

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 75498**

**REFUGEE APPEAL NO 75500**

**REFUGEE APPEAL NO 75499**

**REFUGEE APPEAL NO 75501**

**AT AUCKLAND**

**Before:**

J Baddeley (Chairperson)  
R J Towle (Member)

**Counsel for the Appellants:**

I Chorao

**Appearing for the NZIS:**

No Appearance

**Dates of Hearing:**

16 & 19 August and 31 October 2005

**Date of Decision:**

16 June 2006

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**DECISION DELIVERED BY R J TOWLE**

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[1] These are appeals against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS), declining the grant of refugee status to the four appellants, all citizens of Hungary.

[2] The appellants claim that they will be unfairly treated by the authorities and by their society in Hungary because they are a Roma family. These appeals involve issues of credibility and the well-foundedness of their fears of persecution.

## **INTRODUCTION**

[3] The first appellant is an ethnic Roma man in his late thirties. The second appellant, his wife, is an ethnic Hungarian also in her late thirties. The third appellant is their daughter, of mixed Roma/Hungarian ethnicity, aged 16, and the fourth appellant, their son, also of mixed Roma/Hungarian ethnicity, is aged 7.

[4] The appellants arrived in New Zealand on 22 March 2004 and filed an application for refugee status with the RSB on 29 March 2004. They were interviewed on 4 and 13 August 2004 and a decision declining their claim to refugee status was issued on 28 January 2005. They have appealed against that decision to this Authority.

[5] Pursuant to ss141(b), (c) & (d) of the Immigration Act 1987 (the Act), the first and second appellants are responsible adults for the third and fourth appellants. Each has agreed that their appeals be considered conjointly and that the evidence adduced in relation to each claim be considered together.

[6] At the beginning of the second day of the hearing, counsel submitted that the interpreter, who had been employed on the first day, had made inappropriate comments in the waiting room outside the hearing room. The Authority adjourned the hearing of the appeal to consider this question. It concluded that the interpreter had, indeed, made inappropriate comments about the appellants' claims and should be disqualified from any further participation in the appeal. The hearing was adjourned until the afternoon of 19 August 2005 while the services of a new interpreter were secured. Counsel indicated that her objections were confined to the comments made by the interpreter outside the hearing room and did not relate to his competence as an interpreter during the first day of the hearing.

[7] On the basis of this submission, the hearing resumed on the afternoon of 19 August 2005 and was duly completed using the second interpreter. No other objections were raised as to the quality of interpretation provided by either interpreter during the course of the hearing.

## **THE APPELLANTS' CASE**

[8] What follows is the evidence as presented by the appellants. It is assessed

later.

### **THE FIRST APPELLANT**

[9] The first appellant was born in the northeast region of Hungary. His father is deceased and his mother presently lives in Budapest. He has eight siblings who live in different parts of the country.

[10] In late 1960, the first appellant and his family moved to Budapest where he attended school from 1973 to 1982. He suffered a number of problems because of his Roma ethnicity during his schooling years. Teachers discriminated against him by giving him lower marks than the others. He was humiliated and taunted both by classmates and, on occasion, by teachers. He was bullied by fellow students and on one occasion, when he was about 11 years old, he was beaten by some students. Other Roma students were treated in a similar way.

[11] All of this took its toll on the first appellant's emotional state of mind and his performance at school. His parents transferred him to several other schools in the hope that things might improve. However, given the underlying prejudice against Roma in the country at that time, his schooling years were largely unhappy ones.

[12] In 1979, the first appellant left the normal school system and enrolled in a "work experience school" where he was introduced to various trades. Most of the students at the school were Roma and he did not suffer any significant difficulties because of his ethnicity during this period.

[13] In 1982, the first appellant was arrested and detained by police for two weeks on charges of vagrancy. He believes that the police were motivated to arrest him because he was Roma.

[14] Between 1983 and 1995, the first appellant was subjected to a number of acts of violence, racism and bigotry that he attributes to his Roma ethnicity, including:

- (a) He found it difficult to secure well paid jobs;
- (b) In 1984, he was beaten by some policemen because he was seated in a local park in Budapest;
- (c) In 1987, he left his job because he was falsely accused of theft. He believes the underlying motive of his accusers was racial discrimination;

- (d) In that same year, he was accosted by unknown racists and was assaulted;
- (e) In 1988, during his military service, he was denied leave that was ordinarily given to other recruits. He was also involved in an altercation with a drunk commanding officer in 1988 while he was on leave. The officer laid charges of assault against the appellant even though the appellant claimed that he was innocent. He was detained at the military compound for the next five or six months while he awaited a court martial. Following a trial in late 1988, the first appellant was convicted and given a suspended sentence and a “good behaviour” bond of one year. He completed the rest of his military service without incident and was discharged in mid-1989;
- (f) In 1991, the first appellant was stabbed in the neck by skinheads while he was on public transport in Budapest;
- (g) In 1995, he was harassed by the police as he was walking along the street carrying a suitcase of washing.

[15] In 1989, the second appellant acquired the lease of a city council apartment. It was initially registered in her name but was transferred into the first appellant’s name in early 1999 so that he could, in turn, transfer it to his creditors in satisfaction of outstanding debts.

### **Taxi business and the moneylenders**

[16] In early 1996, the first appellant borrowed money from moneylenders (“loan sharks”) to buy a taxi. He signed an agreement but cannot recall the name of the lender and did not retain a copy of the agreement for himself. It was a two-year loan with monthly instalments with an interest rate of 10 percent per annum. This rate was the same as that being offered by ordinary lending institutions. The appellant did not approach his own family or his wife for financial support because he wanted to demonstrate his independence.

[17] Under the loan agreement, the first appellant pledged the family’s apartment as collateral security even though he estimates it was worth 10 times the amount of the loan.

[18] The first appellant joined a taxi co-operative and, initially, his prospects looked good. However, just before the first monthly instalment was due, unknown persons vandalised his car rendering it unroadworthy. Deprived of any income,

the first appellant was unable to repair the vehicle.

[19] However, the first appellant and his wife still had enough available money to meet the first instalment. When the loan sharks came to the family flat on the first occasion, they refused to accept the money that he offered them. The first appellant assumes that, in reality, the loan enforcers wanted to get him to sign the lease over to them and were not interested in the loan repayments at all.

[20] The appellant also believes that the loan sharks may have paid vandals to damage his car to give them the pretext of calling in the loan and, in particular, claiming the apartment as their security.

[21] Not long after the vehicle was vandalised, the loan sharks and their enforcers again came to the appellant's flat and assaulted him. He also heard from neighbours that they had returned to his apartment on two or three other occasions while he was away and had damaged the outside of the building. As a result of these incidents, the second appellant and their children moved out of the apartment and went to stay with her mother. The first appellant joined them a short time later. They left a number of their personal possessions at the apartment but never returned to live there permanently.

[22] The first appellant did not report these incidents to the police because his own personal experiences with them in previous years had not been positive. They were prejudiced against Roma and would have been unlikely to offer him any kind of protection or redress.

[23] Later that same month in mid-1996, the first appellant heard shots in the street and learned that his niece had been shot and injured by unknown assailants. She suffers a permanent disability from this incident. This time, the police were called but they did not take any effective action to find the perpetrators. The first appellant believes that his niece was targeted, mistakenly, because of her resemblance to the second appellant.

[24] When he went to complain about his niece's assault, the first appellant recognised two policemen at the station as being from the group of "loan enforcers" who had come to his apartment on earlier occasions. For this reason, he believed that the police and his assailants were in some kind of criminal collusion.

[25] After the failure of his taxi business in 1996, the appellant found a variety of

jobs, including a job as a security guard. He worked in this capacity at different locations around Budapest over the next few years until he left the country in mid-1999.

### **People-smuggling incident and related events**

[26] In late 1997, the first appellant went to visit his mother who also lived in Budapest. She owned a large apartment with a number of bedrooms, which she rented to travellers coming to the city. She was registered with the Budapest Tourist Association for this purpose. Other members of the first appellant's family also lived in the apartment, including his four sisters, their children and their partners.

[27] When he arrived, the first appellant noticed that the apartment was full of guests, as was normal. A short time later, the police raided the apartment. The appellant was arrested and taken to the police station where he was accused of being involved, with other family members, in a people-smuggling enterprise.

