Countering radicalisation in Europe and beyond. Does the law matter?

di Veronica Federico and Silvia Sassi

Abstract: The purpose of the special issue is to discuss and make sense of existing de-radicalisation and counter-radicalisation legal and policy frameworks in a number of contemporary democracies, namely Austria, Finland, Germany, Italy, Poland and Turkey, in the chassis of EU hard and soft-law norms. While providing an overall introduction to the special issue, this short article points to a basic clustering of the experiences and suggests a critical discussion of common trends and patterns.

Keywords: De-radicalisation; democracy protection; fundamental rights.

Radicalisation and violent extremism challenge the very essence of contemporary democracies: they leave no space for mediation and compromise, which are what democracies based on pluralism, the rule of law and the respect for fundamental rights should rely on.

Democracies protect themselves and fight back, on the one hand by promoting and entrenching precisely pluralism, the rule of law and fundamental rights and, on the other, by criminalising violent extremism and radicalism. The strategies vary greatly, depending on a number of variables, but they all combine the two approaches in their own specific blend.

Based on the findings of an extensive research project carried out in Europe and beyond,[1] the special issue discusses those approaches,

[1] The special issue stems from a work package of the EU-funded research project "D.Rad: Deradicalisation in Europe and Beyond. Detect, Resolve, Reintegrate" (Grant agreement 59198). The work package ran from January 2021 to October 2022 and involved desk research and in-depth expert interviews. D.Rad is a comparative study of radicalisation and polarisation in Europe and beyond. It aims to identify the actors, networks, and wider social contexts driving radicalisation, particularly among young people in urban and peri-urban areas. The research benefits from an exceptional breadth of backgrounds, as it spans national contexts including Austria, Bosnia and Herzegovina, Finland, France, Georgia, Germany, Hungary, Kosovo, Jordan, Iraq, Israel, Italy, Poland, Serbia, Slovenia, the UK and Turkey, and several minority nationalisms. It bridges academic disciplines ranging from law, political science and cultural studies to social psychology and artificial intelligence. With the possibility of capturing the trajectories of seventeen nations and several minority nations, the project provides a unique evidence base for the comparative analysis of law and policy as nation

questioning the internal coherence of national legal frameworks and strategies, their biases and the delicate balance between the urgency of responding to growing concerns about the increasing internal and external challenges to safety, security, peaceful coexistence and tolerance and the need to ensure respect for the rule of law and fundamental rights and liberties.

Despite all the attention focused on the issue, especially in the past few years, the notion of radicalisation remains complex and controversial[2] and its conceptualisation fuzzy. The term "radical" started being used in the public sphere in the course of the 18th century, in relation to the Enlightenment and the revolutions (both French and American), but it was established as an identifier of a specific political attitude in the subsequent century, with reference to political actors advocating for sweeping social and political change.

"For a significant period of time, radicalism was very much part of 'regular' political life. What is more, more often than not, radical movements militated for democracy and democratic principles rather than against them. Radical ideas referred, among others, to the progress and liberation of humankind, based on the principle of human rights and democracy"[3]. Radicals were members of anti-slavery movements, the suffragettes, and those advocating for decent working conditions on the eve of the 20th century, just to name a few. Moreover, many of the 19th- and early 20th-century "radical" demands have not only become mainstream entitlements today, but are also considered democratic benchmarks.

It is in the late 20th-century, early decades of the 21st-century that the use of this adjective turns to the opposite direction "embracing an anti-liberal, fundamentalist, anti-democratic and regressive agenda"[4]. Moreover, as critically noted by Kudnani, in the aftermath of 9/11, the term "radicalisation" has become a key concept to understand and explain terrorism on the one hand, and to justify counter-terrorism strategies on the other, and in particular the notion has been both analytically and politically linked with jihadism. This has led radicalisation "to provide new lens through which to view Muslim minorities"[5] and to portray those minorities as "suspected communities". According to the author, therefore, the concept itself may be biased, therefore conducting to overestimate Muslim radicalisation and to underestimate all other forms of radicalism. As a consequence, the idea of de- and counter-radicalisation strategies entered the political and law-making agenda since the last decades of the 20th-century, partially relying on pre-existing anti-terrorism frameworks, partially

states adapt to new security challenges. The process of mapping these varieties and their link to national contexts are crucial in uncovering strengths and weaknesses in existing interventions. For further details on D.Rad: dradproject.com/

[2] As pointed out by A. Kudnani, "about the only thing that radicalization experts agree on is that radicalization is a process". Radicalisation: the journey of a concept, *Race & Class*, vol. 54, n.2, 2012, p. 3.

