

The Case of “Mafia Capitale”: The Judicial Proceedings Prosecuted by the Anti- Mafia District Office of Rome against Massimo Carminati and Salvatore Buzzi

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The “Mafia capitale” trial marked a significant point in the interpretation of the specific elements of mafia-style association valid in Italian law. This paper will examine the various stages of the trial proceedings, focusing in particular on the final ruling of the Court of Cassation. This study thus further develops the structure of the crime referred to by art. 416 bis Italian criminal code, discussing in order the externalization methods of the so-called “mafia method.”

Keywords: Mafia; Rome; Italian law; Corruption.

Introduction

One of the most discussed trials of recent years is the one everyone knows as “Mafia capitale.” The case is also commonly called the “Middle World”, which originates from the contents of a well-known telephone interception gathered over the course of the investigation. The one who was referred to as the head of the criminal structure – clearly inspired by the English writer John R. R. Tolkien, the creator of the mythical land called “Middle Earth,” where the events of “The Hobbit” and the “Lord of the Rings” took place – explained to an interlocutor how it was possible for street and white collar criminals to communicate among themselves: “In the theory of the middle world, there are, as they say, the living above and the dead below. And we’re in the middle. That means that there is a world in the middle where everyone meets”¹.

The investigation immediately took the spotlight in Italian media. For years, in newspapers, on social media, on the radio and on talk shows, no one talked about anything else. In just a few months documentaries, films, and books were published dedicated to “Mafia capitale.” The book by the journalists Marco Lillo and Lirio Abbate entitled “I re di Roma. Destra e sinistra agli ordini di mafia capitale”, published in February 2015, was a best-seller for months. The authors explained: “Rome discovered that organised crime was right at home, and it came to know about 416 bis: the crime of mafia-style association for committing crimes”². Netflix aired “Suburra”, a television series drawn from the eponymous

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¹Insolera (2019) at 76; Pignatone & Prestipino (2015) at 95; Sicignano (2021) at 251.

²Abbate & Lillo (2015).

novel by Carlo Bonini and Giancarlo De Cataldo, which was clearly inspired by “Mafia capitale”.

Foreign media also devoted significant space to the investigation. While the New York Times claimed: “the inquiry has blossomed into a national scandal and a reminder that virtually no corner of Italy is immune to criminal penetration”³, Le Monde carried a cartoon depicting a giant octopus that enveloped Rome with its tentacles⁴. The Independent also gave much space to the affair, claiming that “even by Rome’s standards the tsunami of sleaze that has swept over the eternally corrupt city in the past 48 hours has left its weary citizens slack-jawed in disbelief”⁵. El Pais was of the same opinion, “*a pesar de las operaciones policiales que terminaron con «la quinta mafia de Italia», La ciudad todavía no se ha repuesto de décadas de saqueos ni de una clase política incapaz de sobreponerse a la corrupción y la mala gestión*”⁶. According to Newsweek, “the biggest mob trial in modern-day Rome opens on Thursday, with a one-eyed former neo-fascist gangster and 45 other defendants in the dock accused of operating a mafia network that plundered city coffers”. The Daily Beast, one of the most-read news sites in the US, dealt with the topic in an article entitled “In Rome Mafia Trial, One-Eyed Gangster and his 40 Thieves”⁷.

The Charges

The investigation was carried out by the Anti-Mafia District Office of Rome⁸.

Among the various indictments, those arrested were charged with the crime referred to in Article 416 bis Italian criminal code (c.c.)⁹ of being part of a mafia-

³Povoledo (2014); Sergi (2015): ‘According to the prosecutors, this trial is all about the “mondo di mezzo,” the “world in between” and the “in-betweeners” who populate it are public officials, counsellors, local politicians, mediators and brokers who are close to figures in higher office (the “world above”), and who are seen as likely to accept promises of a better career and/or other benefits and income by exchanging favours with figures in the “world below”.’

⁴Ridet (2014).

