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PROFESSIONS IN ITALY: A GREY AREA

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Abstract

The deep roots and development of Mafia–type organisations in local and international settings is in part also a result of the services provided by professionals (for example, in money laundering). Doctrine and case law have highlighted the role of the professionals and their social networks in feeding the relationships of the Mafias in the socio-economic and institutional framework. Professional associations have been criticised for not always being able to prevent or suitably sanction collusive practices either because of inertia or "a desire to not rock the boat". This paper will deal with a phenomenon which has also been studied by socio-historical sciences through the rigour of a juridical analysis. Therefore, what we will look at are the critical areas in the system, also from a *de iure condendo* point of view. The issue is looked into for the first time by studying four main critical areas in relation to each other: 1. criminal law; 2. the system of the professions and the role of the professional associations with particular reference to disciplinary proceedings; 3. the role of the organs that control and sanction the professional associations; 4. data collection and access to databases of the courts and professional associations.

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1. When professionals operate in the interest of Mafia-type organisations. Case laws

"The strength of the Mafia" lies "in complicit and functional cultures and behaviour"[1], it finds nourishment externally[2] and has its major element of strength in "social capital"[3]. This is where it interrelates with the managerial class, within which are to be found the professions, among the most culturally and technically qualified to be of assistance to the Mafias. As it is clear from case law and legal doctrine, the boundaries between legal and illegal are difficult to distinguish. This lack of distinction generates an indistinct zone which is commonly defined as "grey area". We are here confronted with an "opaque space", "made up of a variety of figures", "different for competences, resources, interests and social roles", where "the mafiosi" not always "occupy the dominant position compared to", for example, "politicians, entrepreneurs and professionals"[4].

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[1] See N. dalla Chiesa, *Manifesto dell'Antimafia* (2014), 40.

[2] See R. Sciarrone, *Mafie vecchie, mafie nuove* (2009), 325.

[3] R. Sciarrone, *Mafie vecchie, mafie nuove*, cit. at 2, 46 and 325, otherwise it would be the same as other forms of organised crime.

[4] The issue has been studied in depth and clarified by R. Sciarrone, *Complici, soci e alleati. Una ricerca sull'area grigia della mafia*, in *Studi sulla questione criminale*, 1 (2012), 66-67. Furthermore, the author remarks (71) how often "a Mafia governance model" is outlined in which "the mafiosi constitute the most important link in the network". Moreover, expressions such as "entrepreneurial Mafia" and "Mafia business" give a clear representation of one aspect of the grey area. And this also entails connections or crossovers between the legal and illegal [see C. Visconti, *Proposte per recidere il nodo mafie-imprese, Diritto penale contemporaneo*, in 1 www.penalecontemporaneo.it (2014)]. In addition, "the presence of criminal organisations in the legal economy conditions the activities and the evolution of many economic sectors", thus changing "radically the rules of the game" by asking "difficult and sometimes very risky choices of entrepreneurs", S. Consiglio, E. De Nito, *Quando gli imprenditori usano i clan: il*

The Mafia networking[5] generates direct benefits for professionals and, at the same time, a negative social, economic and institutional fallout. In this context, the specific role of professionals can take various forms and serve a variety of purposes: it can help mafias to achieve a number of objectives, formally legal or partially or totally illegal. All this activities can be led back to Mafia-type organisations (or "Mafia-type associations"), as defined by Article 416-*bis*, par. 3, of the Criminal Code (henceforth CC)[6]. There are various professional categories involved and types of professional activities that can be exercised for the benefit of Mafia gangs, and many cases have come to the attention of the judiciary. These activities might be covered by specific legal criminal definitions and specific disciplinary offences inside the professional associations. Therefore, before a more in-depth theoretical study, it is useful to examine a number of cases that have seen professionals involved in criminal proceedings.

Within the medical profession, we might mention: the doctor who provided treatment to a fugitive Mafia boss[7]; or the doctor who "hid the trail" that would have led to the fugitive; the case of false information included in medical records; the ophthalmologist who concocted a serious diagnosis for a dangerous and bloodthirsty "camorrista" in order to have him granted house arrest[8]; the cases of the exploitation of the forensic psychiatric profession, a support to the judicial system, in the form of false diagnoses, or advice provided to facilitate the simulation of psychiatric diseases to be submitted to the judiciary

caso del re dei videopoker, in L. Brancaccio, C. Castellano (eds.), *Camorra, mercati e imprese*, *Le aree grigie nell'evoluzione dei gruppi criminali,* 196 (2015).

[5] See R. Sciarrone, *Mafie vecchie, mafie nuove*, cit. at 2, 325 e 49.

[6] The Italian law uses the expression "Associazione di tipo mafioso" (e.g. Art. 416-*bis*, c.c.). For a definition of a possible ideal-type of mafia, R. Sciarrone, L. Storti, *The territorial expression of mafya-type organised crime. The cause of the Italian Mafia in Germany* in 1 Crime, Law and Social Change (2013).

[7] Aggravated assistance, under Article 378, par. 2, c.c. See S. Corbetta, *Obbligo del medico di far catturare il latitante in cura?*, in 11 Dir. pen. proc. 1375 (2001).

[8] This refers to the order for preventive custody issued by the GIP (investigating magistrate) at the Court of Naples on 12 December 2012 which foresees the imputation of external collusion with the Camorra group led by Giuseppe Setola, of the Casalesi Clan.

for a wide variety of purposes (e.g. incompatibility with the regime of so-called "harsh imprisonment")[9].

Then there is the case of the notary who was sentenced for providing his professional services which benefited the mafiosis[10].

Turning to chartered accountants, there was the case of a professional convicted of money laundering as well as for having concealed the criminal origin of large amounts of capital[11].

In terms of the legal profession the boundaries between legal professional activity and illegal conduct, whether ethically correct or not, are probably among the most complex to describe, in consideration, first of all, of the right to defence enshrined in Article 24, par. 2 of the Constitution, and of the particular ways in which the professional activity is exercised in order to maintain its independence[12]. Among the alleged misconduct of lawyers are reported: aggravated assistance[13] (for example, the case of the defence lawyer who illegally acquires information concerning the criminal proceedings, with subsequent divulgation useful to their client in order to hamper the investigation or avoid arrest)[14]; the case of the defence lawyer for a "camorrista" who, in open court, issued threats to judges and journalists[15]; the case of the lawyer

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[9] Under Article 41-*bis* of Law no. 354 of 26 July 1975. For reflections on this theme, with references to specific cases as well, see the contribution of a doctor, C. De Rosa, *I medici della camorra* (2011).

[10] Pursuant to Articles 416-*bis* and 110 c.c. In this case, Cass. pen., Sec. VI, 22 March 2004, no. 13910, the legal obligation "of the notary" of the "general duty to provide, in favour of anyone who so requests, does not mean that the notary" should not "abstain from providing the services requested and even performing the role of guarantor and mediator, whenever it can reasonably be inferred that such activities involve illegal acts or apparently legal activities carried out by Mafia members".

[11] Under Article 648-*bis*, aggravated by the special circumstance referred to in Article 7 of Law by Decree no. 152 of 13 May 1991, converted into law no. 203 of 12 July 1991: judgment no. 17694 of the Criminal Court of Cassation, sect. V, 14 January 2010.

[12] On this point see G.C. Hazard, A. Dondi, *Etiche della professione legale* (2005), 228.

[13] Under Article 378, par. 2, c.c.

[14] Cass. Pen., Sec. I, 1 March 2005 and Sec. I, 24 February 1992, n. 4153, in Cass. Pen. 933 (1994). On this point see E. Dinacci, *Favoreggiamento personale*, in F. Coppi (ed.), *I delitti contro l'amministrazione della giustizia* (1996), 382.

[15] This fact, exceptional for its peculiarities, led to the conviction in the first degree for threats with the aggravating circumstance of them being made on behalf of the Mafia (Court of Naples, Sec. III, 10 November 2014). The reference

accused of collusion with the Mafia (Camorra)[16] for allowing a gang affiliate in detention to maintain communications with other affiliates and to obtain false medical documentation certifying his incompatibility with a prison regime[17]; with reference to the same offence, the lawyer who became an "adviser" to a gang and providing legal advice, made suggestions designed to fraudulently evade the law, in order to acquire control of a company[18].

A professional enrolled in a professional association can assist Mafia-type organisations, but they can also do so in the exercise of public functions (in cases where they hold a role in public administration[19] or elected office); they can integrate their professional, social and business network with the more extensive one of the Mafiosi[20], who "often tend to act as intermediaries between different networks of relationships" with the illegal and legal world[21]. Finally, a professional, can be the head or a member of a Mafia-type group, projecting themselves fully into the "bourgeoisie Mafia"[22]. The concept of a "bourgeoisie Mafia" is

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is to the well-known case which saw, in the Assize Court of Appeal, Second Section, 11 October 2010, during the *Spartacus* trial, Roberto Saviano and the journalist Rosaria Capacchione being threatened.

[16] Pursuant to Article 416-*bis* and 110 c.c.

[17] The reference is to the order of arrest issued by the investigating magistrate at the Court of Naples on 12 December 2012. This case partly coincides with the abovementioned ophthalmologist.

[18] Cass. pen., Sec. II, 8 aprile 2014, n. 17894, in www.studiolegale.leggiditalia.it.

[19] For which disciplinary proceedings would be twofold, relating to the association and the administration, as a result of which the professional might be subject to sanctions from both the association and the administration. See on this point V. Tenore, *Deontologia e nuovo procedimento disciplinare nelle libere professioni* (2012), 14.

[20] See R. Sciarrone, *Mafie vecchie, mafie nuove*, cit. at 2, 52.

[21] M. Santoro, *Borghesia mafiosa*, in M. Mareso, L. Pepino (eds.), *Nuovo dizionario di mafia e antimafia* (2008), 74-75. On this point see also F. Curcio, *'Ndrangheta*, in *Relazione annuale sulle attività svolte dal Procuratore nazionale antimafia e dalla Direzione nazionale antimafia nel periodo 1 luglio 2012 e 30 giugno 2013* (2014), 127 - 128.

