

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75952

AT AUCKLAND

<u>Before:</u>	M L Robins (Chairperson) S Murphy (Member)
<u>Counsel for the Appellant:</u>	S Munif
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	22 & 23 November 2006
<u>Date of Decision:</u>	31 May 2007

DECISION

[1] This is an appeal 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 appellant, a 24 year old national of the Slovak Republic, of Roma ethnicity.

BACKGROUND

[2] The appellant arrived in New Zealand in February 2006. He applied for refugee status in May 2006. He was interviewed by the RSB on 11 and 12 July 2006 and the RSB issued a decision, declining his application, on 28 September 2006. It is from this decision that the appellant appeals.

THE APPELLANT'S CASE

[3] This is a summary of the appellant's case as presented to the Authority. It is followed by the Authority's assessment of the credibility of his account.

[4] The appellant was born in Z in the former Czechoslovakia, in what is now the eastern region of the Slovak Republic. He is the youngest of three children. The appellant's parents separated and, when the appellant was aged four, his mother and the children moved to a town, Y, some 20 kilometres from Z.

[5] The appellant described himself as having a white complexion with Roma features. He said his family name and accent would both identify him as Roma.

[6] At school, the appellant was one of two Roma children in his class and one of only 10 Roma children at the school. He was bullied by older white Czech children because he was Roma. Some teachers made him sit at the back of the classroom. Parents complained if their children had to sit next to him. The appellant was not an unintelligent student. He responded well on the rare occasion a teacher supported him. He believed that some teachers downgraded his marks because he was Roma.

[7] During his school years, the appellant was harassed by skinheads and thugs in the street and on one occasion in 1994, when he was eleven years old, he was beaten at a fairground. On that occasion he suffered bruising and cuts but did not require medical assistance.

[8] The appellant lost interest in school and, when aged 14 and 15 years, he spent more time playing truant than attending classes. He was in a group with three other Roma boys. They spent their time fishing or walking or making a nuisance of themselves (playing on the roofs of houses or ringing door bells).

[9] During these two years, the police apprehended the appellant and took him to the Y police station on about 30 occasions. On about half of those occasions, the police officer on duty slapped the appellant's face or slapped him across the back of his head. On one occasion a police officer threw him against a cupboard and on another occasion a police officer beat him on his legs with a baton. He was never kept in custody over night or charged with an offence, but he was often questioned and accused of things, mostly theft.

[10] At age 15 he left school and was granted a welfare benefit from the Slovak government of 1200 Slovakian *koruny* ("SKK") per month.

[11] Around the time the appellant left school, his mother moved to Germany with her new husband. The appellant moved to the Czech Republic to live with his father. A few months later, he returned to Y and lived with his sister AA.

[12] From early the next year (1999), the appellant began several years of regular travel between the Slovak Republic and Germany. He made approximately seven to ten trips to Germany every year, ranging in length from a couple of weeks to six months or so.

[13] In order to keep receiving the benefit in the Slovak Republic, he had to demonstrate to the Slovak authorities that he had applied for at least five jobs per month. He applied for numerous labouring jobs but found it difficult to secure anything but short term or casual employment. He put this down to his Roma ethnicity. He said that employers would sometimes ask if he was Roma, and when he said yes they would say they had no vacancies. Sometimes employers would actually say they would not employ him because he was Roma.

[14] The appellant sometimes found casual labouring work in Germany but this was illegal without the proper permit. Immigration restrictions meant he could stay in Germany for a maximum of only three months each time, although he often stayed longer. On one occasion, the German authorities threatened to deport him so, to avoid prejudicing his ability to visit Germany in the future, he returned home voluntarily.

[15] In 2000, the appellant's father came to New Zealand and successfully claimed refugee status.

[16] The appellant was sometimes abused and threatened by white Slovaks and skinheads. In 2000 he was assaulted by some white Slovaks at a disco in Y. In 2001, the appellant and his cousin BB were attacked in Z by four men who made racist insults and punched and kicked them. On both occasions the appellant suffered cuts and bruising but did not require medical attention.