⁵Day (2014): ‘Roman prosecutors have seized a former terrorist and dozens of associates whom they claim have formed a new Mafia group that has sucked hundreds of millions of euros out of the near-bankrupt capital. It wasn’t a shock that politicians, officials and businessmen were on the make. But it’s claimed they were directed by a newly formed Mafia headed by a one-eyed, former neo-fascist who enjoyed, according to some reports, the collusion of police and secret services. “We have identified the criminal organisation that we call Mafia Capitale, which is Roman, without links to other southern Mafias, but uses Mafia methods,” said Rome’s chief prosecutor Giuseppe Pignatone, after he ordered 37 arrests today. Among those held was Massimo Carminati, a former member of the far-right terror group NAR. Prosecutors believe he was leading the group’.

⁶Ordaz (2015).

⁷Latza Nadeu (2017).

⁸Angeli, Forgnone & Giannoli (2014); Consulich (2016) at 126.

⁹Art. 416 bis, Italian criminal code: ‘Persons belonging to a Mafia-type organisation of three or more persons shall be liable to imprisonment for a term of between three and six years. Persons who further the activities of or manage the organisation shall be liable to imprisonment for a term of between four and nine years for that offence alone. A Mafia-type organisation is an organisation whose members use the power of intimidation deriving from the bonds of membership, the state of subjugation and conspiracy of silence that it engenders to commit offences, to acquire direct or indirect control of economic activities, licences, authorisations, public procurement contracts and

type unlawful association operating in Rome and Lazio, which made use of the power of intimidation arising from ties to the association and the conditions of subjection and “*omertà*” (the code of silence)¹⁰ that came with them. This was all to commit crimes of extortion, loan sharking (usury), money laundering, bribing public officials, and acquiring direct or indirect management of and control over economic activities, concessions, authorizations, procurement contracts, and public services¹¹.

The head of the tight-knit group was identified as Massimo Carminati, a former far-right terrorist, and a past member of the so-called “Magliana Gang”. Salvatore Buzzi, who had been previously condemned in the 1980s to fourteen years in prison for voluntary manslaughter and slander, who ran the association’s economic activities through a network of cooperatives. The main areas in which the group conducted its illegal affairs were waste collection and disposal, receiving refugees, and maintaining public green spaces¹².

According to the charges, this was a very different mafia from the classic organizations operating in southern Italy, one characterised not by domination of its territory, but rather by the control of a particular business and political environment¹³. Indeed, thanks to Carminati’s “criminal prestige”, the group had

services or to obtain unjust profits or advantages for themselves or others, or to prevent or obstruct the free exercise of vote, or to procure votes for themselves or others at elections. If the organisation is armed, members shall be liable to imprisonment for a term of between four and ten years in the circumstances described in the first subsection and between five and fifteen years in the circumstances described in the second subsection. The organisation shall be deemed to be armed if its members have access to weapons or explosives for the purposes of furthering the aims of the organisation, even if hidden or stored. If the association is directed towards committing one of the crimes under Articles 600, 601, and 602, a prison sentence of between five to fifteen years is applied in the cases foreseen in the first paragraph and from four to nine years in cases foreseen in the second paragraph. If the economic activities which the members intend to acquire or maintain control over are financed in whole or in part by the proceeds of crime, the penalties set out above shall be increased by between a third and a half. In the event of a conviction, instruments or means which were used or intended to be used to commit the offence and the proceeds thereof shall be forfeited. The provisions of this section are also applicable to the Camorra and any other organisation, whatever its name, that make use of the power of intimidation deriving from the bonds of membership to pursue goals typical of Mafia-type organisations’.

¹⁰Grandi (2016): ‘The interpretation given in the literature and case law of the concept of “silence” (*omertà*, the code or conspiracy of silence) is more complex: Italian legislators have viewed the phenomenon from a sociological perspective, describing a typical social situation strictly connected with the presence of the “traditional Mafia”. One of the many definitions proposed conceives *omertà* as a form of passive resistance to state authorities, which spreads throughout the community due to the supremacy of the mafia and which the latter promotes by using fear and intimidation and nurturing widespread mistrust of the public authorities. According to another definition, *omertà* is an unconditional and almost absolute refusal of people to cooperate with law enforcement authorities, not only because they fear of retaliation and wish to protect the group they belong to, but also because they deny the government’s right to interfere with individual lives and the group’s affairs’.

¹¹Brancaccio (2016) at 91.