[22] Thus in many cases reinforcing the sociological model of upward social mobility Id., *Ndrangheta*, in *Relazione annuale sulle attività svolte dal Procuratore nazionale antimafia e dalla Direzione nazionale antimafia nel periodo 1 luglio 2012 e 30 giugno 2013*, cit. at 21, 78. For a number of examples, see Id., *Ndrangheta*, cit. at 21, 112 and M. de Lucia, *Cosa nostra*, in *Relazione annuale sulle attività svolte*, cit. at 21, 725.

extended and sometimes coincides with the more fluid and wider one of the "grey area"[23]; this includes the *extraneus*, such as the professional who becomes a point of reference in the network of the organisation and its activities, has a role in designing new strategies for the Mafias[24] to adapt, is part of "a triangulation with public officials, criminals (...) and politicians"[25], thus ending up colluding externally in Mafia type organisations as defined in Articles 416-*bis* and 110 c.c. The concept of bourgeoisie Mafia, the result of sociological analysis, has also been assimilated into juridical and trial language, as demonstrated by recent case law of the Supreme Court. By "bourgeoisie Mafia" the Court of Cassation means "white collars" i.e. Mafiosi who, thanks to their relations and the prestigious posts they occupy in society, collude with the Mafia in order to get some advantages ("easy and conspicuous wealth; support in elections"), allowing them, therefore, "to increase their spread and penetration in the vital nerve centres of society"[26].

2. The dialogue between social and juridical sciences: strengths and weaknesses

The theme of the relationship between the professions and the grey area has to be studied while taking into account the political, legislative, investigative and procedural perspectives. Politicians, legislators, investigators and judges must always take into account the specificity of the socioeconomic networks. Insufficient knowledge is likely to affect, as indeed happens, the efficacy of investigations and prosecution, with a resulting reduction for the prospects of justice in court. The legitimacy of every measure that can be employed[27], in fact, alongside the

[23] The concept of "bourgeoisie Mafia" was revived in the 1970s by M. Mineo, *Scritti sulla Sicilia* (1995), as recalled by U. Santino, *La conquista di Bisanzio, Borghesia mafiosa e Stato dopo il delitto dalla Chiesa*, in Segno 34 (1982) and, more recently, S. Lupo in G. Savatteri (ed.), *Potere criminale. Intervista sulla storia della mafia* (2010), 167.
[24] For reflections on this theme see F. Beatrice, *Camorra*, in *Relazione annuale della Dna*, July 2012 - June 103 (2013).
[25] See N. Amadore, *I sovversivi: in terra di mafia la normalità è rivoluzione* (2013), 71.
[26] Cass., Sec. II, 8 April 2014, n. 17894.
[27] From phone taps to indictments to seizures to arrests.

investigative and prosecution strategy, is based on a delicate balance of several factors. From this point of view the historical, social and economic sciences stand out, with a subsequent effect on the most appropriate methods of analysis on the part of the operators. This is true above all of criminal activities that include offences such as Mafia–type organisation pursuant to Article 416-*bis* and collusion with the Mafia pursuant to Article 110 c.c. Both this articles have applicative limits, also as a result of the linguistic formulations used[28].

Another factor is the legal classification of the crimes being prosecuted. The designation of crimes as Mafia-related[29], provides, pursuant to Anti-Mafia Code[30], that proceedings are the responsibility of the District Anti-Mafia Directorates (henceforth DDA), all the way to the temporary assignment "to local prosecutor's offices" of "judges belonging to the" National Anti-Mafia Directorate and of "those belonging to" the DDA[31].

As pointed out, what can sometimes be seen is a prosecution strategy that tends to absorb within the jurisdiction of the DDA criminal behaviour of dubious relevance to Article 416-*bis* or other crimes that might lead, for example, to the contestation of the aggravating circumstance of the "Mafia facilitating" (the so called art. 7)[32]. The intention, in these cases, is to place the investigation and prosecution in a fast-track lane, better equipped in terms of resources compared to the so-called "ordinary business" lane[33].

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[28] On this point *infra* § 4.

[29] Pursuant to article 51, para. 3-*bis*, Code of Criminal Procedure.

[30] Article 102 of Legislative Decree no. 159 of 6 September 2011.

[31] Pursuant to Article 105 of the Anti-Mafia Code, in the case of "proceedings of particular complexity or that require specific experience and professional skills" "that is (...) specific and contingent investigative or procedural requirements".

[32] Refer to Article 7, Law by Decree no. 152/1991 converted into law no. 203 of 12 July 1991. On this point see L. Ciafardini, *La costituzione, l'organizzazione della direzione distrettuale antimafia e i rapporti con la direzione nazionale antimafia*, in B. Romano, G. Tinebra (ed.), *Il diritto penale della criminalità organizzata* (2013), 488.

[33] Id., *La costituzione, l'organizzazione della direzione distrettuale antimafia e i rapporti con la direzione nazionale antimafia*, in B. Romano, G. Tinebra (ed.), *Il diritto penale della criminalità organizzata*, cit. at 32, 486-490, for an analysis of the aspects related to the assignation.

Furthermore, all this would allow the use of more effective investigative tools[34], such as: telephone taps that have as their presupposition[35], sufficient and not serious evidence[36].

Because the legislative framework is mainly based on criminal justice, its case law and its legal doctrine, the sociological contributions to the phenomenon of professional are generally schematic[37]. Despite the necessary differentiation between approaches, there are proven reasons in favour of the need for a dialogue between legal and sociological sciences, sensitive to the need for a common *intelligere* of contiguity with the Mafia. As it has been clearly stated, with reference to the analysis of the "structure and impact of Article 416-*bis*", it would be "in truth, superficial and misleading to discuss the" relative "structure and (...) impact without considering the social context in which the Mafia has accumulated its power, as well as the cultural representation that the Mafia has gradually assumed"[38].

The socio-historical research should therefore be a scientific reference point in the exercise of legislative[39] and judicial power. To better understand the relationships between the sciences it is useful to highlight a number of aspects that characterise approaches to the subject. A certain distrust regarding the quality of its scientific output has been overcome in terms of sociological studies, the results of which, it was noted, were not always appreciated because of a widespread tendency to "be based on conjecture" and not on the information available. Gradually, there

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[34] Di contra this choice should be assessed in terms of respecting of constitutionally protected guarantees.

[35] Pursuant to Article 13 of Law by Decree no. 152/1991 similarly, "when it comes to intercepting communications between those present (...) interception is permitted even if there is no reason to believe that criminal activity is taking place in the aforesaid places".

[36] Derogating from the general provisions laid down in Articles 266 and following of the Code of Criminal Procedure.

[37] Thus, recently, N. dalla Chiesa, *Manifesto dell'Antimafia*, cit. at 1, 48, 51-52 speaks of a corporate culture (among others) in the professional associations that occurs when they reject "with contempt" or "treat reports with indulgence".

[38] Cfr. M. Ronco, *L'art. 416-bis nella sua origine e nella sua attuale portata applicativa* in B. Romano, G. Tinebra (eds.), *Il diritto penale della criminalità organizzata,* cit. at 32, 36.

[39] See G. Fiandaca, *Il concorso "esterno" tra sociologia e diritto penale*, in G. Fiandaca, C. Visconti (eds.), *Scenari di mafia* (2010), 203-211.

has been a greater recognition of its scientific output, due in part to the increase in the number of publications and a diversification in the topics studied. The wider reference to socio-historical insights is also due to the refinement and consolidation of methods of investigation and a series of factors, among which should be mentioned: the increased number of official sources and the possibility of accessing information; the improvement in the quality of the sources; the increase in "investigations in the field"; access to important sources such as, for example, supergrasses. Scientific contributions have also been characterised by their greater completeness and specialisation[40] resulting in an appreciation by certain scholars, whose visibility in contexts other than purely scientific or judicial ones, particularly in the *agorà* of the mass media, allowed the attention of the general public and politics to be drawn to aspects of the Mafia that taken individually might have appeared insignificant.

The interaction between legal and social sciences can be perceived in the national and international debate[41] both in terms of advantages and critical areas, but in any case of utility. It is necessary to take these positions into account, on the assumption that the relationship between sciences improves the processes of knowledge of phenomena, increasing the possibility of

[40] Among the most significant reasons there is, in fact, A. La Spina, *La sociologia del fenomeno mafioso dopo il 2006*, in La Spina, A. Dino, M. Santoro, R. Sciarrone (eds.), *L'analisi sociologica della mafia oggi*, 2 Rass. It. sociologia 307 (2009), a raised awareness among scholars of the different specialties of sociology that has allowed a better understanding of the more specific aspects concerning the Mafias, through sociological interpretations of "deviance and criminal behavior," "legal", of "analysis of public policies", "economic" and "political" and the sociology of the "cultural and communication processes" and of the "organisation".

[41] It is interesting to recall the research conducted by S.P. Green, *I crimini dei colletti bianchi* (2008), XIII-XV, a translation of *Lying, Cheating and Stealing. A Moral Theory of White-Collar Crime, 2006*, on the subject of white collars in the US and UK. It is observed how if, on the one hand, it starts from the usual distinction between legal approach (in particular criminal), and sociological - where the former "focuses not so much on the social class and the characteristics of the offenders, as on the elements of the offence itself" - on the other, it concludes that the lawyer cannot ignore the mutual interference of "subtle distinctions of criminal law" with other "subtle distinctions". Also very interesting is the analysis of psychoanalysis: see, in particular, the recent contribution of G. Starace, *Vite violente* (2014).

identifying the most efficient means of repression. Such a relationship generates, however, friction as well. This arises, in reality, not from the methodologies and classifications of Mafia phenomena, but rather from the transposition of the models into the concrete configuration of the crime and the punishment of the offender. The most critical positions are to be found among criminal lawyers who complain about the inability of sociological models to take into proper account the Constitutional principles of the determination of the legal fact and personal responsibility. Socio-historical analysis, on its own or with others, allows us to place and understand individual criminal events in a wider dimension, but also to explain the behaviour of individuals[42]. The use that the judiciary makes of socio-historical models can also be identified in judicial provisions - albeit to a lesser extent and still paying attention to the ontological limits of criminal law – and in documents adopted outside the courts (think of the reports of the DNA)[43].

