

060414744 [2006] RRTA 206 (18 December 2006)

DECISION RECORD

RRT CASE NUMBER: 060414744

COUNTRY OF REFERENCE: Slovenia

TRIBUNAL MEMBER: Genevieve Hamilton

DATE DECISION SIGNED: 18 December 2006

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.

BACKGROUND

This is an application for review of decisions made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).

The applicants arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for Protection (Class XA) visas. The delegate decided to refuse to grant the visas. The applicants applied to the Tribunal for review of the delegate's decision.

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 applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

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.

Section 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is either:

(a) a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol

or

(b) a non-citizen in Australia who is the spouse or a dependent of a non-citizen (i) to whom Australia has protection obligations under the Refugees Convention and (ii) who holds a protection visa.

'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. 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'

Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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.

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) 205 ALR 487 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

The Tribunal has before it the Department's file relating to the applicants. The Tribunal has had regard to any material favourable to the applicants' claims referred to in the delegate's decision.

The first and second named applicants made refugee claims in their right. The other applicants were included in the application as their children. For convenience, the Tribunal will refer to the first named as "the applicant", the second named as "the applicant husband", and where appropriate, will refer to both of them together as "the applicants".

In her protection visa application the applicant said she was born in Slovenia in the 1970s. She speaks, reads and writes English, Serbian and Croatian, and ethnically is mixed Serbian and Croat. Her religion is Orthodox. She said she was emotionally and psychologically distressed by her experiences and her forced upheaval as a consequence. She married in Slovenia before arriving in Australia (it is her second marriage). Her occupation in Slovenia was in the financial industry. She is a Slovenian citizen and lived there until she came to Australia, travelling on a Slovenian passport issued in Slovenia. She has travelled before: to Country A and Country B, and to Country C, on each occasion only for a short time. She obtained a Diploma in a finance related areas and has since worked in this area.

In her statutory declaration in support of her application the applicant said that her first husband died suddenly a number of years before her second marriage. Her children are from that marriage. She has been in a property dispute with her late husband's former wife. Her child and herself have been threatened (evidenced by a report from the principal of the children's school). As an ethnic Serb-Croat her rights are significantly affected. In Slovenia ethnicity is correlated with religion. Her married surname is a typically Serbian. Her maiden name is also Serbian. She had to change her name to a Slovenian one to obtain employment (change of name documentation enclosed). The police totally failed to do anything to protect her, her family and her property, because they are all ethnic Slovenians as a requirement of Slovenian law, and do not protect non-ethnic Slovenians.

The applicant said she forewent her salary entitlements and risked her reputation by quitting her job with only a day's notice before coming to Australia. The applicants spent all their savings to escape from Slovenia.

The applicant said that she was phoned by her child's teacher and asked to come to a meeting. A Bosnian Muslim child was tormenting the applicant's child who was the only Serb in his class. The child's father had also been coming to the school and abusing and threatening the applicant child. The applicant parents wanted the police contacted. The school resisted this. The next day the child's father came to the school again and threatened the applicant child. This time the school did report the incident to the police, but the police did nothing and did not contact the applicants or the school.

The applicants' car tyres were slashed and grease was put on their door handles. The applicants are the only Serbs in their apartment block and a block of Bosnian Muslims is across the park. At one point the applicant and the applicant husband went into a café where there were a number of Bosniaks. The applicant was pushed, attacked and verbally abused. On another occasion the applicant husband went out to buy groceries. On the way home he was followed and attacked by three Bosniak men, who made a racial remark and then assaulted him. He came home with physical injuries. Immediately the phone rang and a man's voice threatened to kill the applicant if she reported the assault to the police.

The applicant had to keep these matters secret from friends and from people at work because in Slovenia ethnic persecution is not discussed. To acknowledge such problems is to be regarded as a trouble-maker and affects one's prospects at work.

The applicant said she feared that she or her husband would be killed, or that they and their children would continue being threatened and assaulted by Bosniaks, and the authorities would do nothing because they are Serbs. Her first husband's ex-wife (a Croat) and her siblings had also committed crimes against the applicants, in the context of a property dispute, but using racial epithets. These were reported to the police, but the police did nothing. Some years earlier one of the siblings assaulted the applicant and her then husband, but the police did nothing.

