

Voyvodov v. Canada (Minister of Citizenship and Immigration)

Between
Bogdan Atanassov Voyvodov and Blagoy Ivanov Galev, applicants
The Minister of Citizenship and Immigration, respondent

[1999] F.C.J. No. 1417
Court File No. IMM-5601-98

Federal Court of Canada - Trial Division
Toronto, Ontario
Lutfy J.

Heard: September 1, 1999.
Judgment: September 13, 1999.
(14 paras.)

Aliens and immigration — Admission, refugees — Grounds, membership in particular group, homosexual relationship — Appeals or judicial review, grounds — Inconsistent finds and deficiencies in reasons.

Application by Voyvodov and Galev for judicial review of a decision that they were not Convention refugees. The applicants were from Bulgaria, and claimed refugee status on the basis of their membership in a particular group, which were men involved in homosexual relationships. The tribunal rejected their claim after making a negative finding as to credibility. The tribunal questioned the applicants' failure to present medical reports attesting to their injuries after they were beaten by skinheads. The tribunal found it strange that the two men would be embracing in public when they knew of the hostility of the community and the authorities towards gay people. But the tribunal accepted the evidence of Voyvodov that when a person was in love, he did not always consider all of the consequences.

HELD: Application allowed. The tribunal made inconsistent findings and there were serious deficiencies in its written reasons. Having accepted Voyvodov's explanation for the applicants' open display of affection, it was inconsistent of the tribunal to question the plausibility of such a display. The tribunal also made inconsistent and contradictory findings with respect to the number of incidents of discrimination suffered by the applicants. The tribunal questioned the failure to present medical reports, but did not initially raise this concern. If the tribunal doubted the applicants' story, it could have asked the applicants to obtain a copy of the medical certificates, thus providing them with an opportunity to answer the tribunal's concern.

Counsel:

Howard C. Gilbert, for the applicants.
Godwin Friday, for the respondent.

1 **LUTFY J.** (Reasons for Order):— Bogdan Voyvodov and Blagoy Galev claim Convention refugee status on the basis of their membership in a particular social group: men in Bulgaria involved in a homosexual relationship. Their separate claims were heard simultaneously. The Convention Refugee Determination Division made negative findings of credibility and determined that neither applicant was a Convention refugee.

2 Mr. Voyvodov was ill on the day of the tribunal hearing. During a pre-hearing conference, medical reports concerning his illness were filed with the tribunal. It was agreed that the questions would primarily be directed to Mr. Galev. Mr. Voyvodov provided approximately a dozen short answers towards the end of the hearing.

3 A review of the transcript and an analysis of the reasons have led me to conclude that the tribunal's decision must be set aside. Where the tribunal found the applicants to be lacking in credibility, its reasons are not stated "in clear and unmistakable terms".¹ Where the tribunal did not accept the plausibility of one aspect of the applicants' testimony, which it characterized as "strange", its finding is, in my respectful opinion, patently unreasonable.² There are inconsistencies and findings made without regard to the evidence which further justify this Court's intervention.

4 In their personal information forms, both applicants alleged that in the early hours of May 2, 1997, they were the victims of an attack by skinheads when returning home from a night club. At the time, they were "walking embraced". They sustained injuries, were hospitalized and delivered medical certificates to the police when they lodged their complaint some two days after the incident. One month later, the police summarily dismissed the applicants when they argued that the failure to investigate the incident was because of their sexual orientation.

5 It is not clear from the reasons whether the tribunal accepted that the incident of May 2, 1997 did in fact occur. The tribunal "questioned the validity" of Mr. Galev's statement concerning the attack, yet continued: "Other than the incident of May 2, 1997, the claimant has faced no other incidents of discrimination." This ambiguity is unacceptable. If the tribunal did not believe that the incident happened, it failed to state its reasons in clear and unmistakable terms.

6 The tribunal appears to have questioned the plausibility of the applicants openly expressing their affection for each other, the act which would have precipitated the May 2, 1997 incident. This was Mr. Galev's first gay relationship. Mr. Voyvodov had previous male partners. In 1992, he was forced to resign from his employment as a result

¹ Hilo v. Canada (Minister of Employment and Immigration) (1991), 130 N.R. 236.

