

IN THE HIGH COURT OF JUSTICE  
QUEENS BENCH DIVISION  
ADMINISTRATIVE COURT

Neutral Citation No.: [2004]EWHC2054(Admin)  
Case Number: CO/2372/2004

Date: 12/08/2004

Before:  
MR JUSTICE STANLEY BURNTON

THE QUEEN ON THE APPLICATION OF BAZDOACA  
Appellant

The Secretary of State for the Home Department  
Respondents

JUDGEMENT

Representation:

MISS J FARBEY (instructed by Luqmani Thompson) appeared on behalf of the CLAIMANT

MISS J RICHARDS (instructed by the Treasury Solicitor) appeared on behalf of the DEFENDANT

1. MR JUSTICE STANLEY BURNTON: This is an application for judicial review by Cozmin Bazdoaca of the decision of the Home Secretary to certify his asylum and human rights claims as clearly unfounded pursuant to section 94(2) of the Nationality, Immigration and Asylum Act 2002.
2. May I say, first of all, that the case has been argued excellently on both sides. It is of great assistance to the court to have such efficient and effective argument.
3. The basis of the claim for asylum is the claimant's homosexuality. For the purposes of his claim, it is accepted that his account of his experiences in Maldova are credible and to be taken at face value. The description he gives is of discovering his homosexuality during his teenage years, of living safely in his home town for some while, including a period when he had a homosexual relationship with a partner called Nicolae, who was his neighbour and lived a few blocks away from the claimant. The claimant was then about 17 and a half. They had a relationship, it is not suggested that they lived together, and I think during that period the claimant was living with his parents. He then had another sexual relationship with a partner called Mihai, whom he met when he was 19 and a half. They met in the bar of a disco. Their relationship was relatively short, about three of four months, but Mihai, who was a very jealous person, did not like the fact that the claimant was trying to conceal his homosexuality and did not like to see the claimant with other male friends. He began publicising the fact that the claimant was homosexual and that they had had a homosexual relationship. That led to their splitting up because of Mihai's possessiveness.

4. The home town of the claimant is Balti, which is a provincial town in Moldova, Chisinau being the capital. According to the claimant's account, people would spit at him in the street, call him "queer" and insult him generally. The attacks started in 2001 and went beyond insults to brutality. He said:

"The people who insulted me and attacked me the most were people who lived near my block and were about the same age as me. But it was not always the same people who insulted and attacked me. I ended up with black eyes because of the beatings, or I would get kicked in the stomach or in the head. Sometimes they hit me so hard that I fell to the ground. Most of the attacks were in the evening, when people were drunk or had been taking drugs. I told my parents that I suffered the injuries during martial arts training.

I did not go to the police to complain about these beatings and insults on the street. The police would have done nothing to help me. Some of the people who insulted me were gypsies. But I had seen incidents when gypsies had attacked Moldovans or Romanians and the police would just stare at them and do nothing. The police did not intervene in such incidents, and they would have done nothing to help me either. They would not have wanted to help me because of my homosexuality. The police in Moldova do not take seriously the problems of homosexuals. They don't care about what happens to homosexuals. The police don't get involved in the problems faced by homosexuals."

He went on to say also that his father beat him because he was a homosexual, although it is right to say that he says that when he was much younger he was beaten by his father, who would not infrequently be drunk and violent to him.

5. The law applicable to a case such as the present is not in contention, save possibly at its margins. The first test is whether the claimant could show that he reasonably fears that he would be persecuted if sent home, or that his rights under Article 3 of the European Convention on Human Rights would be infringed. It is not sufficient to establish that there is a risk of isolated acts of violence. It is certainly insufficient to show that there is general discrimination or intolerance of a person because of his race, as in the case of a Roma in some countries, or because of his or her sexual orientation, as in the case of homosexual people. There must be a real risk of an infringement of their rights not to be persecuted and not to be subject to the kind of treatment which is prohibited by Article 3. That, in a sense, is the ultimate test.

6. For present purposes, the question I have to consider is the question which was considered by the Home Secretary. That question effectively, however put, is whether there is any real possibility that if this matter went before an adjudicator, an adjudicator, correctly applying the law, could possibly, legitimately, find that there was a real risk of persecution or infringement of the Article 3 rights of the claimant were he to be returned to Moldova.

7. The seriousness of the conduct which must be apprehended for there to be a successful claim for asylum is highlighted by the decision of the Court of Appeal in *L* [2003] 1 WLR 1230. That case demonstrates that serious intolerance and discrimination are insufficient. It also demonstrates that even an actual and horrifying experience, if isolated, will not justify a grant of asylum, and indeed may not prevent the Secretary of State from certifying a claim as clearly unfounded.

