

CASE LAW COVER PAGE TEMPLATE

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| Name of the court ¹ (English name in brackets if the court's language is not English): | |
| Tribunale di Cagliari (Civil Court) | |
| Date of the decision: | 2013/06/06 |
| Case number: ² | Ordinanza 7778/2012 |
| Parties to the case: Mrs. X v. Italian Government | |
| 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): | |
| Country(ies) of origin of the applicant(s): Nigeria | |
| 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 Libya | |
| 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: Art. 1 (A) 2 |
| (Only for cases with statelessness aspects) 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: |
| (Only for cases with statelessness aspects) 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: |
| (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 2004/83/EC | Relevant articles of the EU instruments referred to in the decision: - |

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

Burden of proof - trafficking in persons - prostitution/commercial sex work - non-state agents of persecution - State protection - women at risk - social group persecution - gender-related persecution – women’s rights – women-at-risk

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

The applicant is a Nigerian woman, born in Ondo State and living in Lagos State since 2002, where she used to work as a tailor. In 2010, a friend asked her to follow her and made her drink a beverage which caused her unconsciousness. Afterwards, she found herself tied in a moving car with other people; after a four-day car trip she reached Libya, where she was forced to prostitution. While the IC was there, she was informed that she would next be sent to Italy. Her above-mentioned friend had also threatened her through voodoo rituals (involving the removal of the IC’s nails and hair), telling her that she would die in case she would not pay her debt back.

While in Italy, in 2012 the IC applied for international protection, which was denied by the competent Territorial Commission. The IC then lodged an appeal before the Civil Court of Cagliari against the decision, claiming the weak assessment of her subjective position as well as the fact that the provision has to be considered invalid since it had not been translated in a language she understands.

Key considerations of the court

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The first argument concerns the fact that the negative decision of the Territorial Commission on the application for international protection had not been translated into a language understood by the applicant. Therefore, according to the applicant's position, the decision has to be considered as illegitimate.

The Cassation Court, however, in accordance with settled case-law, states that the fact that the act had not been translated only constitutes an irregularity in its communication. Thus, the consequences of the above-mentioned irregularity could only affect the expiration date for the appeal lodging against it, and not the validity of the decision itself.

Concerning the content of the negative decision on the IC's application for international protection, the Court refers to the existing case-law on the burden of proof, in particular to a judgment released by the Court of Cassation (no. 18353/06) clarifying that "The burden of proof – subject to attenuation according to the intensity of the persecution – falls on the applicant, for whom it is however sufficient to provide circumstantial evidences on the 'credibility' of the facts he/she exposes".

Notwithstanding the duty of the applicant to substantiate the alleged facts, in case of lack of evidence, those aspects shall not need confirmation when the following conditions are met:

- (a) The applicant has made a genuine effort to substantiate his application;
- (b) All relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;
- (c) The applicant's statements are found to be coherent and plausible and do not contradict the available specific and general information relevant to the applicant's case;
- (d) The applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and
- (e) The overall credibility of the applicant has been established.

Moreover, the Court confirms that judges have to base their conclusions on the individual case not only by considering the subjective credibility of the applicant and his/her duty to substantiate the existence of a "*fumus persecutionis*" against him/her in the country of origin, but also by gathering information and obtain relevant documents in order to verify the persecutory condition in relation to external and objective information on the real situation in the country of origin. The assessment of the individual circumstances is only required to attribute the risk of persecution to the applicant. In this specific case, the applicant statement, confirming that she was forced into prostitution, is coherent, rich in details, and judged plausible, notwithstanding the lack of evidentiary documents, and applying the principle of good faith and benefit of the doubt.

Furthermore, considering the IC's transfer to Libya and the sexual exploitation she had been subject to, the risk of gender-related persecution is considered to be real. In addition, several reports, among which the *2011 Amnesty International Annual Report on Nigeria*, describe violations of human rights perpetrated by police officers, financial problems and delay in delivering judgments, low standard of prison conditions, pre-detention without immediate trial, death penalty and practices of convictions based on unfair trials. The security situation in the country is serious, especially in the area of Delta State, where several criminal acts occur and violence against women is spread. The *2013 Amnesty International Report* draws attention to lack in investigation, general impunity and illegal use of force by the police. The aforementioned reports clearly demonstrate that the State is unable and unwilling to protect.

Outcome: Considering the situation in Nigeria, the religious clashes, the absence of protection, the acts of violence against women and, in particular, the applicant's personal situation, the Court granted the applicant refugee status.

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

The judgment refers to other Italian decisions:

- Court of Cassation no.13032/04; no.17253/05; no.23216/05; no.6978/07; no.7564/08; no.18353/2006; no.27310/2008; no.26056/2010;
- Administrative Appeal Court (Consiglio di Stato) no.2199/06; no.2518/06; no.2762/06;
- Administrative Court (T.A.R.) of Genova no. 382/06; A. C. of Palermo no.1043/06; A. C. of Bari no.1768/06; A. C. of Florence no.2520/06;
- Constitutional Court no. 198/2000

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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