

1205694 [2012] RRTA 517 (25 June 2012)

DECISION RECORD

RRT CASE NUMBER:	1205694
DIAC REFERENCE(S):	CLF2012/52705
COUNTRY OF REFERENCE:	Hungary
TRIBUNAL MEMBER:	Paul Fisher
DATE:	25 June 2012
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Hungary, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] March 2012.
3. The delegate refused to grant the visa [in] April 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) 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.
7. 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) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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 being persecuted 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.
14. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. 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.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant arrived in Australia by air [in] February 2012, holding a subclass 651 eVisitor visa issued to him [in] January 2011. Upon arrival at [an Australian] Airport, he approached immigration and indicated that he wished to claim asylum.
21. The applicant's subclass 651 visa was then cancelled, he was refused entry, and placed in immigration detention. He subsequently lodged a protection visa application prepared with the assistance of a registered migration agent allocated to him under the Department's Immigration Application Advice and Assistance Scheme.
22. The applicant's background and protection claims are set out in a statement which accompanied the application, as follows:

Introduction

1. I am a citizen of Hungary. I do not have a right to citizenship or a right to permanently reside in any other country.
2. I am a Roma.
3. I was born on [date] in Budapest, Hungary.

The country to which I fear returning

4. I fear returning to Hungary.

Why I left that country

5. I left Hungary because of the constant discrimination I endured because I am a Roma Gypsy. I have been discriminated against my whole life in Hungary. I experienced discrimination on a daily basis. The discrimination reached a point where I mentally could not cope with it anymore. I felt mentally tortured.
6. I faced this discrimination because I am a Roma. As a Gypsy I am considered as an outcast, as a thief, and as a person who cannot be trusted. This has impacted me in every interaction and experience in my life.
7. There are many ways I can be identified as a Gypsy. One way is through my family name. My father was a Gypsy and I was identified as such through him. He was a Hungarian typical Gypsy with dark hair and dark skin. Apart from my family name, I have a certain type of character and I am always identified as Roma. I look like grandfather who is Romanian. People find something in my appearance that it different looking to other Hungarians. Also, I wear my hair long as many Roma people do. I wore two earrings and had a gold cross and many Roma people wear jewellery like this. We also dress differently to most other Hungarians. Family is very important to Gypsies and most of my time is spent with Gypsy family members and Gypsy friends.
8. The first time I experienced discrimination and realised that I was being treated differently was in primary school. From the age of [age] I was separated from other children in my primary school and class. I was made to sit at the back of the class and I was either ignored or picked on. When I asked for assistance I did not receive it. There was a perception that as a Gypsy boy I was lazy and bad. I was not given any assistance in school and I was left to my own devices to learn.
9. As a Gypsy, people have a natural ingrained suspicion of us. The first time I was taken to the police station was at the age of [age]. Myself and other Roma boys were accused of breaking and entering a derelict building. Many children from the area would enter this vacant building and collect metals for recycling. One day at school the police came and took me and the other two Roma boys to the police station. Whilst it was well known that many children from the area accessed this building it was only the gypsy boys that were taken for questioned. The charges were eventually dropped. Since this time I developed a fear of authority and am very nervous of authority, even in Australia. As a Gypsy we are always the first to be accused of committing a crime.
10. As a teen I entered trade school. I was a good student and I have a thirst for knowledge. I consider myself a fast learner and have a natural ability to learn. I have even learnt English on my own with no schooling. At trade school I was never graded fairly and my grades were consistently very poor. In the final year of school I was told that I would not be able to sit my final exam to receive my certificate as an electro-technician. There were three or four teachers who made this decision. This decision had nothing to do with my academic performance or any bad behaviour on my part. I was a very shy in school and I was scared of everything. I weighed 45 kilos and I was always picked on. I tried to be invisible and not draw attention to myself. The reason I was not allowed to finish my schooling was purely because I am Roma. When I asked for a reason they said that it was just the way it was going to be. I was never given a proper explanation.
11. As a Gypsy I feel under the constant threat of physical harm, verbal assaults and harassment. In 1991 myself and three Roma friends were attacked in a club. This club was frequented by many Gypsy people. We were set upon by 10-15 skin heads. My nose was broken. This was the first time I was physically assaulted and it had a very significant impact on me. I always avoided contact with people, especially when I was alone. I would always avert my eyes, or wear sunglasses. For a while I even changed my dress to try to fit in with other Hungarian people. I

tried everything to stay invisible and not to draw attention to myself.

12. In my workplace I was continually discriminated against. By law, Hungarian employers must pay a minimum wage. In practice, Hungarian employees receive above the minimum pay as employers subsidise this with cash payments. I was never paid more than a minimum wage and I never received my overtime entitlements. Sometimes I would work three to four weeks without a day off. I would do this to show the employer that I was a good worker in the hope to be offered further work. If other Hungarians worked overtime they would be paid their entitlements. This situation was the same for all Gypsies. The employers knew that we were in a position of disadvantage. The only way Gypsies could secure employment and compete against other Hungarian workers for jobs was to accept the inequitable work conditions imposed on us by employers.
13. When I was unemployed I tried to obtain social security payments. I was told that I could not get this payment. I know that I met the requirements to be eligible for this payment. I was told that they could not help me. I tried twice to obtain welfare payments and both times I was refused without a proper explanation. I was told it was not possible. I am sure that I was turned away because I am a Gypsy and they did not want to assist me to access these payments. On the other hand, my [sister] was able to obtain these payments. My mother is not a Gypsy and she re-married another man and he also is not a Gypsy. My [sister] does not have a Gypsy name. She was able to obtain the welfare payments and her situation was no different to mine.
14. As a Gypsy I faced the threat of constant harassment by the police. Over the last three summers in Hungary I have been stopped approximately 8-10 times by the police. I would be asked questions about what I was doing and where I was working. I would be asked to show identity card, empty my pockets, and the police would use their radios to check if I had a criminal record. I lived with the constant threat of harassment and being stopped. The only reason I was singled out by the police is because I am a Gypsy. This type of harassment made me try to avoid any type of authority and also made me withdraw from social contact with people.
15. Apart from a high police presence in Gypsy areas, neighbourhood patrols groups connected to the right wing Jobbik political party are also operating in Hungary and come to Gypsy areas and terrorise Gypsy groups. On three occasions I have been stopped by this group and asked for my identity card. On each occasion I have told this group that they have no permission to check my identification. They have restricted my freedom of movement and I have not been allowed to leave until the police come. The police and this group are cooperating. When the police come I am made to show my identification and they show my identification details to this civil patrol group. Most members of this civil patrol group are young men around the age of 20-25. It is a new generation of people being brought up to hate and be suspicious of Gypsies. Nothing will change in Europe and the mindset towards Gypsies is very ingrained and deep-rooted.
16. I felt under constant pressure and stress in Hungary. My sense of human dignity was constantly being chipped away at, every single day. I started to plan my movements and I had to watch every step and it was making me crazy. Before going out I would plan what route I would be, what time of day I should go, and how I could ensure my safe return home. I have taken medication for the last nine years for anti-anxiety.

What I fear may happen to me if I return to that country and why

17. If I return to Hungary I fear I will continue to be subjected to the same treatment. As a Gypsy I will live under the constant threat of physical harm, verbal assaults and harassment. I will continue to be arbitrarily stopped by the police and civil patrol groups because I am Roma. I feel no sense of peace or safety in my home country. I do not even feel *safe* in the vicinity of my own home as I have been stopped by the police just outside my home. If I return to Hungary I will continue to face discrimination in accessing jobs. I have been unemployed for over 6 years. I have applied for jobs every week and received no response. This threatens my ability to survive.

Who I think may harm/mistreat me in that country and why.

18. I fear the police, I fear Hungarians who hate and detest Gypsies, and I fear the civil patrol groups who threaten and terrorise Gypsies and sometimes act with violence towards us.

Why I think the authorities of that country cannot or will not protect me if I were to go back to that country.

19. I have never received protection from the authorities and they support the police and the civil patrol groups.

Why I think relocation to another area in my country is not a reasonable option.