The applicant also said her children were called insulting racial names in school.

The applicant husband was born in Serbia in the 1960s and speaks, reads and writes Serbian and Russian. His occupation was in the media. He is a Serbian citizen. His passport was issued in Slovenian. All of his education, including a University course, was in Serbia. He has been in Slovenian for a number of years. He has been self employed since.

In his statutory declaration in support of his application, the applicant husband confirmed his wife's claims. [information about the applicant's history deleted in accordance with s.431 as it may identify the applicant]. When Serbia was bombed in 1999 he refused to join the military, considering himself to be a conscientious objector. He was considered to be a traitor and to be 'pro-American'. He fled across the border into Country B, then to Country A, then Slovenia. Eventually he approached a Government Office and obtained his passport and other necessary documentation. He has a temporary spouse visa for Slovenia. He can apply for a permanent one but the authorities do not have to grant it. Other foreign husbands have been granted temporary visa after temporary visa. The Slovenes have strong feelings against Slovenian women marrying men of other ethnic groups, because they worry about losing their national identity. Only 900,000 of the 2 million population are ethnic Slovenians. This is why there is a derogatory approach to other inhabitants of the former Yugoslavia. Serbians are always served last in a restaurant or store. This is distressing when experienced on a daily basis. In 1992 the authorities "deleted" 19000 people, born in Slovenia but of other ethnic background, from the national birth register. Only 4000 have since been given citizenship. The police are ethnic Slovenian by law, and are known to practice "selective policing".

The applicant husband said that in Serbia his wife would be considered Slovenian and Croat, and there was significant discrimination against mixed marriages there. He would be harmed by the people who considered him a traitor. He would also be harmed by criminals who had previously threatened him in his business and were protected by the authorities, and by others who may have claimed rights to his business. Neither the Slovenian nor the

Serbian authorities could be counted on to help him. The Serbian authorities only help those who are members of a political party. The applicant husband said he had to apply for his Serbian passport outside Serbia because he could not return there.

The applicant husband also said if he returned to Serbia it would endanger the life of his child from his first marriage.

A covering letter from the applicant's adviser refers to the applicants' distress, and to the tarnished reputation of Slovenia with respect to minority rights. A covering letter from the applicant husband also summarises their claims.

The Department received a submission from the applicants' adviser, summarising the applicants' claims and referring to relevant legal principles. The adviser cited the Slovenian Ombudsman's Report of 2004, and related ECRI reports, that note the prevalence of expressions of racial intolerance in Slovenia. The adviser noted that the European Commission had highlighted specifically the problems faced by the ethnic minorities of the former Yugoslavia, with regard to access to citizenship and to social and economic rights, and to ensure that the legislation to combat racism and racial discrimination was fully applied. A national integration strategy was needed. Discrimination in employment remained a serious barrier to the full integration of members of minority groups into the social and economic life of the country. There was some governmental discrimination. The ethnic Serbs and other groups were not protected by special provisions of the Constitution. There was a nationalistic and even a xenophobic attitude among most Slovenes. Many racist expressions were heard in the street and published in the press, and in extreme cases, people belonging to minority groups experienced physical violence. The police did not always pay the necessary attention to the racist attention of an offence. The confidence of minorities in the criminal justice system needed to be improved. The adviser also cited an Amnesty International report that accuses the Slovenian authorities of not pursuing crimes by non-state actors against minorities, including ethnically motivated crimes, with due diligence. The adviser also cited a survey of Slovenian police which showed them to be non-accepting of refugees and to have a high level of national attachment.

Some time later the adviser made a further submission, addressing the issue of relocation within Slovenia in more detail, as well as rights of entry into the EU, and the applicants' fears in relation to Serbia.

The hearing

The applicant said her father was born in Serbia, and her mother in Country A. They met in Slovenia, where they were both working. She has one sibling, married, living in City L, and working in the media. She had several years of education. She graduated in the early 1990s and began working. She gave birth to her first child at the end of her studies. She married her present partner a number of years ago. She used her maiden name until she began looking for a job. Then she adopted the Serbian surname until she adopted her husband's surname.

