Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Humanitarian Protection for Fear of Witchcraft in Nigeria – Tribunale di Bologna, Ordinanza del 09/10/2017 (G.R. 17524/2016)

Question(s) at stake:

Whether the Territorial Commissions for the Recognition of International Protection was correct to refuse the appellant's application for humanitarian protection on the ground that the risk of harm for fear of witchcraft was implausible.

Outcome of the ruling:

The Court granted the appellant a residence permit on grounds of humanitarian protection. It found that the risk of harm for fear of witchcraft was plausible.

Topic(s):

- Immigration and Asylum

Keywords:

- Applicant's credibility

Tag(s):

- Humanitarian protection
- Witchcraft

Author(s):

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Country:

Italy

Official citation:

Civil Court of Bologna, Order of 09 October 2017, G.R. 17524/2016 (Tribunale di Bologna, Ordinanza del 09/10/2017, G.R. 17524/2016)

Link to the decision:

https://www.meltingpot.org/IMG/pdf/trib.bo_09.10.17_nigeria_edo_state_omicidi_rituali_umanitaria.pdf

ECLI:

No ECLI number / ECLI number unknown

Date:

09 October 2017

Jurisdiction / Court / Chamber:

Civil Court of Bologna, Second Section (Tribunale di Bologna, Seconda Sezione)

Remedy / Procedural stage:

Appeal from decision of Territorial Commission

Previous stages:

- Territorial Commission, decision dated 13.06.2016

Subsequent stages:

- None

Branches / Areas of law:

Immigration and asylum

Facts:

The claimant is a Nigerian citizen, and a member of the Edo ethnic group, who was born near Benin City in Edo State, in the village of Eyaen. (p. 1)

He claimed asylum in Italy on the grounds that he feared he would be subjected to witchcraft abuse should he bde returned to Nigeria. (p. 2)The claimant stated that his father, a man of humble origins, had suddenly and inexplicably started to become rich thanks to meetings with strange and wealthy people, with whom he often practised odd and occult rituals. (ibid.) The appellant claimed, further, that his sister had suddenly fallen ill and died. The cause of her death was revealed when, on one occasion, the appellant heard the strange and wealthy people asking his father to sacrifice him, after his sister had previously been sacrificed. (ibid.) The appellant's mother had already returned to her village due to problems with his father. When the appellant reported what he had learned about his sister's death to his mother, she died of shock. (ibid.)

Subsequently, the appellant went to live for a short period with his maternal aunt. (ibid.) Following the advice of a friend, he left Nigeria: his plan at this time was to look for work in Libya. (ibid.) Once in that country, however, he encountered the Asma Boys, a street gang that engaged in robberies and beatings. This gang burned down the house where he had been living while in Libya. As a result, the appellant was prompted to flee from Libya, and he arrived in Italy on 2 May 2015. (p. 4)

The appellant then applied for asylum, subsidiary protection, and humanitarian protection. The Commission refused his claim in its entirety, arguing that the account he had given lacked plausibility and was unrelated to the matter of protection.

Ruling:

The Court held that the appellant shall be granted a residence permit for humanitarian protection. The Court reasoned that the risk of harm due to witchcraft violence was plausible. Furthermore, the Court added that the residence permit was warranted by the appellant's health condition and his level of integration into Italian society. (p. 3)

Main quotations on cultural or religious diversity:

“[I]t is first necessary to assess the applicant’s reliability regarding his narration of the facts and his credibility against the general background information on his country of origin, in particular his claims regarding sects and ritual killings in the region of origin.” (pp. 5-6)