20. As a Gypsy I will face the same treatment in any part of Hungary.

21. I will also face the same treatment in the European Union (EU). I have seen in the news that other countries in the EU also do not want Gypsies. Being part of the EU does not entitle me to permanent residence of other EU countries. My right to stay there depends on securing employment and given the discrimination against Gypsies there is no guarantee of this and I fear I will face the same treatment and I suffered in Hungary. Gypsies are not welcomed into any country. Italy deported Gypsies in 2008 and France deported Gypsies in 2011. The Netherlands, Belgium and Luxemburg also signed an agreement with Kosovo to take Gypsies. These incidents are indicative of the mindset of the EU. We are considered a "problem" and they don't want this problem in their countries. I fear I will be discriminated against and I will face possible deportation. I want to live in a country where I will not suffer persecution and my right to human dignity and to permanent residence are guaranteed. I am therefore seeking asylum in Australia.

23. The applicant elaborated on his protection claims at an interview conducted [in] March 2012. He was subsequently invited to provide additional information addressing the issue of effective protection elsewhere in Europe, and also any claims against the complementary protection provisions, but no further information was submitted.

24. The application was refused [in] April 2012. The delegate found that Australia does not have protection obligations towards the applicant, as he is an EU passport holder with the right to enter and reside elsewhere in Europe, where, in the view of the delegate, he would not face a real chance of serious harm for a Convention reason or a real chance of other significant harm.

Review Application

25. [In] May 2012, the Tribunal received an application for review of the delegate's decision.

26. The applicant appeared before the Tribunal [in] May 2012 to give evidence and present arguments. The applicant was represented in relation to the review by his registered migration agent, who also attended the hearing.

Tribunal Hearing

27. The Tribunal explained its role, the purpose of the hearing, and the applicable legal principles, including the Convention definition of a refugee, the complementary protection principles, and effective protection principles set out in s.36(3) et seq of the Act. The Tribunal then indicated that the matters in issue were as follows:

- Whether the harm feared by the applicant amounted to serious or significant harm;
- Whether, even if he were facing a real chance of Convention persecution or a real risk of other significant harm in Hungary, state protection would not be available to him; and

- Whether, in the alternative, s.36(3) of the Act applies to the Applicant on the basis that he does not face a real chance of serious harm or a real risk of significant harm in other European countries in which, as an EU citizen, he has the right to enter and reside.

Evidence of the Applicant

28. The applicant identified himself to the Tribunal's satisfaction. He confirmed that he is a national of Hungary, and indicated that he does not hold any other nationality.
29. The applicant also confirmed that in Hungary he was residing at the same address in Budapest where he has lived since birth. He lives there with his mother and [a] sister. He also has [another] sister who lives elsewhere with her son.
30. Asked who owns the house, the applicant explained that his mother and [sister] own it. He doesn't have a share because his step-father and mother agreed it would go to his [sister]. The applicant noted in any case that the apartment is very small, and he occupied a room which is barely bigger than a cupboard. From time to time he had spent periods living elsewhere, if he had a girlfriend, for example, but he would end up returning to the family home.
31. The applicant was asked about his employment history. In particular, the Tribunal noted that he had indicated in his statement that he has been unemployed for the previous six years, and yet elsewhere in the application form it indicates that he had been self-employed as an interior designer. The applicant explained that he is self-employed, but received little work. He took whatever cash in hand jobs he could, but last had a regular job in 2005, a job he only secured because of his English language skills. He left when his contract finished.
32. The Tribunal referred to the applicant's statement, in which he mentioned that he was attacked in a nightclub by skinheads in 1991. This was said to be the first time he had been assaulted, but no other assaults are mentioned in your statement. Asked whether he had been physically assaulted on other occasions, the applicant indicated that he had not. However, the incident affected him very badly, and since that time he has avoided public places and unknown people. He has organised his life around avoiding risky situations. In the year prior to leaving Hungary he barely left "the cave" the term he uses to describe his windowless bedroom. If he did go out, he would try to ensure it was with other people, and the route would be carefully planned.
33. The Tribunal asked the applicant to elaborate on his claim to have been stopped on approximately 8-10 occasions over the last three summers by police. Asked where these incidents occurred, the applicant replied that they happened in Budapest, quite close to where he was living. Asked whether he was ever harmed, threatened, abused or insulted during these incidents, the applicant's replied that he was not as such.
34. The applicant was also asked to elaborate on his claim to have been stopped on three occasions by neighbourhood patrol groups. He explained that these incidents had also occurred near where he lives. These people cooperate with the police. They ask him for identification despite having no authority to do so. They seem to do it just for fun, as it has no purpose. The people involved are immature, and seem to have inherited their parents' prejudices, as it is always Roma whom they target.
35. Asked whether he was ever harmed, threatened, abused or insulted during these incidents, the applicant explained that they would just surround him, as they usually travelled around together in large groups, and some of them carry extendable batons although that is illegal.

They observe that he is a Gypsy and query whether he has been involved in committing crimes. If they know you by sight they will harass you again the next time they see you. It amounts to a restriction on his freedom of movement.

36. The applicant was asked where his sister lives, and whether she experiences any similar problems in that area. He explained that she lives in [district deleted: s.431(2)], but you get these problems everywhere. Ordinary day to day transactions are problematic as you get no service. The problems are more serious in other areas, such as near the Czech [-oslovak] border. In Budapest he lives in [district deleted: s.431(2)]. The northern part is occupied by Gypsies, but the rest of the suburb is middle class. Overall there is no place which is safe.
37. The Tribunal noted that the application indicates that the applicant had travelled to a number of other European countries. Asked the purpose of these travels, and whether he experienced any problems there, the applicant explained that he has a cousin who provides financial advice and services, and he travelled to [another country in Europe] to assist him with translating, again because of his English language skills. This [cousin] is Roma, but the cousin's father is a non-Roma, and he is quite prominent, so the cousin never experienced any problems. It is almost as if you can "buy out" of being a Gypsy if you are wealthy and prominent enough. Having a family name which is not Roma is also important, and in addition the cousin is fair haired. [This country] was ok just to visit but it is different if you plan to stay there.
38. The applicant also heard that Hungarians could work in Germany, and he did travel there and inquired informally about claiming asylum there, but was told that such an application would be unsuccessful.
39. The applicant was asked how he learnt English. He explained that he was self-taught, using books and also taking every opportunity to speak to tourists. He had no formal education in English because at school he was denied opportunities, and called an ignorant Gypsy. He has never lived in an English speaking country.
40. Asked why he had chosen Australia as a destination, the applicant explained that he wanted to get as far away from Europe as possible, to obtain real security without the fear of the unknown. In Europe he couldn't leave his apartment without fear, and he has been on medication for 10 years. Even when he was asked to undertake medical checks in relation to the protection visa application he was apprehensive about going, but the psychologist at the detention centre has helped him to understand that he will be able to manage.
41. The Tribunal noted that the applicant had been issued with a visa to come to Australia [in] November 2011, and asked the applicant why, if you was so concerned for his safety, and the problems you faced were so unbearable, he had waited more than two months before departing Hungary. The applicant explained that he had to save up to purchase a ticket and also have some money in reserved for when he arrived here, in case he encountered any problems.
42. The applicant was referred to the report reproduced below at [61], and observed that this information suggests that state protection against the harm feared may be available to him in Hungary.
43. In response, the applicant observed that the government does act after significant violations, but on a day to day basis nothing changes. Furthermore, if the perpetrator denies that the victim's Roma ethnicity was an issue then that is the end of the matter. If the police are

involved, then mostly the authorities will try to clear them. They may investigate the odd case, but most cases go unsolved, and the police try to minimise the human rights protections available to Roma. He has often asked the police why they are checking on him yet again. They just say that they are only doing their job, or that there is nothing they can do to help.

