

0800663 [2008] RRTA 195 (26 May 2008)

DECISION RECORD

RRT CASE NUMBER: 0800663
COUNTRY OF REFERENCE: Romania
TRIBUNAL MEMBER: Wendy Boddison
DATE DECISION SIGNED: 26 May 2008
PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Romania, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal to give evidence and present arguments [Information deleted under section 431 of the *Migration Act 1958* as it may identify the applicant]. The applicant's sibling, Sibling 1, gave evidence to the Tribunal. The applicant was represented in relation to the review by his registered migration agent who attended the hearing.
21. The applicant was born in Romania. According to his protection visa application he was a Romanian Gypsy and a Pentecostal Christian. He had lived his entire life in City A.
22. The applicant claimed that because he was a gypsy he was continuously persecuted by the Romanian police, government and local officials. He was denied an education and was forcefully placed into an institution. He was accused and convicted of a crime that he did not commit and was unlawfully kept in police custody even though he was not guilty. He was beaten by the authorities and sustained an injury. He had always been treated as a second class citizen and there was a parallel legal system that allowed the authorities to treat him like an animal. He believed that if he was returned to Romania he would be subjected to more abuse, mistreatment and physical harm.
23. In a Statutory Declaration accompanying his application, the applicant explained that when he was young he was not allowed to speak his gypsy language, not even in his own home. During his childhood his parent informed him that his relative's house had been targeted and his relative had been killed. At school he was abused and spat at because he was a gypsy. He was not able to attend a normal school but was sent to an institution and as a result his education suffered immensely. It was the teachers' belief that gypsies were not well equipped to attend normal schools and follow in trades. He was trained in an occupation that was regarded as suitable for men in Romania. The serious trouble started when his sibling, Sibling 1, escaped from Romania in the late 1980s. The applicant's parent was repeatedly beaten by the authorities. His other sibling, Sibling 2, was also beaten and another one of his sibling was assaulted. The authorities came to their home often.
24. In the mid-1990s the applicant was arrested and accused of a crime. He was viciously beaten and forced to sign a false declaration of guilt. He was convicted of the crime and imprisoned. The applicant claimed he was accused, beaten and convicted for a crime that he did not commit. He suffered a permanent injury as a result.
25. In the late 1990s the applicant was home when some men came, and started calling the family members names and beating them badly. One of the neighbours called the authorities and when they arrived they took the applicant into custody. He was then told there was nothing

that they could do and that it was his own fault and he was beaten severely. When the applicant's parent was buried the grave was defaced and he believed the authorities were responsible for this. The gypsies in Romania had no right to enjoy legal protection. He was afraid that he would suffer further if he returned to Romania and would probably die in custody.

26. The applicant subsequently provided a further statement to the Department in which he described how in the early 2000s he had to go to an institution for treatment but the institution refused to treat him. He went to a different institution who eventually only agreed to treat him after he paid a bribe.
27. In the mid-2000s he was asleep when he heard people knocking on his door saying, "come out gypsy, we want to talk to you." As he was afraid, he did not open the door. The neighbours telephoned the authorities who arrived very quickly. When the authorities arrived the applicant opened the door and he was taken into custody. The authorities told the applicant that they had found no people at his house and accused him of lying and said that he would have to pay the price for waking them up and they beat him. [Information deleted: s431].
28. Person C from Organisation I provided a report. She noted that the applicant had attended on a few occasions over a short period. He indicated that he was contemplating suicide if his application failed because he could not return to the country where he had been used and abused. He described how the authorities or other people working for them, would intercept him on a regular basis; harass, question and sometimes beat him. After one serious assault he [information deleted: s431]. The applicant claimed that he was also accused of a crime that he did not commit and imprisoned, during which time he was beaten and tortured. [Information deleted: s431]. He had difficulty sleeping and had nightmares relating to his imprisonment and beatings in Romania. [Information deleted: s431]. He was placed on the waiting list for counselling at Organisation I.
29. The Tribunal received a letter from the applicant's advisors relating to the applicant. They submitted that the Tribunal had already acknowledged in a number of decisions the existence of persecution, police mistreatment, forceful relocation, segregation and other forms of human rights violations of the Roma population in the recent past. [Information deleted: s431]. The advisors submitted that the applicant's medical certificates corroborated claims of mistreatment, deprivation of education, school segregation and placement in an institution although he was a perfectly normal child. He experienced unlawful arrest, detention and torture. The situation of the Roma minority in Romania had been well documented, particularly in the US State Department reports, Amnesty International reports, Human Rights Watch reports and the European Court of Human Rights judgements. They concluded that there was a real chance that the applicant would be persecuted if he was forced to return to Romania. The level of mistreatment he had experienced in the past was of a high degree and was not mere discrimination. It was reasons of his ethnicity. They provided country information regarding the case of *Stoica v Romania* from the European Court of Human Rights, US State Department Report, 11 March 2008, Human Rights Watch Report and Amnesty International Reports.

