

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

**REFUGEE APPEAL NO 75829**

**REFUGEE APPEAL NO 75830**

**REFUGEE APPEAL NO 75831**

**REFUGEE APPEAL NO 75832**

**REFUGEE APPEAL NO 75833**

**AT AUCKLAND**

<b><u>Before:</u></b>	M J Robins (Chairperson) S L Murphy (Member)
<b><u>Counsel for the Appellants:</u></b>	I Uca
<b><u>Appearing for the NZIS:</u></b>	No Appearance
<b><u>Dates of Hearing:</u></b>	12, 13, 14 & 29 September 2006
<b><u>Date of Decision:</u></b>	7 March 2007

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**DECISION DELIVERED BY S L MURPHY**

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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 (INZ) declining the grant of refugee status to the appellants, who are nationals of Slovakia.

## **INTRODUCTION**

[2] The appellants are a married man (hereinafter referred to as “the husband”) and woman (hereinafter “the wife”) and their three young children.

[3] In accordance with s141B of the Immigration Act 1987, the parents have represented the interests of their children throughout their refugee claims.

[4] The family arrived in New Zealand on 11 May 2005 and lodged claims for refugee status on 4 July 2005. They were interviewed by the RSB on 19 and 20 September 2005 and a decision declining their claim was delivered on 12 April 2006. It is from that decision that they have appealed to this Authority.

[5] This case centres on discrimination, harassment and violence suffered by the family in Slovakia on account of their Roma ethnicity.

[6] The appellants’ counsel filed detailed and helpful written submissions both before and after the hearing which have been taken into account in this decision.

[7] The evidence is set out below and an assessment of it follows.

## **THE APPELLANTS’ CASE**

### **THE HUSBAND’S CHILDHOOD**

[8] The husband was born in AB, a town of 20,000 people in Presov in the Eastern part of what is now Slovakia, and is the son of an engineering labourer and a shoe-maker. The family was in a good financial position under the Communist state.

[9] He is of Roma ethnicity and has a dark complexion.

[10] He suffered ongoing discrimination at primary school. On one occasion, his teacher tried to confiscate a watch that his father had given him, apparently assuming it was stolen. When he tried to resist, the teacher pulled his hair and beat him in front of the class, causing him to fall down and faint. His father was angry and approached the school principal to complain about the incident, but was instructed to leave the office.

[11] The windows of the apartment block in which the family lived were

frequently broken by vandals.

[12] After the husband finished school, he studied for a further three years, starting in 1989, at an engineering apprenticeship school made up predominantly of ethnic Slovak students. The appellant and other Roma pupils were racially taunted at times.

[13] In his first year, a bicycle was stolen from the school. The husband, who had no involvement in the theft, was taken to the police station for questioning, apparently because he was Roma. During the attack, the soles of his feet were beaten, causing him to falsely confess to the theft. However, the school cleaner intervened on his behalf, telling the police he was from "a good family" and he was then released.

[14] After the overthrow of the Communist state, the situation for Roma became considerably worse. People would repeatedly abuse and swear at the husband on the streets, saying things such as "Gypsy go to the gas."

[15] In about 1992, three boys followed him home from the school, running after him, pushing him to the ground, and then kicking him, shouting "You'll die now black pig." The attack lasted for about 20 minutes and only ended when the husband pretended to be unconscious.

[16] The husband suffered bruising as a result of the attack. His father tried to report the attack to the police, but was advised by the police that he first needed a medical certificate. They attended a medical clinic for that purpose but the doctor refused to issue a certificate, dismissing the attack as "only a beating" and saying that it was "fine" because he did not die.

[17] The husband graduated from the school in 1992, obtaining a trade certificate.

## **THE WIFE'S CHILDHOOD**

[18] The wife was born in what is now Slovakia and moved to AB with her mother when she was six, after her parents separated. Initially she and her mother lived for a year with her aunt in an apartment that had predominantly white tenants. The playground was reserved for the white children. After a while they

moved into a basement apartment in another predominantly white apartment block. The neighbours were unfriendly, and the windows of the apartment were often broken in the night. On one occasion, a stone was thrown through the window with a note wrapped around it saying "Gypsies to the gas chambers." After that incident, her mother was frightened and decided they should move out of the apartment. They found a suitable apartment, again in a white area, but the neighbours wrote a petition demanding that they not be allowed to move in. They managed to secure the apartment in spite of the petition. Initially there were some problems from the neighbours, but eventually they came to accept the family.

[19] The wife did not have the opportunity of being granted entry into the secondary school of her choice, which was a fashion design school. This was because her primary teacher did not send her application to the school, in spite of assuring her that she would. She believes that this was because she was Roma. Instead, the teacher apparently sent the entry into the lesser status dress-making school, into which she was granted entry and subsequently studied.

[20] The wife found her years at the dress-making school traumatic. She was the only Roma in the class, and was ostracised because of that. She had particular difficulties with one of the teachers who was "snobby". The teacher always had carefully manicured hands and made it clear that she found touching the wife's work book distasteful. The teacher would cause her to miss classes by requiring her to run errands for her, and neither the teacher nor the classmates would share the missed curriculum with her, causing the wife to fall behind in her studies.

[21] In spite of these difficulties, she managed to complete the course. She was not invited to the graduation party.

## **MILITARY SERVICE**

[22] The husband was called for military service in 1994. He was frightened to perform the service, having learned that Roma recruits were ill-treated by their colleagues and officers. He was successful in postponing it, with the assistance of a friend, because of musical commitments in a Gypsy band that he had been involved with since adolescence. He then worked as a storeman for a year before joining military service in 1995.

[23] The appellant was the only Roma man in his unit of 20 conscripts, and as such, was repeatedly humiliated by the other men in the unit throughout military service. The appellant summed up his treatment in the military as follows: "I was so badly harassed that I wanted to commit suicide so I could find peace."

[24] Examples of the harassment he suffered were being forced into a cupboard in a sleeping bag and then thrown out of a second story window, being made to drink a cocktail of window cleaner, dish-washing liquid and vodka, being forced to clean the entire corridor with a shoe lace, and at nights being repeatedly required to get out of bed, turn on the light, salute to the light switch, then ask the light switch for permission to turn it off.

[25] On one occasion, an ethnic Slovak recruit was fooling around with other recruits while on guard. The appellant and other soldiers witnessed him pointing a gun at a sleeping Roma soldier, saying "You will die" and pulling the trigger. The gun was loaded and the man was killed. After some cursory questioning by the police, the death was recorded as a suicide, and was reported in the media as such.

[26] The appellant was reluctant to report to senior officers the mistreatment he suffered, fearing that it would result in a worsening of the harassment. On the one occasion that the appellant complained to an officer about the ill-treatment, the officer showed him to the door.

## **RELIGION AND MARRIAGE**

[27] The husband and wife are both of the Roman Catholic faith. The husband had played music in church as a child, but stopped attending the church when it became apparent that the parishioners resented having a Roma family at the church. Parishioners would move pews if members of his family sat beside them, and refuse to shake their hands during the relevant part of the service.

[28] The husband and wife approached a Roman Catholic priest to marry them in 1996. The priest initially refused because they were Roma, but eventually relented and conducted the service after the intervention of a nun from the Charita organisation for whom they worked (see below).

[29] When their first child was born, the priest they approached from the Roman Catholic church refused to christen her into the church. They then approached a

Greek Orthodox priest who agreed to christen her.

