

CANADA / JUDGMENT

TB9-00554

COURT

Refugee Appeal Division

DECIDED

28 August 2020

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RAD File / Dossier de la SAR : TB9-00554 TB9-00555 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXX(a.k.a. XXXX XXXX XXXX XXXX)XXXXXXXX XXXX XXXX Personnes en cause (a.k.a. XXXX XXXX XXXX XXXX) Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision August 28, 2020 Date de la décision Panel Caitlin Maxwell Tribunal Counsel for the persons who are the subject of the appeal Nilofar Ahmadi Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] These are my reasons for granting the appeal of XXXX XXXX XXXX ("Principal Appellant") and XXXX XXXX XXXX ("Associate Appellant"). I am substituting a decision that the Appellants are Convention refugees.
- [2] The Appellants, citizens of Romania, allege a history of persecution based on their Romani ethnicity. The RPD accepted the Appellants' ethnic identity but found that the Principal Appellant had not established discrimination amounting to persecution. While it accepted that the Associate Appellant had suffered past persecution, it did not find any forward-looking risk to her upon return.
- [3] On appeal, the Appellants argue that the RPD erred in assessing whether the Principal Appellant had cumulatively suffered persecution and in implying he could hide his ethnic identity to avoid persecution. They further argue that the panel erred in finding a lack of forward-facing risk for the Associate Appellant. SCOPE OF THE APPEAL
- [4] Generally, I must review a decision of the RPD on a standard of correctness.¹ The exception to this rule is where the RPD enjoys a meaningful advantage in assessing the credibility of oral testimony, which may attract deference in particular cases.² In this case, however, the RPD had no advantage. I will therefore consider whether its decision was correct.
- [5] The Appellants have not submitted any new evidence in support of their appeal. They have requested an oral hearing should any credibility concerns arise. In the absence of any new evidence, however, I have no jurisdiction to convene a hearing.³

ANALYSIS

- [6] The determinative issues on appeal are the well-foundedness of the Appellants' claim of ethnic persecution, as well as a lack of state protection and viable internal flight alternative. For the following reasons, I agree with the Appellants that the RPD erred in its assessment and find that the objective country documentation supports a serious possibility of persecution on a forward-looking basis. Appellants have established risk on a Convention ground
- [7] I agree that the panel mischaracterized the Principal Appellant's experiences as falling short of systemic discrimination rising to the level of persecution. His evidence was that he attended school and was able to run a business and hire a Romanian employee because he took pains to hide his Roma ethnicity. He testified powerfully about the impact of having to hide his ancestry and culture throughout his life; he also provided evidence that when his Roma identity became known, he encountered racism. This includes having to relocate his business multiple times.
- [8] While the RPD did not accept the Principal Appellant's allegation that he had to close his first store when his ethnicity became known, as he was unable to provide corroborating documents, I accept the Appellant's testimony on this issue, which was straightforward and spontaneous. Having closed the store approximately 20 years ago, I also accept the lack of corroborating documents. I also note that the panel accepted the Principal Appellant's further experiences of discrimination during his military service, in accessing healthcare, and while working as a XXXX XXXX. With respect to the latter, his evidence was that he sought police assistance when ethnic Romanians refused to pay him, but that the police mocked him and refused to help.
- [9] The RPD accepted that the Associate Appellant had experienced persecution on a cumulative basis as a result of her Roma ethnicity and gender, including sexual and physical violence and a lack of police response; homelessness; a lack of education; and problems in accessing both employment and healthcare.
- [10] However, the panel determined that the Associate Appellant's life had improved since meeting the Principal Appellant and that there was no forward-looking risk of persecution. It acknowledged her fear of being denied access to proper healthcare while giving birth in Romania but found that discrimination in this area would not amount to persecution. It noted she now had family support and had not expressed any desire to have a life outside the home.
- [11] I agree with the Appellants that the RPD erred in finding that because the Associate Appellant wanted to stay at home and now had family support, she would not face a forward-looking risk of persecution. Similar to its assessment of the Principal Appellant's ability to hide his ethnicity, the panel seems to suggest that if the Associate Appellant remains at home, she will not face any further problems.

