



THE DANGERS OF CALLING TERRORISM WHAT TERRORISM IS NOT

EDITED BY

David Oddone
Achille Campagna



DECEMBER 2020

Broadening and anticipating the incrimination clearly represents a central component of the strategy pursued by policymakers in the fight against terror and other complex crime.

Catch-all offences are establishing themselves Europe-wide as a preferred tool to tackle terrorism, coupled with an effort to move the bar upstream, that is beyond the violent terroristic act and closer to the early onset of the phenomenon.

In essence, the incriminating provisions' scope has been stretched to cover the early signs of terrorism onset, by treating them just like a species of terroristic act, with the critical consequence to target unoffensive behavior like visiting a website, exchanging information, expressing opinions, singing, or painting.

Italy's own experience with **organised crime** should be recalled: as we are witnessing nowadays in **Italy**, the fight against organised crime, with special regard to some trends

- e.g. the increasingly widespread application of the mafia-type aggravating circumstance to an indefinite array of criminal conducts - has gone a long way down such road.

A strategy poised for failure.

We interviewed **Salvatore Calleri** (personal communication, December 7, 2020) former Councillor of the Sicily Region and President President of the Caponnetto Foundation, one of the most established NGOs, at the forefront in the fight against the mafia in Italy. We asked him a question: what the danger is to call mafia what mafia is not. His answer was telling.

"The mafia must be strictly defined and it is not a simple form of crime but something complex with social consensus, money, intelligence and relationships with the power. It is something archaic and modern at the same time, that kills for utility", he states, and follows "Often, in a misleading way, someone confuses the *mafiosi*

style, which is a criminal attitude, with the mafia. This mistake causes a damage: to say that everything is mafia is just like denying its existence. The mafia is out there, and it is strong, but is also feeds on such **vagueness**".

Failure to establish proper definitions of what phenomena like mafia or terrorism are results in denying their existence by undermining the rule of law.

Applying unreasonable punishments through anticipatory catch-all offences, under the limb of terrorism, turns outright restrictions of fundamental freedoms in lawful undertakings by counter-terrorism authorities. This in turn triggers despair and distrust among those who are being administered such penalties, acting as the most dangerous **radicalising** push factor, i.e. the urge to **restore justice**.

In the same direction the general provision of art. 15 of the Terrorism Directive (2017/541) goes where it provides for the sanctions,

applicable to individuals, to be "effective" and "dissuasive", but also "proportionate".

However, achieving a strict definition of terrorism seems to be elusive after decades of clashes at the United Nations, Council of Europe and European Union, where certain differences among member countries have never been bridged, and never was a shared and proper definition of terrorism hammered out.

"To say that everything is mafia is just like denying its existence"

Certain European countries (e.g. France, Spain) have doubled down on such definition vacuum by incriminating the **glorification of terrorism**, or its apology, an approach that has been strongly criticised by freedom of speech and human rights think-tanks (Amnesty International, 2018), alongside the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while

countering terrorism (Human Rights Council, 2019; Human Rights Council, 2019b).

Such concerns are intensified by the level of the penalties these crimes are subject to, beside the repercussions in terms of cross-border judicial cooperation (as a matter of fact, these incriminations may fulfill the requirements to access international cooperation instruments of the likes of the **European Arrest Warrant** or the **European Investigation Order**, in as much as they fit under the label “terrorism” which is listed among those serious offences collaboration would be granted for by way of derogation of the double criminality rule).

Treating common criminals as terrorists, or worse, criminalising speech as terrorism, in addition to clearly unjustified restrictions on people's personal freedoms, works as a push factor for radical-leaning subjects, whose profound reaction of hatred sets the stage for radicalisers to

infiltrate and then control their target groups.

While such arguments do apply in principle to substantive criminal provisions, countering terrorism and organised crime is not only a matter of substantive law, but of procedural one as well, as different investigation tools may be needed, compared to common crime prosecution.

The Italian experience on this subject is significant, considering - as widely known - that Italy has had to face several extremely serious phenomena of complex crime over long periods of time: mafia, domestic terrorism and a kidnapping spree.

Some instruments were developed to address repeated series of kidnappings, but their most widespread and productive deployment can be seen within the fight against organised crime (the use of the so-called *pentiti* – people who cooperate with the authority in the framework of a rewarding legislation);

other systems have followed "mixed" paths (for example, the progressive expansion of the sector of prevention measures in the technical sense).

With such a background, when international terrorism, after September 11, 2001, came to the forefront, Italian law enforcement agencies and the specialised judiciary were better equipped than many others to cope with terror and implement counter-terrorism activities.

As a confirmation of this, the content must be recalled of art. 20 of the Terror Directive (2017/541), requiring Member States to adopt "effective investigative tools" taking as reference "those used against organised crime".

Within this context, the figure of the Italian public prosecutor, independent from the political power, that coordinates police forces and investigations, can concretely help to prevent possible hate campaigns and political instrumentalisations, beside fulfilling the requirements set

out by Court of Justice of the European Union's case law on the judicial authority in cross-border cooperation in criminal investigations, where their functions are requested.

These sound features should not, however, overshadow the dangers that breed inside the misconceptions lying at the foundation of catch-all incriminations or catch-all increases in punishments based on weak links to organised crime, that are spreading in counter-terrorism emergency legislations of many European countries and posing a threat that undermines the rule of law in its essence.

Recalling Calleri, naming everything mafia (and terrorism), is just like denying its very existence.

Disclaimer: Opinions expressed are solely our own and do not express the views or opinions of Agenfor international.

REFERENCES

Amnesty International (2018, November 22). France: Unjust counter-terror measures used to “persecute not prosecute”. *Amnesty.org*. Retrieved from: <https://www.amnesty.org/en/latest/news/2018/11/unjust-counter-terror-measures-used-to-persecute-not-prosecute-in-france/>

Directive EU 2017 (541) of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA. Retrieved from: <https://eurlex.europa.eu/legal-content/EN/TXT/uri=CELEX:32017L0541>.

Human Rights Council (2019). *Visit to France - Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*. United Nations. Retrieved from: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/52/Add.4.

Human Rights Council (2019b). *Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders*. United Nations. Retrieved from: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/52.



FOR MORE INFORMATION
PLEASE VISIT:
AGENFORMEDIA.COM

