

# How damages recovery actions can improve the fight against corruption: the crisis of criminal law policies and the role of private enforcement in an Italian case of judicial corruption

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**Abstract** In many countries corruption is rife, despite the fact that there is a criminal-law legislative framework for corruption. Italy is one of these countries. The commitment of judges and prosecutors to combating instances of corruption is often frustrated by the consequences of the excessive length of the proceedings. The fight against corruption has been carried out mainly in the field of criminal law. The criminalisation of corruption both in domestic and in international contexts is not enough to reduce corrupt practices. In the last decade another front in the fight against corruption has been explored: the private law approach as a complement to criminal law policies. Indeed, the same corrupt practise may be subject both to criminal proceedings by public authority and to civil proceedings by the victims of corruption. The argument that private law instruments may be used in order to achieve a public policy goal is not new and goes beyond the definition of "private enforcement" in the context of competition law. The idea of creating a favourable social and legal background to encourage the victims of anti-competitive practices can also be transposed to the fight against corruption. In fact, in many cases of corruption the low percentage of successful criminal persecution and the class of punishment associated with corruption offences do not represent a deterrent, considering the benefits deriving from bribe. This paper aims to address the question as to whether private law remedies under national legal systems could constitute an effective disincentive against corrupt practices, alongside criminal prosecutions. The case CIR vs. Fininvest, Lodo Mondadori is one of the first cases involving damages actions resulting from corrupt practices, and addresses two of the main obstacles to civil actions in this field: evidence and the quantification of damages.

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