

PREVENTING RADICALISATION IN DETENTION  
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**THE JUDICIAL PERSPECTIVE ON RISK ASSESSMENT AND DEALING WITH  
RADICALISATION IN PRISONS:**

**ITALY'S APPROACH OF USING ANTI-MAFIA TECHNIQUES WITHIN A BROADER  
RADICALISATION SETTING**

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**INTRODUCTION**

Radicalization does not constitute a per se crime does not necessarily have negative connotations, nor is it a synonym for terrorism.

The work of practitioners should focus on radicalization of any kind leading and related to violent extremism or to acts of terrorism.

Two kinds of radicalization taking place also within detention facilities in Italy can be identified:

- political (involving left and right wing extremists as well as members of anarchic terrorist networks);
- religious.

Figures coming from the cases run against terrorist groups tied to Al Qaida or other terrorist transnational organizations having been run in Italy since late 90's and early 2000's lead to conclude that most of the accused have been radicalized, indoctrinated, recruited into terrorist groups not in their home country but in Italy or in any case within European Borders.

**FINDINGS AND FIGURES RELATED TO RADICALIZATION IN PRISONS**

Quite often radicalization and indoctrination have been detected and ascertained in detention facilities. Taking advantage from the lack by most of the penitentiary guards - especially in late 90's and early 2000's-, of language skills such as Arab or of proper preparation about dynamics leading to religious/political radicalization and then to terrorism, foreign detainees arrested or sentenced for terrorism crimes have quite often identified and approached other inmates (speaking the same language, sharing the same religious credo) to indoctrinate, radicalize and then recruit them. The inmates having been selected to be indoctrinated to a radicalization process and then to be recruited usually had relevant criminal records, were able to use weapons and available to undertake military training.

Similar indoctrination and recruitment strategies have been used in the past, by sentenced terrorists during the 70's and 80's are still being used by anarchists being sentenced for acts of terrorism.

After the issuance of arrest warrants and/or sentences, public prosecutors and judges, together with National Prison Administration have thus always been dealing with a dilemma:

confine the arrested/sentenced alleged terrorists

- into detention facilities / dedicated sections populated only by other arrested/sentenced terrorists or
- into detention facilities together with other inmates

The second solution would on one side (looking at an optimistic perspective)

give chances to facilitate a socialization and reintegration process for terrorists.

On the other side this solution would also have given the chances to arrested/sentenced terrorists (since they are usually gifted with very strong and rooted extremist credo) to indoctrinate, radicalize and recruit other inmates as potential terrorists.

Following the first option, terrorists are still usually separated from the other inmates.

Such solution

- significantly reduces the possibility to recruit other inmates, but at the same time
- minimizes the chances that a terrorist might decide to deradicalize, disengage from the own group and even cooperate with justice, since such a decision would in any case be detected and prevented by the other inmates.

In any case these separate detention facilities and separate sections are expected to be staffed with personnel properly trained and motivated to detect any sign of repentance and/or decision to deradicalize and/or cooperate with justice

Current figures indicate at the end of 2016, 372 radicalized detainees were confined in national detention facilities:

172 of them are deemed as dangerous and strictly monitored;

39 of them have been arrested/sentenced for crimes with terrorism purposes;

64 of them are under observation

137 of them have been reported as less dangerous radicalized detainees.

Almost all of them are illegal migrants.

272 former detainees being sentenced for minor offences who went through a radicalization process, after serving their sentence, are now free. Some of them are subject to expulsion procedures to their home countries.

Radicalization processes in detention facilities are reported by penitentiary personnel to a special investigative unit operating within detention facilities for further analysis and further report to Antiterrorism Strategies Analysis Committee (C.A.S.A.) as well as to Prosecution Offices

The assessment of the risk of radicalization that might lead to acts of terrorism or preparatory acts in made –after the early detection and analysis by officers working in the penitentiary administration, by above mentioned C.A.S.A.-hereinafter the Committee) that was established on 6 May 2004, pursuant to a decree issued by the Ministry of the Interior.

Members of the Committee are:

the Director general of the Prevention Police (presiding);  
 high ranking officers of the main police forces (Carabinieri, Polizia di Stato, Guardia di Finanza and of the Department of the Ministry of Justice supervising the detention facilities<sup>1</sup>),  
 high ranking offices of the two National Intelligence Agencies (AISI and AISE).

The Committee is a permanent body which is tasked to:

- assess the international and internal terrorist threats any relevant information regarding those threats;
- coordinate the police forces and the intelligence agencies;
- share the information provided with by the police forces and the intelligence agencies;
- support and enforce the decisions to be taken by the Government and Parliament.

