



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 8827/23

X. H.

against Italy

The European Court of Human Rights (Fifth Section), sitting on 28 March 2024 as a Committee composed of:

Stéphanie Mourou-Vikström, *President*,

Lado Chanturia,

Mattias Guyomar, *judges*,

and Sophie Piquet, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 8827/23) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 17 February 2023 by a Chinese national, Ms X. H. (“the applicant”) and was represented by Mr A. Saccucci, a lawyer practising in Rome;

Having regard to the decision to grant the applicant anonymity under Rule 47 § 4 of the Rules of Court,

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant’s allegations that her expulsion to China would expose her to a risk of ill-treatment due to her membership of the Church of Almighty God (hereinafter, “the Church”).

2. The applicant entered Italy on a tourist visa in 2016 and applied for international protection.

3. At the hearing held in October 2016 in front of the Rome territorial commission for the recognition of refugee status (“the Territorial Commission”), the applicant submitted the following.

4. She had become a member of the Church in early 2005 after listening to the preaching of a far relative. She had started preaching herself but, since the Chinese authorities were persecuting members of the Church and everyone in her village knew that she was one, she had had to close her shop

and often change place of residence. After May 2014, when members of the Church had been accused of killing a woman, the Chinese authorities had taken an increasingly aggressive stance towards them. In 2015, the applicant had been informed that another member who was close to her had been arrested and tortured and she had therefore decided to leave her husband and son and move to a different city, where she had resided with a fellow believer. She had subsequently hidden in a barn for two months and then moved to different cities until, in 2016, she had decided to leave the country. Since she had already obtained a passport in November 2014, she had managed to obtain a visa and had flown to Italy.

5. By a decision of October 2016, the Territorial Commission rejected the applicant's request for protection. While it recognised that the applicant's allegations that members of the Church were persecuted were in line with the relevant international sources, the commission found several gaps and inconsistencies in her story. In particular, her description of her conversion and her beliefs was vague and stereotypical, the public knowledge of her beliefs in the village was incompatible with the Church's secrecy, and it was not credible that she had simply applied for and obtained a passport while being monitored by Chinese authorities.

6. The applicant contested the decision before the Rome District Court, submitting additional documents including a certificate, issued in December 2017 by an Italian association, stating that she was an active member of the Church.

7. By a decision published in 2019, the Rome District Court rejected the applicant's requests. As to her lack of credibility, in addition to the arguments cited by the Territorial Commission, it noted that during the oral hearing the applicant had declared that she had not been part of any church since May 2017, in contradiction with the certificate of December 2017. As to the general situation in China, the District Court relied on the information provided on the website of the Italian Ministry of Foreign Affairs informing travellers that China is a safe and stable country, and concluded that there was no significant risk of ill-treatment in China.

8. The applicant appealed and, in 2021, the Rome Court of Appeal upheld the first instance decision, holding once again that the applicant's statements were too vague and stereotypical and that she lacked credibility. As to the alleged persecution of the members of the Church, the Court of Appeal considered that its believers had not even attempted to obtain registration in China, that they operated in secrecy and disregarded basic principles of transparency and democracy, thus openly violating Chinese law. In such circumstances, they could not claim to be persecuted. In any event, there was insufficient evidence that they were exposed to ill-treatment.

9. The applicant appealed to the Court of Cassation, contesting the appeal judgment both in respect of her lack of credibility and of the ill-treatment of members of the Church.

10. In 2022, the Court of Cassation rejected her appeal. It stated, in particular, that the applicant had not contested the findings on her lack of credibility and that, as a consequence, it was unnecessary to examine her complaint on the ill-treatment of the members of the Church, which would not by itself lead to granting her protection.

11. The applicant complained that her expulsion to China would expose her to the risk of being subject to torture or inhuman and degrading treatment in light of her religious beliefs, in breach of Article 3 of the Convention. She further complained, under Article 13 read in conjunction with Article 3, of the absence of an effective remedy and under Article 6 § 1 of the Convention of the unfairness of domestic proceedings, in light of the fact that domestic courts disregarded available evidence, did not further investigate the applicant's allegations and rendered manifestly erroneous decisions.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 3 of the Convention

12. The general principles concerning the responsibility of Contracting States under Article 3 of the Convention regarding the removal of aliens have been summarised in *F.G. v. Sweden* ([GC], no. 43611/11, §§ 111-27, 23 March 2016), *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 77-105, 23 August 2016) and *Khasanov and Rakhmanov v. Russia* ([GC], nos. 28492/15 and 49975/15, §§ 93-116, 29 April 2022).

