

REFUGEE APPEAL NO. 20/92

T. P.

AT AUCKLAND

Before: B O Nicholson (Chairman)
R P G Haines (Member)
A Rozdiliski (UNHCR)

Counsel for the Appellant: Mr N Foot

Representative of the NZIS: Ms J Tims

Date of Hearing: 6 May 1992

Date of Decision: 23 July 1992

DECISION

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 appellant, a Bulgarian national who is single and aged 27.

The appellant's account is that from the time he entered secondary school he entertained anti-communist political opinions and found himself in difficulties in progressing through the education system because of his expression of those views. Upon graduating from high school he sat and passed his University Entrance examinations in July 1982.

In September 1982 he was drafted into the army for compulsory military service. He explained that he disagreed with the system but he had no option but to comply with his draft notice. He said that he was sent to an army camp where politically unreliable conscripts were sent. Punishments were severe for breaches of discipline and for anybody who spoke out against the regime.

The appellant on one occasions, for arguing with an officer, was placed in solitary confinement for 24 hours and had his head shaved for insubordination. He was then compelled to serve 10 extra days of military service with heavy physical labour. He was released from military service on 25 October 1984. He returned to his home in Choumen in Bulgaria for one week and then went to Sofia to begin studying for his engineering degree at an Institute for Civil Engineering.

In the second semester of 1987 he again encountered problems as a result of his expression of his political views and his lecturer refused to sign a slip confirming that he had passed his political classes. He was refused permission to sit the final

examinations and was forced to leave the institute in disgrace. He returned to his home town Choumen in August 1987 and obtained work there.

In early December 1987, he was arrested along with a friend by the local police without explanation. He was taken to the local Police Headquarters and placed in a cell alone. He was kept there over-night without food and released the following morning without explanation.

He returned to Sofia to prepare for re-admission to the Institute of Civil Engineering and stayed in a student hall on campus from January to June 1988. He was expelled from the student hall at that point on the grounds of political unreliability. As a result he had to pay for accommodation which meant that he had to work to support himself and he was unable to continue his studies.

In May 1989 he joined a new political organisation called Eco Glasnost (E.G.), a group which, under the guise of pressing for environmental controls, served as an organisation for various human rights groups seeking political change in the country. He was also involved in distributing pamphlets on behalf of the organisation and in political discussion in small groups.

On 26 October 1989, he was involved in a demonstration outside the conference centre in Sofia where a world conference on the environment was being held. The police ordered the demonstrators to disperse and, when they refused, they were attacked with truncheons. The appellant was beaten around the head and body and removed from the scene in a police van. His name was then taken by the police and he was released.

On 16 November 1989 he joined another demonstration in front of the Parliament Buildings in Sofia protesting at the election of the new president. The police were again called to break up the protest which they did with violence. The appellant was arrested and taken to the first Police District Headquarters in Sofia and placed in a solitary confinement cell. After three hours he was interrogated about the organisation of the demonstration and when he refused to answer questions he was slapped about the face and kicked with steel capped boots. He was also threatened with confinement to a psychiatric asylum. He was released the following morning. He spent two days in bed recuperating from his experience.

At this time he had a painting job and he and some friends were involved in painting a political slogan on the wall of a building. They were arrested by the police on the following day and taken to Police Headquarters in Sofia. They were interrogated and released with a warning not to continue this type of activity. In addition they were docked one month's pay by their employer.

On 11 June 1990 the appellant was arrested again prior to the second round of Parliamentary elections. When he attended a rally at the UDF Headquarter's building, police broke up the rally and he was arrested along with three friends. Again he was placed in solitary confinement and interrogated by Security Police Officers. He was threatened that he would not be allowed to continue his education and with confinement in a psychiatric asylum. He was kept over night but released the following morning.

On 15 June 1990 he was again arrested while attending an election rally called by the then opposition U.D.F. party (Union of Democratic Forces). He was arrested with friends and taken to Police Headquarters, placed in solitary confinement and then interrogated by the Security Police. He was beaten with a rubber truncheon for five minutes and released the next morning.

