

## CASE LAW COVER PAGE TEMPLATE

<b>Name of the court</b> <sup>1</sup> <b>(English name in brackets if the court's language is not English):</b> Corte Suprema di Cassazione (Italian Supreme Court)	
<b>Date of the decision:</b> (2010/07/27)	<b>Case number:</b> <sup>2</sup> Ordinanza 17576/2010
<b>Parties to the case:</b> S.M.; 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.europeanrights.eu/public/sentenze/Cass17576_07_10.pdf">http://www.europeanrights.eu/public/sentenze/Cass17576_07_10.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>Countr(y)(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>	
<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	Relevant articles of the EU instruments referred to in the decision: Directive 2005/85/EC; art. 10 ECHR

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

Burden of proof – COI – political persecution – freedom of expression

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

S.M. is a Turkish citizen who applied for refugee status in 2008, stating that he was victim of persecution in Turkey due to his membership to the DTP Kurdish political movement.

The Territorial Commission (administrative level) denied the application for refugee status and so did the judge of first instance (civil Tribunal) and the Court of Appeal in 2010. Reasons supporting the denial decision by the Court of Appeal were the inconsistency of S.M.'s statements. Moreover, the Court of Appeal observed that the alleged acts of political persecution were not grounded, because the repressive attitude of Turkey against Kurdish movements was generic and because the arrest warrant against S.M., justified by propaganda in favor of a terroristic movement, proved that Turkey was actually repressing terrorism (similarly to Spain repressing armed struggle movements), not persecuting S.M.

In 2010, against the Court of Appeal's decision S.M. 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 this case the Italian Supreme Court established that the judge must have an active role in the examination of the case and must research up-to-date country of origin information. Indeed, the Court stated that the overall assessment must be grounded not only on credibility, but also, as established by article 8 of the “*decreto legislativo 25/2008*”, on current country of origin information available, provided by the National Commission for the Right of Asylum to the judiciary.

The Supreme Court decided that the Court of Milan has not applied properly article 8 of the “*decreto legislativo 25/2008*” and has ignored the clear previous case law (*Corte Suprema di Cassazione – Sezioni Unite 27310/2008*), which established the duty of the judge to collect actively country of origin information and documentation. As a consequence, the Supreme Court stated that the assessment conducted by the Court of Appeal was summary. Moreover, the decision was focused and based on the credibility of S.M. and the trial was conducted mostly with the idea that the burden of proof about the risk of persecutions was on the applicant’s side. Actually, the Supreme Court established that the risk of persecution must be verified using external and objective information on the country of origin and only the specific reference to the applicant can be grounded on personal elements, such as the credibility of statements.

Moreover, the Court of Appeal of Milan argued that, given the arrest warrant for S.M. for propaganda in favor of a terroristic organization, the repression by the State was against terrorism and not against democratic liberties. The Court observed that this kind of repression is similar to the one carried out in Spain against violent political struggles.

On this point the Italian Supreme Court stated that the decision process was conditioned in its logic by lack of information, lack of investigation on facts allegedly perpetrated by IC and shallow assumptions derived from the comparison of the case with the situation in Spain, where the government and the Basque movement for separatism are fighting.

Moreover, the Italian Supreme Court added that persecution for political reasons exists also when criminal sanctions are legally issued at the end of regular trials against people who have expressed political opinions. On the contrary, the repression of incitement to violence through criminal sanctions cannot be considered as persecution. The Supreme Court established also that the risk of persecution should be assessed on the basis of real events and not only on the basis of the charge.

The Court affirmed, following the *Bingol v. Turkey* decision issued by the European Court of Human Rights, that a criminal sanction against the diffusion of political opinions, except the case of incitement to violence and/or hate, hinders the application of article 10 of the ECHR on freedom of expression.

In conclusion, the Supreme Court established that in the subject of international protection, the judge should assess the risk of persecution claimed by the applicant, verifying the country of origin situation in general. Moreover, the Court established that the judge should also verify the criminal charge and if the event constitutes a legitimate expression of dissent or an illegal incitement to armed fighting.

**Outcome** – The decision by the Court of Appeal of Milan was invalidated and sent back to the judge, in order to review it in the light of the principle of law established by the Italian Supreme Court.

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

The present decision refers to other relevant case law: Corte Suprema di Cassazione, 9094/2007; Corte Suprema di Cassazione, Sezioni Unite 27310/2008; European Court of Human Rights: Bingol v. Turkey, 22/06/2010

## **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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