13. In particular, when an applicant alleges that he or she is a member of a group systematically exposed to ill-treatment, the Court considers that the first step of the risk assessment should be the examination of whether the existence of that group has been sufficiently established. As a next step, the applicants should establish their individual membership of the group concerned (see *Khasanov and Rakhmanov v. Russia*, cited above, §§ 97-99).

14. The Court notices that, in the present case, there have been several shortcomings in the domestic courts' assessment of whether the members of the Church were systematically exposed to ill-treatment. In particular, aside from the Territorial Commission, none of the domestic tribunals dealing with the applicant's case took into consideration the relevant information, which had been provided by the applicant or was in any event freely ascertainable from a wide range of sources, concerning the Chinese authorities' stance towards the members of the Church (see, in this respect, *Khasanov and Rakhmanov v. Russia*, cited above, §§ 111-13). On the contrary, the first instance court excluded any risk of ill-treatment based on generic considerations concerning the overall safety of the country for travellers (see paragraph 7 above), the court of Appeal excluded that a church operating in secrecy may complain that its members are persecuted by the authorities

(see paragraph 8 above) and the Court of Cassation did not even address the issue (see paragraph 10 above).

15. Additionally, the Court has already found that, in light of the relevant international reports, the Church is banned by law in China, the authorities have made repeated attempts at eradicating it and those belonging to the Church risk imprisonment (see *Y.L. v. Switzerland* (dec.) [Committee], no. 53110/16, § 28, 26 September 2017).

16. In these circumstances, it does not appear that the domestic courts have conducted the first step of the risk assessment in a rigorous manner, in light of all the relevant available information (see *Khasanov and Rakhmanov v. Russia*, cited above, §§ 109 and 113).

17. Nevertheless, the domestic courts have rejected the applicant's request also due to her lack of credibility in respect of her membership of the Church.

18. In this respect, the Court reiterates that, while it is frequently necessary to give asylum seekers the benefit of the doubt when it comes to assessing their credibility, when information is presented which gives strong reasons to question the veracity of an asylum-seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see *F.G. v. Sweden*, cited above, § 113 and *J.K. and Others v. Sweden*, cited above, § 93). Additionally, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses. Their assessment, however, is subject to the Court's scrutiny (see *Khasanov and Rakhmanov*, cited above, §§ 104-05 and *F.G. v. Sweden*, cited above, § 118).

19. In the present case, while the Court of Cassation did not examine the applicant's argument relating to her membership of the Church, the Territorial Commission, the District Court and the Court of Appeal all identified relevant inconsistencies in the applicant's story. Among other reasons, they pointed out that the applicant had only generically stated that she had been monitored by the Chinese authorities; that the description of her conversion and beliefs was vague and stereotypical and sometimes in contrast with the known principles of the Church; that she had been able to obtain a passport in November 2014 without any problem, despite her allegations that she was monitored by the authorities; that her statements concerning her continued membership of the Church after her arrival in Italy were contradictory (see paragraphs 5, 7 and 8 above).

20. These discrepancies related to core aspects of the applicant's submissions and not to some minor details of her story (*J.K. and Others v. Sweden* [GC], no. 59166/12, § 93, 23 August 2016; compare and contrast *N. v. Finland*, no. 38885/02, §§ 154-55, 26 July 2005).

21. Additionally, the Court notices that, before domestic courts, the applicant provided only generic explanations for these discrepancies. She argued that they were in part imputable to her anxiety during the hearing; that she had been able to obtain a passport as at the time she had not been fully identified by the authorities; and that she knew the beliefs of the Church in depth. The Court does not consider that these explanations are sufficient to overcome the findings of domestic courts that the applicant's story lacked credibility.

22. In such circumstances, the Court considers that the applicant has failed to establish that she would face a real risk of being subjected to treatment contrary to Article 3 of the Convention if forced to return to China.

23. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Other alleged violations

24. As regards the applicants' remaining complaints, the Court does not find that the applicant has an arguable claim for the purposes of Article 3, which therefore does not apply (see, among many others, *A.J. v. Greece* (dec.), no. 34298/18, § 87, 26 April 2022 and *M.S.S. v. Russia* (dec.), no. 32779/15, § 42, 28 February 2017).

25. The Court also reiterates that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him or her, within the meaning of Article 6 § 1 (see, for example, *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X and, more recently, *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, § 137, 5 May 2020). Having examined the applicant's arguments, the Court sees no reason to depart from this conclusion.

26. Accordingly, both complaints must be rejected under Article 35 § 3 (a) and § 4 of the Convention for being incompatible *ratione materiae* with the provisions of the Convention.

X.H. v. ITALY DECISION

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 18 April 2024.

Sophie Piquet
Acting Deputy Registrar

Stéphanie Mourou-Vikström
President