On the morning of 18 June 1990 when he was on his way to classes, he was approached by two plain-clothed policemen who took him to a district Police Station in Sofia. He was again interrogated by Security Police. He was threatened with expulsion from the institute. Interrogation lasted some two or three hours during which time he was punched and kicked by officers who threatened to put him into a psychiatric hospital. Again he was released the following day.

Thereafter he began receiving threatening phone calls which continued for a period of three to four months, on an average of one per week. These callers would threaten his life and demand that he stop his political activities. He believed that these calls were being conducted by the Security Police.

On 10 July 1990 he was involved in a protest in downtown Sofia when a tent city was erected. On 29 July 1990 the police stormed the tent city and the appellant was arrested and taken to a Police Station. He was interrogated by Police Officers about his political activities and was beaten with rubber truncheons and an unknown heavy object while handcuffed. The beating lasted for approximately half an hour during which time he suffered cuts, grazes and severe bruising. Again he was released the following morning. The appellant describes this beating as the worst he had experienced. He was very frightened about his future if he stayed in Bulgaria and at this stage he began to plan his escape.

He travelled to Switzerland with a girlfriend on 3 August 1990 on a pretext of going on a climbing holiday. He made application for refugee status in Switzerland on 6 August 1990, the day of his arrival there. It was finally declined in May 1991 after an unsuccessful appeal against the initial refusal decision. As a result he left Switzerland and travelled back to Bulgaria by car with his girlfriend arriving on 22 August 1991.

The appellant said that his passport was cursorily examined on his crossing the border. He was required by Bulgarian law to report his return to the police within one month after his arrival. He did not do this because he feared the consequences of doing so, given his past history. He said that he was aware of a friend who had applied for refugee status in Belgium and been refused. This friend had returned to Bulgaria and duly reported to the police and had then disappeared. The appellant believed that this man was in prison.

The appellant remained in Bulgaria until 7 February 1992 when he travelled to Singapore and then arrived in New Zealand on 18 February 1992. During the period that he remained in Bulgaria, he took steps to avoid being detected by the police by staying in a friend's flat in Sofia and avoiding contact with his family. He did speak on the telephone with his father who advised him that on one occasion police visited his father's home as well as making threatening phone calls inquiring about the appellant's whereabouts.

The appellant claimed that his brother A. was dismissed from his position as a mechanical engineer at a factory in March 1991 and that the factory manager told him that this was punishment because the appellant had escaped overseas and claimed refugee status.

The appellant claimed refugee status upon arrival at Auckland International Airport where he was subjected to a preliminary interview. He was then placed in police custody at the Otahuhu Police Station, where he was interviewed by the Refugee Status Section on 19 February 1992 in the presence of Counsel who had had no opportunity to receive full instructions from the appellant. We will refer to this aspect of this case later.

On 26 February 1992 the Refugee Status Section declined the appellant's application and this appeal was filed.

In evidence before us the appellant agreed that the U.D.F. Government had been elected during the period that he was back in Bulgaria and that a U.D.F. president was elected in February of 1992 at about the time he left Bulgaria. He had not remained there long enough to see what changes the new government had effected.

He said he had received a letter dated 24 March 1992 from his brother stating the he (the brother) was black-listed for work, that although the government talked of democracy, the Government Security Committee had not been dismantled as an organisation and that inquiries were still being made for the appellant. In his brother's view there was not likely to be any political improvement in the near future.

The appellant explained that he had felt that he had had no option but to return to Bulgaria when he was refused refugee status in Switzerland because he had no visas for other countries. He was afraid to apply for refugee status in Germany because he believed that there were neo-Nazi organisations in Germany which were attacking refugees. He felt that the Austrian police were in close co-operation with the Swiss in their attitudes and that Italy was having a lot of problems with Albanian refugees so that he would not be welcome there. He felt that France had restrictions on refugees because of an influx of Arabs. He also explained that he had worked illegally in Switzerland and accumulated a considerable sum of money by Bulgarian standards.