8. The court in a case such as the present is, in my judgment, a reviewing court, but the degree of review is that appropriate in a case where the result of the decision is liable to be an irrevocable step potentially involving a breach of fundamental human rights, and indeed human rights of the most important kind; that is to say, leaving aside Article 2, those rights under Article 3.

9. There is a helpful general exposition of the law in the judgment of Auld LJ in *Bagdanavicius* [2004] 1 WLR 1207 under paragraph 55 of his judgment. I do not propose to read it out, but I have been referred to it and I found it most helpful.

10. The real question for me is: what does the evidence before the court show? In this connection, not surprisingly, the evidence focuses to a significant extent on the conditions in Chisinau, the capital of Moldova (I shall explain why in a moment), but the Secretary of State relied on the ability of the claimant to relocate from his town of birth to Chisinau in his decision. Indeed, if returned to Moldova, the claimant would, in all likelihood, start off in Chisinau, where the only international airport is located, and would have to leave Chisinau to locate himself elsewhere.

11. The material before me indicates that discrimination and intolerance towards homosexuals remains in Moldova at a significantly higher level than one would expect to find in this country.

12. In a meeting report presented to the European Parliament on 31st March 2004, Mr Jan Marinus Wiersma stated that he had been working in the Ukraine and Moldova for some five years, being the co chair of the Parliamentary Cooperation Committees. He referred to the fact that countries such as the Ukraine and Moldova could not be compared with countries which had never been part of the Soviet Union. He referred to the lack of transparency, the fact that the countries are not really democratic and that there is enormous corruption, and went on:

" ... there is some respect for human rights, but not in the way we would like to see it. Gay and lesbian rights are not protected, because in general there is no protection of individual rights, the state is dominated by certain groups and there is no interest in promoting an open society, and you need an open society in order to put the issue of human rights and discrimination on the agenda. The old communist atmosphere is stronger there ... there is not such sympathy for human rights, for basic rights of gays and lesbians, there is still this element of the past that blocks and blocks also the possibility of those who want to raise discrimination issues, so this element of intolerance is still there; an element of intolerance and different interpretations of equalities ...

He continued that religion and the church are a big problem in these societies because of the Catholicism tradition, which opposes reform in terms of rights for gays and lesbians.

13. The documentation, however, clearly shows that there have been significant changes in conditions in Moldova since the fall of communism. They are set out in paragraph 22 of Miss Richards' skeleton argument, and it is unnecessary for me to set them out separately here.

14. There is evidence beyond the evidence of the claimant himself, which is of course relevant, of acts of violence to homosexuals. A number of them are referred to in a document prepared by GenderDoc M, an organisation in Moldova which campaigns for the rights of homosexuals and for legal and societal changes in relation to homosexuals. The cases referred to include those of a lady called Olesea, a man called Peter, a man called Slava, a woman called Natasha, a man called Serghei and a man called Eugene. It is perhaps however indicative that the case of Slava, who lived in Chisinau, was one in which he involved the police. The facts, as related in this document, are that in December of the previous year (presumably that would be December 2002, but may have been 2003):

"... he was stopped by two policeman close to the place in the park, known as a meeting spot for homosexuals. They officially presented their IDs, threatened him, searched and took away all the money he had on him and a mobile phone. They asked Slava if he was gay, and Slava replied positively. Then they threatened that homosexuality was illegal in Moldova, and later proposed Slava 'to serve' them sexually. The guy managed to avoid any physical harm, and is so far the

only gay person who had the courage to report violation of his rights to the prosecutor's office. The policeman were found, the case investigated and is soon to be heard before the court".

15. The intolerance and discrimination which still exists in Moldovan society is perhaps highlighted by an anti homosexual speech by a parliamentarian in the Moldovan Parliament. It is a speech of a kind which one would like to think could never be made by a parliamentarian in this country, at least in modern times. On the other hand, the changes in Moldovan law, to which I have indirectly referred in referring to the relevant passages from the Secretary of State's skeleton, indicate that the parliament, as a whole, is aware of the need to change its laws and the attitudes of society towards homosexuals.

