

COURT of PERUGIA
First Civil Division

The Court, sitting as a unified bench in the chamber, composed of the most illustrious

Messrs Magistrates:

Dr. Mariella Roberti President

Dr. Claudio Baglioni Judge

Dr. Ilenia Micciché Drafting Judge

has issued the following:

DECREE

for the case No.310/18 on the General Register, concerning: an appeal pursuant to Art.737, of the Code of Civil Procedure (CCP), E 35b, of legislative decree No.25/2008, against the Decree of the Territorial Commission for the Recognition of the International Protection of Florence - Perugia Division, promoted by:

***, Tax Code: **, born in ** (China) on **, residing in Perugia, at via **, assisted by Mr. Francesco Di Pietro, lawyer, electively domiciled at his offices in Perugia, at via XIV September n. 73, as stated in the power of attorney hereunder;

Applicant

Against

Ministry of the Interior - Territorial Commission for the Recognition of the International Protection of Florence - Perugia Division;

Respondent;

and with the participation of the Public Prosecutor – Public Prosecutor's Office at the Court of Perugia;

1. Facts reported by the applicant with grounds for appeal

***, a Chinese citizen, has submitted, within the given deadline, an application to appeal the provision, issued on 22.09.17, and under notification as from 18.12.17, in which the Florence Territorial Commission for the Recognition of International Protection refused her recognition of refugee status and of additional forms of protection. She has requested the recognition of refugee status, either through the alternative route of a subsidiary

protection status or through the next alternative route, by issue of a residence permit on humanitarian grounds.

The current Ministry of the Interior has called for a rejection of this appeal.

The Public Prosecutor has upheld the rejection of this appeal without acknowledging the recurring elements, which make this case a suitable one for granting recognition of the required forms of protection.

The applicant has stated, before the Territorial Commission, that she belongs to the Han ethnic group and follows the faith of the Church of Almighty God; that she was born in **, in the province of Lianoning, and that she converted to the faith of the Church of Almighty God in 2012, while her parents had converted in 2007 and received other members into their home to pray; that, in 2008, her father had been arrested for this activity, was released after fifteen days following payment of a sum of money, and arrived back home covered in bruises and limping; that in July 2014 the family learned that the Chinese government had intensified the persecution of Christians in domestic churches and, fearing for the father who had already been arrested, decided to move to a relative's house in Inner Mongolia; that they knew of other religious followers who had been arrested and that a former neighbour in **, who was probably under instruction to find them, had phoned to ask for information about the whereabouts of her ** family; that a friend had sent her a letter explaining how he had been captured and beaten, and so advising her to flee; that feeling afraid she went to ** to live with a relative; and that she obtained a passport to ** in 2016, finally arriving in Italy via aeroplane from Beijing.

Considering *'s account to be barely credible and the information regarding her country of origin to be unsupported, the Commission has refused to grant her international protection. They have specifically made reference to the fact of her initiation by family members into the Church of Almighty God, having learned from sources that followers of this faith tend to cut off their relationships with family; to the fact that had the applicant found hospitality with relatives or friends, who were also followers, without ever having been discovered or traced, such a situation would only have conflicted with the strict control exerted by the Chinese authorities, and to the fact that the applicant, while a daughter of somebody who had previously been arrested, and therefore a member of a monitored family, still managed to obtain a passport and cross the border without being monitored or arrested herself.

During the appeal it was deemed that the decision adopted by the Territorial Commission was erroneous because, in summary, a variety of sources attest that, in China, the Church of Almighty God is considered an "evil cult", and that the Chinese police persecute its

members, while also inviting citizens to report its followers; it was added that the applicant appeared credible for having reported a series of detailed notes referring to the practice and the doctrines of the cult, as confirmed by the reports.

At the hearing of 12.06.18, after the discussion had ended, the case was referred for decision by the panel.

2. Regulatory framework: refugee status

The regulatory framework for international protection is established by the directive 2011/95/EU (which has replaced Directive 2004/83/EC) and, on an internal level, by Legislative Decree No.251 of 19th November 2007, as amended by Legislative Decree No.18 of 21st February 2014, implemented by Directive 2011/95 /EU.

As regards the forms of protection requested in the appeal, it should be noted that, pursuant to Art.2, Para.1e) of Legs. Dec. 251/2007, refugee status is applicable "...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence (as a result of such events), is unable or, owing to such fear, is unwilling to return to it."

