2013, p. 7).

Law no. 190/2012 contains some directly applicable provisions and asks for delegated decrees and government regulations: in particular, Legislative Decree no. 33/2013, regarding administrative transparency; Legislative Decree no. 39/2013, on the subject of incompatibility and non-transferability; and Presidential Decree no. 62/2013, which governs the code of conduct for public employees. The law provides for various measures, such as the adoption of a national anti-corruption plan and plans to prevent corruption by each public authority; duties of disclosure; and rules on the incompatibility and non-conferrability of management positions.

Overseeing the entire anti-corruption system in Italy, a public authority, namely ANAC (the National Anti-Corruption Authority), stands as a guarantor. It is

the organizational center of the system as the public authority that is entrusted with the task of preventing corruption. (CANTONE; MERLONI, 2015, s/p).

ANAC falls under the category of independent authorities, which is an organizational model that has been developing in Italy since the 1990s'. (CLARICH, 2005, s/p).

Independent authorities are public entities that are separate from the government and independent from the executive branch of power. Moreover, ANAC is peculiar when compared to other independent authorities, namely because it focuses its attention on monitoring other public authorities, and it only indirectly monitors companies and private citizens.

Law no. 190/2012 introduces different criteria in order to ensure ANAC's independence. First of all, the members of the board are chosen based on criteria that limit the potential for political influence. Those meeting specific competence requirements — excluding those who have carried out political functions in the previous three years — are appointed by the government with the majority approval of two-thirds of the Parliamentary Constitutional Affairs Committee. Board members cannot be re-elected and serve six-year terms (which is therefore longer than the term of the parliamentary legislature).

3. ANAC'S INSTITUTIONAL MISSIONS

The scope of ANAC's anti-corruption powers, assigned to it by the legislature, is linked to the constitutional principles of the good performance and impartiality of the public administration (Art. 97 of the Constitution) and also to the principle of equality (Art. 3 of the Constitution). In fact, criminality and corruption prevent citizens and businesses from accessing certain goods or services that the public administration should provide on an equal footing.

Finally, ANAC's mission is linked to the rule of law of the public administration. The protection of legality is instrumental to the full realization of all constitutional principles, and it is a necessary condition for the pursuit of any matter of public interest³.

ANAC's institutional mission has gradually extended and enlarged. Assuming that corruption is a phenomenon that affects not only the values of ethics and justice but also regular market trends, the legislature entrusted ANAC with the task of preventing and fighting corruption and regulating the market of public contracts. (D'ALTERIO, 2015, p. 757) (LONGOBARDI, 2017, p. 15).

Consequently, ANAC has replaced the two previously existing public authorities that were responsible for these matters; namely, the Independent Commission for the Evaluation, Transparency, and Integrity of Public Administrations (CIVIT) and the Authority for the Supervision of Contracts Public Services (AVCP). The political decision to concentrate anti-corruption and public procurement issues within a single authority reflects the "composite nature" of ANAC's mission. The supervision of public contracts is instrumental and aims at fighting corruption, but at the same time, the prevention of corruption itself is instrumental to the proper functioning, competition, quality, and economy of the public procurement market. (TORCHIA, 2016, p. 605).

4. ANAC'S WIDE RANGE OF POWERS

In order to carry out its mission, ANAC holds a wide range of powers: it regulates, supervises, judges, and punishes. Its regulatory functions include issuing guidelines and other soft law tools aimed at ensuring the implementation of and better

³ Moreover, the same values form the basis of the Brazilian Constitution, which provides in Art. 37 that "the direct and indirect public administration of all the Powers of the Union, of the States, of the Federal District and of the Municipalities will be faithful to the principles of legality, impartiality, morality, publicity and efficiency."

adaptation to discipline. Moreover, ANAC implements adopts the national anti-corruption plan by supervising and exerting control over the effective application of the measures adopted and ensuring compliance with the rules on the transparency of administrative activities. ANAC reports on its activities to parliament and collaborates with its foreign counterparts and with relevant international organizations.

With regard to the governance of the anti-corruption system, ANAC employs a network of subjects in its relationships with individual authorities; above all others, it makes use of those who are responsible for preventing corruption. Normally, they are managers, and in local authorities, they are municipal secretaries who are responsible for both the preparation of prevention plans that are then adopted by political leaders and for the subsequent supervision of their compliance. They are therefore the crux of ANAC; but, in order to perform their functions better, certain conditions relating to their personal independence and organizational endowment that do not always exist need to be adequately satisfied.

In the public contracts sector, ANAC has new and unusual powers in addition to exercising regulatory power through the issuing of guidelines, standard tenders, type specifications, standard contracts, and other flexible regulation tools. For example, it issues, upon request, opinions on questions that arise during the tender process, which obliges the parties who have previously consented to abide by them. These opinions fulfill a conflict prevention function. (VALAGUZZA, 2016, s/p).

Among the unusual powers it possesses is ANAC's special standing before administrative judges, giving it the ability to appeal acts, including general ones, that it considers to be in violation of the rules on public contracts (Art. 211, paragraph 1 bis of the contract code). Thanks to these powers, ANAC qualifies as a subject acting in the public interest', giving it a role in the administrative process not unlike that of

the public prosecutor in the criminal trial or in the accounting process. (DELSIGNORE, 2017, p. 749) (RAMAJOLI, 2018, p. 557).

Finally, ANAC makes frequent use of the so-called implicit powers, as independent authorities often do. (BASSI, 2001, s/p) (MORBIDELLI, 2007, p. 703) (CELONE, 2012, s/p) (PANTALONE, 2018, s/p).

Consequently, ANAC alone expands the powers conferred to it by the legislature. This is due to its general role as an independent subject governing anti-corruption policies. This occurred, for example, in the field of conflict of interest when ANAC provisions configured new hypotheses of incompatibility not envisaged by the legislature (ANAC Resolution No. 179 of March 1, 2017).

5. CONCLUSION: THE QUESTION OF ANAC'S ACCOUNTABILITY

In light of ANAC's numerous and strong powers, a crucial problem arises, which is that of its accountability. (MARRA, 2018, p. 113).

On the one hand, ANAC's accountability is based on the instrumentality of its action to protect the macro-interest, of constitutional importance, to the legality of the public administration. On the other hand, accountability lies in the provision of participatory and consultation mechanisms to the recipients of ANAC's actions. Legitimization from below is a model of procedural accountability that is combined with the classical accountability provided by representative democracy. In fact, all of ANAC's powers are exercised in compliance with the principles of participation, adversarial procedure, and faithful cooperation with the stakeholders involved. (CHITTI, 2013, p. 93).

ANAC has played and continues to play a key role in the fight against corruption in Italy. However, it carries out particularly invasive regulatory activities that affect discretionary administrative areas; moreover, the vagueness of the legislative provisions conferring it with power ultimately constrain administrative

activity. (ANECHIARICO; JACOBS, 1996, p. 66) (DELSIGNORE; RAMAJOLI, 2019, p. 61) (BRIGANTE, 2019).

While a system fighting against corruption needs time to settle in and work, above all, it needs a cultural step when the law can promote but not impose. This cultural snapshot is possible only by adequately training the ruling class — an education that is primarily the task of the university.

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