[17] At the beginning of 2002, the appellant started a well paid job in a timber plant. Around the same time, he began a relationship with a Roma girl, CC. In August of that year, after about six months in the job, he resigned so he and CC could live in Germany.

[18] CC and the appellant returned to Slovakia a few months later. The only job the appellant could find was in a factory managed by a man who deliberately employed people who found it difficult to find work, for example Roma and alcoholics. This boss treated his employees badly and paid them poorly. After a couple of months, the boss told the appellant he was dismissed. The appellant

had worked hard and, so far as he was aware, the employer did not have any legitimate grounds to complain about his work performance.

[19] In January 2003, the appellant and CC had a daughter, DD. A couple of months later the three of them moved out of CC's mother's apartment into their own apartment.

[20] On a Saturday at the end of June 2003, the appellant rode his bicycle to a forest 10 kilometres away from the town of Y, to pick mushrooms. He left his bicycle and walked into the forest. After half an hour he was on a hill. He noticed, to his left, about a dozen people who appeared from their dress to be Indians. They were walking in a line, accompanied by four men. The appellant surmised that the four men were people-smugglers because the forest was very close to the Ukraine/Slovak border and was a well-known smuggling route to Western Europe.

[21] Two of the smugglers saw the appellant. They started running towards him. The appellant started to run away but he fell over. This allowed the two men to catch up to him. They started beating him and demanding to know what he was doing there. The appellant explained that he was picking mushrooms. After several minutes the appellant was able to break free and run further into the forest. He heard the men's voices for a while, indicating they were looking for him, so he stayed hidden in the forest until it was dark. He then walked home (being too frightened to go back for his bicycle).

[22] He arrived home at about 2.00 am. CC was very distressed to see the cuts and bruises on his face. She insisted that he report the assault to the police and so, at 10.00 am the next morning the appellant went to the Y police station and told a police officer what had happened. He was able to give good descriptions of the two men who beat him; one had short blonde hair, blue eyes and a big nose. The other had black hair and a beard. Both were wearing base-ball caps, camouflage shirts and jeans. The police officer did not seem particularly interested, saying the police received many such complaints, although he did take some notes.

[23] At approximately 10.00 pm that evening there was a knock at the apartment door. CC answered it and two men burst in. They were the same two men who had beaten the appellant in the forest. Neither of them was wearing the base-ball caps they had been wearing in the forest and, so far as the appellant was aware, neither of them carried weapons.

[24] They started hitting the appellant. They told him that if he went to the police again he would be "in trouble". They also hit CC, although to a lesser extent. Neighbours from across the corridor started asking what all the noise was about, at which point the two men left.

[25] It was obvious to the appellant that the police must have given the two men his name and address. That is the only way they could have found out where he lived. The appellant concluded that the two men were members of the Slovak mafia. That is because the mafia is violent, is involved in people smuggling, and has close connections with the police.

[26] After the men left, the appellant and CC had an argument. CC was angry that she and DD had been placed in such danger. She blamed the appellant for this. Within the next few days, CC moved out of the apartment with DD and returned to her mother's apartment. Shortly thereafter the appellant also moved out. He went to stay with his mother in Germany for five months.

[27] The appellant returned to Y in January 2004 and lived with his sister AA. Within the first two weeks of his return, he walked into a shopping mall in Y where he saw the blonde man. The blonde man saw the appellant, took out his mobile telephone and began dialling a number. The appellant, frightened that the blonde man was calling for mafia reinforcements, quickly walked away. He moved out of his sister's house and went to live with his grandfather in Z, about 20 kilometres away.

[28] About three months later, the appellant was in Y to visit his daughter at CC's mother's apartment. As he approached the apartment building he saw a BMW vehicle parked outside. BMWs are frequently associated with the mafia so he was immediately suspicious. The windows were all darkened so he would not have been able to see inside had it not been for the blonde man's window being down while he had a cigarette. He was close enough to see the blonde man clearly. He could see the outline of another man but could not identify him. They did not see him so he walked away and returned to Z.

