

## CASE LAW COVER PAGE TEMPLATE

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| <b>Name of the court</b> <sup>1</sup> (English name in brackets if the court's language is not English):<br><b>Corte Suprema di Cassazione (Italian Supreme Court)</b>  |  |
| <b>Date of the decision:</b>  | 20/09/12   |
| <b>Case number:</b> <sup>2</sup>  | 15981/2012   |
| <b>Parties to the case:</b><br>T.C.T., 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:<br><a href="http://www.asgi.it/public/parser_download/save/cass.civ.sez.vi.ord.20.settembre.2012.n.15981.pdf">http://www.asgi.it/public/parser_download/save/cass.civ.sez.vi.ord.20.settembre.2012.n.15981.pdf</a> |  |
| (If no, please attach the decision as a Word or PDF file):  |  |
| <b>Language(s) in which the decision is written:</b> Italian  |  |
| <b>Official court translation available in any other languages?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |  |
| (If so, which):   |  |
| <b>Country(y)(ies) of origin of the applicant(s):</b> Senegal   |  |
| <b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b><br>Italy   |  |
| <b>Any third country of relevance to the case:</b> <sup>3</sup>   |  |
| <b>Is the country of asylum or habitual residence party to:</b>   |  |
| The 1951 Convention relating to the Status of Refugees<br><input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No  | Relevant articles of the Convention on which the decision is based:  |
| <b>(Only for cases with statelessness aspects)</b><br>The 1954 Convention relating to the Status of Stateless Persons<br><input type="checkbox"/> Yes<br><input type="checkbox"/> No  | Relevant articles of the Convention on which the decision is based:  |
| <b>(Only for cases with statelessness aspects)</b><br>The 1961 Convention on the Reduction of Statelessness<br><input type="checkbox"/> Yes<br><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<br><input type="checkbox"/> Yes<br><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   | Relevant articles of the EU instruments referred to in the decision: |

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

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

IC is a citizen of Senegal who declared himself gay and stated that he could not live anymore in his country because homosexuality is punished by articles 319, 320 and 321 of the criminal code by severe sanctions. Moreover, he stated that he lived in an unfriendly family and community and that he was mistreated by his relatives, who did not accept his sexual orientation.

**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 this case the Italian Supreme Court considers that the sanction of criminal law against homosexual acts provided by article 319 of the criminal code of Senegal is in itself a general condition of deprivation of the fundamental right to live an emotional and sexual life without restrictions. In Senegal people with a homosexual orientation are compelled to violate the criminal law and are at risk of severe sanctions, in order to live freely their own sexual identity. Persecution can be a radical fight against minorities, which can also be enforced on legal grounds, i.e. establishing detention measures in order to oppose certain behaviour. As a consequence the criminalization of homosexual acts by article 319 of the Senegalese criminal code is considered to be itself a form of persecution.

The cited Senegalese criminal code provision constitutes a grave interference in private life, which compromise personal freedom of LGBTI\* people in Senegal. Such a violation of a fundamental right, provided by the Italian Constitution, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, has direct consequences on the individual condition of LGBTI people. In the Senegalese legal framework LGBTI people do suffer acts of persecution that justifies the application of international protection.

The Court of Appeal decision has to be reviewed because, as to the social situation in Senegal, the Court ignored homophobia and the grave discriminatory and persecutory acts against LGBTI denounced by press, institutions and NGOs.

**Outcome** – In conclusion, the Court decided to invalidate previous decision and send back the decision to the Court of Appeal, that must verify the applicant's sexual orientation and ascertain what is the current legal and social condition of LGBTI in Senegal.

\* (referred to as “homosexuals” in the original text)

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

This Italian Supreme Court ordinance replaces previous decision by another judge (Corte d'appello di Trieste, sentenza 69/2011 – Court of Appeal of Trieste, decision 69/2011), which denied international protection for the applicant.

The decision refers to other relevant case law: Corte Suprema di Cassazione, sentenza 16417/2007; sentenza 26822/2007; Corte Suprema di Cassazione - Sezioni Unite, sentenza 27310/2008

## **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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