**C.A.S.A.** analyses the information available, ensures the coordination between the intelligence agencies and police forces and provides with the necessary information the relevant agencies.

The Committee thus analyzes and assesses the information about terrorist threats being provided by various institutional sources (including law enforcement and intelligence agencies) and **detention facilities**.

The Committee:

- disseminates the information that has been collected to the relevant police forces;
- plans the action of the main Police Forces so that it is finalized to detect and monitor the terrorist threats:
  - a) by monitoring individuals under suspicion to be close to terrorist groups;
  - b) by monitoring individuals and groups under suspicion to finance terrorist groups;
  - c) by monitoring the dynamics of the detention facilities where members of terrorist groups are confined in order to detect and prevent any indoctrination and recruitment activity;
  - d) by monitoring the jihadist internet websites.

The committee attends also meetings with similar institutions operating in other E.U. Countries aimed at assessing the terrorist threat within E.U.

Prosecution Offices are since 2005 empowered to run preventive intercepts of communications within detention facilities (no use of the outcomes of these intercepts can be made in court) in order detect terrorist threats

The threat of radicalization that might lead to violent extremism and acts of terrorism is also assessed by collecting information within the detention facilities.

Article 4 of law 155/2005, as amended by decree law 7/2015 provides that law enforcement agencies (pursuant to an authorization issued by the Judiciary or the Ministry of Justice) as well as (until 31.1.2016) Intelligence agencies, upon the authorization issued by the Prosecutor General at the request of the Prime Minister, may run informal interviews in detention facilities with inmates that may provide relevant information to prevent the perpetration of a terrorist acts. The National Anti-Mafia and Counter-Terrorism Attorney-General must be notified about the authorization.

The interviews are run without the assistance of a defense counsel, but they need to be recorded  
 The outcomes of these informal interviews can't in any case be tendered as evidence before national Courts.

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<sup>1</sup> information on the threats and dynamics coming from detention facilities where alleged terrorist members are confined are deemed relevant.

## **LACUNAE IN THE PROMOTION OF DERADICALIZATION PROCESS**

A successful antidote to increasing phenomena of radicalization would be a constructive and effective cooperation between religious leaders (such as imams, priests, pastors) and penitentiary administrations. Not all detainees with religious beliefs other than Christians/Catholics have access to religious services in detention facilities.

The National legislation has not yet provided proper tailored rehabilitation/deradicalization programs specifically set up for terrorist individuals as well as counter narratives and alternative messaging.

One of the reasons is that the biggest majority of individuals being radicalized in prisons are foreigners and NON EU citizens being thus subject to expulsion to their home countries after having served the sentence (unless they are at risk of torture and/or other inhuman treatment when being deported back to their home countries).

Deradicalization is thus quite often an individual decision adopted by the concerned detainee.

The phenomenon of radicalization in detention facilities has been deeply analyzed by the penitentiary Administration through specific studies since 2012.

Quite recently the Ministry of Justice issued some guidelines in order to prevent radicalization in detention facilities.

These guidelines are mainly focused on the phenomena of religious radicalization among foreign detainees

These guidelines point out that radicalization is strictly connected with the lack of reintegration within detention facilities and strongly recommend to all penitentiaries that

- 1) any kind of discrimination and isolation should be banned from detention facilities
- 2) detainees should be assisted by expert social workers, psychologists and when possible cultural mediators helping foreign detainees with integration into society;
- 3) extensive education and Italian language classes within detention facilities should be promoted;
- 4) social stakeholders, such as community and religious leaders as well as family members should be involved in the reintegration process of detainees;
- 5) deradicalization programs should be set up.

These guidelines aim thus at eliminating any separation between arrested/sentenced terrorists and the other detainees in the access to social reintegration and rehabilitation programs.

## **IMMUNITY, MITIGATING CIRCUMSTANCES AND PROTECTIVE MEASURES FOR THOSE WHO COOPERATE WITH JUSTICE**

National legislation has so far provided rules incentivizing disengagement and/or cooperation with justice by ensuring immunity of special mitigating circumstances

if it is agreed that disengagement and cooperation with justice may be linked to (although they cannot be identified with) a deradicalization process, it can be stated that national legislation

provided since the 70's immunity and mitigating circumstances for those who decided to cooperate with justice or disengage themselves from the perpetration of a crime and/or from a terrorist organization.