[28] During his initial questioning, the first appellant was assaulted and injured by the police. He was asked to sign a statement acknowledging that he had escorted illegal migrants across the border into Hungary. He refused to sign the statement and was abused by the police. A few days later, he was examined by a doctor who was concerned about his injuries and wished to file a complaint/report. The appellant does not know if this was ever done and did not pursue the matter after his release.

[29] During his interrogation, the first appellant recognised at least one of the policemen as having been present with the loan enforcers at his apartment in 1996. He assumed, therefore, that he had been arrested on false people-smuggling charges as revenge for his failure to surrender his apartment to the loan enforcers.

[30] Initially, the first appellant was detained without access to a lawyer and was not able to contact his family. After two weeks, his wife was able to visit him but he did not get legal advice. He was detained for a total period of two months and then released. From the circumstances of his release, the first appellant assumed that this would be the end of the matter. However, he was surprised to receive a formal court summons later the following year, in September 1998, requiring him to attend the court on charges relating to people-smuggling.

[31] The first appellant was accused, along with a number of other persons whom he knew. They included OA, a Romanian national, who was the partner of the first appellant's sister. The first and second appellant had visited OA's parents on several occasions in Romania in earlier years. A second co-accused, AK, was a middle-eastern national who, at the time, was married to another of the first appellant's sisters, GG. Another accused was a close friend of his sister, who had also been staying at the apartment at the time of the police raid.

[32] In late 1998, the first appellant, together with his co-accused, appeared in the central district court in Budapest to answer the charges of being involved in the illegal smuggling of 51 migrants. The first appellant was assigned legal counsel to represent him.

[33] The evidence against the first appellant included a statement from a witness who, allegedly, identified the first appellant by his physical characteristics. The first appellant had seen this witness at his mother's apartment and, later, at the police station. She did not appear in person at the hearing. The witness said she had seen the appellant as they crossed the border. The first appellant believes that the police investigation was less than thorough and that the interpreter, who helped the "eye witness", made mistakes in the translation and interpretation of her evidence. The first appellant's mother was unwell and did not appear at the hearing either.

[34] The first appellant's defence was based on the evidence of two alibi witnesses who said that he was with a cousin and a friend at the time of the alleged smuggling incident and could not have been near the Hungarian border area. One of the first appellant's witnesses gave evidence briefly and then was dismissed by the court. Another was not summonsed and did not appear in the court. The first appellant felt he was not able to present his evidence and challenge the prosecution evidence in a fair or effective way and that he was not well represented by his lawyer.

[35] At the conclusion of the hearing, the first appellant and the five other accused were each found guilty of various offences relating to people-smuggling. In early 1999, the first appellant was convicted and sentenced to 22 months' imprisonment for his part in the smuggling enterprise.

[36] The first appellant appealed against the decision and was released on bail pending the hearing. He discussed the prospects of his appeal with his lawyer,

who was not optimistic about his chances.

[37] The first appellant believed that he was wrongly accused by the police and wrongly convicted by the court. His trial was defective in a number of ways that included his inability to cross-examine key prosecution witnesses, to present his alibi evidence effectively, and his lawyer's general lack of interest and competence. Overall, the first appellant believed that the police and judiciary were prejudiced against him because he was a Roma and, as a result, he was denied the right to a fair trial.

[38] Not long after his release on bail, the loan enforcers, including the two policemen, came to his apartment and coerced him into signing the deed transferring the interest in the apartment to the loan sharks. He hoped that in doing so, he might influence the appeal court's decision in some favourable way (because of the influence of the corrupt policemen).

[39] By this time, the first appellant and his family were deeply discouraged. They had lost their apartment, the first appellant was facing a prison sentence for crimes he did not commit and their daughter, the third appellant, was experiencing problems at school. For these reasons, the second appellant persuaded him that the family should leave the country.

[40] To facilitate their departure, the first and second appellant got married in May 1999 and they made plans to leave the country permanently.

[41] In July 1999, the four appellants left Hungary lawfully, using their own national passports, and flew to Canada where other relatives already resided. At the time of their departure, the first appellant's appeal against his sentence had not been determined.

### **Events in Canada**

[42] After the family arrived in Canada, the first appellant heard from a relative that the Appeal Court in Budapest had considered his appeal in his absence on 30 November 1999 and had reduced his sentence from 22 to 16 months' imprisonment.

[43] Not long after the family arrived in Canada, the appellants applied for refugee status with the Canadian Immigration and Refugee Board (IRB). At their interview, the first appellant was asked mainly about the people-smuggling



incident. The IRB largely ignored his problems arising from the taxi business, which seemed to be a secondary consideration for them.

[44] The family's claims to refugee status were declined by the IRB in April 2002 on the basis that:

- (a) in relation to the people-smuggling offence, the first appellant was fleeing prosecution and not persecution; and
- (b) in relation to the taxi incident, the first appellant was the victim of criminal activity that was unrelated to the Refugee Convention.

[45] The first appellant wanted to appeal against this decision but their lawyer failed to file the necessary papers in time. They began judicial review proceedings but these were later abandoned.

[46] In November 2002, the first appellant applied for, and was issued with, a new Hungarian passport. The family hoped to remain in Canada and to pursue other immigration rights. By 1994, they had exhausted all rights to remain lawfully in the country. As they were concerned for their safety in Hungary, they decided to travel to New Zealand on 22 March 2004.

[47] The first appellant's principal concern, if the family were to return to Hungary, is for his wife and two children. He has experienced many years of prejudice and harassment by skinheads and the police and does not want his children to be raised in that environment. He is also concerned about the safety of his family, particularly his wife, who has been threatened by one of the co-accused, AK, that he will harm her when he is released from prison.

[48] The first appellant acknowledges that Hungary is now a member of the European Union and a party to the Council of Europe, but considers that these developments have not really altered the reality of prejudice and discrimination for Roma. In these circumstances, the first appellant does not think he could find justice in Hungarian national courts or through the European Court of Human Rights in Strasbourg.

## **THE SECOND APPELLANT**

[49] The second appellant is an ethnic Hungarian raised in Budapest. She attended school from 1975 to 1987. In 1985, while she was still at secondary

school, she met and began her relationship with the first appellant. They have been together ever since but did not get married until shortly before they left Hungary in 1999.

[50] Initially, the parents on both sides of the family did not warmly embrace their relationship but neither did they outwardly oppose it. The first appellant's family was gradually accepting. It took the second appellant some time to adapt to the different traditions of a Roma family but this transition did not cause her any significant difficulties.

[51] After leaving school, the second appellant was employed at a local company until 1989, when she took extended leave because of the birth of her first child, the third appellant. She was granted three years' leave of absence but on her return, in 1992, was told that the position was no longer vacant. She believed that the true reason was her marriage to a Roma and that her employers were racist.

[52] She experienced other problems because of her relationship to the first appellant. These included:

- (a) being harassed and abused by racists during outings in public (to movies and restaurants);
- (b) feeling discriminated against and insulted in her workplace because of her relationship to the first appellant; and
- (c) experiencing difficulties in seeing her husband when he was detained during his military service in 1988.

### **Involvement in people-smuggling incident**

[53] When her husband was arrested in 1997, the second appellant did not know his whereabouts until two weeks later when she was able to visit him in prison. She was angry that her husband, whom she felt was innocent, was in detention, whilst others who were ringleaders in the smuggling enterprise, particularly AK, were still walking free. For this reason, she gave a statement to the police in an effort to exculpate her husband from any criminal liability. She provided evidence to the police as to AK's whereabouts and went with the police to his residence. As AK was being arrested, the second appellant was waiting at a bus stop and was worried that he might have seen her and held her responsible

for his arrest. These fears were confirmed later when she received information, through AK's relative, that AK had threatened to kill her on his release from detention. This threat is still of concern to her.

[54] It was the second appellant's decision to leave Hungary. She was concerned about the threats from AK and was worried about the emotional and physical well-being of her daughter and newly-born son. She had relatives in Austria and in Canada and persuaded her husband that they should leave the country permanently.

[55] Being married to a Roma, the second appellant is worried that if they were to return, she and her family will be subjected to the same kind of discrimination and harassment that they had experienced in earlier years. She is now expecting her third child and is worried she might not receive adequate health care and other social support for the same reasons. A medical report confirms her pregnancy and diagnoses her as suffering reactive depression.