44. He tried to study and improve himself, but in Hungary he always had barriers placed in front of him, effectively preventing him from completing his education. He believes that the failure of his father and grandfather to teach him any Romani language was a deliberate attempt to make things easier for him. He himself decided not to have a family because he didn't want to raise children who would have to experience the same problems. It is true that some people argue in favour of Roma rights, but without genuine government backing they get nowhere.
45. The Tribunal noted that in the primary decision the delegate had referred to country information suggesting that the Roma are not facing significant problems in some of the other EU countries where the applicant has the right to enter and reside. The applicant replied that in practice things can be different to the situation described in the reports. He may face limitations in access to proper jobs and accommodation. Some of the reports indicate that there are negative attitudes towards immigrants generally, and in such cases people can readily turn against immigrants. Europe is well-known as a migration destination, and European countries are always looking for excuses to exclude people on the basis that they are immigrants. The delegate suggested that Spain would be a suitable country because there are many other Gypsies there, but it is important to recognise that there are cultural differences between the different groups, and Roma people there are not going to take him in just because he is also Roma. Furthermore, they are citizens of Spain, and he is not.
46. The applicant acknowledged that as a citizen of an EU country he has the right to enter and reside in other EU countries, but he doesn't have the same rights as the citizens of those countries. The current economic crisis is exacerbating the situation, and if Greece leaves the EU it could get much worse. If he goes to another country and can't get a proper job he will have to seek welfare, but they will not provide any welfare, it would be seen as Hungary's problem.
47. The applicant explained that he fears that he would never be accepted as part of society in any European country. The EU is still not even close to solving many of its problems. Being a Gypsy is an international problem; he has heard that even in Canada problems can occur. He decided to start over by coming to Australia, where he believes he will find social equality. He thinks he would be able to support himself here.

Submissions of the Applicant's Representative

48. The representative then made submissions on behalf of the applicant.
49. With respect to the question of the applicant's right to enter and reside in other EU countries, and the risk of refoulement from those countries to Hungary, he challenged the proposition that the applicant has a legally enforceable right to enter and reside in other EU countries, arguing that the right was not inalienable.
50. With respect to complementary protection, he asserted that applicant faces a real risk of significant harm in Hungary in the form of degrading treatment or punishment. Furthermore, the world still does not accept the Roma, their situation being like that of homosexuals 30 years ago. Roma will always face problems in EU countries.

51. The representative also noted that the lack of physical harm the applicant has experienced in the recent past does not mean there is not more than a remote chance of it occurring in the reasonably foreseeable future. He is lucky he has not been harmed again, but in any case, it is sufficient to found a protection claim if the harm is psychological or emotional.
52. The representative asserted that the applicant has been upfront and truthful the conduct of his case and the presentation of his claims.

Further Evidence of the Applicant

53. At this point the applicant indicated that (regardless of any EU entitlements) he does have the right to enter and reside elsewhere in Europe under the Schengen Agreement.
54. The Tribunal was asked to defer making a decision for a further three weeks in order that written submissions could be provided.

Post-hearing

55. [In] June 2012 the Tribunal received a preliminary psychological report dated [June] 2012, prepared by [name deleted: s.431(2)] of [Organisation 1]. The reports states as follows:

I refer to your request today for a psychological report regarding this [age] year old single Hungarian asylum seeker who is currently detained at [Suburb 2] Immigration Detention Centre. You indicated that you required information today for a submission to the Refugee Review Tribunal. As stated, owing to the time frame and the fact that I have performed only a preliminary assessment of [the applicant], I cannot provide a psychological report which is complete or comprehensive. I can however furnish some brief and provisional opinions about his mental state.

[The applicant] was referred to this service by detention health services and I assessed him initially on [date] May 2012 and again on [date] June 2012. I have read his Statement in support of his asylum claim dated [date] March 2012.

Background

[The applicant] arrived in Australia on [date] February 2012 by air and was detained, having made an asylum claim at [the] airport. He has been detained at [Suburb 2] IDC since then. Prior to coming to Australia he was living in Budapest with his mother and sister. He said that he was unemployed and has had only occasional work since 2005 when he worked for six months in the construction industry.

[The applicant] was born in Budapest. He has [two sisters]. His father, who died in 1992, was ethnically Roma, and from an early age it appears [The applicant] identified himself as a Gypsy and was regarded as such by others. He completed eight years preliminary schooling and then four years trade school where he studied to be an "electro-technician" equipping him to repair electrical goods.

He did not have any serious illness or injuries during childhood and adolescence with the exception that when [age] years old he was hospitalised because he said he had a problem gaining weight.

[The applicant] has been employed in a [variety of jobs], but has never had long term employment.

Regarding his relationship history, he said he has had a number of heterosexual relationships, the longest being for four years.

He said he identified as a Gypsy (an appellation he said he preferred to Roma) and his closest friends and most of his girlfriends have been Gypsies. He does not speak Romany because he

said his paternal grandparents decided family members should avoid being conspicuous. He said he first experienced discrimination when [age] years old at child care and then throughout his schooling. He said people would routinely shun him once they became aware of his ethnicity. He reported being seriously assaulted in a nightclub when [age] years old in a racist attack. In his adult life, as indicated in his asylum Statement, he said he has experienced a variety of forms of discriminatory treatment, ranging from discrimination in employment to harassment by the police.

History of Psychological Functioning

[The applicant] stated that he became wary of the Hungarian community's attitude to Roma from an early age and was self-conscious about his ethnicity. In his adolescence he began to worry about being humiliated in public, and developed the specific fear that he would vomit in front of others. To avoid this, he would eat only at home, but this gave rise to a fear that he would faint at school and be derided for that. He first sought psychological treatment for anxiety he was experiencing in social situations when [age] years old. Despite receiving treatment from a number of psychiatrists and psychologists over the past 12 years it appears that his anxiety in social situations has become more intense over time and has significantly disrupted his social and vocational functioning. He said he had difficulty leaving home and would experience intense fear for about 30 minutes until he familiarised himself with his situation. He could then work or go about other social activities, but if required to move to somewhere unpredictably he would again become intensely anxious.

Over the past 18 months to two years his anxiety has increased to the point where he has required about two hours preparation before leaving his home. He has experienced intense anticipatory anxiety with elevated heart rate and a sense of dread when preparing to leave home or a place where he feels safe. His greatest fear involved him going into a public place, losing control of his body by vomiting, having diarrhoea or fainting, and then in his state of distress being ridiculed and mocked for being a Gypsy and denied any assistance. His preparation involves trying to reassure himself and ensuring he doesn't feel like vomiting or need to go to the toilet.

He has been treated with the anti-depressant Sertraline (which is also used as an anti-panic agent), but this has not apparently assisted him greatly.

Mental State at time of interviews.

[The applicant]'s mental state did not vary appreciably across the two interviews. He was alert, oriented and answered to the point in reasonably fluent accented English. He was composed, somewhat animated in his manner, and showed a good affective range. He did not appear obviously anxious but he reported considerable anxiety associated with the trip to the session from the detention centre. He was not depressed. There was no formal thought disorder, abnormal ideation or perceptual disorder suggestive of psychosis.

He described a history of social anxiety symptoms since adolescence, which have become more intense in the past two years. He said that these symptoms had their genesis he believes in the discrimination he has experienced as a Gypsy in Hungary since early childhood. He said he felt safe in the detention centre but needed to prepare himself for two hours before being taken from the centre to an appointment. He said that some trips from the centre had needed to be abandoned because he had panic attacks.

Conclusion

[The applicant] suffers from a quite debilitating anxiety disorder comprising social anxiety and panic symptoms associated with anticipated humiliation in public settings. His fears are strongly coloured by his Roma ethnic identity in that the humiliation he anticipates involves being disparaged for being a Gypsy. It is possible that the genesis of this condition is his experience of discrimination in childhood and adolescence in an individual predisposed to develop an anxiety disorder. His belief is that regardless of where he might reside in Europe, that anti-Roma sentiment would impede any recovery and he claims this is a reason for seeking asylum in Australia.

He requires appropriately targeted psychological treatment for at least nine months which he does not appear to have ever received.