The National legislation provides with specific incentives those who decide to dissociate themselves from terrorist dynamics and groups and for those who decide to cooperate with Justice

Disengagement is not cooperation.

Disengagement is in fact meant as a change of the own life style following the admission of the own responsibility on the crimes committed. It does not necessarily require specific allegations against the co-perpetrators.

The acknowledgement (made by the Judiciary) of disengagement implies the analysis of the behaviour of the accused inside and outside the detention facilities.

Pursuant to the national case law

- cooperation is a proof of disengagement and at the same time disengagement is also a first step leading to effective cooperation;
- eligibility for immunity and mitigating circumstances (to be acknowledged by the Courts) requires that disengagement and cooperation must be comprehensive, since disengagement must lead the accused to a full dissociation from the own criminal environment;
- cooperation implies wide and extensive statements (to law enforcement agencies and in Courts)
  - i) against the co-perpetrators of the crimes committed by the accused seeking such benefits and
  - ii) against the members of the criminal group the concerned accused participated to.

Those who have been sentenced for terrorist crimes are not eligible to some benefits such as house arrests, anticipated release, release on probation, unless they cooperate with justice

Pursuant to a more recent National case law, in order to promote social reintegration also of those sentenced for terrorist crimes, those benefits can be provided with also to sentenced terrorists who did not cooperate with justice if they did not commit violent crimes.

Some of these incentives (such as immunity, mitigating circumstances, anticipated release, release on probation) had already been legislated at the times of terrorist attacks carried on in Italy since the seventies by terrorist organizations, in order to effectively fight terrorist organization through the cooperation provided with by the insiders.

These incentives were regulated before any legislation

- criminalizing mafia associations (1982) and
- promoting cooperation with justice by members of mafia organizations (1991).

**Article 308 of the Criminal Code** grants immunity for those who, before the perpetration

- of crimes with terrorism purposes (listed from 270 bis to 289 bis of the Criminal Code),
- of the crimes affecting the International Legal personality of the State

a) prevent those crimes from being committed,

- b) dismantle and /or contribute to dismantle the terrorist association as well as,
- c) dissociate/disengage themselves from any kind of conspiracy and/or from the terrorist association

**Article 308 of the Criminal Code** grants immunity to those who before the perpetration

- of the above listed misconduct being criminalized by articles from 270 bis to 289 bis of the Criminal Code,

- of the crimes affecting the International Legal personality of the State

Falling under the criminal scheme of an armed gang

- a) prevent those crimes from being committed,
- b) dismantle and /or contribute to dismantle the armed gang as well as,
- c) dissociate themselves from the armed gang (unless they promoted, organized, managed the armed gang) and/or surrender themselves and their weapons to the Police

article. 4 of law 15/1980 grants a mitigating circumstance for the perpetrators of crimes committed for terrorism purposes, when they dissociate themselves from the co perpetrators, effectively provide law enforcement agencies with significant evidence against the other co perpetrators so that they can be identified and arrested

**Law no. 304/1982** provides for:

- exemption from punishment for those who, having committed only offences related to their membership to a criminal organization, withdraw from the agreement, or withdraw from the organization or from the terrorist group or facilitate the dismantling of the organization or group;
- exemption from punishment in case of attacks and attempted attacks, if the perpetrators prevent the event or supply evidence necessary to ensure an accurate reconstruction of the facts and the identification of any other co perpetrator;
- the granting of mitigating circumstances to persons charged with terrorist crimes who, before the conviction, dissociate themselves from the subversive organizations and make a full confession of the offences committed and effectively cooperate to annul or mitigate the consequences deriving from such crimes, or to prevent the perpetration of other related types of criminal conduct;
- the granting of mitigating circumstances to persons charged with terrorist crimes who, besides having dissociated themselves from the criminal association and confessed the offences committed, effectively cooperate with the judicial authorities in gathering decisive evidence to identify and apprehend the perpetrators of terrorist acts, or to find evidence useful for the reconstruction of the offences and to identify the persons responsible for such offences;

**Law no. 34/1987** provides for a reduction of penalty for terrorist crimes or the subversion of the constitutional order for those who, having been charged with, or sentenced for, offences committed for purposes of terrorism or subversion of the constitutional order, have once and for all dissociated themselves from the organization or the terrorist or subversive group they were members of.

Article 6 of decree law. 8/1991 grants a mitigating circumstance for those who, after the perpetration of a kidnapping for purposes of terrorism or for subversion of the democratic order (punishable pursuant to the above mentioned article 289 bis of the Criminal Code) , dissociate themselves for the other co perpetrators and significantly cooperate with Law enforcement agencies in facilitating the liberation of the victim and ensure his/her safety.

