

Lakatos v. Canada (Minister of Citizenship and Immigration), 2001 FCT 408 (CanLII)

Date: 2001-04-27

Docket: IMM-24-00

Citation: Lakatos v. Canada (Minister of Citizenship and Immigration), 2001 FCT 408 (CanLII),
<<http://canlii.ca/t/p5g>>, retrieved on 2017-02-17

Date: 20010427

Docket: IMM-24-00

Neutral citation: 2001 FCT 408

Ottawa, Ontario, Friday the 27th day of April 2001

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

PAL LAKATOS, MARIA PETRIK

and PAL LAKATOS JR.

Applicants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

DAWSON J.

[1] Pal Lakatos, his wife Maria Petrik, and their son Pal Lakatos Jr. are citizens of Hungary who sought status as Convention refugees on the basis of their Roma ethnicity. They claim a well-founded fear of persecution at the hands of the police and skinheads in Hungary. They bring this application for judicial review from the decision of the Convention Refugee Determination Division of the Immigration and Refugee Board ("CRDD") made on November 29, 1999 by which they were found not to be Convention refugees.

THE FACTS

[2] Mr. Lakatos was the only applicant to testify at the hearing before the CRDD. He advised that there were two particular incidents which caused his family to leave Hungary.

[3] The first occurred in September of 1995 when Mr. Lakatos, a musician by profession, was beaten by skinheads after leaving work in the early morning hours. He suffered bruising and a mild concussion as a result of the beating. Mr. Lakatos stated that the police told him that without witnesses they could do nothing against unknown assailants.

[4] The second incident took place in April of 1998. During this incident, two men attempted to rape Claudia Lakatos, the 13 year old daughter of the adult applicants. Mr. Lakatos was able to intervene to protect his daughter. The assailants kept yelling at Mr. Lakatos, "[y]ou dirty gypsy we'll kill you! We will come back to kill you and rape your daughter!". The police apparently failed to investigate this incident, again citing the absence of independent witnesses.

[5] The CRDD found the applicants to be of Roma ethnicity, and found the applicants generally to be credible and trustworthy. The CRDD accepted that the applicants faced discrimination in Hungary, but concluded that the discrimination did not amount to persecution.

[6] With respect to the applicants' fear of skinhead attacks, the CRDD noted that skinhead attacks had decreased. It was stated that "[r]ecent and reliable documentary evidence does not support the proposition that the Roma population is persistently and systemically targeted for serious harm by skinheads". Therefore, the panel concluded that there was only a mere possibility that the applicants would face such attacks.

[7] The CRDD went on to find that even if the applicants' fear of skinheads was justified, adequate state protection was available to them. The CRDD made reference to measures taken to improve police response, "serious attempts" on the part of the Hungarian government to curb the problem of racial violence and discrimination against minorities, the increasing court enforcement of Roma rights, and other avenues of redress available to them.

[8] The panel did draw a distinction between the situation of Claudia Lakatos and the applicants. It found that the impact of the attack upon her had been profound, and that any return to Hungary in her present state would be sufficiently prejudicial for her as to amount to persecution. Accordingly, the CRDD determined that Claudia Lakatos was a Convention refugee. The applicants, however, were determined not to be Convention refugees.

THE ISSUES

[9] In oral argument, counsel for the applicants advised that the issues to be pursued on the application for judicial review were that the CRDD:

1. erred in not considering the applicants as members of a social group;
2. erred in failing to conduct the analysis required by subsection 2(3) of the *Immigration Act*, R.S.C. 1995, c. I-2 ("Act");
3. erred in failing to conclude that the applicants had a well-founded fear of persecution and not discrimination; and
4. erred in concluding that there was adequate state protection.

[10] Counsel for the applicants advised that he was not pursuing the argument advanced in the written submissions to the effect that the CRDD breached the principles of natural justice by unlawfully delegating its decision-making powers by relying upon a standardized "boilerplate" decision for Hungarian Roma claimants.

ANALYSIS

(i) Did the CRDD err in failing to consider the applicants as members of a social group?

[11] Having concluded that the adult applicants' daughter had a well-founded fear of persecution due to an attack during which the attackers repeatedly yelled "dirty gypsy", it is submitted that the CRDD erred in failing to find the applicants to be Convention refugees by virtue of their membership in the social group comprised of their family unit. It is also submitted that acts against family members may be taken into account in the determination of a claim. Reliance was placed, respectively, upon the decisions of this Court in *Saez v. Canada (Minister of Employment and Immigration)* (1993), 65 F.T.R. 317 (T.D.) and *Ioda v. Canada (Minister of Employment and Immigration)* (1993), 21 Imm. L.R. (2d) 294 (F.C.T.D.).

[12] However, persecution against one family member does not automatically entitle all other members of the family to status as Convention refugees: *Pour-Shariati v. Canada (Minister of Employment and Immigration)* (1997), 39 Imm. L.R. (2d) 103 (F.C.A.). Further, the family is a social group, for the purpose of the definition of Convention refugee, only where there is evidence that the persecution is taking place against family members as a social group: *Casetellanos v. Canada (Solicitor General)*, 1994 CanLII 3546 (FC), [1995] 2 F.C. 190 (F.C.T.D.).

[13] In the absence of evidence that the applicants were persecuted simply because they are members of a certain family, I cannot conclude that the CRDD erred in failing to consider the applicants as members of a social group.

(ii) Did the CRDD err in failing to conduct the analysis required by subsection 2(3) of the Act?

[14] The applicants asserted that the CRDD in substance found that there had been a change in country conditions after their departure from Hungary in May of 1998. In consequence, the CRDD was said to have erred in failing to apply subsection 2(3) of the Act so that immediate family members would not be required to return to Hungary where the adult applicants' daughter was a victim of an attempted rape.