Country Information

The Situation for Roma in Hungary

56. On 16 January 2008, the United Nations Committee on Economic, Cultural, and Social Rights (CECSR) published its most recent report on Hungary, reflecting the conclusions of its 38th Session held on 30 April - 18 May 2007. The report can be accessed from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/401/75/PDF/G0840175.pdf?OpenElement> and includes the following extracts under the heading *Principal subjects of concern*:
7. The Committee notes that, although the Covenant has been incorporated into the domestic law of the State party, most of the rights recognized in the Covenant are not directly applicable in the courts of the State party.
 8. The Committee is concerned that the shared burden of proof under the Equal Treatment Act, requiring the victim merely to establish a prima facie case of discrimination, whereupon the burden of proof shifts to the alleged discriminator, is reportedly rarely applied by the courts. It is also concerned that the low level of resources provided to the Equal Treatment Authority since its inception and the recent reduction in its funding and the number of staff may adversely affect its capacity to deal with an increasing caseload...
 11. The Committee is concerned about the extremely high unemployment rate among the Roma in the State party and about discrimination against Roma by private and public employers...
 14. The Committee notes with concern that, according to the State party, the net minimum wage is not fully sufficient to cover the subsistence costs of a "single household"...
 17. The Committee regrets that the statistical data on social security benefits provided by the State party in relation to personal and material coverage did not enable an assessment of the overall adequacy of the system and the identification of persons and groups who may not be sufficiently protected.
 18. The Committee is deeply concerned about the "limited effectiveness of the cash transfer programme" in the State party and about the fact that social assistance levels do not ensure an adequate safety net for, in particular, the disadvantaged and marginalized individuals, families and groups, such as the Roma...
 22. The Committee is deeply concerned that one-fifth of the Roma in the State party live in slum settlements, often without access to running water, adequate sewerage or located close to municipal dumpsites, and that Roma are frequently denied access to social housing, e.g. on the ground that they previously occupied accommodation without legal title or as a result of the distribution of social housing by local governments through public auction at high prices. It is particularly concerned about the increasing number of forced evictions of Roma, often without provision of adequate alternative housing, and about the Constitutional Court's ruling that the need to implement eviction orders takes precedence over the right of children not to be separated from their families and placed in the State care system...
 25. The Committee is concerned that the average life expectancy of Roma is more than ten years shorter than that of non-Roma, and that Roma are reportedly often denied access to health services, including emergency aid services; segregated in hospitals; and discriminated by health practitioners who allegedly provide medical services of lower quality to them or extort unjustified amounts of money from them.
 27. The Committee is deeply concerned about the high number of Roma children segregated in separate schools, such as special remedial schools for children with mental disabilities, or in separate substandard "catch-up" classes within schools, and that mainstream schools frequently put pressure on Roma parents to apply for private student status for their children.

It is also concerned about the high dropout rate among Roma students at the secondary level and about their low enrolment in higher education.

28. The Committee is concerned about the limited opportunities for minorities, including for the Roma, to receive instruction in, or of, their native language and of their culture.
29. The Committee is concerned that the minority self-governments are insufficiently funded to discharge their responsibilities in the co-administration and co-management of educational and cultural institutions.

57. [Article title, citation and quoted text deleted: s.431(2)]

58. Amnesty International's Report for 2011 published on 13 May 2011, includes a section on Hungary. Accessed from <http://www.amnesty.org/en/region/hungary/report-2012#section-24-2>, it includes the following information about the problems facing Roma in that country:

Roma continued to face violent attacks and discrimination and lived in a climate of fear. The police completed the investigation into a series of attacks against Roma in 2008 and 2009 and four suspects were charged. International human rights monitoring bodies raised concerns over structural shortcomings of the Hungarian criminal justice system's response to hate crimes. Romani children were segregated in primary school.

Background

The coalition of the Alliance of Young Democrats (Fidesz) and the Christian-Democratic People's Party won the parliamentary elections convincingly in April.

An extreme right-wing political party Movement for a Better Hungary (Jobbik) gained seats in parliament for the first time.

Members of the banned group the Hungarian Guard (Magyar Gárda) reportedly continued their activities under another name, the New Hungarian Guard. In September, the prosecutor pressed charges against three of its leaders for incitement against the assembly.

Racism

After a series of violent attacks against Romani communities which left six people dead in 2008 and 2009, Hungarian NGOs reported further attacks against Roma and criticized the lack of procedures within the criminal justice system to effectively address hate crimes (see Justice system below). In June, the OSCE noted that Roma were more susceptible to being made "scapegoats", blamed for the country's existing socio-economic problems, as a larger percentage of them depended on state support. In June, the police completed the investigation into the series of attacks against Roma in 2008 and 2009. It concluded that four suspects should be charged with multiple co-ordinated homicide. In September, the Pest County Prosecutor submitted the indictment: three men were charged with multiple homicides for "base motivation" (as there is no specific provision in the criminal code for racially motivated crime) and the fourth with abetting the crime of pre-meditated multiple homicides.

In September, the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities expressed concerns about violent attacks against Roma, and noted that despite the arrests of the alleged perpetrators, there was still "a climate of fear". The Committee further expressed concerns that "intolerance and prejudice towards Roma are being fanned by the statements of certain extreme right-wing politicians." According to local NGOs, such statements were not firmly condemned by the government.

In the run-up to the municipal elections in October, national public radio and television refused to air a party-political advert by the Jobbik party, which referred to so-called "Gypsy crime" and claimed a link between crime and ethnicity. The National Elections Committee ruled that both media had violated electoral principles of equality of political parties and that the advert had complied with free speech regulations. In September, the Supreme Court upheld the decision.

Justice system

Structural shortcomings of the Hungarian criminal justice system's response to hate crimes were revealed by international and local NGOs and international human rights monitoring bodies. These shortcomings included a lack of capacity to recognize and investigate hate crimes; no specialized training or specific guidelines for police and investigators; inadequate support to victims of hate crimes; and no effective measures to map the nature and scale of the issue, partly because of a lack of data which hampered the authorities' ability to identify trends and prepare relevant policy responses.

There were several documented cases which illustrated that law enforcement authorities often failed to recognize the racial motivation in crimes. In their submission to the UN Universal Periodic Review, Hungarian NGOs also expressed concerns in November over a tendency to classify crimes as "common" crimes rather than hate crimes with a racially aggravated motive. As a result, reliable statistics were not publicly available on the real number of racially motivated crimes in Hungary. Hatred as an aggravated motive was also reportedly ignored in crimes committed against LGBT people or Jewish people.

Discrimination – Roma

The UN Human Rights Committee raised concerns about discrimination against Roma in education, housing, health and political participation and the lack of regulated data collection disaggregated by ethnicity.

For the first time, the Supreme Court awarded compensation to victims of anti-Roma school segregation. The Court found in June that five Romani children had been segregated during their primary schooling in the town of Miskolc. The Court held that segregation on the basis of ethnic origin amounts to unequal treatment prohibited by law, and awarded compensation to the victims

59. On 16 November 2011, the *XpatLoop* website published a report entitled *Misdemeanour Regulations Tightened in Hungary*. Accessed from <http://www.xpatloop.com/news/68610>, it states as follows:

"Late payers of misdemeanour fines may be held in custody, according to a bill that the cabinet has passed, Interior Ministry state secretary Károly Kontrát announced Friday. The government will increase minimum and maximum fines for misdemeanours to Ft 3,000 and Ft 300,000 respectively, from January 1, 2013.

Kontrát said "misdemeanour recidivism" will make committing three offences within the space of six months imprisonable.

Kontrát added that the act will ensure a more effective, faster, simpler and more transparent procedure, will help to reduce crimes and misdemeanours and will enable imprisonment within 30 days of an offence being committed.

The cabinet also passed a bill on civil guards, banning them from engaging in political activity and connections to political parties. Such groups may start to operate after concluding a written co-operation agreement with the relevant county or Budapest police stations, as long as they are registered members of the national civil guard association."

60. The following report from the European Roma Rights Centre (ERRC) entitled *Attacks against Roma in Hungary, the Czech Republic and the Slovak Republic* was published on 15 January 2012 at <http://www.errc.org/article/attacks-against-roma-in-hungary-the-czech-republic-and-the-slovak-republic/3042>:

Since January 2008, in Hungary, the Czech Republic and the Slovak Republic, anti-Roma violence has gained significant prominence in the media.

The attacks listed below, involving firebombing, shooting, stabbing, beating and other acts of violence, have already taken the lives of eight people and have left dozens of others with serious injuries. Many of the attacks have targeted families and children.

The attacks in these three countries since January 2008 have occurred in an increasingly racist climate. These countries have seen a strengthening of extremist and openly racist groups, which spread hate speech and organising anti-Romani marches through the very same villages where people are being attacked or killed.

For the most part, there have been no successful prosecutions of offenders in these attacks. This list of attacks is not exhaustive and does not address the state response to the attacks. The ERRC has not independently verified all of the information contained in these media reports.