Evidence at the hearing

30. The applicant told the Tribunal about the incident in the mid-1990s when he was picked up by the authorities and accused of a crime that he did not commit. He described how he was

beaten and detained. He explained that a few people altogether were accused of this crime. [Information deleted: s431].

31. The applicant lived in the house that was owned by his parents and he had lived in the same place all his life. He came from a family of numerous children. His parents were both employed. All of his siblings went to school. He described how he was discriminated against at school and bullied and abused. [Information deleted: s431]. He had been in contact with his sibling. He understood that the authorities came to the house and asked where he was had also assaulted his sibling His sibling was doing odd jobs in Romania. What happened to gypsies in Romania was that you started a new job, you worked for a few weeks and then the people who you worked for refused to pay you so you left.
32. After the applicant was released from custody he always seemed to be targeted by the authorities. He was often confronted by the authorities and sometimes beaten up. The last time this occurred was shortly before he left Romania. He had also been picked on and spat on and sworn at. The other people in Romania were always showing their hatred towards the Roma. They lived in an area that was predominately Romanian.
33. The applicant described the incident where few men came to his home and ordered him outside and beat him. When he went to report the incident, he was again beaten. A short time before leaving to come to Australia, the authorities called him outside and threatened him and said; gypsy, don't you dare leave the country because if you come back we are going to kill you and they beat him again.
34. The Tribunal asked the applicant why he thought he had been singled out for so much extreme treatment by the authorities. There were many Roma people in Romania and they could not all receive this treatment. He said that he did not know why. He thought the authorities might have been concerned about him leaving Romania and might have thought that he would talk about what happened to him in Romania. It appeared to him that the people who beat him honestly took pleasure from beating him.
35. The applicant's parent did not want him and his siblings to learn to speak the Roma language because he/she was concerned about them being identified as gypsies. He had been told by his parent that his relative had been killed as a result of an attack. He thought that his parent might have been a member of a gypsy organisation but he did not know much about it. They were not aware of any human rights groups that assisted the Roma in Romania. As far as he is aware, they had no power. Even the big leaders had no power in Romania.
36. The applicant was asked whether he had ever tried to leave Romania at an earlier time and he said that he went to Country E for a number of years. He first started going to Country E in the early 1990s. He ceased going in early 2000s. He always had problems when he returned to Romania and the authorities would accuse him of telling people about what happened to Roma people in Romania and they would beat him up. They also said that he went to Country E to commit crimes and to steal.
37. The Tribunal asked the applicant why he had described to the Tribunal a situation where he was being constantly beaten by the authorities in Romania, whereas to the immigration officer he had only described a few incidents. He responded that when he was interviewed he was very scared and forgot to mention a number of things. He described how, just before he left Romania, he was given a very severe beating [Information deleted: s431].

