



IMMIGRATION AND REFUGEE BOARD
(REFUGEE DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DU STATUT DE RÉFUGIÉ)

IN CAMERA
HUIS CLOS
T99-04988

CLAIMANT(S)

XXXXX XXXXXXXXX

DEMANDEUR(S)

DATE(S) OF HEARING

27 October 1999

DATE(S) DE L'AUDIENCE

DATE OF DECISION

17 November 1999

DATE DE LA DÉCISION

CORAM

Judy Campbell

CORAM

FOR THE CLAIMANT(S)

Frank Cardile

POUR LE(S) DEMANDEUR(S)

REFUGEE CLAIM OFFICER

Matthew Oommen

AGENT CHARGÉ DE LA REVENDICATION

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S REPRESENTATIVE

REPRÉSENTANT DU MINISTRE

These are the reasons in the determination of the Convention refugee claim of XXXXX XXXXXXXXX, aged 38, a citizen of Poland, who claims persecution at the hands of extortionists: former police officers under the Communist regime who extort from private businessmen, especially small independent businessmen.

The determinative issue in this case is nexus.

The claimant, a dress designer and tailor, alleges that he was approached by three men in July of 1991, who offered him security and protection for his business. He was eventually assaulted by these men. He was threatened with a knife. The door to his home was kicked in. He was warned not to tell the police. He responded by closing his business in Kracow, moving to his parents and, for their safety, moved to Canada in November 1991. He made his refugee claim in Canada, in February of 1999, seven-and-a-half years later.

The determinative issue in this case is whether the claimant's fear of persecution is by reason of a ground enumerated in the Convention definition: race, religion, nationality, political opinion or membership in a particular social group.

The claimant made no claim that the persecution he feared was based on his religion, race or nationality. The only Convention ground possibly relevant in his case, therefore, appears to be membership in a particular social group or political opinion.

The claimant's testimony might be said to indicate that he belonged to a social group targeted by a group of former police officers organised to make money through extortion. The claimant, in his opinion, was targeted because he was thought to have a lot of money. He considered that self-employed persons working on their own, maybe, were thought to be easy to scare. The lower level of police under the Communist regime was let go with the fall of the Communist regime. Well-trained and seeking income, the claimant explained, they turned to organised crime and extortion. The claimant presented

an article in a Toronto-based Polish language paper to support this analysis.¹ The claimant fears extortion and related assault, should he return to Poland.

The panel, when considering whether the claimant is a member of a particular social group in the Convention sense, takes into account the analysis of membership in a particular social group as set out in Ward. With this in mind and based on the claimant's own testimony, the panel finds the harm feared by the claimant is that of crime, not persecution for Convention reasons. Extortion is a common crime. Successful businessmen may be targeted by extortionists, but the case law is clear that if a refugee claimant's only fear of persecution is as a victim of crime, he or she does not fit the definition of a Convention refugee. The Convention Refugee Determination Division (CRDD) has decided, in a number of cases upheld by the Courts where extortion is the sole basis for the persecution, that there is an insufficient link or nexus to the definition of a Convention refugee. The Supreme Court, in Ward, also rejects as falling within social group categories 'an association of people...merely by virtue of their common victimisation as objects of persecution'. The case law indicates that victims of extortion attempts are not per se a particular social group for a Convention reason. In Randhawa,² the Court noted that, "The CRDD's decision that, where extortion is the sole basis for the persecution and, therefore, there is an insufficient link or nexus to the definition of Convention refugee, finds precedent in a number of decided cases." The Court proceeded to review the Karpounin, Vetoshkin and Balendra and Soberanis³ cases relating to extortion, refusal to pay a bribe or other similar criminal activity, which were found not to constitute persecution or not be related to a Convention ground. In other

¹ Exhibit C-2, Gazeta, no 146, pp.14-15

² Randhawa, Sarbjit v. M.C.I. (F.C.T.D., no. IMM-2474-97), Campbell, February 2, 1998

³ Karpounin, Maxim Nikolajevitsh v. M.E.I. (F.C.T.D., no. IMM-7368-93), Jerome, March 10, 1995

Vetoshkin, Nikolay v. M.C.I. (F.C.T.D., no. IMM-4902-94), Rothstein, June 9, 1995

Balendra, Nandini v. M.C.I. (F.C.T.D., no. A-1660-92), Jerome, November 28, 1995

Soberanis, Enrique Samayoa v. M.C.I. (F.C.T.D., no. IMM-401-96), Tremblay-Lamer, October 8, 1996

case law,⁴ opposition to criminality is not held to constitute a link to a Convention ground. In the case of Vassilev,⁵ which is an exception, opposition to criminality was held to be a link to a Convention ground because crime and corruption was found to permeate the state, in that instance, in Russia. Thus, opposition to criminality was seen by the authorities to be opposition to the state and, therefore, was a perceived political opinion. Although this position was not directly advocated in this case, political opinion was listed as the basis of the claim in the claimant's Personal Information Form (PIF), and counsel for the claimant argued that the persecution the claimant feared stems from the political climate in Poland and the corruption of the police. Was the claimant's refusal to cooperate with the extortionists perceived as political opinion, in opposition to the state, in this case, because either the state is complicit with the Mafia, or declines to give state protection because of the claimant's perceived political opinion?