### **WORK FOR STATE-OWNED COMPANY**

[30] After completing his military service in early 1996, the appellant obtained employment in a state-owned company. Although his official work was as a brick layer, he was assigned unrelated hard labour, such as digging, and was responsible for cleaning the toilets.

[31] He continued to work in the position for nine years, at no stage achieving a promotion. He was often required to work away from home. During such assignments, he was shunned by his non-Roma colleagues who, for example, refused to share a room with him. In order to supplement his income, he would take leave from his work to travel to Germany (where his mother-in-law lived from 1998) to perform casual labour such as apple picking.

[32] In August 2004, a number of workers, including the appellant, were made redundant. Three categories of workers were made redundant: alcoholics, sick people and Roma. No redundancy payment was provided. After this, the appellant was unable to find permanent work and went onto a benefit, whilst performing periodic casual labouring jobs.

[33] The appellant's wife did not work. She received a family benefit for the duration of their marriage.

### **INVOLVEMENT IN ROMA GROUPS**

[34] The husband was involved in a Roma band from the age of 12 until the time he left Slovakia. Over time, the band became famous locally, particularly among Roma. As well as playing locally, the band would tour Slovakia and, at times, the Czech Republic. They produced a cassette, which had photographs of band members on the cover, and the appellant would on occasion be recognised on the streets, including by white people.

[35] The concerts involved much hard work for little financial reward. What small proceeds were earned helped to supplement the appellant's earnings at the state-owned company.

[36] Skinheads would attend and disrupt the band's performances and provoke fights with band members during the breaks. Roma bodyguards would be employed at the concerts to protect the band members and audiences from attacks. The concerts would be organised through the local councils, who would ask police to keep them under surveillance in case there were difficulties. There was usually a police presence at the concerts. There was only one police station in AB town so it was likely that some local police recognised the husband as a member of the band.

[37] For several years in the period prior to 1998, the husband and wife were involved in the Charita organisation, which was subsequently incorporated into the Roma Civic Initiative ("RCI"). The appellant's wife would help make costumes for Roma dance troops. In 1998, the Charita headquarters were attacked and damaged, causing them both to discontinue their involvement.

[38] The husband became involved in the RCI in 1998, although he never became an official member. He would help a friend who was a RCI member organise cultural events, such as summer festivals, during which his band would play. He discontinued his involvement in 2002.

## **GENERAL DISCRIMINATION**

[39] The husband has significantly darker skin than his wife. If the family needed to deal with ethnic Slovak members of the public or officials, they would send the wife, as the discrimination the appellant suffered was particularly pronounced. For example, on one occasion his wife made arrangements for him to have a mobile telephone, however it was necessary for him to sign the relevant documents. When he came in to sign the papers, the suppliers, upon sighting him, refused to go through with the contract.

[40] The wife, however, also suffered discrimination when going about her business. Customers in shops would racially taunt her; for example, on one occasion, a customer in a fruit shop said "Who will eat the tomatoes that those gypsies have fingered?" and asked for fresh fruit to be brought out after she had touched it to test if it was ripe.

[41] The appellant's oldest daughter was an intelligent child. She attended kindergarten for a period. Although the teacher was well-meaning and recognised her intelligence, the daughter was teased and harassed so much by the other

children that the appellant and his wife removed her from the kindergarten.

[42] At school, the appellants' children were made to sit in a row with other Roma in their respective classrooms, often at the back of the class. The appellant's wife challenged the teacher about this but she said that the white parents did not want the seating changed. The school reports of Roma children included a section requesting that parents check the hair of their child for lice.

[43] On one occasion the children went to a discotheque. They knocked on the door of a house believing that the event was to be held there. An old ethnic Slovak man answered the door and angrily threatened that there would be a "discotheque" that would make them jump when he got out his gun and started shooting.

[44] The general taunts and harassment were such that the children feared leaving the apartment.

### **DISCRIMINATION IN MEDICAL SERVICES**

[45] While the husband was in the military, his mother gave birth to his half-brother by Caesarean section under general anaesthetic. During the procedure, she was sterilised without her knowledge. She did not become aware of this until recently.

[46] In early 1997, two months after the birth of her first child, the wife received a letter from the government inviting her to attend a post-labour appointment. The doctor claimed she had a growth on her ovaries and she was referred to AB hospital. While awaiting her appointment at the Women's Health Department, she overheard medical staff talking about her appointment being for sterilisation purposes. On the pretext of going to the lavatory, she escaped the hospital. She did not report the incident to anyone, but changed doctors. Her new doctor examined her and gave her a clean bill of health.

[47] In approximately 2000, the husband went to see a doctor. His doctor, a state employee, required him to pay a bribe before treating him. He believed this was because he was Roma. On another occasion, he was hospitalised for a respiratory complaint. In the hospital he was treated poorly in comparison to the non-Roma patients, for example, medical staff were clearly reluctant to administer injections to him. He was supposed to recuperate in the hospital for a month but



left the hospital after a week because he was so distressed by the poor treatment.

[48] When the couple's third daughter was born in mid-2001, the wife suffered overt discrimination in the maternity hospital. The Roma and non-Roma women were segregated into separate wards, and Roma women were not allowed into the dining hall but had to eat in their rooms. Roma babies were carried on separate trolleys from non-Roma babies and their dummies were marked with an "R". Roma women were given a lower level of service, for example, diapers were provided for non-Roma women, whereas Roma women were required to provide their own, and the staff changed the diapers of non-Roma babies but not those of Roma babies. The doctor humiliated her during her labour, for example asking her if she was in pain in mock Roma language, and repeatedly joking about her with a nurse.

[49] In December 2001, the wife was hospitalised for gall bladder problems. She was taken into surgery without prior warning. Her scar was notably large and rough, in contrast to the small and neat scars of the non-Roma women in her ward. When she questioned one of the nurses about her unusual scar, she was told that if she had offered the doctor 500 crowns, the operation would have been performed neatly. She was unaware whether the non-Roma women had secured their superior operative services through bribery.

[50] The family had previously bribed the same doctor 10,000 crowns to ensure that he performed colonic surgery on the wife's grandmother to a high standard. After the surgery, the medical staff neglected the grandmother; for example, failing to change her diapers, sometimes leaving her with no diapers, and it was only after significant bribes were given to all the staff that they took better care of her.

## **HOUSING DIFFICULTIES AFTER MARRIAGE**

[51] When the couple married in 1996, they moved into a hostel for young Roma families, in a Roma-only area of AB town.

[52] In 1998, 50 skinheads wearing orange jackets and balaclavas attacked the hostel. The windows of their rooms, as well as the windows and headlights of their car, were broken. The attack lasted 20-30 minutes and the police stood by without taking any action. The family dog was killed during the attack and its body was found in a nearby park. The appellant reported the vandalism of the car to the police but they failed to investigate. As a result of this incident, the family decided to move to a white neighbourhood, where they felt they would be safer.

[53] They then moved into the wife's mother's apartment as she had left for Germany. However, the family only stayed there for a year on account of difficulties they faced. The neighbours were hostile to the family, and called the children insulting names. The water supply and power were cut off on several occasions, apparently by the neighbours. The appellant's mother had bought the flat, and sought to have it registered in the appellant and his wife's names. However, the apartment's residents' association had the right to veto the transfer of ownership, and refused to approve it, as they wanted the flat to be transferred into the ownership of white people.