38. The applicant outlined the medical problems he had as a result of the beatings he had received and how he was refused treatment in Romania and was forced to pay exorbitant bribes. His sibling, Sibling 1 sent the money to him from Country J in order to pay the bribes. He described how when Sibling 1 went to Country J things changed for the worst. When his parent and Sibling 2 left Romania it also became more difficult. When his parent died they had nobody left. He was forced to go to an institution in Romania. He had always wanted to learn a trade but they would never let him do this sort of class in school. He did various manual work and odd jobs in Romania. He was often not paid for the work that he did.
39. The applicant's sibling, Sibling 3, told the Tribunal that he/she suffered a lot at school and was forced to go to an institution. He/she would often be beaten up at school by the other students and they would steal his/her lunch and fill his/her lunch box with stones. He/she described the incident when he/she went to visit his/her other sibling in City F and was removed from the train and had to walk many kilometres.
40. [Information deleted: s431].
41. [Information deleted: s.431].
42. The applicant provided an article from the internet regarding the incident where the Foreign Minister insulted the Roma people in Parliament and how he had now been forced to resign.
43. Sibling 1 gave evidence of having been living in Country J for many years. He/she returned to Romania in the late 1990s when their parent died and was quite shocked at all the abuse that he/she received for being a gypsy. He/she described how he/she escaped from Romania and went from Country G to Country H and then to Country J. [Information deleted: s431]. He/she was shocked to see the state that his/her siblings were in and, in particular, [information deleted: s431]. He/she stated that another sibling was killed when he/she was young and he/she believed that the authorities had arranged this. [Information deleted: s431]. His/her older sibling finished school and was a very good student but was unable to further his/her education. He/she was also very good at school but was not able to further his/her education. His/her sibling was assaulted and when they reported the matter to the authorities, [information deleted: s431]. He/she was aware that his/her sibling who remained in Romania was still receiving this sort of treatment. After the visa applicant left, his/her sibling had been beaten up by the police.
44. His/her parent and sibling were involved in a gypsy organisation but being involved in this sort of organisation did not help with anything. The applicant, since being in Australia, suffered from nightmares. He has scars and injuries from the treatment that he received in Romania. [Information deleted: s431]

Independent country information

45. UK Home Office Operation Guidance Note 10 May 2006 states:
 - 3.6.2 Treatment. According to the census of March 2002, 89.5 percent of the total population were ethnic Romanians, 6.6 percent were ethnic Hungarians and 2.5 percent were Roma (Gypsies). There are also communities of Germans, Ukrainians (Ruthenians), Carpatho- Rusyns and Turks.

3.6.3 The law forbids discrimination based on race, gender, disability, ethnicity, language, or social status, among other categories. However, during 2005 the Government did not enforce these provisions effectively in some circumstances and women, Roma and other minorities were often subject to discrimination and violence. In August 2003, a new ordinance increased fines for discriminatory acts up to 40 million Romanian Lei (approximately £750). The National Council for Combating Discrimination (NCCD) is responsible for enforcing the law.

3.6.4 Discrimination against the Roma minority continued to be widespread in 2005 and the social inequalities to which the Roma community is exposed remained considerable. The Roma community faces extremely high risks of poverty, exclusion and isolation across the country. Living conditions are poor and access to social and health services are limited.

3.6.5 According to the Romanian Government, only 27 percent of Roma had steady jobs in 2004 and only half of those jobs were considered skilled. In April 2004, following complaints by several NGOs that monitored such situations, the Ministry of Education nominally prohibited segregation in schools in a notification that was not legally binding. However, during 2005, Romani children continued to be segregated from other students in some schools.

3.6.6 Societal violence and discrimination against the Roma population remained a pervasive problem in 2005. During 2005, Romani NGOs continued to claim that police used excessive force against Roma and subjected them to brutal treatment and harassment. On 12 April 2005, a police officer in Moreni allegedly beat a Romani individual in a bar, resulting in injuries that required six days of hospitalisation. The case is being investigated. It was also reported that on two separate occasions in November 2005, police searched Romani neighbourhoods during an eviction operation and physically assaulted several Roma.

