REFUGEE APPEAL NO. 296/92

RE KT

AND

REFUGEE APPEAL NO. 297/92

RE LK

AT DUNEDIN

Before: B.O. Nicholson (Chairman)
R.P.G. Haines (Member)
G.W. Lombard (Non-voting Member)

Counsel for the Appellants: Ms N. Crafar

Appearing for the NZIS: No appearance

Date of Hearing: 13 October 1992

Date of Decision: 5 February 1993

DECISION OF THE AUTHORITY DELIVERED BY R.P.G. HAINES

This is an appeal against the decision of the Refugee Status Section of the New Zealand Immigration Service declining the grant of refugee status to the appellants, both of whom are Hungarian nationals.

The first appellant is the mother of the second appellant. By consent their appeals were heard consecutively on the same day with each appellant being present at the hearing of the other's appeal. We acceded to their request that the evidence of each appellant be treated as evidence in support of the appeal by the other appellant. In effect, the two appeals are to be determined according to the common pool of evidence, the respective cases being inextricably interwoven.

Very little background information was tendered in evidence by the appellants. The Authority's own researches subsequent to the hearing brought to light further information. That information has been disclosed to the appellants and they have each tendered further statements and submissions commenting on the new information and have, in turn, tendered translated material of their own. All of the new evidence and submissions have been taken into account in the preparation of this decision.

THE FIRST APPELLANT'S CASE

The first appellant is a Hungarian national, forty years of age who has two children by her first husband whom she divorced in Hungary in 1986. Her eldest son (the second appellant) is presently twenty years of age. Her youngest son (who has not applied for refugee status) is presently fifteen years of age.

The first appellant and her two sons arrived in New Zealand on 4 December 1988, she then intending to marry a New Zealand resident of Hungarian origin. However, within a matter of weeks the relationship with her intended husband deteriorated with the result that the couple went their separate ways and the marriage plans were cancelled.

Subsequently, in April 1989 the appellant became engaged to a Dunedin resident. In July 1989 she applied for residence on the basis of an offer of employment. That application was declined on 18 January 1990. On 26 January 1990 the first appellant and her fiancé were married and almost simultaneously a further residence application was lodged, this time based upon marriage grounds. The New Zealand Immigration Service conducted a marriage interview on 12 April 1990 but a decision was made to defer a decision on the application until later in the year. An indication was given that if the first appellant's second husband still fully supported her residence application at that time, it was likely that favourable consideration would be given to the grant of residence status. On 23 April 1990 the appellant's second husband advised the New Zealand Immigration Service that the relationship had come to an end and that he withdrew his support for his wife's residence application. Subsequently, by letter dated 18 May 1990 the first appellant was advised that her residence application had again been declined.

Under cover of a solicitor's letter dated 14 June 1990 the first and second appellants' applied for refugee status.

Both appellants were interviewed by the Refugee Status Section of the New Zealand Immigration Service at Dunedin on 29 October 1991. By letter dated 18 March 1992 they were advised that their applications had been declined. From that decision they now appeal.

The first appellant stated that her mother and father originally lived in Budapest but following the Second World War they were ordered by the then Communist government to live in a rural settlement and it was in this settlement that the first appellant was born. She said that the reason for the expulsion of her parents lay in the fact that her grandfather was considered to be a Nazi supporter. Apparently the first appellant's mother was able to return to Budapest when the appellant was a few months old and the first appellant was brought up by her grandmother.

As a result of her family background the first appellant was not accepted for the university courses in which she wished to enrol but she acknowledged that the last occasion on which she experienced difficulty due to her family background was in approximately 1975. She attributes this to the fact that when she married in 1970 she adopted her husband's name. The Authority is of the view that such difficulties as the appellant has experienced as a result of her family background are now extremely remote in time and have no real bearing on this appeal.

The appellant explained that she was brought up in the Roman Catholic Church and when living in Hungary it was her practice to attend church almost every Sunday. However, she claimed in her written statement of evidence tendered in support of her appeal that she was unable to practise her religious beliefs in that when she attended church she had to take care to ensure that she was not seen by anyone she knew. For this reason she went to some lengths to ensure that she did not attend the same church regularly. The reason was that while it was not against the law in Hungary to practise a religion, it was well-known to the citizenry that anyone who practised a religious belief would be harassed by the authorities and also discriminated against. For example, if an employer became aware that an employee was practising a religious belief, the employee would lose her job. This notwithstanding, however, for some fifteen years the appellant was able to practise her religion without her employer finding out.