[54] In 1999, the family moved to CD block of apartments close to the city centre. The appellants' apartment building was one of seven buildings within the block which was inhabited only by Roma people. The apartment comprised two rooms: a kitchen, and a living room in which all the family slept.

[55] In early 2003, the wife's uncle sold his large and well-appointed apartment in order to buy a family home in a village seven kilometres away from AB. The mayor of that town did not want Roma living there, and a petition was organised to prevent him from buying the house. The house was nevertheless sold to him because the vendor did not have any other offers. After the uncle moved in, the house was attacked by neighbours. The damage so was extensive that he was unable to afford repairs and could no longer live in the house.

[56] In 2004, in the mayoral campaign for AB, candidate EF, who subsequently became the mayor, attempted to capture Roma votes by promising, *inter alia*, that the Roma in the seven apartment blocks would be able to buy their apartments. He also promised that he would improve the Roma settlement on the outskirts of the city, for example, by installing toilets and central heating. The settlement housed around 100 Roma families, and parts of it were substandard, with no running water or central heating, and prefabricated houses that were designed as temporary accommodation only. However, the appellant's wife considered it to be "reasonably good" in comparison to the settlement in the neighbouring town; the Roma in that settlement lived in huts made of scrap wood and metal.

[57] After EF was elected in 2004, he made it clear that his real intention was to rid the central city of Roma, and he started moving Roma into the settlement on the outskirts of town.

[58] In early 2005, the wife arrived home to find a notice pinned to the main door

of the apartment building, saying that the apartments were to be sold and the inhabitants were to be moved to the Roma settlement. The wife was extremely distressed. In the ensuing days she became severely depressed and was unable to do anything but sit at the table crying. Feeling she had no further options, she seriously considered poisoning herself and the family.

[59] Other Roma were extremely upset by the notice and sought a meeting with the city council, demanding that they be able to buy the apartments. The council eventually backed down and allowed the Roma inhabitants to buy the apartments. The appellants bought their apartment and subsequently sold it to a family member.

#### **TREATMENT AT THE HANDS OF SKINHEADS AND POLICE**

[60] In May 1997, a white workmate of the husband invited him to have a drink at a local bar. The husband was very reluctant to go, as he did not generally attend public facilities, fearing racial mistreatment, but relented after his friend assured him that he would keep him safe.

[61] The bar staff served the appellant's drink in a plastic cup, in contrast to other patrons who were given normal glasses. A skinhead, after watching the husband for a period, pulled him towards the table and ordered him to lie on the table with his arms and legs spread apart. He and his associates then proceeded to play a game of "pool", hitting the pool ball forcefully into the husband's body parts including arm pits and groin, laughing all the while. The appellant's friend telephoned the police, who came and questioned the persons involved. They smiled while the husband described what had happened to him and then left without taking action against the men.

[62] In 1998, the husband and a friend were chased on the street by teenaged skinheads armed with baseball bats. His friend was caught and beaten.

[63] In mid-1999, the husband was playing his guitar in a park with some Roma friends. Some white men told them to stop playing the music, and for the husband to remove his hands from his pockets. The husband questioned them, saying "We are only people". This angered the men, who called the police, who took the appellant to the police station. At the police station he was required to remove his

shoes and socks. The police officers swore at him and beat him on the soles of his feet with batons, saying "Now you are not answering back." The pain was so intense that his vision blurred. They stopped after approximately 10 minutes when he was crying "like a small child". He was kept in a cell overnight without food or water and released in the morning. His feet were swollen and blue.

[64] In May 2000, the husband's wife and sister were walking home in the evening with their children after visiting their mother-in-law. They were approached by two young skinheads, who hit the sister-in-law with a baseball bat on her legs, and kicked the husband to the ground. The appellants' daughter, who was three at the time, fell to the ground while trying to shield her mother from attack. The wife believed that her daughter had been killed. She started shouting "You've killed my daughter." and the skinheads fled the scene. Her sister found out the identity of one of the attackers through neighbours of her mother – he was a 13 year-old boy. She subsequently advised the police but no action was taken.

[65] Three months after that attack, the wife, her two sisters-in-law and some friends were at the railway station waiting to attend a Roma dance evening. Approximately eight skinheads appeared dressed in black jackets, army belts, and balaclavas, and wielding baseball bats. They began to strike at the bench with the baseball bats. They then chased the three women and proceeded to kick them to the ground. One of the sisters-in-law sustained a broken arm. The other women, including the wife, were bruised. One of the women reported the attack to the police. The wife was unaware of any action having been taken.

[66] In January 2001, the family were filling up their car with petrol when a car full of skinheads pulled up behind them and started shunting the car. Frightened, the husband drove the car away without paying for the petrol. The other car started chasing them. It then pulled up beside them and the skinhead in the passenger seat pointed a gun at the husband and shouted "Pull over you black pig." The husband quickly braked, did a U-turn and pulled into a side street, hiding between tall apartments, whilst trying to calm the children who were screaming with terror. They then managed to make their way home without further incident.

[67] The husband complained about the attack to the police but they were not interested, telling the appellant to "forget" the incident. They failed to make a written report.

[68] A few weeks after that incident, the family car was vandalised. In order to

obtain insurance money, they needed to have a police report. However, when the husband reported the incident, the police refused to issue a report, saying that the husband should have fewer children so he could afford a new car.

[69] In mid-2003, the husband was involved in a car crash. The other driver, who was white, was at fault and was clearly intoxicated. The police were called. When they arrived at the scene they shook hands with the other driver as if they knew him and started shouting at the husband, blaming him for the crash. One of the officers said "Gypsies should not drive cars but walk." They then wanted to take the husband away for breath-testing, but the husband refused unless the other man was also tested in his presence. The police would not let the husband speak, saying that he was not a judge. A witness told the police officers that he was not to blame and that she was willing to provide evidence to that effect but they told her to be quiet. Police officers then came from a station in the neighbouring town, and took both the husband and the other man to the station to be breath-tested. The husband understands that the man failed the breath test, however, to the appellant's knowledge, no action was taken against him.

[70] Prior to the accident, the husband had regularly been subjected to random searches of his car by the AB police. After the accident, the number of such incidents increased markedly, and he was stopped up to four times a week. The police officers would search the car thoroughly, stripping it bare and at times even pulling out the seats. The searches would last approximately 15 minutes and the police would frequently demand payments for trifling or non-existent infringements, for example wrongly claiming that tyres were worn. This harassment lasted for the two years between the accident and the departure of the family from Slovakia, and caused the husband significant stress.

#### **HARASSMENT REGARDING WIFE'S FATHER**

[71] In 2002, the wife's brother was visited in his home in the Czech Republic by the Czech police on two occasions. He was taken to the police station and asked about his father's whereabouts. On another occasion that year, he was detained overnight as the police had mistaken him for his father as they had the same name.

[72] In January 2004, the wife received a summons to attend the AB police station the next day in relation to her father. The wife was very frightened and thought something "terrible" had happened to him. When she attended the police

station the next morning, she was taken into a room and questioned closely about her father by two police officers, one of whom was from the Czech Republic. She was also asked about her own family circumstances. Her father had left the Czech Republic for New Zealand in 2000, and was granted refugee status on the grounds of harassment by skinheads. The wife did not disclose his whereabouts to the officers, saying she knew nothing about his present circumstances. The police officers at no stage advised her of the reason they were asking after her father; she asked them but they did not answer her.