### **THE THIRD APPELLANT**

[56] The second appellant also gave evidence about her daughter's claim. The third appellant did not do very well at school and gained a reputation as a poor student. Her Roma ethnicity made her the object of teasing, harassment and physical ill-treatment by the older students. On one occasion in September or October 1998, the third appellant was beaten up at school by other students and suffered cuts to her head. The school principal did not take effective action to prevent further bullying so her parents transferred her to another school.

[57] The second appellant said that the situation then improved and her daughter was no longer physically bullied. However, she suffered from headaches and was still affected by the problems she had experienced.

[58] The third appellant, being 16 years old at the time of the hearing, also gave evidence to the Authority. She described her own concerns about returning to Hungary. She said that she first became aware of her Roma ethnicity as early as 1996. She and other Roma were seated separately from the other children and were treated less favourably by students and teachers. She was given lower marks and pushed and hit by other children.

[59] When she transferred to a different school to avoid these problems, she was again teased by other students. She noticed that people kept away from her and her family when they were out in the parks and in public.

[60] She had very negative experiences during her life in Hungary and does not wish to return.

#### **THE FOURTH APPELLANT**

[61] The fourth appellant was not present at the hearing. Because of his age, now 7 years, the second appellant gave evidence in his claim. He was only a baby when the family left the country in 1999. Since then, he has spent most of his life in the English-speaking school system. He has no memory of life in Hungary and his spoken Hungarian is poor.

[62] The second appellant is worried that his Roma ethnicity, which is clearly apparent, would make him the target of harassment and prejudice at school. He is further disadvantaged because he does not speak the language and is not culturally adapted to living in Hungary. This would make the situation worse.

#### Documents

[63] The appellants submitted a number of documents relevant to the claim including:

- (a) excerpts of the transcript of trial at first instance in the Central Court at Budapest, dated 25 & 27 November 1998 and judgment of 31 March 1999;
- (b) an English translation of an excerpt from the Appeal Court decision in Budapest, dated 30 November 1999;
- (c) a security guard identification card of 29 September 1998;
- (d) smuggling charge sheets issued by a District Court in Budapest on 25 and 27 November 1998 and 31 March 1999;
- (e) documents from the Canadian Federal Court of Appeal concerning the dismissal of the judicial review;
- (f) a copy of the decision of the Canadian Immigration and Refugee Board (IRB) dated 26 April 2002, declining the four appellants' claim to refugee

status;

- (g) a Canadian Board of Services Agency "Pre-removal Risk Assessment" referring to the appellants' concerns about threats from AK;
- (h) a psychiatrist's report from Dr Shieff, dated 27 July 2005, in respect of the third appellant; and
- (i) medical certificates dated 27 July 2004 and 11 August 2004 from Dr T Wansborough in respect of the first appellant. Respectively, they describe evidence of scarring from injuries sustained a number of years ago and sleep and stress disorders;
- (j) a medical certificate dated 2 June 2006 confirming that the second appellant is 26 weeks pregnant and suffers from reactive depression.

#### **COUNSEL SUBMISSIONS**

[64] Counsel for the appellants filed submissions and country information to the RSB on 29 October 2004 and 22 November 2004. She also provided submissions and recent country information to the Authority on 12 August 2005 and 5 December 2005. At the request of the Authority, counsel provided further submissions and recent country information on 31 May 2006.

[65] Counsel submits that the first, second and third appellant each suffered physical and emotional abuse during many incidents while they lived in Hungary, and that the cumulative effect of these acts of discrimination amounts to persecution caused by their Roma ethnicity or, in the second appellant's case, her marriage to a Roma. These various incidents are more fully set out in counsel's submissions dated 12 August 2005.

[66] In the claim of the first appellant, counsel also submits that the actions of corrupt police officers in assaulting him, keeping him in prolonged pre-trial detention, denying him prompt access to his family and legal advice, and then prosecuting him on people-smuggling charges, amounts to persecution. She also submits that these actions, together with irregularities in the trial, resulted in a conviction that was a miscarriage of justice. The first appellant's Roma race was, she submits, a factor that contributed to these injustices.

[67] Counsel submits that, despite some improvements in Hungary following its

membership of the European Union, the Authority should exercise caution in assessing how far these changes have been able to address the systemic problems of discrimination of Roma in Hungary. There is still widespread discrimination and prejudice against Roma in all aspects of public and private life, particularly in the area of healthcare, housing, employment and education. There is also evidence of police brutality against Roma and a bias against them in the administration of justice.

[68] In support, counsel has provided the Authority with information from a variety of sources to show that Roma continue to suffer from widespread discrimination and that in these circumstances each appellant's fear of being persecuted is well-founded.

## **THE ISSUES**

[69] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[70] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

## **ASSESSMENT OF THE APPELLANTS' CLAIMS**

### **CREDIBILITY ISSUES**

[71] Before considering whether the four appellants' claims are well-founded in terms of the framed issues, the Authority must determine whether their claims are credible. For the reasons that follow later, the Authority finds the evidence relating

to the second, third and fourth appellants to be largely credible.

[72] The first appellant's evidence, insofar as it describes various incidents of discrimination and harassment in [14] above, is also accepted as credible.

[73] However, the Authority does not accept as credible certain key aspects of the first appellant's evidence relating to the taxi business and his problems with money lenders, and the alleged complicity of the police in those incidents.

[74] Although the Authority accepts that the first appellant was charged and convicted of people-smuggling offences, it does not find credible his assertions that the police prosecution and subsequent judicial process were linked to, or in any way subverted by, extraneous considerations such as his Roma ethnicity or his involvement in the taxi business and the money lenders.

### **Taxi business and money lenders**

[75] The first appellant provided contradictory and inconsistent accounts as to how he became involved with the loan enforcers. He told the RSB that he bought the business in early 1996 and that the damage occurred to his vehicle in mid-1996 (some months later). He told the Authority, however, that the vehicle was damaged before the first instalment had been paid (that is, within the first month). He attempted to explain the discrepancy by saying that the enforcers refused to accept the cash that he offered at the time the first instalment was due and they also refused to accept any future payments he offered in reduction of the loan.

[76] He told the RSB that the loan enforcers had been responsible for the damage to his vehicle to prevent him making the repayments. However, he told the Authority that the damage to the vehicle did not prevent him making these instalment payments and that the enforcers were not interested, in any event, in accepting the payment because their ultimate goal was to secure the lease of the apartment.

[77] The first appellant said that, after the damage to the vehicle, he made no effort to assess its damage or to see whether he could get the vehicle back on the road, a step crucial to sustaining his financial position. The Authority does not find it plausible that he would make no efforts whatsoever to do so, notwithstanding the extent of the damage.

[78] The first appellant told the RSB that on the first occasion, he asked the loan

enforcers for an “extension of time” to meet the repayments. He told the Authority, however, that this was a misunderstanding and that the extension of time referred to the collateral against the apartment. This explanation does not make sense if, as he claimed, he was tendering the full amount of the instalment required.

[79] The first appellant said that the lease of the apartment was secured in his wife’s name in 1989 and was not transferred to the first appellant until early 1999, around the time they were making arrangements to leave the country. In this event, the guarantee that he had signed would not have been enforceable against his wife.

[80] The first appellant said that the interest rate paid to the loan sharks (10 percent) was the same as the commercial rate offered by ordinary lenders and that he could have gone to others but did not want to do so because of his independence. In the overall circumstances of the family’s case, including his wife’s ability to meet the full instalment payments herself and their ability to sell two family cars to raise part of the purchase price for the taxi, the Authority does not accept as plausible that the first appellant would have had to go to loan sharks when more favourable loans were available through his family or more reputable lending sources. Such people, notoriously, charge higher rates than others and place draconian demands on borrowers.

[81] The first appellant provided an implausible account of his dealings with the loan sharks in their efforts to secure the lease of the apartment. In his evidence to the Authority, he described frequent visits by the enforcers between 1996 and 1997 and virtually no serious interference from the enforcers between 1997 and the time that he allegedly signed over the apartment to them in early 1999. The Authority does not find it plausible that the loan enforcers would have acted so vigorously in the period from 1996 to early 1997 and yet taken no further steps in the intervening period before enforcing it in early 1999. This would require a degree of patience and forbearance that was not in keeping with the loan enforcers’ behaviour prior to that time.

