



RPD File No. / N° de dossier de SPR : VA9-02234
VA9-02233

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	XXXXX XXXXX XXXXX XXXXX	Demandeur(e)s d'asile
Date(s) of Hearing	11 Octobre 2011 6 January 2012	Date(s) de l'audience
Place of Hearing	Vancouver, BC	Lieu de l'audience
Date of Decision	19 January 2012	Date de la décision
Panel	Gordon C. McRae	Tribunal
Counsel for the Claimant(s)	Roger Bhatti Barrister & Solicitor	Conseil(s) du / de la / des demandeur(e)s d'asile
Tribunal Officer	N/A	Agent(e) des tribunaux
Designated Representative(s)	N/A	Représentant(e)(s) Désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

REASONS FOR DECISION

INTRODUCTION

[1] This is the decision in the claim of **XXXXXX XXXXXX** (the “principal claimant”) and **XXXXXX XXXXXX** (the “associated claimant”) who claim to be citizens of Hungary and are claiming refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (the “Act”).¹

DETERMINATION

[2] I find that the claimants are not Convention refugee as they do not have a well-founded fear of persecution on a Convention ground in Hungary. I also find that the claimants are not persons in need of protection in that their removal to Hungary would not subject them personally to a risk to their lives or a risk of cruel and unusual treatment or punishment. I also find that there are no substantial grounds to believe that their removal to Hungary would subject them personally to a danger of torture. My reasons are as follows.

IDENTITY

[3] The claimant’s identities and their citizenship as nationals of Hungary have been established by the testimony and supporting documentation filed and entered in these proceedings.

ALLEGATIONS

[4] The following is a synopsis of the claimants’ allegations taken from the Personal Information Forms (the “PIFs”) of the claimants as supplemented by their testimony and other evidence at the hearing.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c.27.

[5] The principal claimant is a Hungarian citizen of Roma ancestry. She married the associated claimant in **XXXXXX** 2008. The associated claimant is ethnic Hungarian.

[6] The principal claimant states that, from an early age, she suffered discrimination as a result of her Roma ancestry. She suffered both verbal and physical abuse from her ethnic Hungarian classmates. She feels that her teachers gave her lower marks than her ethnic Hungarian classmates for no other reason than she was of Roma ancestry.

[7] Her parents complained to school officials about assaults she suffered at the hands of fellow students, however they did nothing.

[8] The principal claimant persevered, in spite of this negative environment and was able to graduate with a grade twelve vocational education, trained as a **XXXXXX**. Things became even more difficult for her after grade eight which is the mandatory level required in Hungary. Many Roma students drop out of school at this point. She was one of very few Roma students who went on to the higher grades and hence was singled out more by the ethnic Hungarian students.

[9] After graduating she had difficulty finding work and was relegated to casual jobs. She feels that prospective employers did not hire her due to her Roma ancestry. When she was able to secure work she was required to work for a lesser wage than ethnic Hungarians.

[10] She was sexually harassed during her employment as a **XXXXXX** and when she refused her supervisors sexual advances he fired her.

[11] She obtained work as a **XXXXXX** with two different employers. She worked in these positions for four years. She experienced sexual harassment by her employer again in this employment.

[12] On her way home in the evening she was chased, robbed, and even beaten by groups of young ethnic Hungarians.

[13] She complained to the police, however, they did not take her accept her complaint. They simply told her not to waste their time. On another occasions they listened to her story and told her they would get a hold of her if they needed anything further. They never contacted her.

[14] She lost faith in the police.

[15] The principal claimant married the associated claimant in **XXXXXX** 2008. They advised his parents of their engagement in **XXXXXX** 2008. His entire family were totally against their marriage. The principal claimant states that it was after they advised his parents of their intention to marry that their problems really began.

[16] The associated claimant has a cousin who is active in the Hungarian Guard.

[17] Members of the Guard began coming to the theatre where the principal claimant worked as a **XXXXXX**. Her supervisor who was upset with her refusal to give in to his sexual demands used this as an excuse to fire her.

[18] She was able to find work as a labourer but only on a part time basis. The claimants' had difficulty finding a place to live due to their mixed marriage. They ended up living in a Roma neighbourhood.

[19] Both claimants' were harassed over their mixed marriage. In **XXXXXX** 2008 the principal claimant received death threats over the phone. She reported these to the police. The police officer told her to change her phone number but did nothing else. When she insisted on an investigation she was told that the police had better things to do than to waste their time on such a trivial matter.

[20] The associated claimant's family tried to pressure him into leaving the principal claimant.