² Giron v. Canada (Minister of Employment and Immigration) (1992), 143 N.R. 238; and Aguebor v. Canada (Minister of Employment and Immigration) (1993), 160 N.R. 315.

of the disclosure of his first gay relationship which was with an older co-worker. In 1994, the couple was physically beaten by young men. In 1996, Mr. Voyvodov and a new partner were attacked because of their sexual orientation. Against this background, the tribunal found it "strange", that the applicants were "walking embraced":

Bearing this in mind the panel finds it strange that two people who are very aware of the hostility of the community and the authorities towards the gay community, would walk in the street openly displaying their affection for each other. The conditions in the country do not warrant such behaviour. The panel, therefore questions the validity of this statement of [Mr. Galev].

7 During the hearing, one tribunal member had this exchange with Mr. Voyvodov:

Q. When you were with your two former partners, your open expression of affection for one another led to problems.

A. Yes.

Q. That continued through - from one partner to another partner to your third partner.

A. When a person has feelings and is in love with someone, he doesn't always take in consideration all the consequences and all the situation.

Q. Okay. I can accept that. But given what we know about Bulgarian society and its [attitude?] towards perhaps persons of a different sexual orientation, why bother to alter your behaviour after the third police incident?

A. Because we didn't want to live in Bulgaria any more and that was the only thing. We wanted to get out of Bulgaria as fast as possible. [Emphasis added.]

8 This tribunal member accepted Mr. Voyvodov's explanation as to why he would openly demonstrate his affection for Mr. Galev, after having experienced difficulties in similar circumstances with previous partners. In view of this exchange during the hearing, it was inconsistent for the tribunal to have questioned the plausibility of the applicants' display of affection.

9 The tribunal also made inconsistent findings concerning the number of incidents experienced by the applicants. With respect to Mr. Galev, the tribunal questioned his single experience of harassment:

... the claimant's experience as a result of his sexual orientation, was only on that one occasion on May 2, 1997. ... The onus is on the claimant to prove his case. This, the claimant failed to do.

Concerning Mr. Voyvodov, the tribunal appears to have been concerned that he remained in Bulgaria after the first incident of his alleged three incidents:

Mr. Voyvodov, in his PIF, relates three incidents spread over a period of five years wherein he has been subjected to discriminatory treatment as a result of his sexual orientation. At each one of these times, he alleges he was physically abused. The situation for homosexuals in Bulgaria was no different then than what it was later when he decided to leave in 1997, yet Mr. Voyvodov remained in Bulgaria until 1997, bearing the alleged insults, physical abuse and the discrimination at work, without ever attempting to leave the country.

10 This reasoning begs for further explanation. It is not reasonable to conclude that one applicant failed to establish his case on the basis of only one incident and to question the other applicant's decision to remain in Bulgaria after having been physically abused for the first time in 1994. The tribunal appears to place the applicants in an impossible position. It implies that it does not believe Mr. Galev's claim of persecution because he only experienced one alleged attack due to his sexual orientation. On the other hand, it finds that Mr. Voyvodov is not credible because he delayed seeking international protection after being initially attacked. This contradictory finding also requires the Court's intervention.

11 The tribunal also questioned the applicants' failure to present medical reports attesting to their injuries and hospitalization as the result of the May 2, 1997 incident. When asked if the hospital reported the incident to the police, Mr. Galev responded that the applicants were provided with medical certificates, which they in turn delivered to the police when they filed their complaint. The tribunal could have requested the applicants to obtain an additional copy of these certificates. It was a reviewable error, in my opinion, for the tribunal not to have confronted the applicants with this concern. The issue of the medical certificates was not initially raised by the tribunal. If the tribunal doubted the applicants' story that they delivered the hospital reports to the police, an opportunity should have been given to obtain another copy of these documents, either during or subsequent to the hearing.

12 The tribunal further erred when it stated that the police raid of a "well-known gay bar" in March 1997 "had received much publicity in the media". The bar was located in Sofia. While this incident was noted in a 1998 country report, the record discloses no information that it was reported in the popular media. Nor is there any evidence to support the statement that the gay bar was "well-known". The tribunal's assumption that Mr. Galev ought to have known of the police raid on this bar ignores the evidence that he resided some 500 kilometres from Sofia and that his first gay encounter occurred only days prior to this police raid.

13 In summary, it is not for this Court to determine whether the applicants are Convention refugees. However, they have a right to cogent reasons from the tribunal. This application for judicial review must be granted in view of the serious deficiencies in the tribunal's written reasons.

14 Neither party suggested the certification of a serious question.

LUTFY J.