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Estudios Globales

# Corrupción en la democracia española. Una aproximación desde los aspectos criminales y políticos

## *Corruption in Spanish Democracy. An approach since criminal and political aspects<sup>1</sup>*

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### Resumen

La corrupción es uno de los fenómenos criminales que más preocupan a las sociedades contemporáneas. Este artículo analiza los vínculos entre los procesos de corrupción y el crimen organizado en España, abordando los mecanismos de infiltración e intercambio de redes criminales en las instituciones públicas. Con este fin, el concepto de corrupción y crimen organizado se explicará desde una doble perspectiva política y criminológica, así como el impacto en los procesos de toma de decisiones y la percepción social de estos temas. España, en las últimas décadas, ha experimentado un ascenso de la corrupción, especialmente en el ámbito de la política, como así atestigua el incremento exponencial de casos investigados por la Fiscalía Especial Anticorrupción. Realidad, que ha despertado la preocupación ante la configuración de un escenario político proclive a la corrupción, que genera un efecto de atracción para la criminalidad organizada ante la vulnerabilidad institucional del sistema político y la Administración Pública, ante el ejercicio de prácticas corruptas. Escenario, que ha sido objeto de análisis y cuya radiografía se expone en este trabajo.

**Palabras clave:** corrupción, España, crimen organizado, democracia

### Abstract

Corruption is one of the criminal phenomena that most concern contemporary societies. This article analyzes the links between the processes of corruption and organized crime in Spain, addressing the mechanisms of infiltration and exchange of criminal networks in public institutions. To this end, the concept of corruption and organized crime will be explained from a dual political and criminological perspective, as well as the impact on the decision-making processes and the social perception of these issues. Spain, in recent decades, has experienced a rise in corruption, especially in the field of politics, as evidenced by the exponential increase in cases investigated by the Special Anti-Corruption Prosecutor. Reality, which has raised concerns about the configuration of a political scenario prone to corruption, which generates an attractive effect for organized crime in the face of the institutional vulnerability of the political system and the Public Administration, in

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the face of the practice of corrupt practices. Scenario, which has been the subject of analysis and whose radiography is exposed in this work.

**Keywords:** Corruption, Spain, organized crime, democracy

## Introduction

One of the first academic difficulties encountered when seeking to analyze the phenomenon corruption is to find a precise, actually, definition of 'corruption'. While our first reflections may come from a moralistic perspective, it is important to emphasize not only the causes, types of crime and the social impact corruption, but also its impact on democratic systems. Indeed, while it is clear that corruption scandals cause significant damage to the democratic conscience of a society, it is the continued feeling of impunity which someone may enjoy, that is more harmful.

At present, crimes of corruption in Spain, or rather, the knowledge we have of them thanks to mass media, have increased significantly. However, it is important to differentiate between corruption and organized crime because these two concepts can lead to confusion, in that corruption is usually seen to be a part of organized crime, and yet, from the State's point of view, where these acts take place have important conceptual differences.

In this article, we analyze public corruption in Spain, identified as one of the great social problems we face today. To do this, we examine the permeability between the processes of corruption in private institutions and public authorities. This will in turn allow us to delve into the degree of involvement of organized crime groups in corruption and to elucidate, if it is the main cause or if, on

the contrary, the problems of corruption are essentially political due to its links with economic-business crime.

## Organized crime, corruption and Spanish democracy

The Spanish National Security Strategy of 2017 (forward SNSS) identifies, in its Chapter IV, entitled "Threats and challenges to national security", the organized crime as a threat, characterized by its transnational nature, opacity, flexibility, adaptability and recovery, as well as its mobility.

Organized crime destabilizes the political and economic structures of States and, in turn, encourages vicious circles of insecurity, insofar as members of criminal networks can collaborate with corrupt governments, paramilitary organizations or terrorist groups. For this reason, organized crime generates and activates other risks and threats - mainly money laundering - that contribute to weakening the state, hampering economic growth and undermining democracy.

In addition, and independently of the impact on the economy activities, such as piracy, drugs trafficking, weapons and human traffics, or the attempts of these criminal acts against Human Rights, it is becoming clear that the links between criminal groups and terrorist organizations are closer. This connection adds danger to the phenomenon.<sup>4</sup>

<sup>4</sup> Concern, which led in 2014 to the decision taken by the Council of Ministers, to approve the Royal Decree amending the basic organizational structure of our Home Affairs Ministry, through the creation of the Intelligence Center against Terrorism and Organized Crime (CITCO), as a new general deputy directorate, under the Secretariat of State for Security, through the integration of the National Center for Counter-Terrorism Coordination (CNCA)

Similarly, SNSS predicts that organized crime will increase in volume, scope and benefits, mainly through the exploitation of new markets in regions of accelerated economic growth. Spain is one of the European countries in which the incidence of organized crime will be more significant, identifying the national territory as an objective, to try to implant its structures and penetrate the various levels of the national administration and business circles.

