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ABUSE OF FUNCTIONS: A NECESSARY CRIME?

ABSTRACT. *Abuse of office remains a topic of ongoing debate even after its abolition. The Constitutional Court was promptly called upon to decide on the legitimacy of the reform. The primary objection raised by the referring judges is that the repeal of Article 323 of the Criminal Code conflicts with specific prohibitions established under supranational law. The author thus aims to examine whether there exist binding obligations to criminalize such conduct, and to what extent the Constitutional Court can intervene to ensure compliance by Parliament. In this context, the supranational norms invoked as the foundation for the constitutional issues are analyzed, and the solutions adopted in several European legal systems are briefly surveyed. The author concludes that while the decriminalization of abuse of office is not inherently objectionable, such a significant intervention should be part of a broader, comprehensive reform of the penal framework addressing offenses committed by disloyal public officials.*

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1. An endless dispute

The issue is longstanding: it concerns ensuring that the activity of public administration is subject to the law (and, therefore, to judicial oversight), while preserving the decision-making autonomy of administrators.[1]

The difficulty of finding a satisfactory solution to such a puzzle, from a criminal law perspective, is well represented by the troubled history of abuse of office, a 'tension area' between legislators and judges.[2]

The offense has been abolished,[3] after being reformed three times in thirty years.[4] The latest legislative intervention is certainly more drastic than the previous ones, but the underlying spirit remains the same: to limit judicial review of decisions – particularly discretionary ones – made by public administration, which the criminal judiciary has always contested by developing interpretations that conflict with the purpose of each 'adjustment'.

A clear example of the protracted conflict between jurisprudence and the legislator regarding the scope of the repealed Article 323 of the Criminal Code is the reaction of judges to the 2020 Reform. Parliament excluded from the list of punishable behaviors the violation of provisions contained in regulations, limiting the criminal

[1] Flaminio Franchini, 'Aspetti del sindacato del giudice penale sugli atti amministrativi' (1957) Riv Trim Dir Pub 337; Gaetano Contento, *Giudice penale e pubblica amministrazione: il problema del sindacato giudiziale sugli atti amministrativi in materia penale* (Laterza 1979); Adalberto Albamonte, 'Atti amministrativi illegittimi e fattispecie penale: poteri del giudice nella tutela penale del territorio' (1983) Cass pen 1861; Giuseppe Gallenca, *Indipendenza della pubblica amministrazione e giudice penale nel sistema della giustizia amministrativa* (Giuffrè 1990); Pier Matteo Lucibello, *Il giudice penale e la pubblica amministrazione* (Maggioli 1994); Claudio Franchini, *Il controllo del giudice penale sulla pubblica amministrazione* (CEDAM 1998); Pietro Aimo, *La giustizia nell'amministrazione dall'Ottocento a oggi* (Laterza 2000); Marco Gambardella, *Il controllo del giudice penale sulla legalità amministrativa* (Giuffrè 2002).

[2] Chiara Silva, 'Il sindacato del giudice penale nei reati contro la pubblica amministrazione: una verifica alla luce del delitto di abuso d'ufficio' (DPhil thesis, Università degli studi di Padova 2011); Antonella Merli, *Sindacato penale sull'attività amministrativa e abuso d'ufficio. Il difficile equilibrio tra controllo di legalità e riserva di amministrazione* (Editoriale Scientifica 2012).

[3] Art 1, co 1, lett b, legge 9 agosto 2024, n. 114 Gazzetta Ufficiale (187) 10 August 2024.

[4] The first in 1990, the second in 1997, the third in 2020. For a concise reconstruction of the legislative evolution of Article 323, see C cost, 25 November 2021 (dep 2022), n 8. See also Bruno Giangiacomo, 'L'abuso d'ufficio dalle riforme all'abrogazione' (2025) Quest giust <www.questionegiustizia.it/articolo/l-abuso-d-ufficio-dalle-riforme-all-abrogazione> accessed 11 January 2025.

relevance to the non-compliance with 'specific rules of conduct expressly provided by law or acts having the force of law, from which no discretionary margins remain'. Despite such an explicit expression of the legislator's intent, the Court of Cassation neutralized the reform by affirming that abuse of office could still be committed through the violation of regulations, if they were technical specifications of legal provisions that, in turn, had to comply with the principles of legality and precision, inherent to criminal law.[5]

The same 'reactionary' stance can be attributed to the decisions where the Supreme Court ruled that the 2020 amendment, even though it narrowed the scope of Article 323 of the Criminal Code, did not entail the *abolitio criminis* of discriminatory or retaliatory conduct, which are still contrary to the impartiality principle set out in Article 97 of the Constitution, a 'constitutional principle of immediate prescriptive scope, which requires no adaptation or specification'.[6]

Evidently, the Government believed it could put an end to the long-standing dispute by addressing the root of the problem. However, abuse of office continues to be a topic of debate even after its abolition.

