

Federal Court



Cour fédérale

Date: 20150220

Docket: IMM-5722-13

Citation: 2015 FC 217


Ottawa, Ontario, February 20, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION****Applicant**

and

**ALADAR RACZ  
ALADAR RACZ  
ALADARNE RACZ  
ZITA RACZNE BUDAI  
BIANKA RACZ  
DIANA RACZ  
ALADAR RACZ  
AMANDA ZITA RACZ  
SZABINA RACZ****Respondents****JUDGMENT AND REASONS****I. Introduction**

[1] “The world is not limited to our neighbourhood, our city, or even our country. [...] I have never heard of an Eastern or Western case or an X-ray that would show the nationality, religion,

language or culture of a patient. [...] As [Sigmund] Freud said: "Now that it is impossible to see clearly, let us shed light upon darkness"" (Abbas Kiarostami). This case is an X-ray of the human condition of the Roma in, but, one town, that was evacuated of Roma for their protection from persecution. It is not necessarily a picture of all of Hungary, although:

The history of the Romani people's past, even their recent past, is rife with ostracism, exclusion, marginalization, discrimination and, in some cases, persecution because of their race. The situation of the Roma requires that the decision-maker assess protection for each individual who claims protection based on the evidence of treatment suffered by nationals who claim state protection. [My emphasis.]

(*Kovacs v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1003 [*Kovacs*]).

[2] In addition, the political and socio-economical state of affairs of any country is complex and multi-faceted, a state protection analysis also entails complex considerations. This is why, as referenced above, the jurisprudence advises that a mere willingness by a state to address the situation of the Roma minority in Hungary cannot be "equated to adequate state protection" (*Bors v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1004 at para 61; *Balogh v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 809 at para 37). As stated by Justice Russell W. Zinn in *Orgona v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1438 at para 11 [*Orgona*]: "Actions, not good intentions, prove that protection from persecution is available". In other words, theory does not always bridge over into practice.

## II. Procedural Background

[3] This is an application for judicial review by the Applicant Minister pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision dated

August 12, 2013, wherein the Refugee Protection Division [RPD] accepted the Respondents' claim for refugee protection under section 96 of the IRPA.

[4] The Respondents are members of a broader Roma family (the Racz family) seeking refugee protection in Canada, composed of 39 individuals, from the town of Gyöngyöspata, Hungary. The family's claims were heard by the same RPD board member over the course of six separate hearings held in April 2013.

[5] In support of their claims, the Racz family collectively brought an expert witness from Hungary, Mr. Aladar Horvath, who is a scholar and expert in Roma issues, a human rights advocate and former member of the Hungarian Parliament. Mr. Horvath testified before the RPD on April 8, 2013, and his oral and affidavit evidence were entered in each claim.

[6] The RPD issued a positive decision in each of the six claims, which included the Respondents', all of whom were the subject of applications for judicial review before this Court.

### III. Factual Background

[7] The Respondents, Aladar Racz, his common-law spouse Aladame Racz, Aladar Racz and his common-law spouse Zita Raczne Budai, and their children, Bianka Racz, Diana Racz, Aladar Racz, Amanda Zita Racs and Szabina Racz, are a Hungarian family, who claimed refugee protection on the basis of their Roma ethnicity. The Respondents fled Hungary and arrived in Canada on September 9, 2011, claiming refugee protection the same day.

[8] The Respondents allege that, between 2002 and 2011, they, as members of a family unit, were targeted by incidents of persecution and ostracism; and, were also subjected to threats, harassment, attacks, and continuous discrimination in respect of employment, education and housing, due to their Roma ethnicity. In their Personal Information Form Narrative, dated October 2011, the Respondents recount, *inter alia*, numerous violent attacks and death threats experienced by them as members of a family unit. The Respondents contend that, despite their efforts in seeking state protection and filing several complaints with the local authorities, these had failed to yield any tangible results. The Respondents submit that the police had turned a blind eye to the violence perpetrated against them and that the police was, in fact, frequently complicit in crimes against the Roma (Narrative of Aladar Racz and family, Tribunal Record, at pp 28-36).