Compared to lawyers, sociologists and historians move in a way that is more neutral, not recognising, if not rarely and for no less important but still formal aspects, difficulties in comparison with the legal sciences. Among the reasons for this is a sharper definition of the borders of the contributions: "overspill" is rare and for this reason the contributions can be appreciated more in the processes of legal positivism. The sociologist and the historian do not appear to be influenced (nor should they be) by the transposability that their models and interpretations of the Mafia phenomenon might have at both trial and legislative level. It should further be noted how this can also be explained in view of the difficulties inherent in legal technicality and the in-depth understanding of the juridical institutions of substantive and trial law. Among the criticisms made by legal scholars is that of a risk of "excessive influence" of the interpretative (in particular sociological) models in legal reconstructions[44]. One example is the qualification of cases of Mafia association and contiguity in the

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[42] Needed for the configuration of criminal facts and the identification of personal responsibility. Among the authors mentioned most often is R. Sciarrone, *Mafie vecchie, mafie nuove*, cit. at 2.

[43] Cfr. F. Beatrice, *Camorra*, cit. at 24, 90.

[44] Cfr. G. Leo, *Crisi ed attualità del concorso esterno nel reato associativo*, in 6 Corr. mer. 551 (2012).

grounds for sentencing and in the drafting of indictments by the prosecution. When operating within the traditional confines of criminal readings it is easy to understand the scepticism that prevails with regard to the socio-historical sciences, above all in the use that the judiciary might make of them, insofar as such readings might not sit well with the Constitutional principles of obligatory prosecution and personal criminal liability - in line with Article 25, par. 2, and Article 27, par. 1, of the Constitution.

Crimes such as criminal association and *extraneus* involvement become a battleground between sociological and legal classifications, where, however, the only ones who defend their position, except sporadically, are legal scholars. Scholars of the socio-historical sciences, as mentioned, if and when they extend their analyses up to and beyond the boundaries that separate them from the legal sciences, do so mainly thinking about legislation, and not the legal issues underlying the practical application of the law, which, instead, is the most common point of confrontation for the criminal lawyer in particular. Judicial provisions and those of the coordinating or investigative authorities, instead, seem to be the main source of information for socio-historical science scholars, to the extent that, this methodological approach has been criticised for its excessive use of such sources, ontologically contaminated by the search for and ascertainment of truth at trial; while, again from the point of view of useful differentiation between the socio-historical and legal sciences, there is a greater demand for historical, sociological and anthropological studies inspired by empirical methods on the ground[45].

In terms of how lawyers understand their relationship with the social sciences, instead, the error has been pointed out which the lawyer risks committing when they relate with "social analyses" and "criminological studies". The efforts of jurists would be misplaced in making automatic the transposition of the "conceptual models" into the "juridical area to deduce their effects or implications which are directly relevant in the area of the law"[46]; instead, what would be useful would be an

[45] In this sense, Raffaele Cantone, during a *lectio magistralis* at the Federico II University of Naples, 16 May 2014.

[46] C. Visconti, *Proposte per recidere il nodo mafie-imprese*, cit. at 4, 1-2.

"empirical" territorial analysis, because it would have the potential to evaluate "the efficacy of the (legislative and judicial) strategies"[47]. The empirical approach also allows for differentiating between the individual Mafias (for example, Mafia, Camorra, 'Ndrangheta), providing the tools to overcome those generalisations that have misrepresented them as unitary and indistinct[48].

3. Opposing collusion between professionals and Mafia-type organisations: the role of professional associations in the legal system

The theme of contiguity has often been addressed in a picturesque way in the media, sometimes propagated through the echo of populist representations and movements[49]. Rarely though have judgments of unfitness or inertia of the professional associations and colleges (henceforth professional associations)[50] in combating Mafia infiltration considered the legal situation, along with the sociological, criminological and journalistic analysis. Instead, it is essential to consider criminal law and the regulations of the professional associations. Indeed, although in many cases the professional associations could have done more, a complete evaluation of the issue cannot be achieved without a close examination of the relationship between criminal and disciplinary proceedings.

As regards the identification of professional associations to observe, the professions that are most involved in Mafia collusion

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[47] *Ibidem*.

[48] G. Fiandaca, C. Visconti, *Scenari di mafia*, cit. at 39, 9.

[49] See A. D'Alessio, *Concorso esterno nel reato associativo* (*ad vocem*), in *Leggi d'Italia*, § 1 and G. Fiandaca, *Il concorso esterno agli onori della cronaca*, in V Foro it. 1 (1997).

[50] In order to simplify from now on we will only use the expression professional association. Regarding the difference between associations and colleges, the Royal Legislative Decree no. 103 of 24 January 1924, provides that "the professional classes, not regulated by previous laws, are constituted of associations or colleges, depending on whether, for the exercise of the profession, they require a degree or a diploma from universities or colleges or a middle school diploma". A distinction which does not correspond, among others, with the College of Notaries, access to which, obviously, requires a university degree.

have been verified empirically, and in consideration of the results, it was decided to limit the field of investigation to only those professions that require registration in professional associations and which fall within the category of the so-called regulated or protected intellectual professions[51].

Bearing in mind the Constitutional principles[52], the laws and the professional associations that characterise the regulation of the professions, the structure of public law that marks the sector is justified for a number of reasons, among them the coincidence of the role of professionals with the function of the protection of state interests (e.g., health and justice)[53], and the desire to "ensure the security, certainty and ethics of the professional relationship (...) which only remains intact through a correct and proper exercise of the profession (...)"[54].

Alongside the traditional duties of probity, dignity, decorum, independence, loyalty, honesty and diligence (which can be in various professional codes), the engineers' Code is worthy of note: in Article 5 on legality it states that "any participation or contiguity in illegal activity in any way connected or linked to organised crime constitutes a serious breach of ethics, detrimental to the profession". Similar provisions can also be found in the Code of Italian planners, landscape architects,

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[51] Which excludes the unprotected or non-regulated professions. For further reading see C. Golino, *Gli ordini e i collegi professionali nel mercato: riflessioni sul modello dell'ente pubblico professionale* (2011), 27-28.

[52] Among the Constitutional principles, among the others mentioned, should be: the fundamental guarantee of inviolable human rights in Article 2 of the Constitution, insofar as the professional association can be qualified as a social group in which is expressed the individual's personality and which therefore demands "the fundamental duties of political, economic and social solidarity be fulfilled"; Article 41, which conditions private-sector economic initiative to social usefulness, safety, liberty and human dignity; Article 54 which speaks of the "discipline and honour" of public office holders. Consider, in addition, also Article 33. par. 5, Const., with reference to state examinations; mention must be made as well as the Constitutional provisions governing work, including Articles 1 and 4. On this point, consider the Constitutional case law, in particular judgments no. 13 of 29 March 1961 and no. 7 of 8 February 1966. For further discussion, see C. Golino, *Gli ordini e i collegi*, cit. at 51, 41 ff. On this point see G. della Cananea, *L'ordinamento delle professioni*, in S. Cassese (ed.), *Trattato di diritto amministrativo* (2003), 1142-1147

[53] See on this point C. Lega, *La libera professione* (1952), 56.

[54] See C. Golino, *Gli ordini e i collegi*, cit. at 51, 62.

conservationists, junior architects and planners, which also refers explicitly to "involvement in a Mafia-type organisation"[55].

While the codes of doctors and psychologists, in terms of forensic roles or providing advice to the courts, include norms safeguarding their independence, also in order to protect the credibility of the professional concerned.

It is clear that these normative presuppositions form the basis for a proper and sensitive exercise of disciplinary power when confronted with forms of collusion and aggravated aiding and abetting of Mafia crimes, as well as performing an ethical, social and cultural role for the professionals, both as individuals and as a category that interacts with citizens, businesses and public administrations[56].

Given the legitimate expectations that stem from the needs of civil society, the institutions, including European and international ones, the judiciary and anti-Mafia organisations and the members of the professional associations, it is essential to evaluate the efficiency and effectiveness and efficacy of the current regulatory framework in order to assess the possibility for reform, also in light of the most recent legislative interventions on the subject.

Before moving on to a detailed analysis we should also consider how the issue has been dealt with in general terms in the past. As we know, the professional associations have been the subject of a reformist debate in a political-institutional setting that only saw partial formal implementation in the most recent legislation. The generally held view of normative inefficiency, also measured through the quantitative datum of the imposing of sanctions for Mafia crimes (a little-known and still very modest datum), is only a symptom, where the causes are to be found in the institutional and political field. It is useful in this regard to point out that had the question of disciplinary power been dealt with in isolation, it is likely better conditions would have been achieved for political convergence along a common line which would have been widely shared among professional associations

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[55] See art. 11 "legality". On this point see V. Tenore, *Il regime disciplinare degli architetti*, in V. Tenore, P. Mazzoli, *Codice deontologico e sistema disciplinare nelle professioni tecniche: ingegneri, architetti, geologi, geometri* (2011), 99-183.

[56] On this point see G. della Cananea, *L'ordinamento delle professioni*, cit. at 52, 1161.

and, by extension, in politics and the legislature. If the debate had been limited to the relationship between the professions and the Mafias, there would have been a more realistic possibility of extending the discussion to encompass the long-overdue reform of disciplinary power. In contrast, the perception on the part of the professional associations of being subject to a generalised reformist "siege", a result of European policies[57], might have been the cause of rigid counter-positions.

The aim of operating in an efficient framework of controls and sanctions is subordinate to the resolution of various critical regulatory areas, which can be traced to sources that depend primarily on the State[58] and the professional associations.

As we wish to demonstrate, the regulation of disciplinary power is the Gordian knot that needs to be undone to construct a new system better able to respond to the abovementioned legal situations. In attempting to provide an order to the development of the second part of this work, in which it is intended to address, from a legal point of view, the more concrete issues in a development of a perspective of anti-Mafia professional conduct, we can proceed to an analysis of the four major critical areas in the current system.

The first concerns criminal law, insofar as in the general and abstract application of the relevant norms and case-law principles we can see the main legal presuppositions, but also the constraints on the exercise of disciplinary power.

The second relates to the professional association, in particular insofar as regards the associations' exercise of regulatory, administrative and disciplinary autonomy, all in the light of the recent reforms.