[73] The wife was released at 4pm that day. When the husband came home, his wife cried and told him about her encounter with the police. He was angry and went straight to the police to confront them about their actions. When he did so, they punched him and held him in the police station until late that night.

[74] A day or two after being questioned by the Czech officer, the wife told her father about this and described the officer to him. She told him that he was "taller" with a shaved head and a moustache. Her father believed that he knew the officer from dealings with him in the Czech Republic. When she came to New Zealand the father told her that the police officer may have been interested in her because he had sold a car while it was on hire purchase.

[75] Following this incident in January 2004, the wife was visited by the police once or twice a month until her departure from Slovakia in May 2005. She would be taken to the police station and repeatedly asked the same questions about herself and her father. She did not ever disclose her father's whereabouts, or consult him as to whether she could tell them where he was. She did not believe that that would ease the situation, as she felt that the officers were just mocking and harassing her rather than actually wanting the information. There were about eight officers in total who questioned the appellant.

[76] The wife's husband was also questioned once or twice together with his wife. On the second occasion, her husband answered back to one of the police officers, who responded by threatening that they would put their children in an institution. Around the same time, the officers started parking by the school gates. When the wife walked past they would smile at her. On one occasion, she saw them talking to the teacher.

[77] As a result of the actions of the police, the appellant and his wife took the children out of school. The police came to their house and saw that the children

were not in school, but the appellant told them that the children were sick and showed them a medical certificate, which placated the police.

### **MARCH 2005 ATTACK**

[78] In March 2005, the family were attacked in their apartment by balaclava-clad men dressed in black and wielding batons. They pushed the appellant's wife to the ground then forced all the family members into the kitchen. They then rampaged through the house, shouting racial insults at the family, throwing all belongings out of the drawers and breaking everything. When they left, they warned that they would return. The family believed that the attackers were the police and so did not report the incident. Their second daughter was so terrified by the attack that she had to sleep in her parents' bed thereafter.

[79] The next morning the family moved out of the apartment and into that of the husband's mother, who lived half an hour's walk from the house. The wife contacted her father and asked him to help them escape the country. He gave them money to come to New Zealand. In early May 2005, they left the country for New Zealand on their own legal passports.

### **WIFE'S FATHER'S EVIDENCE**

[80] The wife's father submitted a written statement as well as giving oral evidence at the hearing.

[81] He said that he had had very little contact with his daughter, the appellant's wife, since he separated from her mother when she was a young child. He received a telephone call in mid-2004 from his daughter to advise him that she was being questioned by the police about him. When she described the Czech police officer, he thought that he may have been an officer in the Czech Republic who had harassed him constantly in his job as a tram driver, checking the tram at 3am every morning. The wife's father had not seen police officer since 1999.

[82] The wife's father proffered two possible reasons why his daughter may have been harassed by the police. The first was because he was a member of the Communist Party in 1998, representing a district of Prague, and was being groomed to be a Member of Parliament. He was the only Roma to join the party, and sat as an observer with the Communist Party in parliament for two days as

part of his training, but decided not to stand for election and left the party. He said that he had the most problems in the Czech Republic after he joined the Communist Party. He thought that the Czech police officer who had questioned his daughter may have been a member of the Communist Party who was angry with him.

[83] His alternative explanation as to the police interest in him was that he had a car on hire purchase for which he had only made three quarters of the payments. He gave the car to a friend two weeks before he left the Czech Republic because he did not have money for air tickets. His friend gave him some money and said that he would pay the outstanding hire purchase payments. His friend reneged on the agreement, did not make the payments and sold the car. His friend was not harassed by the police.

[84] He considered that his membership of the Communist Party was the more likely explanation for the police interest.

[85] He said that he was not close to his daughter when he lived in the Czech Republic and continues to be somewhat estranged from her. He was not aware of the police having made threats to put her children in an institution.

## **THE ISSUES**

[86] 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."

[87] 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' CASE**



## CREDIBILITY

[88] Generally, the evidence of both the husband and wife was candid, spontaneous and understated. Their experiences in Slovakia are consistent with the reported situation for Roma in Slovakia, as set out below.

[89] One aspect of their claim, in contrast to the rest of their evidence, did not appear credible. This was their claim to have been subjected to repeated questioning, surveillance and threats by the Czech police on account of the activities of the wife's father. This evidence was both implausible and inconsistent.

[90] The questioning occurred some four years after the wife's father left the Czech Republic. However he did not provide any credible evidence which could explain the extent of the interest in the Czech police in him, manifested through visits and threats to his daughter in Slovakia, at that late stage.

[91] His evidence that the Czech police officer who visited his daughter may have been the same officer who harassed him daily at his work place in the Czech Republic is at odds with his evidence before the RSB about his circumstances in the Czech Republic. He did not mention to the RSB any harassment at the hands of the police, other than the police checking his car. His claim was about having been harassed by skinheads.

[92] Similarly, he gave no evidence as to being a member of the Communist Party in his refugee claim. Even if this evidence were true, a matter about which the Authority makes no finding, it does not in itself explain why the Czech police would manifest that level of interest in his Slovakian-based daughter four years after his departure. His evidence that the Czech police officer "maybe ... was with the Communist Party and he was angry with me" was unconvincing.

[93] Counsel has acknowledged that the evidence of the wife's father was unsatisfactory in explaining the police interest in the wife. Her explanation was that there was, in fact, a reason for the harassment that the wife's father would be aware of, but that he had failed to divulge it in his evidence. She submitted that this should not impugn the credibility of the appellants.

[94] However, we find counsel's explanation to be speculative. Further, the evidence of the wife and the husband was also flawed, as set out below.

[95] The wife's evidence before the Authority about events after the summons

was at odds with her evidence before the RSB. To the RSB she said that after receiving the summons, she responded “straight away because I was worried” but to the Authority she said that she attended at 8am the next morning, and that that time was specified in the summons. When the Authority put this discrepancy to her, she responded by saying:

“It was immediate because I was asked to come at a certain time. It doesn’t mean I went straight away but my actions were as requested.”

[96] There were also two significant discrepancies between the wife’s evidence and that of the husband. The wife said in her written statement to the RSB that during the period the police were harassing the family, they visited her husband at his work place. In contrast, in his evidence before the Authority, the husband said that they did not visit him at his work place. When the Authority pointed out this discrepancy and suggested to the husband that he would remember if they had come to his work place, he acknowledged that he would, saying “It’s something I would have remembered but right now its too much for me.”

[97] Similarly, in her written statement to the RSB the wife said that after the summons:

“[t]he police would come about once a month to search our house. They searched our apartment, our stuff, threw everything around and scared our children.”

[98] However her husband said that the police did not search their house. When the Authority put this matter to him, the husband acknowledged that he would know if that had in fact happened.

[99] We find it implausible that the appellant did not ring her father after having been sent the police summons referring to him, given her initial evidence that she thought something “terrible” had happened to him. Her explanation when the Authority questioned her about this, namely that “I didn’t take it as so important” because she is not close to her father, is unsatisfactory.

[100] In light of the above, the Authority finds that the summons and subsequent harassment and threats by the police did not occur.

