

CANADA / JUDGMENT

TB9-16933

COURT

Refugee Appeal Division

DECIDED

10 January 2020

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RAD File / Dossier de la SAR : TB9-16933 TB9-16934 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision January 10, 2020 Date de la décision Panel Linda Hart Tribunal Counsel for the persons who are the subject of the appeal John W Grice Conseil de la/des personne|s en cause Designated representative XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX (the Principal Appellant) and XXXX XXXX XXXX (the Minor Appellant) are citizens of Hungary. They are appealing a decision of the Refugee Protection Division (RPD) rejecting their claims for refugee protection.

DETERMINATION

- [2] Pursuant to Section 111(1)(b) of the Immigration and Refugee Protection Act (IRPA), the RAD sets aside the determination of the RPD and substitutes its determination that the Appellants are Convention refugees.

BACKGROUND

- [3] The Appellants alleged before the RPD that they experienced unbearable persecution and harassment in Hungary because of their Roma ethnicity. Members of the Guardists and Jobbik Party openly spread hatred. The Principal Appellant alleged that she was ostracized in school, evicted from her home twice, and attacked on the street. She alleged that she experienced poor treatment in hospital, was denied entry on public transport vehicles, and regularly experienced discrimination in her daily life. She alleged that her husband was unable to find work due to his Roma ethnicity and that their housing choices were limited to Roma slums.
- [4] The Appellants' application for refugee protection was heard on May 28, 2018. In a decision dated June 3, 2019, the RPD rejected their claim finding that the effect of mistreatment suffered by the Appellants did not rise to persecution and that the weak testimony in the case lacked the indicia of severity or persistence to qualify as persecution on an individual or cumulative basis.

- [5] The Appellants argue that the RPD erred by ignoring, mischaracterizing and failing to properly assess evidence of discrimination in housing, education, employment, healthcare and police protection; and erred by failing to properly assess the risks that would be faced by the Minor Appellant.

ANALYSIS

- [6] The RAD finds that the determinative issues in this appeal are whether the Appellants would face discrimination amounting to persecution should they return to Hungary and whether state protection would be available to them.
- [7] The RPD found that the Principal Appellant had established that she had grown up in substandard housing in Miskolc, which did not contain indoor plumbing, and that she had moved twice due to eviction notices. The RPD noted that the Principal Appellant experienced discrimination while at school. She was also placed in the back row of her classroom and discouraged from pursuing an education. The RPD considered the disrespectful treatment received by the Principal Appellant within the healthcare system and the everyday humiliations she experienced such as being denied entry on a public bus and undergoing security checks at shopping malls, all because of her Roma identity.
- [8] The RPD considered that she was able to access healthcare; had the right to work, rent housing, vote and had not been deprived of her freedom. The RPD acknowledged that the Appellants' ability to exercise these rights could be impeded by racial discrimination and limited education. The RPD considered that the Principal Appellant had not personally been subject to serious personal injury in a racially motivated attack and that in the one incident she mentioned she was pushed aside during a random racially motivated assault against her common-law partner.
- [9] The RPD found that the cumulative effect of the mistreatment experienced by the Principal Appellant in Hungary did not rise to the level of past persecution on an individual or cumulative basis. Based on the Appellants' experiences, the RPD found that it was unable to conclude that they faced a serious possibility of persecution in Hungary.
- [10] The Appellants argue that they testified about systemic discrimination in a number of areas which include education, housing, employment, and healthcare. They submit that the RPD largely accepted the principal Appellant's testimony when she described ill-treatment in various spheres of life in Hungary. They argue that the RPD ignored the substantial amount of evidence in the IRB's National Documentation Package showing persecution of Roma. They argue that it was insufficient for the RPD to refer to a cumulative assessment of discrimination and that it was incumbent to recognize the effect of discrimination in one area on all other aspects of a person's life.

- [11] The Appellants argue that the principal Appellant faced discrimination in education and that the RPD failed to appreciate that this impacted her ability to obtain paid work. They submit that the RPD did not consider how the minor Appellant would fare in a system that shows 68% of Roma students ending education and training early because of discrimination.
- [12] The Appellants argue that the Principle Appellant testified to struggling to obtain even low paid work at a XXXX XXXX and not being hired because of her Roma ethnicity. They argue that the RPD failed to properly assess the country conditions documentary evidence regarding employment and to engage meaningfully with the evidence and the Appellants' testimony.
- [13] The Appellants argue that their claim of being poorly treated at a hospital because of their Roma identity is supported by the country condition evidence which shows that Roma experienced discrimination occurs in the field of health care.
- [14] The Appellants submit that the RPD accepted their evidence of inadequate housing conditions and of being evicted on more than one occasion and that the RPD minimized the very real likelihood that they would be homeless if returned to Hungary. They submit that the country conditions documentary evidence indicates that many Roma live in disadvantaged regions of Hungary and segregated settlements that lack basic infrastructure.
- [15] The Appellants argue that they availed themselves of state protection in Hungary and no action was taken. They submit that there is ample country condition evidence demonstrating that their experience with the police is a common occurrence for Roma and that it is unlikely that the state can adequately protect them if they return to Hungary.
- [16] The RAD has reviewed the record and has conducted an independent assessment of the evidence. The RAD finds that the Appellants' arguments regarding the cumulative effect of the discrimination they experienced in Hungary have merit. The RAD has listened to the recording of the hearing and finds the Principle Appellant credibly testified about her experiences of discrimination in the areas of housing, education and daily life. The RAD has considered that testimony, as well as the information contained in the Appellants' Basis of Claim forms and finds that for most of their lives they have experienced incidents of discrimination which ultimately led them to leave their home country. The RAD is guided by the UNHCR handbook which states that:
54. Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practice his religion, or his access to normally available educational facilities.