Conceding that she has been absent from Hungary now for four years the appellant said that she had no specific details of the recent changes in Hungary but it was her belief that the situation had not improved and further believed that the conditions she had experienced still prevailed in Hungary.

She had a similar opinion in relation to the political situation.

In addition to basing her refugee claim on religious persecution, she relied upon the fact that when she travelled to New Zealand in December 1988 she had permission from the Hungarian authorities to be absent from Hungary for a period of twelve months only. She has well overstayed that period. She fears that upon her return she will be punished and cited by way of example a family of her acquaintance who returned to Hungary in 1988 after a period of seven years absence. The father of that family was fined and sentenced to a period of three months imprisonment. It was her belief that the same system prevailed in Hungary today, although she conceded that she had no specific information in this respect.

Asked whether she had corresponded with friends in Hungary, she advised that she had indeed done so, but felt that her friends were unable to tell her about the prevailing political conditions as they were too scared to do so. Therefore, although fearing that conditions in Hungary had not changed, or had in fact deteriorated, she was unable to refer us to any evidence to support her beliefs other than her own uninformed understanding of the situation. But as mentioned, she has now, subsequent to the appeal hearing tendered a number of newspaper articles together with English translations as well as a further brief in which she recounts what she has been told by friends living in Hungary.

The final ground on which the first appellant’s case was based is that were the family to return to Hungary, her eldest son, the second appellant, would face punishment, if not persecution by reason of his breach of the laws governing compulsory military training. We therefore turn to address specifically the second appellant’s case.

THE SECOND APPELLANT’S CASE

The second appellant was born on 22 May 1972. His sixteenth birthday was therefore on 22 May 1988. His passport was issued two days prior to that birthday on 20 May 1988.

The second appellant told us that at the relevant time young men aged between sixteen and eighteen years were sent registration papers for compulsory military training. A medical examination was undergone, forms obtained from the particular school then being attended and the papers delivered to the military. A decision was then taken by the military as to precisely when the particular individual would be called up and in which section of the army that person would be required to serve. Only two weeks notice was given as to when an individual would be required by the army.

The ages between which compulsory military training was undertaken were eighteen to twenty-four years. Thereafter individuals remained eligible for further call-ups until the
age of fifty-six years.

As a corollary to the compulsory military training system, young men eligible for military training required permission before they could leave Hungary.

The concern of the appellant arises from the fact that he left Hungary before he received his registration papers and without obtaining the necessary permission. He said that he was fortunate in that at the time of his departure from Hungary he was not asked whether he had the requisite permission.

It is his belief that the punishment that he is likely to face upon return to Hungary is a period of three year's imprisonment, loss of his passport and then conscription into the army immediately following discharge from prison. In addition, he believed that persons in this category are treated extremely badly in the army and are forced to attend a special section where they undergo rigorous training by way of further punishment. A person known to the appellant who in 1986 had served a period in this special section emerged from the experience "broken down mentally, was aggressive and had no future". To make things worse, there remained in the individual's file an endorsement noting the transgression with the result that for the rest of his own life the second appellant feared that he would face discrimination, harassment and loss of privileges.

The second appellant said that since his arrival in New Zealand he had learnt from the tenants now occupying the flat previously occupied by his family that shortly after his departure for New Zealand military service registration papers had arrived but were returned to the authorities, and that subsequently on two occasions military officers had called at the address looking for the appellant.

He said that were he required to return to Hungary it would be a matter of time before the authorities caught up with him. If they were not waiting for him at the border, he would be located almost immediately thereafter as his identity book had now expired and he would need to renew it in order to comply with the various rules and regulations of Hungary.

The appellant stressed that he had no objection to compulsory military training as such. However, he believed that his failure to register, his failure to obtain the requisite permission to leave Hungary, and his failure to return to Hungary in order to serve his time in the army would result in him being perceived as a traitor.

