

## Italy - Court of Cassation, 20 September 2012, No. 15981/2012

**Country of Decision:**

Italy

**Country of Applicant:**

Senegal

**Date of Decision:**

20-09-2012

**Citation:**

No. 15981/2012

**Court Name:**

Court of Cassation, Civil Division VI, Sub-Division I

**Keywords:**

Country of origin information

Discrimination

Persecution (acts of)

Refugee Status

Sexual orientation

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**Relevant Legislative Provisions:**European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 9](#) [2]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 10](#) [3]

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**Headnote:**

Criminal sanctions against homosexual acts under Article 319 of the Criminal Code of Senegal constitute a deprivation of the fundamental right to live one's own sexual and emotional life in freedom and are sufficient in themselves to justify granting refugee status.

**Facts:**

The Applicant, a Senegalese citizen, had stated that he was homosexual and could not live freely as such in his country of origin, which treats homosexuality as a crime, and additionally because of

hostility within his family and social context. His request was refused. Similarly, his appeals to the Trieste Court and the Appeal Court were also rejected. The Appeal Court held that circumstances where the judicial system treats homosexuality as a crime are irrelevant as regards granting protection because the general situation in a country cannot automatically apply to an individual case. According to this Court, it is necessary to prove not just the homosexuality of the Applicant but also that the same had been subject to specific acts of violence and threats organised by the Senegalese authorities that forced him to leave his country.

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### **Decision & Reasoning:**

According to the Court of Cassation, the contested decision was incorrect and therefore should be amended, given that the conditions for granting refugee status had been fulfilled. The Court of Cassation found that the failure to take the necessary official steps to obtain sufficient information about the legal and social situation in the Applicant's country of origin was unlawful, as it violated the guidance set by legislation. In addition, the Court held that it was patently illogical that the contested decision ruled that it was not possible to infer an individual case of persecution from the overall situation in the country of origin, since criminal sanctions against homosexuality inevitably prevent all homosexual citizens from living their own lives in freedom which is a violation of a fundamental right.

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### **Outcome:**

The decision was declared unlawful and returned to the Court of Appeal for reconsideration and a decision on the substance of the case.

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### **Attachment(s):**



[Original Judgment - No. 15981.2012.pdf](#)[4]

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### **Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[2] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%209%20QD>

[3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2010%20QD>

[4] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20Judgment%20-%20No.%2015981.2012.pdf>