Since 2001, the legislation promoting cooperation with justice by participants to mafia organizations through the provision of special mitigating circumstances and protection measures was extended to the accused of crimes of terrorism

Since 2001 Protection measures can be provided with only to those accused of crimes committed with terrorism purposes who cooperate with justice

**Decree law 8/1991, modified by the law 45/2001** provides for protective measures (such as relocation to be extended also to family members, change of identity, transfer of detained collaborators of justice to safe detention facilities) and financial aid for those who decide to cooperate with justice with reference to crimes committed with terrorism and/or subversion of the Constitutional order or other serious crime. Such measures can be applied to witnesses and to collaborators of justice (that is any person who faces criminal charges, or has been convicted of having taken part in an association of criminals or other criminal organization of any kind, or in organized crime offences, but agrees to co-operate with criminal justice authorities, particularly by giving information or testimony about the criminal association or organization or any offence connected with organized crime or other serious crimes).

The assessment of the credibility of the those who decide to cooperate with justice and the consequent decision on the eligibility to be granted protective measure are issued (at the request of the Prosecutors collecting the statements of the collaborator of justice concerned) by a committee whose members are (among others) an under Secretary of State and two magistrates

Such assessment requires criteria such as:

- a timely guilty plea and/or detailed confession and acknowledgement of the crimes they committed (such conduct can be assimilated to a deradicalization process);
- the supply of relevant information on their assets and proceeds derived from the perpetration of the crimes or being/having been used for the perpetration of crimes that can be forfeited/confiscated and on the assets and proceeds of the other members of the criminal group they participated to;
- the supply of accurate and up-to-date information about the criminal organisations and the crimes perpetrated by their members;
- the supply of accurate and up-to-date information that would enable law enforcement and other relevant agencies to prevent criminal groups from committing further crimes.

The assessment of these criteria takes also into consideration decisions issued by the Courts who did evaluate the evidence provided by the concerned collaborator

Decree law 8/1991, amended by /2001 law, identifies the prerequisites necessary to be eligible for protective measures for those who decide to cooperate with justice

Pursuant to the Law, when assessing the credibility and relevance of the contribution provided with by a collaborator of justice, the relevant Authorities need to consider that particularly relevant can be deemed the information/testimony, related to a serious offence:

- that is necessary (e.g. if it is the only source of evidence) to start an investigation or to prevent a crime from being committed;
- that is credible (genuine and spontaneous);
- that is the crucial evidence available in order to prosecute a specific serious offence;
- that is needed to corroborate other evidence in order to successfully prosecute a specific serious offence;

- that is crucial in order to dismantle a terrorist organization and detect the proceeds derived from the perpetration of crimes;

that, despite other evidence available, is going to be subject to bribery or intimidation.

## **THE ROLE OF RESTORATIVE JUSTICE**

The inclusion of sentenced terrorists into a process of restorative justice is still debated.

In order to focus the attention on the victims of terrorist crimes committed in Italy in the '70s and '80s and promote a reconciliation process between those victims and the perpetrators, attempts have been made to set up a process of social mediation that would promote some form of dialogue between terrorists and victims, through the aid of expert mediators.

That dialogue is an attempt to match the desire of justice and truth of the victims and at the same time the desire of full reintegration into society of the perpetrators.

NGO's have organized so far meetings between victims and direct perpetrators or victims and perpetrators of crimes of the same kind.

Many of these meetings have not been financed nor supervised by public institutions.

Among these meetings, an initiative involving sentenced terrorists and victims of acts of terrorism must be mentioned. Some sentenced terrorists (all of them are former members of extremist left wing terrorist groups) have participated to various meetings aimed at promoting a reconciliation process with the victims of the crimes they were sentenced for.

These meetings have been deemed as prerequisites of a reintegration process into society that has so far involved some sentenced terrorists for crimes committed during the 70's and 80's and a few victims.

These meetings have been held within the framework of restorative or remedial justice, aiming at achieving, even beyond the well-known cases of generalized use in specific historical circumstances, the goal of rehabilitation.

The judiciary has not been involved in these initiatives, since the current approach is aimed at focusing the restorative justice mainly on the rights of the victims. One of the prerequisites to set up the condition of vulnerability of the victim is the seriousness of the crimes committed against them, including crimes for terrorism purposes. It is debated whether the above mentioned initiatives are aimed at protecting victims or at facilitating the reintegration of sentenced terrorists into society