

No. 5417/2017 R.G.

ORDINARY LAW COURT of PERUGIA
SPECIAL SECTION ON IMMIGRATION,
INTERNATIONAL PROTECTION AND FREE MOVEMENT
OF EUROPEAN UNION CITIZENS

The Law Court of Perugia, Special Section on immigration,
international protection and free movement of European Union citizens,
summoned in the Court Chambers in the persons of the following magistrates:

Umberto Rana	President
Stefania Monaldi	Judge
Michele Moggi	Judge Rapporteur

in the proceeding **No. 5417/2017 R.G.** started by

■ (taxpayer's code number: ■), represented and assisted by her
lawyer Francesco Di Pietro, as per the mandate in the petition, and having
elected her domicile in her lawyer's legal practice in Perugia, via Settevalli 32

versus

MINISTRY OF THE INTERIOR - TERRITORIAL COMMISSION FOR
THE GRANTING OF INTERNATIONAL PROTECTION

(taxpayer's code number: 94157990543), in absentia

and in the presence of the

PUBLIC PROSECUTOR

concerning the issue: Challenge as per Art. 35 of Legislative Decree 25/2008

to pronounce the judgment reserved at the hearing of 2018/04/03

at the end of the Court Chambers debate of 2018/04/13

has issued the following

DECISION

Order chronological No. 264/2018 of 2018/05/22

RG No. 5417/2017

No. 5417/2017 R.G. 2

With a petition submitted on 2017/09/03, ■ challenged the decision of the Territorial Commission for the Granting of International Protection in Florence, Perugia Section, of 2017/06/20, notified on 2017/08/03, with which her application for the granting of international protection and humanitarian protection had been rejected; she stated that she is a Chinese citizen and a Christian by religion, a member of the “Church of Almighty God” (also known as “Almighty God”); that she had fled her country since she was wanted by the Police for that reason and that she was fearing for her safety in case she went back to her country, since the sect she belongs to is being persecuted; she stated that the decision to deny her international protection was wrong, pointing out that the considerations made by the Commission to declare her unreliable were wrong; and she concluded by applying for the granting of international protection, with refund of legal costs.

After the cross-examination was regularly established, also on further request by the Judge with reserved order of 2018/01/18, the Territorial Commission for the Granting of International Protection in Florence, Perugia Section, did not appear but submitted the related documents.

The Public Prosecutor also submitted the required documents, stated that no impedimental causes existed to grant international protection, and concluded by requesting the rejection of the application.

At the hearing of 2018/04/03, the Judge reserved the decision.

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In order to examine the petitioner’s claims more fully, it seems suitable to recall, as a matter of the law, the regulation framework, both at international and EU level as well as nationally, and the precedents in the granting of international protection, with particular reference to refugee status.

Refugee status has its foundation, at international level, in Art. 1, Paragraph A, No. 2 of the Geneva Convention of 28 July 1951, ratified in Italy with Act No. 722 of 24 July 1954, as modified by the Protocol relating to refugee status, adopted in New York on 31 January 1967, ratified in Italy with Act No. 95 of 14 February 1970. The definition of “refugee” included in the Geneva Convention was used again by EU legislation in Directive 2004/83/EC, concerning minimum requirements to grant the status of refugee, or of person otherwise needing international protection, to citizens of third countries or stateless persons, as well as minimum requirements for the content of the protection granted (so-called Status Directive), and, at national law level, by Legislative Decree No. 251 of 19 November 2007, implementing Directive 2004/83/EC.

In particular, a “refugee” is defined by Art. 2 Paragraph 1 Letter e) of Legislative Decree 251/2007 as a “foreign citizen who, having well-founded fears of being persecuted for reasons concerning race, religion, nationality, belonging to a certain social group or political opinion, is outside the country of which he or she is a citizen and cannot or, owing to such fear, does not want to make use of the protection of that country ... without detriment to the causes for exclusion as per Art. 10”, whereas “refugee status” is defined by Art. 2 Paragraph 1 Letter f) of Legislative Decree 251/2007 as “the state recognizing a foreign citizen as a refugee”.

The same definitions of “refugee” and “refugee status” are also included in Art. 2 Paragraph 1 Letters d) and e) of Legislative Decree No. 25 of 28 January 2008, which implements Directive 2005/85/EC, concerning minimum requirements for procedures followed in member states in order to grant and revoke refugee status (so-called Procedures Directive), with the sole specification that it is not necessary for the foreigner to belong to a European Union country.