16. It appears from the documents before me that one incentive for them to do so lies in their wish to join the European Union, and if not to join the European Union to benefit from connections with the European Union. The European Parliament has taken the position of human rights and homosexuals in Moldova into consideration and it appears clear that pressure will be put on Moldova to improve the position of homosexuals in Moldova, if that is possible, and, indeed, that the Government of Moldova, taken as a whole, wishes to do so. In that connection it is sufficient for me to refer to a news item put out by GenderDoc M headed "The EU will condition economic privileges for Moldova by respect of LGBT rights". There is also a document headed "The Wider Europe Debate Summary for Intergroup Meeting on 31 March 2004", which says this:

"The time has come to look at LGBT rights in neighbouring countries just outside the new EU borders. We need to discuss an approach to tackle this question. What can we expect? Which demands are realistic? What yardstick to apply? In order to make things as concrete as possible, the Intergroup proposes to take Moldova as case study for discussion. The European Commission has decided to include Moldova in the priority countries for 2004 and therefore will be negotiating Action Plans for this country before June 2004."

Indeed, there is in evidence an action plan for action by the Moldovan Parliament and Government to begin in 2004. The expectation is, therefore, that things will improve, but this case is going to be decided not on the basis of any expectation, but on the circumstances at the moment.

17. Given the decision of the Secretary of State, and given the evidence as to the situation in Chisinau, I intend to consider the evidence as to the position of gays in that city.

18. In my judgment, there is nothing to indicate that there is there anything other than isolated acts of violence against homosexuals. To the contrary, in a sense, there is what is I think referred to as an established gay scene there. It is significant that the Gay Times rates Moldova as entitled to a three pink star rating and says this:

"Moldova is a tiny former Soviet Republic squeezed between Romania and Ukraine. Moldova has very recently started to develop a small gay scene with the opening of 5 clubs and a gay restaurant. Moldova's first Gay Pride was held in April 2002 and next year's Pride will be in May 2003.

The main gay and lesbian campaigning group is called GenderDoc M who appear to be working very hard on many fronts fighting for gay and lesbian rights. They also host an excellent website with lots of information on Moldova.

In September 2002 new progressive laws were introduced equalising the age of consent as from 1st January 2003 amongst other things and all in all the position of gays and lesbians in Moldova looks to be improving enormously. However, Moldovan society still remains very homophobic. For example virulent homophobic statements are casually made by politicians and lesbians and gays

are routinely discriminated against. Violence towards the lesbian and gay community is not unknown."

I read the last sentence which I have cited as indicating that there are acts, but isolated acts, of violence against lesbians and gays. All in all, it seems to me that the passage I have just cited is reasonably accurate of conditions, at least in Chisinau, having regard to the fact that this document pre dated May 2003.

19. In May 2004 the third LGBT Pride of Moldova took place in Chisinau. The event was named "Rainbow over the Nistru". The event was the subject of an article in a local newspaper called "Arguments & Facts Moldova", a newspaper which is, it would appear, not confined to the homosexual community, but the article was reproduced on the website of GenderDoc M, something which indicates to me that GenderDoc M was sympathetic to and generally agreed with the contents of the article. It refers to the fact that the local media gave vast coverage of the event. That is hardly suggestive of the level of persecution or risk of persecution or risk of Article 3 infringements for homosexuals in Chisinau reaching anything like the level which could justify a claim for asylum, unless of course the coverage which was given was intended to provoke violence against the gay community; that, however, is not suggested, it is certainly not suggested by this article. The article is, in general, in positive terms. It is quite clear that the Pride was an open and well publicised event; something which, one is bound to say, is unlikely to have been the case had those participating in it risked violence. What is significant is that there was a demonstration by members of a church called the Holy Trinity Church against the Pride. Under the subheading "Chaos near 'HAOS'", the article relates the following:

"Despite a good advertising campaign, Pride was a quiet event, and the residents of our city were not disturbed. Those who knew had an opportunity to watch thematic films at Cinema Club, or to visit the 'pink' party in one of the bars of our city. But the majority did not know anything about the Pride. Yet, a group of moralists decided to spoil the joyful atmosphere of the Pride events.

On the last day of the Pride at about 8 pm, a group of youths gathered near the club 'HAOS' [that being the name of the club]. They were shouting anti gay slogans. They turned out to be representatives of a little known Evangelical Holy Trinity Church. The young people acted so aggressively that the guards of the club had to call the police. However, even the appearance of the police did not stop the protesting crowd, which only increased (in accordance with some sources there were about 100 people gathered). Their slogans, shouted in the Moldovan language, were far from being unique: Down with lesbians! Down with homosexuals! Don't spoil the country! Moldova is with Jesus! In a while, though, everything became confused in their heads: the crowd started to blame homosexuals for the fact that our citizens are forced to search for jobs abroad, and that teachers have small salaries...