[29] The appellant thought the men were waiting for him, or perhaps their presence indicated that his daughter might be in danger. He decided to leave the Slovak Republic because he thought his daughter would be safer if he left the country.

[30] Two weeks later, the appellant travelled to Germany and a month later, in April 2004, the Slovak Republic joined the European Union. As a result of this, the appellant, like all Slovak citizens, could now freely travel to, and live and work in Germany or any other European Union country. The appellant worked in Germany doing casual labouring jobs and returned to the Slovak Republic a few months later, for the main purpose of seeing his daughter in Y. He lived with his grandfather in Z.

[31] In about October 2004 he again travelled to Germany, returning to live in his grandfather's house in February 2005. In about April 2005 he again travelled to Germany where he stayed for the next six months until he again returned to live with his grandfather.

[32] In early October 2005, the appellant went to a Roma ball in a restaurant in Y. He drank some alcohol and, feeling hot and sick, he left the restaurant and walked down the road. Suddenly the two mafia men leapt out in front of him. They hit him and threw him to the ground. As he was lying on his back, the blonde man had one hand around the appellant's throat and the other holding a pistol to the appellant's head. He said "You will not run away this time".

[33] Luckily, a group of young people were leaving a bar at this time. Seeing the attack, they threatened to call the police. The blonde man withdrew the pistol and the two men left. The appellant, who was bleeding from his scalp and mouth, walked to the station and caught a train home to his grandfather's house.

[34] A couple of weeks later the appellant telephoned his mother in Germany and asked her to send money so he could go to the United Kingdom. The reason he wanted to go to the United Kingdom was that he no longer felt safe in the Slovak Republic because of these two mafia men. He had seen their distinctive BMW driving around Z and believed they were looking for him. He did not want to live with his mother in Germany in case that put her in danger.

[35] He knew his brother EE was living in Leeds but he did not know how to contact him. He had another friend in Leeds and this friend, with money provided by the appellant's mother, arranged the appellant's airline tickets.

[36] In November 2005, the appellant arrived in the United Kingdom and began working in a grocery store in Leeds. In late January 2006, the appellant telephoned his cousin BB who was living with the appellant's grandfather in Z. BB

said the police had come to the grandfather's house on two or three occasions, looking for the appellant. The grandfather or the cousin had told the police that the appellant was in Leeds.

[37] The appellant concluded that the police interest in him must be linked to the two mafia men. Fearing that he was no longer safe in the United Kingdom, the appellant telephoned his father and asked him to arrange flights and airfares to New Zealand. The father agreed and at the end of February 2006 the appellant arrived here.

[38] On arrival at Auckland airport the appellant was granted a three month permit and, a few days before that expired in May 2006, the appellant applied for refugee status.

[39] The appellant asserts that, if he returns to the Slovak Republic, his life will be in danger at the hands of either the two mafia men or the police. He states that because the mafia and the police are closely connected and, because they operate throughout the country, he is not safe anywhere in the Slovak Republic.

[40] The appellant also asserts that, as a Roma, he is in danger of being attacked by white Slovaks. He emphasised the difficulties he faced at school, and also in obtaining employment in the Slovak Republic, due to his Roma ethnicity.

Counsel's submissions

[41] Counsel filed a Memorandum of Submissions before the hearing. She filed a second Memorandum (with the Authority's leave) two weeks after the hearing. Both memoranda have been carefully considered and taken into account.

THE ISSUES

[42] 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."

[43] 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 APPELLANT'S CASE

[44] Before turning to the issues posed, it is necessary to make a finding of credibility. Central to the appellant's claim is his assertion that he is a target of the Slovak mafia. We have concluded that his evidence about the incidents involving the mafia was illogical and implausible and we reject it as not credible.

