

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Tribunale Civile di Cagliari (Civil Court)	
Date of the decision: (2013/04/03)	Case number: ² Ordinanza n. 8192/12
Parties to the case: Applicant v. Italian Government	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the link: http://www.magistraturademocratica.it/mdem/qg/doc/Tribunale_Cagliari_ordinanza_12-08192.pdf (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): 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	
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	Relevant articles of the EU instruments referred to in the decision: article 6 of ECHR; Directive 2004/83/EC

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

Female genital mutilation (FGM) – burden of proof – non-state agents of persecution – State protection – membership of a particular social group – gender based persecution

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

The IC¹ is a Nigerian woman who claimed asylum in Italy as a victim of mistreatment carried out by some members of her family (the stepmother) in Nigeria. After escaping from home, she stayed at her aunt’s place where she was sexually abused by her uncle. She then fled the country, in order not to undergo a FGM, for the purpose of an arranged marriage. In 2012, the international protection claim was denied by the competent Italian administrative authority (Commissione Territoriale) for reasons of lack of credibility, considering that she could have joined her boyfriend in Libya immediately after the rape, without waiting in Nigeria at her aunt’s place for a year.

In March 2012, the IC filed an appeal against the denial of international protection before the Court of first instance of Cagliari (Tribunale di Cagliari).

¹ IC stands for individual case (*omissis* in the text of the decision)

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 – Here, the *Tribunale di Cagliari* (Court of first instance of Cagliari) establishes that acts of FGM are to be considered as acts of persecution for reasons of membership of a particular social group. The Court verifies also that the acts of FGM were referring specifically to the IC and that her fear of persecution is well-founded.

The Court further refers to articles 7 and 8 of Legislative Decree No. 251/2007, providing for acts and reasons of persecution relevant for the recognition of international protection that should be sufficiently serious both in nature and frequency in order to represent a serious violation of fundamental human rights, resulting in acts of physical or psychological violence or discriminatory measures.

Firstly, the Court ascertains that FGM is a serious act of persecution, grounding its reasoning on reports by WHO² and UNHCR³ and taking into consideration relevant national case law of other countries and case law of ECtHR.

The Court verifies the consistency between international law and Italian constitutional law, before interpreting Italian law in the light of European case law. In this case the Court observes that there is no contrast between the laws. Therefore, in its reasoning the Court mentions and takes into consideration the case law of the ECtHR. The Court comes to the conclusion that, in this specific case, it is possible to interpret article 2(e) of Legislative Decree No. 251/2007, containing the definition of refugee, as if FGM is an act of persecution for reasons of membership of a particular social group, following under the rights protected by articles 2 and 3 of the Italian Constitution.

Despite the fact that those acts are perpetrated by non-state agents, the Court recognizes that national authorities of the IC's country of origin are unable to provide sufficient protection against such FGM acts. The IC cannot avail herself of the protection of Nigeria, because pursuant to reports of the US Department of State and the National Population Commission of Nigeria, FGM is very common in the Yoruba ethnic group (the IC is a member of the Yoruba group) and there is no sufficient level of protection against such practice.

Moreover, the Court recalls the principles on burden of proof established by Italian case law for the applicant, who needs to provide jointly to the claim all the necessary elements, but also recalls the existence of a duty falling on the decision-maker to have an active role in gathering objective and external information on the situation in the country of origin, and to evaluate the risk of persecution (*fumus persecutionis*) also on the basis of personal elements of evaluation, among which is credibility. In particular, the lack of evidence, for instance medical certificates, is justified by the familiar environment where the violence was perpetrated, the necessity of escaping due to the risk of FGM and the inability to keep contacts with this environment. For all the aforementioned reasons and the inability to report the abuse suffered to the competent authorities, the Court considers her statement consistent; the Court also goes further in its reasoning by taking into account the distress of a victim of rape, especially when the abuse occurs in the family and in such a social context. Moreover, the Court finds no elements of contradiction in the statement. Once verified all other requirements, in this case the Court assesses and recognizes personal and direct persecution against the IC.

Outcome – In conclusion, the Tribunal recognizes the IC's refugee status considering acts of FGM as acts of persecution for reasons of membership of a particular social group (gender based), for a well-founded fear that persecution is specifically directed to the IC and finally because of the inability of Nigeria to protect her.

² *Female Genital Mutilation Trends, Department of Gender, Women and Health Report of World Health Organization Technical Consultation Geneva, 15-17 October 1997*

³ *Guidance Note on refugee claims relating to female genital mutilation, Geneva, May 2009*

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

The judgment refers to other decisions: European Court of Human Rights, Emily Collins and Ashley Akaziebie v. Sweden, 8 March 2007; Italian Constitutional Court, *sentenza* 348/2007, *sentenza* 349/2007, *sentenza* 39/2008, *sentenza* 311/2009, *sentenza* 187/2010, *sentenza* 196/2010, *sentenza* 80/2011, *sentenza* 78/2012, *ordinanza* 150/2012; Italian Supreme Court, 18353/2006, *sentenza* 27310/2008, 26056/2010, *ordinanza* 4138/2011, *ordinanza* 10177/2011, *ordinanza* 6880/2011, *ordinanza* 2294/2012; Court of Appeal of Catania, 17 December 2012; Court of Appeal of Rome, 2 July 2012

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