The third critical area can be seen in the role that the law leaves to the institutions and bodies that interact with the professional associations, such as the Ministry of Justice, the prosecutors and the courts, and the Parliamentary Anti-Mafia Commission.

Last, but not least, a reflection is needed on the state of the system for the collection and, above all, exchange and access to

[57] On this point see G. della Cananea, *I problemi delle organizzazioni professionali e il loro futuro*, in Id., C. Tenella Sillani (eds.), *Per una riforma delle professioni* (2002), 7.

[58] In view of the absolute reserve of law covering criminal matters.

data concerning judicial and disciplinary measures regarding professionals involved in Mafia crimes.

4. Anti-Mafia Legislation: critical aspects and prospects for reform

The multidisciplinary approach is essential in understanding and regulating contiguity and collusion with the Mafia, insofar as they are phenomena of society and the institutions. Article 416-*bis* c.c., which is also the result of the contributions of the sociological and criminological sciences, assimilates the "social dimension" on a legal level, attributing to it an interpretive role as regards the Mafia association structure. In this way have been laid "the foundations for a more flexible approach" to combating "organised crime"[59].

The counterpart to this approach can be seen in the difficult transposition of the political will for repression into the technical-legislative canons and in the formulation of Article 416-*bis* c.c.[60], the constitutionality of which has been the subject of doubt[61].

Collusion with the Mafia, however, is not born without any precedents in case law, and there is no doubt that it has come to be "a highly innovative means of opposing criminality"[62], which goes well beyond the "symbolic-repressive function" and, by means of its "hermeneutic circularity between the fact and the law", concretely allows the qualification and "discovery of factual situations (...) which" would otherwise have escaped "legal attention"[63].

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[59] A. Centonze, *Contiguità mafiose e contiguità criminali* (2013), 7, 13 -14.

[60] Article 416-*bis*, approved in an emergency situation, was introduced in the infamous year of 1982 which saw the murders of Carlo Alberto dalla Chiesa and Pio La Torre, a member of the Parliamentary Commission of Inquiry on the Mafia in Sicily and first signatory of Law no. 646 of 13 September 1982, which incorporated Law no. 575 of 31 May 1965, (originally) "Provisions against the Mafia" and introduced Article 416-*bis* into the Criminal Code.

[61] See on this point L. Ferrajoli, *Diritto e ragione* (1990), 859 and A. Centonze, *Contiguità mafiose e contiguità criminali* (2013), 3.

[62] M. Ronco, *L'art. 416-bis nella sua origine e nella sua attuale portata applicativa*, cit. at 38, 32.

[63] *Ibidem*, 60.

Difficulties remain, but the case-law consolidated over a long period of application have seen the overcoming, to a large extent, of initial doubts and interpretative difficulties. The Court of Cassation, in particular, has managed to reconcile the impact in criminal-law terms with the sociological leanings of the norms. There remains the consideration that the sociological premises, by their nature, and even more so in reference to the social and economic contexts in which the Mafias are rooted, cannot provide static representations of general and abstract realities governed by law. Thus, for example, Article 416-*bis* c.c., according to what has been said, would be able to better express itself when it has as a reference a model "of hierarchical Mafia", "where the offer of protection" is "exercised in a monopolistic way in a given local community". Therefore, in the presence of more fluid organisational models[64] and ones that are less hierarchical, there should be a reconsideration of the normative points of reference. In some cases this would mean having to respond to the needs for new definitions of crimes[65], through a "desirable improvement in the instruments of enforcement of criminal law"[66]. These considerations do not appear, however, to coincide with the idea of a legislator which is ready to react in the fight against the Mafias. If this legislative dynamism, all the same, ends up being based on the need for continuous adaptation, it would mean having to deal with at least two critical issues: one legislative, the other more strictly legal. Indeed, it would require the continued attention of the legislature, while, as has been critically observed, the progress of action against the Mafia is unfortunately cyclical[67], and, moreover, needs to look beyond the confines of the limited anti-Mafia legislation in the codes. Moreover, to say that there should be some sort of dynamic reference to classifications and sociological readings in an interpretive phase and in necessary reformist reconsiderations, would mean weakening the norm, which would ultimately open the way to further criticism and the resulting perceptive uncertainties.

So we wonder, then, if a more realistic approach might not be helpful in thinking about anti-Mafia legislation, distinguishing

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[64] "Fluid structure" is discussed in A. La Spina, *La sociologia*, cit. at 40, 302.
[65] Cfr. F. Beatrice, *Camorra*, cit. at 24, 89-90.
[66] Cfr. G. Fiandaca, *Il concorso esterno agli onori della cronaca*, cit. at 49, 202.
[67] R. Sciarrone, *Mafie vecchie, mafie nuove*, cit. at 2, XXI.

the implementation of existing legislation from the prospect of reform. An approach that we might wish to follow even more, for reasons that will be explained, in reflecting on the room for improvement in the professional associations, through the exercise of normative, administrative and judicial autonomy, but also of the undervalued instruments of moral suasion. Moreover, from a reformist perspective, the system should be read dogmatically, as a whole and in harmony with the Constitution: instances of prevention, control and repression find a response in normative sources that can be traced to many other fields, including public and administrative law. Among the many might be considered ineligibility for election, the transparency of the public administrations, and the rules governing public procurement.

Returning to the substance of the responses to current needs and available means, the discussion needs to be led back to the legal concept of Mafia-type organisation according to Article 416-*bis* c.c. This contains the reference, the typified, autonomous regulatory model "around which are gathered innumerable rules of substantive and trial law, as well as criminal law, which have given rise to a real special criminal system", produced by numerous pieces of legislation, amended various times[68]. Among these, in view of our common thread that starts from the professionals to extend to the professional associations, should be considered: the special aggravating circumstance referred to in Article 7 of Legislative Decree no. 152/1991, "for crimes carrying a sentence other than life committed under the conditions of Article 416-*bis* (...) that is, in order to facilitate the activities of the associations provided for in that article", which provides that the penalty should be increased by a third; aggravated "personal aiding and abetting" of the Mafia pursuant to Article 378, par. 2, c.c.[69]; assistance to members, under Article 418 c.c.[70]; recycling,

[68] Which in part it flowed into Legislative Decree no. 159/2011, M. Ronco, *L'art. 416-bis nella sua origine e nella sua attuale portata applicativa*, cit. at 38, 32–33: see, in particular, *amplius*, nt. 4, which lists and illustrates the sources of law referred to.

[69] Which punishes the person who is not a member of the Mafia–type organisation nor contributes to it insofar as *extraneus* pursuant to Article 110 and 416-*bis* c.c., but who behaves in a way intended to provide assistance to

under Article 648-*bis* c.c.[71]; Article 391-*bis*, recently added to the Criminal Code[72], which punishes "anyone who allows a prisoner, subject to the restrictions of Article 41-*bi*s of Law no. 354 of 26 July 1975, to communicate with others, in circumvention of the requirements imposed for that purpose" and, in particular, which provides for a special aggravating circumstance "if the offence is committed by a public official, a civil servant or a party practising the legal profession"[73]; and, finally, external collusion with the Mafia, under Article 110 c.c.

Having recalled the main offences that presuppose the existence of a "relationship" with the Mafias, it is opportune to preliminarily anticipate that, leaving aside the ascertainment in the broad sense of Mafia crimes and the penalties that can be imposed, the professional associations, in any case, would be required to consider the behaviour of their member. Thus, a criminal judgment with final conviction, pursuant to Article 653, par. 2, Code of Criminal Procedure[74], would prove the "existence of the fact," the "criminal illicit act and the affirmation that the accused committed it". Behaviour of a criminal sort must also be followed by those which, in contrast to the rules of professional ethics, would result in a disciplinary action, albeit within the

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those who have committed crimes that come under Article 416-*bis* c.c. in order to facilitate the circumvention and avoidance of investigations.

[70] Under which "anyone, except in cases of collusion in the offence or of aiding, provides shelter or food, hospitality, means of transport, means of communication to any individual who are members of the association shall be punished with imprisonment from two to four years".

[71] Mafia association pursuant to Article 416-*bis* c.c. is one of the crimes under Article 648-*bis* CC. Among the aims of Mafia association is the reintroduction of illicit capital in legal channels (cf. in this sense Cass., Sec. VI, sentence no. 45643, 30 January 2009, in www.iusexplorer.it).

[72] With Law no. 94 of 15 July 2009, Article 2, par. 26.

[73] Specifically in reference to the legal profession, during remarks on the bill no. 733, Rome 18 November 2008, 6, the council of the Unions of the Criminal Courts of Rome, in http://www.ristretti.it/commenti/2008/novembre/pdf8/ucpi_sicurezza.pdf, claimed it was an "attempt to criminalise the defender, identified as a possible contact with the outside". On this point see also R. Cantone, *Agevolazione criminosa ai detenuti ed internati in regime detentivo speciale*, in *Leggi d'Italia* (2010).

[74] "Efficacy of the criminal sentence in disciplinary judgment".

limits of the exculpatory procedural assumptions which cannot but be considered in disciplinary proceedings[75].

Before coming to the end of the general classification and moving on to deal with the aspects related to the professional associations, some final considerations need to be made with regard to the crime of collusion with the Mafia, insofar as "speaking of contiguity to organised crime in Italy means above all" bringing up "the thorny issue"[76]. *Extraneus* collusion (pursuant to Article 416-*bis* and 110 c.c.), as noted, fulfils the concrete need to provide a criminal-law response that is "anything but dogmatic" to punish "cases of so-called 'contiguity' or of collusion and interweaving between organised crime and members of the political, professional and economic-entrepreneurial world"[77]. The dogmatic framework, however, can certainly not be overlooked, since it is an aspect that is not at all subordinate to the evidentiary requirements underlying the application of the norm, as widely argued in doctrine and in case law. As regards the aspect we are interested in, the objective that norm sets is to typify and sanction the "behaviours of those who, within (...) the professional field, although unrelated to the group and not sharing its aims", make themselves available, for reasons of self-interest or for environmental compromise, to perform illegal actions that redound to the benefit" of the criminal organisation[78], which, in this way, increases its ability "to expand and enter the nervous system of society"[79].

