

## **BGE 20170926\_53110\_16 vom 26. September 2017**

Bundesgericht (BGE), 2017-09-26, FR

Quelle: [https://mcp.opencaselaw.ch/entscheid/bge\\_20170926\\_53110\\_16](https://mcp.opencaselaw.ch/entscheid/bge_20170926_53110_16)

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### **Regeste**

Regeste Diese Zusammenfassung existiert nur auf Französisch. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 3 et 6 CEDH. Renvoi d'une requérante d'asile en Chine. Il n'appartient pas à la Cour de substituer sa propre vision des faits à celle des autorités internes, qui sont en règle générale les mieux placées pour apprécier les éléments de preuve. En l'espèce, la requérante n'a pas étayé les allégations selon lesquelles elle serait exposée à un risque réel de traitement contraire à l'art. 3 CEDH en cas de renvoi en Chine (ch. 23-32). Conclusion: requête déclarée irrecevable.

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### **Erwägungen**

#### **E. 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.

#### **E. 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.

#### **E. 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' ...

#### **E. 3.4**

May 2014 Killing in McDonald's and Reaction by Authorities 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 ... 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' ... 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 ... 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. Erwägungen 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. *Entscheid* For these reasons, the Court, unanimously, Declares the application inadmissible. Done in English and notified in writing on 19 October 2017. Fato■ Arac■ Deputy Registrar Pere Pastor Vilanova President

#### **E. 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 ... 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 ... 3. Treatment by Authorities

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