Refugee status is further regulated by the provisions of Articles 3-13 of Legislative Decree 251/2007; in particular, Articles 7 and 8 of Legislative Decree 251/2007 provide the definition of the deeds of and reasons for persecution, including – and bearing on this case – also, under Letter b), religion, a concept “which includes, particularly, theist, non-theist and atheist beliefs, participation in or abstention from worship rites being celebrated in private or in public, both individually and in a community,

other religious deeds or professions of faith, as well as any forms of personal or social behavior that are based on a religious belief or prescribed by it”.

As for the burden of proof, Art. 3 of Legislative Decree 251/2007 states that the petitioner is required to produce, together with the application for international protection or as soon as they are available, all elements and documents that are needed to justify the petition. However, should some elements or aspects of the statements by the person applying for international protection not be substantiated with evidence, they shall be considered true if the authority that makes the decision about the application believes that: a) the petitioner has made all reasonable efforts to substantiate the application; b) all relevant elements he or she possesses have been produced, and a suitable reason has been given for any lack of further significant elements; c) the petitioner’s statements have been considered consistent and plausible and do not contradict the general and specific information available about the case; d) the petitioner has submitted the application for international protection as soon as possible, unless he or she proves that he or she has had a justified reason to delay it; e) from collateral evidence, the petitioner is deemed to be generally reliable, as also results from EU precedents (cf. EU Court of Justice, Grand Section No. 148 of 2 December 2014, in joint cases C-148/13, C-149/13, C-150/13) and national precedents (cf. Italian civil Court of Cassation, Section VI, 2013/04/04, No. 8282).

As further specified in case law, profound differences occur with respect to general rules of civil proceedings; the judge, namely, through his or her unofficial powers, can and shall cooperate in ascertaining the conditions which justify acceptance of the application, also acquiring on his or her own motion the information needed to know the legal system of and the situation in the country of origin (cf. Italian civil Court of Cassation, Joint Sections, 17 November 2008, No. 27310).

Indeed, this action has been fully adopted by the delegated legislator, since Art. 19 Paragraph 8 of Legislative Decree 150/2001 expressly states that “the judge can also carry out on his or her own motion any investigations needed to decide on the issue”. Complementing this statement is the one that, when ascertaining the right to obtain international protection, the judge cannot form an opinion exclusively on the basis of the petitioner’s subjective reliability and on carrying out the

burden of proving the existence of *fumus persecutionis* to the petitioner's detriment in the country of origin, but is required to verify the condition of persecution of opinions, habits or practices on the basis of external and objective information related to the real situation in the country of origin, whereas only the *fumus persecutionis* as specifically applied to the petitioner can also be founded on personal evaluation elements including the reliability of the petitioner's statements (cf. Italian civil Court of Cassation, Section I, 23 December 2010, No. 26056; Italian civil Court of Cassation, Section VI, 27 July 2010, No. 17576).

The judge therefore has the duty to perform an extensive investigation, to acquire all required documents, even unofficially, and also to evaluate the real overall situation in the country of origin, a duty imposed by Art. 8 Paragraph 3 of Legislative Decree No. 25/2008, according to which each application shall be examined in the light of updated information about the situation in the petitioner's country of origin, information that the National Commission supplies to the organs of the judiciary that have to pronounce judgment on challenges to negative decisions.

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After these general remarks, and coming to the concrete issue of this proceeding, as a preliminary statement, the challenge shall be declared admissible, since it was submitted within the thirty-day term from the communication of the rejection decided by the Territorial Commission, as per Art. 35-bis Paragraph 2 of Legislative Decree 25/2008. On the merits of the case, the petitioner has stated that she is persecuted for reasons concerning her religion, specifying that she was reported to the Police, that she is wanted by the Police, that she was subjected to a house search, and that she fortunately avoided arrest. In view of this picture, the application for international protection she submitted was rejected by the Commission since her statements were considered "unreliable because not supported by information about the country of origin...". However, the reasoning of the Commission does not appear convincing, since in fact, as stated below, the petitioner's statements appear inherently consistent and reliable as well as, in the light of further documents produced in relation to the Church of Almighty God, corresponding to the actual characteristics of said sect.

