Szekely v. Canada (Minister of Citizenship and Immigration)

Between
Attila Szekely, applicant, and
The Minister [of Citizenship and Immigration], respondent

[1999] F.C.J. No. 1983
Court File No. IMM-6032-98

Federal Court of Canada - Trial Division
Montréal, Québec
Teitelbaum J.

Heard: December 1, 1999.
Judgment: December 15, 1999.
(42 paras.)

Aliens and immigration — Admission, refugees — Disqualifications, acts contrary to the purposes and principles of the United Nations.

Application by Szekely for judicial review of the Immigration and Refugee Board's decision that he was not a Convention refugee. Szekely was a Romanian citizen of Hungarian origin. His father was an outspoken critic of the Ceausescu government. As a result of his father's activities, Szekely was enlisted by the Securitate, the Romanian secret police, as an informant on the activities of Hungarians. He knew that victims of the Securitate were subjected to violence. His work for the Securitate ceased with the fall of the Ceausescu government. He came to Canada and claimed refugee status. The Immigration and Refugee Board denied his claim because he had been involved in activities that were contrary to the principles of the United Nations. Szekely argued that the Board erred in failing to consider that he had been forced to work for the Securitate.

HELD: Application dismissed. Szekely was part of an organization that committed serious, sustained, and systemic violations of fundamental human rights. Therefore, he had committed acts which were contrary to the principles of the United Nations. The circumstances surrounding his employment with the Securitate did not exonerate him from the consequences of his acts.

Statutes, Regulations and Rules Cited:

Immigration Act, R.S.C. 1985, c. I-2, ss. 2, 82.1(1).

United Nations Convention Relating to the Status of Refugees, art. 1F(c).

Counsel:

Dan M. Bohbot, for the applicant.
Michel Pépin, for the respondent.

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1 **TEITELBAUM J.** (Reasons for Order):— This is an application pursuant to section 82.1(1) of the Immigration Act, R.S.C. 1985, c. I-2 (Act) for judicial review of a decision of the Immigration and Refugee Board (Refugee Division) dated October 15, 1998, wherein the applicant was found not to be a Convention refugee in accordance with Article 1F(c) of the United Nations Convention Relating to the Status of Refugees (Convention), as it is incorporated in section 2 of the Act.

2 The applicant seeks an order remitting the matter back for reconsideration before a newly constituted panel of the Refugee Division.

FACTS

3 The applicant, born on October 25, 1969, is a Romanian citizen of Hungarian origin.

4 The applicant's father regularly consumed large amounts of alcohol and while he was intoxicated criticized the Ceausescu government. Consequently, he was often arrested and put in prison for various lengths of time, sometimes up to twelve months.

5 For this reason, the secret police decided to take the applicant under its supervision and, at the age of eighteen, he became an informant for the Romanian secret police (la Securitate).

6 The applicant's work for the Securitate consisted of keeping watch over his Hungarian neighbours and reporting on their activities.

7 During his military service from September 1989 to December 1990, the applicant had to continue to report information regarding his Hungarian and Saxon comrades.

8 The applicant states that he was aware of the violence which victims of the Securitate were subjected to because he often went to the Securitate office to make reports and he could hear the horrific screams of victims in an adjoining room.

9 The applicant further states he was aware that victims were often beaten until they lost consciousness.

10 In December 1989, the applicant's work for the Securitate was interrupted with the fall of the Ceausescu government.

11 The applicant states that he was then asked by another informant to resume his work for the Democratic Association of Hungarians in Romania. In exchange for his

services, the applicant was offered the position of sergeant in the military police which would have afforded him a higher salary.

12 The applicant states that he refused this offer and subsequently he lost his job and the Securitate began to blackmail him as a result of his work from 1987 to December 1989 which would be open to the public.

13 On August 30, 1991, the day after his last conversation with the Securitate, the applicant left his country and remained in Hungary where he obtained temporary residence from February 1992 until March 3, 1993, and then permanent residence on March 20, 1993.

14 The applicant was told that he could not obtain Hungarian citizenship due to his lack of knowledge of Hungarian and his lack of understanding of the economic and political situation in Hungary at the time.

15 It is the applicant's view that his failure to obtain Hungarian citizenship was due to the desire by Hungary to keep in Romania the Romanians who were of Hungarian origin in order to defend Transylvania.

16 The applicant states that he feared for his life and therefore left Hungary and arrived in Canada on December 26, 1997 and immediately claimed refugee status.