55. Where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence. Whether or not such measures of discrimination in themselves amount to persecution must be determined in the light of all the circumstances. A claim to fear of persecution will of course be stronger where a person has been the victim of a number of discriminatory measures of this type and where there is thus a cumulative element involved.
- [17] The RAD has considered the documentary evidence regarding the situation for Roma in Hungary. The United States Department of State report for 2018 notes that human rights Non-Governmental Organizations continued to report that Roma suffered social and economic exclusion and discrimination in almost all fields of life. 1 It is also noted in this document that Romani woman can suffer multiple forms of discrimination on the basis of gender, ethnicity, class and that they experienced barriers to equal access in education, healthcare, housing, employment and justice.
- [18] There exists prejudice by the police against the Roma community and ethnic profiling. It is noted that police response to hate crimes is not adequate.² There is evidence that right-wing paramilitary groups organize demonstrations against Roma, Jews and homosexuals.³ Racist violence against Roma remains one of the most pressing issues in the country. Between January 2009 and September 2013 there were more than 100 cases of alleged hate-motivated violence targeting Roma and/or their property. Roma are often subjected to hate speech. These problems have been sustained by the continued hostility Roma face from police forces and officials, reflected in persistent discriminatory practices including ethnic profiling and finds for even the most minor infractions. This also extends to a failure to protect Roma community members from attack.⁴
- [19] Roma in Hungary face discrimination in all fields of life including education, housing, employment, health care and political participation. The Hungarian Ombudsman has reported that the disadvantageous social situation of Roma is aggravated by discrimination in all of these fields. A report from the Hungarian Central Statistics Office cites that the employment rate for Roma was only 25.9 percent in 2014, as compared to the employment rate for non-Roma, which was 60 percent. This report also states that 67.9 percent of Roma were at risk of poverty. It is noted that 500,000 to 600,000 Roma live in disadvantaged regions of Hungary, mostly in segregated residential zones in poor conditions.⁵
- [20] It is reported that there is an increasing rate of evictions against disadvantaged people and a decreasing amount of social housing. Roma often face discrimination in accessing social housing and municipalities use a variety of techniques to prevent Roma from living in more desirable urban neighbourhoods.⁶

- [21] There is segregation in education. The European Roma Rights Centre notes that there is systemic discrimination and segregation of Romani people in Hungary's schools. Roma children are disproportionately placed in special schools or classes for children with disabilities or special needs, which constitutes a form of segregated education.⁷
- [22] In regard to health care, there is information that Roma women often lack access to medical services due to direct discrimination and degrading treatment at the hospital. It is reported that Roma women are being segregated in certain medical facilities.⁸
- [23] The documentary evidence references efforts to integrate Roma into the general population. However, there is little information on how the government initiatives have benefited Roma specifically.⁹
- [24] The RAD has considered the documentary evidence concerning the situation for Roma in Hungary relating to discrimination and targeting by right-wing groups, as well as the personal experiences of the Appellants in regard to education, employment, housing and social exclusion. The RAD finds, based on past experiences of the Appellants, and the country conditions evidence, that the Appellants would experience discrimination which would lead to consequences of a substantially prejudicial nature should they return to Hungary. The RAD further finds that the documentary evidence does not indicate that the police are providing adequate state protection in regard to crimes against Roma. The RAD therefore finds that there is not adequate state protection available to the Appellants in Hungary. The RAD further finds that there is no Internal Flight Alternative available to the Appellants in Hungary, as the situation for Roma is consistent throughout the country.

CONCLUSION

- [25] The RAD finds that there is a serious possibility that the Appellants would suffer persecution should they return to Hungary because of their Roma ethnicity. For this reason, the RAD cannot uphold the decision of the RPD.
- [26] The appeal is allowed. Pursuant to section 111(1)(b) of the Immigration and Refugee Protection Act (IRPA), the RAD sets aside the determination of the RPD and substitutes its own determination that the Appellants are Convention refugees. (signed) "Linda Hart" Linda Hart January 10, 2020 Date 1 Exhibit RPD-1, RPD Record, Exhibit 4, NDP for Hungary (March 2019), Item 2.1, at p.33. 2 Ibid, Response to Information Request (RIR) no. HUN105587, Item 13.6. 3 Ibid, Item 13.1. 4 Ibid, Item 13.11 5 Ibid, RIR no. HUN105586, Item 13.5. 6 Ibid. 7 Ibid. 8 Ibid. 9 Ibid.

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