[9] Meanwhile, in March 2011, the Roma community in Gyöngyöspata gathered to attend the town square to commemorate a national holiday. On that day, thousands of members of right-wing groups, such as former members of the disbanded Hungarian Guard Movement (Magyar Gárda), Betyar Csoport, Szebbjovo, Ostoró and Vederó, marched in protest against the Roma and “invaded” the Respondents’ town. Roma were attacked, harassed and threatened over the course of several weeks. The police and local authorities failed to effectively protect the Roma, despite these events being widely publicized in the media. In May 2011, international actors intervened in order to evacuate approximately 280 Roma women and children from Gyöngyöspata.

#### IV. Impugned Decision

[10] In its reasons, with respect to credibility, the RPD found that the Respondents testified in a consistent manner.

[11] After reviewing the substance of the written and oral evidence provided by Mr. Horvath, who testified on behalf of the 39 related claimants, the RPD allocated little weight to his testimony, by reason of doubts raised as to Mr. Horvath's methodology and potential bias; however, the RPD found that Mr. Horvath's testimony nevertheless corroborated the documentary evidence provided in the RPD's National Documentation Package of Hungary.

[12] In considering the Respondents' allegations of persecution and the availability of state protection, the RPD recognized that the Respondents bear an onerous burden in rebutting the presumption of state protection.

[13] The RPD noted that the latest documentary evidence demonstrates that Hungary has a history of discrimination against the Roma and that conditions for the Roma in Hungary have deteriorated. The RPD also took note of the Respondents' submissions that state protection in Hungary is ineffective and that the police systematically fail to provide protection for the Roma.

[14] The RPD further canvassed the climate of persecution and discrimination of the Roma in Hungary, in light of which the Respondents' allegations were to be assessed:

[24] I have canvassed the documentary evidence, and I have determined that the documentary evidence indicates that the

attitudes toward the Roma by some Hungarian people, including people who are in authority, are discriminatory and prejudicial. It is clear from the documentary evidence that the effect has been to marginalize the Roma people. Roma are generally under-employed, under-educated and frequently live in subsistence housing, and are now subject to violence from radical elements who are gaining support from the general public to some extent. Roma in Hungary are "consciously despised by the majority population and pushed to the edge of society", while previously "hidden anti-Roma attitudes are becoming more open". The documentary evidence indicates that persecutory acts are often promoted and carried out by right-wing extremist groups, such as members of the disbanded Hungarian Guard, whose members have continued their activities under different names and in newly formed different organizations. Additionally, the right-wing Jobbik Party feeds on sentiments from its constituency, which contributes to the discrimination and persecution of the Roma. According to sources, Jobbik is an "extreme right-wing" political party with nationalistic roots and a strong anti-Roma and anti-Semitic agenda. Sources indicate that the Hungarian Guard's popularity, as well as the party's campaign against so-called "Gypsy crime", significantly contributed to Jobbik's growth. On the other hand, while there seemed to have been surprise at the Jobbik Party's moderate success in the last national election, in which they became the third-place party with nearly 17% of the vote, the documentary evidence also indicates that the Jobbik support dropped in April 2011 to 13 percent among likely voters and in August 2011, it was 15 percent among decided voters. To gain its support, the Jobbik Party has renewed its campaign against Roma with rallies in villages across the country. [My emphasis.]

(RPD's Decision, at para 24).

[15] Finally, the RPD concluded that the Respondents successfully rebutted the presumption of state protection:

[35] In this case, the claimants were assaulted on numerous occasions because of their ethnicity. They had some difficulties with the education system. I find that the claimants were discriminated to a certain degree in Hungary on the basis of the cumulative acts of discrimination directed at them. They have also somewhat rebutted the presumption of state protection in their personal circumstances. [My emphasis.]

[36] Having considered all of the evidence and counsel's submissions, I find that the claimants are Convention refugees. The Refugee Protection Division, therefore, accepts the claims for refugee protection.

(RPD's Decision, at paras 35 et 36).

## V. Issue

[16] The Court considers the reasonableness of the RPD's state protection analysis to be determinative.