2. The limits of constitutional review in criminal law

While some judges have considered that the act previously classified as abuse of office continues to have criminal relevance under the 'guise' of a different offense,[7] others have suspended their judgments and asked the Constitutional Court to declare the unconstitutionality of the repeal of Article 323 of the Criminal Code.[8]

[5] Eg Cass, 16 February 2021, n 33240, CED Cass, 281843-01.

[6] Cass, 6 December 2021, n 2080, CED Cass, 282720-01. In other decisions, moreover, the Court of Cassation has excluded the relevance of the violation of Article 97 of the Constitution. Cf Cass, 10 June 2022, n 28402, CED Cass, 283359.

[7] Eg Trib Milano (Gup Iannelli) 11 September 2024. See Maria Chiara Ubiali, 'Concorso pubblico truccato anticipando i temi delle prove: non potendo più ricorrere alla turbativa d'asta e all'abuso d'ufficio, il Tribunale di Milano condanna per rivelazione di segreti d'ufficio' (2024) 12 Sist pen 83 < www.sistemapenale.it/it/scheda/concorso-pubblico-truccato-anticipando-i-temi-delle-prove-non-potendo-piu-ricorrere-alla-turbativa-dasta-e-allabuso-dufficio-il-tribunale-di-milano-condanna-per-rivelazione-di-segreto-dufficio> accessed 30 December 2024.

[8] Trib Firenze ord 24 September 2024, 3 October 2024, 28 October 2024; Trib Locri ord 30 September 2024; Trib

The requests are primarily based on the alleged violation of asserted obligations to criminalize actions under international law, and therefore, of Articles 11 and 117 of the Constitution.[9] In some rulings, the conflict with Articles 3 and 97 of the Constitution is also highlighted. In any case, the aim is to revive the offense of abuse of office.

Such an outcome would, evidently, have *in malam partem* effects. The Constitutional Court has clarified that it is not entirely precluded from making rulings with such an effect. In fact, according to a well-established principle, the Court's review may concern provisions that «establish, for certain subjects or situations, a preferential criminal treatment»[10] (so-called '*norme penali di favore*').[11] This is because, strictly speaking, the *in malam partem* effect does not result from a possible declaration of unconstitutionality – which therefore does not violate the legislator's monopoly on criminalization choices, as established by Article 25 of the Constitution – but rather from the subsequent re-expansion of the scope of application of the general norm, still present in the legal system, which was set by the same legislator, also with regard to the case subject to the illegitimate derogatory provision.

The repeal belongs to the different category of favorable criminal laws ('*norme penali favorevoli*'). As a rule, the Court's review of provisions of this type is excluded:

Busto Arsizio ord 21 October 2024; Trib Bolzano ord 11 November 2024; Trib Teramo ord 22 November 2024; Trib Catania ord 26 November 2024. All available at <www.sistemapenale.it>.

[9] On the subsequent non-performance of (alleged) supranational criminalization obligations cf Vittorio Manes, *Il giudice nel labirinto. Profili delle intersezioni tra diritto penale e fonti sovranazionali* (DIKE Giuridica Editrice 2012) 112.

[10] C cost, 18 January 2022, n 8, point 7 of the Conclusions on points of law.

