

## 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 d'Appello di Catania (Appeal Court)	
<b>Date of the decision:</b> (2012/27/11)	<b>Case number:</b> <sup>2</sup> n/a
<b>Parties to the case:</b> A. F. v. Italian Government	
<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.magistraturademocratica.it/mdem/qg/doc/Corte_Appello_Catania_sentenza_27_novembre_2012.pdf">http://www.magistraturademocratica.it/mdem/qg/doc/Corte_Appello_Catania_sentenza_27_novembre_2012.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>Country(ies) of origin of the applicant(s):</b> Nigeria, Delta State	
<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: Art. 1 A (2)
<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: art. 3 ECHR

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

1951 Refugee Convention/Female genital mutilation/burden of proof/non state agents of persecution/State protection/ membership of a particular social group/gender-based persecution/credibility assessment/gender discrimination/medical screening/well-founded fear of persecution/women’s rights/women-at-risk

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

A.F., a Nigerian citizen, applied for asylum in Italy declaring that she escaped an attempt of persecutory acts related to her gender, namely the practice of female genital mutilation (FGM).

The Territorial Commission of Syracuse rejected her asylum application on 1/7/2009 and the Tribunal of Catania (decision no. 1072/2010), before which the applicant had lodged an appeal, did not overrule the decision of the Commission, motivating the judgment on the basis of the applicant’s story alleged lack of credibility.

A. F. claimed that her declarations had not been adequately considered and that the judge had also misinterpreted the criteria on the burden of proof as set by the Italian law. She presented the acts of persecution she had been exposed to because of gender-related reasons, namely FGM, a practice that is customary in her country of origin, from which she had to escape. Thus, the applicant lodged an appeal against the decision of the Court of first instance in order to be granted international protection through the recognition of refugee status, or, in a second place, through subsidiary protection.

**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 legal reasoning developed in this decision by the Court is based on the applicability of the Italian legislation implementing the 1951 *Convention relating to the Status of Refugees* and on the credibility assessment.

First of all the judgment refers to the definition of refugee and beneficiary of subsidiary protection respectively given by art. 2 lett. e) and lett. g) of *Legislative Decree 251/2007*.

The Court reminds that the burden of proof in the international protection field is lowered, in the sense that in case the applicant cannot substantiate his/her application through the evidence of relevant elements, the facts exposed during the interview have to be considered as true if the applicant has made all reasonable efforts to support his/her statements, giving an appropriate motivation for the lack of noteworthy elements and on the other hand giving consistent, trustworthy and interrelated statements to the general and specific information on the case. Moreover, it has to be taken into consideration whether the applicant has timely applied for international protection or not, and in such case a compelling reason for the delay must be proved (see the decision of the Supreme Court no.4138 of 18/02/2011\*).

The decision ascertains that the applicant has immediately applied for asylum shortly after the disembarkation, claiming that she was victim of an attempted female genital mutilation (infibulation), and for this reason she lost contact with her family and with her community. The story matches with the general situation in the Country of origin as described in UNHCR and Amnesty International

reports concerning the conditions of women in the country, as well as with the results of a medical screening. Moreover, the applicant's statements are consistent with the information on FGM provided by several sources, such as World Health Organization's reports, the draft resolution *Intensifying Global Efforts for the elimination of female genital mutilation* of the Third Commission General Assembly of the United Nations and UNHCR 2009 *Guidance Note on refugee claims relating to female genital mutilation*.

The Court considers that the situation of the applicant has to be examined under the refugee status determination profile, since the IC exposes her grounded fear of being subject to gender-based violence and, specifically, of being subject to **inhuman and degrading treatment such as infibulation**.

The story appears to be trustworthy since the IC gives a detailed description of how her relatives wanted her to undergo the operation and how they prepared her for it. The applicant claimed to have escaped and to have been beaten during the attempt of imposing such an act: the evidence of this violence has been documented through a **medical report** released in Italy.

The accuracy of the facts is consistent with **UNHCR Guidance Note**, in particular when describing the fact that the FGM are operated without anesthesia, while girls are being held. UNHCR considers FGM to be a form of gender-based violence inflicting severe harm, both mental and physical, also leading to persecution. FGM is inflicted on girls and women only for gender reasons, in order to exert power on them and to control their sexuality. **Women and girls opposing to FGM may also be seen as facing persecution as a political opponent, i.e. not adhering to the traditional religious and social values**. They may be seen by local leaders and by people supporting such practices as political opponents, questioning religious models and common social values.

The European Court of Human Rights has also found that the fact that a woman is subject to FGM unquestionably amounts to mistreatments contrary to Art. 3 of the 1950 European Convention on Human Rights(\*\*).

**Outcome:** The Court recognized the applicant the refugee status in order to avoid this gender-based persecution and, since she has created a family, in order to avoid that her family could be exposed to the effects of such discrimination.

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

The judgment refers to other decisions:

- (\*) Italian Supreme Court (Suprema Corte di Cassazione) sez. VI, 18.02.2011, n. 4138.
- (\*\*)*Emily Collins and Ashley Akaziebie v. Sweden*, European Court of Human Rights, Application no. 23944/05, 8 March 2007;

## **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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