In conclusion, the level of threat is cataloged as serious, real and direct for Spanish interests and for National Security in the political, economic, social issues and in the protection of the rule of law (Spanish National Security Strategy 2013).

Regardless of what is established in our national strategy, currently, at the national level, different perceptions of organized crime are converged, which do not always share the same vision about its defining characteristics and relevance.

In broad outline, it is possible to identify an academic view, where the contributions of the criminological doctrine and those of the criminal legal doctrine do not end up consensual a univocal view of the phenomenon and, even less, shared.

On the other hand, the perception from the Security Forces, which in turn establish differences between “organized delinquency” and “organized crime”, according to criteria of danger and damage (impact), are based on analytical considerations concerning high or low intensity. A conceptual challenge, which will require patience and multidisciplinary studies, to settle this *totum revolutum* in favor

of a unique, agglutinative and shared perception and definition of organized crime and its characteristics at national level.

Nonetheless, the lack of harmonization in definitions has not been an obstacle to development the political and legal area in the fight against organized crime in Spain. As a result of several factors, with the aim of harmonizing procedural and penal law to deal with transnational organized crime, a new criminalization of criminal organizations and groups, has recently been introduced into our Penal Code (López-Muñoz 2015, 42). Typification is located within the crime against public order<sup>5</sup>. In fact, the importance of this decision is due to the fact that, until the enactment of LO 5/2010, Spanish criminal law did not include a concept of organized crime. Moreover, through the jurisprudence of our Supreme Court and the indications of the State Attorney General, a criminological perspective was recognized that allowed the criminal organization to be understood as “the concentration of efforts to achieve a criminal purpose, which by its own nature needs a structural fabric, which makes indispensable an orderly and pre-established collaboration between several people”.<sup>6</sup>

The reform has introduced the criminal definition of delictive structure and, in this sense, our Penal Code defines as “criminal organization” the grouping formed by more than two people with a stable or indefinite character, that, in a concerted and coordinated manner, are distributed tasks or functions, in order to commit crimes. Despite the transcendence of legal innovation, it is part of the strange doctrine (López-Muñoz 2015, 55-56) that the legislator has not also defined, as has already been

and the Center for Intelligence against Organized Crime (CICO).

<sup>5</sup> Organic Law 5/2010 of June 22.

<sup>6</sup> Office of the Attorney General of the State. Circular 2/2005, Section I.2.



done in Italy, the *modus vivendi* of these organizations: The “mafia method” that exemplifies its habitual behaviors<sup>7</sup>, such as to use its position of strength and intimidating potential that provides its solidity as an organization, favoring compliance with its commercial, economic and political, or other pretensions (extortion), on the basis of fear (intimidation), in order to satisfy the criminal strategy drawn, be it lawful or illicit, without necessarily resorting to the use of violence. All of this, under the silence emanated by the fear of retaliation or revenge (Cuenca García 2012).

On the other hand, elements such as the pyramidal, hierarchical or network character of the organizational structure, the use or not of important and especially suitable means to achieve the aim pursued, or the fungibility of its members, do not appear as demands by the legislator (Velasco 2011, 250).

The legal definition closes the art. 570 bis of the Spanish Penal Code, which refers to the potential harm to the organization on the basis of high numbers of members, the supply of weapons or dangerous instruments and the provision of technological means to facilitate implementation or its impunity.

A priori gives the impression that the Spanish Legislator has roughly understood that organized criminal phenomenon, organized big criminality, possesses means, techniques, capacities, tactics and procedures capable of

constituting a qualitatively and quantitatively greater and more important threat (Sansó-Rubert and Giménez-Salinas 2014, López-Muñoz 2015). This is not the case, however.

In favor, highlight the characteristic of the new regulation; On the one hand, its application to criminal organizations operating in Spain, even if they have incorporated or develop part of their activity abroad (Carretero Sánchez 2011). So, art. 570 ter, maintains that “for the purposes of this Code, a *criminal group* means the union of two or more persons who, without meeting any or some of the characteristics of the *criminal organization*”, defined in the previous article, “by purpose or object the concerted perpetration of crimes”. The legislator has wanted to capture those criminal forms that, without fully embracing the model of criminal organizations, are worthy of a plus of danger. Consequently, with respect to the concept of organized crime, two figures are introduced: organization and criminal group.

The preamble of LO 5/2010 justifies differentiation on the basis that the criminalization of the criminal group being a response to other phenomena similar to criminal organizations widespread society, which are extremely dangerous and violent but do not meet the structural requirements. In short, they are forms of criminal agreement, which do not fit into the archetype of criminal organizations but provide an extra criminal danger to their activities and in relation to its members.