61. The report then goes on to list, at <http://www.errc.org/cms/upload/file/attacks-list-in-hungary.pdf>, 50 attacks against Roma in Hungary during the 3½ year period from January 2008 to July 2011.

62. The following article entitled [*article title and citation deleted: s.431(2)*]

63. The 2011 United States State Department (USSD) report on human rights practices in Hungary relevantly includes the following, published on 22 May 2012 at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>:

Among the most important human rights problems during the year were societal discrimination and exclusion of the Romani population and violent right-wing extremism. Discrimination against Roma exacerbated their already limited access to education, employment, health care, and social services. Right-wing extremism, including public campaigns by paramilitaries to intimidate and incite hatred against Roma and other minorities, increased. Also the government began implementing a new law that restricts media freedom by increasing government influence over the media in general. The government also adopted a new Fundamental Law to replace the 1949 constitution, as well as more than 20 cardinal laws. New laws concerning the judicial system, religious organizations, and media freedom gave rise to concerns that the new legislation could undermine the country's democratic institutions by removing key checks and balances. The Fundamental Law and most cardinal laws were to come in to force on January 1, 2012.

Other human rights problems during the year included police use of excessive force against suspects, particularly Roma; new restrictions on due process; new laws that caused concerns over the broad powers of the media regulatory authority, which could encourage self-censorship; government corruption; questionable layoffs of state media employees; societal violence against women and children; sexual harassment of women; anti-Semitism; trafficking in persons; and the adoption of laws that weakened the labor rights of civil servants.

The government generally took steps to prosecute and punish officials who committed abuses, whether in the security services or elsewhere in the government

The Romani community remained the largest ethnic minority. According to the Central Statistics Office, in 2007 the Romani community accounted for 2 percent of the population, or approximately 200,000 persons. However, unofficial estimates varied widely and suggested the actual figure was much higher, ranging between 500,000 and 800,000 persons. Human rights NGOs reported that Roma were discriminated against in almost all fields of life, particularly in employment, education, housing, penal institutions, and access to public places, such as restaurants and bars.

During the year, right-wing extremist groups continued to incite violence against Roma and held marches around the country aimed at intimidating local Romani communities. Beginning on March 6, far-right activists of the For a Better Future Civil Guard Association donned uniforms and patrolled the town of Gyongyospata with the aim of intimidating the local Roma population. On April 22-24, the paramilitary group Vederó (Defense Force) organized a three-day training camp near the village's Roma neighborhood. On the morning on April 22, some 267 Romani women and children were bussed out of the village in a move that some individuals claimed was an "evacuation," but which the organizer, Red Cross Hungary, asserted was a prearranged camping trip. On April 22, Interior Minister Sandor Pinter visited Gyongyospata, ordered

increased police presence in the town, and instructed the police to expel the extremists. The same day, police arrested eight far-right activists and charged them with disorderly conduct. On April 25, the court acquitted five defendants. On April 26, four of the far-right activists who remained in Gyongyospata provoked a fight with the Romani residents. One of the provocateurs suffered serious injuries, while the three others and two local Romani residents suffered minor injuries. The police opened an investigation in the case and pressed charges against two Roma for disorderly conduct committed in a group and in an armed manner.

NGOs accused far-right groups of intentionally provoking ethnic tension in Gyongyospata and asserted that the government failed to protect the local Roma minority against racist provocation. However, the government responded vigorously, adopting legislation in April and May to halt the “uniformed criminal activity” of far-right groups (see section 1.d.).

On March 25, the trial of four persons charged in connection with the 2008-09 serial killings of six Roma, including a father and child who were shot fleeing their burning home, began at the Pest County Court. Three of the defendants were charged with multiple homicides, and the fourth was charged as an accomplice in the killings. The case remained pending at year’s end.

According to the HCLU, members of the Romani community were regularly sentenced for minor offenses, such as collecting firewood or minor traffic violations, that were usually ignored when committed by non-Roma. The HCLU asserted that police and municipalities selectively applied laws against the Roma to keep them segregated and restrict their freedom of movement. The Ministry of Public Administration and Justice operated an antidiscrimination legal service network that provided free legal aid to Roma in cases where they encountered ethnic discrimination. However, human rights NGOs complained that the legal offices were located in the larger cities and were inaccessible to Roma living in deep poverty in small villages. The HCLU received reports that the network’s lawyers rejected some Roma cases.

During the year NGOs complained that courts increasingly used the provision of the criminal code on racism to convict Roma, whereas the law was designed to protect members of minority groups. On March 3, the Pest Central District Court convicted seven young Roma for what the court ruled was a racist attack on a non-Romani individual by applying the criminal code provision of violence against a member of a community. On October 24, the Budapest Metropolitan Court of Appeal upheld the charge of racist motivation in one case and reduced the charges in the case of six other men to “armed hooliganism,” a change that significantly mitigated the legal penalties. The appeals court emphasized in its ruling that lawmakers criminalized violence against member of an ethnic community in order to expand protection of minority groups, not the majority group.

According to the government, approximately 85 percent of working-age Roma were unemployed, and in many underdeveloped regions of the country, the number exceeded 90 percent. On July 11, parliament amended the law on public work stipulating that the unemployed who want to continue to receive benefits cannot reject public work opportunities unless they have small children, need to care for a sick family member, or would require more than three hours to commute to and from work. The new law, effective September 1, also reduced the period for which unemployment benefits are granted from 270 to 90 days and authorized local governments to set up their own preconditions for granting social subsidies. The new National Public Employment Program, launched on September 1 and estimated to cost 60 billion forints (\$249 million), provided part-time employment opportunities for 250,000 registered unemployed persons living on social welfare for two to four months. The public works program typically involves cleaning public spaces or work on agricultural or water projects. During the year approximately 302,152 individuals were involved in the various forms of public employment programs, including those run by local governments.

The public education system continued to provide inadequate instruction for minorities in their own languages. Romani language schoolbooks and qualified teachers were in short supply. According to the national survey published by the National Family and Social Policy Institute on June 7, Roma were significantly less educated than other citizens.

During the fall school season, four Christian churches opened Roma Specialist Colleges in Budapest, Miskolc, Debrecen and Nyiregyhaza providing housing and tutoring for Romani students enrolled in higher educational institutions. During the year 75 Romani students participated in the network of special colleges.

Inadequate housing continued to be a problem for Roma, whose overall living conditions remained significantly worse than those of the general population. According to Romani interest groups, municipalities used a variety of techniques to prevent Roma from living in more desirable urban neighborhoods. In order to apply for EU and government funds for urban rehabilitation and public education projects, municipal authorities must attach to their proposal a desegregation plan outlining planned actions to eradicate segregation in housing and public education. According to a 2010 survey by the Ministry of National Resources, approximately 100,000 seriously disadvantaged persons, mainly Roma, lived in approximately 500 settlements that lacked basic infrastructure and were often located on the outskirts of cities. During the year, the government launched a new program worth 3.5 billion forints (\$14.5 million) to rehabilitate these settlements aimed at improving the living conditions of the residents. The government program involved four segregated settlements, accommodating approximately 5,000 people.

During the year the state secretary for social integration at the Ministry of Public Administration and Justice, Zoltán Balog, continued to play a critical role in advancing Roma affairs within the government. The office harmonized the government's inclusion policy as well as that governing Roma-related government programs (e.g., scholarships, Decade of Roma Inclusion Program). The Ministry of National Resources continued to offer financial incentives to encourage schools to integrate Romani and non-Romani children in the same classrooms and to reintegrate Roma inappropriately placed in remedial programs. On September 26, the government established the 27-member Roma Coordination Council, chaired by the minister for public administration and justice and co-chaired by the head of national Roma self-government, Florian Farkas, who was elected on January 20. The new council includes representatives of local Roma self-governments, NGOs, and churches. Most ministries and county labor affairs centers had special officers for Romani affairs focused on the needs of the Romani community.

On November 30, the cabinet approved the National Social Inclusion Strategy. The national strategy identifies specific actions the government aims to take to reduce the percentage of the population living under the poverty line, integrate Roma into the labor market, and increase the level of education of Roma. On December 13, the cabinet adopted the Governmental Action Plan for the implementation of the National Social Inclusion Strategy for 2012-2014. The action plan determines specific tasks, identifies responsible members of the cabinet, and sets deadlines in the areas of child welfare, education, employment, health care, housing, raising awareness, and fighting discrimination against Roma.

