

CANADA / JUDGMENT

MA8-12456

COURT

Refugee Protection Division

DECIDED

4 November 2009

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Immigration and Refugee Board Refugee Protection Division Commission de l'immigration et du statut de réfugié Section de la protection des réfugiés RPD File No. / N° de dossier de la SPR : MA8-12456 Private Proceeding Huis clos Claimant(s) Demandeur(e)s d'asile XXXXX XXXXX Date(s) of Hearing Date(s) de l'audience October 21, 2009 Place of Hearing Lieu de l'audience Montréal, Quebec Date of Decision Date de la décision November 4, 2009 Panel Tribunal Me Mélanie Raymond Claimant's Counsel Conseil du demandeur d'asile Me Patrizia Ruscio Tribunal Officer Agent du tribunal Annie Lemaine ?Filing of documents? Designated Representative Représentant désigné N/A Minister's Counsel Conseil du ministre N/A

- [1] The claimant, XXXXX XXXXX is a citizen of Hungary. She is basing her claim on section 96 and subsection 97(1) of the Immigration and Refugee Protection Act (IRPA). ALLEGATIONS
- [2] The claimant alleges that she is fleeing the persecution she experienced and risks experiencing in her country as a Roma. She claims that she was a victim of discrimination from her childhood until her departure from Hungary at the age of 21. At the hearing, she claimed mainly that she was the subject of insults and assaults at school, was the subject of disparagement by teachers, had difficulty finding work, was the subject of unjust dismissals and was a victim of assault on public transit. More specifically, the claimant alleges that she is the victim of an assault in the subway in XXXXX 2007 during which she was surrounded by skinheads. After narrowly managing to escape, she filed a report with police, who told her they could not do anything since she was not able to identify her assailants.
- [3] The claimant came to join her father in Canada in XXXXX 2008. She claimed refugee protection in September of the same year.

DETERMINATION

- [4] After examining all of the testimonial and documentary evidence, the panel finds that the claimant is not a "Convention refugee" or a "person in need of protection".

ANALYSIS

Identity

- [5] The panel has a copy of the claimant's passport and is satisfied as to her identity. State protection
- [6] State protection is the determinative issue in this case.
- [7] It is well established that a refugee protection claimant must seek the assistance of his or her country before seeking protection from another country, in this case Canada. Barring a complete breakdown of the government apparatus, the state is presumed to be able to protect its citizens. This presumption can be rebutted only by "clear and convincing" evidence of the state's inability to protect. According to the case law, state protection must be adequate, not necessarily perfect.¹
- [8] The claimant testified at the hearing that she had been the victim of insults at primary school and that she had had difficulty finding a job other than as a cleaner. In her job, she was apparently often singled out for being responsible when things were not going well and was purportedly unjustly dismissed.
- [9] However, the claimant also testified that, as of XXXXX 2007, she went to a prevocational school to prepare her for higher education. She stated at the hearing that she hoped to be able to realize her dream in Canada of studying XXXXX. The panel asked her why she believed that it would not have been possible for her to realize this dream in Hungary by registering for such a program after her studies, and the claimant replied that it would have been possible for her, but that the general climate prevailing there for Romas would have meant that it would not have been easy for her to succeed.
- [10] Hungary is a member of the European Union and, according to the documentary evidence, its government generally respects the rights of its citizens.² Unfortunately, the situation for Roma is not ideal since many prejudices still exist regarding them in Hungarian society. Nevertheless, the Hungarian government has put many initiatives in place to eradicate the stereotypes besetting Roma and to come to the assistance of victims of discriminatory acts.
- [11] In fact, the documentary evidence reports that in May 2008, the Hungarian prime minister appointed a special commissioner to chair the newly established Romani affairs interministerial committee created to coordinate the government's Romani policy. Moreover, most ministries have special officers for Romani affairs. Furthermore, the Ministry of Justice operates a legal service network that provides free legal aid to Roma in cases where they encountered discrimination based on their ethnicity.³
- [12] The Council of Europe's Commissioner for Human Rights reported that "Hungary has extensively heeded the difficulties which Roma have in gaining employment and is now trying to provide concrete solutions."⁴ He also stated that "[t]here have been groundbreaking decisions by the courts in the battle against segregation and racism." He cited the example of two Roma who were awarded compensation because they had been refused entry into a discotheque. In his report, the Commissioner referred to the existence of similar decisions concerning Roma admission to bars, restaurants, hospitals and maternity clinics though he

