

AT AUCKLAND

Appellants:	AB (Slovakia) AF (Czech Republic)
Before:	B A Dingle (Member)
Counsel for the Appellants:	J McBride
Counsel for the Respondent:	No Appearance
Date of Hearing:	22 & 23 June 2015
Date of Decision:	29 June 2015

DECISION

[1] These are appeals against the decisions of a refugee and protection officer declining to grant refugee status and protected person status to the appellants, four of whom are citizens of Slovakia and one of whom is a citizen of the Czech Republic.

[2] The appellants are members of a family group. AA is the mother of two sons, BB and CC, and their sister DD. Another daughter of AA is resident in New Zealand, having come here to live with her partner in 2012. EE is a cousin of the children and he is also DD's partner. EE is a citizen of the Czech Republic, but all of the other appellants are citizens of Slovakia. Before coming to New Zealand, EE was living in Slovakia with the other appellants.

[3] The appeals were heard jointly and the evidence of each appellant is considered in respect of their own appeal and the appeals of the other appellants.

THE APPELLANTS' CASE

[4] The crux of the family's claim to be at risk of serious harm in Slovakia is because they are targeted by a skinhead group. The factual background to this

predicament is relevant to all of the appellants and is therefore set out below as one narrative. EE also claims to be at risk of harm in the Czech Republic and the factual background relevant to that part of his claim is set out separately below.

[5] The appellants have all experienced significant discrimination, harassment, bullying and verbal abuse in their everyday lives because of their Roma ethnicity. Each of the appellants recounted particular experiences during their childhood, school and adult years. They described a perpetual undercurrent of racism that accompanied everything that they did from shopping at the local supermarket, swimming at a public swimming pool, travelling on buses and trains and simply walking down the street.

[6] In addition to the discrimination, harassment and verbal abuse that accompanied their everyday activities, all of the appellants have experienced incidents of physical violence. A selective summary of events which follows indicates the kind of incidents they recall.

[7] On one occasion AA was pushed over and kicked by a fellow worker who had long shown antipathy towards Roma in general and AA in particular. As a result of being kicked, AA's ear was injured and required surgery to restore her hearing.

[8] The sons, BB and CC, were the victims of frequent physical attacks at school and in employment, as well as more random attacks perpetrated by strangers. On one occasion in approximately 1999, the sons went to a disco with their uncle (AA's younger brother) and, after receiving verbal harassment and threats, all three of them were beaten because they were Roma. The uncle received a particularly serious injury resulting in the amputation of his arm. BB and CC have also been the victims of more random physical attacks by strangers on trains, at bus stations and while out socialising.

[9] AA was determined that all of her children should complete trade or tertiary training. She hoped that this would help them to find employment and to escape the poverty experienced by so many Roma. Each of the children was able to complete post-school training. However, each of them experienced significant harassment and discrimination in the course of their study and DD, in particular, felt traumatised by the level of marginalisation she experienced as the only Roma studying in her course.

[10] Common to all appellants was also the experience of discrimination in employment. They reported recurring difficulties in securing employment and would often be offered a job over the telephone only to arrive at the workplace and be told that the job was no longer available. Once they did find employment, they would frequently be discriminated against in the type of tasks they were required to perform. They suffered frequent verbal abuse and occasional physical attacks by both peers and superiors. Complaints to employers about discrimination or attacks rarely resulted in any real change.

Targeted for Violence by Neighbours

[11] Since 1998, the family had lived in Z village where they were the only Roma family. For the first decade of their residence there they found that, as long as they lived quietly and kept to themselves, they did not experience any serious problems. The family's house was located in a small enclave of houses and buildings on one edge of the village. On the opposite side of the road was a sports field and beyond that rural farm land.

[12] In approximately 2009, a village businessman FF established a bar within 50 metres of the appellants' house. There was just one empty section between their house and the bar. In approximately 2010, FF moved into a house which was behind the bar, adjacent to the appellant's house. FF's wife and teenage son lived there with him.