[45] A disturbing feature of the appellant's account is that it is marked by an extraordinary series of lucky escapes. First, he managed to escape from the two smugglers in the forest. Second, he was rescued from the assault in his apartment by concerned neighbours. Third, he managed to avoid being seen by the smugglers as they waited for him in their BMW outside his mother-in-law's apartment. Fourth, he was able to sneak away from the blonde man in the shopping mall. Fifth, he was able to escape the last incident, despite being trapped on the ground with a gun to his head because a group of young people from a nearby bar came to his rescue.

MAFIA

The attack in the forest

[46] The appellant claimed that the reason why the two smugglers chased him was to prevent him (by threats or perhaps by killing him) from reporting their smuggling activities to the police. He asserted that the smugglers were part of the Slovak mafia and that the Slovak police and mafia work closely with each other. Specifically, he claimed that the Y police and the two mafia men worked so closely together that the Y police gave the two mafia men the appellant's address. If that was true, the two mafia men would not have had any logical reason to attack the appellant in the forest, fearing he would lodge a complaint with the police. We put this to the appellant who suggested "Maybe they are not very bright."

The apartment assault

[47] The claimed purpose of the smugglers' visit to the appellant's apartment was to warn him not to go to the police again. If the mafia and the police worked closely together, the men had no logical reason to fear the appellant going to the police again. If that was their purpose, it is not logical that they would threaten and assault him in his home, thereby giving him a reason (and maybe several witnesses) to pursue a fresh complaint of assault. They had not disguised their appearance in any way, despite the risk that other residents might see them as they entered and left the appellant's apartment.

The BMW incident

[48] The appellant also claimed that the mafia men were stalking him outside his mother-in-law's apartment. The two men made no apparent attempt to hide their presence. They were parked close to the apartment block in a distinctive type of vehicle (a BMW) with darkened windows. This particular type of vehicle was, according to the appellant, a typical mafia vehicle.

[49] Despite the fact that the appellant – on foot and without the anonymity provided by darkened windows – came close enough to the vehicle's open front window to clearly identify the blonde man and observe another man inside, the two men remained completely unaware that their quarry was standing beside them.

[50] Adding to the air of increasing unreality, is the necessary implication that, despite the appellant complying with the smugglers' demand that the appellant not talk again to the police, the smugglers' would – three months later – be spending their time waiting in a vehicle outside his mother-in-law's house.

Fear for his daughter

[51] The appellant asserted that he feared that the smugglers might have been planning to harm his daughter, yet he failed to take the most simple and obvious precaution of warning his mother-in-law that the mafia were watching her apartment and that DD may be in danger. His explanations for why he did not warn her were that he was "afraid to approach the apartment", he "wasn't talking to her", and he could not write to her because he "hated that woman". It is implausible, if he truly believed DD was in danger, that he would allow his intense dislike of his mother-in-law to compromise his daughter's safety.

[52] Moreover, despite his claim to have left the country to protect his daughter, and despite the fact that he was by that time (April 2004) legally entitled to reside

and work in Germany, he returned to the Slovak Republic a few months later, for the principal purpose of visiting his daughter.

Relentless pursuit

[53] In the 18 months from the BMW incident in April 2004 until he left for the United Kingdom in November 2005, the appellant lived a roughly equal time in the Slovak Republic and in Germany, returning home two or three times. We asked the appellant why the two mafia men would keep pursuing him given that he had been overseas much of the time and, by not contacting the police, he had done exactly what they had demanded of him. He said "I don't know. Maybe somebody told on them and they think it's me." This explanation is unconvincing. We conclude that it is implausible that the two mafia men would embark on and continue this relentless and pointless pursuit of the appellant.

[54] The appellant's account of his problems with the mafia is farfetched, illogical and ultimately not credible. We do not believe any part of this aspect of his account.

POLICE

[55] The appellant claimed that he sought protection in New Zealand because he was not safe in the United Kingdom once the Slovak police knew he was living in Leeds. For the reasons that follow, we do not believe that the Slovak police are looking for the appellant.