¹²Apollonio (2016) at 133; Ciccarello (2016) at 107; Dalla Chiesa (2015) at 1; Martone (2016) at 29; Mete & Sciarone (2016) at 10.

¹³Vitarelli (2020) at 3.

acquired an “independent intimidation capacity” such that it created a “widespread propensity for fear” that was well-suited for instilling subjection and “omertà”¹⁴.

The Pre-trial Detention¹⁵

Initially, following the petitions by those defendants regarding the legality of the pre-trial detention, the charges were confirmed by the Court of Cassation¹⁶. In twin orders the Supreme Court recognised the mafia-like character of the group, recalling its “corruptive-collusive dimension”¹⁷. In fact, it was argued that the systemic repetition of its corruption activities had contributed to increasing the

¹⁴Candore (2018) at 1168.

¹⁵In Italian law, the pre-trial detention (also known as remand, or provisional detention) is when a defendant is placed in custody, before and until the trial is ended. This measure could be requested when there are serious circumstantial evidence demonstrating that the defendant has committed a crime. Moreover, it is necessary to prove that there is alternatively: a flight risk, the risk of destroying or creating false evidence, or at least the risk of committing another crime. The judge for preliminary investigations, upon the request of the public prosecutor, have authority to ordering it. The defendant or the prosecutor can appeal against such decision at the Court of Liberty, that can uphold, modify, or quash the Judge's order, reviewing all the circumstantial evidence. This decision can be appealed before the Court of Cassation.

¹⁶In Italy, the Court of Cassation is at the top of the ordinary jurisdiction; between the main functions that are conferred by the Basic Law on the Judiciary of 30 January 1941 no. 12 (art. 65) is to ensure "the exact observance and uniform interpretation of the law, the unity of the national objective law, compliance with the limits of the various jurisdictions." One of the key features of its mission and unifying nomophylactic essentially aimed at ensuring certainty in the interpretation of the law (in addition to issue judgments of the third degree) is the fact that, in principle, the current rules do not allow the Court of Cassation to know the facts of a case unless they prove by deeds already obtained in proceedings in the pre-trial stages, and only to the extent that it is necessary to know in order to assess the remedies that the law allows you to use to motivate an application at the Court. The appeal in cassation may be lodged against the measures issued by the ordinary courts at the appellate level or in degree only: the reasons given to support the use may be, in civil matters, the violation of the right material (*errores in iudicando*) or procedural (*errores in procedendo*), the vices of motivation (lack, insufficiency or contradiction) of the judgment under appeal; or, again, the grounds for jurisdiction. A similar scheme is expected to appeal to the Supreme Court in criminal matters. If the Court finds one of the defects mentioned above, has the power and duty not only to quash the decision of the judge in the lower grade, but also to enunciate the principle of law that the contested measure must be observed: the principle that even the national court cannot fail to comply when shall review the facts of the case. The principles laid down by the Supreme Court are not, however, binding on the courts, in general, when they must decide different causes, in respect of which the decision of the Supreme Court may, however, be considered a "previous" influential. In fact, the judges of the lower courts shall comply with decisions of the Supreme Court in the majority of cases. You do not need any special permission to file an appeal before the Supreme Court. According to article 111 of the Constitution every citizen may appeal to the Supreme Court for violation of the law against any decision of the judicial authority, without issuing any appeal in civil or criminal, or against any measure restricting personal freedom. The Court of Cassation is also assigned the task of establishing jurisdiction (ie, indicate, when you create a conflict between the ordinary courts and the special, Italian or foreign, who has the power to treat the cause) and the competence (ie, to resolve a conflict between two lower courts). The Supreme Court also performs non-judicial functions relating to elections and referendum for the repeal of laws.

¹⁷Cass. pen., sez. VI, 10 aprile 2015, n. 24535 e Cass. pen., sez. VI, 10 aprile 2015, n. 24536, in *Dir. pen. cont.*, 15 June 2015.

criminal fame the organization enjoyed, which allowed it to leverage – particularly with regard to the business owners who had no intention of adapting to the rules of the illicit market – its aura of invincibility that came from the dense network of support offered to it by a circle of reliably subservient public officials¹⁸.

