

The bill on the crime of "apologia for organized crime and mafia crime" and its inapplicability to the hateful practice of "inchini"

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The bill presented by the deputy Francesco Emilio Borrelli, aimed at introducing into the Italian Criminal Code the crime of "apologia of organized crime and mafia crime" through the insertion of art. 414 *ter* of the Criminal Code¹, has caused considerable clamour.

The new criminal offense would aim to sanction with a prison sentence of up to three years «anyone who, through public performances or the dissemination of texts or audio or video productions or through social networks or any telematic means, praises people or facts linked to organized crime and mafia crime or denigrates people who have distinguished themselves for activities of any kind against organized crime [...], unless the act constitutes a more serious crime»².

With the insertion of the new article 414 *ter* c.p. it would be intended to provide Italian Criminal Law with a tool capable of concretely contributing to the repression of the increasingly repeated episodes of glorification of criminals and mafia logic which are recorded above all on social networks. In fact, the need to curb this widespread phenomenon had already led to the presentation of a similar bill (no. 405 of 19 October 2022) to amend the art. 414, on the initiative of the deputy Ascari.

In commenting on the bill, it has been supported that the application of the new art. 414 *ter* c.p. can also be abstractly invoked against those who carry out, in the context of religious processions, the bowing of statues and simulacra near the homes of criminals³, a hateful practice against which the Catholic Church has been acting with extreme commitment in recent years⁴.

In our opinion, however, such conduct, even in the event of approval of the proposed law, would not be subsumed under the new criminal hypothesis of "apologia for organized crime and mafia crime", for two reasons.

¹ Already in 2021, the deputy Francesco Emilio Borrelli had advanced a similar bill, which can be consulted at <https://www.cr.campania.it/crccmsintegrationservices/rest/services/documentale/prendiDocumentoStampa?id=151212>.

² The text of the bill has been reported by various newspapers. See *Carcere per neomelodici che inneggiano ai boss e per chi fa inchino in processioni: la proposta di legge*, in *Adnkronos.com*, 28 August 2024.

³ *Ibidem*.

⁴ See FABIO BALSAMO, *Le normative canoniche antimafia*, Luigi Pellegrini Editore, Cosenza, 2019.

First of all, it should be noted that the Court of Cassation, with the sentence of the Third Criminal Section of 20 January 2022, No. 2242, held that the practice of making bows under the homes of bosses, realising a criminal manipulation of the purposes of religious rites, integrates the criminal hypothesis referred to in Article 405 of the Criminal Code (Disturbance of religious functions of the worship of a religious confession).

In the second analysis, the assimilation of religious rites and processions, as acts of worship, to the notion of ‘public spectacle’, contained in the current wording of the bill, appears questionable. Such an interpretation would, in fact, create an undue overlap between the manifestations of freedom of thought and expression, which can include ‘public spectacles’, and the manifestations of the right to religious freedom such as religious rites, which find in Article 405 of the Criminal Code – such as in Articles 403 and 404 of the Criminal Code - their main criminal law protection of the fundamental right to religious freedom and worship provided for by Article 19 of the Constitution.

This does not detract from the fact that the proposed law would have the important merit of allowing the repression of that conduct aimed at denigrating ‘persons distinguished for activities of any kind against organised crime’, including the many priests, ‘mafia martyrs’, who have paid with the price of their lives for their action to prevent and combat the mafia, above all Blessed Don Pino Puglisi and Don Peppe Diana.

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