The uncertainty which would result from the presence of crimes referred to Articles 416-*bis* and 110 c.c., in terms of the

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[75] Article 653, par. 1, Code of Criminal Procedure in particular states: "The irrevocable criminal sentence of acquittal has the force of *res judicata* for disciplinary responsibility in front of the public authorities insofar as it is a finding that the crime does not exist or does not constitute a criminal offence or that the accused did not commit it".

[76] C. Visconti, *Sui modelli di incriminazione della contiguità alle organizzazioni criminali nel panorama europeo: appunti per un'auspicabile (ma improbabile?) riforma "possibile"* in G. Fiandaca, C. Visconti (eds.), *Scenari di mafia*, cit. at 39, 189 and following.

[77] See A. D'Alessio, *Concorso esterno nel reato associativo*, cit. at 49, 2.

[78] M. Ronco, *L'art. 416-bis nella sua origine e nella sua attuale portata applicativa,* cit. at 38, 86.

[79] As stated in the most recent and aforementioned judgment of the Court of Cassation, Sec. II, no. 17894/2014.

Constitutional principle of certainty of law would create a vacuum (also caused by the legislative technique) completely filled, according to a substantial part of doctrine, by the albeit sometimes wavering and oscillating case law[80]. Although, as noted, the case-law definition of the elements of typing would lead to an ultroneous role for case law, opposed to the principle of the separation of powers[81]. This is not the proper place to retrace the extensive debate in doctrine exploring in detail the position of the crime of association. In truth, even in the face of the widely supported need for reform, *de iure condito* there is no doubt that case law, especially that of the Court of Cassation, has succeeded, "through the processing of typological cases"[82], in the objective of qualifying the necessary requirements that constitute the offence and sanctioning collusive and contiguous conduct. The question that arises, and we find ourselves faced with a paradox, is that despite the "constant legislative activism"[83], that has enriched the legislation of the abovementioned new typings, all the attention ends up only on Article 110 c.c., insofar as it is the main lever to lift the bourgeois-Mafia lid that blurs the socio-economic roots of the evolutionary dynamics of the Mafias[84]. Or that even the innumerable "criminal instruments" have ended up creating a confused mass and inevitable "inextricable problems of legal

[80] For a reasonable and linear reconstruction of the precedent of the case law of the Supreme Court see A. Bargi, *Concorso esterno e strumenti patrimoniali di contrasto alla criminalità organizzata*, in May-August Arch. pen. 489 ff. (2012).

[81] M. Ronco, *L'art. 416-bis*, cit. at 38, 88. Also P. Morosini, *La creatività del giudice nei processi di criminalità organizzata*, in G. Fiandaca, C. Visconti (eds.), *Scenari di mafia*, cit. at 39, 538, in taking up the various positions in doctrine on the role of the judiciary, observe how "When dealing with facts related to forms of organised crime (...) the criminal trial is not a neutral ground or one free from conditioning".

[82] G. Fiandaca, *Il concorso "esterno" tra sociologia e diritto penale*, cit. at 39, 209.

[83] C. Visconti, *Sui modelli di incriminazione della contiguità alle organizzazioni criminali nel panorama europeo: appunti per un'auspicabile (ma improbabile?) riforma "possibile"*, in G. Fiandaca e C. Visconti (eds.), *Scenari di mafia*, cit. at 39, 198-199.

[84] In the sense of not considering Article 110 c.c. as a "new and bizarre invention of the judges", C. Visconti, *Sui modelli di incriminazione*, cit. at 83, 189, identifies the normative references and retraces the precedents in case law, also with distant references to the Mafia.

status"[85], thus suggesting the failure of "a weighted and consistent legislative strategy over the last twenty years"[86]. The overall repressive framework can nonetheless be appreciated and, with reference to collusion with the Mafia, the qualification in case law of many types of behaviour[87] has made "the full *acquis* of case-law on the subject" less fluid and more limpid[88].

The efforts of case law are not sufficient however; in fact, as can be gleaned from the report of the DNA in 2013, the current "legal frameworks" are revealed as inadequate "to encompass certain actual realities"[89]. Moreover, questions of undoubted importance remain unresolved, such as, as noted, the system of penalties for collusion. The same penalty being applied for participation in a Mafia-type organisation, in fact, "albeit justified on a formal level" conflicts with the "intuitive (...) different negative social value" and causes "ethical problems" and "is repugnant to the social conscience"[90]. Each occasion of legislative revision needs to overcome the cyclical nature of anti-Mafia policies in Italy[91], in the hope of a political continuity on an issue that, as has been critically observed, is often placed on political agendas as though it were "an issue of marginal interest, evocative of an intellectual *munus*", "suited at most," as has been critically noted, "for a number of Southern lawyers with no

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[85] See C. Visconti, *Sui modelli di incriminazione della contiguità alle organizzazioni criminali nel panorama europeo: appunti per un'auspicabile (ma improbabile?) riforma "possibile"*, cit. at 83, 198-199.
[86] *Ibidem.*
[87] On successful interpretative action of the Supreme Court see V. Maiello, *Concorso esterno in associazione mafiosa: la parola passi alla legge*, in Cass. Pen. 1353 (2009).
[88] See C. Visconti, *Sui modelli di incriminazione della contiguità alle organizzazioni criminali nel panorama europeo: appunti per un'auspicabile (ma improbabile?) riforma "possibile"*, cit. at 83, 197.
[89] Thus F. Beatrice, *Camorra*, cit. at 24, 90, with specific reference to the Camorra and the increasingly frequent use of the ("ambiguous") Article 110 c.c.
[90] A. Bargi, *Concorso esterno e strumenti patrimoniali di contrasto alla criminalità organizzata*, cit. at 80, 493.
[91] On this point see again R. Sciarrone, *Mafie vecchie, mafie nuove*, cit. at 2, XXI. N. dalla Chiesa, *Manifesto dell'Antimafia*, cit. at 1, IX, in placing anti-Mafia policies in the history of united Italian notes how, while other most significant critical zones that saw our country separated from the democratic ideal were addressed within "a path", "*only one* of the historical scars" has been excluded, resulting in its exponential upsurge, "Mafia criminality".

professional duties as regards those accused of criminal association"[92].

5. **Instances of repression and limitation to the autonomy of professional associations**

From the criminal definition of Mafia offences come two of three main routes that lead to the punishability of Mafia involvement by professional associations.

The first two routes for the majority of professional associations run in parallel. The first is that of criminal law: the courts are responsible for imposing the penalty and any other measures[93]; this leads, therefore, to effects directly related to the criminal proceedings and the sentence, that is, to the types of crime.

The second is the competences of the associations, with specific reference to regulatory and disciplinary ones. Such parallelism[94] is initial and continual if the charges against the professional have both criminal and disciplinary significance: the system, in fact, provides - with specific exceptions and not a few uncertainties of application[95] – that from the start of criminal proceedings (being sent to trial and not merely being under investigation) it has to suspend disciplinary proceedings until the final judgment. This is the so-called "pending criminal proceedings", set out in Article 653 of the Criminal Procedure Code, applicable in cases where accusations against the professional are the object of criminal trial.

The third route instead is autonomous, entirely contained in disciplinary proceedings and regarding behaviour that conflicts with professional rules of ethics that have no criminal

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[92] N. dalla Chiesa, *Manifesto dell'Antimafia*, cit. at 1, IX.

[93] In addition to the application of penalties for Mafia crimes, *supra* § 4, we limit ourselves to recalling "additional penalties". For certain crimes and misdemeanours (Article 19 c.c.) is foreseen the "disqualification from a profession" (Articles 30-31 c.c.) or the "suspension from the exercise of a profession" - Article 35 c.c. Consider also the measure of the "temporary ban on engaging in certain professional activities (...)" (Article 290 of the Criminal Procedure Code) following the launch of criminal proceedings.

[94] Which obviously it does not have to only cover Mafia crimes.

[95] This is the case with the Association of Chartered Accountants and Bookkeepers and, more recently, for lawyers, as observed later.

relevance (that is, that are not the subject of criminal proceedings) or that are different from other facts that simultaneously have criminal and professional relevance and are subject to prosecution. Putting it more simply, there might be behaviour that does not coincide with the broad category we have highlighted of Mafia-related crimes, but which are part of a broader category of behaviour "of a Mafia flavour", in such a way as to be characterised as offending the dignity or decorum of the profession among other things.

It is useful to focus jointly on the first two routes described, by far the more important in terms of quantity and quality. As repeatedly underlined, pending criminal proceedings are one of the main critical elements that prevent an effective exercise of professional disciplinary action. This is an assessment that seems to emerge clearly in the recent hearing of the Parliamentary Anti-Mafia Commission of the President of the CNF (the Italian Bar Council) on "the role of Italian legal profession in the fight against organised crime"[96]. The same problem can be found in all the other associations. This is not the place to provide an account of the doctrinal and case-law debate that has characterised the evolution and application of the institution of pending criminal proceedings, which developed before and after the revision of Article 653 of the Code of Criminal Procedure of 2001, while it is opportune to consider the normative evolution, certain exceptions

[96] Stenographer's report sitting no. 37 of 4 June 2014, in www.camera.it. The Commission preceded the hearing with a request to the CNF having as its subject "the lists all the lawyers under judicial or disciplinary investigation and indicating the reasons from January 2008 to the present". From the contents of the hearing, also characterised by its lively tone, emerges a clear need to overcome the pending criminal proceedings. As observed by the President of the Commission, the Right Hon. Bindi, waiting for the final judgment does not make sense because it does not guarantee the citizen's rights (12). But it is probably the results of the inquiry that aroused most concern: the number of judgments handed down by the CNF (a total of less than ten) really seem to be very few, even if the data suffer from the restrictions on access to information. In fact, as specified by the CNF, *Ufficio studi* (editor), *Dossier di documentazione e analisi*, no. 7/2014, 7, this is the court of appeal. With the result that the data provided to the Anti-Mafia Commission concerns only the decisions of the councils of the association being appealed. Moreover, as noted by the President of the CNF, Stenographer's report sitting no. 37 of 4 June 2014, 5, the same organ "has no statutory powers over local associations", so it cannot directly acquire information and data".

and a number of uncertainties in application, as well as the key points case law has arrived at, in particular in the united criminal and civil sections.

