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

THIRD SECTION

DECISION

Application no. 53110/16
Y.L.
against Switzerland

The European Court of Human Rights (Third Section), sitting on 26 September 2017 as a Committee composed of:

Pere Pastor Vilanova, *President,*
Helen Keller,
Alena Poláčková, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 10 September 2016,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the parties' submissions,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Y. L., is a Chinese national who was born in 1984 and lives in Switzerland. The President granted the applicant's request for her identity not to be disclosed to the public (Rule 47 § 4). The Swiss Government ("the Government") were represented by their Agent, Mr F. Schürmann, of the Federal Office of Justice.

2. The applicant alleged, in particular, that her expulsion to China would give rise to a violation of Article 3 of the Convention.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties and in so far as relevant, may be summarised as follows.

4. The applicant entered Switzerland on a tourist visa on 5 April 2015 and applied for asylum four days later. She was twice heard in person by the State Secretariat for Migration (*Staatssekretariat für Migration* – "the SEM"), in the form of a summary interview on 16 April 2016 and a more detailed hearing on 9 July 2015. During both hearings an interpreter was present and the record was translated for the applicant prior to her signing it. During the second hearing, a member of a non-governmental organisation was present as a neutral witness in order to guarantee the fairness of the hearing. He had the opportunity to add comments at the end of the record of the hearing if he had witnessed any irregularities, but did not note down any such observations.

5. In substance, the applicant stated that she had left China because she was at risk of ill-treatment due to her religious beliefs. In May 2009 she had become a member of the Quannengshen, a Christian house Church also known as the "Church of Almighty God" or "Eastern Lightning Church". This church was illegal in China. While she had not personally suffered ill-treatment so far, the authorities had searched for her and for her mother, who was a longstanding member of the Church and who had held regular gatherings at her home. The authorities had attributed a killing carried out by a group of persons in the city of Zhaoyuan in May 2014 to the Quannengshen and had subsequently taken a more aggressive stance towards its members. Many members had been arrested and beaten and some had even been killed.

6. The applicant submitted that she, her mother and her younger sister had been under surveillance by the authorities since July or August 2014 and that her mother's house had been searched several times. At that time, her mother and younger sister had gone into hiding. The applicant had fled to relatives living in another province and, after two months, had gone to stay with a fellow believer in another city. On one occasion, the authorities had searched the fellow believer's house, but the applicant had managed to avoid arrest by hiding in one of the rooms, behind a locked door. Her siblings, with the exception of her younger sister, and her former husband opposed the applicant's membership of the Church. Amidst fears of being arrested, the applicant had applied for a passport in November 2014 and, in April 2015, had left China via the international airport in Beijing, from where she had travelled directly to Switzerland. At the time of her departure she had been a wanted person, and her photograph appeared on billboards.

7. On 11 January 2016 the SEM rejected the applicant's asylum request and ordered her departure from Switzerland. It found that her account was not credible, and concluded that, having failed to prove or credibly

demonstrate her refugee status in accordance with section 7 of the Asylum Act, the applicant was not a refugee as defined in section 3 of that Act. The SEM expressed doubts that she was a follower of the Quannengshen, considering that her knowledge of the Church was very limited and that her responses to questions on that matter were vague, superficial and evasive. The applicant had also been unable to explain in a comprehensible manner how the authorities had become aware of her membership of that Church. There were several inconsistencies in her account, notably with regard to the role of her husband in denouncing her to the authorities, as well as threats by her siblings in that respect.

8. In so far as the applicant had claimed that followers of the Quannengshen had been arrested on the way to gatherings at her mother's home, the SEM noted that the applicant had failed to make detailed and precise statements. Moreover, it seemed questionable that the authorities would have arrested such followers on the way to the gathering, without also taking an interest in the applicant or her mother. The applicant had also failed to substantiate her submission that the authorities had visited her mother's house several times, looking for her. Finally, her account of her departure from China raised doubts as to her credibility. She claimed to have applied for a passport in person in November 2014 and to have received it without any problems. If she had been under the surveillance of the authorities, they would not have issued her a passport, let alone allowed her to leave from Beijing international airport. Considering that the authorities had a restrictive approach to controlling entry into and departure from China, her departure without encountering any problems indicated that she was not subject to persecution by the authorities.