[13] As soon as FF and his family moved in, he made it clear that he did not like having a Roma family as neighbours. Regular arguments between AA and FF began. At this time AA, DD and another of AA's daughters (who does not have a refugee claim) were living in the house permanently. BB and CC would come home regularly for weekends and other holiday periods.

[14] A frequent cause of arguments between AA and FF was that FF's large Alsatian dog would wander into the appellants' backyard and frighten the appellants and their own small family dog. FF also complained that there was a smell of sewerage coming from the appellants' drains and made various allegations that they were unhygienic and creating health hazards.

[15] FF son, GG, was approximately 15 years of age when they moved in's next door. After approximately a year, GG began associating with a skinhead group, the members of which would meet regularly at FF's bar. On some occasions the bar would close for a private function which appeared to be a meeting of

skinheads. After drinking at the bar, members of the group, including GG, would yell abuse and obscenities outside the appellant's home. They would also rattle the gate and fence, throw stones or eggs at the house and throw fireworks at the windows. The behaviour became increasingly hostile and the appellants began to worry constantly for their physical safety.

[16] On at least one occasion, AA raised the issue with FF and asked him to stop the harassment but no discernible change in the situation occurred.

[17] The appellants also observed that local police officers were frequently at the bar. Police patrol cars would often be parked outside and officers, both uniformed and off-duty, would frequently visit the bar.

[18] In mid-2011, a football tournament was held at the sports-ground opposite the appellants' house. A large group of skinheads attended as spectators. As BB walked towards the bus-stop, he was approached by GG and two other skin-heads who were in the crowd. GG then head-butted BB and the other men kicked him. After some minutes BB escaped and ran to a nearby forested area to hide until the crowd had dispersed and he could return home. His nose was broken but the local doctor was unwilling to treat him. BB attended a hospital in a bigger town but he did not take up the option to have surgery on his nose.

[19] In July 2012, the appellants were all at home celebrating AA's birthday when a Molotov cocktail was thrown through a lounge-room window. Earlier in the evening the appellant had been enjoying a barbeque outside but when they heard the skinheads shouting racial abuse from the bar they moved inside. An hour or two later, the skinheads were on the road outside their house and were shouting abuse and threats and rattling the gate. The appellants could recognise GG's voice amongst those shouting. Then a Molotov cocktail smashed through one of the windows, setting the curtains and a couch on fire.

[20] After the appellant put out the fire and carried the smouldering couch outside, BB rang the police. Two police officers arrived approximately an hour later. They spoke to the appellants who told them that GG and his associates were responsible for the attack. The police did not take photographs or make notes. The officers then asked CC to accompany them to the bar so that they could hear "the other side of the story". Once there, CC saw that the police officers were well-known to and on friendly terms with FF. Although CC was asked to wait in a room while the officers talked with FF in another room, CC overheard the officers making racist comments and talking about whether the

appellants had “got what they deserved”. CC also heard FF admit that GG had been responsible for the attack, after which the police officers told FF not to worry. When the officers finished that conversation they assured CC that a report would be made and sent out to the appellants. No police report was ever received by the appellants.

[21] The following night the appellants’ dog was killed in the back yard. They did not hear the attack but awoke in the morning to find the kennel and dog had been set alight. The smell of petrol was evident. This development scared the appellants sufficiently for them to leave and stay temporarily with AA’s sister in a nearby village. However, AA’s sister had a small house only and there was not enough room for the appellants to stay permanently. They returned home after a few days.

[22] After the attack, the skinhead group and GG reverted to shouting abuse and throwing stones and fireworks at the house whenever they were around. The appellant’s attempted to avoid any interaction and would pretend not to be home on the weekend nights when the group most often congregated at the bar.

[23] In mid-2013, EE was attacked by GG at a nearby train station while he was waiting for DD to arrive so that he could walk her home. GG assaulted EE and stated that he would attack the whole family.

