



RPD File No. / N° de dossier de la SPR : TA7-13448
TA7-13528; TA7-13529
TA7-13530

AMENDED: Page 1, footnote 6

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	July 18, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	July 28, 2008 September 16, 2008 (amended)	Date de la décision
Panel	V. Rangan	Tribunal
Counsel for the Claimant(s)	Robert E. Moores Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated Representative(s)	XXXXX XXXXX	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	Nil	Conseil du ministre

XXXXX XXXXX, the principal claimant (hereinafter referred to as “the claimant”), his spouse, XXXXX XXXXX and their minor children XXXXX XXXXX and XXXXX XXXXX are all citizens of the Czeck Republic.¹ They seek refugee protection pursuant to sections 96, and 97(1)(a) and (b) of the *Immigration and Refugee Protection Act*² (IRPA).

Allegations

I have reviewed the Personal Information Forms³ (PIF) of the claimants, the claimant’s oral testimony; the claimants’ supportive documents;⁴ the documents presented by the Board⁵ and counsel’s submissions in reaching these decisions. I will not be reiterating the contents of the same for the purposes of these decisions. I have considered all these documents very carefully in reaching my decisions.

Issues and determination

The determinative issues in these claims are: discrimination vs. persecution, credibility and state protection. The panel determines the claimants to be Convention refugees. Their claims are therefore accepted.

Analysis

Discrimination vs. Persecution

The issue before the panel is whether the discrimination suffered by these claimants amounts to persecution when considered singularly or cumulatively. To be considered persecution, the mistreatment suffered or anticipated must be serious. In order to determine whether particular mistreatment would qualify as "serious", one must exam what interest of the claimant might be harmed; and to what extent the subsistence, enjoyment, expression or exercise of that interest might be compromised. "Persecution", for example, undefined in the Convention, has been ascribed the meaning of "sustained or systemic violation of basic human rights demonstrative of a failure of state protection".⁶ In *Chan*⁷ La Forest J. (in dissent) reiterated that

¹ Exhibit R-2, certified copy of passports received from Citizenship and Immigration Canada (CIC).

² *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

³ Exhibits C-1, C-2, C-3 and C-4.

⁴ Exhibits C-5 and C-6.

⁵ Exhibit R-1, *National Documentation Package*, March 31, 2008 and Exhibit R-2.

⁶ James C. Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991), pp.104-105, cited with approval in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at 734.

⁷ *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593; affirming *Chan v. (Canada Minister of Employment and Immigration)*, [1993] 3 F.C. 675 (C.A.).

"[t]he essential question is whether the persecution alleged by the claimant threatens his or her basic human rights in a fundamental way."

The claimant testified that he grew up in small town called XXXXX about XXXXX km. from Prague. He lived in a predominantly Roma neighborhood and attended regular school. When the teacher tried to move him to a segregated school the claimant's mother stopped it by fighting for son's right. After five years of being unemployed the claimant was able to find employment.

A review of the documentary⁸ evidence states,

Treatment in the employment sector

... the estimated unemployment rate in the approximately 300 poorest Romani localities, which house 80,000 people (CTK 6 Sept. 2006; IPS 18 Dec. 2006), ranges between 90 and 100 percent (Roma Education Fund 2007, 14; CTK 6 Sept. 2006). According to Transitions Online, many of those Roma who are employed have unskilled jobs (TOL 31 May 2007) ...

It continues to state that the Roma were systematically laid off; as a result of very high levels of discrimination on the labour market, most have not held a job since or ever. Roma who are employed, frequently work in dangerous, short-term, or other forms of substandard employment.

The claimants' children had been subjected to racism at school and were often taunted because of their colour. The claimant was subjected to verbal and physical attacks during his stay in the Czech Republic. He just continued to tolerate the situation as he was unable to leave the country. At the time when his father left for Canada seeking Canada's protection in 1997, he was not able to leave the country with his father due to lack of financial resources. The claimant has been refused entry to bars and his children were not allowed to use the public swimming pool. The authorities told the parents that the children were too young to use the pool in spite of parental supervision. However, there were other non-Roma children of the same age group using the pool.

The claimants have been physically assaulted by the skinheads and stopped going to the police to complain because they were denied help on previous occasions. The claimant stated

⁸ Exhibit R-1, *National Documentation Package*, March 31, 2008, tab 13.1, *Response to Information Request*, number CZE102667.EX, December 12, 2007.

that the situation for the Roma had not changed for their benefit since his father left in 1997. Although the tourists often see dance programs by the Roma in public, these in his opinion, were merely a front to display racial harmony. In reality the Roma in his country have been marginalized and often subject to physical attacks by the skinheads.

Documentary evidence⁹ states that only 0.1 per cent of the population in the Czech Republic, self-identified as Roma in the 2001 census, however, the actual number of Roma in the Czech Republic may be as high as 200,000. According to the United Nations Development Programme (UNDP), which conducted a survey of Roma communities in central and Eastern Europe, many Roma choose to "conceal their identity due to the negative stereotypes of the Roma and the social discomfort in which they live."