Asked about the source of his information as to the penalty for failing to complete military service, the appellant could answer only that it was “common knowledge” amongst Hungarians. He also added that he believed that in addition to being imprisoned he would also face a very substantial monetary fine.

He was concerned about the effect on his mother and brother should the expected calamities befall him.

The second appellant also referred to the difficulties encountered by the family in practising their religion.

In relation to the matter of the family’s background, the appellant’s mother fairly conceded that neither of her sons had suffered in this respect as she had gone to some lengths to ensure that they were known by her first husband’s surname and she had also ensured that they were active participants in a sports club supported by the Ministry of Internal Affairs and the Police. As both her sons were successful sportsmen, the clubs paid for such items as clothes, shoes, trips abroad and assisted with entry into high school. In this way they were protected against any discrimination they might otherwise suffer.

THE ISSUES

The Inclusion Clause in Article 1A(2) relevantly provides that a refugee is a person who has a:
“... 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.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well- founded fear, he has not availed himself of the protection of one of the countries of which he is a national.”
In the present context, in relation to each separate appellant, we formulate the issues before us as follows:

1. Is the appellant genuinely in fear?

2. If so, is the harm feared of sufficient gravity to amount to persecution?

3. If so, is that fear well-founded?

4. If so, is the persecution feared persecution for a Convention reason?

This is the formulation we employed in *Refugee Appeal No. 1/91 Re TLY and Refugee Appeal No. 2/91 Re LAB* (11 July 1991).

ASSESSMENT OF THE APPELLANTS' CASE

The credibility of the first and second appellants was accepted, though we noted a disposition to exaggerate aspects of their case. This favourable credibility finding does not, however, mean that we accept their respective assessments of what they can expect were they to return to Hungary.

The essential issue in relation to both appellants is whether their fear is well-founded. In this respect we find against both appellants as it is our conclusion that their fears are not well-founded.

Both 1988 and 1989 were watershed years in Hungary's history with the result that when reporting on developments in the year 1990 the Department of State *Country Reports on Human Rights Practices for 1990* (February 1991) was able to state at 1176:

"In 1990 Hungary evolved into a working multiparty democracy. The Hungarian Socialist Party was defeated in free parliamentary elections in March and April, and a coalition government was formed by three of the parties represented in Parliament."

Commenting on the Department of State report, the Lawyers Committee for Human Rights *Critique: Review of the Department of State's Country Reports on Human Rights Practices for 1990* (July 1991) 110 observed that:

"Once again, the report on Hungary is, with only minor exceptions, a measured and comprehensive survey of a period of dramatic change in the country's history. With the free parliamentary elections of March and April, Hungary's **evolution to an independent constitutional democracy is complete**." [emphasis added]

Religion

Addressing the issue of religion, the *Country Reports on Human Rights Practices for 1990* at 1176 stated:

"In 1990 Hungary consolidated the signal human rights gains of 1989 ... The 1989 landmark law of freedom of conscience and religion, which removed restrictions on religious practise, paved the way for the reopening of scores of religious orders and schools. The government in February restored full diplomatic relations with the Vatican, and a Papal Nuncio has since been accredited to Hungary."

And at 1178:

"Hungarian citizens are no longer imprisoned for the peaceful expression of political, social or religious beliefs."

And again at 1179:

"The law on freedom of conscience and religion adopted at the end of 1989 radically altered conditions of religious expression and education after decades of official suppression. Religious denominations became free to establish places of worship and instruction. From late-1989 on, more than 60 religious orders and numerous seminaries and schools were established or reopened. Instructors in religion must register once with their local governments, but yearly renewals were abolished. Official control of religious education ceased.

Work continued on the return of confiscated church properties ...."

The only comment made on the foregoing in the Lawyers Committee for Human Rights *Critique* (July 1991) 110, 112 is in the following terms:

"The section on freedom of religion would have benefited from inclusion of the fact that the option of 22 months' civil service (in contrast to a year's compulsory military service) is now available for individuals with religious objections to military service. Hundreds of individuals had been imprisoned for refusal to serve in the military on religious grounds under the previous regime."

