

Just Culture and Judiciary

Just Culture across industries: continuing to learn from each other

Online webinar – October 28th 2020

The criminal liability of Air Traffic Controllers within the criminal
negligence framework: time for a new approach?

Nicola Romano

Head – ANACNA Legal Commission

Eliana Greco, PhD

Post-doc Research Fellow in Criminal Law – Università Cattolica di Milano



ANACNA

Italian Air Traffic Controllers' Association

Not For Profit

Non Partisan

Promotion of Safety and Efficiency

Technical and Professional issues of
ATS Professionals

Apolitical

Continuous improvement of Air
Traffic Management



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del Sacro Cuore

ANACNA & Just Culture

Complexity

High-Reliability Organisation

Human being

Errors tolerance

Honest Mistakes

NEED FOR JUST CULTURE



ANACNA & Just Culture: a long journey



2013
Amendment of the **Italian Navigation Code**, to include the ANSP operation manuals in the recognised sources of law

Member of the Eurocontrol Just Culture Task Force

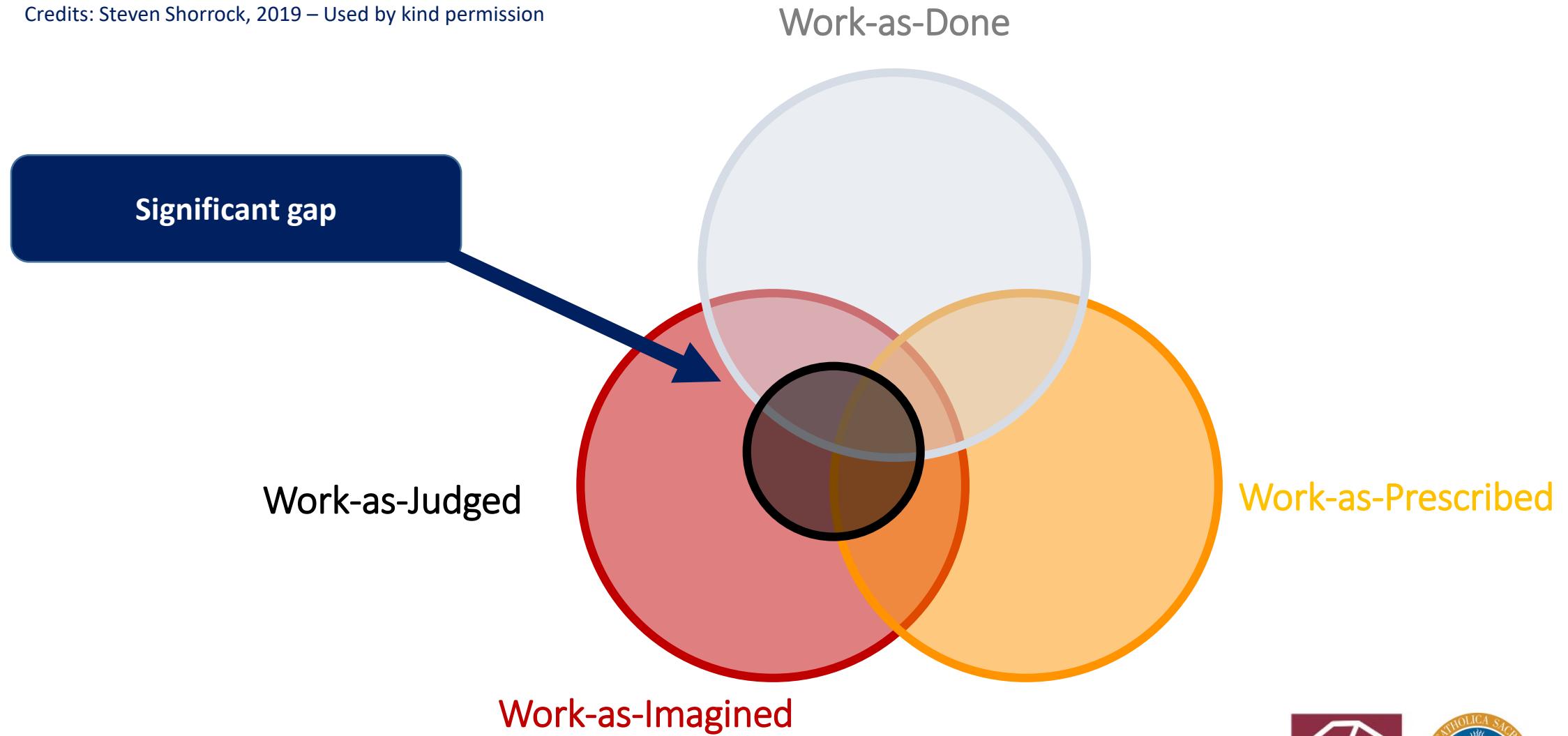
Several members attended the Eurocontrol / IFATCA / ECA **Prosecutor Expert Course**

2015
Training module held at the Scuola Superiore della Magistratura (**Judiciary Training Centre**), prosecutors visit to Roma ACC

Two ANACNA members selected in the **Eurocontrol Experts List**

The gap between Work-as-Done and Work-as-Judged

Credits: Steven Shorrock, 2019 – Used by kind permission



Can we (as a Society) do better?



...and how?