Art.6 of the "*Qualifications*" directive, adopted word for word by Art. 5 of Leg. Decree No.251/2007, gives a uniform definition of the author of persecution and serious harm. This provides that this can be a) the State; b) any party or organisation controlling the State or a substantial part of the territory of the State; (c) any non-State subjects, if it can be demonstrated that the authors mentioned in paragraphs (a) and (b), including any international organisation, are unable or unwilling to provide protection against persecution or serious harm.

Therefore, for the purposes of establishing refugee status, the actions that come directly from the applicant's state of origin are relevant or are, in any case, attributable to it because they are carried out by persons appointed to exercise the prerogatives of a public authority.

Recognition of the status presupposes that the applicant is the subject of a persecuting power, which must also have a necessary causal correlation on grounds strictly specified by the legislator and further specified in Art.8 of the same decree.

Single acts of ordinary criminality cannot be integrated with extreme persecutory acts, while a mode of conduct deliberately planned for the individual and direct persecution of the person applying for protection, and motivated by the reasons specified, is necessary. The EU Court of Justice has pointed out, appropriately, that, "When Member States assess whether an applicant has a well-founded fear of being persecuted, it is immaterial whether he actually possesses the characteristic that attracts the persecution, as long as such characteristic is attributed to him by the author of the persecution." (C.GUE c. 473/2016 F c. Bevándorlási és Állampolgársági Hivatal). Therefore, what seems to be most important here is not the truthfulness of the facts alleged against the applicant, but the fact that the accusations put forward are real, and that they are actually addressed to the party concerned. This is because "it is the existence of these accusations that makes the danger of persecution or serious harm real, in relation to the possible consequences according to the foreign system." (Cass., Section VI, 6 February 2018).

Art.7 of the same decree identifies the acts on which persecutory conduct is based, referring directly to the 1951 Geneva Convention.

In particular, these persecutory acts must be sufficiently serious, by nature or frequency, to represent a serious violation of fundamental human rights and may, inter alia, take the form of:

- (a) an act of physical or mental violence, including an act of sexual violence;
- (b) a legal, administrative, police, or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;
- (c) prosecution or punishment, which is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses, found in Art.10, para.2
- (f) acts specifically directed against a sexual gender or against childhood.

3. Assessing the evidence

Analysing the profile of the applicant's burden of proof, pursuant to Art.2697 of the Civil Code, is central to understanding the protective system under discussion. According to the prevailing jurisprudence, this must be interpreted liberally due to the possibility of limited evidence being available to the applicant. It follows that the judge will have significant authority, which can be used to acquire all the information, including that necessary to

reconstruct the socio-political and judicial-administrative situation in the migrant's country of origin. Nevertheless, the applicant has the onus of demonstrating the crucial facts in order to prove his entitlement to what he is claiming, and then to provide at least the indicative elements necessary to reconstruct his personal story: "the applicant must prove, at least on a presumptive basis, the actual danger he will face on repatriation, with specific reference to the effectiveness and timeliness of the risk "(Court of Cassation, 17.11.2008 No.27310, on the same point see also Cass. 2007 No.26822; 2006 No.18353, 2005 No.28775, 2005 No.26278, 2005 No.2091).

Art.3 of Leg. Decree No.251/2007 actually establishes that the applicant is obliged to produce all the elements and documents necessary to prove the grounds of his request. However, pursuant to Para.5 (below), where certain elements or aspects of the declarations made by the applicant are not substantiated by evidence, these can still be considered truthful if the competent authority determining the application considers that:

- a) the applicant has made every reasonable effort to substantiate the application;
- b) all the relevant elements in his possession have been produced, and a suitable reason has been provided for any lack of other significant elements;
- c) the statements by the applicant are considered consistent and plausible;
- d) the applicant has submitted the application as soon as possible, unless there is a justified reason;
- e) from the findings made, the applicant is deemed reliable.

In other words, the principles regulating the ordinary civil process operate in a very different way when applied to the matter under discussion: "This results in a thorough evaluation, by the official exercising authority, before the competent Commission, and then by the Judge, who is responsible for cooperating in establishing the conditions for granting the foreigner an entitlement to international protection, and also for acquiring the information necessary to understand the judicial system and political situation of his country of origin " (Supreme Court, 17.11. 2008 No.27310).

