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

The "Investigative Cooperation" Duty of the Italian Judge in Asylum Cases: A Possible Tool for Gaining Knowledge of Applicants' Socio-Cultural Context

Question(s) at stake:

Whether a judge has a duty to investigate the applicant's situation despite a finding of non-credibility in a case concerning an asylum claim based on a fear of persecution linked to voodoo/juju practices.

Outcome of the ruling:

The Italian Supreme Court of Cassation upheld the asylum seeker's appeal, ruling that the application for international protection should be re-examined and that the Court's investigative powers should be exercised to examine the applicant's situation, regardless of the finding that the applicant was not credible.

Topic(s):

- Immigration and Asylum

Keywords:

- Right to asylum
- Applicant's credibility
- Religion or belief
- Asylum seeker
- Grounds/Reasons of persecution

Tag(s):

- Juju
- Investigative cooperation duty in asylum
- Voodoo

- Witchcraft

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Country:

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Supreme Court of Cassation, Decision of 20 April 2022, No. 12644 (Suprema Corte di Cassazione, Sentenza del 20 aprile 2022, n. 12644)

Link to the decision:

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ECLI:

No ECLI number / ECLI number unknown

Date:

20 April 2022

Jurisdiction / Court / Chamber:

Supreme Court of Cassation

Remedy / Procedural stage:

Last instance court

Previous stages:

- Civil Court of Perugia, decision of 15 October 2019, no. 687/2019
- Territorial Commission (date unknown)

Subsequent stages:

Not available.

Branches / Areas of law:

Immigration and Asylum, Constitutional Law, Fundamental Rights

Facts:

The appellant fled the Ivory Coast, claiming to fear persecution due to his affiliation with a *voodoo/juju* cult. Belief in this cult was part of the traditional life of his village and was also shared by his family. His father was a leading exponent of the cult as a witch doctor. During the proceedings for the request for international protection initiated in Italy, the applicant stated that he had suffered threats and intimidation for his refusal to adhere to the cult, and that he had been targeted with a paternal curse. Due to various illnesses, the applicant went to a hospital, but no one there was able to diagnose his condition. However, the paternal curse was confirmed by a “traditional” doctor, who advised him that his only remedy was to immediately remove himself from the sphere of parental influence.

For these reasons, he fled to Italy and applied first to the Territorial Commission and then to the Court of Perugia for recognition of international protection (he had requested refugee status under Legislative Decree no. 251 of 19 November 2007, pursuant to Art. 7; alternatively, “subsidiary protection” pursuant to Legislative Decree no. 251 of 19 November 2007, ex Art. 14; or to be granted a residence permit for humanitarian reasons under Legislative Decree no. 286 of 25 July 1998, pursuant to Art. 5, para. 6, in consideration of his – objectively serious condition of vulnerability).

Both the Territorial Commission during the administrative proceedings and the Court of Perugia during the judicial proceedings rejected the application.

In particular, the Court did not hold a hearing, considering the facts underlying the application to be “sufficiently clear” and reasoning that the conditions for the recognition of any form of international protection were not met. According to the judges of first instance, the “lack of credibility” of the applicant’s account of “a family quarrel mainly of a private nature” prevented the recognition of international protection.

The Court specified that, based on the facts as recounted, it was impossible to understand the nature of the cult. The applicant had been unable to describe its elements; he had merely reported that his own father belonged to this religion, and that every five years the members had to introduce a new member of their family. Moreover, the Court found that there was no situation of armed conflict in the country of origin, and no special condition of vulnerability affecting the applicant.

The applicant therefore appealed to the Supreme Court of Cassation.

Ruling:

The Court of Cassation allowed the asylum seeker's appeal and ordered that the application for international protection be re-examined. In particular, the Court of Cassation clarified an important principle for the courts of first instance: even if the asylum seeker's account of his fear of suffering and repercussions arising from his refusal to associate with his father's traditional cult does not appear to be credible, the judge is not exempt from carrying out the in-depth investigations necessary to ascertain the situation in the applicant's country of origin. This duty is especially important when applying for subsidiary protection under Art. 14 letter c) of Legislative Decree no. 251/2007, where the applicant claims a "serious and individual threat to life or person resulting from situations of internal or international armed conflict". This refers to a generalized situation of violence in which the serious risk to life or person may be relevant not only to the individual's situation, but also more generally where the human rights violations reach a high threshold. In this regard, the Court of Cassation referred to the relevant Italian and supranational jurisprudential orientation, citing two rulings: CJEU 30 January 2014, case C-285/12, *Diakité*, point 10.3; Court of Civil Cassation, Civil Section III, 12 March 2020, no. 8819.