Criminal groups own all the characteristics of organizations except the stable character or vocation of permanence over time. A somewhat basic form of ordering the diversity of organized criminal manifestations covered by the lax definition of the 2000 United Nations Convention against Transnational Organized

7 Italian Penal Code, art. 416-bis: Mafia is an illicit type of association which are part of the intimidating force, the associative bond and the conditions of submission and *omertà* (conspiracy of silence), that derive from it to commit crimes, to acquire directly or indirectly the management or in any case the control of economic activities, concessions, authorizations, contracts and public services or to obtain, for itself or for other, unfair benefits or advantages, or in order to prevent or impede the free exercise of the vote or of seeking votes for themselves or for others, on the occasion of electoral consultations.

Crime, which, as already stated, unsatisfactorily terminated the doctrinal debate on the definition of organized crime.

Thus, the Spanish legislator has established two large groups based on the difference between those criminal structures, that represent an attack on citizen security and Public order (criminal groups), of those other structures that, truly, threaten the sovereignty and independence of the State (criminal organizations) (Sansó-Rubert 2015). In addition to the criminal organization, the transnationality of its action denotes a plus of gravity with respect to a common criminal group. Therefore, it must be important to fill in what is understood and identified, by each of the criminal concepts cited, beyond the mere legal definition established.

This evaluation has been sterile since it is a relative comparison, rather the need to establish a list of crimes specific to transnational organized crime (Zúñiga 2016). Another aspect that has been discussed in relation to the organized crime, is its link with the phenomenon of corruption and how it is used, either as a methodology of action, or as a pre-existing structural condition to exploit favorably, for the achievement of its criminal objectives.

How do we differentiate between crime and corruption? If we focus on their different activities, perhaps the differences become clearer. It is obvious that the final aim of both phenomena is to make a profit and their existence depends on the profitability of the illegal activity that is being carried out. While there is no accepted definition of organized crime among academics, there is agreement on what constitutes organized crime.

The creation of an organization with continuity over time, whose objectives are to rationally acquire a number of benefits through force and/or threats or specific actions in the

field of corruption (Albanese 1995). Therefore, it follows that corrupt acts can be used by organized crime groups as instruments, in order to avoid the consequences of punishable actions although sometimes the durability over time of corrupt processes and punishable acts derives from them. This raises the question of the suitability of cataloguing this crime, corruption, as something akin to the usual acts of an organized criminal group.

Corruption is perhaps easier to define. Numerous definitions are existed, based on moral, legal, sociological and political points of view. Bejarano (1997) defines corruption, as changing the nature of something, in other words, perverting it. Simonetti (1996) adds an individual-moralistic perspective, by stating that corruption is “the influence that an individual can have over another in order to provoke an internal transformation”. But fundamentally, the element that characterizes corruption is its connection with the exercise of power both in the private and public spheres.

Although those acts of corruption that have the greatest impact are those relating to the government, it would be inaccurate to ignore those relating to the private sector (Ballasteros 2019a). Therefore, it is important to make this distinction and accept coexistence of corrupt acts in two spheres.

With respect to whether democratic development in Spain has influenced the phenomena of corruption, it is true that we cannot identify the democratic youth of Spain as a single factor, but a series of feedback issues that have favored the publicity of a series of corrupt acts (Lapiente 2016).

Claim that if the crisis of institutional values has been the motive or the consequence of the phenomena of corruption, that in the last fifteen years have ravaged our country, is to be

prove. What is clear is that all of this had been prepared by the economic crisis, which had a particularly violent impact on Spain.

In this sense, in democratic terms, the extension of political corruption to all spheres of Spanish political organization, has provoked a “clear erosion of the confidence of the citizens in the institutions of the State which produces a generalized crisis of confidence and citizen uncertainty that can have important effects on the Spanish democratic system and the actors involved” (Jiménez 2015).

In this sense, there is an evolution in the perception of democracy in Spain. The absence of an alternative regime in the first democratic decades in the country, supposed a majority approval of the system (Montero 1992).

In this sense, we cannot provide a concise definition of democracy in Spain, but the conceptualization of the term, is given by the measurement of the quality of democracy, which will depend on multiple factors including legitimacy, Government effectiveness, the functioning of the rule of law, the representativeness of collectives, the international perception of democracy, political participation, among others (Gómez Fortes et al. 2010).

The democratic system does not be questioned at present. What is questioned is the management of the same, on the side of the political actors. In this sense, the social demand for greater transparency in the public sphere is increasingly recurrent, which will contribute in a more effective way to reduce the processes of political and administrative corruption in our country (Güemes 2018).

