



Italy - Court of Florence (Contentious - Civil Court), first instance decision of 24-29 November 2011

The authorities denied statelessness status to the applicant, holding that he could have applied for both Ghanaian and Malian nationality, countries the applicant had links with. The Court of Florence overturned this decision, holding that the standard of proof must be lower and similar to that used to identify a "foreigner eligible for international protection" under Italian law. The lower standard of proof means the Court can recognise statelessness status even when no full evidence of facts is submitted, provided that the applicant has used his reasonable endeavours to substantiate his application, could provide sufficient justification for the absence of significant facts, has submitted plausible and consistent statements, has lodged his application as soon as practicable or has had a good reason for delay, and can be regarded as a credible person.

Case name (in original language) : Tribunale ordinario di Firenze, sezione civile IV, Pres. Rel. Est. Dott. Luca Minniti

Case status: Decided

Case number: 7397/2019

Citation: Italy - Court of Florence (Contentious- Civil Court), first instance, case 7397/2019

Date of decision: 24/11/2021

State: Italy

Court / UN Treaty Body: Civil Court of Florence (Tribunale ordinario di Firenze)

Language(s) the decision is available in: Italian

Applicant's country of birth: Mali

Applicant's country of residence: Italy

Legal instruments: 1954 Statelessness Convention, European Union law

Key aspects: Standard of proof, Stateless status and documentation, Statelessness determination

Relevant Legislative Provisions:

- 1954 Convention relating to the Status of Stateless Persons.
- Italian Decree 251/07 implementing Directive 2004/83/EC.
- Italian Decree 25 July 1998, no. 286 concerning immigration regulations and rules on the status of foreigners.
- 2011 Code Des Personnes et de la Famille of Mali.
- 1992 Constitution of Ghana and 2000 Citizenship Act.

Facts

Born in Mali, the applicant claims that he was adopted by a Ghanaian family and moved to Ghana. The applicant claim that his adoptive parents died soon after adoption and he was forced to leave. He did not obtain either Malian or Ghanaian nationality. Without documents he fled to Niger while his wife moved to Burkina Faso. He claims that he cannot return to Ghana because he is threatened. The Florence Administrative Commission for International Protection denied refugee status under Article 1(a) 1951 Geneva Convention and protection under Article 14 of Italian Decree 251/07 ratifying Directive 2004/83/EC, finding that the applicant could have been granted both Malian and Ghanaian nationality.

The decision was appealed before the Civil Court of Florence, which, applying the principles established by the Italian Supreme Court, overturned the decision of the Commission and recognised statelessness status.

Legal arguments by the applicant

The applicant argues that, for the ascertainment of statelessness status, Article 10 of the Italian Constitution requires that the reference be made to international rules, in particular to Article 1 of the 1954 Statelessness Convention, and the application must be evaluated with a mitigated burden of proof.

The requirements for the recognition of subsidiary protection provided for by Italian Decree 251/07 implementing Directive 2004/83/EC, or, alternatively, of subsidiary protection provided for by Italian Decree 25 July 1998, no. 28, were met, due to the applicant's subjective vulnerability and the objective conditions of the country of origin.

Legal arguments by the opposing party

According to the Commission, the applicant could not be considered stateless as he could have obtained Ghanaian or Malian nationality. The Commission noted that, in particular, the applicant had never shown that he had requested nationality/identity documents from the authorities of neither of these countries and had ever indicated the reasons why he was allegedly denied such nationality. According to the Commission, the conditions for subsidiary protection invoked subsidiarily to statelessness status by the applicant were also not met.

Decision & Reasoning

The Court of Florence overturned the Commission's decision, recognising statelessness status on the basis of the principles set out by the Italian Supreme Court case law ([case 4262/2015](#)). In particular, to prove statelessness status, the standard of proof has to be "mitigated" (*onere della prova attenuato*) and similar to that used to identify a "foreigner eligible for international protection" under Italian law.

1.Statelessness status must be considered as similar to the status of a foreigner who is entitled to international protection (i.e., full respect for human and fundamental rights).

2.A plausible, gap-free and credible story is sufficient to ascertain the existence of statelessness status ([Supreme Court decision in case 4262/2015](#)). In order to apply Article 1 of the 1954 Statelessness Convention, it is necessary to look not only at the formal conditions but also at the factual conditions, examining the overall material situation of the applicant without limiting the examination to only a formal review of the documents and evidence acquired.

In particular, the application of the "mitigated" standard of proof means the Court can recognise statelessness status even when no full evidence of facts is submitted, provided that the applicant: has used his reasonable endeavours to substantiate his application; could provide sufficient justification for the absence of significant facts; has submitted plausible and consistent statements, which must also be related to general and specific information concerning his case; has lodged his application as soon as practicable or has had a good reason for delay; can be regarded as a credible person.

3. In assessing whether the person could have obtained nationality of other countries, it is necessary to consider only the legislation of the countries in which the person has a "legally relevant link".

4. A dual track between the administrative procedure and civil court proceedings must be ensured for the determination of statelessness status.

5. In this case, the Court of Florence concluded that the applicant could not be considered either 'Malian' or 'Ghanaian' as he could not satisfy either domestic law on nationality. In particular, with regard to Mali, he would satisfy Malian law requirements only theoretically thanks to the Malian nationality of his parents but, in any event, his factual circumstances were not sufficient to establish a link with that country. With regard to Ghana, the personal links were well established; however, both the 'adoption' by Ghanaian nationals and the relationship with his Ghanaian wife were only 'de facto', with no formal recognition in both cases.

Therefore, the court recognised the statelessness status to the applicant.

Decision documents

[Judgment, Court of Florence \(Contentious - Civil Court\), first instance decision of 24-29 November 2011](#)

Outcome

The applicant is granted statelessness status by the Court of Florence which relies on the principles established by the Italian Supreme Court case law.

Caselaw cited

[Italian Supreme Court decision 4262/2015 of 3 March 2015](#)