Right to Enter and Reside Elsewhere in the European Union

64. In addition to the information set out above, the Tribunal has had regard to the EU law and practice as explained in the EU website at <http://europa.eu/>. With respect to residence rights, the EU website provides the following information at http://ec.europa.eu/youreurope/nav/en/citizens/living/right-residence-up-3-moths/for-union-citizens/index_en.html:

Every person holding the nationality of a Member State is a citizen of the Union.

This status confers on you a primary and individual right to move and reside freely within the territory of the Member States, subject to certain limitations and conditions laid down in Community legislation.

Community legislation provides that every Union citizen has the right to reside in the host Member State for a period of up to three months with the only requirement to hold a valid identity card or passport.

The right of residence in the host Member State there is granted to you on grounds of your Union citizenship and these documents confirm that you are indeed a Union citizen.

It is irrelevant whether you intend to reside there for professional or private reasons, whether you are going to work in an employed or self-employed capacity, be a family member of such person or whether you are simply a tourist.

Beside the requirement to hold a valid identity card or passport, there are no other conditions or formalities.

65. With respect to work rights in the EU, the EU website explains that restrictions still apply to EU citizens from some former Eastern Bloc countries, but Hungary is no longer one of them. Thus the EU website at http://europa.eu/youreurope/citizens/work/job-search/work-permits/index_en.htm provides that for nationals of various countries including Hungary, *[s]ince 30 April 2011, no restrictions apply to you any more: you have the right to work - as an employee or self-employed - without a work permit throughout the EU.*
66. With respect to the EU countries in which Hungarian citizens may work without limitation, the Tribunal has had regard to information in the most recent USSD country reports on human rights practices published on 22 May 2012 in a number of relevant countries. The reports on the following countries contain little or no references to Roma (Travellers in the UK report) experiencing serious or significant harm:

Austria

http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186328

Interior Ministry statistics released in September cited 580 neo-Nazi, right-wing extremist, xenophobic, or anti-Semitic incidents in 2010. The government continued to express concern over the activities of extreme right-wing and neo-Nazi groups, many with links to organizations in other countries.

An NGO operating a hotline for victims of racist incidents reported 745 complaints in 2010. It noted an increase in verbal abuse against women wearing headscarves.

In October a court in Styria Province acquitted a right-wing party official of charges of anti-Muslim incitement. The charges stemmed from an Internet pop-up game appearing on the party's Web site that allowed players to "gain points" by pasting stop signs on minarets and men in traditional Turkish attire. The public prosecutor appealed the verdict.

Human rights groups continued to report that Roma faced discrimination in employment and housing. The head of the Austrian Romani Cultural Association reported that the situation of the Romani community, estimated at more than 6,200 indigenous, and between 15,000 and 20,000 nonindigenous, individuals, continued to improve. Government programs, including financing for tutors, helped school-age Romani children move out of "special needs" and into mainstream classes.

NGOs reported that Africans living in the country experienced verbal harassment in public. In some cases black Africans were stigmatized for perceived involvement in the drug trade or other illegal activities.

In response to criticism that it had failed to enforce Constitutional Court rulings regarding the Slovene minority's language rights in Carinthia Province, parliament on July 6 passed a law doubling the number of bilingual town signs, wider use of the Slovene language in administrative offices, and funding for Slovene cultural and educational institutions. Federal law recognizes Croats, Czechs, Hungarians, Roma, Slovaks, and Slovenes as national minorities.

The government continued training programs to combat racism and educate the police in cultural sensitivity. The Interior Ministry renewed an agreement with a Jewish group to teach police officers cultural sensitivity, religious tolerance, and the acceptance of minorities.

Poor German-language skills were a major factor preventing minorities from entering the workforce. The Labor Ministry continued efforts to combat this situation by providing German-language instruction and skilled-labor training to young persons with immigrant backgrounds.

In April the government appointed its first state secretary for integration. Reporting to the interior minister, the state secretary is responsible for coordinating the government's efforts to integrate the country's immigrants.

Norway

http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186390

On July 22, rightwing extremist Anders Behring Breivik detonated a large improvised explosive device (IED) next to government buildings that housed many ministries and the prime minister's office, killing eight persons and injuring scores. After detonating the IED, Breivik drove to a Labor Party youth camp on the island of Utoya outside of Oslo and shot and killed 69 persons (mostly youths) and injured many others. Shortly before the attack, Breivik posted a manifesto on the Internet in which he accused the Labor Party of treason for, among other things, encouraging multiculturalism, feminism, and Muslim immigration.

The Center against Racism reported that, in the hours after the attack and before the perpetrator's identity was established, some immigrants and Muslims in Oslo reported being harassed, spat upon, yelled at, or chased. The government responded to the July 22 attacks by calling for "more democracy, more openness, and more humanity." Commentators noted that, in the months following the attack, there was a greater feeling of inclusiveness towards all members of society.

In a year in which there were few reports of racial profiling by police, media reported that a Ugandan researcher with the International Panel on Climate Change was stopped and searched by Oslo police in October. The police officer reportedly apologized on the spot, saying he searched the man because his behavior was suspicious, not because he was African. The Oslo Police District subsequently sent a letter of apology. There were increasing instances of stigmatizing and hostile rhetoric against immigrants and Muslims during the year, particularly on the Internet. KRIPOS maintained a Web page for the public to contact police regarding online hate speech. In 2008, the latest date for which figures were available, KRIPOS reportedly received 160 complaints about racism and racist expressions on the Internet, but none led to further investigation or action by authorities.

In its concluding report on the country this year, CERD expressed concern over racist views by extremist groups on the Internet and by some representatives of political parties, "which constitute hate speech and may lead to acts of hostility against certain minority groups." CERD also expressed concern over the lack of judicial statistics on the number of complaints, investigations, prosecutions, and condemnations regarding racist acts. After a Congolese-Norwegian woman was attacked violently December 12 and told to "go back to where she came from," there were calls for police to do more to monitor and address hate crimes.

Immigrants and their children sometimes had more difficulty finding employment than equally qualified ethnic Norwegians. As of August 30, the unemployment rate among immigrants was 6.5 percent, compared with 3.3 percent among nonimmigrants, according to government statistics. African immigrants had the highest unemployment rate at 12.4 percent, followed by Asians at 8.2 percent, immigrants from eastern EU countries at 7.4 percent, and Central Americans at 6.3 percent.

Spain

http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186408

There were instances of societal violence and discrimination against members of racial and ethnic minorities, and the government generally undertook efforts to combat the problem.

During 2010 the government-sponsored Network of Centers for Assisting Victims of Discrimination received 235 complaints of discrimination, of which 39 percent were from the African community, 20 percent from the Romani community, and 17 percent from the Latin American community. Of the complaints, 24 percent were related to discrimination based on

unequal access to goods and services in both the public and private sectors, 22 percent were against security forces, and 17 percent were related to discrimination in the workplace. The 2010 Raxen Report by the Movement against Intolerance estimated that there are approximately 4,000 racially motivated crimes in the country each year as well as over 200 xenophobic Web sites. The Office of the Spanish Ombudsman reported 48 complaints of racism and xenophobia in 2010

On March 10, the UN Committee for the Elimination of Racial Discrimination issued a report urging the country to “take effective measures to eradicate the identification controls based on ethnical and racial approaches,” which can lead to unfair arrests. The committee urged Spain to review the police staff notice 1/2010 where arrest quotas of immigrants were included.

According to the media, since 2008, the National Police have had orders to identify as many possible illegal immigrants in Madrid, with the objective of expelling them from the country. Four police unions have confirmed the reports both to the Office of the General Prosecutor and the ombudsman, stating that they were forced to arrest foreigners just because they look like foreigners and could be without papers. The Ministry of Interior had denied the existence of the controls.

According to the domestic NGO Fundacion Secretariado Gitano (FSG), Roma continued to face discrimination in access to employment, housing, and education. The Romani community, which the FSG estimated to number 650,000, experienced substantially higher rates of unemployment, poverty, and illiteracy than the general population. During the year the FSG reported 115 cases of discrimination against Roma, of which 30 percent involved discriminatory portrayals of Roma in the media and online.