The claimant gave no personal evidence that in his case the extortionists he feared were involved with the government in power at the time, in 1991. The panel reviewed the other objective evidence available in this case. The documentary evidence on country conditions in Poland in 1998/99 is clearly distinguishable from that level of corruption and linkage to government authorities outlined in Vassilev. In the British Home Office Assessment,⁶ the observation is, "Corruption among the police is not a big problem. Cases, which have been found, were of an incidental character. After a complaint is confirmed, the consequences are particularly acute: the policeman is dismissed from service and the Prosecutor's Office opens an investigation against him. Every signal about the corruption of a policeman becomes a subject for particularly penetrating checks." Paragraph 4.21 goes on to state that in the case of complaints against police, in the case where a complaint is confirmed as correct, the person involved receives an apology personally or in written form. In cases which, for example, resulted in damage

⁴ For example: Guzman, October 29, 1998; Chkliar, Ekaterina, January 21, 1995; Karaseva, Tatiana, November 26, 1997; Alifanova, December 11, 1998

⁵ Vassilev, Anantoli Fedorov v. M.C.I. (F.C.T.D., no. IMM-3443-96), Muldoon, July 4, 1997

to health or material loss, the police pays damages. Additionally, a policeman who is found guilty of a breach of discipline is liable to service or criminal responsibility.

In Refinfo 31364⁷, the organised crime problem is recognised by the police. A crown witness program has been implemented to protect witnesses. Although too early to gauge its effectiveness, it is “one example of measures taken by the authorities to deal with organised crime groups”. One example of the results of the government initiatives against organised crime is noted⁸: three organised crime leaders received sentences of up to fifteen years from a Polish Court for their involvement in car theft and robbery in what is ‘seen as part of a government crackdown against organised crime’. The panel finds this evidence indicative of the government of Poland’s serious efforts to combat organised crime at this time. The claimant presented evidence of deterioration in the level of crime in Poland since the fall of communism. One article noted the reluctance of police to accept reports hard to follow because it makes the statistics of crime detection look bad and consequently influences the policeman’s bonuses.⁹ There is criticism in an article from a Polish language Toronto based paper on the new Criminal Proceedings Code and the courts who “often try to put the victim on an equal footing with the criminal.”¹⁰. The panel did not find this evidence persuasive of a finding that organised crime and corruption permeates the state or that the claimant would not receive protection because of a perceived political opinion.

The panel was not provided with the authors of the articles which makes it difficult to assess their authoritativeness. Regardless, they do not establish that the level of police corruption or organised crime “permeates the state”. The panel prefers to rely on the internationally respected reliable source of British Home Office, the Department of State Country Report on Human Rights Practices for 1998 and the Refinfo 31364. In

⁶ Exhibit R-2, “Poland:Country Assessment,Country Information Policy Unit,” Version 02, November 1998

⁷ Exhibit R-2, RefinfoPOL31364, p. 2

⁸ Ibid., p.3

⁹ Exhibit C-2, Polityka, May 8, 1999

¹⁰ Exhibit C-2, Gazeta, May 1999

the latter, according to the Office of International Criminal Justice, “Violent crime, including homicide remains low in Poland. ... A series of organised crime-related bombings claimed several victims in 1997. According to police sources, most of the perpetrators have been arrested or were killed in gangland style assassinations and 1998 has been fairly quiet. ... The Polish National Police has taken major strides towards the development of community policing, and has implemented crime prevention programs in major metropolitan areas.” Authorities cited indicate “there is by no means the same level of corruption in the police force that is characteristic of the Russian Federation”. In DOS, there was reference to the new Criminal Code. The criticism of the Code by the European Convention on Human Rights focused on infringements of the rights of the accused to be present at proceedings. The point of view of the article provided by the claimant appears in this context perhaps to overvalue the crime fighting effectiveness of the Communist days, and undervalue the protection of human rights, a necessary feature of a democratic nation. The court system was described as cumbersome, poorly administered and underfunded, but the feature of organized crime noted was that the threat of organised crime was noted to have provoked legislative responses that raise questions of the right to privacy.

Taking into account all the evidence, the panel concluded opposition to extortion and organised crime in Poland is not reasonably seen as opposition to the authorities, as it was in Vassiliev. Therefore, the panel finds, based on the evidence before it, the claimant does not have a link to a Convention ground as a person persecuted for a Convention reason.

He is not a person unable to get adequate state protection because of his actual or perceived political opinion. The claimant never sought police protection so there is not evidence from his experience that he was refused state protection because of perceived political opinion. Nor does the country condition documentation of the claim in this case

support a finding that persons opposed to extortion would not receive state protection because of a perceived opposition to the state.

Having considered all the Convention grounds that might reasonably apply to the claimant, membership in a political social group and political opinion, the panel finds the harm the claimant fears is not persecution for a Convention reason; it is not linked to a Convention ground. Having considered all the grounds that might reasonably apply, the panel finds that the harm the claimant fears is not based on a Convention ground. The panel finds that the claim has no nexus or link to a convention ground as is required by the Convention refugee definition.

Based on the foregoing analysis, the Refugee Determination Division concludes that XXXXX XXXXXXXXX is not a Convention refugee.

“Judy Campbell”
Judy Campbell

DATED at Toronto this 17th day of November 1999.

**KEYWORDS - REFUGEE DIVISION - NEXUS - PARTICULAR SOCIAL GROUP - POLITICAL
OPINION - STATE PROTECTION - MALE - NEGATIVE - POLAND**