noted that there did not seem to be any similar court decision concerning employment discrimination. Initiatives have also been put in place by the government concerning the availability of housing.

- [13] Police forces still seem to have trouble eradicating the prejudice some of their officers have towards Roma.⁵ However, the documentary evidence indicates that the Web site of the Parliamentary Commissioner for National and Ethnic Minority Rights of Hungary reports that any person can file a complaint with the Commissioner if he or she feels that, as a result of a government agency's decision, proceedings or negligence, a violation has taken place in her/his national or ethnic minority rights, or that the direct threat of such a violation is imminent. Among the agencies covered by this policy are the police, the national security services and the armed forces. The undue delay in handling the complainant's case constitutes one example of a possible violation of national or ethnic minority rights. It is also noted that the same Web site provides detailed instructions on how to file a complaint, as well as appropriate addresses and contact information. Examples of complaints that were filed with the Commissioner and for which there was an investigation are given in this same document.⁶
- [14] The documents submitted in evidence demonstrate a rise in the extreme right in Hungary. The documents show the existence of groups that promote "purity" in Hungarian culture and blame Roma for their country's economic problems.⁷ However, the documentary evidence also shows that the Hungarian courts are ensuring the protection of the interests of minority groups like Roma. For example, a Budapest municipal court allowed the prosecutor's office to dismantle an extremist organization called Magyar Garda because the main purpose of its activities was to breach the rights and freedoms of Roma and to create an anti-Roma climate.⁸ There is also the example of a decision by the Appellate Court that upheld a decision by a lower court to acquit two Roma who were unfairly convicted of murder.⁹
- [15] Roma can seek assistance from non-governmental agencies (NGOs) that defend their interests. Amnesty International, one of the NGOs that advocates on behalf of Hungarians, has pushed for the investigation by the General Prosecutor of incidents of alleged police misconduct motivated by racism. There are also two other NGOs that defend the rights of ethnic minorities: the European Roma Rights Centre (ERRC) and the Legal Defense Bureau for National and Ethnic Minorities (NEKI). The ERRC is mainly involved in strategic litigation in the defence of Roma rights. NEKI initiates litigation and represents alleged victims of ethnic or national discrimination before Hungarian authorities.¹⁰

- [16] The claimant stated at the hearing that, in XXXXX 2007, she was apparently surrounded on the subway platform by individuals she did not know. They allegedly treated her as a "gypsy" and purportedly behaved in a threatening manner towards her. Fortunately, a subway car apparently entered the station and, thanks to the distraction created by the arrival of other passengers, the claimant allegedly managed to escape. She purportedly went to the police station afterwards to file a report.
- [17] An officer apparently took note of her testimony. He allegedly wrote a report, of which she was given a copy. He purportedly asked her to describe her assailants, which the claimant apparently did by stating that they were white men dressed in black and white. The officer who spoke with the claimant also stated that her complaint would be dealt with and that someone would contact her.
- [18] Because she had not yet received a call, the claimant apparently attempted to contact the person in charge of her complaint about two weeks later. She allegedly attempted to reach him twice in the same day without success. She purportedly managed to speak with him the next day. He apparently then told her that there were no new developments. She purportedly had still heard nothing from police when she left for Canada in XXXXX 2008.
- [19] The claimant sees this as proof that her state is not capable of protecting her. The panel disagrees. It notes that, according to the claimant's account, the police dealt with her complaint. When confronted with this observation, the claimant declared that she expected the police to arrest those who attempted to attack her. The panel made her aware that it would have been difficult for the police to arrest them since the claimant did not know the identity of her assailants, and she replied that they perhaps should have been able to locate them because they had a criminal record. The panel wondered how the police would have been able to know that those who had attacked the claimant had a criminal record if they did not know who they were, and the claimant replied that the police had told her only that they were not in possession of evidence.
- [20] The claimant also testified that, throughout her life, the above-mentioned incident was the only time she had gone to police. She also stated that she had never called on other mechanisms or organizations that help Roma in Hungary.
- [21] The panel believes that, over the course of her life in Hungary, the claimant may have been the victim of injustices because of negative stereotypes prevalent in Hungarian society towards Roma. This is also the case for the insults against her in primary school and the problems she had finding jobs. However, it finds that, if the claimant was a victim of discrimination, this does not amount to persecution under section 96 of the IRPA. In fact, the panel notes that the claimant was still able to pursue her studies in a prevocational school in preparation for higher education.