THE DECISION OF THE BOARD

17 The Board's decision may be summarized in the paragraph that follows:

> Après avoir analysé toute la preuve tant testimoniale que documentaire, le tribunal retient que le revendicateur n'ayant plus voulu collaborer avec la Securitate comme agent d'informateur après le renversement du régime Ceausescu a été congédié de son emploi. Selon notre connaisance de la preuve documentaire que nous avons partagée avec la procureure du revendicateur, nous savons que le revendicateur court le risque d'être découvert et malmené par la population devant une ouverture au public des dossiers des anciens agents informateurs du régime de Ceausescu. Selon la preuve documentaire, près de 60% des cadres du SRI sont des anciens cadres de la Securitate, il n'est impensable que le revendicateur puisse de nouveau faire l'objet d'autre chantage de la part du SRI.
> Ce qui précède ne nous autorise pas pour autant à accorder le statut de réfugié au revendicateur vu qu'il a été un agent informateur sous le gouvernement de Ceausescu. Ce faisant, il a été complice de la Securitate. Il ne mérite pas la protection internationale.

ISSUE

18 This application raises the question of whether the Board erred by concluding that the applicant's work with the Securitate was sufficient to exclude him from Convention refugee status pursuant to Article 1 F(c) as it is incorporated in section 2 of the Act?

POSITIONS OF THE PARTIES

Applicant's Position

19 The applicant argues that the Board made several factual errors which led to its finding that the applicant was excluded from claiming refugee status due to his work with the Securitate. Firstly, the applicant states that the Board erred in finding that the fact that the applicant was forced into being an informant for the Securitate was not pertinent to the assessment of whether he was excluded by virtue of Article 1 F(c) or not.

20 Further, it is submitted that the Board gave no consideration to the fact that the applicant was merely eighteen years of age, with an alcoholic father, when he was forced to work for the Securitate. The applicant submits that in order to survive in the communist system in Romania at that time, he had no choice but to work for the Securitate.

21 Thirdly, the applicant argues that the fundamental error of law, on which the decision of the Board is founded, is the conclusion found at page six of its reasons which state that the applicant is excluded from Convention refugee status in accordance with Article 1 F(c) of the Convention as it is incorporated in section 2 of the Act.

22 The applicant submits that the Board misapplied this provision on the basis that it was meant only to apply to persons who had participated in the exercise of power in a member state and who participated in the violation of Convention principles in that state. It is argued that the precedents indicate that Article 1 F(c), by reason of its general nature, must be applied in a circumspect manner. I am satisfied there is no merit to this submission.

Respondent's Submissions

23 The respondent submits that the evidence illustrates that the applicant was well aware of the objectives and horrific treatment of persons for which the Securitate was responsible.

24 Secondly, the respondent argues that the applicant could have fled before the fall of the Ceaucescu government such as many of his friends did whom he had denounced. Having continued his duties with the Securitate until the government was overthrown, the applicant cannot now seek international protection as a Convention refugee.

ANALYSIS

25 Article 1 F(c) of the Schedule to the Convention reads as follows:

> F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.
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> * * *
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> F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser:
>
> (c) qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

Purpose of Article 1 F(c) of the Convention

26 This provision was recently interpreted and applied by the Supreme Court of Canada in Pushpanathan v. Canada (Minister of Citizenship and Immigration), [1998] 1 S.C.R. 982. In that case, the Refugee Division ruled that the applicant was not a refugee by virtue of the exclusion clause in Article 1 F(c) based on the finding that he had been involved in trafficking narcotics.

27 The Supreme Court of Canada reviewed the findings of McKeown J., [1993] F.C.J. No. 870, which had led him to conclude that the Board had reasonably found that there were serious reasons for considering that the appellant was excluded by Article 1 F(c) of the Convention.

28 At the outset, Bastarache J., writing for the majority, articulated that the standard of review to be applied against decisions of the Immigration and Refugee Board is the correctness standard. He then went on to discuss the purpose and intent of Article 1 of the Convention at paragraph 58 of his reasons as follows:

> The purpose of Article 1 is to define who is a refugee. Article 1F then establishes categories of persons who are specifically excluded from that definition. The purpose of Article 33 of the Convention, by contrast, is not to define who is and who is not a refugee, but rather to allow for the refoulement of a bona fide refugee to his or her native country where he or she poses a danger to the security of the country of refuge, or to the safety of the community. This functional distinction is reflected in the Act which adopts Article 1 F as part of s. 2, the definitional section, and provides for the Minister's power to deport an admitted refugee under s. 53, which generally incorporates Article 33. Thus, the general purpose of Article 1 F is not the protection of the society of refuge from dangerous refugees, whether because of acts committed before or after the presentation of a

> refugee claim; that purpose is served by Article 33 of the Convention. Rather, it is to exclude ab initio those who are not bona fide refugees at the time of their claim for refugee status. Although all of the acts described in Article 1 F could presumably fall within the grounds for refoulement described in Article 33, the two are distinct. This reasoning must also be applied when considering the acts under Article 1 F(c) must be acts performed outside the country of refuge, as argued by the appellant. In my opinion, the refoulement provisions cannot be invoked to read into Article 1 F(c) any such limitation.