3.6.7 There were still reports in 2005 of ill-treatment by law enforcement personnel, including excessive use of force and use of lethal force in non-compliance with European Union and international standards. As in the past, many of the reported victims were Roma. In the first nine months of 2005, human rights monitors identified 19 cases of violence or abuse against Roma, including police abuse and segregation in schools.

46. US Department of State 2008 Country Reports on Human Rights Practices for 2007 Romania 11 March 2008 states:

National/Racial/Ethnic Minorities

A study released in June by the Institute of Public Policies and Romani CRISS pointed to the danger of online discrimination and hate speech on the discussion forums of four national dailies. The study revealed that hate speech was mostly directed against Roma and homosexuals.

On August 1, the government established an institute to study national minority issues, to research the history, culture, religion, and government-implemented policies regarding national minorities. The institute will also conduct surveys and polls regarding national minorities.

Discrimination against Roma remained a serious problem. NGOs reported that Roma were denied access to, or refused service in, many public places. Romani groups complained that police brutality, including beatings and harassment, was routine. On

December 11, Roma were evicted from a tent camp illegally built close to the belt road of Bucharest sector 6. In January and August 2006, police forcibly beat and evicted Roma from their homes.

According to a Roma Inclusion Barometer, launched by the Soros Foundation Romania in February, Roma continued to feel discriminated against in society; over 50 percent viewed themselves as disadvantaged in interactions with local government, the police, and the healthcare system. Forty-one percent of Roma believed that they were treated worse than other ethnic groups in the education system.

The annual AI report on global human rights issues, released in May, gave particular attention to the Roma, who continued to face discrimination in all areas including employment, education and housing.

In December the Civic Alliance of Romanian Roma published a progress report assessing government actions during the first two years of the Decade of Roma Inclusion (2005-2015). The report indicated that the government had made significant progress in the areas of health care and education for Roma, but had not established programs to address the continued lack of jobs and housing.

Roma faced persistent poverty with poor access to government services, few employment opportunities, high rates of school attrition, inadequate health care, and pervasive discrimination. Although some government initiatives have shown positive results, Roma activists viewed many programs as replacing Roma culture with a deepening culture of dependence.

A 2004 European Commission report estimated that the Roma population numbered between 1.8 and 2.5 million persons, although the most recent official census of 2002 reported the significantly lower number of 535,000. According to NGOs, government figures were low because many Roma either did not reveal their ethnicity or lacked any form of identification.

According to data from the 2002 census, the average number of years that Roma spent in school was 6.8 for the population over ten years of age. The national average was 11.2 years, almost double the rate of Roma school participation. Only 0.19 percent of the Roma population had a university education, compared to 7 percent for the general population. The disparity between Roma and non-Roma was even more striking at the level of secondary school where the completion rate for the general population was 64.2 percent and for the Roma population was only 29.1 percent. According to the Roma Inclusion Barometer, 23 percent of the Roma were illiterate, and 95 percent did not complete high school.

NGOs and the media reported that discrimination by teachers and other students against Romani students served as an additional disincentive for Romani children to complete their studies. There were reports of Romani children being placed in the back of classrooms, of teachers ignoring Romani students, and of unimpeded bullying of Romani students by other schoolchildren. In some communities, authorities placed Romani students in separate classrooms from other students and even in separate schools. During the 2006-2007 school year, Romani CRISS identified 23 cases of Romani children segregated from other students in schools in Gorj, Dolj, Brasov, Cluj, Neamt, Constanta, Salaj, Harghita, Sibiu, and Mures counties. At the beginning of the year, Romani CRISS filed five complaints with the CNCD regarding the segregation of Romani students in schools in Craiova, Dolj County; Roman, Neamt County; Dumbraveni, Sibiu County; and Atid, Harghita County. On May 24, the

CNCD decided that the segregation of Roma students at the school in Craiova represented a discriminatory act. The other four complaints were pending.