Moreover, according to the Court of Cassation, the subjective credibility test is not a necessary prerequisite for the collection of country of origin information. Earlier jurisprudential orientations that subordinated the judge's evidentiary powers/duties to the credibility of the asylum seeker's account (Cass. Sez. 6/1, 27

June 2018, no. 16925; Sez. 6/1, 10 April 2015, no. 7333; Sez. 6/1, 1 March 2013, no. 5224) are, in the view of the Court of Cassation, no longer in line with the most recent domestic law and jurisprudence (Cass. no. 2954 of 2020 and no. 8819 of 2020). The asylum seeker is required to allege the facts constituting the right to the protection sought, but not “to prove those facts”. The same principles on the burden of proof also apply to humanitarian protection. The Court of Cassation also recalled the evidentiary obligations incumbent upon judges:

- acquisition of relevant and up-to-date COI (country of origin information) available at the time of the decision (or at a time close to it), to be obtained from the relevant bodies, such as the EASO, UNHCR, and international human rights organizations, about the general situation in the applicants’ country of origin and, where appropriate, the countries through which the applicants have transited;
- indication in the judgment of the substance of this information (gathered with COI from the EASO, UNHCR, etc.), as required by Article 10(3)(b) of the so-called Procedures Directive (Directive 2013/32/EU of 26 June 2013,).

Specifically, the Court of Cassation reiterated that the first and second instance judges have a duty to acquire the necessary information by activating the necessary diplomatic and administrative channels, including through appropriate letters rogatory, to indicate in the grounds of the judgment the substance of such sources, and to avoid recourse to stereotyped formulas completely disconnected from the situation actually ascertained.

Main quotations on cultural or religious diversity:

“At the referral proceedings, the Court will therefore abide by the following principles of law:

a) On the subject of investigative cooperation, the judge must, *in limine*, take the starting point for his assessment and the consequent decision from a precise and credible version, even if lacking in proof – because it cannot be found or cannot be demanded – of the personal exposure to serious risk to life or person: this

premise is certainly capable, in the abstract, of activating the *ex officio* duty to cooperate aimed at ascertaining the situation in the asylum seeker's country of origin;

b) The principle according to which the applicant's statements that are inherently unreliable – on the basis of the subjective credibility indicators referred to in Art. 3 of Legislative Decree No. 251 of 2007 – do not, under any circumstances, require any *ex officio* preliminary investigation, does not comply with the law (in the latter sense, however, incorrectly, Cass. Sect. 6/1, 27/06/2018, no. 16925; Sect. 6/1, 10/4/2015 no. 7333; Sect. 6/1, 1/3/2013 no. 5224), as recently affirmed, among others, by the more recent pronouncements in Cass. no. 2954 of 2020 and no. 8819 of 2020; […]

(e) In the assessment of the asylum seeker's credibility, a potentially negative finding cannot, therefore, be the basis, *ipso facto*, of the refusal of investigative cooperation to which the judge is obliged by law, in fact, that judge will never be able, *ex ante*, to know and correctly assess the real and current situation in the applicant's country of origin – so the equation of lack of credibility/insistence tout court with the obligation to cooperate is the result of an obvious paralogism, in light of the principles established by supranational case law; […]

g) The judge's duty of *ex officio* cooperation consists in the acquisition of relevant and up-to-date COI at the time of the decision (or at a time close to the decision), to be requested from the relevant bodies, the content of which must be fully, albeit briefly, set out in the grounds of the decree, in the light of the obligation, enshrined in Art. 10(3)(b) of the so-called Procedures Directive, 'to make available to the staff responsible for examining applications precise and up-to-date information from the EASO, the UNHCR, and international human rights organizations concerning the general situation in the applicants' country of origin and, where appropriate, the countries through which they have transited;

h) It is therefore incumbent (firstly on the administration, and then) on the court of merit to acquire *ex officio* the necessary information relating to the asylum seeker's countries of origin that is complete, reliable, and up-to-date, activating, if

necessary, the necessary diplomatic and administrative channels through appropriate rogatory letters (Court of Cassation 28435/2017), specifying, in the grounds, the content of such sources and avoiding resorting to stereotyped formulas that are completely divorced, especially in terms of time, from the situation actually ascertained". (para. 1.6; pp. 4–5)