[82] The first appellant’s account of the taxi business that he gave to the Authority differs, significantly, from that recorded as evidence in his refugee claim to the IRB in Canada. These differences include the following:



- (a) The IRB decision states (pages 73, 72) that the first appellant borrowed money and set up the taxi business in May 1995, a year earlier than he had told the Authority;
- (b) The IRB decision states that the first appellant had problems with the taxi business when he found that he had to pay money to an organised crime gang to be allowed to park in the taxi stand. If he had failed to comply with their demands, the criminals would not have allowed him to pick up the customers. This payment reduced the first appellant's disposable income and, as a result, he was unable to repay the money he had borrowed. The IRB decision states that because the first appellant was pressed for time, he borrowed money from a loan shark, putting up his house as collateral;
- (c) The IRB record states that the revenue from the taxi business continued to fall and the first appellant was, once again, unable to repay the loan sharks. In December 1997, they smashed the first appellant's car and "vandalised the house... . Even there the threats from the criminals continued and as a result of which he lost his job".

[83] This record provides a significantly different version of events from the account provided by the first appellant in his New Zealand claim. In explanation, the first appellant stated that he was stressed, that he had not seen the translation of the Canadian decision, and that he had experienced difficulties with the interpreter in the Canadian process.

[84] The Authority does not accept this explanation. The first appellant had the opportunity to go through the notes of the IRB file with his present lawyer in the context of the New Zealand procedure, but did not raise these issues as discrepancies of concern.

[85] The first appellant claimed that some of the discrepancies in his evidence, as to dates and sequence of events, were caused by his stress and problems with interpretation. Dr Wansborough, in her medical assessment, notes the appellant's stress-related symptoms and the medication he required.

[86] The Authority has considered the nature of the discrepancies carefully and finds that they are not adequately explained by the first appellant's stress. They contain specific details which may have been forgotten over time but which are fundamentally inconsistent with each other. They are indicative of the first

appellant's inability to maintain a consistent line in what the Authority finds to be an untruthful description of events, and were not caused by any medical impairment from which he may have suffered.

[87] Taking all of these various discrepancies, inconsistencies and implausibilities as a whole, the Authority does not accept as credible the first appellant's account of the taxi business and collateral loan against the family apartment. It is also unable to accept his evidence that he and the family suffered problems from the loan enforcers or that his later problems can be linked back to these events. In particular, the Authority does not accept as credible the evidence about the visit of policemen to his house as part of the loan enforcers' team or that he saw these same officers during other stages of his detention. It follows, therefore, that the smuggling charges cannot have been tainted or influenced by the police or loan enforcers because of the failed taxi business or his reluctance to cede ownership of the apartment. That pivotal link in the first appellant's narrative of events is simply not tenable.

### **People-smuggling charges**

#### *Relationship with co-accused*

[88] The Authority accepts that the first appellant was charged and convicted of people-smuggling offences, but finds that he has not been candid about the true relationship with his co-accused and his involvement in that criminal enterprise. It also does not accept that he has given an honest and frank account of the prosecution and court proceedings which, he claimed, caused a substantial miscarriage of justice and his conviction.

[89] The appellant's explanation that he quite innocently visited his mother on the day of his arrest is not accepted as truthful. It is clear from the evidence, that the first appellant was initially reticent to divulge that he had direct or indirect contacts with a number of his co-accused. Two of his sisters were in *de facto* or married relationships with the co-accused. He and his wife had visited the family of one co-accused in Romania on several occasions and it is clear from the appellant's evidence to the Authority, as he gradually and somewhat reluctantly disclosed it to us, that he had frequent and quite close relationships with his other family members, including at least one and probably more of his co-accused.

[90] None of this evidence fits comfortably with his initial contention that he knew

nothing of the smuggling enterprise being undertaken by his relatives who were using his mother's house, that he had been inadvertently caught up in this enterprise when he went to visit his mother, and that he was innocent of any charges.

[91] The Authority finds it inconceivable that the first appellant would have had no conception that his mother's apartment was being used as a conduit for a highly organised smuggling enterprise on a scale that involved a number of his extended family members and spanned several countries in the region.

[92] The evidence also discloses that the first appellant and his wife, the second appellant, had some personal disagreements during this period. The Authority found the first appellant's evidence on this issue to be evasive and was left with the distinct impression that he was not telling the whole truth about the real cause of his disagreement with his wife. Although not determinative in itself, this is a further example of the first appellant's propensity to conceal the whole truth surrounding those events.

#### *Judicial proceedings at first instance*

[93] As to the judicial process itself, the first appellant told the Authority that he had not been given the chance to challenge the prosecution evidence, he was prevented from presenting his own defence, including witnesses to establish his alibi, and that he was not well served by his legal representative. He tried to give the impression that the entire legal proceedings, including the subsequent appeal, were irredeemably biased because he is a Roma and that he has been the innocent victim of a substantial miscarriage of justice

[94] The Authority has carefully examined the transcript of the court at first instance, the substantive decision and judgment. Together, these paint a very different picture of events from that given by the first appellant.

[95] The transcript provides a long description of the various steps taken throughout the proceedings which included:

- (a) The right to silence was waived by the first appellant but he did not give oral testimony;
- (b) He was given a full opportunity, with legal representation, to present his defence and evidence;

- (c) The court also dealt, in some detail, with the alibi evidence. It specifically rejected, as unhelpful, the alibi witness' evidence on the crucial issues of the first appellant's whereabouts on the night the smuggling took place (page 139 of the court record);
- (d) The court assessed the independent evidence of several witnesses, including the people being smuggled, and found that the first appellant had been clearly identified at the border crossing. The court record states:
- “[ ] witness describes how [the first appellant] held his hand when they crossed some stream later. Later on, during the face to face confrontation, he stated that when he slipped [the first appellant] was the one who helped him. He also said that after the crossing, the next time they saw [the first appellant] was at [his mother's apartment]. [The witness] made a reference to the fact that he is not confusing him with another person because it was a full moon that night and he had a clear view of his face.”
- (e) Although the witnesses had left the country by the time the trial took place, the court directed itself as to the admissibility of such evidence under Article 6(3) of the ECHR. The first appellant and the co-accused had the opportunity to confront the witnesses during the pre-trial process;
- (f) On the strength of this and other evidence from the co-accused, which the court found to be contradictory and inculpatory of the others, the court was satisfied that the first appellant had played a role – albeit not a central organising one – in the criminal enterprise;
- (g) The court assessed the evidence of the other accused and found that each of them had tried to downplay or falsify his relationship with the others, in much the same way as the first appellant has tried to do in this appeal hearing. The court found that the first appellant had a much closer relationship to his co-accused than he had claimed. On the strength of the Authority's own assessment of the first appellant's evidence in the present hearing, it reaches a similar conclusion;
- (h) On the question of sentencing, the court found that, although all the accused were part of a common criminal association, each of them played different roles and deserved differential treatment in the penalties imposed. The court sentenced the principal protagonists to five years' imprisonment. The first appellant was sentenced to one year and 10 months for his lesser role and some dispensation was given for his role as a father to his young child.

*The appeal proceedings*

[96] The Authority has also studied the translated judgment of the Hungarian appeal court dated 30 November 1999, a copy of which was provided by counsel. These indicate that :

- (a) The first appellant was represented by counsel at the appeal and sought an acquittal or reduction of sentence;
- (b) Despite the physical absence of several witnesses from the lower court trial, the proper principles of admissibility were applied pursuant to the Hungarian Criminal Code. Having reviewed the elements of the procedures adopted by the lower court, the appeal court concluded that “neither the legal or human rights of the defendants suffered injury”;
- (c) The appeal court reviewed all the evidence and concurred with the lower court’s finding that the first appellant was a co-conspirator in a sophisticated people-smuggling organisation;
- (d) The appeal court found that the lower court had inappropriately sentenced the accused on the basis of 51 counts of smuggling (based on the number of people smuggled) and therefore reduced the number of counts to three groups of offences. As a result, the appeal court reduced the sentences of all accused, including the first appellant, whose prison sentence was reduced from 22 months to 16 months.

[97] Viewed in their entirety, the Authority has no doubt in preferring the official records of the Hungarian courts to the evidence of the first appellant. The first appellant has not told the truth about his problems with loan-enforcers, miscreant policemen and his true relationship with his co-accused. He has also misrepresented to his advantage, what actually transpired in the court during his trial. Contrary to what he has told the Authority, his specific complaints are, in fact, addressed clearly in the court records.

[98] These records not only rebut the first appellant’s complaints but also disclose a more than sufficient factual nexus on which the charges of people-smuggling could be laid against the first appellant and on which a conviction could be safely reached.