## VI. Legislative Provisions

[17] The following provisions of the IRPA, as they relate to findings of persecution and state protection, are applicable:

### **Convention refugee**

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former

### **Définition de « réfugié »**

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa

habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

**Person in need of protection**

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

**Personne à protéger**

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé



(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

## VII. Applicant's Arguments

[18] The Applicant challenges the RPD's decision on the basis of three main arguments.

[19] First, the Applicant contends that the RPD erred in improperly shifting the onus of establishing adequate state protection from the Respondents to the RPD, and in applying a lower standard of proof in this respect.

[20] Second, the Applicant argues that the RPD failed to adequately analyse the documentary evidence contradicting its state protection findings.

[21] Third, the Applicant submits that the RPD failed to analyse how the Respondents' alleged experiences of mistreatment and discrimination amount to persecution.

## VIII. Standard of Review

[22] The adequacy of the RPD's state protection analysis must be reviewed on the reasonableness standard, as it is largely a factual assessment to be conducted on a case-by-case basis (*Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 36

[Carrillo]; *Molnar v Canada (Minister of Citizenship and Immigration)*, 2012 FC 530 at paras 34 and 93 [Molnar]; *Chaves v Canada (Minister of Citizenship and Immigration)*, 2005 FC 193 at para 11).

[23] Accordingly, the Court must assess whether the impugned decision “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”. This standard requires the existence of “justification, transparency and intelligibility within the decision-making process” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Miroslav v Canada (Minister of Citizenship and Immigration)*, 2010 FC 383 at para 22).

#### IX. Analysis

[24] The Court must assess whether the RPD’s finding that the Respondents have successfully rebutted the presumption of adequate state protection, in regard to their personal circumstances, is reasonable.

[25] Such as stated by the Federal Court of Appeal in *Carrillo*, and in accordance with the surrogate role of international refugee protection, refugee claimants must demonstrate, on a balance of probabilities, the presence of inadequate state protection (*Carrillo*, above at paras 18 and 25).

[26] The burden which rests upon claimants to rebut the presumption of state protection is directly proportional to the level of democracy in the state in question (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 60; *Hinzman v Canada (Minister of Citizenship and*

*Immigration*), 2007 FCA 171 at para 41; *Kadenko v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ 1376).

[27] Thus, the Court has significantly reviewed that which the RPD wrote in respect of state protection as rebutted by the Respondents. Although the RPD used the word "somewhat", somewhat carelessly, in speaking of state protection, an analysis of state protection of worth was nevertheless shown by the RPD. The RPD demonstrates in its reasons that it has carefully read through the evidence, wherein the mayor of the town of Gyöngyöspata himself, in which serious violence erupted, in respect of the Roma, had to flee due to the fact that he was attempting to have the Roma protected; and, the police itself, for all intents and purposes, withdrew any protection of the Roma as "right-wing" organizational violence erupted and caused havoc in the town of Gyöngyöspata; thus, the municipal local authorities lost complete control of the town to the degree that the Roma were literally "evacuated" and the matter became fully known to human rights organizations which denounced and decried the complete lack of protection to the Roma.

[28] In *Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, Justice Luc Martineau discusses the RPD's role in assessing state protection:

[27] In order to determine whether a refugee protection claimant has discharged his burden of proof, the Board must undertake a proper analysis of the situation in the country and the particular reasons why the protection claimant submits that he is "unable or, because of that risk, unwilling to avail [himself] of the protection" of his country of nationality or habitual residence (paragraphs 96(a) and (b) and subparagraph 97(1)(b)(i) of the Act). The Board must consider not only whether the state is actually capable of providing protection but also whether it is willing to act. In this regard, the legislation and procedures which the applicant may use

to obtain state protection may reflect the will of the state. However, they do not suffice in themselves to establish the reality of protection unless they are given effect in practice. [Citations omitted.]

[29] By corollary, the view that adequacy of state protection must be analyzed at the operational level has been extensively supported by this Court (see: *E.Y.M.V. v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1364 at para 16; *Beri v Canada (Minister of Citizenship and Immigration)*, 2013 FC 854 at para 36; *Lakatos v Canada (Minister of Citizenship and Immigration)*, 2014 FC 785 at para 30; *Kovacs*, above at para 66).