[3] D. Pisoiu, *Islamist Radicalization in Europe: An occupational change process*, Routledge, 2011, p. 23.

[4] A.P. Schmid, *Radicalisation, De-Radicalisation, Counter-radicalisation: A Conceptual Discussion and Literature Review*, The ICCT Research Paper, March 2013, p. 7.

[5] Kudnani, op.cit. p.3.

building new paradigms, often echoing the biases radicalisation has been built on. The purpose of this special issue is not, however, to engage with conceptualization, but rather to make sense of existing de-radicalisation and counter-radicalisation legal and policy framework. We will, therefore, rely on the broad definition of radicalisation provided by Article 2(14) of Regulation (EU) 2021/1149 of the European Parliament and of the Council of 7 July 2021 establishing the Internal Security Fund, which identifies radicalisation as a

> phased and complex process leading to violent extremism and terrorism and in which an individual or a group of individuals embraces a radical ideology or belief that accepts, uses or condones violence, including acts of terrorism, to reach a specific political, religious or ideological goal.

The definition does not solve all problematic aspects tied to the identification of radicalisation as both a social phenomenon and as a theoretical concept for unravelling social facts and legal issues, and yet it is clear enough to enable us to build a sufficient common ground for the comparative analysis the special issue aims at. Nonetheless, a certain anti-Muslim bias surfaces in a number of legal frameworks, as implicit element of counter-radicalisation strategies, and this makes it harder to capture other arising forms of radicalisation, and in particular white suprematism and extreme right activities

The media and political debates on radicalisation, violent extremism and on the instruments to counteract them follow the waves of events (and far too frequently policy-making and law-making processes do so as well), whereas scientific literature remains relegated to the fringes of the market of ideas. In this field sociology, psychology, political science and strategic studies dominate the scene. Legal studies are rare, as it is comparative research. The purpose of the special issue is to contribute to filling both gaps through an in-depth discussion of a number of diverse case studies that, taken together, may provide the reader with a broad picture of how legal and policy-making systems face the challenges of radicalisation. While it is firmly anchored in legal analysis, and in particular embraces critical legal theory – which suggests that the law is inherently intertwined with social and political dimensions and that laws are thus heavily influenced by the power dynamics characterising societies – the special issue mirrors a methodological pluralism that combines a number of different research methods, that is the sole analytical instrument through which the endeavour of disentangling the complexity of de-radicalisation appears feasible.

The peculiarity of this special issue is that all the papers analyse, from a legal and political perspective, two phenomena that are the two faces of the same coin in terms of their respective reactions – 'negative' and 'positive' – to discomfort, suffering and/or intolerance. The authors share a common, basic view: namely that a variety of factors – particularly those of a historical, socio-cultural and political nature – must be taken into account in order to devise effective measures to counter radicalisation and promote de-radicalisation. This is why all the essays focus on the ways in which different legal systems – at the national and supranational level – seek to prevent, counteract and eradicate the extreme forms of radicalisation that lead to violence in certain contexts, annihilating independent thought and undermining the democratic system as a whole.

In this perspective, therefore, it is no coincidence that the phenomenon of radicalisation is studied in countries such as Germany, Poland, Turkey, Italy, Austria and Finland. In the framework of the international and European strategies to contrast radicalisation and violent extremism, the country studies effectively represent three approaches to the challenges radicalisation poses in contemporary democracies: the repressive approach (Italy and Turkey), the integrative approach (Finland) and the mixed approach (Austria, Germany and Poland). The first cluster of countries is characterised by a strong criminal law apparatus, in which security and intelligence activities embody the core strategy, along with a robust legal framework for addressing terrorism and some related offences. In Finland, by contrast, an integrative policy design plays a crucial role in preventive strategies, which are based on the proactive role of institutions and civil society actors in detecting situations at risk or vulnerable groups. In this case, social integration is deemed essential to challenge drivers that can lead to radicalisation or avert situations that can foster grievances. Hence, repression and criminal provisions represent an *extrema ratio*, rather than the main and ordinary response. Systems with a mixed pattern (Austria, Germany and Poland), for their own part, have achieved a balanced strategy by combining and merging the aforementioned approaches. Therefore, security instruments and active integration policies mutually coexist in the efforts to shape the legal and policy apparatus in response to the challenges of radicalisation.