*Adequacy of legal representation*

[99] The first appellant has not been candid as to why he has not been in contact with his lawyer since he left the country in 1999. He had not contacted her in Budapest to find out the result of the appeal because “he didn’t have her contact details” and “didn’t have enough time”. This is implausible. The first appellant had a real interest in the outcome of that appeal - despite his lawyer’s prognosis that his chances of success were poor - and he could easily have established contact with her, had he so wished.

[100] Had the lawyer held any serious concerns that the criminal proceedings were tainted by racism or otherwise defective in any significant way, it would have been relatively simple for her to provide an assessment to this Authority or to the IRB in Canada. This evidence is conspicuously absent. In this regard, the first appellant has failed to make any genuine attempt to comply with s129P(1) of the Act, which states:

“It is the responsibility of an appellant to establish the claim, and the appellant must ensure that all information, evidence, and submissions that the appellant wishes to have considered in support of the appeal are provided to the Authority before it makes its decision on the appeal.”

[101] The Authority also notes that Hungary is a member of the Council of Europe and has been a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) since 1992. In effect, final decisions taken by the courts in Hungary can be reviewed by way of individual petition to the European Court of Human Rights in Strasbourg, particularly on issues pertaining to the fairness of national trials and their compliance with the provision of the ECHR.

[102] In this context, the first appellant has not taken steps to pursue these remedies which would have been open to him. Had he been genuinely aggrieved by his conviction, the Authority finds that he would have taken more active steps to pursue the legal remedies available to him and to engage the assistance of his former lawyer.

[103] The first appellant’s lack of genuine effort to plead his innocence by remaining in Hungary and pursuing legal remedies available to him, tends to further undermine his contention that he has been the innocent victim of a substantial miscarriage of justice in Hungary.

### **Reasons for leaving Hungary**

[104] During the appeal hearing, the first appellant gave his reasons for not wishing to return to Hungary. He described his concerns about the skinheads and the state authorities and his fears for the safety of his two children. It was only belatedly, towards the end of his evidence when he was recalled, that he mentioned the family's fear of recriminations from the co-accused, AK.

[105] The Authority finds it remarkable that this significant reason for the family leaving Hungary in 1999, which the first appellant had advanced as the principal ground for the "pre-removal risk assessment" conducted by the Canadian authorities in 2004, was not given any prominence in the first appellant's evidence in this appeal hearing.

[106] The Authority concludes that the first appellant has deliberately downplayed the real reasons for the family's departure from Hungary in 1999 – their fear of AK. Instead, he has invented an account of problems from racist money-lenders and corrupt police who have conspired to bring false charges of people-smuggling against him. He has tried, unsuccessfully, to provide a link to the criteria in the Refugee Convention.

### **WELL-FOUNDEDNESS OF THE APPELLANTS' CLAIMS**

[107] Before the Authority considers the issues framed in [70], it is useful to summarise the country information that describes the situation for Roma in Hungary.

## COUNTRY INFORMATION ON THE TREATMENT OF ROMA

### *General*

[108] An overview of the many detailed reports on the situation Roma in Hungary presents a mixed picture. On the one hand in the broader context of the enlarged European Union (EU), the government has initiated many positive reforms to address the levels of discrimination in Hungary. On the other and like many other states within the EU, Roma in Hungary continue to suffer various forms of discrimination in society generally and, specifically, through the acts and omissions of different government institutions and local body authorities; see generally a report by the European Commission, *The Situation of Roma in an Enlarged European Union* (2004).

[109] The European Commission against Racism and Intolerance (ECRI), in its *Third report on Hungary* (adopted 5 December 2003), acknowledged the positive efforts of the government to address discrimination against Roma at different levels of society. However, it also highlighted a number of areas that were still problematic and made recommendations as to how they should be addressed.

[110] More specifically, the United States Department of State *Country Reports on Human Rights Practices in 2005: Hungary* (8 March 2006) (the DOS report) noted the active roles played by the Minority Affairs Ombudsman, the Political State Secretary for Minority Affairs, and various commissioners for Romani affairs in the Ministries of Education, Cultural Heritage and Economy. At the regional level, the government supported the establishment of the European Roma Forum in Brussels and at the local level, it has developed a number of community-based projects to assist poor Romani communities and improve their socio-economic integration into Hungarian society. In particular,

“The minority affairs ombudsman played an active role in the examination of allegations of discrimination against the Romani community and continued to promote a uniform antidiscrimination law... . The Ministry of Justice also funded a Roma antidiscrimination legal service network, which provided free legal aid to Roma in cases where they had been discriminated against based on their ethnicity.”

[111] Notwithstanding these positive developments, the DOS report concludes that

“... Discrimination against Roma remained a serious problem. ... Reports of police abuse against Roma were common, but many Roma were fearful of seeking legal remedies or notify NGOs... . Living conditions for Romani communities continued to be significantly worse than for the general population. Roma were



significantly less well educated and had below average income and life expectancy. The unemployment rate for Roma was estimated at approximately 70 percent, more than 10 times the national average, and most Roma lived in extreme poverty. Widespread discrimination against Roma continued in education, housing, penal institutions, employment and access to public institutions, such as restaurants and pubs.”

[112] Other reports highlight the general level of discrimination faced by Roma. A report of the European Centre for Minority Issues (ECMI): *Patterns of Discrimination, Grievances and Political Activity Among Europe's Roma: A Cross-Sectional Analysis*, Jonathan Fox – Winter 2001/2 states:

“One of the primary problems the Roma face is prejudice. The Roma are generally considered by others to be dirty, lazy and stupid people who are prone to crime. That they are often active in the black market and prostitution and are disproportionately involved in recorded crimes perpetuates the stereotype. However, the poor economic status of the Roma which is at least partially due to these prejudices, is to a great extent responsible for this level of engagement in crime. The Roma have all the characteristics of an economic underclass. They tend to have high levels of unemployment, sometimes reaching 80 to 90 percent. They usually live in poor housing, often dwelling in a ghetto-like environment. They tend to be uneducated, having high levels of illiteracy.”

[113] A more general discussion on Roma rights in Hungary is found in Robert E Koulisch “*Attitudes towards Roma Minority Rights in Hungary: A Case of Ethnic Doxa, and the contested Legitimization of Roma Inferiority*” in *Nationality Papers* Vol. 31, No. 3, September 2003.

### **Law enforcement issues**

[114] The DOS report notes that, although the law prohibits practices such as torture and cruel and inhuman degrading punishment treatment:

“... police used excessive force, beat, and harassed suspects, particularly Roma. The number of police abuse reports rose slightly, although observers attributed this increase to greater public willingness to report abuse. In the first half of the year, 34 police officers were charged with assault and six others were charged with forced interrogation. NGOs estimated approximately half of the police abuse cases involved Romani victims.”

[115] Specific incidents of Roma being treated in an illegal or inadequate way by police are reported, from time to time, by the European Roma Rights Centre (ERRC), *ERRC Concerns; Race Crime in Hungary* (19 May 2005); *Roma Youth Dies in Unclear Circumstances during Police Pursuit in Hungary* (2 August 2004); *Hungarian Police hold Romani Boy in Custody Arbitrarily* (4 April 2004).

[116] On the issue of arrest and detention, the DOS report states:

“The law requires that police obtain warrants to place an individual under arrest. Police must inform suspects upon arrest of the charges against them but may hold

detainees for a maximum of 72 hours before filing charges. The law requires that all suspects be allowed access to counsel prior to questioning and throughout all subsequent proceedings... . In actuality, police did not always allow access to counsel, particularly for persons accused of minor crimes .... Roma [reportedly] were kept in pre-trial detention more frequently than non-Roma... .”

[117] The DOS report also notes that although prisons generally met international standards, overcrowding was a serious problem.

[118] In *Written Comments by the Hungarian Helsinki Committee (HHC) Regarding the Second Monitoring Cycle on Hungary under the Framework Convention for the Protection of National Minorities* (20 September 2004), it is stated:

“The majority of police brutality takes place when the suspects is apprehended by the police... . Ill-treatment also occurs in the subsequent phases of the procedure, although somewhat less frequently. Most of the cases amount to forced interrogation i.e. the ill-treatment is not so much motivated by emotions but by the clear intention to obtain a confession.”

[119] Other country information describes discriminatory practices against Roma in the administration of justice. In its *Second report on Hungary* (21 March 2000) the ECRI noted its concern:

“... at evidence that severe problems in the administration of justice exist as regards to discrimination against members of the Roma/gypsy community and non-citizens. There are authoritative reports that Roma/gypsies are kept in pretrial detention for longer periods and more frequently than non-Roma although the prohibition of the recording of the ethnic origin of suspects makes it difficult to evaluate the extent of such discrimination... .”