The institutional legacy received by the 1978 constitutional system is a heavy burden. Despite the great advances made by the current constitutional regime, in relation to the years of Franco’s dictatorship, it was not

possible to break the mold (Acemoglu and Robinson, 2012). The embedded inheritances of a model managed from the conception of patronage politics as a system, have once again sowed strong roots, if ever they disappeared (Costa 2005).

The prevailing institutional system suffers from a political patronage that stifles the political-institutional life of the country and favors the intrusion of organized crime into the institutions of the established democratic system. The lack of means and effective tools capable of immunizing the current democracy, with respect to the practices of nepotism and clientelism extended to the dictatorial stage, favors its consolidation in the dynamics of government and public management. There has been a contamination of the entire institutional building in the face of political disaffection in eradicating corrupt behavior in the management of the public, the result of an extended patrimonial conception of power. Spain suffers from a permissive social perception in relation to the culture of favor.

With respect to a definition of corruption, we leave aside the established between individuals, or private corruption (Sutherland 1983), to focus on the public, political or administrative. In this sense, we apply the definition taken in art. 2 of the Civil Convention on Corruption adopted by the Committee of Ministers of the Council of Europe on 4 November 1999. Whereby “corruption is understood as the solicitation, offering, giving or accepting, directly or indirectly, an unlawful commission, any other advantage or the promise of such advantage affecting the normal exercise of a function or the required conduct of the beneficiary of the unlawful commission, of another undue advantage or of the promise of such undue advantage”.



From this definition, the particularities in the case of Spain, will be analyzed in the following sections.

## Perceptions of corruption and its impact in Spain

Public perception plays a key role in our understanding of the impact of corruption on democratic systems. It is not only about the subjective assessment of what corruption is and how this is translated into show trials that involve those indicted on corruption charges and the judicial actors. It also has a direct impact on politics and electoral campaigns.

In general terms, cases of corruption and the attention which media gives to these events, influence new forms of advertising and political visibility (Palau and Devesa 2013) (Thompson 2001). Today, the effect that news about corruption has on civil society is an element that political parties consider extremely important in the development not only of their electoral strategies, but also as a weapon in their attack tactics in the conventional political debate.

But, does the average Spanish citizen consider the phenomenon of corruption as an ordinary part of political life, or does it have truly measurable influence on their vote. Jiménez and Cainzos (2004) provide six conditions that must be met for a corruption scandal to have an influence on the election result. These are:

1. Knowledge about the scandal; 2. Negative evaluation: knowledge of it has to carry potential rejection; 3. Allocation of responsibility: the voter has to directly or indirectly hold responsible those participating in the elections; 4. Allocation

- of relevance: the citizen must position the corruption at the top of the hierarchy of social concerns; 5. Visualization of an alternative: the voter has to be willing to vote for a different candidate or party to the one they usually vote; 6. Consistency between attitudes and behaviour: the voter must be consistent at the time of exercising their right to vote with respect to the above conditions (Jiménez and Cainzos 2004).

If we analyze the Spaniards perception about corruption, we can observe that public opinion is more concerned only when the most famous corruption scandals come to light. In recent years, the acts of corruption that have produced a direct negative impact on the perception of Spaniards have been those, which have involved relatives of the King of Spain or important national politicians.

One of the most worrying developments arising from the ongoing public revelations of corruption is the matter-of-factly attitude with which citizens accept this type of criminal acts. Getting used to seeing these acts both in the newspapers and on TV leads to a *blasé* attitude where nothing surprises anybody anymore.

In this regard, Palau and Davesa argue “when society is constantly subjected to negative messages about the political class, the scandal is no longer seen as something rare and exceptional and becomes instead an endemic characteristic of political culture, leading to the sensation of ‘*scandal fatigue*’ in some citizens” (Palau and Davesa 2013, 98). This is due to the permanent and constant appearance of cases of corruption not only in the news but also on ad-hoc TV programs or even in the so-called tabloid press.

In addition, we must stress that the volume of cases of acts corruption reported in the

media is inversely proportional to the interest and level of education that citizens tend to aspire to (Krosnick and Kinder 1990). Because of 'scandal fatigue, the population tends to suffer from laziness in seeking basic information from political parties about their manifestoes. The ignorance on the part of an important sector of society about political programs, and the number of votes that a given political party depends on the journalists, marketing and communication strategies the candidates use during the election campaign. Thus, Spanish political and electoral strategies are going to be influenced and shaped by the number of political scandals come out about opposition parties and political rivals.

In fact, Peters and Welch (1978) have argued that significant differences in the levels of electoral sanctions were associated with different models of corruption allegations. This fact was decisive in relation to the scale of moral values of citizens.

The social impact derived from the perception of moral decadence of a well-known politician is not comparable to an act of corruption committed by a newcomer. For example, the negative and surprising impact generated in Spain by the alleged corruption case involving Rodrigo Rato, former Minister of the Economy in the first President government José María Aznar, around 1996, was due not only to the crime itself, but also because of the untarnished image, perceived by many citizens, with which he portrayed himself during his years in politics.