[24] In late August 2013, GG and a group of approximately five skin-heads kicked down the door of the house, entered and assaulted the appellants. AA was hit and kicked in the stomach. BB and CC were attacked and subdued as was EE. DD was pinned on the ground and sexually assaulted while EE was forced to watch. Within minutes, GG yelled to the other skinheads that it was time to go, at which point the skinheads threatened the family that they would kill them and left. The appellants did not report the incident to the police because they did not believe they would get a useful response and they also feared it may exacerbate the situation. They again left the house and stayed with AA’s sister.

[25] However, after approximately a week at the sister’s house, the appellants were located there by GG. One day, a group of skinheads on motorcycles circled on the grass outside the sister’s house, shouting anti-Roma threats and abuse. They then dismounted and started throwing stones and fireworks at the house and pushing the fence. The appellant’s heard GG’s voice amongst the others but they were hiding out of sight and so did not see him. The skinheads were shouting that they would find the appellants wherever they tried to hide. After about 30 minutes

the skinheads left. At that point the sister and her husband asked the appellants to return to their own house out of fear of what might happen next.

[26] The appellants returned home but recognised that their situation was getting desperate. In November 2013 they sold their house so that they could afford to buy air tickets to travel to New Zealand, where AA's second daughter had settled with her partner. They had to wait until February 2014 to travel however, because the cost of flights was too high during the holiday season.

[27] In December 2013, EE was again beaten by GG's associates when he was out shopping. When he sought medical attention, the doctor in their village refused to see him until DD and EE threatened to advise the police of his refusal. At that point the doctor wrote a report so that the incident could be reported to police but did not prescribe any painkillers or other medication. DD and EE reported the matter to the police but the officer implied that they were lying about the incident. They never received a report or notice of investigation about the incident.

EE's case

[28] EE is a citizen of the Czech Republic. He was born in Slovakia but moved with his family to the Czech Republic when he was five years of age. After attending primary school for a year, EE was moved to a 'special school' for children with learning or behavioural difficulties. He recalls his school years as being marked by constant intimidation, bullying and threats.

[29] EE and his family also had problems with skinheads and racists in the Czech Republic. In addition to the usual experiences of discrimination, harassment and random physical attacks, the family were also targeted for attacks. EE's father had a particular problem with a skinhead with whom he worked. Throughout 2009, the skinhead would regularly attack EE's father on his way home from work. The situation became so serious that EE's mother insisted that EE's father give up his employment to escape the attacks.

[30] In late 2009, the family received a letter delivered through the front door which had the word "skinheads" on the envelope along with a swastika. The letter contained a threat to kill the family. Approximately 20 minutes later a group of men stood outside the house screaming abuse and threats.

[31] The following day, the family were attacked in their home by police. Late in the evening the police knocked on the door and pushed their way in, stating that they were searching for drugs. The police stood the family members with their backs to each other and tied a rope around them. The officers then searched the home, breaking household objects and abusing EE's family. Finally, when they had found nothing of interest, they untied the family and made insulting and derogatory comments as they left. Within a month, the rest of EE's family had collected sufficient money to buy air tickets to the United Kingdom. EE did not travel with them because he wanted to attend a building course he had finally been accepted into. EE stayed with an uncle.

[32] EE also had a girlfriend in the Czech Republic whom he did not wish to leave. However, that relationship brought its own difficulties because EE's girlfriend was a white Czech and her family were opposed to the relationship. EE and his girlfriend were often harassed by skinheads and others about their relationship. Eventually the girlfriend did not want to continue the relationship because of the problems EE had with skinheads.

[33] At around the same time, EE received texts which threatened harm to him and his family. After the breakdown of his relationship, EE travelled to the United Kingdom to be with his family but, even there, the texts continued. He threw away his phone and bought another one and only gave the number to family members, including his uncle in the Czech Republic.

[34] In late 2009 and early 2010, EE began regular contact with DD. In approximately May 2010, he travelled to Slovakia to meet her. They subsequently began a relationship and have remained together until the present time.