On July 19, the Ministry of Education issued an order forbidding the school segregation of Romani students, a decision requested by Romani CRISS long ago.

According to OSI, ethnic Roma were five times as likely as members of the majority population to live below the poverty line. OSI also estimated that approximately 60 percent of Roma lived segregated from the majority population in communities with substandard housing and without basic governmental services such as schools, adequate healthcare, running water, electricity, and waste disposal.

Exclusion from the administrative and legal system was a problem for Roma communities. During the year, according to OSI research, 4.9 percent of Roma lacked a birth certificate. Among non-Roma citizens, less than one percent lacked a birth certificate. Similarly, 6 percent of Roma, compared to 1.5 percent of non-Roma, lacked identity cards. The lack of identity documents excluded Roma from participating in elections, receiving social benefits, accessing health insurance, securing property documents, and participating in the labor market. Roma were also disproportionately unemployed and underemployed.

On June 6, the government approved the establishment of a commission, comprised of Romani and non-Romani experts in Roma history, to study the historical period of Roma slavery and to draft a report on this issue by the end of the year.

Stereotypes and use of discriminatory language against Roma were widespread; journalists and even high-ranking officials frequently made discriminatory statements. On May 19, suspended president Traian Basescu used the term "stinking gypsy" to describe a television reporter. In answer to a complaint by Romani CRISS, the CNCD decided the president's statement was discriminatory and admonished him. The president lost his appeal of the court's decision. Romani CRISS filed similar complaints against Social Democrat parliamentarian Vasile Dancu, who, on June 18, pointed to the "difference between Social Democracy and Gypsy-like attitudes," and Prime Minister Calin Popescu Tariceanu, whose comments reportedly associated Roma with criminality on July 2. On July 17, the CNCD decided that the prime minister's statement was not a discriminatory act but Romani CRISS appealed the decision. A decision was pending in Dancu's case. On November 2, Foreign Minister Adrian Cioroianu stated on television, with reference to some Roma who committed crimes abroad, that the government "should buy land in the Egyptian desert to place there those who embarrass us." Nine NGOs demanded Cioroianu's resignation, the CNCD issued a statement condemning his statement, and Romani CRISS filed a complaint with the CNCD. On November 15, the CNCD decided it could not rule on the complaint because it had already adopted a position the case when it publicly blamed Cioroianu.

In January 2006 the CNCD decided that an anti-Romani speech made by Corneliu Vadim Tudor, the leader of the extreme right Greater Romania Party, was in breach of the antidiscrimination law; in September 2006 the CNCD fined the New Right (Noua Dreapta), an organization with extremist and xenophobic views, and three of its leaders for discriminatory articles against the Roma on the organization's Web site.

Based on a 2003 CNCD ruling that the owner of a public bar committed a discriminatory act by posting a notice denying access to Roma, the victims filed a complaint, and a court in Botosani ruled in 2006 that the defendant should provide

access to Roma to the bar and pay moral damages amounting to \$230 (600 lei) to the plaintiffs.

On August 21, a violent conflict broke out between ethnic Hungarians and Roma in Apata village, Brasov County. Private security guards reportedly observed Roma stealing crops from a farm. A mob of approximately 150 ethnic Hungarians quickly formed, and the mob, reportedly armed with axes, clubs, and stones, entered the Roma neighborhood and broke the windows of several Roma houses. About 130 gendarmes and police were called in to diffuse the near-riot. Three people were slightly injured, no one was hospitalized. The two groups blamed each other for the conflict. To defuse future tensions, county and local authorities established joint teams, comprised of land owners and Roma representatives, to patrol the area in order to prevent any theft of crops. An investigation of the incident was in progress at year's end.

On April 26, the ECHR took note of the government's acceptance of responsibility for violent incidents in Casinul Nou, Harghita County in 1990, which resulted in the burning of 29 Roma houses, and in Plaiesii de Sus, Harghita County in 1991, during which one Roma was killed and 27 Roma houses were set on fire. In addition, the government agreed to pay compensation of approximately \$180,000 (133,000 euros) to the victims and to implement a program to improve interethnic relations in the two localities.