More than one decade after the review of the norm, case law has emphasised the principles of reference and outlined hermeneutic solutions which[97] confirmed, in 2014, "the relevance of the principle", for the first time enshrined in the United Sections in 2006[98], of the suspension of professional disciplinary proceedings[99]. This relationship between criminal and professional disciplinary action cannot alter the criticism made of the professional associations that do not comply immediately in imposing sanctions on members involved in Mafia crimes. We would find ourselves faced, in fact, by an insurmountable constraint of law determined by the multiple relevance of the penal and professional disciplinary offence. Consequently, the only concrete solution that can be proposed, taking this criticism into account, to be considered of an ethical, cultural and political nature, cannot but find a concrete projection in new protections of the juridical good, that is, in a desirable review of the legislation or, less likely, in reconsiderations of case law. While, as noted in doctrine, exceptions to the suspension of disciplinary proceedings would be *contra legem*, insofar as enshrined in a source of primary law, through the exercise of the normative autonomy of the professional associations, therefore by means of professional ethical sources[100].

The criminal and professional disciplinary levels end up intertwining, although not necessarily, in a second moment, that

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[97] Also when they have not directly affected professional associations, but other "public authorities" (Article 653, par. 1 of the CPP) that can be linked to the former.

[98] Cass. civ., SS.UU., 8 March 2006, no. 4893 with a note by F. Morozzo Della Rocca, *Procedimento disciplinare e pregiudizialità penale nel novellato art. 653 c.p.p.* in 4 Giust. civ. 954 ff. (2007), speaks about a "new course" for pending criminal proceedings, in opposition to previous judgments of the Supreme Court, which, even after the quoted, Law no. 97/2001, had "continued to exclude pending criminal proceedings and, therefore, the applicability of Article 295 of the Code of Civil Procedure to disciplinary proceedings".

[99] Already stated in previous case law regarding: the last being Cass. civ. SS.UU., with its judgment no. 11309 of 22 May 2014, in www.iusexplorer.it.

[100] V. Tenore, *Deontologia e nuovo procedimento disciplinare nelle libere professioni*, cit. at 19, 126.

of the professional disciplinary proceedings. In the event of the offence falling under the statute of limitations, pursuant to Article 157 of the Code of Criminal Procedure[101], for example, the proceedings will only be activated subsequently. In this (as in every other) case of sentences (for example, definitive conviction or acquittal), the process will occur at a time quite distant from an awareness of the fact. This may have important consequences. In the case of the continuing exercise of professional activity, pending the issuance of an irrevocable criminal sentence of condemnation, it might lead to a loss of credibility for the professional associations. In contrast, on the level of the protection of rights and implementation of the principle of innocence until final conviction, the professional who is finally acquitted, who in the meantime has been prevented from exercising their profession, would suffer an infringement of their rights in the case of the imposition of a professional disciplinary sanction on the basis of the same facts evaluated in the criminal trial. Here too it is the rationale of the pending criminal proceedings, as well as in the possibility on the part of the professional associations to have access to the necessary evidence, which, with greater and more suitable means, might be acquired and ascertained in the criminal trial.

The professional is therefore a subject protected by the professional association and, from the point of view of balancing interests, their status and exercise of the profession are more highly valued than, say, the protection of the prestige of the profession, both in terms of internal relationships (with other professionals enrolled in the same association or with the authorities of the professional associations) and in external relationships (with citizens, institutions, other professionals)[102].

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[101] The terms of which, it should be remembered, are doubled in the case of Mafia crimes under Article 51, par. 3, Code of Criminal Procedure.

[102] This prestige that might lead the professional to take the risk (at trial) of appealing against a judgment of acquittal, therefore one in their favour, because the formula is not one of the comprehensive ones, such as: "because the crime does not exist" or "because the accused did not commit it". Judgments, then, pronounced with other formulae (such as acquittal for reasons of non-punishability for conduct after the fact) "which, while not applying a penalty, involve - in different forms and to different degrees - a substantial recognition of the responsibility of the accused or, at least, the attribution of the fact", and which, as such, would be able to harm the "moral" but also "the legal interests

In reflecting on the possibility of overcoming the application of the institute of pending criminal proceedings, it is useful to recall, *de iure condito*, two different current disciplines which, instead, would allow the professional association to proceed in any case with its disciplinary proceedings, under given circumstances. The first is sanctioned by Legislative Decree no. 139 of 28 June 2005, "Constitution of the Association of Chartered Accountants and Book-keepers (...)", which has the status of a *lex specialis*, like the more recent law no. 247 of 31 December 2012, "New regulations for the organisation of the legal profession"[103]. These are, therefore, primary sources, operating in derogation of Article 653 of the Code of Criminal Procedure. A second hypothesis is that of the norms of the professional association which state that disciplinary power can be exercised independently, also simultaneously with criminal proceedings[104]. This second model, as critically observed in doctrine, "is exposed to objections in judgment"[105], insofar as the association rules and regulations cannot "derogate from the so-called pending criminal proceedings (...)"[106] contained in a source of primary law. In contrast, the first model of derogation merits particular attention, insofar as it is appropriate for untying the Gordian knot that prevents the overcoming of the current system based on pending criminal proceedings.

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of the acquitted" - (cf. the judgment n. 85 of the Constitutional court, 4 April 2008, in 2 Giur. cost. 1032 (2008), on this point M. Bargis, *L'imputato può nuovamente appellare (con un limite) le sentenze dibattimentali di proscioglimento: la corte costituzionale elimina (e nel contempo crea) asimmetrie,* in 2 Giur. cost. 1046 (2008) - leaving them still open to "possible consequences (...) of a professional disciplinary nature" - other than "accounting and administrative" (see on this point the United Sections of the Court of Cassation, sentence 11 march 1993, no. 6203 and no. 6989 of the Sixth Section of the Court of Cassation of 30 March 1995). In the same way, the professional, to protect their prestige and integrity, according to Article 157 of the Code of Criminal Procedure, may waive the statute of limitations to seek a judgment of acquittal with the full formula.

[103] Article 50 "Disciplinary proceedings", par. 10, states: "the professional who is subject to criminal proceedings is also subjected to disciplinary proceedings for the fact that was the subject of imputation, unless they have been acquitted because the crime did not exist or the defendant did not commit it".

[104] This is the case of the "Code of Architects (…)", (Article 37, par. 5).

[105] V. Tenore, *Deontologia e nuovo procedimento disciplinare nelle libere professioni*, cit. at 19, 126.

[106] *Ibidem*, 201.

With reference to the regulations of chartered accountants, Article 50, par. 10, of Legislative Decree no. 139/2005, in conjunction with Article 20, par. 1 of "Regulations for the exercise of territorial disciplinary functions" of 2009, provides that the council of the association "having opened disciplinary proceedings and carried out the hearing stage, may order suspension, pending other proceedings before the judicial authorities". The application of this nor[107] does not allow the clarification of uncertainties in interpretation, as noted in the professional disciplinary seat[108], despite clearer guidance already provided by the association itself[109].

The most recent law no. 247/2012 sets out a new way of interaction between professional disciplinary and criminal proceedings for the legal profession. Article 54 regulates the relationship between the disciplinary proceedings and the criminal trial, affirming that the former "are defined by a procedure and evaluations which are independent of the criminal proceedings which has as its object the same facts"; if the organs involved believe that "for the effects of the decision" it is "essential to acquire documents and information pertaining to the criminal trial", it may suspend disciplinary proceedings for a "fixed" period, but for no more than a "total" of "two years", during which "the limitation period will suspended". The law gives, therefore, discretion to the competent bodies, establishing the presuppositions for the suspension of disciplinary proceedings. It notes that professional disciplinary proceedings

[107] *Ibidem*, 200 ff., discussing in detail the current regulations, states that "courageously it is expected that prosecution does not suspend or prevent the initiation of disciplinary proceedings where the conduct constitutes *independent* evaluation of the provisions of the Code" (our italics).

[108] As an example, consider the maximum measure taken by the National Council of Accountants, 19 May 2011, no. 9, which states that "Article 653 of the Criminal Procedure Code, affecting the relationship between professional disciplinary proceedings and criminal proceedings both initiated both against same professional for the same offences, introduced a prejudice between the proceedings cited, determining in fact the suspension of disciplinary proceedings pending the criminal outcome".

[109] A question by an association to the National Council of Chartered Accountants and Statutory Auditors, on the "duration of disciplinary proceedings (...)" on 21 October 2014, was answered by the Director-General of the association reiterating the optional nature of the suspension of disciplinary proceedings, referring to the provisions of the abovementioned Article 20.

should not be suspended when the acquisition of documents and information from the criminal proceedings is not deemed as indispensable. The legislature of 2012, in this way, sought to protect the public interest by the activation of disciplinary proceedings in a certain time frame, "lining them up" (consistently with Article 55) with the regulations on the "prescription of professional disciplinary action".

Furthermore, the legislator, as regards the hypothesis of conflicting judgments, has provided a mechanism for balancing the effects. Article 55 provides for the reopening of proceedings[110] and acquittal if "a disciplinary sanction was imposed and, for those same acts, the court" has issued "a sentence of acquittal because the crime does not exist or because the accused did not commit it"; or a new free assessment of the facts when the professional disciplinary process has "issued an acquittal and the criminal court has issued a conviction for an offence committed intentionally founded on facts relevant to the determination of disciplinary responsibility, which were not evaluated by the district board of professional discipline".

These provisions have been defined as 'singular' by authoritative doctrine[111] and concerns were also expressed about them during the process of approval[112]. In any event, it is possible to appreciate their innovative character, insofar as a coordinated reading with other institutions reduces the previously mentioned criticality in the application of pending criminal proceedings. It remains, without doubt, entrusted to the associations the role of the supervision of legality in the professional disciplinary settings. The institutes will be verified in the seat of application.

In an era in which justice, because of the length of time trials take, sees its axis move increasingly towards other models, a high degree of distrust of the professional disciplinary function seems to persist. The model, hopefully, in its application, enriched

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110 "At the request of the accused or the accuser" (par. 2).