On April 4-6, Thomas Hammarberg, the Council of Europe’s commissioner for human rights, visited Madrid and met with the secretary general of social policy and consumption, Isabel Martinez Lozano. In his report on the visit, Hammarberg noted that the economic downturn had a disproportionately severe impact on Roma, whose rate of employment in 2009 declined by 35 percent, compared with a decline of 18 percent experienced by the general population, and may endanger improvements the country has achieved. He also noted that disproportionate numbers of Roma continued to live in segregated and substandard dwellings, with civil society reporting that 12 percent of Roma in the country lived in substandard housing and 4 percent lived in shantytowns. Hammarberg criticized “certain Spanish media” for propagating negative stereotypes about immigrants and Roma, associating them with “illegality, deviance, and lack of adaptation.”

Politicians known for their hard-line stances against immigration gained ground following Catalonia’s municipal elections in May. Xavier Garcia Albiol of the Popular Party of Catalonia became the new mayor of Badalona, a suburb of Barcelona that is the third largest city by population in Catalonia, in part due to his polemical views linking immigrants from Romania and other countries to crime and promising a tougher stance on illegal immigration. As a result of a 2010 campaign flyer linking immigrants to crime that stated “We don’t want Roma,” Albiol was charged with inciting racist hate. As of year’s end, investigators were determining whether to send the case to trial.

In the May elections, the far-right, anti-immigrant Platform for Catalonia (PxC) increased its number of city council representatives in Catalonia from 17 to 67, but the party neither won any mayoral races nor earned a seat in the regional parliament. In November Juan Carlos Fuentes Linares, the PxC’s former secretary general and city councilman in the town of Vic, was sentenced to one-and-a-half years in prison for inciting hate. The charges stemmed from anti-Muslim pamphlets that Fuentes Linares distributed in the 2007 election campaign. In the same trial, the court absolved PxC founder and president Josep Anglada of the same charges, citing insufficient evidence to prove that Anglada knew about the pamphlets.

On May 27, the government approved the disciplinary code of the armed forces, which calls for penalties for the use of any type of discriminatory or xenophobic expressions.

On November 4, the Council of Ministers approved the Integral Strategy against Racial Discrimination and Xenophobia. The strategy called for improvement in the gathering of

statistical information from public institutions, strengthening of the cooperation between entities and institutions, and creation of prevention plans for vulnerable groups, including immigrants, refugees, unaccompanied minors, or those suffering discrimination because of their gender or religious beliefs. The strategy paid special attention to labor discrimination.

The United Kingdom

http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186418

The law prohibits racial discrimination, but Travellers, as well as persons of African, Afro-Caribbean, South Asian, and Middle Eastern origin, at times reported mistreatment on racial or ethnic grounds.

On October 19, after a legal process that began in 2005, Essex police began an operation to clear an illegal Travellers' encampment at Dale Farm in Basildon, Essex. Thirty-nine protesters were arrested. Amnesty International estimated that 300 to 400 persons were evicted from the illegal settlement. Although some claimed this action was anti-Traveller, the evictions were in accordance with established legal procedures, and the Basildon Council offered alternative housing to those evicted.

FINDINGS AND REASONS

Nationality

67. The applicant claims to be a citizen of Hungary. Departmental records indicate that he arrived in Australia bearing an apparently valid Hungarian passport indicating that he is a national of that country. The Tribunal finds on this basis that the applicant is a national of Hungary, and has assessed his claims on that basis.

Assessment of Claims

Outline of Claims

68. The applicant claims to have a well-founded fear of being persecuted in Hungary for reasons of his Roma ethnicity, as his father was Roma, he has a Roma surname, and he both identifies and is identified as a Roma.

Convention Nexus

69. The Tribunal accepts that the applicant's claims, if made out, are capable of bringing his case within the scope of the Convention ground of race, namely his Roma ethnicity.

Credibility

70. The applicant was an impressive witness. To his own detriment he declared his intention to claim asylum upon arrival at [an Australian] airport; had he not done so he could have passed through immigration clearance unhindered, and applied for a protection visa from within the Australian community, but instead he has languished in detention for the past four months.
71. In his application form the applicant outlined his history of discrimination and mistreatment as a Roma in Hungary, and he has consistently affirmed that account in his subsequent interview with the Department and at the Tribunal hearing.
72. The applicant's claims with respect to what has happened to him in the past do not appear to have been overstated. He was scrupulous, for example, in assuring the Tribunal that the only physical assault he has suffered occurred some 20 years ago, but he nevertheless detailed the

low level harassment and discrimination which has been a constant in his life, throughout the periods both his childhood and education, and his adulthood and employment history.

73. He described in despairing terms how he felt he had to take precautions such as planning his route and trying to ensure he was not alone when he left the house, and it was evident that this was not always possible, that he was increasingly harassed by both the right-wing civil guards and the police, and that as a consequence he suffered debilitating anxiety, becoming progressively more reclusive and feeling like a prisoner in his own home.
74. The applicant's claims, at least with respect to the situation in Hungary, are consistent with the country information reproduced above. For example, the article [article title deleted: s.431(2)] tends to confirm that the applicant has a Roma name, as well as dramatically illustrating anti-Roma violence, which is also extensively documented in the ERRC report, above at [61]. Reports extracted above from the CECSR, ERRC, Amnesty International and USSD report confirm the applicant's claims about entrenched anti-Roma discrimination, including in areas such as in education and employment. The USSD report also tends to confirm the applicant's claims with respect to the anti-Roma activities of the civil guards.
75. The evidence which the applicant gave with respect to the impact his experiences have had upon him is consistent with the preliminary psychological assessment received by the Tribunal after the hearing, but also reflects the country information such as the Amnesty International report extracted above, which describes the Roma as living in a climate of fear.
76. The Tribunal is therefore minded to accept the applicant's claims with respect to the problems he has experienced in the past in Hungary. In particular, the Tribunal accepts that the applicant is half-Roma, and both identifies as and is identifiable as a Rom. The Tribunal accepts that the applicant was physically attacked on one occasion in the past for reason of his Roma ethnicity. The Tribunal accepts that as a student the applicant was discriminated against and deliberately denied the opportunity to fulfil his potential. The Tribunal accepts that the applicant has also been discriminated against both in employment and in his efforts to access social security benefits, and that he has been harassed by the civil guards. The Tribunal also accepts that the applicant has been living in a constant state of fearfulness for at least a decade, causing him to dramatically modify his behaviour in an attempt to avoid harm.
77. Having regard to the applicant's claims, including cumulatively, the Tribunal finds that he has experienced persecution in Hungary in the past for reason of his Roma ethnicity.

Well-Founded Fear of Persecution

78. The Tribunal has considered the applicant's claims cumulatively. The Tribunal also notes that in *Haji Ibrahim*, McHugh J observed at [65] that persecution involves unjustifiable and discriminatory conduct which, *inter alia*, is so oppressive or likely to be repeated or maintained that the person threatened cannot be expected to tolerate it. For the purposes of s.91R(2), and bearing in mind the open ended definition of serious harm in that sub-section, the Tribunal finds that the applicant faces a real chance of experiencing serious harm including: serious physical harassment or ill-treatment; significant economic hardship and the denial of access to basic services threatening his capacity to subsist; and also (further) psychological harm. The Tribunal therefore finds that if the applicant returns to Hungary in the reasonably foreseeable future, there is more than a remote possibility that he will experience serious harm capable of amounting to persecution for the purposes of s.91R(1)(b).

79. Having regard to the country information about both the entrenched discrimination in Hungary directed against the Roma, including by some sections of the Hungarian government, and the systematic targeting of the Roma, particularly by the right wing Jobbik Party and the civil guard movement, the Tribunal finds for the purposes of s.91R(1)(c) that the persecution involves systematic and discriminatory conduct.
80. Finally, the Tribunal finds for the purposes of s.91R(1)(a) that the Convention reason of the applicant's race, namely his Roma ethnicity, is the essential and significant reason for the harm persecution he faces.