The more recent Department of State *Country Reports on Human Rights Practices for 1991* (February 1992) is couched in very similar terms, noting at p.1135 that "Hungary is largely Roman Catholic by tradition; members of other faiths practise their religions freely.".

The Lawyers Committee for Human Rights *Critique: Review of the US Department of State's Country Reports on Human Rights Practices for 1991* (July 1992) 139 records:

"The report on Hungary is once again a generally fair, accurate and comprehensive survey of developments in the legal protections accorded human rights in the new constitutional democracy. The developments themselves, although in places halting, are almost entirely positive."

Against this clear and uncontradicted evidence, we simply cannot accept that there is any foundation to the claim that the appellants will face difficulty, discrimination or persecution by virtue of their religious beliefs.

Other Human Rights

The 1990 *Country Reports* also records at 1181 that in 1990 Hungary was not subject to allegations or investigations of human rights abuses by any international or non-governmental body. The 1991 *Country Reports* makes no reference to any such allegations. On the contrary, it records the proliferation of various non-governmental human rights organizations. See p.1136:

"Several human rights organizations operate in Hungary. Prominent among these are the Hungarian Helsinki Committee, the Wallenberg Association for Minority Rights, and the Hungarian Human Rights Foundation. A 25-member parliamentary committee for Human, Minority and Religious Rights oversees the field of human rights."

It is difficult to accept that the want of specific information supporting the various claims made by the appellants is attributable to the fact that it is not possible to get information from Hungary on the prevailing human rights situation.

It is our conclusion that during their four-year sojourn in New Zealand, the appellants have been almost entirely isolated from radical and profound changes in their country of origin. It is almost as if they have been caught in a time warp. In particular, they have no understanding at all of the progress that has been made in Hungary to protect human rights. In order to give some idea as to the profound nature of the changes that have taken place we refer to the following quote taken from Pogany, *Human Rights in Hungary* (1992) Volume 41 International and Comparative Law Quarterly 676:

"... Hungary has taken equally remarkable, if less widely publicised, steps to secure the rule of law and the protection of human rights. These latter objectives have been pursued through the creation of a Constitutional Court, the introduction of democratic institutions and processes and the unequivocal recognition of fundamental rights in the Hungarian Constitution and in Acts of the National Assembly. The Constitutional Court, which is one of the first of its kind to be established in Eastern Europe, has been functioning since 1 January 1990. It has the power, *inter alia*, to annul any Hungarian law, whether in whole or in part, which conflicts with the Constitution.
...

The Hungarian Constitution, which was substantially amended in the period 1989/90, largely on the basis of protracted discussions between the then ruling Socialist Party and various opposition elements, accords a central position to the protection of human rights in Hungary. Thus, the Constitution states that the Hungarian republic "recognizes the inalienable and inviolable fundamental rights of man, and regards their observance and protection as the state's primary responsibility". Among the rights and principles specifically recognized in the Constitution are "the right to life and to human dignity" (section 54(1)); the principle that "no-one may be tortured or subjected to cruel, inhuman or degrading treatment or punishment" (section 54(2)); the principle that human and civil rights shall be applied in a non-discriminatory manner to everyone on Hungarian territory, without regard to "race, colour, sex, language, religion, political or other opinions, national or social origins, wealth, ancestry, or any other factors" (section 70A(1)); "the right to freedom and to personal security" (section 55(1)); "the right to freedom of thought, conscience and religion" (section 60(1)); "the right to freedom of communication" (section 61(1)); and the "the right of peaceful assembly" (section 62(1)).

In addition, a series of Acts have been passed by the Hungarian National Assembly which indicate the scope of particular rights recognized in the revised constitution. **Such Acts include an Act on Emigration and Immigration, recognizing the right of Hungarian citizens to travel abroad and to return to Hungary, as well as Acts on Freedom of Conscience and Religion**, on Freedom of Association, and on the right of citizens to participate in national and local elections. At the time of writing, additional bills have been drafted on the rights of national and ethnic minorities, a parliamentary commissioner for citizens' rights, and the protection of personal data.

