

## Italy, Italian Supreme Court (Corte di Cassazione), Section VI civil, 25 March 2015, Ordinance No. 5926

### Deciding bodies and decisions

- Italy, Supreme Court, Section VI civil, 25 March 2015, Ordinance No. 5926
- European Court of Human Rights, *Hirsi Jamaa et al. v. Italy*, 27765/09
- European Court of Human Rights, *M.S.S. v. Belgium and Greece*, 30696/09

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### Area of law

EU asylum law

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### Subject matter

Public authorities failure to provide information about the possibility of the irregular migrant to request international protection at the borders - Notion of 'borders' include also the maritime border - Direct application of the Asylum Procedure Directive before the expiry of the transposition period - Legal source of public authorities' duty of information - Effects and remedy for the public authorities violation of the duty of informing irregular migrants of their possibility to lodge a claim for international protection

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### Summary Facts Of The Case

A Nigerian national was saved while on the sea by the Italian Marine army, and placed in detention at the Centre for Identification and Expulsion of Rome and issued an expulsion order due to being without any identification document. It has to be noted that asylum seekers are lodged in a different reception centre, namely, (C.A.R.A.). The Magistrate court in Rome confirmed the expulsion order. The migrant lodged an appeal against the decision of the Magistrate court before the Supreme Court, claiming that he did not receive any information about the possibility to request international protection and that his fundamental rights were thus violated (in particular those protected by Articles 5, 6 (1) and 13 of ECHR).

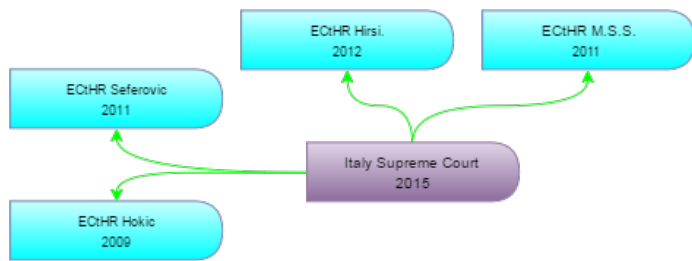
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### Relation to the scope of the Charter

The Charter is not mentioned, but only the Recast Asylum Procedure Directive and the ECtHR jurisprudence, in particular the *M.S.S. v Belgium and Greece* and *Hirsi v Italy* as regards the existence of a duty of information incumbent upon public authorities, and *Seferovic v. Italy* and *Hokic and Hrustic v. Italy* as regards the effects and remedies of violation of this duty of information on detention measures.

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### Diagram



## Vertical (Italian Supreme Court - ECtHR)

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### Sources - ECHR

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### Sources - ECtHR Case Law

- European Court of Human Rights, *Hirsi Jamaa et al. v. Italy*, application no 27765/09
- European Court of Human Rights, *M.S.S. v. Belgium and Greece*, application no 30696/09

From *Hirsi Jamaa c. Italy*, the Court recalled para. 204, where the ECtHR notes that ‘lack of information is one of the main barriers to access to asylum procedures’ (similarly *M.S.S. v Belgium and Greece*, para. 304). The Supreme Court added that these judgments stress the importance of ensuring the right of persons affected by an expulsion measure, whose effects are potentially irreversible, to obtain sufficient information to enable them to have effective access to procedures and to support their actions. The Court reminded that according to the Strasbourg Court, the lack of access to information concerning the procedures to be followed is clearly a major obstacle in accessing those procedures. " (*M.S.S v Belgium and Greece*) The Supreme Court underlined that public authorities have not just a duty to inform, but this duty has to fulfil certain requirements, namely to ensure a timely exercise of the right to apply for international protection.

Therefore, the Supreme Court concluded that there is settled jurisprudence of the ECtHR (citing paras from *Hirsi v Italy* and *M.S.S v. Belgium and Greece*) establishing a duty of information, which requires consistent interpretation of national legislation in compliance with European standards affirming that: “*Having regard to the terms of the present case and in accordance with the European directive mentioned above, the following principle of law may be affirmed: if there are indications that foreign nationals or stateless persons, present at national country borders, wish to submit an application for international protection, the competent authorities have a duty to provide them with information on the possibility to do so, and ensuring interpretation services to the extent necessary to facilitate access to the asylum procedure, under penalty of nullity of the relevant decrees of refoulement and detention*”.

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