According to the Court, therefore, for the purpose of determining the applicability of the crime of a mafia-type unlawful association for committing crimes, the intimidating force exerted by the associational ties, which led to subjection and “omertà”, can be directed to threaten either the life or personal safety and/or the essential existential, economic, or work conditions of specific categories of people. With a reserve of violence firmly remaining as part of the association's heritage, this intimidating force can be acquired by the creation of an organizational structure that, in virtue of its political and electoral connections and by shows of force and systematic bribery, exerts widespread influence over awarding procurement contracts, granting concessions, controlling areas of activity by public entities or equally public businesses, to the extent that it can substantially nullify competition or new initiatives by those who do not comply or are not connected to the group.

The Court of Cassation discerned a sort of operational continuum between the practices of intimidation and bribery in a symbiotic relation in which each one feeds the other in the association's common perspective of imposing its own illicit rules over the area of public disbursements¹⁹.

¹⁸Fornari (2016) at 24; Insolera (2015) at 223; Manzini (2016) at 107.

¹⁹Ronco (2013) at 139; Visconti (2015b); Grandi (2016): *‘The applicability of Article 416-bis Cc even when no violent conduct is engaged in was upheld by the Court of Cassation in its very recent decisions concerning the unlawful activities affecting the public administration of the municipality of Rome, referred to as “Mafia capitale”. According to preliminary investigation results, a powerful criminal organization had gained control over the administrative procedures for the awarding of public procurements, grants and permits, related to a variety of profitable economic activities (waste collection, reception of refugees, public parks maintenance), by means of systematic bribery of public officials. While the defence lawyers contended the criminal group had not taken advantage of the characteristic mafia-type intimidation, but only of the complicity of corrupted civil servants, the Court of Cassation has held that: The effect of the intimidating power stemming from the bonds of association has been aimed not so much at determining the activities of the corrupted public servants who act as members of the criminal group, which ensures and increases their illicit profit; but rather as a means of establishing and preserving a conventio ad excludendum, in order to preclude the free participation in public procurements by undertakings that do not accept the system of rules imposed by the criminal group itself’. In other words, systematic corruption had enabled the criminal group to influence the decisions of a number of public offices in Rome, with no need to make use of violence or threats; as a consequence, potential competitors and, more in general, all the individuals involved in public procurement had experienced a “condition of subjugation which was so widespread and deep-rooted that nobody dared to voice opposition, either at a political or judicial level, before criminal courts or before administrative ones’.*

The Judgment of the Tribunal of Rome²⁰

While accepting the charges almost in their entirety, the Tribunal of Rome reversed the conclusions of the Court of Cassation by excluding the existence of the mafia- type unlawful association²¹.

The Tribunal found in particular the existence of two distinct non-mafia criminal groups: one directed by Massimo Carminati dedicated to committing common crimes of an extortionist and usurious nature, and the other directed by Salvatore Buzzi that was active in the area of crimes against the public administration.

The Court added that the specifics referred to in Art. 416 bis c.c. require the present and concrete operation of the mafia method by means of three specific requirements: 1) the capacity of intimidation, understood as the ability of the organization to induce fear by its steady and not infrequent disposition to exert coercion; 2) subjugation, understood as a state of psychological submission of the potential victims of intimidation – identified on the basis of the territory of influence of the criminal consortium – deriving from serious and inescapable danger due to the strength of the association; 3) “omertà”, understood as the presence in its dominated territory of a general and not infrequent refusal to work with the justice system, a refusal and fear that commonly manifest as false and reticent testimony or favouritism.

According to the Tribunal of Rome, an association aiming to illegally obtain public contracts through corruptive agreements can never be mafia-like. For the purposes of Art. 416 bis c.c. the use of the mafia method is in fact necessary, and there is no crime under that statute when the illegal outcome is attained by systematic recourse to bribery, even if it is integrated into a context of political and business groups, and even where these prove to be particularly dangerous because they are capable of steadily infiltrating the political-economic sphere. If the association establishes an eminently corrupt relationship without well and truly subjugating the employees and directors of the Roman administration by the group's efforts, it is not a mafia²².

