

## Italy - Ordinary Tribunal of Milan, 31 March 2016, n. 64207

**Country of Decision:**

Italy

**Country of Applicant:**

Gambia

**Date of Decision:**

31-03-2016

**Citation:**

No. R.G. 64207/2015

**Court Name:**

Ordinary Tribunal of Milan, First Civil Section, Judge Federico Salmeri

**Keywords:**

Assessment of facts and circumstances

Individual assessment

Persecution Grounds/Reasons

Personal circumstances of applicant

Political Opinion

Real risk

Refugee Status

Subsidiary Protection

---

**Relevant Legislative Provisions:**European Union Law

---

**Headnote:**

The Italian consolidated Law on Migration (Art. 5(6) n. 286/1998) requires humanitarian protection to be given where a person is in a situation of vulnerability. Such a situation occurs when the applicant's constitutional and international fundamental rights, such as health and nutrition, are compromised.

**Facts:**

A Gambian citizen requested international protection in Italy and was heard by the Territorial

Commission of Milan (the competent administrative body). Before the Commission the applicant relied upon his activism within the UDP, a Gambian political party, and the acts of persecution he faced on the part of the Islamic Government in charge.

The Territorial Commission refused any kind of protection to the applicant, because it did not consider the alleged active participation of the applicant within the UDP to be credible. In particular, the Commission did not deem the applicant trustworthy because he had repeatedly referred to the wrong date for the election of the Gambian President; and this was an unlikely mistake for a genuine political activist.

The applicant appealed the decision before the competent Tribunal of Milan.

---

### **Decision & Reasoning:**

1) The judge dismissed the request for the asylum status agreeing with the Territorial Commission that the applicant's alleged participation in the UDP party was not credible.

2) The judge also dismissed the subordinate request for subsidiary protection. He deemed the request both inadmissible and unfounded.

The request was considered inadmissible because the applicant had not clarified what kind of serious damage amongst those defined by art. 14 of the Legislative Decree 251/07 (implementing the 2004 Qualification Directive) he would risk being subject to upon his return.

The judge further affirmed that the request was unfounded. In this respect, he underlined that Gambia was not considered either by the UNHCR, or the CJEU (see *Elgafaji v. Staatsecretaris van Justitie; Diakité*) to be a State characterised by indiscriminate violence due to an ongoing armed conflict. The Tribunal, therefore, found the reasoning underpinning *Elgafaji* to not be applicable.

3) The judge, however, accepted the alternative request for humanitarian protection.

He firstly observed that, according to Art. 5(6) n. 286/1998 (Italian consolidated Law on Migration), as interpreted by the Court of Cassation (see inter alia judgment *n. 22111/2014*), humanitarian protection has to be granted to people in a situation of vulnerability, namely those whose fundamental rights codified in constitutional and international law are compromised. In addition, the judge remarked that this protection has a residual nature the requirements of which are distinct from those of refugee or subsidiary protection status. (*Cass. 4139/2011; 6879/2011; 24544/2011*).

Secondly, the judge affirmed that it is undisputable that an individual is in a situation of vulnerability where his rights to health and nutrition, which stem from the right to life, are jeopardised. In addition, he recalled that these rights are protected by the Italian Constitution (Art. 34), the Universal Declaration of Human Rights (Art. 25), and the International Covenant on Economic, Social and Cultural Rights (Art. 11).

Finally, as to the specific case, the judge noted that data shows that in Gambia there is widespread poverty which seriously compromises access to nutrition and medical treatment. Additionally, the undertaking of such a lengthy and perilous journey would not have been done if the applicant's life conditions in the country of origin had been above the threshold of acceptability. Consequently, the judge concluded that returning the applicant to his country would be a violation of the aforementioned fundamental rights, and therefore granted the applicant humanitarian protection.

To further corroborate his conclusion, the judge underlined that it is immaterial that the above mentioned interpretation may allow a massive recognition of humanitarian protection. Indeed, fundamental rights are universal and therefore not to be granted in limited numbers.

---

**Outcome:**

The Judge refused the request for asylum and the request for subsidiary protection.

The Judge recognised the applicant has being entitled to humanitarian protection.

---

**Observations/Comments:**

The above summarised ordinance is not one of a kind. On the contrary, since 2014 several similar judicial decisions have been taken which have granted humanitarian protection against the refusal of the Administrative Territorial Commissions. (see the following ordinances: Tribunal of Venice, 5 February 2016, R.G. 4767/15; Tribunal of Trieste, 29 June 2015, R.G. 3128/14; Tribunal of Rome , 17 March 2016, R.G. 7822/2014; Tribunal of Trieste, 14 October 2014, R.G. 2435/2012)

All of these decisions were based on the general serious risk to the individual's fundamental rights in case of return to the country of origin. This risk was inferred by taking into account the general social, political and humanitarian situation of the place of origin, regardless of personal specific circumstances of the third country national, and regardless of the fact that the risk is not foreseen by the framework relating to asylum and subsidiary protection. Furthermore, in some cases the humanitarian protection was also granted giving due consideration to the applicant's successful integration.

