

## CASE LAW COVER PAGE TEMPLATE

<b>Name of the court</b> <sup>1</sup> (English name in brackets if the court's language is not English): <b>Corte Suprema di Cassazione, Sez. VI Civile - 1 (Italian Supreme Court)</b>	
<b>Date of the decision:</b> 24/02/2015	<b>Case number:</b> 5926/15
<b>Parties to the case:</b> Mr. I.A. vs. Italian Ministry of Interior	
<b>Decision available on the internet?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the link: <a href="http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&amp;db=snciv&amp;id=./20150326/snciv@s61@a2015@n05926@tO.clean.pdf">http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&amp;db=snciv&amp;id=./20150326/snciv@s61@a2015@n05926@tO.clean.pdf</a>	
<b>Language(s) in which the decision is written:</b> Italian	
<b>Official court translation available in any other languages?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (If so, which):	
<b>Countr(y)(ies) of origin of the applicant(s):</b> Nigeria	
<b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b> Italy	
<b>Any third country of relevance to the case:</b> <sup>3</sup> n/a	
<b>Is the country of asylum or habitual residence party to:</b>	
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: 31
<b>(Only for cases with statelessness aspects)</b> 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:
<b>(Only for cases with statelessness aspects)</b> 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:
<b>(For AU member states):</b> 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:
<b>For EU member states:</b> please indicate which EU instruments are referred to in the decision:  - Directive 2003/9/EC - Directive 2005/85/EC - Directive 2013/32/EU	Relevant articles of the EU instruments referred to in the decision:  - Art. 7 (3) (14) - Art. 18 - Art. 8

**Topics / Key terms: (see attached ‘Topics’ annex):**

Nigeria. Italian Supreme Court. Expulsion. Immigration Detention. Illegal immigrants / Undocumented migrants. Rescue at sea / Interception at sea. Right of the asylum-seeker to receive information at the border.

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

The IC is a Nigerian national rescued by the Italian Navy on 18 February 2014. Having no identity document, he was identified as an irregular immigrant. On the same day, the Police Commissioner of Syracuse issued an expulsion order, along with the order to be conducted to an Immigrant Detention Centre in Rome (Ponte Galeria).

The Judge for Peace of Rome, responsible for the validation of the expulsion order, confirmed it on 21 February 2014. During the judicial hearing, the IC expressed his intention to claim asylum and stated that he had not received any interpreter’s assistance when heard by the Police Commissioner of Syracuse. Nevertheless, the Judge for Peace did not examine the merits of the expulsion order and confirmed the detention one (order no. R.G. 7956/2014), without ruling on the proportionality of the established measure.

The IC lodged an appeal (no. 6403/2014) against the decision, on the ground of several violations:

- Violation of the right to be informed about the international protection procedures and the resulting inability to access the international protection procedures;
- The resulting violation of the right to be conducted to a Reception Center for Refugees and Asylum-seekers (Centro di Accoglienza per Rifugiati e Richiedenti Asilo - CARA), rather than to an Immigration Detention Centre (Centro di Identificazione ed Espulsione – CIE);
- The Judge for Peace did not examine the proportionality of the detention measure established by the Police Commissioner of Syracuse.

**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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According to Directive 2013/32/EU, article 8, “*where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so. [...], Member States shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure*”. The Cassation Court considers that the aforementioned Directive had not yet come into force at the time of the event and that the obligation to provide third-country nationals or stateless persons with sufficient information on the possibility to submit an application for international protection - with a specific regard to the border crossing points - does not derive explicitly from Italian law. Nonetheless, the Court states that any jurisprudential decision shall be made in compliance with the EU Directives, even during the transposition process undertaken by any Member State, and with the European Convention for the Protection of Human Rights and Fundamental Freedoms’ principles, as ruled also by the Court of Strasbourg. In fact, this obligation has been stressed by the European Court of Human Rights (ECtHR) through its jurisprudential activity: the Cassation Court refers to *M.S.S. v. Belgium and Greece* (no. 30696/09), of 21 January 2011, where the ECtHR notes, at § 304, “*in this connection that the applicant claims not to have received any information about the procedures to be followed. Without wishing to*

*question the Government's good faith concerning the principle of an information brochure being made available at the airport, the Court attaches more weight to the applicant's version because it is corroborated by a very large number of accounts collected from other witnesses by the Commissioner, the UNHCR and various non-governmental organisations. In the Court's opinion, the lack of access to information concerning the procedures to be followed is clearly a major obstacle in accessing those procedures".* The same reasoning has been repeated by the ECtHR on 23<sup>rd</sup> February 2012 in the case *Hirsi Jamaa and Others v. Italy* (no. 27765/09): at § 204, the ECtHR refers to the M.S.S. case, emphasizing that *"the lack of access to information is a major obstacle in accessing asylum procedures (see M.S.S., cited above, § 304)"*. The Court *"reiterates [...] the importance of guaranteeing anyone subject to a removal measure, the consequences of which are potentially irreversible, the right to obtain sufficient information to enable them to gain effective access to the relevant procedures and to substantiate their complaints"*.

Some references to the responsibility to inform sufficiently any third-country national or stateless person on the possibility to seek international protection could be gathered from the Italian national law as well: see article 3.2, 6.1 and 26.1 of the Legislative Decree no. 2008/25; article 2.1 of the Decree of the President of the Italian Republic no. 2004/303.

The abovementioned violation of the right to obtain sufficient information to gain effective access to the procedure has been a major obstacle for the IC to seek international protection.

Consequently, another violation has occurred according to article 7.3 and 7.14 of the Directive no. 2003/09/CE, article 18 of the Directive no. 2005/85/CE, and article 31 of the 1951 Convention relating to the Status of Refugees: the IC has been conducted to an Immigrant Detention Center rather than to a Reception Center for refugees and asylum-seekers.

Furthermore, the Cassation Court adjudicates about the legitimacy of the detention before expulsion and the power of the judge to examine the merits of the established measure: based on a consolidated jurisprudence of the ECtHR (*Hokic and Hrustic c. Italy*, no. 3449/05, of 10 December 2009; *Seferovic v. Italy*, no. 12921/04, of 8 February 2011) the Cassation Court states that another violation has occurred. According to article 5, 6.1 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms; article 1 of the Protocol no. 7 to the aforementioned Convention, and to article 177 of the Italian Constitution, the Judge for Peace should have examined the proportionality of the detention measure and the validity of the order, instead of simply confirming it: the local judge did not consider the violation committed by the Border Police of not informing sufficiently the IC about the international protection procedures and, consequently, he did not evaluate the invalidity of the resulting expulsion order and the improper conduction to an Immigration Detention Center.

### **Decisions and reasoning:**

The Cassation Court emphasizes that where there are indications that third-country nationals or stateless persons, present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so. In those crossing points, Member States shall make also arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.

### **Outcome:**

The Cassation Court rules that the lack of access to information concerning the procedures to be followed in order to seek international protection is clearly a major obstacle in accessing those procedures. Furthermore, the Court revokes all the decisions previously issued with regard to the IC: any expulsion and detention order issued because of the violation of the abovementioned responsibility is considered invalid.

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

The judgment refers to:

**ECtHR case-law**

- Hovic and Hrustic c. Italy 2009/12/10 (no. 3449/05)
- M.S.S. v. Belgium and Greece 2011/01/21 (no. 30696/09)
- Seferovic v. Italy 2011/02/08 (no. 12921/04)
- Hirsi Jamaa v. Italy 2012/02/23 (no. 27765/09)

**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.

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