[21] The principal claimant was continually harassed on the street. In **XXXXXX** 2009 she was accosted and a knife was pulled on her. She was told that they were going to cut out her

reproductive organs. She was kicked by her assailants who left her in mud and snow when they heard someone approaching.

[22] The principal claimant was terrified as a result of this incident. She did not go to work and was afraid to go out of the house. The claimants decided that they had to flee Hungary. They fled to Canada on **XXXXXX**, 2009 and claimed refugee protection the next day.

ANALYSIS

Credibility

[23] For the purposes of this analysis I will assume without deciding that the claimants are credible. This assumption does not mean, however, that I accept any of the inferences that the claimant may have drawn from his experiences.

State Protection

[24] The determinative issue in this claim is state protection.

[25] The issue before me is whether it was objectively unreasonable for the claimants to pursue state protection in their country over and above the attempts that were made at the front line service level. States are presumed to be capable of protecting their citizens. If the claimant alleges that the state cannot or will not protect them the onus is on them to produce clear and convincing evidence of the state's inability to protect them. The claimants cannot rebut the presumption of state protection in a functioning democracy by asserting only a subjective reluctance to engage the state. Their rebuttal must be objectively based.²

² *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

[26] Claimants from a democratic country have a heavy burden when attempting to show that they should not have been required to exhaust all of the avenues of the recourses available to them domestically before claiming refugee status³ in Canada.

[27] Hungary is a republic with a population of approximately 10 million and a multiparty parliamentary democracy. Legislative authority is vested in the unicameral parliament (National Assembly). The National Assembly elects the head of state, the president, every five years.⁴ I find that Hungary is a functioning democracy.

[28] The principal claimant testified that she had been the victim of theft and assault on several occasions. She reported the incidents to the police on four occasions.

[29] On the first occasion she was attacked at a bus stop. She was pushed to the ground and her purse was stolen. She went to the police to report the matter and testified that the police did not believe her and so they did nothing regarding her complaint.

[30] On another occasion, after being victimized she went to report to the police and was told to sit down and wait for an officer. After approximately two hours of waiting she left as she had to go to work. She returned the next day and this time an officer did take her complaint but the police did nothing. She received this same type of inaction on two more occasions when she went to the police to report being victimized. She believes that the police indifference and their subsequent inaction were as a result of her being Roma.

[31] The principal claimant was not satisfied with the lack of police response but did not seek to report this to any other government agency or to a higher police authority. She stated that her relatives had told her that if you complain about the police that you would be in more trouble and so she was afraid to pursue the matter within the police command structure. She testified that she was not aware of any other agencies where she might turn for assistance but would not have reported to them at any rate as she does not believe any government agencies will assist Roma.

³ *Canada (Minister of citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

⁴ Exhibit 3, National Documentation Package (NDP), Hungary 20 April 2011, Item 2.1 United States (US). 8 April 2011. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2010*.

[32] The claimants did not consider fleeing Hungary until the attack she suffered in ~~XXXXXX~~ 2009 when four Hungarian Guard members attacked her while waiting for a bus on her way home from work. She did not report this assault to the police because she had lost total faith in them.

[33] The principal claimant was asked if she was aware of an independent police complaints commission in Hungary. She stated that she was not and did not believe that one existed. When asked to imagine that one did exist she stated that even if it did exist she did not believe that it would help her in her situation and that agencies such as this are only for show. She expressed the same scepticism about the existence the Equal Treatment Authority, and the Minorities Ombudsman and also stated if they did exist she did not believe that they would be able to help her either.

[34] She stated that her parents, who still live in Hungary, had never heard of any of these agencies and she would expect that if they existed her parents would know about them. The fact that Roma's are still being attacked suggested to her that either the agencies do not exist or that they are ineffective.

[35] It is clear from the evidence of both claimants that they have no faith in any of the state protection mechanisms in Hungary, even questioning their very existence. Notwithstanding the claimants scepticism the country documents are clear on the existence of state protection mechanisms in Hungary for the Roma.

[36] Counsel for the claimants submitted that the simple existence of state protection legislation and/or agencies is not sufficient in and by itself for this panel to conclude that state protection exists for these claimants. He submitted that the panel must go beyond the theory and examine the practise. I agree with counsel on this point. The Federal Court has said that it is not enough that a government is willing to provide protection and is making efforts to do so. In order for state protection to be present, the efforts made must adequately protect citizens in practice.⁵

⁵ *Koky, Milan v. M.C.I.* (F.C., no. IMM-2577-11, Russell, December 2, 2011; 2011 FC 1407.