### **Judicial bias**

[120] The DOS report outlines the procedures for fair trials in Hungary:

“The law provides for the right to a fair trial, and an independent judiciary generally respected this right. Trials are public, but, in some cases, judges may agree to a closed trial to protect the accused or the victim of a crime... . Judicial proceedings generally were investigative rather than adversarial in nature. Defendants are entitled to counsel during all phases of criminal proceedings and are presumed innocent until proven guilty. Counsel is appointed for [individual’s need]... .

...

Judicial proceedings varied in length, and delays of several months to a year before the commencement of trials were common. Cases on appeal may remain pending before the courts for indefinite periods, during which time defendants are held in detention. Defendants can confront or question witnesses against them and present witnesses and evidence on their behalf, and they have access to government-held evidence relevant to their cases.”

[121] The DOS report states:

“Many human rights and Romani organizations claimed that Roma received less

than equal treatment in the judicial process.”

[122] The Hungarian Helsinki Committee report (cited above) states that:

“Judicial bias toward Roma is another problematic area, which - similarly to the case of local government – is very hard to examine due to evidentiary difficulties regarding finding proofs for such presentiments. The report identifies areas such as extended pretrial detention, police ill-treatment during the initial phase of the procedure, sometimes even before the formal commencement of the criminal proceedings.”

[123] Similar difficulties faced by Roma in access to justice are identified in other reports provided by counsel, such as the HHR Minority Report, *Equality before the law for Roma and non-Roma suspects in the criminal justice system* (2000), (<http://www.helsinki.hu/article.cgi?lang=en&fo=4&al=2>).

[124] There are also reports of steps being taken by the judicial authorities to reverse the effects of deeply engrained discrimination. Three reports of the ERRC illustrate the efforts, albeit limited, in the judicial system to protect Roma rights and to rectify earlier miscarriages of justice; *Court Punishes Disco for Denying Entrance to Roma* (26 August 2005) and *Hungarian Court acquits two Romani men after 2100 days in prison* PRCC report (1 August 2005); *Hungarian Appellate Court Upholds release of wrongly Convicted Roma* (3 May 2006).

[125] Of more significance, in February 2005, the Hungarian Constitutional Court struck down, as unconstitutional, provisions of a local government decree regulating social housing that was discriminatory and had a disproportionately negative impact on Roma: ERRC, *Hungarian Constitutional Struck Down Discriminatory Housing Decree* (2005).

[126] Hungary's membership of the European Union and the Council of Europe is gradually having a positive effect. Hungary is a signatory to the principal United Nations human rights instruments and, since November 1992, a party to the ECHR. Under that Convention, individuals from Hungary are entitled to submit applications to the ECHR in the event that they are unable to obtain effective remedies through the national judicial process.

[127] This has a normative effect on the way justice is administered throughout the European Union, including in Hungary. In *Balogh v Hungary European Court of Human Rights* Application 7940/99 (judgment 20 July 2004), the court considered an application by a Roma Hungarian who alleged that he had been ill-treated by the police and had no effective remedy in the judicial process in

Hungary. Having heard submissions in evidence from the applicant and the state party, the court concluded that the applicant's injuries sustained in police detention were in violation of Article 3 of the Convention.

[128] In *Balogh*, the applicant's claim, pursuant to Article 6 of the ECHR, that he had been denied the right to effective remedy during the judicial process, was declined. The court held that in all the circumstances the applicant had not been denied a fair hearing in the determination of his civil rights. In addition, the court dismissed the applicant's claim that his ill-treatment and the subsequent proceedings involved discrimination on the basis of his Roma ethnicity. The court also held that, although the allegations that the applicant had suffered ill-treatment in violation of Article 3 had been made out, his claim that the Hungarian judicial process was flawed because of bias on account of his Roma ethnicity, was declined. The applicant was awarded 14,000 Euros in damages and related costs for the violation of his rights under Article 3 of the ECHR.

### **Housing**

[129] On the issue of housing, country information indicates both positive developments and ongoing problems for Roma. The DOS report states:

"According to the Roma Civil Rights Foundation (RCRF) many municipalities employed a variety of techniques to prevent Roma from living in more desirable neighbourhoods in their cities. Such techniques included the misappropriation by local government of social housing designated by the poor by auctioning it off to the highest bidder, as well as the eviction of Roma from areas slated for renovation without providing enough financial compensation for them to move back once renovations were completed... . On May 2, the parliamentary commissioner for national and ethnic minority rights formerly requested that the Minister of Interior opened a countrywide investigation into racial discrimination against Roma in the allotment of social housing."

[130] A press release by the ERRC noted that this investigation and actions by the Constitutional Court to strike down discriminatory legislation are important steps in the development of the right to adequate housing in Hungary which have particular significance for Roma who have had acute housing concerns for the past 15 years. Nonetheless, considerable problems of discrimination remain; *Housing Rights in Hungary: Parliamentary Commissioners Act on Abuse by Municipalities* (13 May 2005).

### **Children**

[131] A recent report of the United Nations Committee on the Rights of the Child,

*Consideration of Reports Submitted by States Parties, Concluding Observations: Hungary (27 January 2006), CRC/C/HUN/CO/2 (CRC report) noted at paragraph 19:*

“Despite legislative advances ... and several measures and programmes aiming at the elimination of discrimination ... discriminatory and xenophobic attitudes, in particular towards the Roma population, remain prevalent and that especially Roma children suffer from stigmatisation, exclusion and socio-economic disparities, notably relating to housing, unemployment, access to health services, adoption and educational facilities because of their ethnic status.”

[132] On the issue of education, since 2003 the government has taken steps towards ending the practice of segregation of Roma children within schools and to improve the quality of education in poorer areas that are inhabited, predominantly, by Roma. Nonetheless, segregation continues in some areas and there are still regional disparities in the quality of education. Overall, Roma children tend to receive inferior education to that of non-Roma children; CRC Report, paragraphs 48-51.

[133] Segregation is, however, a complex issue which has its supporters and detractors. Even among Roma themselves, some are prone to resist integration as strongly as white parents; see Roma Page: Kurt Lewin *“Hungary’s ability to desegregate schools put to the test in the town of Miskolc” Financial Times (13 July 2005)* and ERRC press release, *First Instance Court Upheld Segregated Education (June 2005)*.

[134] The DOS report states:

“The Government was committed to children's rights. The law provides for compulsory education, which was free through age 18 for children who were born after 1987. ... The Ministry of Education estimated that 95 percent of school-age children ... were enrolled in school, although the dropout rate for Romani children was much higher than the overall student population. NGOs reported that only 10 percent of Romani children complete high school, compared to 80 percent of the general population... . Although education laws forbid the official segregation of children according to ethnicity or nationality, the de facto segregation of Romani children was a problem. Romani children were often placed without cause in remedial classes, effectively separating them from other students. NGOs and government officials estimated that 20 percent of Roma children were in remedial programmes and that 700 such segregated classes exist. Many schools with a majority of Romani students had substandard buildings and resources, as well as simplified curricula ... according to the ERRC, Romani students comprised only 20 percent of the country’s student population but over 50 percent of the student body in special schools for children with developmental disabilities.”

[135] The DOS report further notes:

“[Predominantly] [s]chools for Roma were more crowded, more poorly equipped, and in significantly worse condition than those attended by non-Roma... . Non-government organisations (NGOs) reported racial discrimination in adoption and

high rates of removal of children from Romani families from Child Protective Services. NGOs claim that city councils threaten to remove children from Romani families in order to more easily evict those families for non-payment of public utilities and discriminated against Roma in the distribution of social housing benefits.”

### **Employment**

[136] Roma also face difficulties and discrimination in securing employment. The ECRI report notes, at paragraph 28

“As concerns in employment, recent figures shows that in Hungary 74 percent of Roma men and 83 percent of Roma women are unemployed. These rates are reported to be even higher in certain areas.”

### **Healthcare**

[137] In the area of health, the various ministries within the Hungarian government responsible for social, ethnic and youth affairs, are taking steps to address the discrimination against Roma. Notwithstanding, there are also reports that Roma still suffer discrimination in their ability to access adequate healthcare; see ERRC report: *Access of Roma to Healthcare highlighted at Budapest Seminar* (18 February 2005) which notes that:

“Roma in Hungary face barriers in access to healthcare because of discrimination and related exclusionary forces. Romani women frequently suffer the complex effects of double discrimination and access to healthcare, due to the impact of gender and race.”