"In sede di giudizio di rinvio, il Tribunale si atterrà, pertanto, ai seguenti principi di diritto:

a) In tema di cooperazione istruttoria, il giudice deve, in limine, prendere le mosse del suo accertamento e della conseguente decisione da una versione precisa e credibile, se pur sfornita di prova - perché non reperibile o non esigibile - della personale esposizione a rischio grave alla persona o alla vita: tale premessa è sicuramente funzionale, in astratto, all'attivazione officiosa del dovere di cooperazione volta all'accertamento della situazione del Paese di origine del richiedente asilo;

b) Non è conforme a diritto il principio secondo cui le dichiarazioni del richiedente che siano intrinsecamente inattendibili, alla stregua degli indicatori di credibilità soggettiva di cui al D.Lgs. n. 251 del 2007, art. 3, non richiedano, in nessun caso, alcun approfondimento istruttorio officioso (in tale ultimo senso, invece, erroneamente, Cass. Sez. 6/1, 27/06/2018, n. 16925; Sez. 6/1, 10/4/2015 n. 7333; Sez. 6/1, 1/3/2013 n. 5224), come di recente affermato, tra le altre, dalle più recenti pronunce di cui a Cass. n. 2954 del 2020 e n. 8819 del 2020; […]

e) In tema di valutazione di credibilità del richiedente asilo, il relativo giudizio, eventualmente negativo, non può, pertanto, essere posto a base, ipso facto, del diniego di cooperazione istruttoria cui il giudice è obbligato ex lege, volta che quel giudice non sarà mai in grado, ex ante, di conoscere e valutare correttamente la reale ed attuale situazione del Paese di provenienza del ricorrente - sicché risulta frutto di un evidente paralogismo, alla luce dei principi affermati dalla giurisprudenza sovranazionale, l'equazione mancanza di credibilità/insussistenza tout court dell'obbligo di cooperazione;[…]

g) Il dovere di cooperazione officiosa da parte del giudice si sostanzia nell'acquisizione di COI pertinenti e aggiornate al momento della decisione (ovvero ad epoca ad essa prossima), da richiedersi agli enti a ciò preposti, il cui contenuto deve essere compiutamente, sia pur sinteticamente, esposto nella motivazione del decreto, alla luce dell'obbligo, sancito dall'art. 10, comma 3, lett. b) della cd. Direttiva Procedure, “di mettere a disposizione del personale incaricato di esaminare le domande informazioni precise e aggiornate provenienti dall'EASO, dall'UNHCR e da Organizzazioni internazionali per la tutela dei diritti umani circa la situazione generale nel paese d'origine dei richiedenti e, all'occorrenza, dei paesi in cui hanno transitato”;

h) E', pertanto, fatto obbligo (dapprima all'amministrazione, e poi) al giudice di merito di acquisire ex officio le necessarie informazioni relative ai Paesi d'origine del richiedente asilo che risultino complete, affidabili e aggiornate, attivando, se del caso, i necessari canali diplomatici ed amministrativi attraverso opportune rogatorie (Cass. 28435/2017), specificando, in motivazione, il contenuto di tali fonti ed evitando di ricorrere a formule stereotipate del tutto avulse, specie sul piano temporale, dalla situazione concretamente accertata”. (para. 1.6; pp. 4-5).

Main legal texts quoted in the decision:

- Legislative Decree of January 28, 2008, Section 8, Paragraph 3
- Legislative Decree of January 28, 2008, Section 35-bis, paragraph 9

Cases cited in the decision:

- EU Court of Justice, 30 January 2014, C-285/12, Diakité
- Supreme Court of Cassation, civil section III, 12 May 2020, no. 8819
- Supreme Court of Cassation, civil section I, 7 February 2020, no. 2954
- Supreme Court of Cassation, civil section 6/1, 27 June 2018, no. 16925
- Supreme Court of Cassation, civil section 6/1, 10 April 2015, no. 7333
- Supreme Court of Cassation, civil section 6/1, 1 March 2013, no. 5224

Commentary

The “Investigative Cooperation” Duty of the Italian Judge in Asylum Cases: A Possible Tool for Gaining Knowledge of Applicants’ Socio-Cultural Context

In opinion no. 12644 (civ. sec. III, 20 April 2022), the Italian Court of Cassation issued an important warning to international protection judges of first and second instance: in asylum application cases, judges must exercise additional evidentiary powers with respect to the applicants by consulting COI and other sources of information on the socio-political and also cultural context of the applicants’ origin, as prescribed by European and national protection standards. This principle was asserted when the appeal of a victim of a *voodoo*/*juju* ritual was upheld after the first instance judge had rejected the claim on the grounds of credibility and insufficient explanation of the ritual.