[37] The Federal Court of Appeal has made reference to protection being “adequate.” The Court stated that “it is also clear that no government that makes any claim to democratic values of protection of human rights can guarantee the protection of all of its citizens at all times”.⁶ Effectiveness of protection should not be set too high.⁷ Consequently, as long as the government is taking serious steps to provide or increase protection for individuals then the individual must seek state protection.

[38] I will now examine what state protection mechanisms would be available to the claimants should they return to Hungary and whether or not they provide adequate protection.

[39] The constitution and law prohibits discrimination based on race, gender, disability, language or social status. However, the government has been criticized for not enforcing these rights fully.⁸ There is a government agency called the Equal Treatment Authority (the “ETA”) which monitors enforcement of anti-discrimination laws. In 2010 the ETA received 1,282 complaints as a result of their role to monitor enforcement of antidiscrimination laws. The ETA issued 377 decisions and found 40 complaints of illegal discrimination to be justified. In the “justified” cases, the ETA ordered employers to stop illegal activities, refrain from further wrongdoing, and in 20 instances, pay penalties ranging from one hundred thousand to five million forint (\$473.00 to \$23,700).⁹

[40] This evidence suggests that the ETA is active in investigating and enforcing antidiscrimination laws and is in contrast to the claimants’ belief that government agencies of this nature are in effect “window dressing.”

⁶ *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

⁷ *Smirnov v. Canada* (Secretary of State, [1995], 1 F.C. 780 (T.D.)).

⁸ Exhibit 3, NDP, Hungary 20 April 2011, Item 2.1, United States (US). 11 March 2010. Department of State. “Hungary.” *Country Reports on Human Rights Practices for 2009*, p.21.

⁹ Exhibit 3, NDP, Hungary 20 April 2011, Item 2.1, United States (US). 8 April 2011. Department of State. “Hungary.” *Country Reports on Human Rights Practices for 2010* p.25.

[41] The Independent Police Complaints Board (the “ICPB”), established by the National Assembly in 2008, investigates violations and omissions by the police that substantively concerned fundamental rights. The five member body functions independently of police authorities.

[42] The Hungarian Helsinki Committee (the “HCC”) is a non profit organization that monitors the enforcement of human rights. The HHC indicates that in 2009 the Complaints Body issued 457 decisions on 737 complaints and that, of those 457 decisions, 59 were considered “severe” violations of fundamental rights and sent to the National Police Commissioner for adjudication. The Police Commissioner fully agreed with the Complaints Body in 11 of the 59 cases and partly agreed in 26. In 2010, the Complaints Body received 531 complaints and delivered 428 decisions, out of which 166 cases were considered “severe” violations of fundamental rights. These cases were also sent to the Police Commissioner, who fully agreed with 14 of the Complaint Body’s decisions and partly agreed with 4 others.¹⁰ These statistics do not suggest that this organization is not performing its mandate.

[43] The evidence is that the government has put in place a process to deal with corrupt, incompetent, police officers and those who might abuse their authority or refuse to carry out their duties due to racism. The claimants did not test this avenue of state protection because, according to their testimony, they were not aware of it and the principal claimant was afraid to seek redress regarding police inaction. I note that the agency did not come into existence until 2008 and may not have been well known upon its initiation. The important issue for this analysis, however, is that it does exist, that the claimants would have access to it and that it does take action on issues such as these claimants say they fear if they were to return to Hungary.

[44] The government has established four Ombudsmen in Hungary. One of these is dedicated to Minorities. The Minorities Ombudsman is authorized to act in all cases arising under the scope of the *Minorities Act*.¹¹ This includes individual as well as collective minority

¹⁰ Exhibit 5, NDP, Hungary 20 April 2011. Item 10.2 HUN103566.E. 22 September 2010. Police corruption, including recourse available to those with a complaint of police corruption or inaction in response to crimes; state funded agencies available to assist complainants.

¹¹ Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.

rights (such as participation in education provided in the minority language, political and cultural equality, full participation in public life, maintaining contacts with the mother country, minority programs on the public service television, establishing and maintaining minority educational institutions) as well as the formation and operation of minority self-governments to promote minority rights.

[45] According to the Minorities Ombudsman, both he and the General Ombudsman, accept complaints of “maladministration,” which includes racist or discriminatory behaviour, by public administrators or service suppliers. He maintains that this is the best way to make the discrimination public. Although the decisions they make are not binding on public service providers or public authorities, their investigations “encourage consensus [or] mediation” and exert pressure for public policy changes.