[138] In a comprehensive study in 2003, the ERRC found many instances of Roma women being treated in a discriminatory manner in their access to, and quality of, basic health care, particularly maternity care *‘Gypsy Rooms’ and Other Discriminatory Treatment against Roma Women in Hungarian Hospitals* (<http://www.errc.org/cikk.php?cikk=2063&archiv=1>).

[139] In a very detailed analysis of the provision of medical and healthcare to Roma in 2004, an independent consultancy firm found significant levels of discrimination by medical practitioners and health providers against Roma. Their empirical evidence gave a mixed picture whereby 30.3% of those polled were prone to anti-Roma sentiment; 14.1% were strongly anti-Roma; 21% were not anti-Roma; 28.3% were non-discriminatory; and 6.3% rejected anti-Roma sentiments; Delphoi Consulting, *Differences in Access to Primary Healthcare – Structure, Equal Opportunity and Prejudice – Results of an Empirical Study* (2004).

### **General conclusions**

[140] A number of general conclusions can be drawn from this country information:

- (a) The national legal system in Hungary, buttressed by myriad obligations imposed upon it as a recent member of the European Union, the Council of Europe and by the jurisdiction of the European Court of Human Rights, provides a legal framework for the protection of Roma's basic civil, political, economic, social and cultural rights. In particular, Hungary is bound, under the ECHR, to implement the decisions of the ECHR, including the payment of compensation and damages;
- (b) In recent years, the Hungarian authorities have taken many initiatives at the regional, national and community levels, to address discrimination and prejudice against Roma. These have achieved varying degrees of success. The fact that there is such voluminous country information and analysis from a variety of sources means that these issues have not been forgotten and, indeed, are the subject of close scrutiny and reporting.
- (c) Although, as counsel rightly cautions, any positive developments do not mean that discrimination has been eradicated, cases such as *Balogh* illustrate that the human rights of Roma can be secured and redressed through the national courts and the ECHR. The ECHR has a normative and positive effect on the state party's obligations, including an improvement in the accountability and impartiality of its judicial system. In *Balogh* the claimant's rights under Article 3 of the ECHR were violated but other important rights, such as a fair trial and non-discrimination as a Roma, were not violated in the national system;
- (d) Notwithstanding the positive developments that are taking place across the spectrum of civil, political, social, cultural and economic rights, in practice Roma are still frequently the victims of incidents of discrimination and negative stereotypes that persist in all aspects of social life throughout the country:
  - (i) Specifically, there are serious incidents of police ill-treatment of Roma, particularly in detention, although their frequency is difficult to determine;

- (ii) There are specific incidents of Roma receiving less than equal treatment in the judicial process but this does not appear to be as widespread or systemic problem as in the past;
  - (iii) The authorities do not consistently provide Roma with adequate protection or redress from racially-motivated attacks and other acts of discrimination by the local populace. Many incidents continue to occur;
  - (iv) Socio-economic discrimination against, and marginalisation, of Roma continues. In some instances, Roma, themselves, bear some responsibility for the segregation that exists.
- (e) Overall, many Roma continue to be significantly less educated; have fewer and lesser paid work opportunities; inferior housing; poorer standards of, and access to, health care; and lower life expectancy than the population at large.

### **WELL-FOUNDEDNESS OF APPELLANTS' CLAIMS**

[141] In assessing the well-foundedness of each appellant's claim, the Authority has taken into account counsel's helpful submissions and the considerable volume of documentary evidence that is summarised above. The Authority takes into account the fact that the first and second appellants are expecting another child in several months time and that this will place a further burden on them if they were to return to Hungary.

### **FIRST APPELLANT'S CLAIM**

[142] The first appellant has suffered a variety of discriminatory measures and ill-treatment from both state officials and members of the populace in the past. These have caused him some disadvantage in his schooling, employment prospects and, no doubt, have been distressing and humiliating for him in the past.

[143] However, the Authority finds that he was, nonetheless, able to earn a living in a variety of jobs. His income, combined with that of his wife, was sufficient to have an apartment of adequate quality. There is no evidence he was unable to support his family to a reasonable standard, including access to health care. The family owned a car and had holidays together in other countries in the region.



There was no significant interference with his right to his cultural or social heritage as a Roma, and his rights to privacy and family life, including his extended family members in Budapest, were not denied in any significant way.

[144] The Authority concludes that the quality of his life before he departed in 1999 was, according to its assessment of country information, significantly better than that of many Roma living in Hungary today. The situation for Roma, generally, is still difficult but there is no evidence that they are worse off than at the time the first appellant left. Indeed, substantial progress has been made towards the better realisation of their basic rights even though a great deal more needs to be done.

[145] Refugee status determination involves a prospective assessment of the risk of persecution faced by the first appellant if he were to return to Hungary. In this light, the Authority concludes that the first appellant might face some degree of discrimination from the authorities in securing accommodation, employment and other social support. However, he is healthy man with work experience and motivation and he has a wide family support network that could assist the family, at least in the early stages of its reintegration.

[146] The first appellant may also face some discrimination from the non-Roma population in the form of harassment or verbal abuse. However, his risk of being the victim of any serious and random attack by racists is no higher than that faced by Roma generally. The Authority finds that the risk does not rise to the level of a “real chance” of being persecuted; *Refugee Appeal No 70366* (22 September 1997).

[147] Having regard to the country information cited above and the submissions of counsel, the Authority concludes that the various forms of discrimination the first appellant might face, even when taken cumulatively, do not rise to a sufficient level of seriousness to amount to “being persecuted” under Article 1A(2) of the Refugee Convention. They do not amount to a sustained or systemic violation of his basic human rights demonstrative of a failure of state protection; *Refugee Appeal No 74665* (7 July 2004).

#### *People-smuggling charges and conviction*

[148] For the first appellant to be granted refugee status in relation to this aspect of his claim, he must establish that his punishment for people-smuggling, and/or

his treatment by the authorities on his return, amount (separately or together) to persecution – as opposed to prosecution – and that there is a real chance this persecution will occur. He must also establish that his Roma race is a contributing factor in that persecution.

[149] For the reasons given earlier, the Authority concludes that the notes and decision of the appeal court in Budapest do not disclose any significant deficiencies in violation of the first appellant's fundamental human right to a fair trial. The Authority does not find that the first appellant suffered a miscarriage of justice, that his penalty was disproportionate to the severity of the offence with which he was convicted, or that the court was influenced, in any improper way whatsoever, by the first appellant's Roma ethnicity.

[150] The first appellant had the services of a lawyer to assist him in preparing for and presenting his defence and in pursuing an appeal. He chose, instead, to leave the country even though he was not under any immediate threat himself, other than the risk of conviction and a possible term of imprisonment. If the first appellant had a serious grievance, he could have sought further relief from the ECHR in Strasbourg, but has not done so. A successful outcome from the ECHR would have redressed the injustice to him because the state is bound to implement the decisions of the ECHR, including remedies for damages.

[151] In summary, the first appellant's treatment by the courts was neither persecutory nor was it linked to his Roma race.

[152] If the wider proceedings in Hungary can be faulted, it was in the pre-trial process when the first appellant was held in detention by the police. He was arrested and charged, along with a number of others with whom he had some relationship, with criminal offences relating to people-smuggling.

[153] In that regard, the Authority accepts that:

- (a) He was detained for a two-week period, during which he was questioned by the police, treated in an inappropriate way during this interrogation and suffered physical injuries. He was also not given the opportunity to have full access to lawyers and his family within the prescribed period of 72 hours. However, he received medical attention from a doctor who said he would make a report of his findings. There is no evidence the first appellant tried to produce this evidence for the subsequent trial;

- (b) After two weeks, his rights of access to the outside world were restored through the visits of his wife. After his release, there was a significant period of time in which no restrictions were placed on his freedom of movement. He also had access to legal counsel in order to prepare his defence when he became aware that the prosecution would proceed.

[154] Although the first appellant's treatment in detention is reprehensible and may have violated a number of his rights, the Authority finds that the police ill-treatment and inappropriate conditions of detention did not have any material bearing on the outcome of the trial and appeal. The first appellant did not make any admissions or confessions during his detention and, despite the Authority's abhorrence of any ill-treatment of detainees, it is satisfied that, in the first appellant's case, it did not result in any substantial miscarriage of justice in relation to the people-smuggling charges.