[101] We have carefully considered the impact of this finding on the evidence of the break-in to the apartment by masked intruders shortly before the departure of the appellants, given that it occurred in the same time period as the police interest in respect of the wife’s father. On balance, we consider it appropriate to extend the appellants the benefit of the doubt with regard to this aspect of their claim. In

contrast to the evidence of the appellants regarding the police interest, this evidence was plausible, and delivered spontaneously and consistently.

## **COUNTRY INFORMATION**

[102] Roma in Slovakia, who are estimated as numbering 320,000, have historically faced widespread and serious discrimination in all facets of their life, including schooling, housing, employment, education, health services, as well as racist attacks from skinheads and violence at the hands of the police; European Roma Rights Centre (ERRC) *Written Comments of the ERRC concerning the Slovak Republic for consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 65<sup>th</sup> session, 2-20 August 2004* (30 July 2004) (hereinafter "2004 ERRC Written Comments").

[103] The accession of Slovakia to the European Union in 2004 required the government to be seen to be taking measures to address these problems. The government now publicly expresses its commitment to advancing the position of Roma, and set up an array of institutions to address Roma issues in preparation for accession. As early as 1994, the Slovak Centre for National Human Rights was set up, and it was strengthened in 2003. In 1998, the Slovakian Deputy Prime Minister was given responsibility for human rights and minority issues and tasked with acting as a co-ordinator of Roma issues. The following year the government created the post of Government Plenipotentiary for Roma Minority Affairs charged with responsibility for Roma issues, and in 2000, it hosted a national conference against racism, xenophobia, anti-Semitism and discrimination, and designed an Action Plan to Prevent All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Manifestations of Intolerance. In 2001, the government created an Interdepartmental Commission for Roma Community Affairs, as well as setting up a Parliamentary Commission for Human Rights and Minorities, a Racism and Xenophobia Monitoring Centre, and a Commission to Deal with Racially-Motivated Violence. In 2004, an anti-discrimination legislative regime was implemented. Within the auspices of the institutions set up, numerous measures have been taken to address Roma issues, including a number of publicity campaigns and law reforms aimed at stopping racism and discrimination; Committee on the Elimination of Racial Discrimination *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: Fifth Periodic Reports of States Parties due in 2002: Addendum, Slovakia CERD/C/419/Add.2* (29 March 2004); 2004 ERRC Written Comments.

[104] However, it is widely recognised that there is a gap between Slovakia's policy and its practice with respect to Roma people; see eg. Committee on the Elimination of Racial Discrimination 65<sup>th</sup> session Consideration of Fourth and Fifth Periodic Reports of Slovakia CERD/C/SR.1655 (16 August 2004). Discriminatory attitudes and feelings of hostility towards members of the Roma community remain deep-rooted and widespread throughout the country, and serious discrimination persists; Concluding Observations of the Committee on the Elimination of Racial Discrimination: Slovakia. 10/12/2004. CERD/C/65/CO/7. In October 2005, the Slovakian Constitutional Court struck down those parts of the anti-discrimination legislation that allowed affirmative action on grounds of race and ethnicity (whilst confirming the legality of such measures on other grounds such as gender) jeopardising the future of programmes designed to advance Roma; "Slovak anti-discrimination law is against the constitution" *Romea* (18 October 2005); Amnesty International *AI Report: Slovakia* (2006); Centre for Civil and Human Rights *Briefing of the Centre for Civil and Human Rights on the Implementation of Anti-Discrimination Legislation in Slovakia* (January 2006). Furthermore, continued government commitment to advance Roma issues has been thrown into doubt in light of the election in mid-2006 of a government in coalition with a far right nationalist party, the Slovak National Party, the leader of which, Jan Slota, has propagated violent hate speech against Roma; "New Slovak Government Includes Extreme Right Party" *European Roma Rights Centre* (6 July 2006); Tom Nicholson "Euro-Socialists Suspend Fico's Smer Party" *The Slovak Spectator* (16 October 2006).

## **HOUSING DISCRIMINATION**

[105] One of the key areas in which Roma in Slovakia face serious discrimination is housing.

[106] In January 2006, it was estimated that half of Roma lived in segregated urban ghettos and settlements and over a quarter live in "primitive cabins with medieval hygiene conditions without electricity, running water and gas". The number of Roma in Roma settlements has grown over the past decade and is more than any other country in central and Eastern Europe; see World Bank *Poverty and Welfare of Roma in the Slovak Republic* (April 2002) viii. Eastern Slovakia is the worst, particularly the Kosice and Presov regions; "Slovak Reforms Still Lower Romanis' Living Standard" *Europe Intelligence Wire* (19 January 2006).

[107] The Roma settlements are:

“... characterised by substandard or extremely substandard housing, a prevalence of environmental hazards including toxic waste, rubbish tips, intermingling of waste and drinking water ... partially or completely lacking in formal infrastructure such as paved roads, electricity, heating, sewage removal and the provision of adequate drinking water, and are frequently excluded from other public services, such as bus or postal services”; 2004 ERRC Written Comments.”

[108] There is frequent opposition to Roma moving outside Roma-only settlements. Roma who try to rent or purchase property outside segregated settlements are often blocked by vigilante action, at times with the complicity of local authorities; see 2004 ERRC Written Comments; United States Department of State *Country Reports on Human Rights Practices for 2005: Slovakia* (8 March 2006) (hereinafter “2006 DOS Report”). For example, in September 2004 a Roma family was hounded out of their village after a series of violent incidents in which the mayor was complicit. The mayor had come to the home of the family one night in 2003 and his guards had attacked them with baseball bats, throwing the youngest daughter into the river and breaking the father’s arm. Later that year, their house was burned down by villagers in a violent attack. When a human rights group subsequently tried to have a caravan put on the property for the family to live in, the mayor organised a group of protestors at the site, and aggressively intervened when the caravan arrived, calling the family “niggers from Somalia”. After this, the family resorted to building a shack on the property, but the shack, together with their belongings, was demolished on the mayor’s orders in September 2004, causing the family to live on the streets of Bratislava; “Racist Mayor Strikes at Slovak Romani Family Again” *European Roma Rights Centre* (29 September 2004).

[109] In June 2005, the mayor of Presov announced the construction of a wall to separate Roma from non-Roma citizens in the Stara Tehelna neighbourhood, although the plan was withdrawn due to negative international media coverage; see 2006 DOS Report.

[110] Local councils of villages have consented to development projects for Roma only if they are in isolated or excluded areas, including, in September 2003, a project funded by the European Union. In its 2004 report, the European Roma Rights Centre noted generally that

“A number of governmentally and/or internationally-funded housing projects for Roma have in recent years been implemented in such a way as to exacerbate racial segregation, generally because of local opposition to integrated housing projects involving Roma”; ERRC Written Comments

[111] Social welfare cuts in 2004 which, according to comments made by

politicians at the time, were apparently targeted at Roma (see para 120) have resulted in a dramatic increase in the number of Roma failing to pay their rent; “Eviction Fever in Slovakia” European Roma Rights Centre, Roma Rights 3-4/2004: Health Care. This has resulted in a rise in the number of forced evictions of Roma in recent years. Evicted Roma have at times been required to move to other towns; see for example “Slovak Towns in Dispute Over Where to House Roma” European Roma Rights Centre (September 2006).

