

**Intersessional meeting of the Conference of the States Parties to the United Nations Convention against Corruption on the achievements of the political declaration by the special session of the General Assembly (UNGASS)**

*Vienna, 5 – 8 September 2022*

**d) Asset recovery**

Thank you Mr. Chair, and all our gratitude to the panelist for the interesting presentations.

In relation to anti-corruption measures, it is worth dwelling on the crime in question, which in Italy can cover malfeasance in the performance of duties (Art. 318), performance of an act contrary to official duties (Art. 319), bribery in judicial acts (Art. 319-ter), undue inducement to give or promise various benefits (Art. 319-quater) and incitement to bribery (Art. 322 of the Penal Code).

The Criminal Code provides not only for the punishment of imprisonment but, in Article 322-ter, provides for "the confiscation of property that constitutes the profit or price, unless it belongs to a person extraneous to the crime, or, when this is not possible, the confiscation of property that the offender has the availability of, for a value corresponding to such price or profit".

However, there is also an additional measure in the Italian system involving the Court of Auditors, in its jurisdictional articulation, which fights the corruption even with an administrative judgement.

Whenever a corruption offense is established, there is an injury to the image and prestige of the Public Entity that was affected by the violation, which has a compensatory and non-criminal nature.

Therefore, the Public Prosecutor of the Court of Auditors must bring an action before the Court to obtain the compensation necessary to restore the public good "reputation" of the administration.

In the Code of Accounting Justice, the legislature has provided that irrevocable convictions for a crime against Public Administration, including corruption, pronounced against civil servants or other persons in a service relationship with Public Administrations, shall be forwarded to the Regional Prosecutor of the Court of Auditors to initiate any proceedings for fiscal responsibility against the convicted person (Article 51, Paragraph 7, Legislative Decree No. 174 of August 26, 2016).

In such cases, an action may be brought for damages' compensation suffered by the administration, including those resulting from injury to the image of the public body. Since it is difficult to quantify the amount of image damage, Law No. 6 November 2012, no. 190, "Provisions for the prevention and repression of corruption and illegality in the Public Administration," which the legislature introduced into the system in implementation of international provisions, provided that "In the judgment of liability, the amount of the damage to the image of the Public Administration resulting from the commission of an offense against the same Public Administration ascertained by a final judgment is presumed, unless proven otherwise, to be equal to twice the amount of money or the asset value of other benefits unlawfully received by the civil servant" (Art. 1, para. 62).

To promote better protection of the treasury, it also stipulated that in liability judgments involving acts or facts of damage to the image, it is possible to apply for the attachment of assets "in all cases of well-founded fear of mitigation of the guarantee of the treasury's claim" (Art. 1, para. 62).

Thus, the legislature intended to protect the good image of the public administration, which is damaged every time an act of corruption occurs.

The action for damage's compensation to the image of the Administration is not a duplication of the criminal conviction or confiscation of the price of the crime ordered by the criminal Court.

Confiscation under the aforementioned Article 322-ter of the Criminal Code has a punitive and afflictive function that is not parameterized to either the culpability of the offender or the seriousness of the conduct, as held by criminal jurisprudence.

In fact, it pursues the purpose of restoring the offender's economic situation as it was before the violation of the criminal law.

This occurs by depriving the offender of utilities derived from the crime committed and by taking away assets of corresponding value, without performing any preventive function.

In fact, the confiscated sums are collected by the Ministry of Justice and flow into the Single Justice Fund, according to the Article 61, paragraph 23, of Decree Law No. 112 of June 25, 2008, converted by Law No. 133 of August 6, 2008.

As also recognized by the European Court of Human Rights, which ruled on a specific case, confiscation and the compensatory action of the Accounting Prosecutor's Office can coexist because they operate on different levels. Therefore, this instrument is concerned in respect of the "ne bis in idem" principle.

On one hand, the confiscation of the price of the crime, ordered in criminal proceedings, has a punitive and afflictive nature; on other hand, the conviction ordered by the accounting judge has a compensatory nature and is aimed at protecting the patrimonial sphere of the damaged public entity.