- [12] With respect, the panel failed to consider whether the Appellants could live their lives openly in Romania as Romani people. It ignored their evidence that the Associate Appellant wears traditional dress, making her a target, and that the Principal Appellant avoided going out in public with her to keep his Roma identity hidden. As pointed out by the Appellants, the Federal Court has repeatedly held that individuals need not conceal or repress innate elements of their identity to avoid persecution.⁴
- [13] The panel also failed to put the Appellants' experiences into the context of the broader country conditions facing Roma. While Romania has taken steps toward promoting inclusion and tackling prejudice, the balance of the documentary evidence confirms that violence and discrimination against Roma remain widespread.⁵ Racist discourse against Roma persists in political and media campaigns.⁶ Societal and police violence against Roma continues to be a problem.⁷ Sources report that Roma experience disproportionate unemployment compared to the rest of society, frequently face discrimination in hiring, and are more likely to work in the informal sector than the rest of the population.⁸ According to the World Bank, "Roma currently do not have the opportunities to improve their own welfare and gain access to the labor market, despite clear and actionable policy entry points."⁹ Roma are reported to face lower life expectancy, inadequate health care, and poor access to government services.¹⁰ Sources also indicate that they are denied access or refused service in many public places.¹¹
- [14] Guidance from the United Nations High Commissioner for Refugees' Handbook on refugee status determination,¹² as well as Canadian jurisprudence,¹³ indicates that discrimination can amount to persecution when a number of discriminatory acts take place in a general atmosphere of insecurity in the country of origin and when such acts are substantially prejudicial to the person concerned. Where the cumulative nature of the discrimination results in an insecure future for the person concerned, this constitutes persecution. Considered cumulatively, I find that the Appellants' experiences rise to the level of persecution. Together with current conditions, the evidence supports a serious possibility of persecution on return. Lack of adequate state protection and viable internal flight alternative
- [15] The Council of Europe reports that a consolidated, coherent legal framework for the protection of minority rights is lacking in Romania, and that racist incidents have persisted despite support from the National Council for Combating Discrimination, courts rulings, and statements from the authorities. The revised Strategy for the Inclusion of Romanian Citizens Belonging to the Roma Minority - 2012-2020, adopted in 2015, sets targets in the areas of education, employment, health, and housing, and also addresses the protection of Roma culture and participation in public and political life. However, it has been criticized for lacking mechanisms to ensure its funding and implementation.¹⁴

- [16] Police brutality against Roma is reportedly widespread. The European Commission Against Racism and Intolerance ("ECRI") recently expressed its deep concern about continuing allegations of police misconduct. In particular, it cited over 20 judgments since 2015 by the European Court of Human Rights condemning Romania for police violence and the authorities' failure to effectively investigate police abuses, including racially motivated ill-treatment.¹⁵ According to ECRI, these repeated cases are indicative of a persistent problem.
- [17] Considering the Appellants' own prior failed attempts to access state protection, and the current country evidence, I find, on a balance of probabilities, that they would not have access to operationally adequate state protection upon return.