In the Italian jurisprudence, this duty of the judge to “cooperate” in the search for evidence establishing the asylum prerequisites is defined as “investigative cooperation”. It is a duty which has its source both in EU norms (Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, Art. 4) and in internal norms which transpose EU directives (Art. 3 Legislative Decree 251/2007; Art. 8 Legislative Decree 25/2008; Art. 35 bis Legislative Decree 25/2008). The duty of investigative cooperation must be exercised primarily by the administrative bodies responsible for the examination of the applications at the first instance (the Territorial Commissions), which is then extended to the jurisdictional procedure that the applicant may initiate before the judge following a refusal by the Territorial Commission. In particular, para. 9 of Art. 35 bis Legislative Decree 25/2008 provides that the same procedures of investigative cooperation imposed on the administrative asylum bodies also apply to the jurisdictional procedure in the event the decision is appealed.

This duty requires the judge to play an active role in proving whether the prerequisites for access to the three forms of international protection (refugee status, subsidiary protection, and humanitarian and special protection) are met (Del Rosso 2020). In asylum procedures, there is in fact an attenuated burden of proof: the applicant must provide, in the first instance, all the elements, statements, and documents necessary to supplement his or her application, but

where certain facts are lacking in evidence, the judge has a duty to carry out further investigation by consulting precise and up-to-date information on the general situation prevailing in the asylum seeker's country of origin and, where necessary, of the countries through which they have transited. The relevant information is compiled by the National Commission for the Right to Asylum on the basis of data provided by the UNHCR, the EASO, and the Ministry of Foreign Affairs, with the cooperation of other agencies and bodies for the protection of human rights operating at an international level.

The investigative duty of the judge exists only in civil-law systems, and not in common law countries. This duty is an important procedural protection for asylum seekers, who often have no lawyer (for example, in the administrative procedure before the Territorial Commissions), no financial means, and no evidence in support of their cases.

Fulfilling precisely this investigative obligation, in the ruling under review, the Court of Cassation upheld the appeal of an asylum seeker from the Ivory Coast who had been denied protection. The applicant stated that he had fled his homeland because he had refused to join the *voodoo/juju* cult of which his father was an exponent and priest. Because of this refusal, he had been threatened and believed himself to be suffering from a curse that caused ill health, which even the doctors he consulted considered incurable and inexplicable, whereas a traditional healer attributed the symptoms to his father's influence. The applicant, therefore, feared for his safety. According to the first instance judge, the facts recounted by the applicant were unreliable, and could be traced back to internal family quarrels of a purely private nature. The court of first instance had also reasoned that the applicant was unable to provide precise information about the cult in question. All these elements, therefore, led to a negative assessment of the credibility of the applicant's account, and, in the first court's reconstruction, exempted the judge from the duty of "investigative cooperation".

The first instance court's refusal of protection was appealed directly to the Court of Cassation (in the Italian legal system, a 2017 reform – Decree-Law No. 13 of 17 February 2017, converted with amendments by Law No. 46 of 13 April 2017 –

eliminated the double degree of merit in international protection procedures, providing that only an appeal to the Court of Cassation is admissible against the final decree of first instance). The Court of Cassation annulled the judgment and ordered the first instance judges to re-examine the application, this time exercising the duty of investigative cooperation. It held that this duty cannot be considered non-existent due to the fact that the account appears not to be credible. In this respect, the Court of Cassation confirmed an orientation counter to the one outlined by the first instance judge, which excluded the judge's duty to cooperate due to the unreliability of the account.

The judge's cooperation in the search for evidence plays a crucial role in judgments on international protection. In this regard, it is interesting to explore how this tool could become a "gateway" to anthropological knowledge in international protection processes, enabling judges to understand harmful cultural practices and contexts. In these proceedings, asylum seekers ask for protection from situations and practices rooted in the social, political, cultural, and religious contexts of their origin, which are far from the social, political, and anthropological paradigms of Western culture. It is therefore difficult to fit these situations – described by applicants as threats to their safety and fundamental freedoms – within the legal categories of international protection or within the cultural and legal framework of the judge.

As is the present case, the relationship between traditional African rituals and religions and the individuals who decide to adhere to them or reject them has often been the subject of legal cases in both international protection and criminal law, because they sometimes generate conflicts with fundamental rights (in this regard, see, for example, the cases on *voodoo/juju* rituals reported in Ruggiu 2024) and are difficult for judges to understand. Italian criminal law has, for example, addressed how *voodoo/juju* rituals contributed to creating a condition of slavery in the trafficking and sexual exploitation of young Nigerian women (see Carta and Ruggiu 2026).