He acknowledged that upon departure for Singapore he went through Passport Control at Sofia airport. He felt that the impromptu manner in which he left took the authorities off guard so that he was not stopped at the airport.

The New Zealand Immigration Service presented to the Authority a number of articles and publications relating to the present political situation in Bulgaria. In summary the Service submitted that there had been substantial changes in the human rights field in Bulgaria and that the appellant in his claims did not take into account these changes. The appellant on the other hand describes the changes as merely cosmetic and designed to ensure that foreign aid was available to Bulgaria. At grass roots level he claimed that the old communist organisation was still in existence, that there had been no changes in positions of authority, that the informer system was still operating and that the Security Police were still involved in abuse of human rights.

In terms of Article 1A(2) of the 1951 Convention and the 1967 Protocol relating to the Status Refugees, it must be shown that owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, the appellant 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.

The appellant's claim is of fear of imprisonment and physical abuse at the hands of the Security Police on the grounds of his political opinion.

As to the appellant's credibility, we note there are a number of discrepancies between his initial statement made at the airport to a Compliance Officer of the New Zealand Immigration Service, his statement to the Refugee Status Section carried out at the Otahuhu Police Station and his statements before us.

The appellant acknowledges that there are discrepancies but he explains that these arose from fatigue from which he was suffering at the time of his interview. In this connection Mr Foot complained to the Authority about the treatment accorded to the appellant by the NZIS during the processing of his refugee application. The appellant arrived after a long flight from Singapore and was interviewed by a compliance officer that same day on 18 February 1992. He was then taken into police custody and detained overnight at the Otahuhu Police Station. There he was interviewed by the Refugee Status Section on 19 February in the presence of his counsel who had had no opportunity to take instructions from the appellant. Mr Foot said that both he and the appellant regarded this interview as being of a preliminary nature and expected a more normal type of interview later. On 20 February a synopsis of the interview was sent to Mr Foot for comment and his client was released from custody. On 21 February the appellant was served with a removal order by the NZIS. On 24 February Mr Foot was able to supply comments on the interview synopsis after being given only two working days to do so and on 26 February the decision of the Refugee Status Section was issued.

The NZIS has not offered any reasons to us at the hearing for this unseemly haste. We can only surmise that because this appellant admitted that he had been refused refugee status in Switzerland, the NZIS felt that his application here was unjustified. If that was the case the approach was misconceived. (See *Refugee Appeal No. 1/92 Re SA* (30 April 1992) at page 12 to 33).

The appellant explained to us that he was confused and upset at being taken into Police custody and that he had had no sleep that night. He had had virtually no sleep from the time he left Singapore until he underwent his interview with the Refugee Status Section.

We wish to make it clear that in our view the whole process of the appellant's claim was improper. Given the short time between the interviews and the comments on the synopsis being provided by Mr Foot, we do not consider that Mr Foot would have had sufficient opportunity to obtain full and satisfactory instructions from the appellant. We understand that to the knowledge of NZIS Mr Foot at this stage was attempting to assist another refugee claimant in a very similar situation.

The NZIS had a duty to make clear to both the appellant and his Counsel the precise purpose of the interview at the police station. There should have been no ambiguity as to whether the interview was merely preliminary in nature as opposed to a full and final interview to determine the application for refugee status. Again the NZIS had a clear duty to provide Mr Foot with adequate time to prepare for the Refugee Status Section interview and to comment on the synopsis of that interview. We are unclear as to the reasons for this appellant being placed in custody. Nor do we understand why it was considered appropriate to serve him with a removal order before the refugee claim had been processed by the Refugee Status Section. We trust that there will be no repetition of this unduly procedure for refugee claims in the future.

Returning to the merits of this appeal, we note that the appellant took advantage of his limited opportunity to make corrections to the synopsis but there were still discrepancies between the corrected version and his later statement to us, in particular in relation to the number of arrests he suffered. We find that the discrepancies are largely accounted for by the circumstances under which the interviews were conducted. We find the appellant to be a credible witness and we accept his account to us as being in general an accurate one as to the number of occasions in which he was detained by the police, as to the physical abuse he suffered at the hands of the police and as to his political activities which resulted in his arrests.