Particular attention can be payed to the ordinance of the Tribunal of Rome, 17 March 2016, R.G. 7822/2014. The reasoning of the decision is especially interesting because it highlights that, according to the literal interpretation of art. 5(6) of the Italian Consolidated Law on Migration, humanitarian protection does not necessarily have to be justified on the basis of specific international or constitutional norms, but can also be simply grounded on the need of protecting human rights, as generally imposed by art 2 of the Italian Constitution.

**Attachment(s):**



[Milano Tribunal, 31 3 2016, n. 64207 2015 \(Humanitarian Protection based on poverty\).pdf](#)[1]

---

**Other sources cited:**

ICESCR, Art. 11

N General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Art. 25.

[http://www.ucdp.uu.se/gpdata/gpcountry.php?id=60&regionSelect=2-Southern\\_Africa](http://www.ucdp.uu.se/gpdata/gpcountry.php?id=60&regionSelect=2-Southern_Africa) [2]

<https://www.amnesty.org/en/countries/africa/gambia/report-gambia/> [3]

<http://www.state.gov/r/pa/ei/bgn/5459.htm> [4]

<https://www.gov.uk/foreign-travel-advice/gambia> [5]

UN Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary

executions, Gambia;

UK Home Office: The Gambia Report (  
<http://www.refworld.org/country,,,GMB,,567121e14,0.html> [6])

US Department of State: 2014 Report on International Religious Freedom:

<http://www.refworld.org/country,,,GMB,,55fab8164,0.html> [7]

<http://www.refworld.org/country,,,GMB,,562f6f6815,0.html> [8]

<http://www.imf.org/external/index.htm> [9]

<http://www.ruralpovertyportal.org/fr/country/home/tags/gambia> [10]

<https://www.ifad.org/home> [11]

### **National / Other Legislative Provisions:**

[Italy - Legislative Decree No. 251/2007 - Art 2 \(g\)](#) [12]

[Italy - Legislative Decree No. 251/2007 - Art 7](#) [13]

[Italy - Legislative Decree No. 251/2007 - Art 8](#) [14]

[Italy - Legislative Decree No. 251/2007 - Art 14](#) [15]

[Italy - Legislative Decree No. 251/2007 - Art 19\(1\)](#) [16]

[Italy- Legislative Decree n. 25/2008](#) [17]

[Italy - Legislative Decree No. 286/1998 - Art 5\(6\)](#) [18]

[Italy - Legislative Decree No. 1068/1947](#) [19]

[Italy - Law n. 881/1977](#) [20]

[Italy - Decree of the Republic President n. 115/2002 - Art. 83\(3\)](#) [21]

[Italy - Decree of the Republic President n. 115/2002 - Art.133](#) [22]

---

### **Links:**

[1]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Milano%20Tribunal%2C%2031%203%202020>

[2] [http://www.ucdp.uu.se/gpdatabase/gpcountry.php?id=60&regionSelect=2-Southern\\_Africa](http://www.ucdp.uu.se/gpdatabase/gpcountry.php?id=60&regionSelect=2-Southern_Africa)

[3] <https://www.amnesty.org/en/countries/africa/gambia/report-gambia/>

[4] <http://www.state.gov/r/pa/ei/bgn/5459.htm>

[5] <https://www.gov.uk/foreign-travel-advice/gambia>

[6] <http://www.refworld.org/country,,,GMB,,567121e14,0.html>

[7] <http://www.refworld.org/country,,,GMB,,55fab8164,0.html>

[8] <http://www.refworld.org/country,,,GMB,,562f6f6815,0.html>

[9] <http://www.imf.org/external/index.htm>

[10] <http://www.ruralpovertyportal.org/fr/country/home/tags/gambia>

[11] <https://www.ifad.org/home>

[12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/italy-legislative-decree-no-2512007-art-2-g>

[13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/italy-legislative-decree-no-2512007-art-7>

[14] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/italy-legislative-decree-no-2512007-art-8>

[15] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/italy-legislative-decree-no-2512007-art-14>

[16] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/italy-legislative-decree->

no-2512007-art-191

[17] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/italy-legislative-decree-n-252008>

[18] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/italy-legislative-decree-no-2861998-art-56>

[19] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/italy-legislative-decree-no-10681947>

[20] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/italy-law-n-8811977>

[21] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/italy-decree-republic-president-n-1152002-art-833>

[22] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/italy-decree-republic-president-n-1152002-art133>