The special issue begins with the discussion of the European Union policy and legal framework. Despite the growing attention on the part of EU policymakers, and a first attempt to provide an overarching definition of what radicalisation should mean in the EU legal framework, as mentioned earlier, there is no all-encompassing, dedicated, legally binding act devoted to this phenomenon. This is mainly due, as A. Rosanò points out, to the fact that the EU has no specific competence in this matter, and it can hardly claim any, also in the light of the principles of subsidiarity and proportionality; it is solely called upon to play a supporting role.[6] And yet a number of both direct and indirect, binding and non-binding instruments have been elaborated at the EU level, and what emerges is a tendency in EU law to approach the fight against violent radicalisation using tools that are not only of a punitive nature. Nonetheless, the responsibility for effectively countering radicalisation remains within the competence of Member States, and this is the reason why the special issue is mainly devoted to an in-depth analysis of national legal and policy frameworks. As stated above, Italy and Turkey are characterised by a typically repressive approach.

Two essays deal with the fight against radicalisation in Italy. Although both highlight the extent to which the Italian legal system pays special attention to jihadism and violent religious extremism, the authors' arguments and respective conclusions differ. G. Spanò[7] is very critical of the way Italy has addressed the issue of de-radicalisation. There are several reasons: in Italy the topic of de-radicalisation has been dealt with

[6] *Lack of competence, lack of action? The European Union legal framework on deradicalisation and its limits.*

[7] *De-radicalisation in Italy: is 'emergency' a strategy per se?*

inconsistently, having been investigated through several different perspectives. It does not seem to be perceived as a distinct issue standing on its own, and as in many other European systems, "de-radicalisation" is included within the broader umbrella category of counter-terrorism responses. In assessing the aforementioned issues, the paper develops an analysis of the Italian context, in order to underscore its legal, political and institutional specificities (and contradictions). It describes the current 'state of the art' of the Italian regulatory framework, also discussing the interventions and attempts concerning de-radicalisation strategies, which still remain at a 'formal level'. It also investigates the substantive role of courts in facing the legal (and policy) vacuum. The picture of the Italian case is complemented by an insight into one of the most crucial terrains where the fight against radicalisation takes place. G. Anello's article[8] focuses on one of the most fertile grounds for the development of radicalisation – prisons – to assess whether it is possible to implement new prevention strategies in the Italian system taking into account the proposal of a contemporary Muslim thinker – Jawdat Sa'id – about "Self-Critical Jihadism" in the pluralistic society.

The Turkish repressive model is rather different. In Turkey the problem of political violence is a long-standing one. Its roots go back as far as the period of the Ottoman Empire. However, it was not until the Lausanne Peace Treaty of 1923 that the phenomenon was legally and politically addressed. In the opinion of Hasret Dikici Bilgin and Nazlı Özekici Emiröna l,[9] this agreement shapes the Turkish State's current approach to countering radicalisation. This is despite the fact that different constitutions have been adopted over time. More specifically, the relevant legislative framework concerning radicalisation has a similar security-based approach, from which a conceptualisation of radicalisation is absent, while speech outside the constitution and official ideology is treated as a threat to national integrity and assessed in the context of counter-terrorism. The legislation is punitive, limited in scope when it comes to hate crimes, and applied in a biased way to protect the majority ethnic and religious groups. The existing legislation regarding radicalisation does not encompass online contexts, and any effort to detect radical content on online platforms tends to target minorities and dissident groups rather than hate speech and discriminatory attitudes towards them. In light of all this, it is therefore not surprising that Turkish policies ignore ethnic and religious diversity, downplay the crimes against minorities with a security-based approach to radicalisation and de-radicalisation, and protect the dominant groups rather than minorities and dissidents. The Islamisation policies of the Justice and Development Party (*Adalet ve Kalkınma Partisi, AKP)* and its further closing down of the political space with a super-presidential system also exacerbate the situation and feelings of insecurity among non-Muslim and heterodox Muslim groups.

