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## 2<sup>nd</sup> International expert conference

“The so-called anti-terror-struggle using the example of Kurds –  
practice in the European legal sphere”

Bonn, 10-12 December 2010



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### III. European policies of criminalization

#### 1. Prosecution 2010

#### 4. Italy

## Italy

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In Italy the cases of asylum-seekers coming from the South-East of Anatolia and representatives of the political movement for the rights of Kurdish people in Turkey have been tackled in many different ways, sometimes even ambiguously.

On the one hand, Italy is a Country that, both for its administration and the sentences expressed, has a high asylum recognition rate, this means both the recognition of the status of refugee prospected by the Geneva Convention and the right of asylum described in article 10 of the Italian Constitution, which was meant for those people who do not benefit from fundamental rights in their Country of origin through the same kind of legislative document.

In this sense the 1999 sentence of the Rome Court of Justice in favour of Abdullah Ocalan was and still is a fundamental one, since it recognised the right of asylum to the leader of the PKK (who in the meanwhile had been captured by Turkish Police forces and imprisoned at Imrali prison).

In the sentence pronounced before the Italian Government, the Court of Justice stated the following:

“the ideal drive of Ocalan’s activities (which is the cause of crimes undeniably serious) has constantly been the recognition of rights for Kurdish people, those rights which so far have been contested and denied. This political ideal, from the point of view of absolute values and certainly worthy of consideration both in the present context and in an historical perspective, represents a counterweight to the degree of the offence perpetrated. Therefore, as far as internal right is concerned, under the effect of the extradition ban imposed by the Constitution on political rights, it is the right of the involved person not to be extradited; from this point of view, the criminal activity which constitutes the charge cannot influence negatively on the recognition of the right of asylum”.

Since then, honestly, the Italian Government has done nothing to obtain from Turkey the respect of the Judicial Authority’s sentence. Nevertheless, Ocalan’s case was the cause for many other asylum-seekers’ applications and the presence of Kurdish political representatives as refugees in Italy.

Moreover, thanks also to the effective work of Police authorities in executing the international arrest warrants, over the last three months Italy has tackled on many occasions the issue of extradition of Kurdish politicians alleged of crime of terrorism cause of their membership to the PKK. The Courts of Appeal in Rome, Florence and Taranto have always answered negatively to the requests coming from the Turkish Government, both cause of the lack of guarantees in the proceedings involving the Kurdish politicians and also the political nature of the alleged crimes, which obliges to respect the ban imposed by our Constitution on extradition for political crimes.

Obviously, in these occasions the discussions on the relationship between political crime and terrorism went very deep in the matter.

At present, at the Court of Appeal in Venice there is a pending criminal proceeding against a popular politician of the Kurdish Diaspora and former Turkish MP, Toguc Nizamettin, who is currently a Dutch citizen and was arrested as a consequence of an International arrest warrant issued by Turkey during his brief stay in Italy.

After having spent many weeks in prison during the summer, Toguc was released, but he has been obliged since then to stay within the Italian Region Veneto. The situation is still blocked while waiting for a close date of the judgement regarding the extradition application made by the judicial authorities of Diyarbakir and Ankara. This application contains allegations on the collaboration of the former deputy with the PKK and his substantial participation into armed activities on the Turkish territory and within its boundaries.

The fact that Toguc, who obtained the status of refugee from Dutch authorities before his citizenship, was released, underlines a positive consideration of the Kurdish politician's defence; nevertheless the criminal proceedings are still in process and the situation is still uncertain.

One of the issues used by the defence is the following: "in a State where fundamental human rights are considerably violated and there are no democratic pacific means to force the State to respect these rights, the revolt is a lawful reaction according to what the liberal tradition defines 'right of resistance' to the State-oppressor".

Moreover, as far Toguc's defence before the Court is concerned, the case is a good example of application of the 1957 European Convention on Extradition, according to which "an extradition request is not to be accepted when it is based on a crime considered by the Defendant's party as a political crime or an action related to this kind of crime" and "when the Defendant's party has serious motivations to believe that the request for extradition based on ordinary law was presented in order to take legal proceedings or punish someone on grounds of race, religious belief, nationality or political opinions and that the involved person's status risks to be worsened due to one of the above causes". The Italian Penal Code also reads as follows: "extradition cannot be allowed in the case of a political crime, when there are reasons to believe that the suspect or the defendant will be subject to persecution or discriminatory actions on grounds of race, religion, sex, nationality, language, political opinions, personal or social conditions, which can be a cruel, inhuman or degrading treatment or punishment, or any other action which causes the violation of any fundamental human right".

While the sentences of the Courts of Appeal have always denied so far the extradition of Kurdish political representatives or PKK members to Turkey, there have been two cases when Kurdish politicians were sent to France under European Warrants of arrest.

Even in these cases, the issues on the defendant's side were based on the political nature of the alleged crimes and the fact that they could not be defined as crimes of terrorism, but they involved French Judicial Authorities and not Turkey. Therefore, Italian judges paid less attention to the issues presented to them and delegated their judicial authority to the Country requiring the evaluation of the nature of alleged crimes at charge of Kurdish political representatives.