It might have been considered funny but we also noticed intimidating boys with huge fists among the crowd. As one of the policemen informed our reporter, those were students of one famous institute. And, by the way, the policemen themselves assumed that the action most probably had been ordered and paid for. But, nonetheless, the fighters for faith and morality avoided open clashes. We also have to thank our police that the protesting crowd did not show open violence. The club was literally surrounded by police forces, including mobile armed units of the patrol service Scut. In a couple of hours, having alarmed the people from the neighbouring buildings, the protesters slowly disappeared."

There is a postscript to the article:

"In their conversation with the 'Arguments & facts Moldova' reporter, the officials of GenderDoc M expressed their sincere gratitude to the policemen who prevented violence and who fulfilled their professional duties with dignity."

20. There is other material which indicates that the demonstration against the Pride was the first, although the Pride itself was the third which had occurred. The newspaper account wholly supports the position of the Home Secretary as to the sufficiency of protection in Chisinau in the event of violence against gays. It is inconsistent with a suggestion that there was a general unwillingness to protect homosexuals in Chisinau.

21. There is another item from GenderDoc M which gives some additional support to that conclusion. It is an item published on 9th January 2004 relating to a meeting with police officers on the rights of sexual minorities. Presentations were given by a lawyer from GenderDoc M. Quoting from the GenderDoc M website, the following is stated:

"The aim of the presentations was to give basic information for police workers about the rights of sexual minorities and the most recent positive changes in Moldovan legislation. The problems, which usually occur between the police and gays in Moldova, were also touched upon. Although the presentation, which lasted one hour and a half, could not totally change the attitude of the police towards the LGBT community, nevertheless policemen expressed a desire to treat the LGBT community in a tolerant and positive way. Moreover, some of them would not mind if one of their colleagues were gay or lesbian. In general this topic induced a lot of discussions and that is why the presentation lasted one hour and a half instead of the planned 20 minutes."

22. There is a recent affidavit, sworn on 9th August 2004, of Louise Bowyer, trainee solicitor with the claimant's solicitors, who has been in contact with a gentleman at GenderDoc M. He was asked: "Has there been any marked diminution in homophobic discrimination in Cahul and/or Balti since GenderDoc M's presentations to the police?". His answer is recorded as follows:

"Mr Anmeghichean stated that homosexuality in Cahul is invisible. He stated there were no openly gay homosexuals and for those who live outside Chisinau in provincial towns, the situation is very tense and almost intolerable, so most of them live in Chisinau or they leave Moldova."

The implication being that circumstances for openly gay homosexuals is different in Chisinau from the provinces. He commented on the intervention of the police at the third Gay Pride event. He was asked: "Do you think that the assistance that the police gave to the third Pride event in May 2004 is indicative of a general tolerance towards LGBT and a general willingness to assist them in countering homophobic hatred?":

"Mr Anmeghichean was hopeful that the situation was improving but believed that you cannot generalise in Moldova on the basis of one or two events. He stated that the police can be civilised in situations but he would not say that at the moment this is a trend. He said that whilst the police were protecting people during the Pride event, two representatives of the state security forces were filming inside a gay club. They requested that the security members stop and believed that the only reason they would be filming was for blackmail purposes or other negative uses."

That apprehension is not indicative of a threat of persecution or breach of Article 3 rights. It is of course an apprehension; a fear rather than a risk which has been evidenced. He was asked this: "We are aware that there are 5 gay clubs and a gay restaurant in Moldova. How do these manage to run safely?":

"Mr Anmeghichean believed there had been a misunderstanding over the existence of gay clubs in Moldova. He stated that they have gay friendly clubs but there are no actual gay clubs in Moldova. For example, they have a club that hosts gay discos once a week and a cafe/bar which is gay friendly and is mainly used by lesbians. He did not know of any problems faced by these clubs and the cafe/bars."

It was Mr Anmeghichean's e mail of 30th July 2004 which stated that the demonstration at the third Pride was the first protest against homosexuals.

23. When I view the evidence as a whole, as I said during the course of argument, it seems to me that there really is no evidence of concerted or systematic attacks or persecution of homosexuals persons, even openly homosexual persons, at least in Chisinau. There is evidence of police assistance where necessary. There is evidence of openly gay events and nights at clubs or restaurants, all of which is inconsistent with a well founded apprehension of persecution or breach of Article 3 rights.

24. When I put all that evidence together, I ask myself whether there is any arguable case to put before an adjudicator. I come clearly to the conclusion that there is not. That being so, there can be no question of any irrationality or grounds for interfering with the certificate of the Secretary of State. In those circumstances, notwithstanding the fact that the burden on the Secretary of State when he certifies a case as clearly unfounded is a high burden, and Parliament has imposed a strict test for the use of the certificate, this is a case in which I am clear that it was justified. In those circumstances the claim is dismissed.

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