[11] Emilio Dolcini, 'Leggi penali "ad personam", riserva di legge e principio costituzionale di eguaglianza' (2004) Riv it dir proc pen 50; Domenico Pulitanò, *Diritto penale* (Giappichelli 2005) 15; Giuliano Vassalli, 'Giurisprudenza costituzionale e diritto penale sostanziale' in Alessandro Pace (ed), *Corte costituzionale e processo costituzionale* (Giuffrè 2006) 1021; Greta De Martino, 'Brevi osservazioni in tema di norme penali di favore e di reati strumentali' (2006) Giur cost 4170; Ombretta Di Giovine, 'Opinioni a confronto. Norme penali di favore e controllo di costituzionalità' (2007) Criminalia 224; Gaetano Insolera, 'Controlli di ragionevolezza e riserva di legge in materia penale: una svolta sulla sindacabilità delle norme di favore?' (2007) Dir pen proc 671; Domenico Pulitanò, 'Principio d'eguaglianza e norme penali di favore' (2007) Corr Merito 209; Costanza Nardocci, 'Norme penali di favore fra tutela dell'unità della famiglia "tradizionale" e diritti individuali. All'incrocio tra "tempo" della norma e "tempi" del legislatore. A margine di corte cost. Sent. n. 223 del 2015' (2016) 2 Riv AIC 14; Rossi Bernardino, 'Gli effetti della dichiarazione di illegittimità costituzionale di una norma penale di "favore"' (2017) Cass pen 199; Gino Scaccia, 'Rilevanza della questione di legittimità costituzionale e norme penali di favore: una proposta' (2020) Giur cost 1537.

otherwise, a possible declaration of unconstitutionality would restore the repealed norm, which is the expression of a criminalization choice revoked by the legislator as no longer deemed relevant.[12] However, this prohibition does encounter some exceptions; and among these, challenges based on Articles 3 and 97 of the Constitution cannot be included.

The Constitutional Court has indeed already declared inadmissible challenges raised, in light of the parameters just mentioned, specifically concerning the previous reforms of Article 323 of the Criminal Code. In this regard, the constitutional judges, in line with their traditional approach, reiterated that Article 3 of the Constitution can only be invoked against preferential criminal laws: outside of this case, constitutional review is inadmissible unless it is intended to produce favorable effects; and this is true even if the challenged incriminating provision were to, hypothetically, result in unequal treatment or unreasonable outcomes (a situation that the Court could only remedy through a 'reparative' ruling with *in bonam partem* effects).[13]

As for the allegations of violation of Article 97 of the Constitution, the Constitutional Court has justified their inadmissibility by stating that the abolition, even if partial, of a crime is not in itself a choice subject to censure. Indeed, criminalization is not the only means of protecting values of constitutional relevance (in this case, impartiality and the proper functioning of the public administration); on the contrary, criminal law should be considered the *extrema ratio*, which the legislator should resort to only when – based on a discretionary assessment, generally immune from constitutional review – he believes that constitutional protection needs cannot be adequately fulfilled by other rules and sanctions.[14]

However, the Constitutional Court is also the guardian of the compliance of Italian laws with obligations arising from international law. In this role, it is permitted to cross the gates of the 'forbidden garden' where Parliament exercises a monopoly over

[12] C cost (n 10). Cf also C cost, ord 23 May 2001, n 175; sent 23 January 2019, n 37; ord 6 November 2019, n 282.

[13] C cost, sent 20 July 1995, n 411; ord 6 December 2006 n 437; sent 15 December 2000 n 580.

[14] C cost, sent 23 January 2019, n 37. Cf also C cost, sent 18 July 1996, n 317; 15 December 1998 n 447; 7 July 2010 n 237. For more on the topic see, among other, Caterina Paonessa, *Gli obblighi di tutela penale. La discrezionalità legislativa nella cornice dei vincoli costituzionali e comunitari* (Edizioni ETS 2009); Manes (n 10).

criminal law choices, so that it can verify the legislator's adherence to the commitments Italy is bound to respect under Articles 11 and 117 of the Constitution. Constitutional legitimacy review with potential *in malam partem* effects is, therefore, admissible when the challenged provision is alleged to be in conflict with international obligations.[15]

3. Do international obligations to criminalize really exist?

According to the referring judges, the repeal of abuse of office would make Italy non-compliant with the commitments undertaken through the ratification of the United Nations Convention against Corruption (UNCAC, Mérida Convention).

More precisely, it is acknowledged that the Treaty, far from imposing a true obligation to criminalize, merely requires the contracting States to consider criminalizing abuse of office[16]; however, if the legislator were to choose criminalization, such a decision would no longer be reversible, due to a supposed obligation to 'keep things as they are'[17] (the so-called *stand-still* obligation).

The Court of Reggio Emilia, in rejecting the constitutional challenge raised by the Prosecutor based also on the interpretation of the Mérida Convention briefly mentioned[18], argued that if there is no obligation to criminalize, then there cannot be a prohibition on regression.[19] However, this statement is too *tranchant*, as it relies on a

[15] C cost, sent 12 February 2014, n 32. The Court justified the admissibility of the *in malam partem* effects resulting from the declaration of unconstitutionality by also referring to the need to avoid leaving 'certain types of conduct unpunished for which there is a supranational obligation to criminalize. This would constitute a violation of European Union law, which Italy is required to respect under Articles 11 and 117, first paragraph, of the Constitution". cf Manes, *Il giudice nel labirinto* (n 10).