9. On 17 February 2016 the applicant lodged an appeal against that decision before the Federal Administrative Court and made additional submissions later on. She submitted that she had been anxious during the second hearing, because of her experiences with the Chinese authorities. She alleged that the interpreter had repeatedly intervened, instructing her not to talk too much, which had resulted in her omitting many details of her story, and also that the interpreter had not understood her well. No inferences could be drawn from the fact that the minutes of the hearing contained no references to that end, as the member of the non-governmental organisation who was present to guarantee the fairness of the hearing did not understand Mandarin. She submitted newspaper reports concerning the Quannengshen Church in China as well as written statements by fellow-believers, according to which the applicant was a practising member of the Church. One of the statements confirmed the applicant's description of what had happened to her and her family in China in 2014 and 2015. In substance, she mainly repeated her claims made before the SEM. With regard to her ability to obtain a passport, she submitted that she had not held a leading role in the Quannengshen at the time she applied for it, and also

that a fellow believer who worked for the authorities had checked in advance that her name was not on a list of wanted persons.

10. On 26 August 2016 the Federal Administrative Court rejected the applicant's appeal. At the outset, it noted that the minutes of the hearings indicated that the applicant had understood the interpreter well and that the minutes had been translated into Chinese for the applicant prior to her signature, to confirm their accuracy. The representative of the non-governmental organisation had not noted any irregularities, which was significant, given that the whole interview had been translated into German. The skills of interpreters used for asylum interviews were carefully examined. There was no evidence to support the applicant's allegation in that regard.

11. On the merits, the court expressed its reservations as to the SEM's finding that it was doubtful that the applicant was a follower of the Quannengshen. The SEM had placed too much emphasis on the applicant's limited knowledge of the Church and had done so in a rather global manner, without indicating what sort of substantiation or specific information it would have expected from a person of that faith. The court noted that some of the applicant's statements were of a certain level of substance. Against this background, it could not be ruled out that the applicant had familiarised herself with this faith on the internet, and that she had done so only after her departure from China, for the purposes of facilitating her asylum claim.

12. However, in the light of her overall account and demeanour, the court found that she had failed to demonstrate credibly that she had practised her membership of that Church in China and that the Chinese authorities had persecuted her. Her account in that regard had been inconsistent and had lacked substance. The court noted that she had claimed to be a Christian Protestant in her initial registration with the SEM, while a dedicated member of the Quannengshen could have been expected to provide a more accurate statement at that stage. She had also initially stated that she feared being arrested upon return, whereas she later alleged that prior to her departure she had already been a wanted person whose photograph appeared on billboards. This raised credibility concerns which were reinforced by the fact that she was not able to provide any details about the billboard search and merely stated that she "had been told about this".

13. The court further considered the applicant's account of how she had avoided arrest not to be credible. Had the authorities indeed sought to arrest the applicant, they would not have failed to open a locked door behind which the applicant claimed to be hiding during their search of the house of a fellow believer. Moreover, her statements concerning gatherings with fellow believers and the arrest of some of them lacked substance. Also her account relating to her family and the denunciation by her former husband contained discrepancies. Last but not least, the circumstances of her

departure in April 2015, with a newly-issued passport, indicated that she was not being persecuted by the authorities at that time, contrary to her allegations. The statements made by her fellow-believers had to be regarded as given out of courtesy.

14. Furthermore, the court found that the applicant's removal was possible, permitted and reasonable within the meaning of section 83(1)-(4) of the Aliens Act. The human rights situation in China was not such that any removal would *per se* be in violation of Article 3 of the Convention and the applicant was in good health, had ties to the country and work experience, so that it did not appear likely that she would be exposed to a situation threatening her existence.

15. On 1 September 2016 the SEM set a deadline for the applicant's voluntary departure, which passed on 27 September 2016.

B. Relevant domestic law

16. The relevant provisions of the Asylum Act of 26 June 1998 (*Asylgesetz*, 142.31) read as follows:

Section 3 – Definition of the term refugee

"1. Refugees are persons who, in their native country or last country of residence, are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages for reasons of race, religion, nationality, membership of a particular social group, or owing to their political opinions.

2. Serious disadvantages include a threat to life, physical integrity or freedom, as well as measures which exert intolerable psychological pressure. Motives for seeking asylum which are specific to women must be taken into account.

3. Persons who are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages because they have refused to perform military service or have deserted are not refugees. The provisions of the Convention of 28 July 1951 relating to the Status of Refugees are reserved.

4. Persons who claim grounds based on their conduct following their departure which are neither an expression nor a continuation of a belief already held in their native country or country of origin are not refugees. The provisions of the Convention of Refugee Convention are reserved."