This does not deny that, broadly speaking, the facts of corruption can be crimes of a mafia-style organization, or that they could take place in an environment that appears asymptotically similar to that of a mafia-style subjection; it simply says that if they are the predominant activity of a newly formed criminal

²⁰In Italy, once an investigation is completed, the Public Prosecutor opens a criminal case in order to initiate a criminal trial, unless he or she believes that the case may be dismissed. A criminal proceeding usually takes place in three stages: in a court of first instance (Giudice di pace, Tribunale, Corte di Assise), the Corte di Appello and the Corte di Cassazione. In the first stage, all the evidence – witnesses and documents – is obtained and ends in a conviction or acquittal. Both the defendant and the prosecutor may appeal the sentence to the Court of Appeals, which will retry the defendant. The ruling of the Court of Appeals may be appealed again to the Court of Cassation, which may not rule on the merits. Both the Court of Appeal and the Court of Cassation can confirm, modify or annul the sentence. Once all the stages of the trial and appeal process have been completed, the verdict is final.

²¹Trib. Roma, sez. X, 20 July 2017, n. 11730, Pres. Ianniello, cons. Orfanelli-Arcieri, in *Foro it.*, II, 2018, 176 et seq.

²²Amarelli (2018) at 960; Fiandaca (2018) at 176; Zuffada (2017) at 285.

group that does exhibit mafia-style methods with public officials or interested private parties, then the *quid pluris* that distinguishes a mafia association from an ordinary one cannot be recognised²³.

The Judgment of the Court of Appeal of Rome

The Court of Appeal of Rome overturned the conclusions of the Tribunal, the court of first instance²⁴.

At the outcome of the appeal by the public prosecutor and the defendants, the appellate court judge found the existence of a single mafia-type unlawful association that was active between 2011 and 2014. In the view of the Court of Appeal, there was a consortium, with a single head that divided into various internal groups, that utilised the same methods previously employed for usury and extortion in the public procurement contract sector²⁵.

On the basis of these findings, the Judicial Panel emphasised that, for the purposes of the existence of the crime referred to in Art. 416 bis c.c., neither the modest number of victims (which the Tribunal indicated was eleven) nor the limited relational or territorial context are relevant. Indeed, the characteristics that constitute the crime of Art. 416 bis c.c. are neither the general control of a territory nor a general condition of subjugation and “omertà” in a community. Regarding the question of the force of intimidation, the Court – contrary to what the Tribunal of first instance held – concluded that there is no incompatibility between this element of the crime of Art. 416 bis c.c. and bribery. Indeed, in the Panel’s view on this specific case, intimidation would be employed precisely when bribery and partitioning agreements are not sufficient for the group to attain its goals.

The ruling has been highly criticised as literature; critics maintain that, following this approach, the force of intimidation becomes fluid, disconnected from the use of violent methods, and based on the capacity of a criminal group to establish relations with “deviant” State agencies, such as secret services and law enforcement on the one hand and corrupt functionaries on the other²⁶.

In any case, the Court handed down only a formal *reformatio in peius*, considering that – while recognizing the crime under Art. 416 bis c.c. – it imposed milder sentences than those decided by the lower court of first instance, which had excluded the mafia-type unlawful association.

The Judgment of the Court of Cassation

A final plot twist occurred with the judgment of the Court of Cassation, which concluded the judgment on the merits²⁷.

²³ Amarelli (2018) at 960; Catino (2019) at 31.

²⁴ App. Roma, sez. III, 11 september 2018, n. 10010 in *Dir. pen. cont.*, 14 may 2019

²⁵ Cipriani (2019); Greco (2019) at 108; Mazzantini (2019) at 4; Ubiali (2019) at 662.

²⁶ Della Ragione (2020) at 5; Mezzetti (2020) at 15.

²⁷ Cass. pen., sez. VI, 22 october 2019, n. 18125, in SP, 18 june 2020

The Court returned to the positions expressed by the Tribunal of Rome, recognizing the existence of two distinct non-mafia criminal groups: one oriented towards carrying out traditional sorts of crimes, the other towards crimes directed against the public administration. Indeed, according to the Supreme Court, the mafia-type unlawful association is not a “pure” crime of association, and in order to qualify a crime as coming under Art. 416 bis c.c. it is necessary that the group actually make effective use of the force of intimidation²⁸; the mere willingness to resort to it or the probability of doing so is not sufficient²⁹.