[46] The Minorities Ombudsman receives 800 to 1,000 complaints annually. In 2010, 75 percent of those complaints were related to the Roma and included charges of racial discrimination and unequal treatment. The HHC added that in 2009, out of 1,012 complaints, 69 complained about the police, 34 the penitentiaries, and 54 the courts; in 2010, out of 1,064 complaints, 73 were police-related, 34 penitentiary-related, and 45 court-related. According to the HHC, the annual report on the Minorities Ombudsman’s activities indicates that in 2009, out of 1,012 complaints, 603 (61%) involved the Roma, and in 2010, 739 (70%) of 1,064 complaints were Roma-related.

[47] The HHC also said that on 1 January 2012, the four ombudsmen will be replaced by one ombudsman, the Commissioner of Fundamental Rights, in accordance with Hungary’s new constitution. The new ombudsman and his deputies will be responsible to “defend the interests of future generations and the rights of nationalities living in Hungary.”¹²

[48] These statistics do not suggest that these positions are simply put in place to give the appearance that state protection exists in Hungary.

¹² *Ibid.*

[49] The documentary evidence does not suggest that state protection in Hungary is perfect. Several media sources report that corruption remains a problem in Hungary but is found mainly in lower levels of government. In a survey conducted by PricewaterhouseCoopers they found that “the perception of corruption and bribery remained considerably higher than their reported incidence”. The World Bank and the European Bank for Reconstruction claims that the level of corruption has fallen in Hungary since 2002. Transparency International ranks Hungary 40 out of 159 countries in the Corruption Perceptions Index in 2005. According to the index, Hungary has a “corruption rating” of 5.0 on a scale of 0 to 10 where 0 is “highly corrupt” and 10 is “highly clean.”¹³

[50] While some agencies describe the Hungarian government’s efforts to combat corruption as largely unsuccessful Transparency International Regional Director Miklos Marschall stated that Hungary’s anti-corruption institutional framework was “adequate”. Freedom House recognizes the “significant improvement” in Hungarian institutions devoted to combating corruption and also suggests that more effort is needed from state bodies to reinforce the importance of the anticorruption initiatives. They also state that Hungary is considered one of the least corrupt post-Communist states in Europe.¹⁴

[51] Perfection, however, is not the standard that this panel must analyze when determining whether the claimants would reasonably be able to avail themselves of state protection should they return to their home country.

[52] The Federal Court has determined that it is “adequacy” that is the measure.

[53] In addition to the agencies mentioned above the Ministry of Public Administration and Justice (formerly the Ministry of Justice and Law Enforcement) operated an antidiscrimination legal service network that provided free legal aid to Roma in cases where they encountered ethnic discrimination. Human rights NGOs lamented that the lawyers’ offices were located in the larger cities, rendering them inaccessible to those Roma living in deep poverty in small

¹³ Exhibit 5, NDP, Hungary 20 April 2011, Item 7.1 HUN101698.E. 31 August 2006. State actions and effectiveness in combating governmental and police corruption (January 2005 - August 2006).

¹⁴ *Ibid.*

villages. This, however, does not apply to these claimants as they were in **XXXXXX** a city of approximately **XXXXXX** and **XXXXXX** thousand people according to the principal claimant. HCLU received reports that the network's lawyers rejected some Romani cases.

[54] Other than reporting four separate incidents to front line police officers the claimants made no attempts to elevate their report to senior police officials or to take their concerns to government agencies mandated to investigate exactly these types of incidents. Local failures of state protection do not necessarily imply that state protection is unavailable.¹⁵

[55] The claimants did not file a complaint with the ICBP nor did they attempt to seek assistance from any other government agency including the Justice branch where they could receive free legal advice. I acknowledge that legal aid is not, in and by itself, a state protection mechanism, however its existence is a crucial element to allow people such as these claimant's access to the courts where their complaints dealing with human rights abuses may be heard and the laws enforced.

[56] There is insufficient credible evidence before me for me to conclude that they would be subjecting themselves to any further danger if they made a complaint as is the principal claimant's subjective belief. The principal claimant testified she came to this conclusion as a result of discussions with relatives. There is no evidence as to how these relatives formed their conclusions. It is highly likely that it is grounded in the significant suspicion that Roma hold regarding the police as opposed to objective evidence. I place little weight on this portion of the principal claimant's evidence.

[57] The adequacy of state protection cannot be assessed on the basis of the claimant's reluctance or failure to seek it. The point is that, should they decide to seek it, it will be available to them. The claimants cannot argue that state protection is inadequate because, as Roma, they are reluctant to seek it because they do not believe they will receive any satisfaction. They may well have subjective beliefs to this affect, but if the state can, objectively speaking, provide adequate protection for Roma in their position then they have not rebutted the presumption of

¹⁵ *Gregor, Slavomir v. M.C.I.* (F.C., no. IMM-1623-11), Near, September 12, 2011, 2011 FC 1068.

state protection. Their failure in the past to consult state authorities should not be taken as an indication that they would not provide protection in the future upon their return.¹⁶

[58] I find that there is no valid reason why they could not utilize any of the state protection services identified, if they required it, should they return to their home country.