Moreover, we must also note that the multiplier element of economic crises also increases subjectivism and satisfaction or dissatisfaction with the political situation and the government. Therefore, the social impact will also depend on the political-economic situa-

tion that the country is going through at the time. We could suggest that the cases of corruption such as the ones that have appeared in recent years in Spain would not have had such a negative impact had they been revealed during times of economic bonanza.

However, curiously, despite the fact that the Spanish once again consider corruption as one of the great problems of the country, to the point that the number of scandals with politicians as protagonists have placed society at some point close to the weariness, at least in theory. But this maxim cannot even be verified in Spain, since here the punishment to the corruption in the polls is very limited. Corruption seems almost free to the politician at the polls and electoral punishment to which the suspects are subject is at best very limited. In addition, despite the fact that civil society has other instruments to exercise a necessary control over the political class, these resources are in practice underutilized. One possible explanation for this may be the high levels of demobilization that characterize Spanish society as a whole.

In spite of this imperious need, the continuous episodes of political corruption have undermined the confidence of the citizens, not only in politics and politicians, but in the democratic system itself, favoring institutional detachment and discouragement, thus generating evident risk of collapse of the rule of law. To this circumstance, Villoria Mendieta (2001, 102; 2006, 278 et seq.) adds as the main cause the low civic and participative culture of the Spaniards, which he concretizes in: his low interest in politics; his sarcastic and cynical vision of power; the fact that television is the hegemonic means of political information; its very low levels of political and trade union affiliation (last place in Western Europe), its low rates of

civic associationism (around 30%, the lowest in Europe) and their general distrust towards other citizens (above 60%).

To what should be added, in relation to the role of organized crime as a factor favoring corruption, it is not perceived as a threat, even tangible, by the Spanish society.

Society and the main public administrations and government are not aware of the real danger of organized crime. The absence of the widespread practice of extortion protection, coupled with the fact that their levels of violence have been low enough not to arouse the social alarm and, consequently, the frontal response of the State. Its social effects, much lower than those of other countries, have been able to be metabolized without major problems. All these reasons have led to the Spanish citizen not having a clear awareness of the danger posed today by organized crime. This is why there is no social mobilization in Spain, as in other countries such as Italy (for example the “*Addio Pizzo*” movement), where civil society and even the Church are very active in the fight against organized crime.

Finally, in order to fully understand the perception of a corruption scandal, one must take into account several factors, the type and nature of the scandal, the level of influence of the actor or actors accused of the crime, and finally, the political-economic situation at the moment the criminal act is made public

## Corruption in Spain

It is not something new to affirm that the prevention of corruption offenses is of the utmost importance for the Spanish democratic system. In the last decades the scandals, some proven and others alleged, have had a

profound effect on the political agenda of our country.

It is essential to delimit conceptually what is meant in Spain by corruption. We can find definitions from many different perspectives, but we believe it is important to start this analysis from a legal point of view. So “corruption would be any action or omission on the part of a public actor who violates legal norms and the duties of his position, with abuse of power and with the purpose of obtaining private or personal benefits for himself/herself or for the group that he/she is a part of” (Villoria 2014).

From a legal point of view there are two areas of law through which acts of corruption can be punishable: from a criminal point of view, and secondly, from an administrative approach (Villoria 2014). When the incidence of such acts does not reach the sufficient levels of severity and impact on the good order and community government with a resulting institutional disrepute, then an administrative sanction would be the result. (Villoria 2014) But we must also keep in mind that not all sanctionable conducts must be considered corrupt (Villoria 2014). Moreover, Heidenheimer, Johnson and V.T. Levine (1989) leads us to consider three types of corruption based on a moral-collective element (black, grey and white) that is determined by the acceptance and conviction of the moral elite of the country and public opinion. In this regard, what is considered corruption is going to depend on each State, so an act that in our country might be considered corrupt, in another country could be seen as part of its idiosyncrasy derived from its social and political structure. One example is that of the “kickbacks” in Latin American countries, which are considered as white corruption there but would be

considered as deplorable, ethically reprehensible acts in European states.

From an ethical perspective, it is considered a corrupt act in the public sphere when external “goods” are put before internal “goods” (Villoria 2014), in other words, when a public official abuses his position in the public administration to obtain a benefit. Ultimately, as Laporta and Álvarez (1997) point out, “the inevitable and ultimately irreducible conduct of corruption is the dishonest behaviour of the public actor”.