[35] Even after moving to Slovakia, EE received a number of texts on his new mobile telephone. He has since discovered that his uncle in the Czech Republic shared his new telephone number with EE's ex-girlfriend who requested it. EE does not know if his ex-girlfriend or someone in her family was responsible for the texts. After receiving the texts he smashed his telephone and became wary of using the computer or a mobile telephone to communicate with anyone.

[36] EE lived with DD and her family in Z village from 2010 until their departure in early 2014. He was therefore also a victim of the abuse, threats and assaults at the hands of GG and his associates. He has twice been beaten by GG — once while out shopping and once at the train station.

Material and Submissions Received

[37] The Tribunal has received the RSB file, a copy of which has been provided to the appellant. In addition, counsel has provided further information, including:

- (a) on 12 June 2015, updated statements from each of the appellants; a statement from AA's New Zealand-resident daughter, HH, and a handwritten letter from AA's brother in Slovakia; and
- (b) on 17 June 2015, counsel's opening submissions, updated country information and updated chronologies for each of the appellants.

[38] Counsel also made closing submissions on the second day of the hearing.

ASSESSMENT

[39] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellant as:

- (a) a refugee under the 1951 Convention Relating to the Status of Refugees ("the Refugee Convention") (section 129); and
- (b) a protected person under the 1984 Convention Against Torture (section 130); and
- (c) a protected person under the 1966 International Covenant on Civil and Political Rights ("the ICCPR") (section 131).

[40] In determining whether the appellant is a refugee or a protected person, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellant's account.

Credibility

[41] The appellants' accounts are accepted as credible. The testimony given by the appellants was broadly consistent with the accounts each had previously advanced in respect of their claims. Their respective accounts were also consistent with those of the others. The appellants were able to describe events spontaneously and their respective testimony was consistent with the independent country information available to the Tribunal. The Tribunal has been provided with

images downloaded from satellite maps which corroborate their account of the relative location of their house, the sports-ground and the bar.

[42] While the Tribunal did note some concerns with CC's recollection of the second time the appellant stayed with AA's sister (and the skinhead harassment), it finds that he is entitled to the benefit of any doubt in that connection.

[43] The Tribunal therefore finds that appellants AA, BB, CC and DD are a family of Roma ethnicity, from Slovakia. EE is a young man of Roma ethnicity from the Czech Republic. The appellants have all been subjected to discrimination and violence throughout their lives. The family as a whole have experienced persistent and targeted violence from GG and his skinhead associates. The police have been unwilling to investigate the assaults and attacks that have been reported and appear to have at least informal links with GG and his father FF.

[44] EE's family have also been targeted for severe violence and intimidation in the Czech Republic including, on one occasion, an attack by police officers against the family. Even after he and his family had moved away from the Czech Republic, EE continued to receive threatening text messages which may have been related to his ex-girlfriend's family. EE's family remain living outside the Czech Republic.

The Refugee Convention

[45] Section 129(1) of the Act provides that:

"A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention."

[46] Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[47] In terms of *Refugee Appeal No 70074* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

Assessment of the Claim to Refugee Status

[48] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection — see *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90]. Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection — see *Refugee Appeal No 71427* (16 August 2000) at [67].

[49] In determining what is meant by “well-founded” in article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective — see *Refugee Appeal No 76044* (11 September 2008) at [57].

Objectively, on the facts as found, is there a real chance of the Slovakian appellants being persecuted if returned to Slovakia

[50] Before turning to assess the appellant’s predicament, it is necessary to outline relevant country information

Country information - Slovakia

[51] Human rights groups and monitoring bodies have consistently reported that Roma in Slovakia face widespread discrimination in employment, education, housing, access to health and social services, and access to state protection from violence. In recent times, this social marginalisation has been accompanied by increasing political and media expressions of anti-Roma sentiment. Also reported is an apparent growth in far-right fascist and skinhead groups who actively

promote anti-Roma hate-speech and violence against Roma and other marginalised groups.

