

## 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 di Cassazione - "Cassation Court"</b>	
<b>Date of the decision:</b> (2013/09/20)	<b>Case number:</b> <sup>2</sup> No. 21667/2013
<b>Parties to the case:</b> E.A. vs Italian Government	
<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.teleconsul.it/leggiArticolo.aspx?id=266529&amp;tip=ul">http://www.teleconsul.it/leggiArticolo.aspx?id=266529&amp;tip=ul</a>	
<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	
<b>Country(ies) of origin of the applicant(s):</b> Turkey	
<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:
<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  n/a	Relevant articles of the EU instruments referred to in the decision:  n/a

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

**Immigration/ Persecution on political grounds/ Anti-terrorism law/ Country of origin information/ Denial of refugee status/ Exclusion clauses/ Freedom from torture, inhuman and degrading treatments/ Freedom of assembly and association/ Human rights and fundamentals freedoms/ Political parties/ Due process/ Persecution based on political opinion/ Opposition/ Humanitarian Protection/ Extradition/ Non-refoulement**

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

E.A., a Turkish citizen, applied for international protection in 2010. The applicant explained he had been forced to leave his country after having been tortured because of his **political activity**. Moreover, there are two criminal proceedings pending against him in Turkey for terrorism-related crimes. Because of that, Turkey asked Italy for the extradition of the applicant, which had been conclusively denied by the Italian Authorities. The applicant has then lodged an appeal before the Tribunal against the negative decision of the competent Territorial Commission, which rejected his application. The Tribunal stated that the fact that the IC had also been sentenced in Italy for the crime of association with terroristic purposes prevented him the recognition of refugee status as well as of subsidiary protection, thus he could only be eligible for **humanitarian protection**. The Italian MoI immediately lodged an appeal against the Tribunal's decision on the basis that the existing criminal sentence against the applicant does not entitle him to any form of protection.

The Court of Appeal, affirming the appeal of the MoI, entirely rejected the applicant's request for IP, stating that in order to recognize **any form of international protection it has to be established a mutual trust** between the State and the immigrant, and that in the specific case that trust had been spoiled by the fact that the applicant was **untraceable**. E.A. lodged an appeal to the Cassation Court against this decision.

Besides, in 2004 E.A. had been sentenced to prison by the Italian Authorities for the crime of association with terroristic purposes. In 2010, he was released and subject to possible expulsion due to the fact that he had no authorization to stay in the Italian territory. He had been subsequently detained in a Center for Identification and Expulsion (CIE); he then lodged an appeal against the expulsion provision and, as said above, applied for international protection.

**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:** The Court of Cassation has examined the appeal presented by the applicant, which was based on fifteen arguments. The most relevant considerations of the Court could be summarized as follows.

The applicant claimed the violation of art. 35, par. 12 of Legislative Decree no. 25/2008 and of art. 737 of the Criminal Code, in relation with art. 24 and 111 of the Italian Constitution, as the trial had been repeatedly deferred for over 19 months from the date the claim had been presented. The official reason for this deferral was that the Court had to acquire the provision of the Surveillance Court on the possible expulsion of the applicant; according to the latter's position, the trial has been postponed in order to wait for the ongoing criminal trial of the applicant to be defined. However, according to the constant trend in the ECtHR case-law, the existence of a criminal judgment, even for crimes having terrorism-related nature, cannot prevent the granting of some form of protection (subsidiary nor humanitarian), which has to be recognized whenever the country of origin of the applicant is identified as not being able to guarantee the rights set in the ECHR.

The Cassation Court agrees with this position, stating that the fact that the Turkish national had been sentenced by the Court of Appeal for committing the crime of association with terroristic purposes is not supposed to influence the assessment of the application for international protection; the latter only has to be conducted in the light of the existence of a life threat and the risk of being subject to torture and inhuman and degrading treatments in case the applicant would be forced to repatriation.

In the specific case, the Court of Appeal had stated that in the country of origin the applicant would not be able to invoke the *ne bis in idem* principle nor to be guaranteed a due process. It has been also highlighted that, despite the fact that Turkey is a democratic country, in many occasions the right to a defense resulted as compromised by episodes of the arrest of defense attorneys and the perpetration of torture and mistreatments.

Notwithstanding, the Cassation Court remarks that the Court of Appeal, even if it had recognized the fact that E.A. would have been subject to the violation of his fundamental rights in his country of origin, has denied the recognition of any form of protection to the applicant by considering as an obstacle the fact that he was untraceable. In this regard, the Cassation Court states that the recognition of refugee *status* as well as of subsidiary or humanitarian protection only has to be founded on the consideration of the circumstances that the applicant is exposed to persecutions or threatening danger in his/her country of origin.

The fact that E.A. did not want to reveal his location during the time of the trial cannot be considered as relevant; in the specific case, the applicant explained that his absence was due to the fear of being expelled, as at that time he had no permit of stay nor he was recognized any form of protection.

Thus, the Court considers that the recognition of international protection cannot be founded on the respect of an alleged mutual trust between the State and the alien, thus denying the protection whenever this trust is neglected. There is no obligation of collaboration or reciprocity pending on the asylum seeker. The Court also stated that the proceedings regarding the recognition of international protection belong to the civil jurisdiction, where the traceability of the part can only be considered relevant in order to verify the validity and efficacy of the communication with the accused.

**Outcome:** The Court of Cassation remands the decision to the Court of Appeal of Bari with different judges.

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

**References to ECtHR case-law:**

- Saadi v. Italy, judgment 28 February 2008, no. 37021 of 2006;
- Abdelhedi v. Italy, judgment 24 March 2009, no. 2638 of 2007;
- Ben Salah v. Italy, judgment 24 March 2009, no. 38128 of 2006;
- Bouyahia v. Italy, judgment 24 March 2009, no. 46792 of 2006;
- Darraji v. Italy, judgment 24 March 2009, no. 11549 of 2005;
- Hamraoui v. Italy, judgment 24 March 2009, no. 16201 of 2007;
- O. v. Italy, judgment 24 March 2009, no. 37257 of 2006;
- Soltana v. Italy, judgment 24 March 2009, no. 44006 of 2006;
- Sellem v. Italy, judgment 5 May 2009, no. 12584 of 2008;
- Ben Khemais v. Italy, judgment 24 February 2009, no. 246 of 2007;
- Mannai v. Italy, judgment 27 March 2010, no. 9961 of 2010;
- Adel Ben Slimen v. Italy, judgment 19 June 2012, no. 38435 of 2010

**References to Italian Court of Cassation case-law**

- Cass., 2012/06/21 no.10375

**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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