

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English):	
Supreme Court (Corte Suprema di Cassazione)	
Date of the decision:	(2013/09/16) Case number: ² 19187/10
Parties to the case: E.J.E. vs Italian Government	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide the link: http://www.meltingpot.org/IMG/pdf/Sentenza_corte_di_cassazione_7_settembre_asilo.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): n/a	
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 n/a	
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 - Directive 2004/83/EC	Relevant articles of the EU instruments referred to in the decision:

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

Burden of proof/Persecution on political grounds

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

The IC lodged an appeal against the decision of the Court of Appeal confirming the denial of his application for international protection issued by the Territorial Commission of Gorizia.

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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The Court examines the reasoning behind the appeal presented by the applicant, claiming the incorrect behaviour of the Court of Appeal judge, who omitted to take into consideration the documents substantiating the international protection application, namely a newspaper article where it is described how the applicant himself has been victim of a reprisal by an armed group because of his opinions. The Court agrees with the above mentioned reasoning.

In fact, according to EU Directive 2004/83/EC, both the administrative authority in charge of the exam of the application and the judicial authorities have an active role in the instruction of the application, a role which differs from the ordinary civil trial principles, founded on the possibility of acquiring information and all the necessary documents.

Therefore, the judge has a duty of cooperation in the scrutiny of relevant facts with regard to the recognition of refugee status, and he/she has wider inspection powers.

The position of the Court of Appeal judge, who decided to ignore the documents substantiating the application for the only reason that they were written in English, has to be considered contrary to the above-mentioned duty of cooperation, aiming indeed at compensating the possible lack or weakness of the elements of evidence presented by the applicant.

Moreover, the Court reminds that in the Italian system there is no obstacle in using documents in a foreign language during a trial, since the obligation to use the Italian language only refers to the procedural acts *strictu sensu*.

Outcome: The Court remands the decision to the Court of Appeal of Trieste with different judges.

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

- Italian Supreme Court (Corte di Cassazione), no. 27310, 2008/11/17

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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