The group must demonstrate that it possesses this force and has made use of it. Furthermore, for the purpose of showing the existence of the crime of mafia-type unlawful association, the force of intimidation must originate from the association itself, not from the criminal reputation of an individual member. A mafia-type unlawful association is such when its own criminal fame remains alive even if individual members are identified, prosecuted, and isolated, including those with significant personal criminal fame. Thus, in the view of the Court of Cassation, the Court of Appeal, rather than dealing with the probative argument of the Tribunal of first instance, only adopted the Court of Cassation's decision as a precautionary measure without considering the different evidentiary basis that had taken shape in the meantime.

Furthermore, for the Court of Cassation, the city of Rome's public procurement contract system was not managed by the fear of mafia intimidation, but rather by a well-oiled system of corrupt practices. Indeed, the capital's public competitive bidding processes were polluted not by the fear of violent retaliation by a group that was already known for its previous use of similar operational methods and its common criminal history, but rather by general, widespread, and systemic collusion, due to the stipulation of reciprocal agreements in the mutual interest of parties operating in a different environment. It follows that there is an incompatibility between a mafia-type unlawful association and a relational context based on relations *inter pares*: for the intimidating force of the associational bonds to be such, which the insiders use, it must coerce the moral liberty of outsiders. Where human relations instead develop voluntarily and with no moral coercion, such use of force – which constitutes the characteristic of the mafia method – fails³⁰.

²⁸Grandi (2016): *‘the offence of unlawful association is considered to have taken place at the very moment when an agreement to commit more than one crime is entered into; on the other hand, the offence of mafia-type association is considered to have taken place when an already existing association starts using a particular method¹⁴ to attain its objective, which may also be legitimate. According to a majority of legal scholars and case law, whenever a mafia-type association also has the purpose of committing more than one crime, so that the two categories overlap, only the offence under Art. 416-bis should apply due to the principle of speciality. Contrarily, Art. 416 will apply whenever the special constituent element of the mafia-type method is not fulfilled’.*

²⁹Abukar Hayo (2020); Apollonio (2020); Fiandaca (2020).

³⁰Della Ragione (2020) at 28; Zuffada (2021) at 420.

Conclusions

The Court of Cassation's solution has the merit of providing a response to the dilemma about qualifying aspects of new mafia-style associations that are different from the classic mafias operating in southern Italy³¹. By means of a rigorous system of argumentation, the Supreme Court specified that the intimidating ability of a mafia-type unlawful association – from which derive the conditions of subjugation and “omertà” of those who actually come into contact with it – must be actual rather than potential³².

The other position does not seem convincing, according to which the crime of Art. 416 bis would be a purely associational crime that would be satisfied merely by a group's potential for intimidation³³. Article 416 bis c.p. typifies both a crime of damage and a crime of danger³⁴. Regarding the subjective element (*mens rea*) of the crime, the law only punishes those who participate in an association with the intent (*dolo specifico*) of carrying out the particular criminal program of a mafia association³⁵. Its existence requires not only conspiracy, but also that it manifest an autonomous intimidating capacity that is able to bend to its own ends the wills of those who come into contact with its members³⁶. In this sense the multiple infractions of the case also play a role: Art. 416 bis c.c. is a crime of damage regarding a first category of legal goods (public order and moral liberty of the

³¹Amarelli & Visconti (2020); Balsamo & Recchione (2013) at 15; Canato (2020), at 12; Dell'Osso (2017) at 66; Iannotti (2020) at 26; Maiello (2007) at 52; Manna & De Lia (2020) at 22; Mazzantini (2020), at 1270; Merenda (2021), at 336.

³²Court of Cassation, 3.6.1993 n. 1793, De Tommasi, in CED, n. 198577: *'Article 416 bis of the Criminal Code outlines an offence of criminal association of a multi-faceted, mixed nature, in the sense that whereas the offence of simple criminal association entails only the establishment of a stable organization aimed at the commission of a number of crimes, in the case of mafia-type association, it must likewise be shown that the group has gained a concrete power of intimidation in the surrounding environment and that the participants have effectively taken advantage of that power in order to carry out their criminal plan. The act of "taking advantage" can imply either the mere exploitation of the existing power of intimidation, or the commission of further acts of violence and threats, provided that such acts do not produce the psychological effect in and of themselves, but they rather underpin the already existing coercive power of the association'*.