The applicant said her children all went to the local school. There were no problems there before recent years. The students were from a range of ethnic backgrounds. Then a squabble between children developed into racist hate towards her child. No other minority kids were victimised in the way her son was. At one point there was a new child he was having trouble with. The teacher called the applicant and said her child had been attacked. She should come

to the school immediately. The applicant went to the school, where the teacher explained what had happened. Her child also recounted the incident, when they got home. Her child had been attacked by this student a couple of times before this.

So there was a meeting, with medical professionals, the principal, the parent of a friend, and the father of the perpetrator. One of the medical officers began to give what the applicant described as a lecture. She interrupted, saying that her child had been the victim of serious and repeated attacks. The teacher said there had been tension between the two children for months. The new student would provoke the applicant's child, and would then tell his father that it was the applicant's child who was the perpetrator. The father would come and shout at and threaten the applicant's child. Then it became physical: at a recess the new student physically assaulted the applicant child. This was seen by the teachers, who reported it to the principal.

The meeting became heated, with the other child's father being very aggressive, denying everything, and the applicant yelling at the applicant's child. He walked out. The applicant husband wanted the police called but the principal was against this. The other child's father was a Bosnian war veteran and the principal was scared of him. The child's father came to the school the next day and made threats against the applicant. After that the applicants were very protective of their child, and kept the child away from the new student. The applicant was afraid for her life. She was escorted everywhere and was afraid to go out on her own. She believed that he would kill her and that no one would do anything to stop him.

The Tribunal observed, however, that the applicants did not have any problems with this particular individual again. The applicant said it was not with him but with other people in his ethnic group. At the café, someone called her a verbally and physically assaulted her. She suffered physical injuries. The applicant said they did not report this to the police because they had learned already not to involve them – they would not do anything. No one in the café intervened – they just stared. The café was owned by Slovenians and frequented by different groups. This day there were a number of Muslims there. The manager did not realise what had happened. Asked whether she informed the manager, the applicant said she had never had problems there before, and had not been back since.

The applicant said the police did nothing about the incidents at school. Asked how she knew this, the applicant said that a few days before they left Slovenia they went to the school to ask for a certificate about what had happened there. The principal could not provide anything from the police. The Tribunal asked the applicant why she did not approach the police directly. The applicant said she knew from earlier experiences of being attacked and robbed or discriminated against due to her ethnic background that the police would do nothing. Asked to elaborate on this claim, the applicant said that when she was using the Serbian surname and her car was broken into, the police came promptly. By comparison when it came to this dispute with a child's father, he was not even charged. The Tribunal observed that the police had to make decisions about how much priority to give to a dispute like that.

The applicant said that a Slovenian neighbour was involved in a brawl and the police were there straight away. Her child is young, and should be protected from traumatic experiences. The Tribunal commented that the incident at the café was not even reported to the police. The applicant said that once she was attacked and they said they would not get involved unless it was life threatening.

The applicant said that after the café incident the applicants stayed home more and avoided certain areas. The applicant was shocked and traumatised. They realised there was no one who could help them.

The applicant said they wanted to go far away from Slovenia, even though they had friends in Western Europe and were well situated economically.

The Tribunal asked the applicant how the property dispute was resolved between the ex-wife of her late former partner, and herself. The applicant said the ownership of it was unclear; he had had access to it while he was alive, but the ex-wife wanted it to herself after he died. The applicant had now relinquished any rights to it. She reported the damage to her belongings to the police. They said she needed a witness to take it to court. This was the same police station that was responsible for her child's school.

The Tribunal observed that it was not clear that these disputes, one over property, and the other with another parent, were Convention-related. The applicant said the family of her late partner's ex called a Serbian whore, and said she could not establish "Serbian territory" at the house. At school, her son was the only Serbian child in his class, although there were also Croat and Roma children. The applicant had had to take on a Slovenian identity in order to obtain a job and an apartment. The Tribunal said it was not clear that the applicant would have been prevented from getting a job or apartment in Slovenia under her maiden name. The applicant said non-Slovenians cannot get a job or an apartment in Slovenia. They cannot practice their own religion or speak their own language. The Tribunal referred to the US Country Report cited below, as indicating that Serbs were not persecuted – i.e. seriously harmed, in Slovenia. The applicant she herself respected all races and religions, and was a reasonable person, but as a wife and mother she valued safety.