At the opposite end of the spectrum is Finland, which is the sole country firmly committed to integration strategies; yet the model also suffers from shortcomings. K. Kuokkanen, L. Horsmanheimo, and E.

[8] *Jihadism in the Italian Prison System: Some Critical Notes.*

[9] *Can you protect minorities without recognizing them as minorities? The pitfalls of the Turkish legal and policy framework on radicalization.*

Palonen[10] state that the country deals with the issue quite comprehensively, as the approach is both implicit – i.e. with measures designed to assure a functioning democracy and access to welfare services and education, aimed at the entire population – and explicit – where it addresses a combination of social and security issues in a pragmatic manner. According to the authors, however, the critical point of Finnish policy is its dependence on time-limited projects, which undermine policy continuity.

The mixed approaches lie between the two opposite poles. They combine a legislative framework based on a counter-terrorism agenda with preventive measures aimed at achieving a balance with securitarian responses. The two patterns recur in the different national models, which nonetheless reflect the specificities of the historical, social and political traits of respective jurisdictions.

As J. Glathe and M. Virga[11] point out, Germany has experienced repeated waves of radicalisation and far-right violence since its reunification in 1990. Because of this, Germany's response to the phenomenon of radicalisation is based on the idea of "militant democracy", the country having drawn lessons from the past and the national-socialist power takeover. In particular, the authors deal with the legal tension between "militant democracy" and its aim of guaranteeing the basic democratic order by preventing and prosecuting extremism through criminal law, and the fundamental rights laid down in the Constitution, such as freedom of speech and freedom of assembly.

The Polish case is slightly different from the German case because, as stated by M. Moulin-Stozek, M. Garwol and B. Przywora,[12] the risk of terrorism is low in the country. Despite this, the State security response is strong and involves relatively substantial powers vested in the intelligence services and the police, but the role of fundamental freedoms in countering radicalisation is also paramount. So much so that, in the Polish narrative, citizens' social engagement and the right to assemble peacefully, the right to associate, and freedom of speech are portrayed as crucial elements for addressing radicalisation. The article discusses selected challenges related to the Polish legislative counter-terrorism reforms in the context of the country's constitutional framework. During the COVID-19 pandemic, fundamental freedoms were restricted to a degree that was inconsistent with constitutional standards, and these limitations persisted also in the later period of the epidemic threat, undermining the delicate balance between securitarian and right-based approaches.

Finally, with regard to the Austrian case, J. Fux, M. Haselbacher and U. Reeger[13] take the recent terrorist events as a starting point to review anti-terrorism legislation from a historical-institutional perspective and to

[10] *Conceptualising Finnish deradicalisation policies: Implicit or explicit, projectified or institutionalised?*

[11] *Defending Democracy in the Light of Growing Radicalization: Tensions within Germany's Militant Democracy*

[12] *State security versus fundamental freedoms. Evaluating Polish legislative responses to terrorism and radicalization*

[13] *Legislative responses to the BVT affair and the Vienna terror attack: Securitisation between structural reforms and symbolic policies.*

DPCE online
ISSN: 2037-6677

question how recent legal reviews address the issue. The three authors focus their attention on the latest two acts– the 'Terror Combat Act (2021)' and the 'State Protection and Intelligence Act (2021)' – in order to demonstrate how these recent laws address the organisational restructuring of security agencies with the aim of securing their independence, while they also fit into the picture of securitisation after 9/11 and the ongoing politicisation of Islam.

Against an uneven legal landscape across countries (and quite often also within countries, with legal systems characterized more by fragmentation than by harmonized legal and policy coherence), the most interesting common trait is the strategic and systematic recourse to criminalisation. Contemporary democracies defend themselves against the threat of radicalism mainly through repression. Radicalisation is commonly read as a public security, criminal-law type of issue, even though the reason behind this choice may vary from country to country depending on the political, economic and social context. Such an approach unveils the tension between national security, fundamental freedoms and the rule of law. Quite often counter-radicalisation strategies come at odds with basic human rights and liberties, and biased approaches tend to exacerbate minorities (especially religious minorities) grievances. At risk is not simply counter-radicalisation measures' ineffectiveness, but democracy itself.

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1982