Significantly, section 7(1) of the Constitution states that Hungary's legal system accepts "the generally recognized rules of international law" and that it shall continue "to ensure the consistency of Hungary's international legal obligations and her domestic law". This provision has assumed considerable practical importance as a result of Hungary's membership of the Council of Europe and its signature of the European Convention on Human Rights, as well as its participation in a number of other human rights instruments including the International Covenant on Civil and Political Rights.

However, it is the role of Hungary's Constitutional Court, in recognize and enforcing these rights, which may well prove to be decisive. **Through the vigorous assertion of its powers, the Court has already made a significant contribution to the protection of human rights in Hungary**."
[emphasis added]

The conclusion reached by Pogany at *op cit* 680 is that the one-party State and a socialist system in which human rights were denied unequivocal constitutional recognition, have been replaced by the separation of powers and judicial review of primary legislation.

The importance of the Constitutional Court is also a matter referred to in the Lawyers Committee for Human Rights *Critique: Review of US Department of State's Country Reports on Human Rights Practices for 1991* (July 1992) 139, 140:

"The Constitutional Court nevertheless has taken an extremely active role. In April, it ruled that the "collection and processing of personal data in the absence of a definite purpose and for arbitrary future use are unconstitutional". It also ruled as unconstitutional the "unlimited use" of personal identification numbers, including their use with identity cards. The decision, apparently based on a constitutional right to privacy, is not mentioned in the report. The report also fails to mention the Court's role in what the report termed a "major milestone" - the passage of a law compensating in part individuals whose property was nationalized by earlier regimes."

In the face of the foregoing there is simply no evidence to support the submission on behalf of the appellants that:

"Freedoms in Hungary are given by legislation but taken away in practice by the pressure placed on citizens by the Authorities." (see page 13 of the written submissions on behalf of the second appellant)

or the alternative claim that:

"The authorities have passed legislation giving freedom of movement, religion, expression and conscience, however it has made impossible for people to obtain any of these freedoms as they are restricted by the authorities for supposedly legitimate purposes." (see page 11 of the written submissions on behalf of the first appellant)

Consequences of Return

We turn now to the claim that the appellants will face penalties for remaining away from Hungary for more than the one year permitted. In the Summer of 1992, László Szoke, an employee in the Ministry for Foreign Affairs, Budapest wrote *Hungarian Perspectives on Emigration and Immigration in the New European Architecture* (1992) Volume 26 International Migration Review 305. In this article he expresses the opinion that in the years of the Communist regime's collapse - 1988-1990 - there were dramatic changes to the official Hungarian attitude to migration. In September 1989 the basic legal document concerning migration was accepted by Hungary's parliament. Whereas that body was then still Communist-dominated, the Law No. XXIX of 1989 on Emigration and Immigration was the outcome of co-ordination between the government and the Opposition Round Table being formed at that time.

"One of the so-called "fundamental laws" of the peaceful transition from communist dictatorship to a pluralistic parliamentary democracy worked out in late 1989 stipulates that:
It is a basic right of the citizens of Hungary to freely choose their place of living, to emigrate from Hungary and to return there (Article 1).
All Hungarian citizens living abroad are guaranteed by virtue of this law the right to return at any time they wish. This right cannot be limited (Article 5)."
op cit 309.

There is no mention whatever in this article of returnees facing punishment for overstaying their exit permits. Nor is there any such reference in the 1990 *Country Reports* and 1991 *Country Reports* (or in the respective *Critiques* published by the Lawyers Committee for Human Rights). On the contrary, the 1990 *Country Reports* states:

"Current law establishes the right of Hungarians to emigrate and of emigres to return freely. ... From mid-1989 on, several exiled dissidents returned to Hungary and successfully regained their revoked citizenships. A notable example was Bela Kiraly, who went into exile after the defeat of the Hungarian Revolution of 1956, regained his citizenship in early 1990, and is now a member of the new Parliament."

The 1991 *Country Reports* states:

"There are no restrictions on movement within or outside Hungary, including the rights of emigration and repatriation."

