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TERRORISM IN THE ITALIAN LEGISLATION

Last episode of crime had shocked the entire world. The Islamic extremist terrorism imply to not want to halt and to on their enlistee, now well integrated in every society.

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The last episode of crime had shocked the entire world. The **Islamic extremist terrorism** implied to nc want to halt and to rely on their enlistee, now well integrated in every society.

On 13th November, Paris was assaulted by four terroristic attacks in which lost their lives **132 civilians**.

Regarding the terrorism, the penal code foresees a series of rules that goes from '**art 270 bis' to 'art 27 sexies**'. Recently, October 9th to be exact, with **the sentence n 40699**, **Court of Cassations** judged the correct application and interpretation of **'art 270 quater' of penal code**.

The case concerned an Albanian which was probed for enlisting a third person in the terrorism group "Islamic State" with the purpose of participation in a terroristic way to the armed conflict in Syria, was subjected by the GIP of Brescia to a precautionary jail measurement. This measurement was justified b ***great evidence of guilt*** since ***the attempt to enlist***, by the probed, of a third person *in the terrorism grou field*. It went as far as the legitimate judge following the complaint by the magistrate of PM which cancelled the adoption of the precautionary measurement, adopted by the Tribunal of Brescia, and its following release of the probed.

However, articles '**270 quater- 270 sexies from penal code'**, were introduced with the **conversion law 2005** because of "*Urgent measures to contrast the international terrorism*" as well as wanted from the **Convention of the Council of Europe to prevent the terrorism, drafted in Warsaw on May 16th 2005**.

Therefore, following this path, the judge added, with the said conversion law of 2005, **articles '270 quater, 270quinquies and 270sexies of penal code'** that recites:

- **Ex art. 270quater p.c**.: "*whoever, outside the cases of art 270bis, enlist one or more person to exercise acts of violence that is to sabotage essential public services, with terroristic finalities, ev toward a foreign country, an institution or an international body, is punished with jail from sever fifteen years*";
- **Ex art. 270quinquies p.c**.: "*whoever, outside the cases of art 270bis, trains or gives instructions regarding the preparation or the use of explosive materials, fire arms or other arms of substance chemical or bacteriological harmful or dangerous, and also every other technique or method for accomplishment of an act of violence such as the sabotage of the public services essentials with terrorism aims, even if directed to a foreign state, an institution or an international organism, is punished with reclusion from five to ten years. The same punishment is given toward the trained person*";
- **Ex art. 270 sexies p.c**.: "*Are considered with terroristic aim, behaviours that for their nature or context, can bring serious damage to a country or to an international organization and are made with the aim of frighten the population or make the public powers or an international organizatic to accomplish or refrain from accomplish every type of act, or destabilize or destroy political structures that are fundamental, constitutional, economical and social of a country or of an international organization, as well as other behaviours defined terroristic or committed with terroristic aims by conventions or other international law rules binding for Italy.*"

The quaestio that present itself at the Court of Cassation is the one for the interpretation of the term "*enlist*" that is in the 'art. 270 quater of penal code'.

The hermeneutic process developed by the judges of the Supreme College, runs through three points:

1. This norms needs to be read in combination with **'art. 6' of the Convention of Warsaw of 2005** that promote "*the effective penalisation of multiple behaviours defined as introductory (regard th*

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accomplishment of the single terroristic act) and so to instigate in a public way, of training and recruitment, qualified by the particular finality of terrorism. In particular the art. 6 quoted by the Convention, for what concern the recruitment mention as relevant behaviour the individual solicitation, directed to the participation of the subject addressed in the realization of a terroristi offence or the subscription to the association with said finalities";

2. Judging in respect of **'art 12 prelaw'**, in virtue of the *connection* of words and so operating a wic and harmonic lecture of the entire normative disposition;
3. Confronting the use of the term "enlist" as well as employed by **'ex art 270 quater p.c.'** and inde the one **'ex art 244 p.c.'**, which is, strictly recited: "*whoever, without the approval of the government, makes enlistment or accomplish other hostile acts against a foreign country, so to expose the Italian State to the danger of a war, is punished with reclusion from six to eighteen years; if the war begins, is punished with life sentence*."

Answering to this last sentence, the difference, as the Court says, is that "*the notion of an enlisting- included in 'art 244' "it implies not only the stipulation of a contract but the envisionment of the enliste in a military structure in an effective sense", while the one foreseen by art 270 quater of penal code "d not imply nor assume the existence of a regular army, as organizations of a paramilitary type, even wit minimum number of adhering people.*"

Therefore, as the judges say, the significance that has to be given to the term "*enlist*" is the one of the notion of "***engagement***" interpreted as "*the accomplishment of a serious deal between a subject who propose (the make, in an organized way, of more acts of violence that is a sabotage with terroristic finalities) and the subject who adhere.*"

The ratio who moved the legislator to use the term "*enlist*" in the making of the '**art 270 quater p.c.**' explain the "*willing to put the consummative moment of the violation in an advanced phase in respect o the one proposed (from the enlister) or negotiation, even as for the particular sector in which is set the norm and the relative risk to confuse the mere ideological proselytism activity with the typical case crime*".

Besides in this case it will result integrated in the moment of the "*reach of the deal*" as activity potentia prodromic to the fulfilment of terroristic activities.

This discipline, basically, tends to avoid the creation of "*the human growth*" that could possibly impact the juridical goods which could be damaged by this type of behaviour.

The main characteristic of the "serious deal", in accord to the interpreter, is that it benefit of:

- **Seriousness**, to refer to as the concrete possibility that the proposer could adjoin the aspirant in th terroristic structure;
- **The possibility to integrate in the type of offence mentioned in the norm.**

In that case, so, it does not seem to be omitted, once figured the behaviour integrated in the crime at the 'art 270 quater of penal code', the possibility of an **attempt**, with regard to what mentioned before, as regulating the same deal is possible to think of as highly dangerous the activities tends to promote the deal.

The hermeneutic process followed by the judges is that that, once identified the crime at the art 270quat p.c. as a crime of event, could consider itself the attempt of progression of the acts to the conclusion car be integrated in the "serious deal".

So :

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- The term "*enlist*" used by the legislator, in the crime foreseen in the art 270quater p.c., has to refe hermeneutically, to the term "*engagement*" that see Its defining moments in the fulfilment of a "*serious deal*", between proposer and the potential terrorist, in order to add the terroristic organizations. Being a matter of a crime of event so, that, as it is, is integrated with the basic deal does not seem to be omitted the configuration of the trial of crime of enlisting.