In one such criminal trial, the court relied on anthropological expertise to understand the real potential of the ritual to influence the psyche of young

women. The Italian judge considered it necessary to investigate the cultural scope of the ritual in order to delineate the role of the ritual in the commission of the crime (Carta 2023). The powers/duties of investigative cooperation in international protection cases are important because they allow for such in-depth investigations. In international protection, however, the aim is not to incriminate but to protect victims from a socio-cultural context where such harmful practices have been established. In the absence of in-depth investigations, these circumstances tend to be downgraded as mere private and family affairs or are considered implausible because the applicants are unable to report precise elements of the cult, as occurred before the first instance in the present case. On the other hand, as could easily be deduced from the anthropological literature on the subject, the "secrecy" of these forms of traditional cult is another characteristic that might escape the eye of the Western judge, although it is typical of these realities: subjects who are not yet part of the cult or at least do not hold apex roles (as leaders or priests) often do not fully know the instruments and rituals because they remain obscure until one actually joins the group or its elite (Decarli 2021: 165). (Some elements common to traditional African religions, such as the secrecy of rituals, are cited, for example, by an Italian anthropologist (G. Decarli) who carried out an anthropological consultation in an international protection case very similar to the present case, in which a Christian of Nigerian origin had fled his homeland because he had refused to succeed his father in the position of *voodoo*/*juju* priest and feared the consequences of this refusal.)

The instrument of investigative cooperation cannot offer the precision that an anthropological expert report would in the reconstruction of harmful cultural practices/contexts (such an expert report is also admissible in these judgments, although not imposed, see Decarli 2021), but it is certainly an additional tool that helps the judge to see beyond the apparent lack of credibility of the applicant, which often arises from the fact that the circumstances recounted are foreign to the judge's own life context and training. It is also a first step towards extending to international protection a form of protection that Italian judges have already implemented in the criminal field thanks to in-depth examinations with respect to

cultural practices detrimental to fundamental rights, such as the use of *voodoo/juju* rituals to enslave young Nigerian girls, as mentioned above. Furthermore, it is a step toward implementing Article 10 of the Italian Constitution on the right of asylum for those who are prevented, in their country of origin, from effectively exercising the democratic freedoms guaranteed by the Italian Constitution (Carta 2023).

In this ruling, the Court of Cassation does not clarify whether refusal to join traditional *voodoo/juju* cults – or similar practices – automatically entitles someone to protection. However, it provides important guidance, urging judges to seek anthropological, sociological, and legal insights in order to assess the actual and potential harm these practices may pose to fundamental rights.

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

General legal literature on the topic that may not be directly connected with the case

- Carta, Silvia. 2023. “Riti vudù e reato di riduzione in schiavitù: un nuovo riconoscimento giudiziale della variabile culturale (nota a Cass. pen., sez. I, del 3 febbraio 2022, n. 3796)”. *Stato, Chiese e pluralismo confessionale* 14.
- Carta, Silvia and Ilenia Ruggiu. 2026. “The *Voodoo/Juju* Ritual as an Instrument of Slavery in the Trafficking of Nigerian Women”. *Cultural and Religious Diversity under State Law across Europe*, DOI: 10.48509/CUREDI092IT002.
- del Rosso, F.G. 2020. “Il dovere di cooperazione istruttoria officiosa e le 'country of origin information' nel procedimento per il riconoscimento della protezione internazionale e umanitaria, in Diritti senza confine”, available at <https://www.questionegiustizia.it/articolo/il-dovere-di-cooperazione-istruttoria-officiosa-e-le-country-of-origin-information-nel-procedimento-per-il-riconoscimento-della-protezione-internazionale-e-umanitaria?fbclid=IwAR3QcKp-w4O8nDlHSWOFqrSFt9Ue_NspSp_Nh4BIyfLDs3lcb118ElIJWs8> accessed 6

May 2026.

- Decarli G. 2021. “Esperienze di consulenza antropologica nel giudizio di protezione internazionale. L’antropologo *antropologo*”. *Diritto, Immigrazione e Cittadinanza* 2/2021.
- Ruggiu I. (ed). 2024. *Guidebook on Cultural Diversity*, entry “Voodoo (Rituals)” in <www.anthrojustice.net> accessed 6 May 2026.

General literature on the topic from other disciplines

- Brivio, A. 2021. “Assoggettamento da juju? Decostruire le categorie della dipendenza tra le giovani migranti dalla Nigeria”. *ANUAC* 10 (1): 161–185.
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- Landry, Timothy, R. 2016. “Incarnating Spirits, Composing Shrines, and Cooking Divine Power in Vodún”. *Material Religion* 12 (1): 3–26.
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