Section 5 – Ban on *refoulement*

"1. No person may be forced in any way to return to a country where his or her life, physical integrity or freedom is threatened for any of the reasons stated in section 3(1), or where he or she would be at risk of being forced to return to such a country.

2. The ban on *refoulement* may not be invoked if there are substantial grounds for the assumption that, because the person invoking it has a legally binding conviction for a particularly serious felony or misdemeanour, he or she represents a threat to Switzerland's security or is to be considered dangerous to the public."

Section 7 – Proof of refugee status

"1. Any person who applies for asylum must prove or at least credibly demonstrate his or her refugee status.

2. Refugee status is credibly demonstrated if the authority regards it as proven on the balance of probabilities.

3. In particular, cases are not credible if they are unfounded in relation to essential points or are inherently contradictory, do not correspond to the facts, or are substantially based on forged or falsified evidence."

17. The relevant provision of the Aliens Act of 16 December 2005 (*Bundesgesetz über die Ausländerinnen und Ausländer*, 142.20) provided as follows:

Section 83 – Order for temporary admission

"1. If the enforcement of removal or expulsion is not possible, not permitted or not reasonable, the SEM [State Secretariat for Migration] shall order temporary admission.

2. Enforcement is not possible if the foreign national is unable to travel or be taken to his or her native country, or country of origin, or a third country.

3. Enforcement is not permitted if Switzerland's obligations under international law prevent the foreign national from making an onward journey to his or her native country, country of origin, or a third country.

4. Enforcement may be unreasonable in respect of foreign nationals if they are specifically endangered by situations such as war, civil war, general violence and medical emergency in their native country or country of origin ..."

C. Relevant country information on China

18. The US Department of State 2015 Report on International Religious Freedom – China, 10 August 2016, stated:

"Certain religious or spiritual groups are banned by law. The criminal law defines banned groups as 'cult organizations,' and those belonging to them can be sentenced to prison. ... The government ... considers several Christian groups to be 'evil cults,' including ... Eastern Lightning ... A National Security Law passed in July [2015] by the National People's Congress Standing Committee (NPCSC) explicitly bans 'cult organizations.' An amendment to the criminal law passed by the NPCSC in August [2015] increases the maximum possible sentence for 'organizing and using a cult to undermine implementation of the law' from 15 years to life in prison."

19. The US Department of State 2015 Annual Human Rights Report – China, 13 April 2016, stated:

"[Section 2d] ... The government expanded the use of exit controls for departing passengers at airports and other border crossings to deny foreign travel to some dissidents ... Most citizens could obtain passports, although those individuals the government deemed potential threats, including religious leaders, political dissidents, petitioners, and ethnic minorities, reported routinely being refused passports or otherwise prevented from traveling overseas."

20. In its 16 October 2014 response to an information request, the Immigration and Refugee Board of Canada stated the following:

> "2. Activities Attributed to the Church of Almighty God
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> ... According to the BBC, the Church shows 'outright hostility' towards the Chinese Communist Party (CCP) ... Sources report that the Church calls on its members to fight against the CCP ...
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> 3. Treatment by Authorities
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> 3.1 Legal Status
>
> ... According to the Guardian, authorities 'have made repeated attempts to eradicate' the Church of Almighty God ... The BBC reports that members of the Church of Almighty God have accused authorities of 'persecution' ... Human rights observers have criticized certain government actions against the Church of Almighty God ... The Guardian reports that according to a Hong Kong-based researcher for Human Rights Watch, the government has 'gone after members of Eastern Lightning for organising activities that [are not] against the law' ... Likewise, the New York Times quotes a defence lawyer as saying that actions by authorities against the group were politically motivated and that they were an 'effort to eradicate an entire group of believers, not just the ones who committed crimes' ...
>
> 3.4 May 2014 Killing in McDonald's and Reaction by Authorities
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> Multiple sources report that the slaying of a woman in late May 2014 in Macdonald's restaurant in the city of Zhaoyuan, in Shandong province, was linked to members of the Church of Almighty God ... The woman was reportedly publicly beaten to death after refusing to provide her phone number to six members of the group ... The incident was caught on video and broadcasted nationwide ... Sources indicate the attack caused 'shock' ..., 'public outrage' ... and 'a national outcry' ... in the country. According to two sources, the Church of Almighty God accused the authorities of linking the murder to the group ...
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> Sources report that authorities launched a crackdown on cults following the killing ... According to sources, authorities announced in June 2014 that over 1,500 cult members had been detained ... Sources reported that it was also announced that 59 individuals had been sentenced for up to four years imprisonment under charges of 'using a cult [organisation] to undermine enforcement of the law' ...
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> In August 2014, Chinese authorities announced that 'nearly 1,000' alleged members of the Church of Almighty God have been arrested since June 2014 ... According to Xinhua, those arrested were 'allegedly involved in more than 500 [separate] cases' ... AFP noted that the arrests included 'high-level organizers and backbone members' and that those arrested reportedly came from six different provinces ... According to Reuters, 'China has sentenced dozens of followers' of the Church of Almighty God since the killing in the McDonald's restaurant ...
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> The ChinaAid Association, an NGO that monitors and promotes religious freedom in China ..., reported that there were concerns among Chinese Christians 'that the government will escalate their persecution of house churches through the front of combating cult organizations' ..."

