

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. 7109/17 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 at ** (People's Republic of China) on **, residing in Perugia, via **, represented and defended by 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 25.05.17, and under notification as from 26.10.17, 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 or, in the alternative, a subsidiary protection status and, as a further alternative, the 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 the province of **, in the city of **; that she married when she left school and went with her husband to the province of **, in the city of ** and in the province of **; that she worked in her own country as a clerk and asylum assistant; that her family, with whom she has had no contact since she has been in Italy, lives in China and consists of her parents and a younger brother; that the mother was arrested in 2008 and she does not know where she is; that she divorced her husband in 2010 and, in order to have a child, left to live with her grandmother; that she began to follow the Church of God Almighty in 2009, and that her mother had been arrested the year before because she was proselytizing, but had escaped; that the police visited her house many times after this arrest to force her father to tell them where his wife was, and to ask the neighbours to monitor the family to spy on them; that the father, not tolerating this situation, had tried to commit suicide but had been found in time and saved; that her in-laws and her husband, using her faith as a pretext, had asked for a divorce, without allowing her to see her son and without recognizing her financial entitlement. The complainant then added: she was taken by force to the police station, managing, just before it was found, to get rid of a list of names of religious followers; that she was questioned by the police, who wanted to know the names of the other followers but she gave them no answer, not even after having been subjected to episodes of torture, such as the so-called "tiger chair" (*"an iron chair with a crossbar, used to immobilize my hands, and a fat policeman grabbed me by the hair and repeatedly banged my head on the bar. I felt the front of my head swell up and then I did not feel anything else, I seemed to faint"*); that she was deprived of food, water and sleep (*"up until the evening nobody gave me any food to eat nor anything to drink, and they would not let me to go to the bathroom. When my eyes closed over with tiredness they pulled me up and shone a very strong light into my eyes. It continued like this until the next day, in the afternoon, when getting nothing from me, they let me go"*); that she received threats that if she continued to belong to the church she would be captured and punished, and that she was released, but was then followed immediately; that she was unable to remain at home after this episode, so went to live with a cousin in **, where she stayed for a year and a half without being able to make contact with the church and the other followers; that she resumed contact with the Church of Almighty God in 2015, but meanwhile the district of ** had

announced that it would be searching for followers, so she had to hide in a safe place during a control-check in March 2016, when she found herself at a sister's house to discuss religious matters, discovering that her sister had been threatened if she did not report her presence in her house, which she had by now informed the police about; that she had come to understand that in China it was too difficult to believe in God, and had therefore decided to go abroad, taking a flight from Beijing to Italy.

The Commission has refused her international protection, maintaining that *'s account is not very consistent, either internally or externally, with respect to the COIs, and in particular because it did not find it credible: that the applicant had been converted to the Church of Almighty God by her mother (because moving away from the family is considered, in the cult, to be a way of reaching a higher level in the hierarchy); that the applicant had been released even after being identified as belonging to the cult, this being a church included in the list of evil cults, which is considered by the Chinese criminal code to represent terrorist organizations; and that her passport had been regularly issued to her because her arrest had not been registered.

From this appeal we can understand the error of the decision taken by the Territorial Commission as, in brief, many sources attest that in China the Church of Almighty God is considered an "evil cult", and that the Chinese police persecute its members and also invite citizens to report its followers; in addition, the applicant appears to be quite credible by having reported such an array of detailed information relating to the methods of cult practice confirmed by the reports.

At the hearing of 3.04.18, 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 (Testimony by the Church of Almighty God of New York, annex document No.14) and interviews with the sociologist, M. Introvigne, a scholar of new religions and director of the CESNUR Study Centre.

A case in which the applicant has done everything possible to substantiate her application, and to provide all the elements in her possession in order to demonstrate that she belongs to this cult, is perfectly coherent.

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.

Therefore, firstly it does not appear at all inconsistent that the recruitment of cult members takes place, before it occurs externally, within the family, as the applicant has reported, so she could very well have been introduced to the cult by her mother.

It is also wrong to say that the applicant's account about being able to obtain a passport from the Chinese authorities seems only barely 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 ever wish to return to her own country. This is also true on a subjective level, having reported being personally searched for by the police and that her own mother also, due to being connected to cult membership with the Church of Almighty God, had been arrested and searched for after escaping, 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 by which she is persecuted 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 11th June 2018.

Judge-Rapporteur

Ilenia Micciché

The President

Mariella Roberti