The Availability of State Protection

81. As pointed out to the applicant during the hearing, the country information indicates that at least some elements of the state have spoken out in support of Roma rights, and are concerned about protecting those rights and curtailing the influence of the far right. Thus the USSD report indicates that in 2011 the government established a Roma Coordination Council National Social Inclusion Strategy. As reported on the *XpatLoop* website, and in apparent furtherance of this strategy, the Hungarian cabinet *passed a bill on civil guards, banning them from engaging in political activity and connections to political parties*. On the other hand, the efficacy of such measures is questionable, with the USSD report indicating that during 2011, *[r]ight-wing extremism, including public campaigns by paramilitaries to intimidate and incite hatred against Roma and other minorities, increased*. Similarly, Amnesty reported earlier in 2011 that *Members of the banned group the Hungarian Guard (Magyar Gárda) reportedly continued their activities under another name, the New Hungarian Guard*.
82. Despite the efforts of some in the government, the country information suggests that some sections or arms of government are unwilling to embrace or implement these more inclusive policies, and that the executive and judicial arms of government continue to discriminate against the Roma. Thus the Amnesty report details a failure on the one hand to prosecute people charged with attacks on Roma under the hate crime provisions which attract harsher penalties, but a readiness to prosecute Roma accused under those provisions when the victim is non-Roma.
83. The Tribunal therefore finds on the basis of this evidence that the Hungary at present fails to provide the level of protection which its Roma citizens are entitled to expect according to international standards: see *Minister for Immigration and Multicultural Affairs v Respondents S152/2003* (2004) 222 CLR 1 at [27]-[29]. The Tribunal concludes that the applicants' unwillingness to seek protection from those authorities is therefore justified for the purposes of Article 1A(2).

Internal Relocation

84. The country information suggests to some extent the anti-Roma sentiment is more pronounced in some parts of the country, such as in the north-eastern counties, but it is also apparent from reports such as the ERRC report at [61] that violent attacks against Roma have occurred in recent years in almost every province, and also in the capital, Budapest. The country information that the Roma are experiencing problems throughout Hungary. The tribunal therefore finds that the harm feared by the applicant could not be avoided by him relocating within Hungary.

Conclusion on Risk of Convention Persecution in Hungary

85. Having carefully considered the applicant's claims and evidence, the Tribunal finds that he has a well-founded fear of being persecuted in Hungary for the Convention reason of his race, namely his Roma ethnicity, should he return there in the reasonably foreseeable future.

The Applicant's Right to Enter and Reside Elsewhere in Europe

Risk of Serious or Significant Harm Elsewhere in the Europe and Application of Section 36(3)

86. In determining whether s.36(3) of the Act applies to the applicant, relevant considerations will be: whether the applicant has a legally enforceable right to enter and reside in a third country either temporarily or permanently, and however that right arose or is expressed; whether he has taken all possible steps to avail himself or herself of that right; whether he has a well-founded fear of being persecuted for a Convention reason or faces a real risk of other significant harm in the third country itself; and whether there is a risk that the third country will return the applicant to another country where he has a well-founded fear of being persecuted for a Convention reason or faces a real risk of other significant harm.
87. On the basis of the evidence before the Tribunal, including evidence of the applicant's Hungarian nationality in the form of a current Hungarian passport, and also the country information set out above at [63], the Tribunal finds that the applicant has the right to enter and reside in, at least temporarily, all other EU countries.
88. There is no evidence before the Tribunal to suggest that the applicant has taken any or all steps to avail himself of this right, and the tribunal finds that he has not done so.
89. The Tribunal therefore finds that the applicant has a right to enter and reside elsewhere in the European Union, including Austria, Norway, Spain and the United Kingdom, and that he has not taken all possible steps to avail himself of that right for the purposes of s.36(3) of the Act.
90. The applicant has expressed concern that he may also face serious harm elsewhere in Europe for reason of his Roma ethnicity, and in the case of at least some of those countries his claims finds clear support in the country information. The risks are illustrated, for example, by the European Roma Rights Centre report entitled *Attacks against Roma in Hungary, the Czech Republic and the Slovak Republic* However, the Tribunal does not accept that the risk of serious harm for a Convention reason or indeed significant harm for any other reason extends throughout the EU.
91. In the view of the Tribunal the country information reproduced above at [65] does not support the proposition that the applicant faces a real chance or experiencing serious harm capable of amounting to persecution in Austria, Norway, Spain or the United Kingdom, and the Tribunal therefore finds that the applicant does not have a well-founded fear of being persecuted for a Convention reason in those countries, and that subsection 36(4)(a) does not apply to him.
92. The Tribunal has also considered whether the information about the circumstances facing Roma people indicates the existence of substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed to Austria, Norway, Spain or the United Kingdom, he would suffer significant harm. However, in the view of the Tribunal the USSD reports do not support such an inference. The country information does not, for

example, suggest that there is a real risk that the applicant would face the death penalty, or be subjected to the torture. Furthermore, and in contrast to the situation in Hungary itself, and in some other European countries such as the Czech Republic, the country information about Austria, Norway, Spain or the United Kingdom does not support the proposition that the applicant would be arbitrarily deprived of his life, or subjected to cruel or inhuman treatment or punishment, or degrading treatment or punishment. Furthermore, to the extent that Roma or other minorities are experiencing some problems in these countries, the country information evidence suggests for the purposes of s.36(2B)(c) that they, and by inference the applicant, are able to obtain from an authority of the country, protection such that there is not a real risk of suffering significant harm.

93. Consequently, the Tribunal finds that s.36(4) is not enlivened in this case.
94. The applicant has not argued, and the Tribunal is not satisfied on the evidence before it, that the applicant is at risk of *refoulement* to Hungary from elsewhere in the EU, including from Austria, Norway, Spain or the United Kingdom, whether in the strict Convention sense for the purposes of subsection 36(5), or with respect to him facing other significant harm in that country for the purposes of subsection 36(5A). The Tribunal therefore also finds that subsections 36(5) and (5A) of the Act are not enlivened in this case.
95. Accordingly, the Tribunal concludes that s.36(3) applies to the applicant, as a consequence of which it is not satisfied for the purposes of s.36(2)(a) or (aa) that Australia has protection obligations to him.

Ministerial Intervention Pursuant to s 417 of the Act

96. The Tribunal has before it a preliminary psychological report from [Organisation 1] which includes the following:

[The applicant] suffers from a quite debilitating anxiety disorder comprising social anxiety and panic symptoms associated with anticipated humiliation in public settings. His fears are strongly coloured by his Roma ethnic identity in that the humiliation he anticipates involves being disparaged for being a Gypsy. It is possible that the genesis of this condition is his experience of discrimination in childhood and adolescence in an individual predisposed to develop an anxiety disorder. His belief is that regardless of where he might reside in Europe, that anti-Roma sentiment would impede any recovery and he claims this is a reason for seeking asylum in Australia.
97. The Tribunal has found that the applicant experienced Convention persecution in Hungary in the past, and has a well-founded fear of being persecuted should he return to that country in the reasonably foreseeable future.
98. The Tribunal has also found that the applicant has the right to enter and reside elsewhere in the EU, including in a number of countries where he does not face a real chance of Convention persecution or a real risk of other significant harm, nor any risk of *refoulement* to Hungary.
99. The Tribunal nevertheless notes that, unlike in the case of internal relocation, there is no reasonableness test relating to s.36(3). Subject to the exceptions set out in subsections 36(4), (5) and (5A), which the Tribunal has found are not enlivened in this case, as long as an applicant has not taken all possible steps to avail himself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country

apart from Australia, then it is irrelevant for the purposes of s.36(3) that it might be unreasonable in all the circumstances to expect an applicant to take such steps.

100. Given the evidence of the applicant's mental state, and subject perhaps to what is said in the substantive psychological report foreshadowed in what the tribunal has already been provided with, it does appear that the applicant's mental health issues would make it very difficult if not impossible for him to successfully relocate within the EU.
101. In the view of the Tribunal, the evidence suggests the existence of compassionate circumstances regarding the health of the applicant such that a failure to recognise them would result in irreparable harm and continuing hardship to him.
102. The Tribunal therefore recommends that the Minister consider intervening in this matter on public interest grounds pursuant to s 417 of the Act. That is, of course, a matter entirely at the Minister's discretion.

CONCLUSIONS

103. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
104. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s36(2)(aa).
105. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

106. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.