111 In this sense, G. Alpa, *L'illecito deontologico e il procedimento disciplinare nell'ordinamento della professione forense*, in Nuova Giur. Civ. 4 (2014), note 10, which defines as "singular (...) the institution of the reopening of disciplinary proceedings" as in Article 55.

112 In the *Dossier* prepared by the "Ufficio studi del Senato" "ai disegni di legge", in November 2012, no. 406, in http://www.senato.it/service/PDF/PDFServer/BGT/00737342.pdf, 17 to 18.

by an evolution characterised by the desire to maintain solid references to the level of principle, can also be replicated for other associations through national legislative action, while respecting, where necessary, the special features of the regulations of each profession. The practical application of the new regulations for lawyers generates new presuppositions that should allow the legal associations to resolve the critical issues recently highlighted in the Parliamentary Anti-Mafia Commission, in particular the effective ability of the association to protect the interests of the whole community with regard to combating Mafia infiltration in the sectors of the economy, the institutions and society[113].

Undoubtedly, from the combined reading of other provisions, it is possible to pick up on the signs of a process of improvement which, although not complete, when applied with determination, clarity and widely shared objectives, might support the opening of a new phase. The reference is, in particular, to the provisions concerning: prescription, typing[114], limitations on the suspension of disciplinary proceedings, information and control activities of the national bodies over the territorial, interim suspension, disbarment, training of the members of the district, territorial and national disciplinary councils and guaranteeing the independence the decision-making of the same in the exercise of their disciplinary functions. Each of these elements presents problem that have to be considered individually and in the wider context. Among these, the last element is what is commonly considered the major cause of the supposed inefficiency imputed to the professional associations. In the public mind, in fact, the overlapping of roles between the professional who violates the rules of ethics and the other professionals who evaluate the application of sanctions has a negative impact on independence and reasoned judgment. Such a critical reading of the phenomenon, which has many supporters, however, must be brought back to the juridical and dogmatic level. It must be said that it is not at all easy to formulate models capable of ensuring a proper balance between (the principles of)

[113] *Infra* § 6.

[114] As happens, for example, for the Lawyers' Code of Ethics, which lists the duties of conduct in a series of articles, the last paragraph of which provides for the sanction that can be imposed.

fairness or impartiality[115] of the professional disciplinary bodies and the independence of the professional associations that takes the form of an appropriate and necessary level of representation of the professionals[116]. To take as the basis of the reasoning a practical element, we can look first at the composition of the disciplinary boards, trying to define the features of the models outlined by the system.

A first model that moves in the direction of extending the professional disciplinary bodies to include subjects other than the professionals themselves is that of the notaries. The system foresees that the competent regional administrative disciplinary commission should be chaired by a magistrate[117]. What we have, then, is a mixed college. A further guarantee is provided by the challenge on appeal[118] and, on the occurrence of certain conditions, to the Court of Cassation[119].

A second model is the one outlined with the rules regarding deregulation in the Decree by the President of the Republic no. 137 of 7 August 2012. For the associations affected by this legislation - the majority (the medical and legal professions are excluded) - Article 8 establishes territorial disciplinary councils in the territorial boards of the associations, to which are entrusted the tasks of investigation and decision regarding disciplinary matters relating to members. It is first established that, regardless of the number of members of the disciplinary board, the single disciplinary matter must be bealt with by a

115 V. Tenore, *Deontologia e nuovo procedimento disciplinare nelle libere professioni*, cit. at 19, 114 ff., 179 ff. and 213 ff.

116 On this point, see the judgment no. 10875 of the United Sections of the Court of Cassation, 30 April 2008, at http://www.iusexplorer.it, according to which the disciplinary function is exercised to protect the interests of the same category by the same professional bodies that represent "the professional group most directly offended by the behaviour of one of its members and therefore more interested in the repression of ethically improper conduct".

117 The reference is to Legislative Decree no. 249 of 1 August 2006, amending Law no. 89 of 16 February 1913. Articles 148 to 153 lay down a set of rules that define the model of the notarial profession.

118 The reference is to Article 158, par. 1 of Legislative Decree no. 249/2006 as amended in 2011, with the limits of applicability pursuant to Article 36 of Legislative Decree no. 150 of 1 September 2011. On this point see Cass. Civ., Sec. II, 23 January 2014, no. 1437.

119 The first model (notaries) was subject to criticism, M. Gozzi, *Il procedimento disciplinare nell'ordinamento delle professioni,* 4-5 Riv. Dir. Proc. 956 ff. (2013).

board consisting of three persons, chaired by the senior member[120]. For the nomination of members of the disciplinary councils, the basic principle is that of the incompatibility between the office of the territorial association and the office of member of the corresponding territorial disciplinary council. This principle is also extended to the national disciplinary councils, in line with the regulations of the national councils of the association. With regard to the appointment (by the president of the court) of external parties (magistrates), it is possible to also include subjects who are not members of the association[121]. The role of the president of the court should be highlighted insofar as they have to select the other components from a list drawn up by the associations themselves[122].

This function, instead, is not foreseen in the new lawyers' association[123] – and in this case we would be in the presence of a third model – which foresees an elective system. This choice of the legislature has given rise to criticism because it would lead to a compression of the "relationship of representation between board and members"[124]. On the other hand, it can be held that the role attributed to the president of the court might represent a further guarantee, substantial but also relating to image, of the independence and authority of the names chosen to play an

[120] This point was subject to criticism, insofar as, M. Gozzi, *Il procedimento disciplinare nell'ordinamento delle professioni*, cit. at 119, § 5, the reduction in the number of members would impede - as instead happened previously, when it was the entire professional association that reached a decision - the pronouncement of the "conspicuous plurality of elected members who ideally should have represented the judgment expressed by the entire professional category".
[121] See article 8, par. 2 and 4.
[122] According to Article 8, par. 3, those who can be nominated are "specified in a list of individuals proposed by the corresponding association boards or colleges (...) subject to the binding opinion of the supervisory minister".
[123] According to Article 50, par. 2, of Law no. 247/2012, which provides that "the district disciplinary council is composed of members elected by democratically one member, one vote, in respect of gender representation under Article 51 of the Constitution, according to the regulation approved by the CNF".
[124] On this point, See M. Gozzi, *Il procedimento disciplinare nell'ordinamento delle professioni*, cit. at 119, 5, who observes how the general provisions contained in Legislative Decree 137/2012 would be going in the opposite direction to those of the notaries and the legal profession.

important role in the protection of the public interest and the positions of individual rights of the members of the associations.

It is evident how the models will be tested in the disciplinary setting and evaluated considering the other precepts laid down in order to guarantee independence[125]. The model that foresees elections and therefore finds concrete expression in the principle of the accountability of members practicing in full the autonomy of the association will equally be able to meet the objectives of independence and reasoned judgment. We cannot, however, overlook the existence of a greater degree of permeability and risk for the boards, particularly in territories and historical phases in which the presence of the Mafia is heightened.

From the insights gained in the analysis of one of the most important aspects and from the consideration of the need for a reading of the system that considers individual norms in their practical application, it is easy to understand how, by returning to an organic vision, the task of opposing Mafia infiltration and contiguity in a broad sense cannot fall only to the legislator. On these conceptual foundations a real anti-Mafia sense could take root in the associations, in turn traceable to a broader concept of anti-Mafia ethics, which should involve all public or private bodies that have their own codes of ethics and disciplinary bodies called upon to judge responsibilities and impose sanctions, also in terms of warning and guarantee for the daily exercise of all the functions and activities that, inevitably, impact on society and the institutions.

6. For an Anti-Mafia policy in professional associations amid inefficiencies in the information and control systems.

There are two additional elements to be evaluated: the system for the collection of information and data on professionals involved in the Mafia and the supervision of the workings of the

[125] It should be remembered, in lowering the level of risk, how, like the notaries, the regulations for the lawyers' association (Article 50, par. 3 of Law no. 247/2012) provide that "members belonging to the association in which the professional against whom they must proceed is inscribed" cannot be members of the judging panel of the district disciplinary council.

associations. The description of these two factors might contribute to the evaluation of the effectiveness of the system of controls with respect to cases of inertia and improper exercise of the disciplinary function. The analysis of the organisation and the exercise of the administrative and judicial powers given over to the control and further investigation of the legal facts we are interested in appears necessary for various reasons. Above all, in the face of a sometimes harsh academic criticism of the activity of the associations[126] and sociological contributions that highlight the negative effects of a certain corporative culture that "prevents the recognition of the presence or infiltration of the Mafia in its own professional association"[127], it is necessary to reflect starting again from the norms. It must first be noted that there are no systematic insights in legal doctrine[128] nor unique normative references, and "the ways in which this form of 'control' can and should be carried out" appear insufficient.

The supervisory functions, exercised in consideration of the legal nature of public entity of the associations, have been attributed to a large extent, though not exclusively, to the Ministry of Justice[129]. These consist essentially in requests for clarification and, sometimes, in activities of inspection. Their goal is to verify the proper operation and exercise the power of dissolution and shutting down of local or national associations in the case of proven dysfunction or "of serious and repeated violations of the law, variously defined by the regulations as

[126] As regards "false guardians of professional ethics" see F. Stefanoni, *I veri intoccabili* (2012), 142 ff. The author, taking up a number of legal cases, and statistics on the activity of the associations, highlights the paucity of cases that result in penalties; moreover, among the factors conditioning the disciplinary function are: "the subjective qualities of the members, resources and time available, the number of statements, backlog to be dealt with, (...) good relationships, friendships or enmities (...)" and electoral favours. Also in the case of professionals involved in or convicted of collusion with the Mafia, the situation is described as particularly critical. For a reminder of the case studies in the field of the collaboration of professionals with the Mafia see N. Amadore, *La zona grigia, professionisti al servizio della mafia* (2007).

[127] See on this point N. dalla Chiesa, *Manifesto dell'Antimafia*, cit. at 1, 209-213.

[128] On this point, see V. Tenore, *Deontologia e nuovo procedimento disciplinare nelle libere professioni*, cit. at 19, 228 and C. Golino, *Gli ordini e i collegi*, cit. at 51, 273 who point out the deficiencies in this area.