[52] The United States Department of State *Country Reports on Human Rights Practices 2014: Slovakia* (25 June 2015) (the DOS Report) records that the Slovak Republic is a multi-party parliamentary democracy led by a Prime Minister Robert Fico. Mr Fico heads the Smer-SD (Direction-Social Democracy) party which secured a majority of seats in the 150-member National Council in the 2012 parliamentary elections. Although Smer-SD has relatively centre-left views on socio-economic policy, it has more nationalist and socially conservative views on other issues. See The Democratic Society *Direction — Social Democracy (Smer-SD)* (19 May 2014) <www.demsoc.org>. Mr Fico has reportedly stated that Slovakia had been “established for Slovaks, not for minorities”, and raised the ire of the country’s Roma community with plans for boarding schools for Roma schoolchildren. He dismissed critics of these plans as “human rights angels” and has painted Roma issues as being “European” problems rather than being something for the Slovakian government to address. See: M Kneuer et al. “2014 Slovakia Report” *Sustainable Governance Indicators* <www.sgi-network.org>.

[53] Other developments indicate a growing wave of anti-Roma attitude amongst the general population and politicians.

[54] Since 2008, a series of walls have been erected beside Roma settlements with the intention of separating the Roma from the rest of the community. As reported in the article “Walls are going up again” *The Economist* (25 July 2013), at least 14 walls segregating predominantly Roma neighbourhoods have been erected since 2008. At the time of the article, the most recent wall was in Košice, Slovakia’s second largest city and one of two “European Capitals of Culture” for 2013. In that case, the local council spent nearly €5,000 erecting the barrier. Other towns in heavily Roma-populated eastern Slovakia, including Michalovce, Ostrovany and Šarišské Michaľany also have walls. The *Economist* article notes that, while such walls exist elsewhere in Europe, the Slovak trend is exponentially stronger than elsewhere.

[55] A further phenomenon of concern noted by human rights groups is the rising number of anti-Roma marches and protests. In its report, *Slovakia: Country Profile 2011–2012* (16 July 2013), the European Roma Rights Centre (the ERRC) identified eleven anti-Roma marches in the previous two years. It

noted at p 26 that one of the worst examples involved the mayor of Zlaté Moravce, who said during his New Year's speech:

"...we do order in the city and we will force to leave those, who do not work and are parasites on us whites... I promise you, you will have to work and for work you will be paid...no one will be parasites on us and the others... thank you to all citizens... and declare fight against discrimination of whites in the city and whites in this country...."

[56] The ERRC report and other sources record regular marches, often organised by town mayors, which are blatantly anti-Roma and which, in some cases, have been accompanied by violence.

[57] In late 2013, Marian Kotleba, a right-wing extremist, was elected regional governor of Banska Bystrica in central Slovakia. He is a former leader of a banned far-right organisation and now leads the ultra-nationalist Our Slovakia party. He previously organised marches against Slovakia's Roma. See "Slovak 'neo-Nazi' wins election in Banska Bystrica" BBC News (24 November 2013) <www.bbc.com>. He also promised to end the "unjust preferential treatment for not only gypsy parasites" and hinted at the creation of militia-style groups to provide security near Romani communities. Following his victory, a party newsletter announced that Kotleba's victory had initiated "real change," which would not be complete until the country was "Slovak, Christian, and white". See DOS report, *ibid*.

[58] Since 2011, more than 400 mayors from Slovakia have joined the movement *Zobud'me sa!* (Let's wake up!). The movement promotes the demolition of Romani settlements under environmental law by defining them as waste dumps. See: European Roma Rights Centre *Slovakia: Country Profile 2011–2012* (16 July 2013) ("the ERRC report").

[59] Country information also records targeted violence against Roma individuals, families and groups. Commentators repeatedly note the lack of useful statistics collected by police and government authorities about racially-motivated violence which makes it is impossible to estimate the number of attacks. The ERRC report records a significant increase in racially motivated attacks in 2011 and expressed concern at the ongoing trend. Notwithstanding the lack of statistics, the anecdotal reports suggest that racially-motivated violence is continuing to increase.