[16] Art 19 ('Abuse of functions'): 'Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity'.

[17] Trib Firenze, ord 24 September 2024.

[18] The Prosecutor had also raised the objection that the repeal was contrary to the Proposal for a Directive on combating corruption; the Court had asserted that a proposal, as such, cannot be considered binding.

[19] Trib Reggio Emilia, ord 7 October 2024.

reading of Article 19 detached from its context. It does not take into account other parameters, which, in fact, have also been invoked in some referral rulings.

The reference is, in general, to Article 65 of the Convention, which commits the contracting States to adopt 'the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention'; and, more specifically, to Article 7, paragraph 4, under which 'each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.'

Placed within the framework just outlined, the question of whether there is an obligation of stand-still appears more complex. Indeed, the Italian legal system had already provided for the crime of abuse of office long before the ratification of the Mérida Convention: therefore, it seems more appropriate to discuss the existence, rather than a generic obligation of criminalization (which, as seen, does not seem to exist), of a prohibition on regression.

Regarding abuse of office, Italy would have, in fact, committed itself to maintaining its criminal relevance; however, whether this is a strict obligation that could eliminate Parliament's discretion is doubtful. The aforementioned provisions of the Convention seem to impose on States the adoption of an effective anti-corruption system, while still leaving them free in their choice of further implementation measures beyond those deemed essential. In this regard, consider that while Article 19, dedicated to abuse of functions, commits the Parties to 'consider adopting', other provisions, such as Article 15, which deals with the 'Bribery of national public officials', express the related obligation using the more peremptory phrasing 'shall adopt'.

Ultimately, the criticism of the repeal of Article 323 of the Criminal Code being in contrast with the relevant commitments undertaken at Mérida does not seem well-founded; however, there are other sources that allow for a more plausible doubt regarding the legitimacy of the outright abolition of abuse of office from a supranational perspective.

For example, consider Directive 2017/1371 ('PIF Directive').[20] As is known,

[20] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law [2017] OJ L 198/29.

the introduction of Article 314-*bis* of the Criminal Code – just before the repeal of Article 323 – became necessary in order to comply with Article 4 of the aforementioned Directive, whose third paragraph states that 'Member States shall take the necessary measures to ensure that misappropriation, when committed intentionally, constitutes a criminal offence.' The provision does not prescribe the specific introduction of the crime of abuse of office, but case law had already classified the misappropriative and embezzling conduct that the supranational provision required to be criminalized[21] under the scope of Article 323 of the Criminal Code.[22]

The formulation of the 'new' Article 314-*bis* of the Criminal Code still leaves, albeit partially, the non-fulfillment of obligations deriving from the aforementioned EU provision, since today the criminal code punishes 'misappropriation' only in relation to movable property, not immovable property.[23]

The constitutional challenges proposed so far based on this criticism have not been accepted and, therefore, will not be reviewed by the Constitutional Court.[24] In any case, it should be noted that the conduct relevant to the PIF Directive does not exhaust the varied range of behaviors that, according to international definitions, can be classified as abuse of functions.

Ultimately, even European Union law does not provide for specific obligations to criminalize abuse of functions: this is evident from the fact that the Proposal for a Directive on combating corruption presented by the European Commission in 2023 included the criminalization of abuse of functions as mandatory;[25] however, under an

[21] Art 4 cited also specifies that «'misappropriation' means the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests».

[22] Eg Cass, sent 30 September 2020, n 36496, CED Cass, rv. 280295-02; sent 23 January 2018, n 19484, CED Cass, Rv. 273783-01.

[23] Cf Gian Luigi Gatta, 'Morte dell'abuso d'ufficio, recupero in zona Cesarini del 'peculato per distrazione' (art. 314-bis c.p.) e obblighi (non pienamente soddisfatti) di attuazione della Direttiva UE 2017/1371' (2024) 7-8 Sist pen 135 <https://www.sistemapenale.it/pdf_contenuti/1725290460_gatta-1-fasc-7-82024.pdf>.

[24] The Court of Reggio Emilia rejected the issue as it was deemed irrelevant to the decision: more precisely, due to the lack, in this case, 'of elements from which to infer that the alleged diversion of the property could be considered, even in a reflected manner, harmful to the financial interests of the European Union'.