[30] Justice Roger T. Hughes illustrates this principle in *Hercegi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 250 at para 5:

It is not enough to say that steps are being taken that some day may result in adequate state protection. It is what state protection is actually provided at the present time that is relevant. In the present case, the evidence is overwhelming that Hungary is unable presently to provide adequate protection to its Roma citizens. [My emphasis.]

[31] Also, as noted by Justice Zinn in *Pinter v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1119 at para 14:

I note that accepting a report of criminal conduct does not establish adequate police protection when no steps are taken to investigate the complaint. If police had no obligation to investigate a complaint where the assailant was unknown, their job would be remarkably easier.

[32] In a similar perspective, Justice Simon Noël states, in *Csurgo v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1182 at para 26:

The willingness of the government in setting up measures is certainly a good beginning, but it must also be that there are, in reality, offering an actualized protection.

[33] As a trier of fact, the RPD is required to assess the weight to be given to competing evidence on country conditions (*Molnar*, above at para 93).

[34] Moreover, notwithstanding the presumption that the RPD weighed all of the evidence adduced before it, its burden of considering and providing explanations for contrary evidence increases with the relevance of the evidence in question to the disputed facts (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ 1425 at paras 15 and 17 [*Cepeda-Gutierrez*]; *Kovacs*, above at para 57; *Balogh v Canada (Minister of Citizenship and Immigration)*, 2014 FC 771 at para 48; *Flores v Canada (Minister of Citizenship and Immigration)*, 2008 FC 723 at para 15 [*Flores*]).

[35] The RPD is not only entitled but also required to weigh contrary evidence which demonstrates adequacy of effective state protection in the Respondents' particular circumstances (*Kovacs*, above at para 83; *Cepeda-Gutierrez*, above at para 17).

[36] It is the Court's view that, contrary to the Applicant's submissions, the RPD was mindful of the requirements of the law with respect to a state protection analysis. The RPD was also cognizant of the heavy burden which lies upon the claimant in rebutting the presumption of state protection of Hungary, a democratic state and member of the European Union. The RPD did specify in its decision the key requirements in stating the test for state protection, although a little loosely, but it did address it, nevertheless.

[37] The Court cannot agree with the Applicant's submission that the RPD's assessment of the evidence is essentially one-sided. The RPD's reasons and the Tribunal Record reveal that the RPD engaged in a balanced and nuanced analysis of the evidence as a whole, including portions of the evidence weighing against its overall finding of lack of state protection.

[38] Notably, the RPD explicitly considers evidence relating to the progress made by the Hungarian government and local authorities in protecting its citizens, as well as the existing mechanisms, both institutional and operational, which may be indicative of state protection. The RPD refers to specific country condition evidence in recognizing that Hungary is a democracy where free and fair elections are held and where there is a relatively independent and impartial judiciary; that Hungary is in effective control of much of its territory and has a functioning security force to uphold the laws and constitution of the country; and that Hungary is not in a state of complete breakdown.

[39] The RPD also recognizes that although some preliminary investigate measures have been taken by local authorities in response to the Respondents' numerous complaints and efforts in seeking protection, these have not translated into meaningful investigations, let alone prosecutions or convictions. The RPD accepts that the Respondents successfully demonstrated that from their personal experiences, the state has failed to protect them and that a climate of impunity had prevailed.

[40] The Immigration and Refugee Board's Responses to Information Requests document entitled *Hungary: Situation of Roma, including employment, housing, health care, and political*

*participation* describes the dissonance between state protection initiatives by the Hungarian government and local authorities, and the availability of such protection for the Roma communities, in practice:

A joint report by 10 Hungarian and international human rights NGOs, submitted in 2010 to Hungary's Universal Periodic Review (UPR) by the UN Human Rights Council, stated that "many instances of anti-Roma statements by public authorities and politicians, and statements advocating hatred towards the Roma" had been recorded (CFCF et al. Nov. 2010, 7). The same report states that "the reluctance of high-ranking Hungarian authorities to condemn anti-Roma statements creates a climate in which such statements are tolerated and in which ordinary citizens feel emboldened to act violently towards the Roma" (ibid.). Similarly, the Society for Threatened Peoples writes that the state response to anti-Roma sentiment and violence is "often restrained and not particularly effective" (11 Aug. 2010, 1).