- [22] The panel also finds that the claimant did not demonstrate clear and convincing evidence that the Hungarian state is not able to protect her. It stated instead that the government has put in place many initiatives to improve the situation for Roma and to ensure that they fully participate in society.
- [23] The only time the claimant approached police, her complaint was dealt with and she was told that an investigation would follow. The claimant did not show that the police's statement that they did not have sufficient evidence to locate these assailants was attributable to ill will on their part. Moreover, the documentary evidence referred to earlier states that, if this had been the case, there was recourse available to the claimant to report the police officers' attitude towards her.

CONCLUSION

- [24] After analyzing all of the evidence, the panel finds that the claimant did not meet her burden of showing a serious possibility of being persecuted based on a Convention ground. She was not successful in demonstrating, on a balance of probabilities, that in returning to Hungary, she would be personally subjected to torture or to a risk to her life or to a risk of cruel and unusual treatment or punishment.
- [25] For all of these reasons, the panel finds that the claimant is not a "Convention refugee" or a "person in need of protection".
- [26] The panel rejects XXXXX XXXXX refugee protection claim. Mélanie Raymond Me Mélanie Raymond November 4, 2009 Date REFUGEE PROTECTION DIVISION / ETHNICITY / DISCRIMINATION / HUMAN RIGHTS / STATE PROTECTION / FEMALE / NEGATIVE / HUNGARY 1 Zalzali v. Canada (Minister of Employment and Immigration), [1991] 3 F.C. 605 (F.C.A.); (1991), 14 Imm. L.R. (2d) 81; 126 N.R. 126 (F.C.A.); M.E.I. v. Villafranca, Ignacio (F.C.A., No. A-69-90), Marceau, Hugessen, Décary, December 18, 1992. 2 Exhibit A-1, National Documentation Package on Hungary, March 25, 2009, Tab 2.1: United States. February 25, 2009. Department of State. "Hungary". Country Reports on Human Rights Practices for 2008 ? in English only?. 3 Idem 4 Exhibit A-1, National Documentation Package on Hungary. March 25, 2009, Tab 2.4: Council of Europe. March 29, 2006. Commissioner for Human Rights. Follow-up Report on Hungary (2002-2005). 5 Supra note 1. 6 Exhibit A-1, National Documentation Package on Hungary. March 25, 2009, Tab 10.2: HUN100494.E. September 22, 2005. Recourse available to those with a complaint of police inaction in response to crimes, harassment or discrimination; organizations that would be of assistance in such cases (January 2003 - August 2005). 7 Supra note 1 and Exhibits P-3 to P-7. 8 Supra note 1. 9 Exhibit A-1, National Documentation Package on Hungary. March 25, 2008, Tab 9.1: European Roma Rights Centre (ERRC). May 3, 2006. Hungarian Appellate Court Upholds Release of Wrongly Convicted Roma ?in English only?. 10 Supra note 5.

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