[59] I will now comment on the discrimination that the principal claimant testified that she faced all of her life in Hungary and what actions the government is taking to address the situation.

[60] Country documents state that Roma and the other 12 official minorities are entitled to elect their own minority self-governments (the “MSG”), which organize minority activities and handle cultural, educational, and linguistic affairs. The president of each MSG also has the right to attend and speak at local government assemblies.¹⁷

[61] Since January 2009, in order to apply for EU and government funds for urban rehabilitation and public education projects, every city must attach to its proposal a desegregation plan outlining planned actions to eradicate segregation in housing and public education. The government opened 200 positions in public administration for Romani college graduates. By year’s end 165 applicants had passed the mandatory civil servant entry exam and 66 were placed in various national and county government offices.

[62] The Hungarian government has provided programs to assist Roma with further education. Most ministries and country labour centres have special officers for Romani affairs focused on the needs of the Romani community. One example is the Ministry of Social Affairs and Labour, established a Department for Roma integration which pays attention to the enhancement of the labour market opportunities of the Roma population, operates a scholarship scheme for the

¹⁶ *Torales Bolanos, Magaly v. M.C.I.* (F.C., no. IMM-2482-10), Russell, March 30, 2011; 2011 FC 388.

¹⁷ Exhibit 5, NDP, Hungary 20 April 2011, Item 2.1 United States (US). 8 April 2011. Department of State. “Hungary.” *Country Reports on Human Rights Practices for 2010*, p. 35.

young Roma, and cooperates with organizations for the protection of the rights and interests of Roma people.¹⁸

[63] A recent test case in Hungary has seen the Hungarian Supreme Court put a value on the detrimental effects of segregation has on Roma children. The court awarded damages of 100,000 forints (\$450.00) to five Roma children who were segregated by the school authorities in Miskolc, Hungary's third largest city. This fine represents roughly three months income for many Roma families.¹⁹ Decisions such as this send a clear message to any educator that may hold racist views that if he/she acts on those racist opinions, as the principal claimant was subjected to in the past that he/she will be held accountable by the courts. I have already commented on the importance that the availability of legal aid plays in Roma accessing the courts. This decision is an excellent example of the value that is added to state protection mechanisms when minorities have access to the courts through legal representation.

[64] There is no evidence of a complete breakdown of state apparatus in Hungary. In fact the evidence is that the state is making a serious effort to ensure state protection is available to the Roma and that discrimination has been identified as an issue that the government is attacking. There is insufficient credible evidence of similarly situated individuals who did not receive state protection. There is insufficient credible evidence of past personal experience that would lead the claimants to believe that state protection would not reasonably be available to them at any level in the police service or by any other government organization. I do note that the principal claimant did not receive adequate state protection when she reported to front line police officers on four different occasions however, her failure to pursue the state protection avenues that were open to her beyond the front line police prevents me from logically concluding that state protection would not be available to her at any level.

¹⁸ Exhibit 5, NDP, Hungary 20 April 2011, Item 13.2, Council of Europe, "Third Report Submitted by Hungary Pursuant to Article 25, Para. 1 of the Framework Convention for the Protection of National Minorities," June 4, 2009.

¹⁹ Exhibit 5, NDP, Hungary 20 April 2011, Item 13.1 *The Guardian* [United Kingdom]. 1 August 2010. Balazs Sahin-Toth and Rachel Nicholson. "Roma: Hope in Hungary."

[65] I find based on the evidence before me that the government of Hungary is taking significant steps to ensure that state protection is available to their citizens including those of Roma ancestry and that this protection would reasonably be available to these claimants should they require it and should they request it. I also find based on the evidence before me that this protection is adequate. I further find that it would not be unreasonable for these claimants, in their set of circumstances, to seek such protection.

[66] The evidence before me does not refute the claimants' burden of presenting clear and convincing evidence of the state's inability or unwillingness to protect them. Whether considered under section 96 or subsection 97(1) my finding that state protection is available is fatal to both.

[67] I therefore reject the claims of both the principal and associated claimant under section 96 and subsection 97(1) of the *Act*.

CONCLUSION

[68] Having considered all the evidence I find that **XXXXXX XXXXXX** and **XXXXXX XXXXXX** are not Convention Refugees or persons in need of protection and I therefore reject their claim.

(signed)

“Gordon C. McRae”

Gordon C. McRae

19 January 2012

Date