³³Grandi (2016): *'the roots of the offence of mafia-type association started to develop long before the legislative bill of 1980. Indeed, a parliamentary Commission of Inquiry on the phenomenon of the Sicilian Mafia, established in 1962, had already called for a law reform aimed at addressing the shortcomings of existing legislative instruments. Although mafia criminal activities had been affecting the country for many decades, the original version of the Criminal Code enacted in 1930 did not contain any explicit reference to the mafia itself. Nonetheless, this does not mean that during the long period before the introduction of Article 416-bis participation in mafia-type organizations had been left unpunished. In fact, both the literature and case law called for such organizations to be included within the scope of application of the provisions against the offence of unlawful association to commit a crime (Article 416 Cc), which applies when three or more persons associate together in order to commit more than one crime. Notwithstanding the abundant case law concerning the application of Article 416 Cc, the latter provision showed to be insufficient to effectively tackle the rapid spread of mafia-type criminal activity, especially in some areas of the country'*.

³⁴Amarelli (2019) at 1229; Turone (2015) at 323; Merenda & Visconti (2019) at 3.

³⁵Fiandaca (1983) at 261; Insolera (1982) at 702.

³⁶Amarelli (2019); De Vero (2020) at 1043; Deroma (2016) at 2838; Gaeta (2018) at 2718.

group's members) and a crime of danger regarding a second category of legal goods (economic order, impartiality and good performance of the public administration, the democratic order)³⁷. It is indeed a commonly held opinion that a mafia association is not an association “in order to commit crimes,” but rather one that “commits crimes.”³⁸ Moreover, the third paragraph of Art. 416 bis c.c. requires that the participants “avail themselves” – not that they “can avail themselves” – of the various qualifying elements of the mafia method³⁹.

In this context it seems correct to hold the view that “Mafia capitale” is not a mafia. The association does indeed seem a far cry from traditional mafia organizations, since we are dealing with a group that is a link between the criminal and political worlds, and that prefers dialoguing with political figures rather than exercising various forms of violence and intimidation within the community⁴⁰. The group rarely resorted to violent methods (during the trial only eleven episodes of violent crime were considered to be proven), preferring the systematic use of corruptive techniques that were designed to guarantee that group members, and in particular the companies they controlled, would be awarded public service contracts⁴¹. And while in the past the charge of association for carrying out mafia-style crimes had been made against groups that were not organically traceable to traditional mafias⁴², the specifics of this case are clearly different.

We agree with the conclusion stated by Costantino Visconti, according to whom Italy is a country “afflicted with mafia bulimia, in which without the word ‘mafia’ in the middle, things do not seem serious enough to spend time and energy on them”. Visconti also warns that the real problem is that employing the word «mafia» in legal circles has very serious consequences: “it sets in motion judicial systems with a high repressive potential that infect the entire system with a series of effects that are often irreversible. The sword tends to prevail over the scales of justice, and the justified goal of scorched earth around an enemy risk taking on the fearsome guise of the «tyrant principle» that crushes all others – the others, however, are fundamental in a State under the rule of law. But in the long run it is like pouring a drop of oil in a reflective pool; although it is originally small, the drop slowly extends to cover much of the surface. One no longer sees the water underneath; everything seems oily, and someone will finally say – and not without reason – “The Mafia is everywhere”. It is unfortunate that the immediate consequence of this statement is to conclude that “if everything is Mafia, then nothing is Mafia!”⁴³.

³⁷Damante (2020) at 6.

³⁸Cass. pen., Sez. V, 13 febbraio 2006, n. 19141, in *C.E.D. Cass.* n. 234403; Insolera & Guerini (2019), at 85.

³⁹Amarelli (2018) at 959.

⁴⁰Basile (2016); Salviani (2018) at 1212; Vannucci (2016) at 41; Visconti (2015) at 353.

⁴¹Apollonio (2016) at 133; Ciccarello (2016) at 107; Dalla Chiesa (2015) at 1; Martone (2016) at 29; Mete & Sciarrone (2016) at 10;

⁴²Fiandaca (1985) at 301 et seq.; Serraino (2016) at 264 et seq.

⁴³Visconti (2016) at 3.

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