21. The Immigration and Refugee Board of Canada's response of 6 March 2014 to an information request, provided:

> "In 10 February 2014 correspondence with the Research Directorate, the Executive Director of the Dui Hua Foundation affirmed that airport security officials have access to the Public Security Bureau of China's online database of citizens who have been convicted of crimes or are wanted by the authorities [also known as Policenet or the Golden Shield]. Similarly, the representative of the Laogai Research Foundation stated that reports on 'experiences of activists who have been detained while trying to board an international flight provide clear evidence that airport officials are connected to Policenet' ... A colleague of Cao Shunli, who was also prevented from travelling to Geneva for the human rights training in September 2013, later publicized her own experience at the airport in Guangdong ... According to the Laogai Research Foundation, the colleague indicates that when her passport was swiped by airport authorities, scanning equipment immediately made noises alerting airport officials that she was wanted by police. She was subsequently detained in the Guangdong Baiyun Airport and told that Shanghai police would not let her leave. She was then transported from Guangdong to Shanghai for detention and questioning. This woman's experience provides concrete evidence of airport officials coordinating with police departments in tracking and detaining a political dissident ..."

COMPLAINTS

22. The applicant complained under Article 3 of the Convention that she would face a real risk of being arrested and subjected to treatment in breach of Article 3 of the Convention if she were deported to China. Relying on Article 6 of the Convention, she alleged that the proceedings concerning her asylum application were unfair due to the poor quality of interpretation and undue interruptions from the interpreter.

THE LAW

A. Article 3 of the Convention

23. The applicant maintained her submissions made in the domestic proceedings and alleged that she was at risk of ill-treatment in breach of Article 3 of the Convention at the hands of the Chinese authorities due to her membership, and that of her mother, of the Quannengshen Church. She referred to reports concerning the situation of followers of that Church (see paragraphs 18 and 20 above) and argued that her mere membership of the Quannengshen exposed her to a real risk of imprisonment and torture if she were to be deported to China. Article 3 of the Convention provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

24. The Government submitted that the applicant mainly challenged the Swiss authorities' assessment of evidence, emphasising that it was not the Court's task to substitute its own assessment of the facts for that of the domestic courts, which were, as a general principle, best placed to assess the evidence before them. They reiterated that it was the applicant who had to adduce evidence capable of proving that there were substantial grounds for believing that, if the measure complained of were to be implemented, she would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention. The Government observed that the applicant's account and its discrepancies had been analysed in detail by both the SEM and the Federal Administrative Court. In substance, they mainly repeated the arguments of these authorities and concluded that the applicant had failed to clarify the significant discrepancies in her account and that the Federal Administrative Court could, hence, not be criticised for dismissing the applicant's account as not credible. The human rights situation in China was not such that all members of the Quannengshen were subject to persecution throughout the country and the applicant had failed to demonstrate credibly that she was a practising member of that Church and that the authorities had persecuted her for that reason.

25. The Court notes that the relevant general principles have recently been summarised by the Court in *J.K. and Others v. Sweden* [GC] (no. 59166/12, §§ 77-105, ECHR 2016, with further references).

26. It reiterates that a general situation of violence would only be of sufficient intensity to create a real risk of treatment contrary to Article 3 of the Convention "in the most extreme cases" where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return (see, for instance, *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, §§ 216 and 218, 28 June 2011, and *J.K. and Others v. Sweden*, cited above, § 86, with further references), and notes that none of the reports conclude that the situation in China, as it stands, is such that any Chinese national, if returned to his or her country, would run such a risk, nor do the reports contain any information capable of leading to such a conclusion. The Court therefore finds that the general human rights situation in China does not prevent the applicant's removal *per se*.