Therefore, in general terms, the definition of Professor Villoria (2006) is the best suited to our country. He affirms that corruption is considered “an abuse of power, with a direct or indirect benefit, to the person who is taking part in the corrupt act or the groups that the person is a part of, being in breach of legal rules or ethical standards that a community takes as valid, and where the corrupt actor always puts the private interest before the general interest”.

In the field of public corruption, the opportunities to begin the process of corruption, treating these facts not as mere independent actions but as a concatenation of events that generate a set of actions that violate the ethical and legal principles, increase in line with the power that the public actor owns and the benefits to be gained (Fernández 2014). One of the reasons that Caciagli (1996) puts forward to explain the increase of corruption in Italy is due to increasing state intervention in the economy. In this regard, factors such as increased local power, increased free designation of officials and excessive bureaucracy that substantially delays the decision making (Fernández 2013).

In addition, corruption affects the growing professionalization of politics leading to

the consolidation of a partitocracy (Caciagli 1996) which results in an increase in internal discipline in parties and the configuration of phenomena such as groupthink that produce deviations in the decision-making process (Herrero de Castro 2006).

Generally speaking, from a socio-economic point of view, the processes of corruption have a number of causes amongst which one should highlight, first of all, the rapid economic growth coupled with the establishment of a progressive interventionism covering the most important areas of public administration (Iglesias and Medina 2002), secondly, the increase in consumer values, along with a growing lack of political ethics, discarding the feeling of working for the public good. Third, the professionalization of politics from a narcissistic sense, and finally, the low efficiency of the regulations established to combat corrupt processes (Iglesias and Medina 2002), mainly due to the delay in the transposition of many European directives to the legislation of our country (Fernández, 2014). Let it serve as an example Directive 2004/18/CE, which took a lot of work to be adapted to our legislative corpus.

If we undertake a revision of the last decades in Spain, we see many of these elements reproduced in full.

With regard to the situation of our country in terms of corruption, the growth of the partitocracy has contributed to the exponential increase of the costs and financing of political parties. In this regard, public-private corrupt processes have focused on two issues: urban planning and public procurement.

Before delving into these phenomena, we must highlight the distinction between political corruption and administrative corruption (Heywood 1995a; 1995b; 1997; Villoria

2006). First type is developed by political representatives, while the second one, is based on corrupt acts committed by officials. According to Villoria and Jiménez (2012a), these two types of corruption occur in all spheres of the Spanish administration, at both national and regional or local levels. But despite the fact that the coexistence of these two types of corrupt acts is a fact, one of the alarming trends these last few years has been the increase in political corruption. According to these authors, this is due to the difference between the meritocracy involved in the access to the civil service system and the arbitrariness in the appointment of politicians (Villoria and Jiménez 2012b).

Corrupt processes in Spain with regard to urban planning policies focus primarily on one type of political corruption. Mainly, they have their center of gravity in local government (municipalities and town halls) and are produced under various variables: on the one hand, the principle of local autonomy reflected in the Spanish Constitution and referred to in several judgements made by the Spanish Constitutional Court states that “relevant and recognizable competences with regards to urban planning should be conferred to municipalities”.<sup>8</sup> Moreover, the increase in the supply and demand of real state assets and housing in the last few years has favoured corrupt practices. The local finance system, urban development, the proximity of public officials (administrative corruption) to the speculators and the reduced effectiveness of contentious-administrative law has contributed to the rating and unrating of land being done in many situations without a tight control, and this

has been used as an extra source of income by local authorities (Círculo de Empresarios 2005).

From a standpoint of crimes established in our current Penal Code, the following should be noted:

- Bribery. It can be considered as the most common criminal offense.
- Influence trafficking
- Perversion of justice
- Violation of secrets
- Embezzlement
- Fraud and extortion

With regard to procurement, it must be said that corruption as a result of urban policies that prevailed during the 90's and the first decade of the 21st century and have been regarded as one of the causes of the crisis experienced in recent years, has suffered a period of decline leading to the rise of a type of corruption that focuses on the connivance of public administration functionaries with the private sector (Ballesteros, 2019b).

In the case of Spain, we can disclose a typification of corruption cases, depending on who gets the final benefit. In this sense, we see four predominant models:

- First, based on the clientelism of a particular political party.
- Secondly, the result of collusion between officials of the public administration and political parties.
- Third, the one corresponding to the collusion between public officials and private companies.
- Finally, the result of the relationship between political parties and companies, which entails crimes of illegal financing of parties

With regard to the first model, use as an example one of the slopes in which the case of

<sup>8</sup> Sentencia Tribunal Constitucional (de España) 240/2006, July 20.



corruption in Andalusia is divided, which is currently under judicial process and affects the Socialist Party of Andalusia. It would be the case of the ERE, which consisted of including members of the environment of positions of the socialist party in the procedures of the employment regulation files of several private companies, reason why they obtained an economic amount that did not correspond to them (El País 2019).