Delay in police interest

[56] We asked the appellant why the Slovak police would suddenly start looking for him in late 2005/early 2006, when they had not shown any interest in him in the two and a half years since he complained to the police in June 2003. He said "I don't know. Maybe the mafia wanted to sort it out for themselves but wanted the police to help them." We have already rejected his claim that the mafia are targeting him. There is no plausible reason why the Slovak police would start searching for him.

Failure to obtain highly relevant evidence

[57] Despite the obvious importance to his refugee claim of the sudden police interest in him, and the fact that the alleged police interest prompted him to leave

the United Kingdom and travel to New Zealand, the appellant claims not to have found out from his cousin, in the early February 2006 telephone call, any but the barest details of the alleged visits by the police to his grandfather's house. He did not know, for example, how many police officers came, how many times they made enquiries and when, whether the cousin was at the grandfather's house on the occasion of each visit and whether any threats were made. His explanations for his apparent lack of interest were inconsistent, for example "Phone calls are expensive so I limited it to two minutes"; "I had more money but two minutes was enough"; "I didn't think to ask questions"; "I was too busy working (to spend time telephoning my cousin)".

[58] It is surprising that the appellant made no attempt from that telephone call in February 2006 until the hearing before the Authority in November 2006 to find out more information about the occasions on which the police had visited and whether the police had made further enquiries. His explanations were again unconvincing. He said his "grandfather's telephone did not work"; that he (the appellant) "was not good at writing letters", that he "feels safe in New Zealand" now that he has applied for refugee status and "Why should I be interested (in what is happening in my home country)?" We conclude that if the appellant had had such a telephone discussion with his cousin, that he would have made at least some, if not all of the basic enquiries listed above.

[59] We bear in mind that his two family members in New Zealand, his father and sister, have both been through the refugee determination process and cannot have failed to inform him of the nature of the enquiry and the evidence likely to assist his case.

Delay in applying for refugee status

[60] The appellant did not apply for refugee status until three months after his arrival in New Zealand and just before the expiry of his temporary permit. We asked him why, if he was so frightened that the Slovak police or mafia were chasing him, he did not apply for refugee status at the earliest opportunity. His explanations were that he did not get round to telling his father about the danger he was in until two or three weeks after his arrival, because they "had a lot to talk about". He did not see his sister AA (who had arrived in Auckland in 2005) because he did not go out much. He says he was not aware until quite late of the possibility of claiming refugee status, and when he learned that refugee applicants

had to have injections, this put him off because he does not like doctors or injections.

[61] The appellant's casual approach to claiming protection through refugee status was completely inconsistent with his claim that he had to flee the United Kingdom to hide on the other side of the world to escape the attention of the Slovak police. We do not believe the Slovak police are looking for him.

[62] For all the above reasons we reject his assertion that he is a target of the Slovak mafia and police.

[63] The appellant also claimed that, as a Roma, he is in danger of being attacked by white Slovaks. In this regard, he emphasised the difficulties he faced as a child at school, and also in obtaining employment in the Slovak Republic, due to his Roma ethnicity. We now assess the credibility of this aspect of his account.

WHITE SLOVAKS

[64] The panel that heard this appeal, also heard the appeal of AA. AA and her father (also the appellant's father) gave evidence in AA's appeal. They both confirmed that the appellant was their brother and son. We are satisfied that AA and her father are Roma and therefore that the appellant is also Roma. The appellant's account of the discrimination he suffered at school, the difficulty he had securing employment, and the abuse and harassment by white Slovaks and skinheads is consistent with the country information. We therefore accept that the appellant is Roma and we accept his account of the discrimination and ill treatment he suffered because of his Roma ethnicity.

[65] We now turn to the question of whether, on this ground, there is a real chance of the appellant being persecuted if he is returned to the Slovak Republic.

Country Information

[66] The Authority carefully considered the country information relating to the treatment of Roma in the Slovak Republic in its consideration of AA's appeal; see *Refugee Appeal Nos 75829 to 75833* (7 March 2007), paragraphs [102] to [142]. The following excerpts are quotes from that decision.