CONCLUSION

- [18] For the reasons set out above, the appeal is allowed. I substitute my own decision that the Appellants are Convention refugees. (signed) "Caitlin Maxwell" Caitlin Maxwell August 28, 2020 Date 1 Canada (Minister of Citizenship and Immigration) v Huruglica, 2016 FCA 93, at para. 103. 2 Ibid., at para. 70. 3 Immigration and Refugee Protection Act (IRPA), SC 2001, c 27, as amended, at ss. 110(6). 4 See, e.g., Okoli v Canada (Citizenship and Immigration), 2009 FC 332, at paras. 36, 37; Sadeghi-Pari v Canada (Minister of Citizenship and Immigration), 2004 FC 282, at para. 29. 5 The World Bank indicates that Roma in Romania are "poor, vulnerable and socially excluded." The Open Society Foundation notes that "negative attitudes and stereotypes about Roma are deep-rooted, resilient and prevalent." The US Department of State reports that discrimination against Roma remains "a major problem." See Exhibit RPD-1, RPD Record, Exhibit 4, National Documentation Package ("NDP") for Romania (31 October 2018), Item 13.4, ?IRB Research Directorate, Response to Information Request ROU105285.E, "Situation of Roma, including treatment by society and government authorities; state protection and support services available to Roma (2011-2015)," 9 October 2015, at pp. 1-2 and NDP for Romania (29 May 2020), Item 2.1, US Department of State, Country Reports on Human Rights Practices 2019: Romania, at pp. 28-29. 6 Exhibit RPD-1, RPD Record, Exhibit 4, NDP for Romania (31 October 2018), Item 13.4, ?IRB Research Directorate, Response to Information Request ROU105285.E, "Situation of Roma, including treatment by society and government authorities; state protection and support services available to Roma (2011-2015)," 9 October 2015, at p. 3. 7 NDP for Romania (29 May 2020), Item 2.1, US Department of State, Country Reports on Human Rights Practices 2019: Romania, at pp. 1, 28-29; Item 13.8, Council of Europe, European Commission Against Racism and Intolerance, ?ECRI Report on Romania (fifth monitoring cycle), CRI(2019)20, 5 June 2019 at pp. 21-22, paras. 52-53. See also, Exhibit RPD-1, RPD Record, Exhibit 4, NDP for Romania (31 October 2018), Item 13.4, ?IRB Research Directorate, Response to Information Request ROU105285.E, "Situation of Roma, including treatment by society and government authorities; state protection and support services available to Roma (2011-2015)," 9 October 2015, at p. 2. 8 Exhibit RPD-1, RPD Record, Exhibit 4, NDP for Romania (31 October 2018), Item 13.4, ?IRB Research Directorate, Response to Information Request ROU105285.E, "Situation of Roma, including treatment by society and government authorities; state

protection and support services available to Roma (2011-2015)," 9 October 2015, at pp. 8-9; see also, NDP for Romania (29 May 2020), Item 2.3, Freedom House, "Romania: Freedom in the World 2019, p. 12. 9 Exhibit RPD-1, RPD Record, Exhibit 4, NDP for Romania (31 October 2018), Item 13.4, "IRB Research Directorate, Response to Information Request ROU105285.E, "Situation of Roma, including treatment by society and government authorities; state protection and support services available to Roma (2011-2015)," 9 October 2015, at p. 9. See also NDP for Romania (29 May 2020), Item 2.1, US Department of State, Country Reports on Human Rights Practices 2019: Romania, at pp. 28-29. 10 NDP for Romania (29 May 2020), Item 2.1, US Department of State, Country Reports on Human Rights Practices 2019: Romania, at pp. 28-29; see also, Item 2.3, Freedom House, "Romania: Freedom in the World 2019, p. 12. 11 Ibid. 12 Office of the United Nations High Commissioner for Refugees, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, reissued Geneva, December 2011, at paras 53-55. 13 Liang v Canada (Citizenship and Immigration), 2008 FC 450, at paras 21-23. 14 Exhibit RPD-1, RPD Record, Exhibit 4, NDP for Romania (31 October 2018), Item 13.1, Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, "Fourth Opinion on Romania - adopted on 22 June 2017, ACFC/OP/IV(2017)005, at p. 1. On criticisms of the National Inclusion Strategy, see also, Item 13.4, "IRB Research Directorate, Response to Information Request ROU105285.E, "Situation of Roma, including treatment by society and government authorities; state protection and support services available to Roma (2011-2015)," 9 October 2015, at pp. 19-20. 15 NDP for Romania (29 May 2020), Item 13.8, Council of Europe, European Commission Against Racism and Intolerance, "ECRI Report on Romania (fifth monitoring cycle), CRI(2019)20, 5 June 2019 at p. 22, para. 53.

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