[112] Since 1995, Slovakia’s second largest city, Kosice, has had a policy to progressively evict Roma from the city centre and re-house them in a substandard housing estate called Lunik IX, whilst simultaneously allocating alternative housing to the non-Roma occupants of Lunik IX. In November 2003, the last non-Roma person moved out of Lunik IX; 2004 ERRC Written Comments.

[113] In September 2006, local authorities resolved to evict between 35 and 40 Roma with rent and utility arrears from municipally-owned flats in the centre of Puchov town and relocate them to a nearby village. Local residents protested against the move and formed a human chain to stop the Roma from moving in; ERRC Roma Rights 2-3, ERRC 10<sup>th</sup> Anniversary (September 2006).

[114] In some areas such as Presov, Roma families have been moved into housing for chronic rent defaulters, despite having no rental or utility debts. Presov has also reportedly rendered most Roma ineligible for state social housing by adopting the precondition that at least one member of the family be employed; 2004 ERRC Written Comments.

[115] Slovak law requires persons “going to live permanently abroad” to end their permanent residence in Slovakia. Some Roma who have emigrated from Slovakia in recent years have been removed from local registries in accordance with this law. There is no obligation on any municipality in Slovakia to provide returnees with residence permits. A lack of a residence permit results in limited or total lack of “access to basic public services” including legal housing, as well as the inability to vote or stand in local elections; 2004 ERRC Written Comments.

#### Recent measures to address Roma housing

[116] In 2005, the Slovakian government put out a National Action Plan of the Slovak Republic Regarding the Decade of Roma Inclusion, in which it acknowledged the necessity for a “comprehensive solution to the housing issue”.

Notably, the report did not acknowledge the discriminatory practices underpinning Roma housing problems, instead saying that the cause of the problems was “their low education, cultural and social level”.

[117] The Ministry of Construction and Regional Development of the Slovak Republic committed in the report to developing a “Long Term Housing Development Concept for Marginalised Population Groups”, and the Government undertook to achieve the following objectives: “higher housing standards in the Roma settlements”, “progressive inclusion of the Roma from the Roma settlements”, “higher housing standard for the Roma within the urban agglomerations”, and “creating conditions for higher housing standards within the Roma settlements”, with a 2015 deadline for meeting those objectives.

[118] The extent to which these objectives will be progressed is uncertain. Central government policies on Roma housing have in the past been difficult to implement at the local level, and at times blatantly obstructed by councils; Canadian Refugee and Immigration Board *Slovakia: Update to SLK30143.E on the situation of Roma (2001-April 2002)*(23 April 2002); 2004 ERRC Written Comments. Furthermore, the new Minister of Construction and Regional Development, whose ministry is tasked with creating and implementing the long- term Roma housing strategy, is a member of the far right Nationalist party; “New Slovak Government Includes Extreme Right Party” *European Roma Rights Centre* (6 July 2006). It is also possible that the October 2005 ban on affirmative action has rendered part or all of the policy inoperable.

## **EMPLOYMENT AND SOCIAL WELFARE**

[119] Welfare reforms were instituted at the start of the millennium which impacted adversely on Roma and resulted in an exodus of Roma to the Czech Republic, predominantly from Eastern Slovakia; See “Thousands of Roma from Slovakia seek better life in the Czech Republic” *Czech Radio 7, Radio Prague* (31 March 2003).

[120] Further welfare cuts were applied in February 2004 which, according to political rhetoric prior to their implementation, were apparently specifically directed at Roma; see 2004 ERRC Written Comments.

[121] Under the February 2004 policies, support for families with more than four children was cut and a portion of the benefit became contingent on the recipient

living in legally registered housing; Extreme Rights Deprivation Among Roma in Slovakia Leads to Unrest *News Roundup: Snapshots from Around Europe, Roma Rights* What is Roma Rights? 1/2004; 2004 ERRRC Written Comments. These reforms have cut the incomes of the poorest Roma families in half, and state and municipal authorities have failed to offer work to those people to replace the lost income; “Slovak Reforms Still Lower Romanis’ Living Standard” *Europe Intelligence Wire* (19 January 2006). According to a report in January 2006, the living standard of Roma was continuing to worsen dramatically as a result of the 2004 welfare reforms; “Slovak Reforms Still Lower Romanis’ Living Standard” *Europe Intelligence Wire* (19 January 2006).

[122] The introduction of the welfare cuts resulted in rioting by Roma, to which the police responded violently (see paras 138 - 139).

[123] Under “activation” policies introduced at the time of the welfare reforms, aimed at “maintaining the working habits of the job seeker”, compensation at less than a third of the minimum wage is offered for municipally-organised work. The activation policies have resulted in some companies firing regular workers in favour of lower paid activation workers. The worst and lowest status positions are reportedly being given to Roma; Laco Oravec and Zuzana Boselova “Activation Policy in Slovakia: Another Failing Experiment?” European Roma Rights Centre (2006).

[124] Some failed asylum seekers who have returned to the Kezmarok area have been denied access to social welfare; 2004 ERRRC Written Comments.

[125] In December 2004, the Committee on the Elimination of Racial Discrimination expressed “alarm” at the level of *de facto* discrimination against Roma in the field of employment; Concluding Observations of the Committee on the Elimination of Racial Discrimination: Slovakia CERD/C/65/CO/7 (10 December 2004).

## **HEALTH**

### Sterilisations

[126] There is widespread evidence that Roma women have been sterilised without their informed consent in recent years; see for example Commission on Security and Cooperation in Europe *Accountability and Impunity: Investigations into Sterilization Without Informed Consent in the Czech Republic and Slovakia*



(Washington, 2006) (hereinafter “2006 CSCE Report”)

[127] The allegations of coercive sterilisations of Roma women came to light in 2001 and have been dealt with by the Slovakian government with denials, intimidation and threats. In late 2001, Roma activist Alexander Patkolo was threatened with the criminal charge of “spreading alarming information” for publicly stating that Roma women had been sterilised without informed consent. A lengthy NGO report in 2003, alleging that illegal sterilisations had occurred, met with the following threatening response from a spokesperson for the Minister of Human Rights and National Minorities charged with responsibility for Roma matters:

“If we confirm [the sterilisation allegations] we will expand our charges to the report’s authors, that they knew about a crime for a year and did not report it to a prosecutor. And if we prove it is not true, they will be charged with spreading false information and damaging the good name of Slovakia;” 2006 CSCE Report p7.

[128] Under international pressure to examine the allegations, the government conducted its own investigation into the issue and reported on its findings in 2003. It denied that there had been any wrongdoing, admitting only that there had been “procedural shortcomings” in sterilisation procedures undertaken with respect to Roma women; 2006 CSCE Report, p1. However, the government report was heavily criticised by the international community for its narrow mandate, the process it undertook to investigate the allegations, and its conclusions; see for example 2006 CSCE Report. Of particular concern was that Roma women witnesses were treated like criminals, for example being taken for questioning in police cars with their sirens on, threatened with imprisonment in the event that their claims were false, and denied access to their medical files; see “Report Slams Handling of Roma Sterilization” *The Slovak Spectator* (21 August 2006); Amnesty International *Slovakia: Failed Investigation into Allegations of Illegal Sterilisation of Roma Women* (28 November 2003).

[129] To date, there has been no redress for the women subjected to the procedures; see Commission on Human Rights 61<sup>st</sup> session Item 6 *Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, Xenophobia and Related Intolerance: Report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr Doudou Diene, Addendum, Summary of Cases Transmitted to Government and Replies Received* E/CN.4/2005/18/Add.1 (23 February 2005).