The Authority has been unable to find any information to support the claimed fear of adverse consequences of returning to Hungary after an unauthorized absence of four years. All of the literature sighted suggests the opposite. See for example, Gabor, *Reflections on the Freedom of Movement in Light of the Dismantled "Iron Curtain"* (1991) 65 Tulane Law Review 849. The following passage is taken from page 855:

"The recent political and socioeconomic changes have had a direct impact on the full recognition of the right of freedom of movement in Hungary. Hungary took broad steps in 1987 and 1988 to provide a so-called "world passport" for its citizens. These passports permit travel without limitation for as long as the passport is valid, which is generally five years. At the same time, in 1988, the physical barrier of the "Iron Curtain" was demolished. After several months of preparatory work, a new

comprehensive statute on the right to freedom of movement was promulgated in October of 1989. The preamble to this statute emphasized that the major purpose of the enactment was to achieve full compliance with Hungary's international legal obligation under the Covenant on Civil and Political Rights, ratified in 1976. Paragraph 1 refers to article 13, paragraph 1 of the Covenant, stating that every Hungarian has the basic right to freely choose his place of domicile and has the freedom to emigrate from and return to Hungary. This basic human right can only be limited in the exceptional cases specifically stated in the statute. Furthermore, no other statute or law of registration can restrict the inherent human right of freedom of movement.
...
Article VI of the Act guarantees the right to return home for all Hungarian citizens living abroad. They can exercise this right at any time, and it cannot be limited. This guarantees the freedom of movement in accordance with the Covenant. ... Hungarian citizens who decide to return and establish their domicile in Hungary will be treated as and will enjoy all of the rights of domiciled citizens."

We have already referred to the article by Pogany, *Human Rights in Hungary* (1992) Volume 41 International and Comparative Law Quarterly 676 which is in similar terms.

Against this background we find that any fear of return to Hungary that is based upon the fact that an exit permit has been overstayed is entirely without foundation.

Compulsory Military Training

As mentioned, the appellant does not object to performing military service and is not a conscientious objector. For this reason we do not need to consider the problems associated with the refusal to perform military service and which are discussed in Hathaway, *The Law of Refugee Status* (1991) 179 and the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* paragraphs 167-174. In any event, it is significant that there is now an option of twenty-two months' civil service in lieu of compulsory military service available for individuals with religious objections to military service: Lawyers Committee for Human Rights, *Critique: Review of the Department of State's Country Reports on Human Rights Practices for 1990* (July 1991) 110, 112.

The second appellant's case in this respect is based on the consequences said to flow from his failure to register for military service. He fears imprisonment, the imposition of a fine, the loss of other civil rights and the performance of his military service in harsh circumstances.

The Authority has been given no supporting material by the second appellant to support his contentions, and the Authority's own researches have failed to find any such material.

In Gabor, *Reflections on the Freedom of Movement in Light of the Dismantled "Iron Curtain"* (1991) 65 Tulane Law Review 849, 857 there is reference at page 858 footnote 33 to certain statutory restrictions on emigration. The relevant provision of Article 4 of the 1989 Emigration and Immigration Act stipulates:

"Emigration may not be granted to those who are:
...
...
...
(D) Liable for military or civil service under the regulation of the general military conscription, and the minister of defense has not authorized leave."

Thus, before a person of draft age can receive permission to emigrate he must have the consent of the Minister of Defence and must possess a certificate from the Regional Replacement Centre verifying announcement of his intention to emigrate: *op cit* 857 footnote 32. It is the Authority's view that these are not unreasonable restrictions but in any event, the second appellant's complaint is not the restriction on emigration. His complaint is directed to the penalties he believes he will face upon his return. In this regard we have already noted the complete absence of evidence to support his beliefs. In addition, given the substantial changes that have taken place in the field of human rights in Hungary we find no basis on which it can be inferred from the surrounding circumstances that there is any possibility, let alone a real chance, that the penalties feared by the second appellant exist in law, or will be imposed upon him on his return.

The view that we have taken is that it is to be expected that the Hungarian authorities have kept a record of the fact that the appellant has not registered for military service and has accordingly not yet served the required time in the armed forces. It is also to be expected that they will make enquiries as to his whereabouts from time to time. However, there is nothing sinister in these circumstances, nor is there anything sinister in the fact that upon the second appellant's return to Hungary he may well have to serve his military service at that time. No evidence whatsoever has been placed before us to justify a finding that the second appellant will face any penalty for his breach of the compulsory military training laws of Hungary upon his return.