[129] In particular, the Directorate General of Civil Justice, Office III, sectors 1 and 2, respectively "Notarial" and "Professions".

violations of the duties of the organ (...) tasks which lie with the Ministry of Justice"[130].

The control function is also exercised by the public prosecutor[131], either independently or in support of the Ministry. In this case too, the functions attributed do not allow a single reading, in that, except for certain provisions of a general nature, they have as their normative reference the specific legal provisions of the individual associations[132].

However, it is useful to analyse some of the functions that might be exercised. In addition to the role of pushing for the launch of disciplinary proceedings (also exercisable by fellow professionals, local boards or third parties), the public prosecutor, informed by the associations of the decisions taken in disciplinary proceedings, has the power to impugn them[133]. The functions of the prosecutor thus appear more incisive than the power of supervision of the Ministry[134].

The disciplinary measures pronounced by the associations can, therefore, be challenged, as can be seen from most of the laws governing the individual associations, in the national councils, in the ordinary court of first instance or appellate or cassation (united sections and not), or, in some cases in the administrative court[135].

The disarticulation and uncertainty of the regulatory references[136] and of the extent of controls understood in the broad sense, represents a first acute shortcoming of the supervisory system, so non-linear and ineffective at the operational level as to

[130] *Relazione sulla amministrazione della giustizia nell'anno 2013 - Dipartimento per gli affari di giustizia*.

[131] V. Tenore, *Deontologia e nuovo procedimento disciplinare nelle libere professioni*, cit. at 19, 242 and *amplius* 242-252: "Identified each time as prosecutors at the courts of appeal and/or prosecutors at the courts in the district where territorial disciplinary boards are located (...)."

[132] *Ibidem*, 245 ff., the author reconnects the individual functions to the specific legislative disposition of the associations.

[133] The supervisory function may also consist in the possibility of participating in the preliminary disciplinary proceedings.

[134] Consider also the role that these exercise before the Court of Cassation in case of appeal. On this point, see V. Tenore, *Deontologia e nuovo procedimento disciplinare nelle libere professioni*, cit. at 19, 191.

[135] *Ibidem*, 166-198 for a reconstruction with doctrinal and case-law references.

[136] Think merely of the different role assumed by the prosecutor according to the law establishing the association.

constitute an initial strong limitation for the subject of Mafia collusion, but in general for any other matters relating to the associations. As regards the authority of the Ministry, a body with reference to which we can actually speak of supervisory powers, dissolution is an extreme act, principally intended to punish repeated violations or failure to function and thus leaving individual violations outside the margins of operation, such as inertia with respect to individual disciplinary actions or specific misapplication of the rules of professional ethics. We can therefore conclude that for this type of supervision the principle of the autonomy of the associations continues to prevail, with a balancing of interests that appears to be insufficient.

To this must be added the other critical issue represented by the shortage in terms of information that can be detected in the systematic collection of data concerning professionals involved in Mafia crimes and the communication of the same to the organs, not just of control. As there are no systems of data collection, there is obviously no possibility of accessing compiled and individual data that bring together Mafia crimes, professionals, the state of criminal and professional proceedings, disciplinary measures taken or inertia. This state of affairs does not even allow important agencies responsible for combating the Mafia, such as the Parliamentary Anti-Mafia Commission, access to comprehensive information. This also affects the ability of operators and scholars to have access to data on the subject.

The most comprehensive database should be the "single national database of anti-Mafia documentation"[137], obviously with limited access for security and investigative reasons, of extremely wide scope, whose targeted access, among other things, would lead to great expense for such complex inquiries. The amount of information contained in it does not allow us to imagine its being used for the purpose under discussion, unless it a specific function be established normatively.

The databases of the professional associations not only do not allow, therefore, systematic research, but also appears to be absolutely inadequate[138] compared to their stated aims, even only

[137] See art. 96-99 of Legislative Decree n. 159, of 6 September 2011.
[138] Though there are some partial exceptions: think of the files of the Association of Chartered Accountants and Bookkeepers.

to gain timely information to be reworked later. One step forward, which could be easily carried out, is that already hoped for of giving over to the judiciary the monitoring of "the judgments of the Court of Cassation"[139] on Mafia crimes, up to those on the first and second degree. A key role could also be played by the Parliamentary Anti-Mafia Commission which already has an important archive containing a wealth of documentation, which includes reports from judges, law enforcement officials, journalists and researchers[140].

From a point of view of legislative approval, therefore, it is necessary to consider this limit, since, as has been critically observed, "there is no database of professionals arrested for criminal association or aiding and abetting (...). There are, unfortunately, no numbers, statistics or monitoring that might provide an idea of the macro phenomenon. In practice it is not known how many white-collar workers are arrested or involved in investigations into the Mafia"[141]. Some steps in this direction were made by the Anti-Mafia Commission of the current legislature, which has initiated, for now with the CNF, a path of cooperation that will hopefully quickly reach the area of interest. The goal must be to overcome incongruous barriers to access and to reach systems, albeit differentiated, for the sharing of data of interest. The current critical issues emerged during the Anti-Mafia Commission[142] at the hearing of the President of the CNF in June 2014. Thus, for example, it was recognised how the law does not permit the CNF "to acquire directly the provisions that have been filed in cases in which disciplinary proceedings were initiated and then for the most varied of reasons the proceedings were concluded"[143]; nor is there an organic system suitable for acquiring information for the CNF about professionals facing prosecution[144]. In these conditions it is difficult to imagine a new

[139] See N. dalla Chiesa, *Manifesto dell'Antimafia*, cit. at 1, 103.
[140] See L. Pepino, *Antimafia. I. Commissione parlamentare*, in M. Mareso, L. Pepino (eds.), *Dizionario di mafie e antimafia* (2013), 10-11, which on this point also refers to M. Pantaleone, *Antimafia occasione mancata* (1969), 11.
[141] N. Amadore, *La zona grigia, professionisti al servizio della mafia*, cit. at 126, 41. The reference is to Cosa Nostra, but the judgment is obviously extendable to the other Mafias. See also 45-46.
[142] On which, *Stenographer's report* cit. at 96, 5 discussed above.
[143] *Ibidem,* 5.
[144] *Ibidem*, 47.

course that places among the priorities of the associations the fight against the Mafias. We are talking, in fact, of essential conditions for the operability of the organs of the associations.

Placing the reasoning in a broader perspective, the culture of legality should be the focus of political debate, prior to and simultaneous with what takes place in the national, European and international legislatures, and the professional associations. The concept of the culture of legality must have a wide scope, with a natural dialectical-multidisciplinary thrust, extending to new legislative and associative systems, with the aim of following up the proposals made by the highest institutions in the field[145] and the movements and associations involved in the anti-Mafia struggle.

The impetus for reform should be born in a state of tension capable of pushing levels of participation "towards a civil or cultural movement", which is that of the anti-Mafia movement, beyond its borders and towards every other form "of participation (...) political, trade union, associative, cultural (...) for peace (...), environmental (the fight against the eco-Mafia), (...) for justice or social, civil and human rights"[146]. The permeability and the versatility of the shapes and textures of an even wider and transverse anti-Mafia would create a natural contrast to the "systemic nature of the Mafia phenomenon"[147]. The anti-Mafia as a political, social, institutional, legislative, judicial reality would be greatly strengthened by a real anti-Mafia in the professional associations [148], shared by all the professional associations, without uncertainty on the legislative, disciplinary, cultural,

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[145] F. Beatrice, *Camorra*, cit. at 24, 90.

[146] N. dalla Chiesa, *Antimafia (Movimento)*, in M. Mareso, L. Pepino (eds.), *Dizionario enciclopedico di mafie e antimafia* (2013), 47.

[147] *Ibidem*, 25, discusses about the systemic nature.

[148] Among the initiatives we might recall is the "Ethical charter of the intellectual professions" born in Modena in 2011 as part of the joint committee of the professions and the Manifesto of the Committee of professionals (www.professionistiliberi.it) of Palermo, who along with LiberoFuturo and Addiopizzo foresee the voluntary signing by professionals and public or private employees of a "Declaration of Commitment" with membership of a public directory that involves the obligation to respect the contents of the Manifesto, which if violated will see the exclusion of the professionals. The declaration can be seen at http: // www.professionistiliberi.org/?cmd=il_manifesto.

ethical and communicative levels, carefully conceived in terms of legislative technique and in harmony with Constitutional principles, but bold in wanting to oppose any denial and firm in sanctioning the phenomena of collusion and aiding and abetting. Every tool available to the professional associations should be pointed in a single direction, as should ethical training, which should be carried out following a multidisciplinary approach, reconnecting behaviour to values and principles, to the effects on the economic and social level, with the intention of animating a "collective consciousness" aimed at strengthening, as has been observed, "a coercive power that is inherent in the social norm, from blame to the isolation of the group". Evidently the definition of behaviour contrary to the law and the rules of professional conduct is essential and the professionals themselves should contribute to this through an ongoing case law (in the broadest sense) of the associations, one that is unitary and transparent. The borders between legality and illegality must be as visible as possible, while in some places they are sometimes wilfully obscured for the benefit of a few, with the serious consequence of not being identifiable any more or, and this is even more serious, not shared and recognised by the majority. Only by ensuring the credibility of the professional and social role of professionals can a clear contrast be achieved to the (non) culture of lawlessness that takes root and thrives in the grey area.

From this point of view, it is useful to refer to the legal nature of professional associations and to the different forms of autonomy. Professional associations foster collective[149] and general interests. They are the expression of «a social group»[150] and recognise themselves in their own "social sub-layer"[151]. By respecting the limits established by the legal system, it is the professional associations' duty to discipline ethically and deontologically the professionals' conduct and exercise the powers of control and sanction. Such power is to be concretely intended in a dynamic sense, always taking into account the evolution of the above-mentioned interests.

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[149] Of the professional enrolled in the professional associations.

[150] F. Teresi, *Ordini e collegi professionali* (*ad vocem*), in Dig. Disc. Pubbl. 452 (1995).

[151] G. della Cananea, *L'ordinamento delle professioni*, cit. at 52, 1175.