[67] Essentially, despite the accession of the Slovak Republic to the European Union in 2004 (a move that required the Slovak government to be seen to be

taking measures to address the discrimination faced by Roma), there remains a big difference between the government's stated policy and its practice towards Roma.

[68] Roma face serious discrimination in securing adequate 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)."

[69] Roma who leave the Slovak Republic risk losing their residence status:

"[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."

[70] There have been some recent measures to address the issue of housing for Roma:

"[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. "

[71] The welfare payments on which so many Roma depend have been cut:

“[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.” (ie. 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 65th session, 2-20 August 2004 (30 July 2004)).”

[72] Slovak Roma suffer violence at the hands of the Slovak police and skinheads:

“[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...

[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 11th 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)."

Application of the country information to the appellant's case

[73] We now assess whether the appellant has a well-founded fear of being persecuted if he is returned to the Slovak Republic.

[74] Persecution has been defined 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).

[75] Persecution must be distinguished from discrimination which is not sufficient to establish a case for refugee status. 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."

[76] The appellant suffered discrimination at school. He asserts that this discrimination was a major cause for his disillusionment with the education system. This disillusionment led to his truancy and his problems with the police and, ultimately, to his failure to achieve any academic or trade qualifications. His lack of qualifications coupled with the discrimination faced by all Roma seeking employment, meant that he was forced to accept casual labouring jobs. He did not experience discrimination in regard to housing because his relatives were willing to accommodate him and because he spent about half his time out of the country. He occasionally suffered abuse or harassment on the streets from white Slovaks and skinheads and, on three occasions (in 1994, 2000 and 2001), he was assaulted.

[77] The country information is unequivocal. Roma in the Slovak Republic are discriminated against. We accept that the appellant suffered discrimination in a number of facets of his life.

[78] The country information indicates that, going forward, the Slovak government is taking steps which aim to reduce and ultimately remove institutionalised discrimination (for example measures to integrate and improve Roma housing) but there remains a significant gap between the government's policies and the implementation of them. The real intention of some recent government policies (such as the welfare "reforms" and the activation policies) is dubious, given that they were obviously going to impact most seriously and negatively on Roma. There remains a disturbing level of anti-Roma violence from the police and skinheads.

[79] The appellant has relatives who can support him (grandfather and cousin in Z and mother in Germany). He has in the past managed (although not without difficulty) to secure fresh employment in the Slovak Republic (despite his constant excursions to Germany) and, when unable to find employment, he has accessed some social welfare assistance. He has not had any problems with the Slovak police. He has also (apart from the two assaults six and seven years ago) not suffered serious encounters with skinheads and other racist thugs.

[80] Taking all of the above into consideration, we conclude that, if the appellant returns to the Slovak Republic, he will encounter the same level of discrimination as he did when he left.

[81] When the elements of this aspect of the appellant's claim are viewed cumulatively, we find that they do not amount to the denial of human dignity in any key way. The standard of a sustained or systemic denial of core human rights is simply not met. We find that the risk is one of discrimination, not persecution.

[82] We have carefully considered the country information that some Roma who have emigrated in recent years have lost their municipal residence permits on the grounds that they have gone to live permanently abroad. The lack of a residence permit apparently deprives the returnee of access to basic public services including legal housing, as well as the ability to vote or stand in local elections. We have reflected on the appellant's history of regularly living outside the Slovak Republic, sometimes for periods of six months or more. On at least one occasion he returned from Germany after being threatened with deportation from that country. He always managed to reintegrate into Slovak society, reregistering himself for the unemployment benefit and/or finding himself employment and a place to live. He was not deprived of residence status on any of those occasions. We acknowledge that, as at the date of this decision, he will have been out of the

Slovak Republic for approximately 20 months (November 2005 to June 2007) but we do not consider that this factor is sufficient to convert the risk from one of discrimination to one of persecution.

CONCLUSION

[83] For the above reasons, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

.....
M L Robins
Chairperson