[130] In an apparently tacit acknowledgement of the shortcomings in the previous regime, the government made changes to the Slovakian legal code on 1 January

2005, requiring informed consent to be obtained prior to sterilisations; Commission on Security and Cooperation in Europe *Accountability and Impunity: Investigations into Sterilization Without Informed Consent in the Czech Republic and Slovakia* (Washington, 2006).

[131] However, the government elected in 2006 are proponents of racially-targeted birth control. The current prime minister, Robert Fico, in 2002 advocated to “actively control the irresponsible growth of the Romany population”. Jan Slota, head of the Slovak National Party, part of the governing coalition, stated in February 2006 that if his party joined the government after the June elections, he would seek to control the birth rate of “unadapted” Roma and, in June 2006, said Roma “multiplied like mice”; “Report Slams Handling of Roma Sterilization” *The Slovak Spectator* (21 August 2006).

### General Health Care

[132] The general health care system in Slovakia operates in a discriminatory manner. In its 2004 report, the European Commission Against Racism and Intolerance highlighted practices such as segregating Roma from other patients in hospitals (para 66). The 2006 DOS report referred to continued discrimination with respect to health care; 2006 DOS Report.

[133] In addition to the segregating of Roma patients in some state hospitals into Roma-only rooms and barring of them from common spaces, there have been delays and outright refusals of medical professionals, including emergency services, to enter Roma settlements. There have also been reports of health workers beating and racially abusing women and children, as well as a lesser standard of service being provided to Roma; 2004 ERRC Written Comments.

[134] In November 2005, a pilot project aimed at improving Roma access to health care was launched, involving the training of 40 health assistants; 2006 DOS Report.

### **SCHOOLING**

[135] Segregation of Roma occurs routinely in the education system. Thirty-eight percent of Roma students attend special remedial schools or classes for the mentally disabled compared to 2.5% of the Slovak majority. In some schools for the mentally disabled, every pupil is Roma.

[136] There is widespread evidence of racial segregation of Roma in normal primary schools; some normal primary schools are predominantly or entirely comprised of Roma children, even where the local populations do not reflect that demographic; 2004 ERRC Written Comments.

## **POLICE AND SKINHEAD VIOLENCE**

[137] Violence against Roma in Slovakia is well documented, including violence perpetrated by the police. In 2001, the United Nations Committee Against Torture expressed concerns about “allegations of instances of police participation in attacks on Roma and other members of the population”; see United Nations Committee Against Torture *Concluding Observations on Slovakia* 11 May 2001, CAT A/56/44/2001, para 104(c). A number of measures have been taken by the Slovakian government to address the question of violence against Roma, in particular, setting up a Commission for Racially Motivated Crimes, implementing and strengthening laws against racially motivated crimes, recruiting of some Roma into the police force, as well as training sessions on discrimination and racism for judges; see European Commission Against Racism *Third Report on Slovakia* CRI (2004) 4 (27 January 2004); Committee on the Elimination of Racial Discrimination *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: Fifth Periodic Reports of States Parties due in 2002: Addendum, Slovakia* CERD/C/419/Add.2 (29 March 2004). However, violence against Roma persists.

[138] In February 2004, at the time of the welfare cuts targeted at Roma, Roma threatened a state-wide strike, and started rioting, resulting in the largest deployment of police and armed forces since 1989. According to Roma sources, in the course of this deployment, several hundred masked officers raided a Roma settlement and indiscriminately entered a number of Roma houses, kicking and striking Roma with truncheons, including electric truncheons, beating and verbally abusing women, children and disabled people and using electric cattle prods on bodies and heads. More than 40 people were detained, and nearly all of them were physically abused in custody, including males being ordered to strip to the waist and struck repeatedly in the midriff by truncheons; Extreme Rights Deprivation Among Roma in Slovakia Leads to Unrest *News Roundup: Snapshots from Around Europe, Roma Rights* What is Roma Rights? 1/2004.

[139] Police used pressure and threats to discourage Roma from pressing

charges relating to these actions. Requests by the European Roma Rights Centre that these actions be investigated, together with similar police actions in the surrounding days, including the death of one Roma man in suspicious circumstances, were unsuccessful. No action has been taken in response to these matters; Extreme Rights Deprivation Among Roma in Slovakia Leads to Unrest *News Roundup: Snapshots from Around Europe, Roma Rights What is Roma Rights?* 1/2004; 2006 DOS Report.

[140] In 2006, the United States Department of State reported an improvement in police responsiveness with respect to Roma. However, the report stated that “skinhead violence against Roma continued to be a serious problem” and that police investigators were at times reluctant to take the testimony of Roma witnesses, or to thoroughly investigate cases involving Roma; 2006 DOS Report.

[141] In spite of efforts of the international community, NGOs and the government to improve the situation of Roma, attitudes toward Roma remain largely negative, including at the highest levels. For example the 2006 DOS report noted that several mayors were able to propagate hate speech against Roma with impunity, in spite of the existence of laws against hate speech.

[142] The extent to which the election of the far right nationalist party into the governing coalition in 2006 will impact adversely on the position of Roma is, to date, unclear. The party leader is infamous for violent hate speech against Roma such as “the only way to deal with gypsies is with a long whip and a small yard” “New Slovak Government Includes Extreme Right Party” *European Roma Rights Centre* (6 July 2006). Since the formation of the coalition government, however, he has publicly condemned racial intolerance. The sincerity of the statement has been questioned, not only because of its disjunct with his anti-Roma political platform to date, but because it occurred in the context of an 11<sup>th</sup> hour (and in the event unsuccessful) attempt by Slovakia to avoid suspension from its historical voting block in the European Parliament, the Party of European Socialists Slovakia; “Slota Rejects Extremism, then Stalks off TV Talk-Show” *The Slovak Spectator* (11 October 2006). Similarly, his subsequent signing of an agreement with the head of the Roma parliament has been dismissed by some as further cynical political manoeuvring to stave off continued intense international criticism of Slovakia in light of his party's involvement in the new government; “Roma Leaders in Slovakia divided over pact with far-right party” *BBC Monitoring International Reports* (21 November 2006).

## DO THE APPELLANTS HAVE A WELL-FOUNDED FEAR OF PERSECUTION?

[143] It is against the backdrop of the country conditions outlined above that the appellants' risk of persecution must be assessed.

[144] Whether a particular appellant is at risk of persecution for a Convention reason is a forward-looking test; the decision maker must undertake an assessment of the future risk to the person. Past persecution is not a prerequisite to refugee status. In some cases, however, past persecution may be indicative of the fate of a person upon their return; see *Refugee Appeal No 71404* (29 October 1999). Accordingly, an initial task of the decision maker is to analyse the events that have occurred in the country in which the person claims to be at risk.

[145] Discrimination is qualitatively different to, and therefore to be distinguished from, persecution. Differences in the treatment of various groups do exist to a greater or lesser extent in many societies and persons who receive less favourable treatment as a result of such differences are not necessarily the victims of persecution; UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*, Para 54 . As stated in *Refugee Appeal No 71404* (29 October 1999):

“It is important to bear in mind that discrimination *per se* is not enough to establish a case for refugee status. A distinction must be drawn between a breach of human rights and persecution, a distinction the Authority has repeatedly emphasised in its jurisprudence. See for example *Refugee Appeal No 30/92 Re SM* (26 November 1992) 22; *Refugee Appeal No 2039/93 Re MN* (12 February 1996) 15-16 and *Refugee Appeal No 70618/97* (30 June 1998) 22.”

