



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee  
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## Case Summary

Country of Decision/Jurisdiction	<b>Italy</b>
Case Name/Title	Tribunale di Napoli, Sezione Civile I bis, 2 febbraio 2011, sentenza n.30
Court Name <i>(Both in English and in the original language)</i>	Ordinary Court of Naples (Tribunale di Napoli)
Neutral Citation Number	
Other Citation Number	
Date Decision Delivered	02/02/2011
Country of Applicant/Claimant	Kenya
Keywords	Credibility, Medical reports, Country of origin information
Head Note (Summary of Summary)	Appeal against refusal to grant the refugee status <sup>1</sup>
Case Summary (150-500)	The applicant, a Kenyan national, claimed a fear of persecution coming from an illegal group, called the Mungiki. He was beaten and kidnapped by members of this group because of his refusal to join it. After he managed to escape he was beaten again and received several threats. For this reason, in 2008, he left Kenya and arrived in Italy.
<i>Facts</i>	The Italian Ministry of Interior rejected the asylum application. The applicant appealed against this decision. From the text of the judgment it wasn't possible to understand exactly on what grounds the refugee status was denied. However, on the documentation that the Ministry of Interior prepared for the Court, references to the lack of credibility were made. In particular the Ministry explained that the applicant showed some hesitation.
<i>Decision &amp; Reasoning</i>	Since the Ministry of Interior indicated a lack of credibility of the applicant, the Court decided to test it.  In order to do that the Court recalled the provisions of Art. 3 of the legislative decree 251/2007 (Italian law incorporated the above mentioned directive into Italian legislation as Directive 2004/83/CE. Art. 3 of the decree is the transposition of Art. 4 of the EU Directive). Then the Court compared these provisions with what the applicant's case, stating that he fulfilled his duty to submit all elements needed to substantiate his application as soon as possible by having a medical examination certifying the torture and the harm he suffered.

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	<p>In relation to the specific provisions of Art. 4 of the EU Directive the Court stated that the applicant had made a genuine effort to substantiate his application (Art. 4.5 (a)) in his interview with the Commission, which lasted more than two hours. During the interview he gave many details in relation to his history, e.g. the names of the persons who persecuted him and the lists of the activities carried out by the Mungiki organization.</p> <p>Then the Court, taking into consideration the country of origin information provided by the National Commission (Italian administrative authority), explained that the applicant's statements were found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case (Art. 4.5 (c)).</p> <p>The Court also found that the applicant has applied for international protection at the earliest possible time (Art. 4.5 (d)) because he submitted his applications just two months after his arrival in Italy.</p> <p>Lastly, the Court judged that the general credibility of the applicant has been established (Art. 4.5 (e)) since the statements he made in front of the Commission and the Court were coherent and showed no contradictions. In addition to this, his statements were also confirmed by the relevant COI.</p> <p>In addition to this, referring to the hesitation that the Ministry found in the applicant's words, the Court explained that:</p> <p><i>"Le titubanze del racconto appaiono quindi giustificabili dalla sindrome (da stress post traumatico) attestata dal medico che ha visitato il ricorrente".</i></p> <p>"The hesitation shown by the applicant can be justified in the light of the fact that the applicant suffers from (post-traumatic stress disorder) syndrome, as certified by the doctor who visited him."</p> <p>Finally, the Court stated that the claim of the applicant could not be related to any of the grounds for persecution as set out in the 1951 Refugee Convention or to the grounds for the recognition of the subsidiary protection.</p>
<p><i>Outcome</i></p>	<p>The Ordinary Court of Naples decided not to grant refugee status or subsidiary protection. Nevertheless, the Court judged the existence of a risk for the integrity of the applicant in case of removal and granted him the so-called "humanitarian protection", a form of complementary protection.</p>