

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English):	
Date of the decision:	(2012/02/16)
Case number: ²	2294/2012
Parties to the case:	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide the link: http://www.asgi.it/public/parser_download/save/1_itgiurisprudenza.cassazione.2294.religione.pdf	
(If no, please attach the decision as a Word or PDF file):	
Language(s) in which the decision is written: Italian	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
Countr(y)(ies) of origin of the applicant(s): Ghana	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Italy	
Any third country of relevance to the case: ³	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
For EU member states: please indicate which EU instruments are referred to in the decision	Relevant articles of the EU instruments referred to in the decision: article 8 directive 2004/83/EC

Topics / Key terms: (see attached 'Topics' annex):

Internal relocation alternative/internal flight alternative – persecution on religious grounds

Key facts (as reflected in the decision): [No more than 200 words]

IC from Ghana stated that he was forced to flee from his country because he risked to be killed for religious and tribal reasons by some members of his community.

In 2009 the Territorial Commission (administrative level) denied international protection. In 2010 the Tribunal of Palermo denied again the refugee status, because the judge did not recognize the existence of direct and personal acts of persecution and observed that in any case IC could have moved to other regions of the country, far away from the place of origin. In 2011 the Court of Appeal of Palermo as well denied international protection.

Against the Court of Appeal's decision IC applied to the Italian Supreme Court (Corte Suprema di Cassazione), which decides on the correct interpretation of law and through its decisions assures the uniformity of the application of the law in Italy.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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Decision and reasoning – In the decision issued by the Court of Appeal international protection was denied because, firstly, the alleged religious sacrifice of IC should have occurred in 2007, therefore IC should have been replaced by another victim and at the time of the judgment the Ghanaian police would have granted protection because the tribal ritual reasons were not anymore valid. The second reason was the fact that the risk of being persecuted and killed for religious reasons was linked to the membership of the family to a certain ethnic group and that the Court considered that IC could have moved to other regions of Ghana, where there was no risk for him.

The Italian Supreme Court decided that this reasoning is not legally correct because article 8 of the Directive 2004/83/EC provides that: *“1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country. 2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant”*.

In this case the Italian Supreme Court considers that the directive gives to the State the power to implement this part of the directive (*“Member States may determine”*). The implementation has come through the approval of the *“decreto legislativo 251/2007”*, which has not transposed article 8 of the directive. Ergo, that regulation has not come into force in our legal system and does not constitute an applicable rule to the case. As a consequence, the Court of Appeal could not use, as a reason to deny refugee status, the fact that it would be possible for IC to move to another region of the same country.

As to the first reason, it is not logically consistent because the risk of being persecuted for IC remains the same after a long time, because of a possible revenge for tribal and familiar reasons, consequent to his refusal to sacrifice himself for religious reasons. Moreover, the Court considered that in this context the assumption that the Ghanaian police would have protected him is not grounded, because family revenge is a tribal rule as well as the religious sacrifice and it is not sure that the Ghanaian police would have been able to grant protection to IC.

Outcome - The decision by the Court of Appeal of Palermo was invalidated and sent back to the judge, in order to review it in the light of the considerations made by the Italian Supreme Court.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

The decision refers to relevant previous case law: Corte Suprema di Cassazione 6879/2011

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

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