Therefore, first of all, contrary to findings from the sources used by the Commission, in the light of the most recent studies on the subject (doc. 26 filed papers), it should be deemed wholly natural that recruitment of sect members may happen within the family, as stated by the petitioner, who said she was introduced to the sect by her mother. Besides, it appears unimportant that, as stated by the petitioner, her father's employer, after knowing that she and her mother had been proselytizing, "only" demoted her father and did not report the two women to the authorities, since, on the one hand, it is not known that there is any obligation to report and, on the other hand, it is certainly possible that this man tried not to act too cruelly towards his employee and his family. Equally unimportant is the fact that the petitioner, who stated that she is wanted by the Police, was able to flee abroad with a regular passport and visa, since the passport was issued on 2014/12/09 (doc. 2 filed papers), therefore at a time preceding the report and the house search as well as her mother's arrest, events that - again as the petitioner said - occurred in 2015, and anyway the visa was issued by a foreign authority.

Moreover, it must be pointed out that the petitioner tried to provide all elements in her possession in order to prove her belonging to the sect and, in particular, she produced a "Letter of Attestation" (docs. 12 and 29 filed papers) from the Church of Almighty God of New York (USA), stating that she is a member of said church; the authenticity of the document has been deemed plausible by Massimo Introvigne (doc. 14 filed papers), a sociologist and one of the top experts of new cults (doc. 16 filed papers).

Having said the above, in this case, in order to grant refugee status, it shall be considered that the petitioner [REDACTED] has well-founded fear of being persecuted for religious reasons, both subjectively, since - as she herself stated - her mother was arrested for reasons linked to her belonging to the Church of Almighty God, and the petitioner herself was subjected to a house search, is wanted by the Police for the same reasons and several times fortunately escaped arrest; and objectively, since the petitioner's statements in this respect appear consistent with the most updated information on the situation in China in relation to freedom of religion.

From this point of view, indeed, the documents produced show that the Church of Almighty God (“Eastern Lightning” or “Almighty God”), of which the petitioner is a member, was included in a list of fourteen movements that are defined as “evil and illegal”, and called “evil cults”, whose members, according to a report by Amnesty International (doc. 7 filed papers) and to further documents produced by the petitioner (docs. 9, 10 filed papers), are subjected to persecution, arbitrary detention, unfair trials, torture and further mistreatment for reasons linked to their belonging to forbidden cults.

In the light of the above, it is therefore presumable that, if she returns to her country, the petitioner, who expressly stated that she is a member of an illegal church, will be subjected to persecution by local authorities.

As for the further requirement of persecution for religious reasons by the Chinese state, without detriment to what already pointed out in relation to the Church of Almighty God being included in the list of illegal cults, it must be considered that, according to findings from the documents provided (docs. 15, 22, 23, 24, 25, 26 filed papers), Art. 300 of the Chinese Criminal Code, which punishes, among others, “those who ... use superstitious cults...”, is interpreted in case law as punishing even those who “are active in a superstitious cult” and therefore it is sufficient to be identified as a member of a forbidden sect to be arrested and receive a prison sentence, which, in case of “particularly serious circumstances”, exceeds seven years. Moreover, again the filed documents (doc. 15 filed papers) show that the Church of Almighty God has been charged by Chinese authorities with crimes (the murder of a woman in a McDonald’s restaurant) with which it is probably unconnected, to the only purpose of bringing discredit on it.

In this context, then, it is totally evident that the petitioner could in no way make use of the protection of the state of which she is a citizen.

Finally, it is self-evident that the petitioner is currently outside the country of which she is a citizen.

Moreover, the causes for exclusion as per Art. 10 of Legislative Decree 251/2007 do not seem to exist.

In conclusion, therefore, since all prerequisites for accepting the application for

international protection exist, the petition should be accepted and the petitioner [REDACTED] should be granted refugee status.

In consideration of the absolute novelty of the issue being examined, serious and exceptional reasons exist, according to Art. 92 of the Italian Code of Civil Procedure, to refund the legal costs in full.

FOR THESE REASONS

The Law Court of Perugia, Special Section on immigration, international protection and free movement of European Union citizens, accepts the application and, through its effect, grants [REDACTED] refugee status; and declares that legal costs are refunded in full.

Place and date: Perugia, 13 April 2018

The Judge Rapporteur

Michele Moggi

The President

Umberto Rana