An example of the second model is the one that also affects the Socialist Party of Andalusia, in the second aspect of the case, which used the money approved for the training courses for unemployed in a fraudulent way, earmarking it as a benefit for certain people not related to such courses. In this sense, autonomous public and provincial officials authorized and allocated the money for these courses without controlling their implementation, so that most did not get to be taught (El País 2019).

As for the third model, we can say that it is the one that has more opaque nature, and, at the same time, more widespread in our society, so we can conclude that it is a structural corruption at certain levels of the public administration. Most cases do not reach the media, unless a senior official is involved or grants of exorbitant amounts of money are involved. Examples of this type of corruption are found in the levels of public administrations in which contracts and public tenders are awarded. In this sense, bribes, and gifts made by certain companies, to officials with decision-making powers in public tenders, conclude in favors and favors to these companies, favoring the award of such contracts and public work projects.

Finally, in what corresponds to the fourth model, it is necessary to detach the case Gürtel. In this case of corruption is the Spanish

Popular Party and related companies that obtained contracts of the public administrations that were under the Popular Party government. The amounts of money were delivered to party charges that, well, destined to finance the same, or destined to own benefit of the one that received the money within the political group (General Council of the Judiciary 2018).

## Politics and Corruption

Spain has a serious problem with political corruption in general, with organized crime becoming increasingly involved in it (Tarín 2016). It is quite possible that corruption has not really increased in comparison to the last stages of growth and transition in the country. What happens is that now it seems the corruption-detection mechanisms have improved and corruption cases emerge in abundance, especially, following the creation of specialized investigative police units and the creation of the specialized anti-corruption prosecutors' office.

Corruption in Spain basically is a combination of a poorly rooted political culture, coupled with serious institutional flaws and poorly protected risk areas. To make a brief exercise in historical retrospect one could say that the institutional legacy received by the young Spanish democracy is a heavy burden. Despite the great advances that current constitutional regime has brought in comparison to Franco's dictatorship, as Acemoglu and Robinson (2012) have highlighted, Spain has not managed to break the mold.

In order to understand the present situation of the political model and the institutional system we must emphasize the scourge of political patronage, which hampers the

political and institutional life of the country. Spain suffers from an entrenched culture of cronyism and a widespread patrimonial conception of power that accompanies us from the pre-democratic era (Costa 2005). A severe manifestation of the inexistence of an institutional state culture, both from those exercising the tasks of political leadership of the country (Heclo 2010) as well as the social recipients of those policies: political power is conceived as a means of sharing privileges or positions of power among clienteles, friends, family, companies or organizations that help build complex and opaque networks. In a sort of “plot” or conspiracy can find politicians, business people and criminals eager for enrichment and power, interconnected by facilitators, whether law firms, financial advisors or property managers that put money, skills and political influence at the service of a common interest that satisfies all parties involved (Robles 1996).

Despite the general perception of corruption that exists, we must stress that experts agree that there is no widespread corruption in Spain (Transparency International 2016; Villoria and Jiménez 2012a); that is, corruption is not consolidated in a systematic way (systemic corruption) in public administration or amongst functionaries of the State. They understand that the corruption tends to be rather a corruption of a political nature. A corruption that is more likely to develop at the regional and local levels because it is at these levels of institutional power where controls and checks and balances tend to be weaker compared to the centralized level. Regional and local authorities have broad powers and very considerable resources without having an equivalent level of responsibility when compared to the centralized level of govern-

ment. They also lack adequate control mechanisms and have therefore become the target of criminal penetration.

At this point, It is suitable to remember that several territorial levels of government coexist in Spain: the central government, the regional public administrations corresponding to the seventeen autonomous regions and two autonomous cities, and also under the banner of local government, Spain has municipalities, county councils, smaller islands and metropolitan areas. In turn, each of these regional governments has a large public sector that comprises a large number of entities with a distinct legal status (i.e. Municipal companies). Legal controls on these entities are laxer than those used in higher levels of government. And yet, organized crime has found in them a gold mine that allows them to hide their activities under a veneer of legality, especially those activities linked to public procurement and the provision of services.

Other niches of vulnerability in public administration that organized crime has been able to exploit due to the absence of prevention and early warning mechanisms have been the procurement of public works, embezzlement and fraud in relation to financial aid grants and public funding (both national funds and those arriving from the EU) and the funding of political parties favored by deficient legislation regarding the control of anonymous donations (Holgado 2003). Added to this, one finds a professionalized political class that has been managing public administration non-stop since the transition without a generational replacement, the existence of revolving doors between public administration and private economic and financial sectors without any type of control or restriction, the absence of transparency initiatives in legislation and

lax parliamentary controls that have generated an optimal scenario for the development of influence on the part of organized crime.

