

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Italian Supreme Court (Corte Suprema di Cassazione)	
Date of the decision: (2014/11/04)	Case number: ² 4262/15
Parties to the case: Stateless claimant; Ministry of 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): Stateless	
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: n/a
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: Artt. 1, 17, 31 and 32
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input checked="" 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 2011/93/EC; Directive 2013/32/UE	Relevant articles of the EU instruments referred to in the decision: Art. 2 and art. 4, Directive 2011/93/EC; Art. 2 and art. 10, Directive 2013/32/UE

Topics / Key terms: (see attached 'Topics' annex):

Burden of proof - Statelessness - Statelessness Determination Procedures

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

In accordance with article 1 of the 1954 Convention, the claimant was recognized with stateless status from the Tribunal of first instance of Rome. The Court of Appeal of Rome overturned the first instance's decision, denying the status for two reasons both related to the burden of proof required to recognize the statelessness condition. In particular, the circumstances of the applicant's missed registration in the civil registry were not considered sufficient to prove that she was not a Bosnia Herzegovinian citizen.

The applicant then lodged an appeal before the Italian Supreme Court against the Court of Appeal's decision, claiming, first of all, that the Court of Appeal did not take into due account the attenuation of the burden of proof, as recognized by relevant case-law. Secondly, the applicant claims the weak assessment of her subjective position, since the Court of Appeal omitted to evaluate relevant facts demonstrating her statelessness condition.

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]

Disclaimer: This is an unofficial translation, prepared by UNHCR. UNHCR shall not be held responsible or liable for any misuse of the unofficial translation. Users are advised to consult the original language version or obtain an official translation when formally referencing the case or quoting from it in a language other than the original.

Decision and reasoning: the most relevant considerations of the Italian Supreme Court could be summarized as follows.

The Italian Supreme Court, following the approach set out in its previous judgement no. 28873/2008 (Italian Supreme Court, Sezioni Unite), affirms that the stateless status determination should take into account not only the lack of formal requirements for the acquisition of the citizenship of the country of origin of the stateless claimant (or the country with which the stateless claimant has relevant links) but also substantial conditions.

In the Italian legal system, the statelessness and foreigner's conditions are equalized. The condition of reciprocity granting stateless persons equality of treatment with foreigners is foreseen, among other sources of law, by article 1 of the Consolidated Act on Immigration, article 2 of Legislative Decree no. 25/2008 and article 2 of Legislative Decree no. 251/2007 regarding the right of international protection for foreign nationals. As a result, in Italy a stateless person is entitled of all fundamental rights recognized to foreigners, as the enjoyment of the rights in question is not conditional upon the possession of Italian citizenship. Furthermore, in accordance with the 1954 New York Convention relating to the Status of Stateless Persons, ratified by Italy with L. n. no. 306/1962, stateless persons are granted the same treatment accorded to Italian citizens regarding religion (art. 4), artistic rights and industrial property (art. 14), access to courts (art. 16), public relief (art. 23), labour legislation and social security (art. 24) and fiscal charges (art. 29).

In addition, stateless persons receive treatment comparable to beneficiaries of international protection with regard to expulsion (art. 31) and naturalization (art. 32). Article 32 of the 1954 Convention states that *"the Contracting States shall as far as possible facilitate the assimilation and naturalization of*

stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings”.

Furthermore, the possibility of a direct access to the ordinary jurisdiction for the determination of the stateless status instead of the more complicated administrative procedure (See Italian Supreme Court, Sez. Unite, case no. 23338/2008) underlines the paramount importance recognized to the fundamental rights in question. Moreover, it represents another common element with international protection that is subject to ordinary jurisdiction. This is due to the fact that, as underlined by the “Sezioni Unite” of the Italian Supreme Court, in its order no. 19393/2009, “*since the legal individual condition of a foreign has the nature of a subjective right, it should be included among the fundamental rights recognized by art. 2 of the Italian Constitution and art. 3 of ECHR*”.

Considering the aforementioned assimilation [of statelessness condition] to the beneficiary of international protection’s measures, the Italian Supreme Court endorses the claimant considerations according to which the burden of proof on the stateless claimant should be attenuated. In particular, potential needs for integration of the investigation should be filled by the judge with his officious investigative powers by requesting further information or documentation to the competent authority of Italy or of the Country of Origin or of the country with which the stateless claimant has relevant links. Although the attenuated burden of proof is not transposed into national law (on the contrary, it was transposed into art. 3 of the Legislative Decree no. 251/2007 and art. 8 of Legislative Decree no. 25/2008), it should be nevertheless accorded also to a stateless person, in light of a constitutional rights-oriented interpretation, according to which a stateless person is entitled of the same rights granted to a foreigner requesting for a residence permit or to an asylum seekers.

In addition, according to the aforementioned judgment (case no. 2338/2008), the “*Sezioni Unite*” of the Italian Supreme Court decided that in order to assess the stateless status’ requirements, a formalistic examination that takes into account only documentary or probative verifications would not be suitable. On the contrary, the assessment of stateless status requires an overall substantial evaluation (See also, more recently, the Italian Supreme Court, case no. 2512/2013).

In the Italian Supreme Court’s view, the Court of Appeal did not recall the above principles, limiting its investigation to the lack of evidences without further verifying if, with respect to the *iura novit curia* principle, the Bosnian citizenship law would provide *ratione temporis* any relevant rules for the recognition of the Bosnian citizenship to the applicant.

Furthermore, with regard to the requirements related to the Italian citizenship, the only other country with which the claimant had relevant links as recognized also by the Court of Appeal, the lack of any considerations referring to it in the contested judgement must lead to the conclusion that the Court has carried out a negative evaluation of the requirements for the acquisition of the Italian citizenship, based on Italian law.

The claimant, as properly underlined in the appeal, does not satisfy the requirements foreseen by the law to request the Bosnia Herzegovinian citizenship. Indeed, in accordance with art. 6, dealing with the acquisition of the citizenship “by origin”, Bosnian citizenship can be recognized only to whom is born abroad and at least one of his/her parents is a Bosnian citizen, after the entry into force of the Constitution (1995). [It is not the case of the claimant, who was born in 1986]. Other cases of citizenship acquisition (by birth, adoption, naturalization or international agreements) should be totally excluded because the claimant has never been outside Italy.

In conclusion, considering the Italian and the Bosnian laws applicable to this specific case, the Court of Appeal has illegitimately excluded the existence of the stateless status’ requirements. The Court of Appeal omitted to take into account the attenuation of the burden of proof on the applicant, and it did not resort to its officious investigative powers in order to clarify all the doubts and uncertainties raised during the case.

Outcome: The Italian Supreme Court has overruled the decision of the Court of Appeal and has recognized the status of stateless person to the claimant.

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

The judgement refers to other Italian decisions:

- Italian Supreme Court, case no. 28873/2008;
- Italian Supreme Court, case no. 23338/2008;
- Italian Supreme Court, case no. 25212/2013;
- Order of the Italian Supreme Court, case no. 19393/2009.

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:

Protection Information Unit
Division of International Protection
UNHCR
Case Postale 2500
1211 Genève 2 Dépôt
Switzerland
Fax: +41-22-739-7396
Email: refworld@unhcr.org