27. Hence, the Court must assess whether the applicant's personal circumstances are such that she would face a real risk of treatment contrary to Article 3 of the Convention if deported to China.

28. The Court notes that the applicant alleged a risk of ill-treatment at the hands of the Chinese authorities due to her membership, and that of her mother, of the Quannengshen Church. It notes that relevant international reports on the situation in China indicate that the Quannengshen Church is banned by law in China and that those belonging to the Church may risk imprisonment (see paragraph 18 above). The reports also indicate that the authorities have made repeated attempts to eradicate the Quannengshen

Church and that they launched a crackdown on the Church following the killing of a woman in the city of Zhaoyuan in late May 2014, arresting a significant number of individuals, including high-level organisers and backbone members (see paragraph 20 above).

29. Turning to the specific circumstances of the applicant, the Court observes that she was interviewed by the SEM twice with the assistance of an interpreter and that during the second, more detailed hearing, a representative of a non-governmental organisation was present and did not note any irregularities. The Federal Administrative Court found that there was no evidence to support the applicant's allegation that the quality of the interpretation was poor and that the interpreter had unduly interrupted her (see paragraph 10 above). Moreover, both the SEM and the Federal Administrative Court made careful examinations of the applicant's submissions and provided thorough reasoning for their conclusions. The SEM dismissed her account as not credible as a whole (see paragraphs 7-8 above) and the Federal Administrative Court, upon the applicant's appeal, confirmed that assessment to a large extent. While that court also found that it could not be ruled out that she had familiarised herself to a certain extent with the Quannengshen Church, it considered that the applicant had failed to demonstrate credibly that she was a practising member of the Church and that the authorities had persecuted her because of that (see paragraphs 11 to 13 above).

30. The Court reiterates that, as a general principle, the national authorities are best placed to assess the credibility of an individual, since it is they who have had an opportunity to see, hear and assess his or her demeanour (see, for example, *F.G. v. Sweden*, cited above, § 118) and that the burden of proof, as far as individual circumstances are concerned, should in principle lie with the applicant (see *J.K. and Others v. Sweden*, cited above, § 96). While the rules concerning the burden of proof should not render the applicant's rights under Article 3 of the Convention ineffective, and while it is frequently necessary to give asylum-seekers the benefit of the doubt when assessing the credibility of their statements (ibid., §§ 93, 97), the Court notes that the SEM and the Federal Administrative Court found that there were several discrepancies in the applicant's account, which also lacked substance and detail (see paragraphs 7-8 and 11-13 above). These discrepancies and credibility concerns related to core aspects of the applicant's submissions and her account as a whole (compare and contrast *N. v. Finland*, no. 38885/02, §§ 154-155, 26 July 2005). The domestic authorities' conclusion that the applicant was not wanted by the Chinese authorities is also supported by relevant international reports, which indicate that the Chinese authorities used exit controls for departing passengers at airports to prevent individuals wanted by the authorities from travelling abroad, if the authorities had not already refused them passports (see paragraphs 19 and 21 above).

31. Having regard to the above, and reiterating that the Convention system is founded on the principle of subsidiarity, and that it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts, which are, as a general principle, best placed to assess the evidence before them, the Court is satisfied that the assessment made by the domestic authorities was adequate and sufficiently reasoned. It endorses the assessment by the Swiss authorities that the applicant failed to substantiate 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 (see, *mutatis mutandis*, *R.H. v. Sweden*, no. 4601/14, §§ 69-74, 10 September 2015, and *H.N. v. Sweden*, no. 30720/09, §§ 39-42, 15 May 2012).

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

B. Article 6 of the Convention

33. The applicant also complained, under Article 6 of the Convention, that the proceedings concerning her asylum application were not fair. In its relevant part, Article 6 of the Convention provides:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

34. The Court reiterates its well-established, constant case-law that proceedings and decisions concerning the entry, stay and removal 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 of the Convention (see *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X; *Szabó v. Sweden* (dec.), no. 8578/03, ECHR 2006-VIII; *Tatar v. Switzerland*, no. 65692/12, § 61, 14 April 2015; and *A.A. v. Austria* (dec.), no. 44944/15, § 19, 17 May 2016).

35. Accordingly, the complaint under Article 6 must be rejected under Article 35 § 3 (a) and § 4 of the Convention for being incompatible *ratione materiae* with the provisions of the Convention.

36. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 October 2017.

Fatoş Aracı
Deputy Registrar

Pere Pastor Vilanova
President