[155] The ill-treatment may have violated some of the first appellant's human rights but, in the Authority's view, did not amount to such a serious violation as to constitute "being persecuted" under Article 1A(2) of the Refugee Convention. In this regard, the Authority finds that the ill-treatment in pre-trial detention was not a sustained or systemic violation of his basic human rights demonstrative of a failure of state protection; *Refugee Appeal No 74665* (7 July 2004).

[156] Even if it had been so satisfied, the Authority finds this ill-treatment was a historical event that occurred during his pre-trial detention in 1998/1999, more than seven years ago.

[157] On his return to Hungary, the first appellant may have to serve a term of imprisonment. Country information from 2005 indicates that overcrowding is a serious problem in Hungarian penal institutions but that, generally, prisons meet international standards. The Authority accepts that if the first appellant were detained, he may be held in unsatisfactory conditions with other prisoners, which are likely to include other Roma. He may receive some harassment and discrimination on account of his race but the Authority concludes that the risk of him suffering more serious ill-treatment, at the level of persecution, is remote and below the level of a real chance; *Refugee Appeal No 70366* (22 September 1997).

[158] For all of these reasons, the framed issues in [70] are answered in the negative.

## SECOND APPELLANT'S CLAIM

[159] The Authority finds that the second appellant was largely a straightforward and truthful witness.

[160] As to the people-smuggling incident, the Authority accepts that she was innocently caught up as a witness against members of her husband's family. Having given evidence to the police, she may have placed herself at some risk from AK, who appears to have been the ringleader in this criminal enterprise.

[161] However, the Authority does not accept her contention that the police would be unable or unwilling to offer her protection in the event that AK did seek some form of revenge against her, or that her relationship to a Roma might diminish the quality of that protection. The second appellant has provided valuable assistance and evidence to the police to secure the conviction of AK and there is no credible evidence to suggest that the police and other authorities would not take whatever steps were necessary to provide her with protection against AK if she were to return to Hungary.

[162] The Authority finds, therefore, that the risk of her suffering serious harm at the hands of AK is remote and does not rise to the level of a real chance; *Refugee Appeal No 70366* (22 September 1997).

[163] In any event, the harm she fears from AK does not amount to her "being persecuted" under Article 1A(2) of the Refugee Convention because it is not a sustained or systemic violation of her basic human rights demonstrative of a failure of state protection; *Refugee Appeal No 74665* (7 July 2004).

[164] The Authority accepts that her relationship with her Roma husband has caused her a number of difficulties since 1985. Over the years, she has been subjected to a number of incidents of harassment, prejudice and discrimination that have intruded on different aspects of her private life. On the other hand, the Authority also finds that, despite these difficulties, the second appellant had a sound education, regular employment, an adequate standard of accommodation and health and was able to raise a family of mixed ethnicity, albeit with some difficulties and anxiety for their well-being.

[165] On the basis of these past experiences, the Authority concludes that the second appellant may face some forms of discrimination and harassment if she were to return to Hungary. However, it also notes that she has work skills and

experience, a basis of English from her years in Canada and New Zealand, and family support structures in Hungary and elsewhere in the European Union.

[166] The Authority accepts that, if her husband were required to serve a prison term, the family would lose the support of its principal caregiver and this may cause the second appellant additional hardship, both emotional and financial. This may be more onerous given the birth of a new member of the family later this year. This is an inevitable, if regrettable, consequence for families of anyone sent to prison, and was expressly taken into account by the Hungarian court in passing sentence on the first appellant.

[167] In her evidence, the second appellant did not refer to any problems in getting adequate medical care when her first two children were born or during her pregnancies. Her new child is likely to be born in New Zealand where she and the child will receive appropriate natal care. Although country information indicates some differential and discriminatory treatment for Roma in getting access to healthcare and other social entitlements, including housing, the Authority is satisfied that the consequences of these, for the second appellant, are not sufficiently serious to amount to “being persecuted” under Article 1A(2) of the Refugee Convention.

[168] They do not, either individually or cumulatively, amount to a sustained or systemic violation of her basic human rights demonstrative of a failure of state protection; *Refugee Appeal No 74665* (7 July 2004).

[169] The first framed issue in [70] is answered in the negative and the second issue does not need to be determined.

### **THIRD APPELLANT’S CLAIM**

[170] The Authority finds the third appellant to be an honest and straightforward witness. The evidence given on her behalf by the second appellant was also a sincere expression of her mother’s genuine concern for her well-being.

[171] From the medical report of Dr Shieff, dated 28 July 2005, it is apparent that the various forms of discrimination, which she suffered in her first nine years of life in Hungary, continue to affect her. He notes that she has flourished in Canada and New Zealand and is concerned about the consequence of her return to Hungary, particularly its effect on her “social fabric and educational status”. Dr

Shieff also sets out his concern at the possibility of the third appellant, as she has told him, being relegated to a class of younger students on her return to school in Hungary.

[172] The assessment of refugee status is prospective. It requires the Authority to determine the degree of risk (to a level of a real chance) of serious harm (at the level of “being persecuted”) that an appellant will face if returned to his/her country of origin.

[173] The Authority has assessed carefully all of this evidence, including the country information submitted. It accepts that, if the family were to return to Hungary, there would be a period in which some re-orientation and adjustment would be required. This is a reality that almost any emigrant family would have to face when returning to its country of origin after an absence of seven years.

[174] As to the third appellant’s education, the Authority notes that, despite her difficulties at school in Hungary, she “was able to perform relatively well, gaining grades which placed her roughly in the middle of the cohort of students” (Dr Shieff’s letter dated 28 July 2005). During the seven years she has lived outside Hungary, her social skills and standard of general education have flourished. She has achieved a significant level of schooling in New Zealand, maintained her Hungarian language and is now fully fluent in English; all of which can only benefit her on her return. In this context, the Authority finds the third appellant’s concern (reflected in Dr Shieff’s report), that she will be relegated to a lower class, to be speculative and not substantiated by any independent evidence. In any event, any such disadvantage is caused by the family’s prolonged absence from Hungary and not because she is Roma.

[175] Overall, the Authority accepts that the third appellant, as a child in a Roma family, might face a degree of discrimination in Hungarian society, at school and in the workplace. However unfair this may be, it is still a reality of life for many Roma families in Hungary, despite the many positive changes that have occurred there in recent years.

[176] Giving all of these matters and country information careful consideration, the Authority finds that these forms of prejudice and discrimination, even if taken cumulatively, do not reach a level of seriousness that amounts to “being persecuted” under Article 1A(2) of the Refugee Convention. They do not amount to a sustained or systemic violation of the third appellant’s basic human rights

demonstrative of a failure of state protection; *Refugee Appeal No 74665* (7 July 2004).

[177] Accordingly, the first framed issue in [70] is answered in the negative. The second issue does not need to be determined.

#### **FOURTH APPELLANT'S CLAIM**

[178] The Authority reaches a similar conclusion in relation to the fourth appellant. He is still a young boy who did not suffer any of the prejudice and discrimination faced by his older sister before he left Hungary in 1999. He is fluent in English, although his Hungarian is weaker. He is part of a sound and caring

family and has made a good start in his basic education.

[179] The Authority finds that, if he were to return to Hungary, the fourth appellant may have some initial difficulties in adjusting to the language and culture of his society, particularly as a Roma. However, it has no doubt that, given his age, he would quickly adapt to the reality of life with his family and benefit from the support of his extended family in Hungary.

[180] On the basis of country information, the Authority accepts that, like other Roma, there is a risk that he might face random acts of discrimination and racism by parts of Hungarian Society if he were to return. However, as in its assessment of the third appellant's claim, the Authority concludes that even the cumulative effect of these various kinds of discrimination would not rise to a level of seriousness as to amount to "being persecuted" under Article 1A(2) of the Refugee Convention.

[181] The fourth appellant is not at risk of a sustained or systemic denial of his basic human rights demonstrative of a failure of state protection; *Refugee Appeal No 74665* (7 July 2004).

[182] The first framed issue in [70] is answered in the negative and the second issue does not need to be determined.

## **CONCLUSION**

[183] For the foregoing reasons, the Authority finds that none of the four appellants is a refugee within meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined in respect of each claim. The appeals are dismissed.

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R J Towle  
Member