Referring to available country of origin information, the Tribunal stated: From the Country of Origin Information it emerges that “It is difficult to tell how widespread the phenomenon of ritual killings is in today’s Nigeria. Most Nigerians are convinced that it is widespread, as shown by different academic studies on the local media coverage of alleged ritual killings [...] most of these killings have occurred in the South of Nigeria. Historically it was believed that victims of ritual killings or food offers to spirits or witches had to be persons close to those performing the ritual, otherwise it would have not been a real sacrifice or price to pay. In modern times, however, as a Nigerian priest has stated in an interview, ‘the tradition of sacrifice used to be limited to killing a family member, but nowadays it is a common belief that also complete strangers’ lives could satisfy spirits or witches.’ (Report EASO on Nigeria 2017 at http://coi.easo.europa.eu/administration/easo/PLib/EASO Nigeria Country focus June 17.it.pdf).”’(p. 6)

Main legal texts quoted in the decision:

- Decreto Legislativo 286/1998, art 5(6)

Cases cited in the decision:

- Court of Appeal, Second Section, Decision of 30 June 2016, 1128, RG 769/2015 (Corte di Appello di Bologna, Sez II, sentenza n 1128 of 30.06.2016 (R.G. 769/2015))

Commentary

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Evaluation of the approach taken by the Bologna Tribunal regarding cases based on fear of witchcraft persecution is impossible, due to the difficulty of accessing first-instance decisions and appeal judgements on asylum cases in Italy. These are not available online, and neither are they collected in a central archive (Sorgoni 2019: 164). Consequently, it is not possible to determine if the treatment of witchcraft-related cases reflects a trend, or is an isolated case, or if the case law on the subject is divided. It is also not possible to tell if witchcraft persecution cases are generally linked to religious practices.

The legal literature indicates that in Italy, as in many other EU countries, asylum decisions are characterized by a "culture of denial" that "transforms an attitude of mistrust into a material action of rejection". (Sorgoni 2019: 165) This is in part explained by the absence of a shared cultural background common to both the asylum applicant and the person who has to adjudicate the case. As a result, there emerge "misunderstandings that eventually casts doubts on the claimant's credibility". (Sorgoni 2019: 167).

This becomes apparent in claims that involve unusual beliefs, or where the adjudicator is ignorant of important cultural asects of such claims. (Bianchini 2021: 3812) In the case under consideration here, the claim for protection was refused by the Territorial Commission on the grounds that the fear of witchcraft was implausible and unrelated to protection. It is unclear why the appellant did not seek a review of the refusal of asylum, and only appealed the refusal of the residence permit for humanitarian reasons. One possible explanation is that the appellant's lawyer was unacquainted with claims of witchcraft based persecution. An alternative explanation, however, would note the persistent lack of success of cases based on claims of witchcraft persecution, and would conclude that an appeal made on such a basis would have been strategically unsound.

In this decision, the judge focused not only on the serious harm that the appellant would face upon return to Nigeria (i.e., the harm of being killed by the occult society to which the father belonged) but also on two additional arguments that relied on the enhanced vulnerability of the appellant. These latter arguments were those of the integration pathway in Italy, much of which the appellant had

already completed, and the health problems the appellant was experiencing (these had already been indicated in the submitted medical reports). The judge partially reversed the finding of the Territorial Commission and found the appellant credible. The court reasoned, based on the country reports submitted and the consistent testimony of the appellant, that the particular personal characteristics of the claimant and the situation in Nigeria would require that he be granted humanitarian protection through the issuance of a residence permit.

This contrasts with a recent case heard in the Court of Cassation. The claimant in this case feared persecution by vampires and was refused because this claim was not found credible (Corte di Cassazione, sentenza del 06.03.2019 (R.G. 10226/19)). However, it should be noted that the text of this decision does not engage in detail with the fear of persecution and the facts of the case.

Literature related to the main issue(s) at stake:

- Bianchini, Katia. 2021. “The Role of Expert Witnesses in the Adjudication of Religious and Culture-based Asylum Claims in the United Kingdom: the Case Study of ‘Witchcraft’ Persecution”. *Journal of Refugee Studies*, 34(4): 3793–3819.
- Sorgoni, Barbara. 2019. “The Location of Truth: Bodies and Voices in the Italian Asylum Procedure”. *PoLAR: Political and Legal Anthropology Review* 42 (1): 161–176.

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