[...]

According to Freedom House, Hungary has "taken a number of steps to improve monitoring of Romany legal rights and treatment (2011). [...] However, the UN Special Rapporteur on racism observes that according to both governmental and non-governmental sources, policies for Roma integration have not always been implemented (ibid., para. 31).

Sources indicate that the Ministry of Public Administration and Justice operates a legal service network providing free legal aid to Roma who have experienced ethnic discrimination (Minority Rights Feb. 2012; US 24 May 2012, Sec. 6). *Country Reports 2011*, notes, however, that extremely disadvantaged Roma living in remote villages are not able to access the legal offices, which are only located in larger cities (ibid.). The same report indicates that, according to the Hungarian Civil Liberties Union, some Roma cases have been rejected by the network's lawyers. A professor of sociology at the University of Corvinus who specialized in anti-Roma discrimination stated, in a telephone interview with the Research Directorate, that although complaints mechanisms exist for victims of discrimination, they are not very effective (13 June 2012).

(HUN104111.E, *Hungary: Situation of Roma, including employment, housing, health care, and political participation*;

*whether Roma are required to pay a fee for health services* (2010-June 2012), Tribunal Record, at p 496).

[41] The document *Hungary: Treatment of Roma and state protection efforts (2009-June 2012)* describes the escalating violence against the Roma population in Hungary from 2009 to 2012, including the occupation of Gyöngyöspata described by the Respondents in their claims:

In a 15 February 2012 statement prepared for a US Helsinki Commission Hearing on state response to violence against Roma, the European Rights Centre (ERRC) states that “racist of stigmatising anti-Roma rhetoric has been on the rise both in public and political discourse” in countries such as Hungary. In addition, the ERRC notes that “extremist groups, political parties and politicians have sharpened their anti-Romani rhetoric and actions, galvanizing segments of the public against Roma” (ERRC 15 Feb. 2012).

In a February 2009 article, the *Irish Times* reports that “growing economic problems and rising unemployment in Hungary have stoked long-held racial prejudices, and far-right organisations have become more prominent through claims that white Hungarians are suffering an onslaught of “Gypsy crime”” (25 Feb. 2009). In a January 2009 article, MTI (Magyar Távírási Iroda), a Hungarian news agency based in Budapest, notes that the police chief Miskolc said that all burglaries in the city during December 2008 and January 2009, approximately 100, were committed by Roma (MTI 30 Jan. 2009). However, the police chief did not comment on whether he was referring to “gypsy crime” (ibid.).

In a January 2012 article, *The Guardian* notes that Roma are the “prime targets for rightwing hate and more general discrimination” (28 Jan. 2012).

The US Department of State’s *Country Reports on Human Rights Practices for 2011* reported that during 2011, “right-wing extremist groups continued to incite violence against Roma and held marches around the country aimed at intimidating local Romani communities (US 24 May 2012, 35). According to the *Guardian*, in March 2011, in the village of Gyöngyöspata, during its two month occupation by the Civil Guard Association for a better Future, the head of the far-right Jobbik party gave a speech during which he indicated that the party planned to deploy similar “gendarmierie units” worldwide” (28 Jan. 2012).



(HUN104110.E, *Hungary: Treatment of Roma and state protection efforts (2009-June 2012)*, Tribunal Record, at p 505).

[42] In regard of state protection and police effectiveness in protecting the Roma, the document further adds:

The ERRC notes in a March 2011 report that in Hungary, “racist violence” is not monitored systematically (Mar. 2011, 19). Similarly, a Human Rights First report published in February 2012 indicates that the Hungarian government does not have an “effective system” to collect data on “violent hate crimes” nor a way to identify the ethnicity of a crime victim (Feb. 2012, 3).

[...]

