

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English):	
Civil Court (Tribunale ordinario di Trieste – Sezione civile)	
Date of the decision:	(2010/03/24) Case number: ² 162/10
Parties to the case: K.S. vs Italian Ministry of the Interior	
Decision available on the internet? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If yes, please provide the link: (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): Tunisia	
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 2005/85/CE	Relevant articles of the EU instruments referred to in the decision:

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

Burden of proof/denial of refugee status/credibility assessment/country of origin information/freedom of assembly and association/police/refugees sur place

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

The applicant lodged an appeal against the denial of the recognition of refugee status issued by the Territorial Commission of Gorizia for the recognition of international protection.

The IC exposed his personal situation, declaring to be a Tunisian national from the city of Redeyef in the Gafsa region, an area where the so-called “Phosphate company” is the main source of employment for the local community, even if in the last few years there has been an increasing reduction in labour force and, subsequently, a loss in workers’ rights. In 2008, the local Authorities published the results of a recruitment examination: since the selected candidates had been chosen by local powerful people, a popular riot arose, which was widely documented on the internet and to which the Police special forces responded with brutality, through arbitrary searches, arrests and detention without legal assistance. The IC claimed to have participated to the protests in Redeyef and to have escaped in a small town, where he was arrested and beaten by the Police. He said he had never seen a lawyer or a judge during his detention. The IC then looked for refuge in Tunisia, but the memories of the facts were so grievous he had to leave Tunisia with the help of an uncle. He then reached Lampedusa, where he applied for asylum.

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 IC claimed that his asylum application has been rejected by the Territorial Commission despite the fact that his declarations were considered trustworthy and that an important document was released on the subject, namely a letter signed by the Euro-Mediterranean Network for Human Rights and the International Federation of Human Rights Leagues (FIDH) addressed to UNCHR, in which the organizations called for the recognition of international protection to the Tunisian nationals hosted in Lampedusa. The aforementioned letter included a non-exhaustive list of people for whom it was asked the recognition of international protection.

The applicant claimed that the decision issued by the Territorial Commission was illegitimate since it was poorly motivated, not being clear why the applicant was considered as untrustworthy, and since the situation in the country of origin had not been adequately assessed.

The Court examines the applicant's story and it overrules the decision of denial issued by the Territorial Commission which was motivated by the fact that the applicant could easily move within and outside the city of Redeyef; that, instead of escaping as soon as possible, he moved to Tunis looking for a job; and that he was subject to hostile behaviour only by the employers he addressed. In the Territorial Commission decision, moreover, it was also stated that the IC had committed serious crimes such as throwing stones at the Police, and that it was unlikely for him to be subjected to inhuman and degrading treatments.

The Court disagrees with such decision since **the reasoning behind the denial contradicts the information given by the most important international organizations for human rights** protection as well as by the US Department of State with regard to the non-independence of the judiciary and the inhuman detention conditions in Tunisia.

The Court also takes into consideration the fact that UNHCR component of the Territorial Commission expressed his/her position in the sense of the recognition of refugee status, adding as a motivation the fact that, despite the circumstance that the applicant's statements appear as partially trustworthy and that there could be no immediate risk of persecution at the moment of his departure, such a risk could become real since the Tunisian authorities are likely to be aware of the submission of the asylum applications and of the related motivations.

The Court reminds of article 3 of the Italian Legislative Decree no. 251/2007, saying that the examination of the application for international protection has to be carried out on an individual basis. Moreover, as stated in the Supreme Court case-law (*), the same article states that, during the exam of an application for international protection, the judge can acquire all the necessary information on the political and juridical situation in the Country of origin, and that the good faith and diligence of the applicant could balance the lack of evidence substantiating the application.

Despite the partial credibility of the applicant's declarations with regard to his direct participation in the riots repressed by the Police and by the army and to his period of detention, it has to be considered, however, that the danger of persecution could be real, as highlighted by the UNHCR component of the Territorial Commission, considering that the Tunisian authorities are aware of the fact that so many nationals have applied for asylum, and that the facts substantiating such applications had a considerable echo in the media. Since it has been proven that the Tunisian authorities have tried to avoid the spread of the news about the social protest in the Gafsa region, the Court states that, if the applicant returned to his

country of origin, he would be heavily persecuted by the means described in many NGOs reports (torture, unfair trials, etc.) for having spoiled the image of his country.

Outcome: the applicant is recognized as a refugee.

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

- Italian Supreme Court (Corte di Cassazione) judgement no. 18940, 2006/09/01
- Italian Supreme Court (Corte di Cassazione) judgement no. 25028, 2005/11/25
- Italian Supreme Court (Corte di Cassazione) judgement no. 26822, 2007/12/20
- Italian Supreme Court (Corte di Cassazione) judgement no. 27310, 2008/10/21 (*)

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.

Please submit this form to:

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