29 Bastarache J. elaborated at paragraph 63:

> What is crucial, in my opinion, is the manner in which the logic of the exclusion in Article 1 F generally, and Article 1 F(c) in particular, is related to the purpose of the Convention as a whole. The rationale is that those who are responsible for the persecution which creates refugees should not enjoy the benefits of a Convention designed to protect those refugees. As LaForest J. observes in Ward[1], supra, at page 733., "actions which deny human dignity in any key way" and "the sustained or systemic denial of core human rights...se[t] the boundaries for many of the elements of the definition of 'Convention refugee'". This purpose has been explicitly recognized by the Federal Court of Appeal in the context of the grounds specifically enumerated in Article 1 F(a) in Sivakumar v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 433 where Linden J.A. stated (at p. 445): "When the tables are turned on persecutors, who suddenly become the persecuted, they cannot claim refugee status. International criminals, on all sides of the conflicts, are rightly unable to claim refugee status."

30 The majority concluded that the appellant's conspiring to traffic heroin was not a violation of Article 1 F(c) on the grounds that there was no clear indication that the international community recognizes drug trafficking as a sufficiently serious and sustained violation of human rights as to amount to persecution.

31 Particularly relevant to the facts of this case are the comments of Bastarache J. on the second category of acts which fall under Article 1 F(c). He states at paragraph 70 of his reasons:

> The second category of acts which fall within the scope of Article 1 F(c) are those which a court is able, for itself, to characterize as serious, sustained and systemic violations of fundamental human rights constituting persecution. This analysis involves a factual and legal component. The court must assess the status of the rule which has been violated. Where the rule which has been violated is very near the core of the most valued principles of human rights and is recognized as immediately subject to

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[1] Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689.

international condemnation and punishment, then even an isolated violation could lead to an exclusion under Article 1 F(c).

32 Applying this reasoning to the evidence before the Board, the applicant was part of an organization that committed acts which were clearly serious, sustained and systemic violations of fundamental human rights constituting persecution. The acts committed by the Securitate, and thus the applicant, go to the very core of the most valued principles of human rights. This is undisputed.

Burden of Proof

33 The leading case on the application of the terms "serious reasons for considering" is Ramirez v. M.E.I., [1992] 2 F.C. 306 (C.A.) where the Court held that this wording can be substituted by the phrase "reasonable grounds to believe" which creates a burden that is less than on the balance of probabilities.

34 Thus, the burden of proof which must be established by the Minister to exclude an individual from the protection conferred by the Convention is less onerous that the civil standard as reaffirmed by the Court of Appeal in Moreno v. M.E.I., [1994] 1 F.C. 298 (C.A.) and in Sivakumar v. M.E.I., [1994] 1 F.C. 433 (C.A.).

35 This principle was expanded upon in Ramirez, supra where the Court established that a finding that there are reasonable grounds to believe that an applicant is guilty of acts contrary to the principles of the United Nations rests on the determination that there was a shared purpose and knowledge held by all of the parties involved.

36 It was articulated in Bazargan v. M.E.I. (1996), 205 N.R. 282 at page 287 that this is a pure question of fact. Therefore, the applicant must show that the factual findings of the Board are unreasonable based on the evidence.

37 In this regard, the applicant states that the Board failed to consider the circumstances which led to the applicant becoming an informant with the Securitate. Specifically, the applicant argues that he was of a young age and was forced to comply with their decision that he become an informant due to the situation with his father and his fear of the communists.

38 While I sympathize with the applicant's circumstances at the time he began working for the Securitate, I am in agreement with the respondent that he could have fled before the fall of the Ceaucescu government given his knowledge of the torture to which the Securitate was subjecting its victims.

39 I am unable to find that the circumstances surrounding the applicant's employment with the Securitate are sufficient to exonerate him from the consequences of the acts committed. These acts went to the very core of the principles which the United Nations seeks to uphold, and therefore he is unable to benefit from the protection offered to persons who qualify as Convention refugees.

40 The applicant was a persecutor and now seeks to be protected from persecution, the very situation which Article 1 F(c) contemplates. I am satisfied that the Board was correct in finding that there are serious reasons for considering that the applicant committed acts which are contrary to the principles of the United Nations.

41 Therefore, no judicial interference with the Board's decision is justified. The application is hereby dismissed.

42 Neither party submitted a question for certification.

TEITELBAUM J.