The claimants before the panel are very visible as Roma because of their physical attributes. Hence, the issuing of hiding their identity is out of question. Their visibility makes them more vulnerable to discrimination.

The same article refers to the *Country Reports 2004* which states that,

General Information

Roma in the "Czech Republic suffered "disproportionately from poverty, unemployment, interethnic violence [and] discrimination" (28 Feb. 2005, Sec. 5). The UNDP survey, released in February 2005, found that the unemployment rate among the Roma population in the Czech Republic was between 40 and 45 per cent (UN 2 Feb. 2005, 27). The survey also revealed that seventeen per cent of the Roma population did not have access to secure housing, compared with four per cent of the "majority population [living] in close proximity to Roma" (ibid.). Roma were also susceptible to racial violence, often perpetrated by skinhead organizations, and experienced discrimination in access to housing as well as to public establishments such as restaurants and bars (Country Reports 2004 28 Feb. 2005, Sec. 5). Sources cited evictions of Roma from subsidized housing by municipal authorities as an additional issue faced by the community in the Czech Republic (COE 8 June 2004; ERRC 9 Feb. 2004; ibid. 30 June 2005). A survey conducted by a government-sponsored polling agency showed that 75 per cent of Czechs considered Roma to be undesirable neighbours (AP 27 Apr. 2005).

Nevertheless, the UNDP concluded in its survey that Roma in the Czech Republic were better off than Roma in other parts of central and Eastern Europe, and had a comparably lower rate of unemployment and "better social and health status".

⁹ Exhibit R-1, tab 13.2, *Response to Information Request*, number CZE100727.E, January 26, 2006.

The article continues to state¹⁰ the Czech Republic has taken some initiatives to address the situation of the Roma in their country. In regards to the Government Policy,

Government Policy

The Czech central government created a policy for the integration of Roma in 2000, and proceeded to update the policy yearly between 2002 and 2005 in an effort to continually find "new ways" for its implementation (Czech Rep. 4 May 2005, 7). The main goal of the policy was "to improve the status of the Roma in all spheres of life" ... According to the Czech government, "combating social exclusion is an urgent [policy] priority."

Was this implemented? The same documentary evidence states, ... the European Commission against Racism and Intolerance (ECRI), a human rights monitoring body established by the Council of Europe (COE), pointed out that ensuring local implementation of the integration policy had become increasingly difficult because of public administration reforms (COE 8 June 2004, 17). ECRI stated that initiatives set out in the policy were being implemented "in an inconsistent fashion, depending on the willingness of the local authorities to carry them out" (ibid.). ECRI explained that "the majority of local authorities seem not to be motivated to take actions to improve the situation of Roma as such actions are reportedly not popular with local communities and can be politically costly" (ibid.). According to ECRI, local officials are responsible for Roma integration and have jurisdiction over housing, education, health care and social services, all of which affect the daily lives of Roma (ibid.). The central government acknowledged in its 2005 update of the Roma integration policy that, as an advisory body, the Government Council for Roma Community Affairs did not supervise the implementation of integration initiatives by regional and municipal authorities, nor could it "draw any conclusions from their failure to fulfill such tasks ...

... Roma advisors, who had previously been appointed at the district level to assist in the implementation of anti-discrimination and integration policies, had not been replaced following public administration reforms that led to the elimination of district-level offices (COE 8 June 2004). The Czech government stated in the 2005 integration policy update that, since the appointing of Roma advisors at the local level was not prescribed by law, the government could not force local authorities to hire them ...

A review of the evidence before the panel is indicative of discrimination based on their race which cumulatively amounts to persecution. The issue then before the panel is whether

¹⁰ Exhibit R-1, tab 13.2, *Response to Information Request*, number CZE100727.E, January 26, 2006, "Government Policy," p. 1 of 6.

there are remedial measures to address the situation of the Roma and whether state protection would be available to them.

State protection

There is a presumption that a state is capable of protecting its citizens, and to rebut this presumption, the claimant must provide "clear and convincing proof" of the state's inability to protect.¹¹ Further, the claimant must approach his or her state for protection, providing state protection might reasonably be forthcoming.¹² Refugee claims are not meant to permit an applicant the opportunity to seek better protection abroad than he would receive at home.¹³

In the case at bar, the claimants have been subjected to systemic discrimination all through their lives. They have been subjected to physical abuse by the skinheads.

The documentary¹⁴ evidence makes reference to,

Police Response

Country Reports 2004 stated that there was increased recognition on the part of police and prosecutors that many crimes had racial motives, and police were recruiting Romani police officers and assistants to better serve the Roma community (28 Feb. 2005, Sec. 5).

However, the International Helsinki Federation for Human Rights (IHF) remarked that police "often failed to act adequately" in cases of violent attacks against Roma in 2004 (IHF 27 June 2005) and, according to the United States (US) Department of State, there remained some "judicial inconsistency in dealing firmly with racially and ethnically motivated crimes."

I have reviewed the most recent cogent documentary evidence and find that the situation for the Roma and police have not improved as recent as 2007. Documentary evidence¹⁵ on the issue of treatment by the authority state:

Treatment by the authorities

Country Reports on Human Rights Practices for 2006 indicates that police have responded to complaints involving discriminatory treatment of Roma in public places such as bars and restaurants, including some cases in which signs were posted prohibiting Roma from entering the premises (US 6 Mar. 2007, Sec. 5).