[60] Moreover, the racist attitude of many police means that most attacks against Roma go unreported. See the ECRI report, *ibid*, pp 22-25. A number of

research reports have found the police to be ineffective, with police responses ranging from refusal to record complaints or take statements, a lack of investigation of alleged offences against Roma, to active mistreatment of Roma complainants and in some cases the Roma victims being charged and tried for offences themselves. For a summary of relevant country information sources see Immigration and Refugee Board of Canada *Slovak Republic: Police structure from local to national levels; instances of police refusing to file or investigate a complaint of a crime, including recourse available to the victim; whether a copy of a police complaint or report is provided to the victim 2013-March 2014* (3 April 2014).

[61] As noted above, in some instances the police themselves are responsible for perpetrating violence on Roma communities and individuals. For example, in June 2013 approximately 60 police officers raided Romani settlements in the town of Moldava and Bodvou, allegedly resulting in multiple injuries to residents, including children, and property damage. What followed next is illustrative of the lack of government will to address police behaviour. Following the raid, the Ministry of Interior (the same government agency responsible for the police department) concluded that the police raid was lawful. The ombudswoman reviewed the matter and disagreed, finding that police violated the rights of individuals in conducting the raid. However, after inviting her to one of its sessions, the cabinet refused to allow her to speak about the raid and concluded that she did not follow the necessary procedures in approaching the government with her complaints. Following the cabinet session, senior ministers criticised a journalist for treating Roma testimony as credible when it contradicted testimonies by police officers. Some months later, Prime Minister Fico visited police officers in Moldava and Bodvou and stated that he wanted “police officers in Slovakia to know that the Slovak government simply stands behind them.” See The United States Department of State *Country Reports on Human Rights Practices: Slovakia 2014* (25 June 2015).

[62] As to the prevalence and size of neo-Nazi and skinhead groups in Slovakia this, too, is difficult to accurately estimate. A recent report of the Council of Europe cites figures from 2011 that there were about 500 active members of neo-Nazi groups along with several thousand sympathizers. See: Council of Europe European Commission Against Racism and Intolerance (ECRI) *ECRI Report on Slovakia (Fifth monitoring cycle): Adopted on 19 June 2014* (16 September 2014) (“the ECRI Report”). Other sources suggest that recent economic difficulties and the atmosphere of impunity for those who publicly express anti-Roma sentiment

generally, has seen a significant increase in the number of sympathisers and supporters.

[63] Country information also records the cooperation and cohesion between neo-Nazi groups throughout central Europe whereby they support each other at public gatherings and share models of organisation and action. Further, it records the efforts of such groups to have their members employed in state administration and the police force and to manipulate social media and other IT skills to enhance their power base and increase information and data-sharing. See, for example, the analysis of right-wing extremist groups in M Mares “Trans-National Cooperation of Right-Wing Extremists in East-Central Europe” *Center for European and North Atlantic Affairs* (2012) <www.cenaa.org>.

Objectively, on the facts as found, is there a real chance of the appellants being persecuted if returned to Slovakia?

[64] The Tribunal finds there is a real chance of the appellants, including EE, being subjected to further violence by GG and associated skinheads if returned to Slovakia. The past history of assaults, attacks and intimidation against the family has been so sustained that it transcends any notion of transient or passing antipathy. That view is reinforced by the fact that, when the family attempted to avoid further mistreatment by hiding at a relative’s house, they were deliberately sought out there and the harassment continued. The evidence is such that the Tribunal is satisfied that, if the family were to return to their village, the harassment and mistreatment would immediately resume at the same, undoubtedly serious, level.