Even if, notwithstanding the total absence of evidence, we were to assume that there is a prospect of the second appellant facing prosecution for infringement of the compulsory military training law, and even if against all reason we assumed that the penalties which could be imposed were harsh and unreasonable, these consequences will not in any event bring the second appellant within the Refugee Convention as there is no evidence to at all to suggest that the feared consequences will be imposed for one of the Convention reasons, namely the appellant's race, religion, nationality, membership of a particular social group or political opinion. As the second appellant fairly conceded, the enforcement of compulsory military training is carried out for no other reason than that such service is part of the general law of the land. There is no Convention ingredient to any of the consequences feared by the second appellant. This was accepted by the appellant in his evidence:

"I don't know why they would want to punish me. I think it is because it is government rules - like parking on yellow lines."

We examined the issues of prosecution/persecution at some length in our decision in *Refugee Appeal No. 29/91 Re SK* (17 February 1992). At page 8 we said:

"As stated by Professor Hathaway in *The Law of Refugee Status* (1991) at 169 it is clear that refugee status may not be invoked by an individual solely on the basis that he is at risk of legitimate prosecution or punishment for breach of the ordinary criminal law.

The principle is expressed in the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* at paragraph 56 in the following terms:

"Persecution must be distinguished from punishment for a common law offence. Persons fleeing from prosecution or punishment for such an offence are not normally refugees. It should be recalled that a refugee is a victim - or potential victim - of injustice, not a fugitive from justice."

Professor Hathaway explains at 170 that claims based on a fear of prosecution fall outside the scope of the Refugee Convention because the risk faced by the claimant is only the potential criminal liability of every citizen, and is therefore not linked to a form of civil or political status enumerated in the refugee definition:
"Insofar as an examination of both the nature of the criminal offence and its prosecution and punishment confirms that the offence is politically neutral in substance and application, then it cannot serve as the basis for a claim to refugee status."

Our conclusion is that at worst the second appellant faces a remote possibility of prosecution, but not persecution.

General

Both appellants referred from time to time to the hardships they will face upon their return to Hungary in terms of finding accommodation, employment and re-establishing their lives. Even if it were to be assumed that such hardship will be experienced (and in this respect there was again no evidence to support them), it is to be remembered that these matters fall well outside of the ambit of the Refugee Convention and are not relevant to the present enquiry.

CONCLUSION

There was a considerable air of unreality to the claims made by the first and second appellants. They left Hungary four years ago on the eve of enormous changes both in that country and in Central and Eastern Europe. Yet they remain to this day almost entirely ignorant of these changes and have demonstrated no resolve to properly inform themselves notwithstanding the voluminous information that is available. It was only after the Authority drew attention to evidence uncovered by its own researches that the appellants tendered newspaper clippings from Hungary. In relation to these we have concluded that they bear the hallmark of having been carefully selected to present a one-sided picture only.

We are satisfied that the changes that have taken place in Hungary are substantial and durable in terms of the test suggested in *Chan v Minister of Immigration and Ethnic Affairs* (1989) 160 CLR 379, 391 (Mason CJ), 414-415 (Gaudron J). This is a decision which we have frequently applied in the past in the context of changed circumstances

in the country of origin: *Refugee Appeal No. 81/91 Re VA* (6 July 1992) (Bulgaria); *Refugee Appeal No. 25/92 Re AS* (9 July 1992) (Bangladesh) and *Refugee Appeal No. 73/92 Re MHKC* (10 August 1992) (Bangladesh).

As far as Hungary is concerned it is our conclusion that there has been a formal political shift which has been implemented in fact, enshrined in the Constitution and in turn, executed by the relevant political and judicial institutions. The power structure under which the first and second appellants lived while in Hungary no longer exists. The political change has been truly effective.

In view of these findings there is no need for us to address the balance of the issues we have referred to earlier in this decision.

It is our conclusion that the fears held by the first and second appellants are not well-founded and there is no real chance that the harm feared by them will occur.

For these reasons we find that the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. Each appeal is dismissed.

“R P G Haines”

.....

[Member]