The local level is, without a doubt, the *Achilles heel* of Spanish politics and public administration against organized crime. This basically derives from the broad powers of decision that mayors have. According to data obtained from the press, more than 600 Spanish municipalities have been investigated for corruption scandals (Villoria 2016; 51-52). In some communities this reality is overwhelming; for example, almost 60% of municipalities in Murcia and 40% in the Canary Islands have had some sort of corruption scandal (Jerez et al. 2012).

The excess of discretionary powers monopolized by the mayors on highly sensitive issues such as urban issues, represent one of the biggest vulnerabilities of our political system against organized crime, which, in turn, has led to functionaries being corrupted, especially at the local level of government. The other most vulnerable group in Spain against organized crime is the members of the Security Forces, especially local police forces (Cabezas 2016). This is a corruption that has not been achieved through the use of violence or intimidation. In Spain, organized crime tends to go largely unnoticed, making little use of violence. They want Spain to remain a place to do business and exchanges, both legal and illegal, so the resort to violence is mainly episodic.

## Conclusions

Making a conclusive diagnosis of the nature of corruption in Spain, we can say that it is largely an idiosyncratic element, systemically grasped in some sensitive sectors of society.

Specifically, in the political and business field where it seems that the achievement of the ends to achieve success, would justify the use of any means. At the same time, although we have pointed out the definitions of several Spanish authors on the concept of corruption, it is true that we are now immersed in the discussion of whether the current catalog of various ethically debatable acts would be part of the cast of crimes or corrupt acts.

On the other hand, the political-criminal nexus between organized crime and corrupt behavior is very focused on the municipal sphere, with some significant but limited episodes in the regional political arena. In Spain, unlike other countries such as Italy, it has not yet experienced the active presence of members of different criminal organizations in the highest instances of the public administration and the legislative, judicial and especially the executive (governmental level). Similarly, the presence of organized crime is confined to very specific sectors of business (especially construction, the services sector in tourist areas and import and export activities to camouflage illicit trafficking with Latin America and the North of Africa, mainly), but from the perspective of infiltration of individuals from criminal organizations, there are no direct links of state actors with organized crime groups in entities, such as political parties, ecclesiastical institutions, the Catholic Church itself, the Armed Forces, the intelligence service, and even the Security Forces and Corps of the State. Despite of deplorable cases of police corruption, we must highlight his high standards of institutional integrity and social recognition for their labour.

The reality, in which Spain is immersed, invites a deep reflection, especially in relation to the high levels of political corruption and

the apparent perception of impunity of those responsible: politicians.

And, in turn, another reason for serious reflection is due to how to redress the hitherto political and social indifference about the threat of organized crime, which has meant that until very recently, as a society, we have not been fully aware of the danger that it poses to the independence and viability of the State itself. Fortunately, the voices of the experts and their calls to action are beginning to be earing, trying to prevent any of the active criminal structures in the country, achieve their chronic infiltration in the centers of political power.

In order to respond successfully to these considerations, it is necessary to establish adequate regulation to deal with the forms of criminality of the 21st century, and especially the complex cases of organized crime and corruption. Added to an immediate increase of the budget for Justice, equating the number of Judges and Prosecutors in Spain to the European average. Consequently, the provision of tools for public officials with competencies in the fight against corruption reinforcing the assistance of judicial and fiscal bodies, in order to investigate such cases (judicial police units, aid from the Tax Agency and Of the General State Intervention).

It should not be forgotten that both political corruption and organized crime, and moreover, the links between them, are highly sophisticated and require highly qualified material and personal means to combat them. An asymmetric struggle is only fought to reinforce or create the institutions that defend the integrity and good functioning of the system. This does necessarily lead to the eradication of the institutional precariousness in which these professionals move.

In the final analysis, if in Spain there is much, little or medium political corruption linked directly or indirectly to organized crime, it remains an unknown fact. The data available to us are inaccurate, unless they refer to corruption that has been already discovered. Paradoxically, the only thing we know exactly is that we will not know its measure. Not being considered by society as a threat, and only recently by the security institutions, as has already been mentioned due to the importance of another menaces like terrorism, the attention and means intended for their control and eradication are insufficient. It is possible that exists relevant political links with various criminal organizations, as well as a larger casuistry, which has not yet been detected.

What seems to be clear is that, on the one hand, organized crime in Spain has managed to appear invisible in the eyes of the majority of society, until now. Its strategy of not creating social alarm has been successfully. And the second, municipal councils and local politicians (local level), have not endured the onslaught of organized crime, succumbing to corruption, which forces them to take a good note of it for the future.

It all comes down to an apparatus of the State not yet sufficiently prepared to face a complex phenomenon like that of organized crime and now that the true dimension of these groups has been revealed, the Spain has to tackle all possible fronts to combat them.

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