This assumption is further confirmed in regulations by Art.19, Para.8 of Leg. Decree No.150/2011, according to which: "the judge can also act officially, holding the power to order the investigation required for resolving the dispute" and Art.8, Para.3 of Leg. Decree No.25 of 2008, states that the examination of issues must be based on "precise and updated" information on the general situation of the country of origin, and of the countries in which the migrant has passed through, elaborated by the National Commission and then

made available to the Commission's territorial authority and, in the event of an appeal against refusal measures, to the judicial bodies.

4. Merits of the appeal

With regard to the reasonable procedural cooperation of the party, for substantiating the application, it must be noted that the applicant, in addition to producing reports from international organizations and press articles pertaining to the persecutory measures against Christians in China, has also produced a series of documents to prove her official membership with the Church of Almighty God (please see: statement of the Church of Almighty God of Rome, produced at the hearing of 12.06.18) and interviews with the sociologist, M. Introvigne, a scholar of new religions and director of the CESNUR Study Centre.

In view of the documentation produced, it must be pointed out that the applicant has done everything possible to substantiate the request, and to provide all the elements she possesses, in order to prove that she belongs to the cult and her reasons for moving away from her country of origin.

In terms of the credibility of the account provided, the board does not consider there to be any reason to cast doubt - unlike the evaluation carried out by the Territorial Commission. This is because it appears to be substantially complete, fully coherent and very detailed with regard to the sequence of events that led the applicant leaving her country, and also in view of the information available regarding the cult of the Church of Almighty God.

In particular the available sources state that the Church of Almighty God is a religious movement created in China in 1991, which essentially teaches that Jesus Christ returned to earth as Almighty God, incarnating himself as a living person who "teaches the fullness of truth to purify and save humanity". Scholars of this church believe that Jesus was incarnated as a Chinese woman, born in 1973 in north-western China. The Chinese Communist Party deems all religious independent religious movements, which do not accept the government's rule, to be dangerous. In particular, the Church of Almighty God has been subject, since the first years of its existence, to a harsh repression in China, and is officially considered, by inclusion in a special list published in 1995 and regularly updated, to be a superstitious sect ("xie jiao"). Article.300 of the Chinese Penal Code provides that "anyone who organizes superstitious sects (...) shall be sentenced to not less than three years and not more than seven years of fixed-term imprisonment."

The number of reported cases of persecution towards members of the Church of Almighty God is no less high: there have been thousands of arrests, dozens of cases of torture and

also deaths in suspicious circumstances. The destruction of Xie Jiao has turned out to be one of the priorities of the Chinese authorities, while cash remuneration is offered to those who report the members to the police, in order that they can be arrested.

Yet it still emerges through some of the COI that, as with most religious movements, the majority of conversions take place within CDO environments through family members and that family networks play a central role in protecting the faithful from persecution (please see COI Canada, Appendix No. 23).

The account reported by the applicant, that she was able to obtain a passport from the Chinese authorities, is perfectly credible, given the fallibility of the Chinese monitoring systems and the widespread corruption in the country.

In light of what has been pointed out up to now, the board believes that a fear of being persecuted by state organisations, for religious reasons, should be considered sufficient for this applicant if she should consider returning to her own country. This is also true on a subjective level, having reported that her own family had been investigated and her father arrested due to cult membership of the Church of Almighty God, and also on an objective level, as the applicant's statements appear to be consistent with both current news reports on religious freedom in China and the government's systematic and deliberate persecution against the cult practised by the applicant.

In this case, all the objective and subjective requirements underlying the granting of refugee status are integrated within the above mentioned conditions. In conclusion, being a native of the state of her persecution precludes the applicant from availing herself of any internal protection from her state of origin.

This appeal needs to be upheld because recognition of the applicant, ***, as a refugee, is essential.

Due to the nature of this dispute, the costs of the proceedings must be compensated.

For these reasons:

In view of Art.35 of Leg. Decree 25/2008, Art..19 of Leg. Decree 150/2011, Art.702b and subsequent, and Art.737 of the Italian Civil Code.

- 1) Accept the appeal and, accordingly, grant ***, born at ** (People's Republic of China) on **, refugee status.

- 2) Compensate for expenses.

Please send this to the court registry for the completion of ordinary formalities, and, to inform the applicant of this order, to the Territorial Commission concerned and to the Public Prosecutor at the Court of Perugia.

This decision has been passed in the council chamber of Perugia on 13th June 2018.

Judge-Rapporteur
Ilenia Micciché

The President
Mariella Roberti