¹¹ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

¹² *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

¹³ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

¹⁴ Exhibit R-1, tab 13.2, *Response to Information Request*, number CZE100727.E, January 26, 2006.

¹⁵ Exhibit R-1, tab 13.1, *Response to Information Request*, number CZE102667.EX, December 12, 2007.

In August 2006, CTK reported that police in Brno set up a free summer camp for Romani children in an effort to foster a positive attitude about the police (CTK 31 Aug. 2006).

However, there were reports of police mistreatment of Roma, and by 2007, there was still no independent police watchdog to investigate complaints (AI 2007).

The government of the Czech Republic has taken steps to improve the situation of the Roma in their country. However, the same documentary evidence makes reference to the ineffectiveness of these measures. Documentary evidence¹⁶ states:

State protection

The task of the Czech Public Defender of Rights (Ombudsman) is to protect citizens against offices of the state administration, including police, municipalities, the army, prisons, public health insurance and courts should they act in a way that [is] "contrary to the Law," does "not comply with principles of a democratic state respecting the rule of law" or is seen as a "fail[ure] to act" (Czech Republic n.d.b). Citizens may lodge a complaint with the Ombudsman in writing, by electronic mail or in person at the Office of the Public Defender of Rights in Brno. ...

The Czech Retail Inspection Office, which investigates cases in which retailers and service providers allegedly infringe on their customers' rights (*Czech Business Weekly* 8 Jan. 2007), employs two female Romani inspectors; the Office investigated 260 discrimination-related complaints in 2006 (US 6 Mar. 2007, Sec. 5).

However, according to the ERRC, in 2006 there was "near total impunity for racial discrimination against Roma" in the Czech Republic (1 Mar. 2007). The International Helsinki Federation for Human Rights (IHF) states that in the majority of cases involving neo-Nazis targeting minorities, including Roma, "authorities, including the police, turned a blind eye" (IHF 2007). According to IPS, a survey conducted in 2006 found that "courts rarely investigate cases of racial discrimination ...

The same documentary evidence states that,

Legislation

While there are general bans on discrimination in such legislation as the Czech Constitution, the Education Act and the Labour Code (Roma Education Fund 2007, 18), as of 2007, the Czech government had yet to adopt a comprehensive anti-discrimination law (ibid.; ERRC et al. July 2007, 3). In addition, the Roma

¹⁶ Exhibit R-1, tab 13.1, *Response to Information Request*, number CZE102667.EX, December 12, 2007.

Education Fund believes that the aforementioned bans on discrimination are difficult to implement because of "a lack of official enforcement mechanisms" (2007, 18). An anti-discrimination bill was approved by the Czech Parliament in December 2005 but was not passed by the Senate the following month; many senior officials were reportedly opposed to the bill, including Czech President Vaclav Klaus (ERRC et al. July 2007, 10). However, IPS notes that the Czech government, "facing possible European Union sanctions, is already working on a new rights bill" (IPS 6 Apr. 2007), although further or corroborating details on this proposed bill could not be found among the sources consulted by the Research Directorate.

The documentary evidence before the panel makes reference to incidents of punitive measures taken against racists and police by the justice department and the very same document also makes reference to the ill treatment of the Roma by the police. However, in the particular case before the panel, the claimants have suffered years of discrimination with no reprieve in spite of some of these changes. They had called the police for help and found none forthcoming. The claimants have rebutted the presumption of state protection with clear and convincing evidence.

Czech Roma have received ideological support from a number of non-governmental and regional organizations, including the European Union (EU), Council of Europe (COE), Organization for Security and Co-operation in Europe (OSCE), European Roma Rights Center (ERRC), International Roma Union, the UN Committee on the Elimination of Racial Discrimination, and several others. Due to their lack of political cohesion, widespread poverty and low levels of education, Czech Roma have virtually no risk of rebellion and only a very low risk of protest. Their situation, however, remains poor at best. Roma are still among the poorest in the Czech Republic and are subject to several forms of discrimination and popular prejudice. Nonetheless, there are several signs of hope; chief among them are the continuous pressures by the EU, the COE, and other regional as well as non-governmental organizations on the Czech government to remove restrictions and adopt new policies to improve the situation of the Czech Roma. The claimants have neither the education nor the sophistication to access whatever help is available to them in their country. All that they know is to complain to the police. They did complain and were subjected to threats from the police for repeatedly calling them three to four times a month when the skinheads physically assaulted them.

In the case at bar, considering the claimants' particular circumstances, I find that although the government has taken steps to address the Roma issue, the panel finds that there is more than a mere possibility that these claimants will face serious harm amounting to persecution should they return to the Czech Republic.

Conclusion

As the claims of the claimant's wife and children base their claims on that of the claimant, and membership in a particular social group, namely, the family, I find that they are also Convention refugees.

The panel determines the claimants to be Convention refugees and accepts their claims.

(signed)

"V. Rangan"

V. Rangan

September 16, 2008

Date