

## 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> Civil Court (Tribunale di Roma, prima sezione civile)	
<b>Date of the decision:</b> (2013/08/02)	<b>Case number:</b> <sup>2</sup> 15571/2013
<b>Parties to the case:</b> IC v. Italian Government	
<b>Decision available on the internet?</b> <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):	
<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> Cameroon	
<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 - Directive 2004/83/EC	Relevant articles of the EU instruments referred to in the decision:

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

1951 Refugee Convention/ Acts of persecution/ Burden of proof, credibility assessment/ Lesbian, gay, bisexual, transgender and intersex (LGBTI)/ sexual orientation/ state protection/ non-state actors/ forced marriage/ persecution on the basis of sexual orientation or gender identity.

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

The IC, a lesbian woman from Cameroon, received the denial of her asylum application from the Territorial Commission in Rome, which granted her humanitarian protection instead. The reasoning behind the denial was, according to the Commission, the applicant’s story lack of credibility. The IC told she had been considered as a disgrace within her own community because of her sexual orientation and that later in time she had been forced to marry the village chief who previously sentenced her to death and who constantly supervised on her behaviour. However, the Commission considered some elements of her story as lacking credibility, e.g. the fact that she declared she kept having relationships with other women while she was living with her husband, as well as the fact that she left and came back to her husband’s house in many occasions. The IC lodged an appeal before the Tribunal of Rome claiming the recognition of refugee status.

**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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With regard to the general principles on the recognition of refugee status, the judge refers to the definition of refugee set out in art. 1 (A) 2 of the 1951 *Convention relating to the Status of Refugees*, ratified by Italy through law no. 722/1954. According to a well-defined jurisprudence, the recognition of refugee status cannot be merely based on the gravity of the general political and economic situation in the country of origin, such as the lack of democratic freedoms; it is required, instead, that the combination of the specific personal condition of the asylum seeker together with the objective situation in the country of origin is likely to validate the existence of a serious danger for the applicant’s safety (\*). Such interpretation can also be found in the provisions of the Italian *Legislative Decree 251/2007*, transposing the EU *Directive 2004/83/EC*. Article 3 of the above-mentioned Decree, setting the assessment criteria for the application, states that the applicant has to **specify elements of his/her individual situation and personal circumstances** other than the facts describing the current situation in the country of origin, from which it will be possible to infer whether the acts he/she has been or could be exposed to can be considered as persecution or serious damage.

In the specific case, since no element of proof has been given in order to substantiate the application, the only element on which the decision can be based upon is the credibility and the truthfulness of the applicant’s personal story as it has been told to the Commission. The Court considers the applicant’s declarations being detailed, likely and coherent. Moreover, the elements of the story have been acknowledged by medical records released by an NGO, basically confirming the evidence of violence on her body (including sexual violence), psychological damages and an ongoing depression.

The second element taken into consideration by the Court in assessing the applicant’s situation can be found in the current criminal law provisions against homosexuality in Cameroon. In fact, art. 347 of the

national Criminal Code states that the person found guilty of homosexuality is sentenced to 6 months to 5 years in jail and punished with a consistent fine; besides, the Government of Cameroon has recently proposed to increase the above-mentioned jail sentence up to 15 years, as exposed in the 2012 Amnesty International report.

Moreover, as described in the 2010 Amnesty International report, the detention conditions all over the country are terrible: in August 2010, the national Governmental Commission for human rights declared that every year at least five prisoners die for the lack of medical care and poor hygienic conditions. Moreover, the Commission expressed its concern about the situation of 62% of prisoners who have not been object of a trial, some of them being imprisoned for 9 years. In this context, gays/lesbians are perceived as demonic and immoral, and therefore vulnerable both in their public and private lives (see *2012 Report of the Permanent Observatory on Refugees*). The judge also refers to the Position *P7\_TC1-COD(2009)0164* of the European Parliament: the document includes a definition of “membership of a particular social group” encompassing elements related to the applicant’s sex, gender identity and sexual orientation, that can be linked to certain juridical traditions and customs. As a matter of fact, sexual orientation is a basis for well-founded fear of persecution and ground for granting refugee status.

For all the aforementioned reasons, the applicant, whose sexual orientation is well-known in her social environment, can be exposed to the risk of persecutions and thus she may not trust the protection of her country’s designated Authorities.

**Outcome** – The Court recognizes the applicant the refugee status and revokes the decision previously released by the Territorial Commission.

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

(\*) The judgment refers to the decision of *Consiglio di Stato IV* (Supreme Administrative Court), 18.3.1999 n. 291

## **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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