The applicant husband said it was not possible to call the police because people threaten to kill you if you do. He was personally attacked and told they would finish him off. Friends of the other child's father came after him. He would see the father with those people. The applicants had paid for the exploitation of ethnic differences, between people who had previously lived peacefully together.

The applicant husband said it was natural for people who were threatened to simply flee. The police in Slovenia did not want to involve themselves in ethnic squabbles, even though there were police on every corner. If they went into the EU they would always have to explain themselves to any group of the former Yugoslavia. The applicant husband said it took a friend of his from Serbia several years to gain Slovenian citizenship after marrying a Slovenian, and then he had to give up his Serbian citizenship. The applicants did not want their children to go through what they did. It was difficult to describe fear. For many years their advancement had been stifled. The only solution was to go somewhere else.

The applicant husband said he had been called for military service in Serbia. Also the mafia now played a major role there: one had to be with them or against them. If he went back to Serbia now he would be court-martialed. He would be socially ostracised as a deserter. He had left a business with equipment and tools there. They had probably now been stolen. In Slovenia he eventually met up with some other Serbs and got work; until then he survived on money he had brought with him.

The applicant husband said the assault against their child should have been given more importance. There are reports of officially-sanctioned right-wing radical groups in Slovenia that terrorise Serbs.

Post-hearing

In a submission after the hearing, the adviser stressed that the applicants and their child had been victims of systematic racial violence and threats, accompanied by systematic and discriminatory failure of the Slovenian police to protect them. The adviser cited the September 2005 report of the European Monitoring Centre on Racism and Xenophobia, called "Policing racist crime and violence", concerning the new EU countries' including Slovenia's police practices. Slovenia rated poorly in various aspects of policing of racist crime and violence. They only recorded racial motivation for crimes involving incitement. They had no instructions on how to decide if a crime was racially motivated. They recorded nationality but it was not clear whether it was for victim or offender. There was no training on response to racist crimes, nor had Slovenia identified whether such training was needed. Slovenia did not promote reporting of racist crime. It worked with minority communities to a limited extent. There were no measures for publicising police initiatives on racist crime. The adviser noted that it had been concluded that the lack of reporting of racial motivation for a crime meant that the true level of such incidents was underestimated. Victims were reluctant to report racist crime because there was a perception – for a number of reasons - that their complaints would not be taken seriously. With regard to the assault on the applicants' child, it was reasonable for the applicants to leave the reporting of it to the police up to the school, and to assume that either the school did not report it to the police or that the police took no action. It was not acceptable for the police to treat it as a low priority. The adviser concluded that the assault and threat to the applicants was extremist racism, derived from the racial hatred that led to the wars of racial cleansing in Serbia.

Country information

Country Reports on Human Rights Practices - [2005](#) - released by the Bureau of Democracy, Human Rights, and Labor on March 8, 2006

The law prohibits discrimination based on race, gender, disability, language, or social status, and the government generally enforced these provisions in practice. However, violence against women and children, trafficking in persons, and discrimination against homosexuals and Roma were problems.

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National/Racial/Ethnic Minorities

According to the 2002 census, minorities made up approximately 17 percent of the population and included approximately 36 thousand Croats, 39 thousand Serbs, 22 thousand Bosniaks (Bosnian Muslims), 10 thousand Muslims, 6 thousand Hungarians, 6 thousand Albanians, 3 thousand Roma, and 2 thousand Italians.

The law provides special rights and protections to autochthonous Italian and Hungarian minorities, including the right to use their own national symbols and have bilingual education and the right for each to be represented as a community in parliament (see section 3). The Romani minority does not have

comparable special rights and protections. The constitution provides that "the status and special rights of Gypsy communities living in Slovenia shall be such as are determined by statute." By year's end parliament had not enacted laws to establish such rights for the Romani community.

In a 2003 report, the committee on the elimination of racial discrimination expressed concern that discriminatory attitudes and practices against the Roma persisted and that the distinction between "indigenous" Roma and "new" Roma could give rise to new discrimination. Ethnic Serbs, Croats, Bosnians, Kosovar Albanians, and Roma from Kosovo and Albania were considered "new" minorities; they were not protected by the special constitutional provisions for autochthonous minorities and faced some governmental and societal discrimination with respect to employment, housing, and education.