[146] New Zealand refugee jurisprudence accepts that refugee law ought to concern itself only with actions which deny human dignity in any key way. Persecution has accordingly been defined by the Authority as “the sustained or systemic denial of basic or core human rights such as to be demonstrative of a failure of state protection”; Hathaway *The Law of Refugee Status* (1991) 104-108, as adopted in *Refugee Appeal No 2039/92* (12 February 1996) and *Refugee Appeal No 71404* (29 October 1999). However, although discrimination is not in itself persecution, the Authority recognises there are situations where various threats to human rights, in their cumulative effect, can deny human dignity in key ways and should properly be recognised as persecution; see *Refugee Appeal No 71404* (29 October 1999); *Refugee Appeal No 2039/93 Re MN* (12 February 1996).

[147] The appellants have suffered ill-treatment on account of their Roma race in

numerous facets of their lives.

[148] The types of discrimination and ill-treatment faced by the husband, as a dark skinned Roma, have been various and serious. He has suffered violence from the police in the form of beatings on the soles of his feet on two occasions, acts which amount to torture at international law; *The Greek Case 12 Yearbook of the European Convention on Human Rights* (1969), 186; *Refugee Appeal Nos 73952-73958* (26 May 2005). In addition to this serious mistreatment at the hands of the state, he has also been subjected to a threatened shooting by skinheads in front of his family, been victim to a racial attack and an attempted racial attack on the streets, the former of which resulted in injuries, and been subjected to degrading mistreatment during his military service and later when skinheads “played pool” into his body parts. He was in recent years made redundant on overtly racist grounds, rendering him a beneficiary, after having suffered nine years of discrimination in the workplace, as well as having been discriminated against in the medical system to the extent that he discharged himself before he had medical clearance to do so.

[149] The violent mistreatment suffered by the husband at the hands of the police in 1989 and 1999 contrasts with the mistreatment that he suffered in recent years after crashing into the intoxicated man, and is illustrative of the comparative recent improvement in the police treatment of Roma. Although racially abused by the police at the scene of the crash he was not physically mistreated. However, consistent with the country material on the continued discriminatory attitude of the police toward Roma, subsequent to the crash, under cloak of discharging their general traffic duties, the police were able to create an ongoing climate of harassment for the appellant, stopping his car repeatedly, and extorting unnecessary payments from him under official pretexts.

[150] The appellant's wife was subjected to the threat of sterilisation at her post labour check up. The failure of the doctor to advise her that she was to be sterilised and to diagnose a “growth” on her ovaries which mysteriously disappeared without medical intervention, in the context of country information regarding coerced sterilisations would tend to indicate that the procedure was likely to be performed without her informed consent. Coerced sterilisation violates Article 16(1)(e) of the Convention on the Elimination of All Forms of Discrimination Against Women, and may also amount to torture or cruel, inhuman or degrading treatment or punishment; see van Dijk and van Hoof *Theory and Practice of*

*European Convention on Human Rights* (2<sup>nd</sup> ed 1990) *The Meaning of Persecution in United States Asylum Law* (1991) Vol 3 *International Journal of Refugee Law* 5, 22-23. When applied selectively for a Convention reason, it may be persecutory under the Refugee Convention (*Matter of Chang* Int. Dec. 3107 (BIA 12 May 1989) *Interpreter Releases*, 10 July 1989. While the sterilisation did not in the event occur, as the appellant managed to escape the hospital, the threat of this occurrence, and continued possibility that it could occur again would have been traumatising for the wife.

[151] The wife was also subjected to the indignity of being admitted into a hospital which segregated Roma patients and babies from other patients during the birth of her third child. She, too, was the victim of two racial attacks, one of which would have been particularly distressing given that her three year-old daughter fell to the ground while trying to protect her.

[152] The appellant and his wife had ongoing difficulties in securing housing both during their childhoods and after marriage. In each apartment in which they attempted to make a home after marriage, they were either forced out through violence or neighbourhood hostility, and, in respect of their final apartment, both violence and official fiat. The latter was pursuant to an undisguised policy of segregation of Roma, in flagrant breach of a number of human rights instruments. Although the policy of the AB Council was subsequently revoked, the threat of being forcibly uprooted from their family home and directed to relocate into the segregated and sub-standard Roma settlement on the outskirts of AB caused the wife serious psychological stress.

[153] In light of the above, we find that the acts of discrimination and violence that the appellants have suffered plainly amount to persecution.

[154] It now falls upon the Authority to assess whether there is a real chance of such events occurring upon their return to Slovakia.

[155] As can be seen in the analysis above, in recent years, there have been some improvements in the situation for Roma in Slovakia. However, the last three years have also seen set backs, in particular the 2004 welfare cuts directed at Roma, the late 2005 decision by the Constitutional Court to selectively strike down affirmative action measures for racial minorities, and the election last year of a far right nationalist party into coalition government.

[156] Certain of the events that the appellants have suffered are, nevertheless unlikely to occur upon their return. The torture that the husband suffered at the hands of the police in 1989 and 1999 is unlikely to occur again. Country information would suggest that flagrant violations of this nature are now sporadic only.

[157] Similarly, the wife would appear no longer to be at risk of coerced sterilisation, in light of the legal regime implemented in 2005 requiring informed consent prior to sterilisations Commission on Security and Cooperation in Europe *Accountability and Impunity: Investigations into Sterilization Without Informed Consent in the Czech Republic and Slovakia* (Washington, 2006).

[158] However, it is clear from the appellants' own evidence and the current country conditions that there is a real chance that the appellants would face various discriminatory acts and measures as well as the possibility of further racial violence upon their return. They would likely face considerable difficulties in accessing housing and may be forced by discrimination, or potentially official direction, to live in a segregated Roma ghetto area, possibly in non-legal housing. They also risk being denied a residence permit upon their return in light of their having left the country, and consequently denied basic public services. Further, there is a real chance that the husband would face continued unemployment upon his return, and a cut in his unemployment benefit in the event that they are unable to secure legal housing. Further, there is a real chance that they would face discrimination, and, potentially segregation in health services and the education of their children. The husband also faces likely continued harassment by the police through repeated checks of his car and resultant fines.

[159] The family also faces the possibility of a further violent invasion of their home, the perpetrators of the invasion of their home that precipitated their departure having threatened to return. Although it is possible now, given the incremental improvements in policing that have occurred in recent years, that the police might institute some form of investigation in the event that such an event occurred upon their return, there is no certainty that such investigation being comprehensive, given the reported reluctance of some police officers to take testimony of Roma witnesses or to thoroughly investigate Roma cases; 2006 DOS Report. Furthermore the likelihood of the police being able, or indeed willing, to prevent such an event from occurring is minimal.

[160] Collectively, these violations of rights that the appellants risk facing amount



to persecution.

[161] The persecution the appellants face is on account of their race.

[162] Although some of the risks facing the appellants are specific to AB town, in light of the generalised discrimination and poor conditions for Roma throughout Slovakia, we find there to be no internal protection alternative for the appellants.

### **CONCLUSION**

[163] The appellants and their children are refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeals are allowed.

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S L Murphy  
Member