[25] Commission, 'Proposal for a Directive of the European Parliament and of the Council on combating corruption,

agreement reached in June 2024 within the European Council, the text was modified to provide, among other things, for the criminalization of abuse of functions not as an obligation, but as an option, in line with the UNCAC, to which the European Union is also a party.[26]

4. Common problem, different solutions

Although the European Union does not mandate the criminalization of abuse of functions, the phenomenon is punished almost everywhere within Europe.[27]

Nonetheless, the definitions adopted by national legislators exhibit many variations, and this proves that it is not possible to challenge the illegitimacy of the repeal of Article 323 of the Criminal Code by asserting the existence of specific and binding international obligations.[28]

Further confirmation can be found by taking a look at the German legal system, where, since the Prussian Code of 1851, there has been no general provision for abuse of office, in accordance with the clear intention to avoid the risk, inherent in a provision formulated in an imprecise manner, of excessive judicial interference in the activities of the public administration. Any liability of disloyal officials is sanctioned on a disciplinary level, as well as through the invalidation of measures adopted by abusing their powers.

replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council' COM (2023) 234 final.

[26] Council, 'Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council - General approach' ST (2024) 11272, Annex, 38.

[27] As can be read in the explanatory memorandum of the Commission Proposal for a Directive on combating corruption, according to a Commission's analysis of the 2023, 'Member States have in their national legislation offences on […] abuse of functions'. The sample analyzed included not only Bulgaria and Denmark, which had not responded to the questionnaire. The text of the explanatory memorandum is available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023PC0234>.

[28] Cf Vittorio Manes, 'Contestazioni in eccesso e la fine dell'abuso d'ufficio' *Il Sole 24 Ore* (24 June 2023) <ntplus diritto.ilsole24ore.com/art/contestazioni-eccesso-e-fine-abuso-d-ufficio-AEyZKzoD> accessed 6 January 2025.

Criminal repression applies in truly marginal cases, as outlined in §§ 339 and 344 of the Strafgesetzbuch (StGB), which are rarely applied. The first of the two provisions mentioned, more specifically, punishes abuses committed by judges and arbitrators through the deliberate adoption, to the benefit or detriment of one of the parties, of decisions characterized by objective violations of the law (*Rechtsbeugung*, i.e., 'perversion of the law'), or by the falsification of facts.

§ 344 is essentially the equivalent of § 339, which applies to prosecuting authorities, who are guilty of the persecution of innocent individuals (*Verfolgung Unschuldiger*)[29].

The regulation established by the Spanish Criminal Code is completely different, where a general figure of abuse of functions is provided.[30] Very similar to the offense previously established by Article 323 of the Italian Criminal Code, now repealed, the crime of *prevaricación administrativa*, punished by Article 404 of the Spanish Code, is committed by an authority or public official who, knowingly, adopts an administrative measure that is clearly contrary to the law and lacks any rational basis.

La prevaricación also has a judicial variant, which occurs when a judge, even if only negligently, adopts an unjust decision (Articles 446 and 447).

The general figure of abuse of functions coexists with other more specific offenses, similar to crimes punished in our legal system, such as, for example: trafficking in influences by public officials (Article 428), embezzlement to the detriment of public administration assets (Article 432), abuses committed in the negotiation of contracts or other business (Article 439). In the face of such a varied constellation, it is very common for a conflict of provisions to arise in relation to the same fact; and, in case of doubt, the general provision, less defined, is often applied.

Even in France, there is a very controversial hypothesis of abuse of functions, perhaps more so than its Italian and Spanish 'sisters'.[31] The conduct incriminated by Articles 432-1 and 432-2 of the *code pénal* is described in the terms, both evocative and nebulous, of an '*échec à l'exécution de la loi*' (literally: 'checkmate to the enforcement of

[29] Cf Adelmo Manna, 'Profili storico-comparatistici dell'abuso d'ufficio' (2001) Riv it dir proc pen 1201.

[30] Cf Vittorio Manes, 'L'abuso d'ufficio nel nuovo codice penale spagnolo' (1998) Dir pen proc 1441.