[65] As to the availability of state protection (which would require that the risk of serious harm fall below the level of a real chance), the Tribunal finds that there is none. The appellants have sought state protection from the Slovakian police previously and have not received an effective response on any occasion. The appellants anticipate that they would receive a similarly ineffective response in the future. In light of their past experiences, and the country information summarised above, the Tribunal agrees that there is no state protection for Roma in Slovakia such that the risk of serious harm that the appellants face on return falls below the real chance threshold.

Internal protection alternative

[66] The Tribunal has also turned its mind to whether the risk to the appellants

is restricted to just the eastern part of Slovakia or whether they could access state protection away from the area in which they were living.

[67] It is well-established in New Zealand refugee law that the appropriate approach to the question of whether there is an internal protection alternative is the analysis posited by the 1999 *Michigan Guidelines on the Internal Protection Alternative*. As adopted in *Refugee Appeal No 71684* (29 October 1999) at [64]–[73], the *Michigan Guidelines* require that, if there is a proposed site of internal protection within the state’s territory to which access is practical, safe and legal, the three questions to be addressed in relation to it are:

- (a) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- (b) Is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of the kind that might give rise to the risk of return to the place of origin?
- (c) Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

[68] As each of the three requirements is cumulative, an internal protection alternative will only exist if the answer to each question is “yes”.

[69] In a case involving a Roma family in the Czech Republic, *AC (Czech Republic)* [2012] 800183–186, the Tribunal observed at [69]:

“The Czech Republic is a small country, barely 400kms across at its widest point. Were the appellants to take any normal resettlement steps, such as being recorded in the telephone directory, registering on the electoral roll or registering a motor vehicle, their whereabouts would be easily ascertainable. Absent their going into hiding (which they are not required to do), the ability of BB to locate and reach the appellants would appear likely to exist across the country. Further, even if some areas of the country have a better police response to Roma complaints, it is impossible to say which those areas might be and the appellants are not required to gamble on finding themselves in a good one.”

[70] In this respect, the situation of the appellants in Slovakia is analogous. They are required to register their residence with municipal authorities wherever they settle and will, in the ordinary course of life, also be required to provide government authorities with their address for the purposes of things such as medical registration, and driver and vehicle licensing. The Tribunal is satisfied, particularly because of the apparent close connections between the perpetrators of the harm and the police, and the increasing use of information-sharing by

skinhead groups, that the first question posed by the *Michigan Guidelines* is answered in the negative. It follows that there is no internal protection alternative.

Conclusion on the Claim to Refugee Status for the Appellants AA, BB, CC and DD

[71] Each of the appellants AA, BB, CC and DD has a well-founded fear of being persecuted if they were to return to the Slovakia.

Objectively, on the facts as found, is there a real chance of EE being persecuted if returned to the Czech Republic?

[72] It is also necessary to address the claim by EE, which must be considered in the light of his citizenship of the Czech Republic. Notwithstanding that he was resident in Slovakia from 2010, he is not a national of that country and his claim falls to be assessed against the Czech Republic.

[73] Put briefly, the situation of the Roma population in the Czech Republic is much the same as that in neighbouring Slovakia. In a recent decision the Tribunal noted that Roma in the Czech Republic have endured a long history of discrimination and racially motivated skinhead violence. See *AE (Czech Republic)* [2014] IPT 80059 (17 December 2014). It also noted that the increasing antipathy directed toward the Roma population including the wave of anti-Roma riots throughout the country in 2013. It cites the Updated Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 and 2013 for The Czech Republic which states, at p 33:

“However, the growing urgency of the human rights situation was shown in early 2013 by the beginning of a wave of anti-Roma riots, which spread this year over the entire country. Representatives of a platform of organisations trying to prevent racist marches counted, to date, (mid-November 2013) about 35 demonstrations with a racist background. The largest of these demonstrations had about 1,000 participants and involved major riots of protestors against police forces that tried to hinder the skinheads from reaching the Roma neighbourhoods or counter-demonstrations. Most of these demonstrations were registered by country-wide operating fascist organisations or extremist political parties. While the participation was, in some cases, limited to a small group of skinheads, in other cases the core group of violent fascists was joined by ordinary local citizens – especially large numbers of teenagers. As the Czech Republic already experienced earlier series of racist protests that were however limited to particular regions (2008/9 in Litvnov-Jánov, 2011 in Nový Bydžov and mainly the Šluknov region), experts from the NGO Konexe speak from the third wave of anti-Roma protests in the Czech Republic. From their perspective, each of these waves:

‘...significantly worsens the position of the Roma minority in the Czech Republic, increases anti-Roma attitudes, and also further shifts the borders

of what is still considered to be “normal”. Each of these waves increases interethnic tensions in the Czech Republic. Each new wave is worse and stronger than the past one and the breaks between the waves are getting shorter.’ (Miroslav Brož, Konexe)”

[74] For further analysis of the recent violence perpetrated against Roma in the Czech Republic see Amnesty International ‘*We Ask for Justice: Europe’s Failure to Protect Roma from Racist Violence*’ (8 April 2014) at pp 9–14.

[75] Even in light of the country information, there is a greater degree of uncertainty about the predicament of EE, because he has not lived in the Czech Republic for some years. It is possible that, if he were to return there now, the skinheads who terrorised his family into leaving in 2009 would either not be around or they would no longer remember him. A number of factors militate against that, however. First, the harassment of EE went on long after his parents had left. Both when he tried to stay with an uncle for the purpose of study and even after that, when he went to the United Kingdom, he received numerous threatening texts. The point is less that the skinheads found a way to obtain his new telephone number than the fact that they were sufficiently motivated to keep harassing him a long time after he had physically disappeared from the scene. Such sustained adverse interest might well have arisen from his relationship with a white Czech girl, a perceived effrontery which would not sit well with skinheads.

[76] It is the uncertainty surrounding that ongoing adverse interest in EE which, by a narrow margin, persuades the Tribunal that, if he returns to the Czech Republic, he is at risk of serious harm at the hands of skinheads. The small size of the Czech Republic has already been noted. EE is a young man of 26 years with limited work experience and no formal qualifications. He has no immediate family there for support and would likely have to return to the home of his uncle for accommodation, the same uncle who is known by his ex-girlfriend’s family. In what is already a highly marginalised sector of society, the Tribunal considers it inherently unlikely that EE would have the resources or ability to avoid the skinheads.

[77] The Tribunal is satisfied that EE has a well-founded fear of being persecuted for a Convention reason if he were to return to the Czech Republic.

Convention Reason

[78] In respect of all appellants, the relevant Convention reason is race.

Conclusion on Refugee Status

[79] Each of the appellants has a well-founded fear of being persecuted for a Convention reason if returned to the relevant country. Each is entitled to be recognised as a refugee.

The Convention Against Torture

[80] Section 130(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.”

[81] The appellants are recognised as refugees. By virtue of section 129(2) of the Act (the exceptions to which do not apply) they cannot be deported from New Zealand. This is in accordance with New Zealand’s *non-refoulement* obligation under both article 33 of the Refugee Convention and section 164(1) of the Act. Accordingly, the appellants are not persons requiring protection under the Convention Against Torture. They are not protected persons within the meaning of section 130 of the Act.

The ICCPR

[82] Section 131 of the Act provides that:

“(1) A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

...

(6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment.”

[83] For the reasons given in relation to the claim under the Convention Against Torture, the appellants cannot be deported from New Zealand. Accordingly, they are not in danger of being returned to either arbitrary deprivation of life or cruel, inhuman or degrading treatment. They are not persons requiring protection under the ICCPR. They are not protected persons within the meaning of section 131(1) of the Act.

CONCLUSION

[84] For the foregoing reasons, the Tribunal finds that the appellants:

- (a) are refugees within the meaning of the Refugee Convention;
- (b) are not protected persons within the meaning of the Convention Against Torture;
- (c) are not protected persons within the meaning of the Covenant on Civil and Political Rights.

[85] The appeals are allowed.

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