[15] In submitting that the CRDD relied upon a change in country conditions, the applicants specifically referred to the election and swearing in of the new centre-right coalition government which took place after the applicants left Hungary.

[16] On a careful review of the evidence referred to by the CRDD, I am satisfied that the events relied upon by the CRDD occurred either at the time the applicants left Hungary or at the time before their departure. There was no express reliance upon the election of the new coalition government.

[17] In the result, there was no need for the CRDD to consider the analysis required by subsection 2(3) of the Act.

(iii) Did the CRDD err in concluding that the applicants suffered discrimination not amounting to a well-founded fear of persecution?

[18] The applicants pointed to the fact that they were found to be generally credible and trustworthy by the CRDD. They said that their evidence, together with a copious amount of documentary evidence, brought them squarely within the definition of persecution.

[19] In *Sagharichi v. Canada (Minister of Employment and Immigration)* (1993), 182 N.R. 398 (F.C.A.), the Court wrote at paragraph 3 as follows:

3 It is true that the dividing line between persecution and discrimination or harassment is difficult to establish, the more so since, in the refugee law context, it has been found that discrimination may very well be seen as amounting to persecution. It is true also that the identification of persecution behind incidents of discrimination or harassment is not purely a question of fact but a mixed question of law and fact, legal concepts being involved. It remains, however, that, in all cases, it is for the Board to draw the conclusion in a particular factual context by proceeding with a careful analysis of the evidence adduced and a proper balancing of the various elements contained therein, and the intervention of this Court is not warranted unless the conclusion reached appears to be capricious or unreasonable.

[20] The CRDD in its reasons correctly set out both the definition of a Convention refugee and the test as to when discrimination may amount to persecution. All of the conclusions which the CRDD reached are supported by at least some evidence.

[21] In that circumstance, I am unable to conclude that the panel's conclusion was capricious or unreasonable.

(iv) Did the CRDD err in concluding that there was adequate state protection?

[22] The adequacy of state protection is also a question of mixed law and fact within the jurisdiction and expertise of the CRDD. There is a general presumption that a state is able to provide its protection to its citizens, and where the state apparatus has not broken down an applicant faces a heavy evidentiary burden to displace that presumption.

[23] In the present case, the CRDD concluded that the applicants had not given clear and convincing proof of inadequate state protection. There was some evidence that the measures taken by the Hungarian government to protect minorities had some effect. While opinions varied as to whether racial violence decreased, there was some evidence to support the CRDD's conclusions. For example, IRB Information Request HUN 30081.EX referred to by the panel noted:

Dr. Barany believes that altogether there are no more than, and possibly fewer than, 1,000 skinheads and neo-nazis active in Hungary. The largest concentrations of skinheads can be found in Budapest and Eger, although they are a very mobile group and Hungary is a small country - they can appear anywhere. Skinhead attacks on Roma are not common and, in fact, violent attacks have decreased substantially since the early 1990s (Barany; Kovats). Skinhead violence is not a significant problem in Hungary today, according to Barany.

[...]

While there have been exceptions, since 1991 there has been a general trend of increased vigilance on the part of law enforcement officers in policing skinhead and neo-nazi groups. The police have received strong messages from the Ministry of Interior that police who do not fulfil their duties will be punished, fired, etc.

Martin Kovats agrees that the situation between Roma and the far right has improved somewhat in the last four years:

Immediately after the change of system (and even before) the skinhead movement grew rapidly. The main targets of the skinheads were black people (most of whom left the country) and Roma. The movement peaked in 1992-3 before pressure both at home and abroad forced the Democratic Forum led government to distance itself from its more racist supporters. The socialist-liberal coalition of 1994-98 effectively clamped down on racial violence and gave no encouragement to skinhead groups and the number of racial attacks declined.

[24] Given the weight of the evidence, I may well have reached the opposite conclusion to the CRDD on the issue of state protection. However, Parliament invested the CRDD with full jurisdiction to weigh the evidence and decide issues as to the adequacy of state protection. Given that there was some evidence to support the conclusion of the CRDD, I cannot conclude that its decision was either patently unreasonable or clearly wrong.

[25] For these reasons, I have concluded that the application for judicial review must be dismissed.

[26] Counsel for the applicants posed the following two questions for certification:

1. Does the CRDD lose or exceed jurisdiction in a case where it finds a minor, thirteen year old Claimant, to be a Convention Refugee but determines that her parents, designated representatives under s.69(4) of the *Immigration Act*, do not have a well-founded fear of returning to the same country, based on their membership in a particular social group, namely the family?
2. Can physical attacks, threats, and/or injury to the physical and psychological integrity and well-being of a person, or serious threats thereof, based and triggered by the identifiable racial features of the victim, ever amount to "discrimination" or is it invariably "persecution" under the refugee definition?

[27] Counsel for the Minister opposed certification of those, or any, questions stating that the questions posed were fact specific and raised no significant question of general importance.

[28] I accept that the first question is fact-specific, and that the question was settled by the Court of Appeal in *Pour-Shariati*. I find the second question not dispositive in view of the CRDD's conclusion on state protection.

[29] Therefore no question will be certified.


ORDER

[30] **IT IS HEREBY ORDERED THAT:**

The application for judicial review is dismissed.

"Eleanor R. Dawson"

Judge

By  for the law societies members of the



Federation of Law Societies of Canada

[Scope of Databases](#)

[Tools](#)

[Terms of Use](#)

[Privacy](#)

[Help](#)

[Contact Us](#)

[About](#)