On July 25, the UN Human Rights Committee reported that the Roma continue to suffer prejudice and discrimination, in particular with access to health services, education, and employment.

Many Roma lived in settlements apart from other communities that lacked basic utilities such as electricity, running water, sanitation, and access to transportation. Unlike in previous years, there were no reports that Roma were forcibly relocated to segregated substandard housing facilities. A 2003 report funded by the European Commission noted that the unemployment rate among Roma was 87 percent.

The Roma also reported discrimination in employment, which complicated their housing situation.

Regularization of status for non-Slovenian former Yugoslav citizens remained an issue. Approximately 18 thousand persons, mostly Yugoslav citizens residing in the country at the time of independence, did not apply for citizenship in 1991-92 and subsequently found their records were "erased" from the population register in February 1992. The deletion of these records has been characterized by some as an administrative decision and by others as an ethnically motivated act. In 2003 the constitutional court ruled unconstitutional portions of a law governing the legal status of former Yugoslav citizens because the law neither recognizes the full period in which these "erased" persons resided in the country nor provides them the opportunity to apply for permanent residency. From February 20 to 24 and from July 2 to 25, several persons went on hunger strikes to protest the government's failure to implement the constitutional court's 2003 ruling. At year's end, the government had not completed legislation to resolve the court's concerns.

Amnesty report Index: EUR 68/003/2003 16 May 2003 "REPUBLIC OF SLOVENIA before the UN Committee against Torture"
<http://web.amnesty.org/library/Index/ENGEUR680032003>, includes the following information

The government's obligation extends to the duty to investigate alleged abuses by non-state actors and to bring perpetrators of such abuses to justice in fair

proceedings. Amnesty International is concerned that the Slovenian authorities have failed to conduct effective investigations into several alleged human rights abuses which have come to the organization's attention.

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Amnesty International has received several reports which indicate in particular that investigations into attacks which appear to have been motivated by the ethnic and racial origins of the victims are not pursued with due diligence by the Slovenian authorities.

For example on 2 July 2001, 33-year-old Ignacio Bintchende, a national of Guinea-Bissau, and a long-term Slovenian resident, was reportedly attacked by a group of skinheads near the entrance to his apartment in the centre of Ljubljana. His apartment is located near the Sodček bar, which is apparently frequented by skinhead groups. Ignacio Bintchende had gone out to buy some food for his guests around 9.30pm when he was reportedly accosted by two skinheads, who started to slap him. When one of them raised a heavy beer glass, making as if to hit him with it, Ignacio Bintchende tried to push the man away. At this point, two other skinheads joined the scuffle and reportedly punched Ignacio Bintchende in the face and back. He managed to reach his front door and rang the doorbell for his friends to let him into the apartment as the entire group of four made to jump upon him. Two of his friends (nationals of Ethiopia and Mali) came outside and got embroiled in the ensuing fight until the police arrived. The police arrested all seven people. Ignacio Bintchende and his two friends, as well as three of the skinheads were brought before a misdemeanour court (sod za prekrške), for disturbing the public order.(30) In addition the passports of Ignacio Bintchende and his two friends, Ibrahim Nouhoum and Tefera Eyechew were confiscated and they were summoned to the police station the next day.

The case was still pending as of mid-April 2003 before the misdemeanour court, and a police investigation into the racist attack has reportedly not yet produced any results. Police allegedly failed to interview any eye witnesses to the incident although, according to Ignacio Bintchende, there were at least some 15 people watching the initial attack against him on the street.

According to information available to Amnesty International, over the past couple of years only in one case have perpetrators of a racist attack been prosecuted. In May 2002, two members of a skinhead group, UD and MV,(31) who had been tried in connection with a violent attack on Ibrahim Nouhoum and Michael Obeno in February 2000, were respectively given a suspended sentence and acquitted for lack of evidence.(32) The alleged attack had taken place near the same location as the attack on Ignacio Bintchende and both victims sustained physical injuries.

FINDINGS AND REASONS

Based on the information in their file, the Tribunal finds that the applicant is a Slovenian citizen of mixed Serb/Croat ethnicity. It finds that the applicant husband is a Serbian citizen.