The ERRC notes that state authorities are not effective in responding to violence against Roma (15 Feb. 2012). The *Irish Times* reports in a 25 February 2009 article that the Minister of Justice admitted that the police force in Hungary is “failing to find those responsible for a growing number of fatal attacks” on Roma.

[...]

In a public statement issued in April 2012, AI states that law enforcement officials failed to protect Roma residents of Gyöngyöspata during March 2011 vigilante activities in the village, which included a 2,000 person march by the far-right Jobbik, as well as three vigilante groups patrolling the village for approximately a month, during which they were “threatening, intimidating and harassing Romani residents” (4 Apr. 2012). In its 2012 country report, AI indicates that the Hungarian Civil Liberties Union (HCLU) submitted complaints regarding four Roma cases that occurred in Gyöngyöspata, which involved verbal abuse and attempted physical violence, stating that the police “failed to classify the acts as violence against a member of a community” and they also failed to inform the victims of the “relegation of these crimes to minor offences and of the stages of investigation” (AI 2012, 169). The Prosecutor General ordered that the investigations be reopened (*ibid.*).

[...]

According to Human Rights First, because of cases of police “ill-treatment and discrimination” against Roma, there is a “high level

of mistrust of authorities” within Roma communities, which results in “sever underreporting” of racist and violent incidents (Feb. 2012, 2). The HHC also noted that a “large majority of hate crimes are not investigated or reported to the police” (29 June 2012).

Human Rights First notes that police abuse incidents of Roma include arbitrary arrests, misuse of legal procedures and verbal abuse (Feb. 2012, 2). Similarly, the US Country Reports 2011 notes that the HCLU has reported instances of verbal and physical abuse of Roma by police, most “frequently” in Borsod-Abauj-Zemplen County, located in the northeast Hungary (US 24 May 2012, 2).

(HUN104110.E, *Hungary: Treatment of Roma and state protection efforts (2009-June 2012)*, Tribunal Record, at pp 506-508 and 509).

[43] The Applicant seems to suggest that the RPD’s findings that the Hungarian authorities have implemented measures in ensuring investigations of complaints and protection of the Roma, coupled with the extensive evidence pointing to progress made in ensuring state protection in Hungary, are irreconcilable with the RPD’s ultimate finding of lack of state protection in the Respondents’ case.

[44] The Court finds that the RPD’s nuanced approach in assessing the adequacy of state protection, towards which the Court owes considerable deference, is not inconsistent or irreconcilable with the evidence; rather, it reveals a careful weighing of the evidence as a whole (*Sanchez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1336; *Flores*, above at para 14).

[45] Rather, the RPD's reasoning is consistent with the principle that a state protection analysis depends on the specific facts and evidence adduced before it (*Carrillo*, above at para 4; *Martinez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 343 at para 8).

[46] In addition, the political and socio-economical state of affairs of any country is complex and multi-faceted, a state protection analysis also entails complex considerations. This is why, as referenced above, the jurisprudence advises that a mere willingness by a state to address the situation of the Roma minority in Hungary cannot be "equated to adequate state protection" (*Bors v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1004 at para 61; *Balogh v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 809 at para 37). As stated by Justice Zinn in *Orgona*, above at para 11: "Actions, not good intentions, prove that protection from persecution is available". In other words, theory does not always bridge over into practice.

[47] The Court considers that the RPD on the whole conducted an extensive and thorough review of the evidence and of the applicable law in finding a lack of state protection in the Respondents' particular circumstances. Based on the reasonableness of the reasons and the conclusions of the RPD, the Court does not find that the RPD committed any error which may warrant the Court's intervention.

#### X. Conclusion

[48] For the reasons articulated above, the Court considers that the RPD's decision is reasonable and falls within a range of reasonable outcomes having regard to the evidence before it.

[49] The application must thus be dismissed; and, as specified in the reasons above the understanding of state protection, or lack thereof, has been overall demonstrated and treated by the RPD, both as read in the transcript of the hearing as well as in its reasons in consideration of the file record; and, therefore, no question for certification was considered appropriate in that regard.

**JUDGMENT**

**THIS COURT'S JUDGMENT** is that the application for judicial review is dismissed.

There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

**FEDERAL COURT****SOLICITORS OF RECORD**

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