We note that the appellant applied for refugee status in Switzerland presumably on the grounds of those same arrests and abuses that he suffered at the hands of the police that he described to us and that his application was declined.

It is clear however from a message received from the New Zealand Consulate-General in Switzerland regarding this appellant's previous refugee application that 97% of all refugee claims in Switzerland are declined. Given that statistic, we find we are unable to place any significance on the fact that this appellant's application was declined there. This is particularly so when we do not have any information as to the reasons for the decision of the Swiss authorities available to us.

We accept too that the appellant felt that he had no choice but to return to Bulgaria given the circumstances that he found himself in when he was refused refugee status in Switzerland and that on his return to Bulgaria he took steps to conceal his whereabouts from the Bulgarian authorities until such time as he was able to leave again.

We accept that while it is possible that the only reason that the police were inquiring for the appellant, after his return to Bulgaria, was because of his failure to report within one month of his return. We are unable to discount the possibility that their interest was promoted by his known political activism rather than a breach of border regulations.

We find that the evidence of those police enquiries together with the evidence of the disappearance of an acquaintance who did report to the Police on his return and the contents of his brother's letter are special factors arising at or since his return from Switzerland to Bulgaria which support his belief that fundamentally the problems of political activists have not changed.

The next issue for determination is whether or not the appellant has a genuine fear. We are satisfied, having examined his credibility, that he does have a genuine fear. We are further satisfied that what he fears is detention, imprisonment and physical abuse and possibly danger to his life at the hands of the security authorities in Bulgaria and that these matters are sufficiently grave to amount to persecution.

The next issue is whether or not those fears are well-founded. Ie, is there a real chance of persecution? In this respect the New Zealand Immigration Service's decision based on the country information they have supplied to us suggests that the appellant has not taken sufficient notice of the profound political changes which are alleged to have occurred in Bulgaria in the last year or two.

It is clear that democratic elections have now been held on two occasions, that a non-Communist party has gained power in Bulgaria, a non-Communist president has been elected and some reforms have been achieved in the field of human rights.

The appellant says that these changes have not reached grass roots level and that the bureaucracy is still staffed by persons of Communist sympathy and with the old attitudes towards human rights.

In *Refugee Appeal No. 81/91 Re V.A.* dated 6 July 1992, this Authority has recently had cause to consider the present political situation in Bulgaria and reached a conclusion that the information disclosed that the situation was not sufficiently permanent or stable to enable the Authority to find that there had been material changes which entitled us to say that an appellant's genuine fear was no longer well-founded.

We adopted the expression of opinion of the High Court of Australia in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 and in particular the dictum of Mason CJ. where he expressed the view that where a well-founded fear was found to have existed at the time of the claimant's departure from his country of origin, that fear could only be found to be no longer justified for compelling reasons.

We note that the information supplied to us by the New Zealand Immigration Service is rather more comprehensive than that supplied to us in *Re VA*. In particular we note the comment by Amnesty International in its Refugee Newsletter of October 1991 that there do not appear to be any grounds on which Amnesty International would oppose the return of asylum seekers to Bulgaria. In our view that is not sufficient to provide us with compelling reasons that the decision in *Chan's* case envisages nor does the other information that we have before us.

The new government has only a small majority in the House.

The new president was elected by only a small majority and we can find no reason to doubt this appellant's claim that at grass roots level the bureaucracy and the Police Force practices and attitudes have yet to change in a comprehensive way.

We therefore find that the appellant's fear is still a well-founded one and that the persecution which he fears is related to a Convention reason namely his political opinion. Since the persecution he fears is at the hands of state organisations in the

form of the Security Police and the ordinary Police Force, we find that Bulgaria would fail to offer him protection from the persecution he fears.

The appellant therefore is a refugee within the terms of the Convention definition and the appeal is allowed. Refugee status is granted.

“B O Nicholson”

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[Chairman]