It is worth to notice that also in this case, due to the complexity of provisions regulating the issue of political nature of crimes, there is an indefinite description of terrorism and crimes of terrorism. As far as the listing of the PKK in the European list of terrorist organisations, the overall position maintained by Italian Authorities is vague and ambiguous: while they are sure of their decision

when the issue is presented by Turkey (mainly cause of the lack of assurance given by this Country with regards to the respect of the right to life and fundamental rights), they are certainly more pliable and less decided to go further into the details of a case when the request comes from a Member State of the EU.

Two good examples of this non-uniformity of behaviours are the big investigations started by the Rome and Venice Attorneys.

The first one involves a financial activity with the PKK through money remittance. It substantially took place during the summer 2009 and involved a series of house searches to Kurdish businessmen and traders who came from Turkey, even the headquarters of associations for the promotion of Kurdish culture were searched. The bank investigations which followed, obviously started by an initiative of Turkish authorities, have not been concluded yet and are left open to interpretations on the developments. This will of course have negative implications on the relationship between the defendants and the Italian administrative authorities taking care of their right of residence.

The second investigation is even more emblematic. It was started in February this year by the Venice Attorney, which performed about ten arrests and the search of a campsite where seminars were held by representatives of the Kurdish Diaspora. What followed was weeks of detention and related media campaign on the alleged charges of many people to be collaborating to the financing of PKK and the recruiting of young guerrilla fighters to be sent to the Kurdistan mountains. The Venice Court of justice, behind the defendant's application, released all the arrested and, after long hearings, supported the position of the defence, which demolished the accusations build up by the Public Prosecutor with evidence in Police statements and the proof of high pressure put by Turkish authorities in their warnings.

The Court of Cassation, with the assent of the Public Prosecutor, rejected the application of the Venice Attorney and confirmed the verdict of the Court of Justice. Nevertheless, the proceeding is not concluded and the fact of the investigation itself represents obvious damage and prejudice for those who were involved.

Similarly, it was once more the defence's task to indicate useful elements to interpret the cultural and associative reality of the Kurdish political movement in Turkey and the Kurdish Diaspora, which was in particular the object of the investigation. In this way, it was still the defence which elaborated a critique towards the reductive vision of the Kurdish movement and its armed branches as terrorist criminals, while highlighting at the same time the complexity of political activity in the Kurdish regions, the possible phases in the dialogue with the parties, the relationship between Turkey and the EU as regards to the respect of human rights and the rights of populations, the geopolitical issues which are involved into the Kurdish event.

Obviously, until the PKK will keep on being on the European Union's terrorist list, it will not be possible to fully define the political nature of alleged crimes for the Kurdish national democratic movement and the Kurdish national resistance.

In this scenario, as it also emerged during the trials, the sentence of the Turkish Constitutional Court which declared unlawful the Democratic Society Party (DTP) - the representative party of the Kurdish minority in Turkey which is also present at the National Parliament with above 20 deputies – together with a wave of arrests and repressive measures against mayors, local administrators, human rights activists and political representatives of the Kurdish movement in Turkey which took place at the end of last year, is the proof that that dramatic situation for the

Kurdish population in Turkey is not only still existing, but it is getting worse. The contradictory scenario alternates authoritative repression to signs of dialogue and peaceful perspectives.

The quest for a political solution to the Kurdish issue has to include the full recognition of civil and political rights of the population involved. This is a fundamental condition for a truly democratic Turkey and it constitutes an issue of primary interest in the process of building a democratic Europe. This is the only perspective and opportunity to interrupt the spiral of repression without an end; no doubt that all the interlocutors-representatives of the Kurdish reality have to be involved into the process of dialogue, otherwise pointless.

In spite of the sentences of the European Court of Justice declaring the unlawfulness of the listing of the PKK amongst terrorist organisations, the Council of the EU keeps on including it. This is a very serious judicial case, since it does not take into account the political nature of this organisation, which is one of the main actors of the resistance movement against the policy of systematic abnegation of the rights of Kurdish people and which highlighted long ago, through declarations and concrete action, the need for dialogue and the hope for a democratic pacific solution to the Kurdish issue in Turkey. On the Turkish side, the initiative has instead had the effect of restrictions to freedom and democratic space for the Kurdish population, together with an increase of accusations of terrorism towards Kurds, including children, just for the fact of being of this ethnic origin and having taken part to demonstrations. Moreover, this decision fosters the Member states of the EU to use repressive measures against political opponents and representatives of the Kurdish Diaspora.

From the political point of view, this represents a serious obstacle to the dialogue process and the quest for a pacific solution in Turkey. Moreover, it is a clear denial of the principles recognized on an international scale regarding the right of resistance in the framework of abnegation of people's cultural and political rights.

By overcoming this situation, the EU could concretely contribute to an effective dialogue between the Turkish State and the Kurdish political movement towards the achievement of a pacific political solution, for the recognition of Kurdish people's rights and the creation of a true democracy in Turkey, and last but not least for the enlargement of European democratic values.