[31] Sophie Corioland, *Responsabilité pénale des personnes publiques* (Dalloz 2019) 34.

the law'), to designate any abuse committed to the detriment of the administration ('*Des abus d'autorité dirigés contre l'administration*' is the title of the relevant section of Chapter Two, which covers crimes committed by public officials).[32]

Equally problematic is Article 432-12, which punishes the '*prise illégale d'intérêts*' and is also criticized for its lack of precision, from which derives its limited application. Indeed, there can be no doubt about the vagueness of a phrase such as 'to take, receive, or maintain, directly or indirectly, an interest that could compromise one's impartiality, independence, or objectivity in a matter or transaction in which the public official, at the time of the act, has the duty to ensure supervision, administration, settlement, or payment.'

Certainly, the aim is to punish the disloyal public official who exploits the opportunity to participate in the completion of a public interest act for personal gain, but such a provision is not able to specify when this occurs. From this perspective, the 2021 reform, which replaced the previous reference to '*un intérêt quelconque*', has resulted in only a slight reduction in the scope of application of Article 432-12.

5. Conclusive remarks

It seems inappropriate to make a prediction about the judgment of the Constitutional Court; at most, it can be observed that the path towards a declaration of unconstitutionality based on the incompatibility of the repeal of Article 323 of the Criminal Code with supranational obligations appears an uphill struggle.

A diagnosis, on the other hand, is allowed. The troubled life of abuse of office – as seen, not very different from its European counterparts – is an expression of the 'genetic' resistance of this phenomenon to being typified as a well-defined criminal offense. The repeal seems to presuppose exactly this awareness, developed as a result of the long series of experiments carried out through progressive restrictions on the scope of application of Article 323 of the Criminal Code.

[32] The penalty of five years' imprisonment and a 75,000 euro fine provided for the danger offense is doubled if the purpose of the 'checkmate to the enforcement of the law' is achieved.

It is, in any case, a political choice, which, as such, should be assessed according to criteria of appropriateness. From this point of view, the reform promoted by the Minister of Justice reveals the flaws of a hasty decision, implemented without prior consideration of the consequences.

First of all, as authoritative commentators have already pointed out, it must be taken into account that, similarly to the past, the judiciary (in particular, public prosecutors) will likely resort to substitute crimes, which are more severely punished, based on dangerous interpretative distortions.[33] If, therefore, the legislator aimed to curb the interventions of magistrates on the actions of administrators, it is likely that the promise of a future free from the 'fear of signing' will remain *flatus vocis*.

Meanwhile, the repeal will inspire courage in the many honest members of the Public Administration, but will leave citizens exposed to favoritism and abuse of power by the less loyal public servants. The traditional principle that disciplinary justice is, by nature, 'domestic' indeed leads one to doubt that the threat of disciplinary action has the deterrent effect invoked by the proponents of the repeal.[34] Similar doubts apply to accounting liability, which, by definition, presupposes account damages, and thus disregards acts that, while constituting offenses, have not caused similar repercussions.

After all, there is no action completely free of side effects. The decriminalization of abuse of office is no exception, and in any case, it is not, in itself, a solution to be criticized. However, such a disruptive intervention deserved to be part of a comprehensive reform of the sanctioning system for offenses committed by disloyal public officials. Alongside an enhancement of non-criminal tools, a revision of the

[33] David Brunelli, 'Eliminare l'abuso d'ufficio: l'uovo di Colombo o un ennesimo passaggio a vuoto?' (2023) 3 Archivio penale <https://archiviopenale.it/eliminare-labuso-dufficio-luovo-di-colombo-o-un-ennesimo-passaggio-a-vuoto/articoli/43652> accessed 11 January 2025. The Author mentions the falsity in public documents (Art. 479, extended by Art. 48), the revelation and exploitation of confidential information (Art. 326, paragraphs 1 and 3), and the omission and refusal of acts of office (Art. 328). He also refers to bid rigging (Art. 353 and 353-*bis*), noting that public prosecutors had charged this offense even in relation to hiring competitions, until the Court of Cassation [eg Cass (26225) 10 May 2023, CED Cass, 285528] restricted its application to public tenders only. Cf also Vittorio Manes (n 28).

[34] For this reason the establishment of independent authorities with inspection powers has been proposed. Cf Francesco Cingari, *Repressione e prevenzione della corruzione pubblica: verso un modello di contrasto integrato* (Giappichelli 2012).

criminal law apparatus targeting the sectors most sensitive to the risk of favoritism and abuse of power, such as public competitions and procedures for selecting contractors, and more generally, the issuance of favorable decisions, would have been appropriate.[35] But there is still tomorrow.

[35] Brunelli (n 26) 9.