An opportunity: new laws on medical liability in Italy

- The **Baldazzi Law** (2012) and the **Gelli-Bianco Law** (2017) set new criteria to establish criminal liability in the medical sector in Italy
- Some **Just Culture** elements (i.e. role of the guidelines and good practices)
- **Worth exploring** for other sectors and businesses?
- Let's stop complaining and **let's ask the experts!**



ANACNA – ASGP (Università Cattolica di Milano)
Research Project on the criminal liability of ATCOs

The ASGP – ANACNA research

An introduction

- The criminal response to the major disasters, including the aviation ones, represents one of the most significant issues of Modernity. It therefore requires a multidisciplinary analysis (not only from a legal or criminal perspective)
- This is a very important issue relating to the mechanisms of judicial assessment of criminal liability of air traffic controllers, in case of adverse events, such as aviation disasters

The ASGP – ANACNA research

At a glance

- The ***Alta Scuola “Federico Stella” sulla Giustizia Penale (ASGP)*** of the ***Università Cattolica del Sacro Cuore*** (Milan) and ANACNA conducted, during the years 2019-2020, **a research on the criminal liability of air traffic controllers**
- The study of the conditions that can expose air traffic controllers to (or preserve them from) criminal liability has a particular importance. The analysis of the dynamics of criminal negligence related to harmful events in this field presents not only a legal relevance, but also a **social, cultural and operational one**: it represents a paradigmatic context for a more general **rethinking** of the criteria of imputation and responsibility in relation to macro-adverse-events that may occur within **«organizations with high risk potential»**

The ASGP – ANACNA research

The goals

- The research aims:
 - first of all to analyze the criminal negligence criteria in case of an adverse-event occurred within «**High Reliability Organizations**»: in sociological literature these are organizations that operate in highly complex contexts «while keeping high standards of reliability and safety, effectiveness and efficiency»
 - to look for and to **develop regulatory solutions** capable of adequately considering the specific characteristics of the risk management within this field

The ASGP – ANACNA research

The issue of liability assessment in specific technical fields

- The risk is to incur, as has often happened, in liability assessments that result in forms of “**position-responsibility**” (so-called “*responsabilità da posizione*”: a responsibility based on the fact of holding, because of one’s qualifications or specific competences, a top / pre-eminent role in the management of a certain risk; this leads in many cases to erroneously believe that the individual in question is **always** in the condition of being able to avoid the occurrence of a certain adverse fact, or to reduce the risk of occurrence of a certain event
- This is a **totally wrong approach**

The ASGP – ANACNA research

The research methodology

- The research followed an ***interdisciplinary methodology*** which includes sociological and criminological acquisitions as well as the study of criminal law relating to similar sectors (the medical one, first of all), constantly keeping into consideration the indications coming from International and European Law
- In the first months of the research, an empirical analysis was undertaken, through:
 - **qualitative interviews**, with the precious collaboration of many ANACNA representatives, aimed at acquiring knowledge on the context within which air traffic controllers operate and according to which procedures
 - a quantitative analysis involving **169 air traffic controllers**
 - a one-day **operational room visit** in Milano ACC

The ASGP – ANACNA research

The questions

- the greater or lesser frequency of ordinary risk situations compared to emergency situations
- the procedures to be followed in the case of unexpected threats
- the ability to decrypt “red flags” and the influence, on this profile, of the training received (skills, refresher courses, duration, renewals)
- the impact of teamworking on the correct application of procedures
- the time available to take relevant decisions
- the methods of interaction with other professionals (pilots, airport authorities, airport vehicles, firefighters, medical facilities)
- the role of new technologies in carrying out ordinary or extraordinary activities

The ASGP – ANACNA research

*A paradigmatic case: the **Cagliari accident** (Cassazione penale, sez. IV pen., 10 dicembre 2010, n. 6820, on Resp. civ. e prev., 2011)*

- We analysed an emblematic case of aviation disaster, which is the «**Cagliari accident**», an example of failure to take into account the peculiarities that characterize the activity of ATCOs
- The fact was analysed from a juridical-criminal point of view with reference to some elements:
 - Duty of care (the so-called «*posizione di garanzia*»)
 - Criminal negligence criteria
 - The role of precautionary rules

The ASGP – ANACNA research

So, what should be done?

- Seek rational, effective **regulatory solutions** that are able to:
 - reduce the impact on the air navigation system of the so-called «**accusatory approach to error**»
 - limit the risk – indeed a very serious one in businesses with high risk potential – of **overcriminalization**, looking not only for best practices, but also for procedural models and prospects for regulatory innovation
- Work with other stakeholders towards a **new legislative proposal**, based on that applicable to medical professions in Italy, whereby criminal liability of front-end staff would be limited to cases of **gross negligence**

The right tools



Provide all stakeholders (both operational staff and members of the judiciary) with **the right tools** to do their job:

- front-line operators need clear, unambiguous rules, and a **well-defined perimeter** for their liability (i.e. no undefined position of guarantee)
- judges/prosecutors need **new legislative tools** that allow for a new approach to liability assessment, especially in civil law countries, such as Italy

A collaborative approach

Operational
Staff

Universities

Legislative
Bodies

Lawyers



Prosecutors /
Judges



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The times they are a-changin'

Likely growth in
(post-pandemic)
traffic demand

Widespread
deployment of remote
tower operations

Interaction with
autonomous systems
(RPAS, etc.)

Increased focus on
human factor aspects
of our profession

Increasing levels of
automation

Introduction of AI in
operational contexts

**The right time to get a
new legislative
framework is NOW!**

The next steps

- Publication of the research report in relevant criminal law journals
- Whenever the pandemic situation permits, presentation of the research report in a dedicated conference
- Keep raising the awareness on the issue of Just Culture and criminal liability among elected officials and institutions in general



Stay tuned!

Thank you!

Nicola ROMANO – nicola.romano@gmail.com

Eliana GRECO, PhD – eliana.greco@unicatt.it