The Tribunal accepts that the applicant parents became involved in a dispute with the father of a student at their child's school. It accepts that this man was violent towards their child, and abusive and threatening towards the applicants. However, the Tribunal does not accept, on the evidence before it, that this person's essential and significant motive for treating them this way was their ethnicity. Animosity had developed between the two children: it was not clear that this was based on racial difference. In that context the father could have been acting out of a misdirected sense of paternal loyalty, however unacceptable his behaviour was. The applicant herself said there were other minority students in the school, and that she was not aware of other such incidents, as would be expected if race was the motivating factor with this individual.

The Tribunal does not accept that any lack of response by the authorities to the above-mentioned events was discriminatory. On the evidence before it, the Tribunal does not accept that the police were alerted.

The applicants claimed to have experienced assaults themselves, the applicant in a café, the applicant husband on his way home, by people connected with the above mentioned father of a student. They received phone threats and their property was damaged. However, the Tribunal does not accept that these incidents occurred. The applicants' behaviour in not reporting those incidents to the police was not consistent with people claiming to be in such fear for their safety that they needed to seek protection overseas. It follows from this finding that it is not necessary to determine the essential and significant reason for those assaults. (The Tribunal notes that if they had occurred, and were linked to the dispute at school, it would follow from earlier findings that the Tribunal would not accept that they were racially motivated. They were not approached as claims of random violence.)

It follows from the foregoing finding that the applicants have not experienced any harm in connection with the dispute with the people at school, in the period before they came to Australia in December. On this basis the Tribunal finds that there is no real chance of the experiencing further serious harm in the reasonably foreseeable future (even if it could be characterised as Convention-motivated, which the Tribunal does not accept).

The applicant claimed that she and her late first husband were assaulted by relatives of his ex-wife, over a property dispute. Notwithstanding the use of racial epithets during this event, the Tribunal does not accept that the essential and significant reason for that dispute was ethnic difference. Marital breakdown and property issues were the readiest explanation, and there was not enough evidence to displace them.

The applicants referred to ethnic discrimination and the difficulties in obtaining employment as non-Slovenians. However, that has not caused them such economic hardship as to threaten their capability to subsist; indeed they indicated they had a relatively comfortable life. The applicant said she only got a job by changing her name. However, that was several years ago and the applicant has considerable experience since then. The Tribunal does not accept that she would be unable to obtain one now, using her own or her married name.

The applicants are of ethnic minorities living in a xenophobic country. Hate speech is common socially and racist attitudes are perpetuated by the media. The police are insensitive to racist crime and may even be unsympathetic to victims for racial reasons. As "southerners" the applicants must be included in the objects of these racist attitudes and no doubt that causes emotional discomfort. However, there are tens of thousands of people with the applicants' ethnicity in Slovenia. Although the ECRI report cited by the adviser argues

that racial violence is underestimated because people don't report it, this conclusion appears to be based on anecdotal data rather than statistics. The few examples of racial violence reported by Amnesty do not relate to Serbs/Croats. Amnesty complains of the lack of prosecutions, but the Tribunal has no evidence of cases that ought to have been prosecuted but weren't.

Based on the information before it, the Tribunal does not accept that as ethnic Serbs or ethnic Serb/Croats, the applicants face a real chance of serious harm – either in the form of physical ill-treatment, a threat to life or liberty, or significant economic harm, within the meaning of the Convention.

The Tribunal finds that the applicant does not have a well-founded fear of persecution in Slovenia within the meaning of the Convention. The Tribunal finds that the applicant husband has a right to enter and reside in Slovenia, where he does not have a well-founded fear of persecution and from where (given his marriage) he is not at risk of refoulement, and therefore is not owed Australian protection.

CONCLUSIONS

Having considered the evidence as a whole, the Tribunal is not satisfied that the applicants are persons to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the applicants do not satisfy the criterion set out in s.36(2) for a protection visa and cannot be granted protection visas.

No specific Convention claims were made by or on behalf the included applicants, other than those dealt with above. The fate of the included applicants' application therefore depends on the outcome of the applicants' application. As the applicants cannot be granted a protection visa, it follows that the included applicants cannot satisfy the alternative criterion set out in s.36(2)(b) and cannot be granted a protection visa.

DECISION

The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.

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

Sealing Officer's I.D. Iward