Despite a 2005 ruling in favor of the Roma, in April 2006 a court in Ludus ruled against the seizure of perpetrators' property to compensate Romani victims of mob violence in the village of Hadareni in 1993 that resulted in the deaths of four persons and the burning of 13 Romani houses. On January 19, the Mures County court rejected an appeal of this ruling. In September Roma representatives filed a new complaint with the ECHR, stating that their rights to a fair trial and property were infringed upon.

47. **Strasbourg Court Sanctions Romania for Failure to Remedy Police Ill-Treatment of Romani Man, Judgment strengthens discrimination law notes:**

The European Court of Human Rights today delivered its judgment in the case of Cobzaru v. Romania concerning the beating of a Romani man by police officers while in custody in Mangalia, Romania, and the ensuing official investigation. The Court held that Romania is responsible for breaches of the prohibition of inhuman and degrading treatment (Article 3), the right to an effective remedy (Article 13) and the prohibition of discrimination (Article 14). The applicant was represented by Monica Macovei, a Bucharest-based lawyer, the Romanian Helsinki Committee, and the European Roma Rights Centre.

On 4 July 1997 after a domestic incident involving his partner and her relatives, the applicant went to the local police station asking for help. However, instead of offering help, two police officers brutally ill-treated him, and eventually released him after two hours. As a result of the beating, the applicant suffered from craniocerebral trauma and numerous bruises and haematoma all over his body. The official investigation into the assault ended with a decision of non-indictment, and was marked by numerous derogatory remarks on the part of the authorities in relation to the applicant's and the witnesses' Roma ethnicity.

In relation to the applicant's claims under Article 3, the Court noted the numerous shortcomings of the official investigation, and concluded that the Government did not satisfactorily establish that the applicant's injuries were caused otherwise than by the

treatment inflicted on him while he was under police control, thus warranting a finding of both the substantive and the procedural aspects of Article 3.

The Court also established a violation of Article 13 of the Convention, since no effective investigation into the allegations brought by the applicant was carried out, and moreover, since the negative result of the criminal proceedings prevented the applicant from availing of any other domestic remedy.

The ruling on the applicant's Article 14 claim brings welcome clarification to the Court's case-law on the prohibition of discrimination. Firstly, the Court held that there was no evidence that the beating was motivated by racial hatred, and therefore did not find a substantive violation of Article 14. Secondly however, with regard to the procedural aspect of Article 14, the Court noted that even in the absence of prima facie plausible information to prove that the assault on the applicant was racially-motivated, the authorities were under an obligation to investigate a possible racist motive to the attack given the number and notoriety of such incidents in post communist Romania, and the general policies adopted by the Romanian government to combat discrimination against the Roma. Thirdly, the Court held that during the official investigation, a number of derogatory remarks were made in relation to the applicant's Roma origin, which disclosed the general discriminatory attitudes of the authorities, which in itself constituted discrimination contrary to Article 14.

The ERRC and APADOR consider that the judgment in the *Cobzaru* case is important for two reasons. Firstly, it highlights Romania's failure to provide effective protection to its Roma minority from harm meted out by police officers, as well as the widespread anti-Roma discrimination in the country. Secondly, *Cobzaru* further crystallizes the Court's case-law in the field of discrimination, principally by attaching significance to the general context of anti-Roma discrimination in Romania, and thus going beyond the particulars of the applicant's situation. (<http://www.errc.org/cikk.php?cikk=2853&archiv=1>)

48. See also the European Court of Human Rights judgement in the case of *Stoica v. Romania* (Application no. 42722/02) decided 4 March 2008.
49. ECRI, Third report on Romania, CRI (2006) adopted on 24 June 2005 made public on 21 February 2006 states:

130. Nevertheless, ECRI notes that many problems remain. For example, in spite of the above-mentioned notification, Roma children are still segregated: they still all too often find themselves in schools of a distinctly lower standard than the others, or are relegated to the back of the classroom or placed in separate classes. As this Notification is not legally binding, few practical steps are taken against schools or teachers who breach its principles. ECRI also notes that despite recognition of the importance of their role, school mediators still do not have a clear and legally defined status. It also notes the Romanian authorities' statement that few Roma children assert their identity: during the 2002-2003 school year, only 160,000 Roma pupils identified themselves as such. Although this figure increased to 183,000 the following year, ECRI notes that only 10% of these pupils wished to learn Roma language and history. ECRI therefore notes that Roma children are faced with a problem of self-esteem which the authorities will have to help remedy.

FINDINGS AND REASONS

50. The Tribunal found the applicant to be an impressive witness who provided his account in an unhesitating and plausible manner. His presence and demeanour was consistent with his account of being intimidated, harassed and regularly beaten by the authorities.
51. The Tribunal accepts that the applicant is a member of the Roma ethnic group and accepts that he has been on occasion detained and beaten by the authorities because of his ethnicity. The country information suggests that allegations involving the Roma are often not investigated properly which adds credence to the applicant's claim that he was accused and convicted of a crime he did not commit. With the passage of time it is difficult for the Tribunal to assess this claim, however even if he was responsible for this crime the Tribunal accepts that when he was charged with criminal offences he was treated more harshly because of his ethnicity and that this adverse treatment amounted to serious harm.
52. The applicant has provided a detailed account of serious physical abuse he claimed to have suffered at the hands of the authorities over an extensive period of time. Medical evidence has been provided to the Tribunal that confirms the nature of some of his injuries. There is nothing before the Tribunal that contradicts the applicant's claims as to how these injuries were sustained.
53. The applicant's account of being segregated at school is consistent with the country information set out above and the Tribunal accepts that this occurred.
54. The Tribunal acknowledges that although the country information indicates that Roma are subject to discriminatory beatings by the authorities, the scale and regularity of the beating which the applicant claimed to experience seems to be extreme and in objective terms there appeared to be no reason for the family to be singled out in this way.
55. [Information deleted: s431]. The Tribunal found the witnesses to be credible and their accounts were consistent with the applicant's account and provide a context to the problems the applicant has faced.
56. The applicant's parent was involved in a Roma organisation and this may have led to the family developing a profile which has been enhanced by the applicant's siblings leaving Romania Further once the applicant was convicted of criminal offence it may have meant that he was constantly under the eye of the authorities and subjected to ill-treatment.
57. The Tribunal accepts that the applicant has suffered serious harm that amounts to persecution in the past for reasons of being of Roma ethnicity.
58. The country information above, whilst acknowledging that steps are being taken to improve institutional attitudes towards the Roma in Romania, indicates there are still regular abuses occurring that are directed at the Roma and clearly Roma are targeted in Romania for ill-treatment by the authorities simply because they are Roma. The Tribunal accepts, based on the applicant's past experiences and the country information quoted above, that there is a real chance the applicant will be persecuted in the reasonably foreseeable future for reasons of his Roma ethnicity. As the authorities are the perpetrator of the claimed persecution it is clear that no state protection is available to the applicant.

59. The Tribunal has considered whether it would be reasonable for the applicant to relocate to avoid the real chance that he would be persecuted. On one hand the applicant's family seem to have established a profile with the authorities that has led to ill-treatment and perhaps if they moved to where they were not known they would not experience these difficulties. However, on the other hand, the country information indicates that attitudes to the Roma people are entrenched throughout the country and this is demonstrated by high level politicians making derogatory comments about the Roma in national forums. Based on the country information the Tribunal could not be satisfied that relocation would negate the real chance that the applicant would be persecuted in the reasonably foreseeable future for reasons of being a member of the Roma ethnic minority and therefore he is a refugee within the meaning of the Convention.

CONCLUSIONS

60. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

61. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer's ID: ntreva