



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee  
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## Case Summary

Country of Decision/Jurisdiction	<b>Italy</b>
Case Name/Title	Corte di Cassazione Sez. VI, 27 luglio 2010, n. 17576
Court Name <i>(Both in English and in the original language)</i>	Supreme Court (Corte di Cassazione)
Neutral Citation Number	
Other Citation Number	
Date Decision Delivered	27/07/2010
Country of Applicant/Claimant	Turkey
Keywords	Persecution
Head Note (Summary of Summary)	Appeal against the decision of the Court of Appeal to deny refugee status on the ground that the acts of the Turkish government did not qualify as persecution.
Case Summary (150-500)	The applicant, a Turkish national, claimed a fear of persecution from the Turkish government. He based his claim on a fear of persecution based on his membership to the Kurdish political movement.
<i>Facts</i>	<p>In 2008, the asylum application was rejected by the Italian Ministry of Interior stating that the claim of the applicant was not based on an individual fear of persecution.</p> <p>The applicant appealed against this decision and in 2010 the Court of Milan dismissed his case. The Court stated that the behaviour of the Turkish government towards the Kurdish community could not qualify as persecution. In particular, the fact that the claimant was charged with terrorism and that a Turkish tribunal issued an arrest warrant <i>in absentia</i> against him shouldn't be considered as an act of persecution but as an action taken in the framework of counterterrorism activities.</p>
<i>Decision &amp; Reasoning</i>	<p>The Court of Appeal of Milan did not grant refugee status stating that the Court of Appeal of Karaman (Turkey) issued an arrest warrant against the applicant for the crime of the incitement of terrorism. In the opinion of the Court the adoption of a preventive measure, as mentioned above, must be interpreted not as a form of limitation of a civil liberty, but as a form of repression of violent acts carried out by political movements.</p> <p>The Supreme Court, stressing the severe deficiency of information and lack of investigation of the judge of the Court of Appeal stated that:</p> <p><i>" (...)giòva a proposito precisare che la persecuzione politica sussiste anche quando vengono legalmente adottate sanzioni penali all'esito di un regolare processo a carico di chi ha espresso mere opinioni politiche, nel mentre non può essere considerata persecuzione la repressione adottata con sanzione penale dell'attività di incitamento alla violenza..."</i></p> <p>"(...)it is useful to specify that political persecution occurs even when penalties have been lawfully issued at the end of a regular trial against a</p>



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	<p>person who merely expressed a political opinion; however the penalty can't be considered as persecution if adopted against activities instigating violence.."</p> <p>The Supreme Court then referred to a recent decision of the European Court of Human Rights in Strasbourg (Bingol v. Turkey). Referring to this decision the Court stated that:</p> <p><i>"Con il che viene autorevolmente rammentato che incide indebitamente sulla libertà di espressione dall'art. 10 della CEDU una sanzione penale comminata per la diffusione dei dichiarazioni di natura politica in cui dette dichiarazioni abbiano contenuti ed obiettivi di incitamento all'odio ed alla violenza (..)"</i></p> <p>"It must be remembered that a penalty negatively influences the liberty of expression granted by Art. 10 of the ECHR if it is issued with the aim to punish the diffusion of political statements except when those statements have the content and aim to instigate hate and violence (...)"</p>
<i>Outcome</i>	The Supreme Court quashed the judgment.