

CANADA / JUDGMENT

TA9-09591

COURT

Refugee Protection Division

DECIDED

6 September 2011

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RPD File No. / N° de dossier de la SPR : TA9-09591

TA9-09592

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TA9-09594

Private Proceeding / Huis clos

Reasons and Decision ? Motifs et décision

Claimant(s)

XXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXX

XXXXXXXXXX

Demandeur(e)(s) d'asile

Date(s) of Hearing

January, 25, 2011

April 28, 2011

July 4, 2011

Date(s) de l'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

September 6, 2011

Date de la décision

Panel

Berto Volpentesta

Tribunal

Counsel for the Claimant(s)

Milan Tomasevic

Conseil(s) du / de la / des demandeur(e)(s) d'asile

Tribunal Officer

Agent(e) de tribunal

Designated Representative(s)

Représentant(e)(s) désigné(e)(s)

Counsel for the Minister

Conseil du ministre

REASONS AND DECISION

- [1] XXXXXXXX and his common-law partner, XXXXXXXXXXXXXXXXXXXX, along with their children XXXXXXXXXXXX and XXXXXXXXXXXX, claim to be citizens of Hungary and request protection under sections 96 and 97(1) of the Immigration and Refugee Protection Act (IRPA).¹ These claims were joined according to Rule 49(1) of the Refugee Protection Division Rules. The father of the minor claimant XXXXX was appointed as her Designated Representative according to section 167(2) of the IRPA as she was under eighteen years of age (born on XXXXXX XX, 1993) at the time of designation. XXXXX was born on XXXX, 1991 and was just eighteen years of age when he arrived in Canada.

ALLEGATIONS

- [2] The allegations are set out in the claimants' Personal Information Forms (PIF) 2 submitted June 1, 2009, their shared narrative submitted June 17, 2009,³ and their amended narratives submitted December 1, 2010.⁴ In summary, the claimants allege the following:
- [3] The claimants have suffered various forms of mistreatment because they are Roma. At school, at work and in the streets they suffered verbal and physical mistreatment. They lost jobs because they are Roma. In XXXXX 2009 they were verbally and physically attacked by a group of skinheads. In XXX 2009 XXX was attacked by members of the Hungarian Guard. Their relatives were forced off the road by members of the Hungarian Guard. In XXX 2009

XXX attempted suicide and a few weeks later the family left for Canada and requested protection on arrival.

PROCEDURAL ISSUE

- [4] At the beginning of the hearing when the claimants were to confirm their signatures and declaration made on their PIFs, counsel offered that there was some difficulty with the translation of the narrative and more details were revealed in subsequent meetings with different interpreters. During the hearing at the end of the first sitting counsel request that the first narrative be struck from the record. Counsel argued that since the first interpreter did not do their job, the claimants would be unduly prejudiced as the information contained is tainted.
- [5] The claimants explained that the Roma Community Centre recommended the interpreter to them. Counsel explained that the claimants came to his office with the interpreter on a few occasions and was introduced as their friend and they seemed to understand each other. The claimants explained that the first narrative was created by the interpreter who wrote down what they said. The claimants allege they provided the interpreter at the time some details which did not make it to the narrative. The claimants said the interpreter who helped them with their PIFs and narrative seemed to have good intentions, but it is now clear they did not understand each other, although XXX admitted he understood her.
- [6] The claimants were asked whether they tried to contact the interpreter when they discovered the missing or incorrect details in their narrative. The claimants said the interpreter had moved. The claimants tried the Roma Community Centre, but they were unable to provide contact details as they only had the old telephone number for the interpreter. However, at a subsequent hearing the claimant provided a letter from the Roma Community Centre that indicated the centre had no knowledge of the interpreter, they said, "...we have no contact with her and did not know who she is (my emphasis added) or where they could find her."⁵ The claimant explained that they met her at the centre and saw her coming from the office. She offered assistance, but they do not know if she actually worked at or out of the centre. This explanation is unreasonable. The claimants previously said that the Roma Community Centre advised them they had no current contact details for the interpreter and only an old phone number. This is completely different than what the letter from the centre states indicating that they do not know who that person is.
- [7] Furthermore, the letter from the XXXXXXXXXXXX Centre states the claimants had volunteered at the centre "about a year ago", which would make it approximately XXXXXX 2010 given the date of the letter. XXX said he helped XXXXXXXXXXXXXXXX in the around XXXX of 2010 and agreed that he had not been to the centre before that. Clearly, the claimants were not at the centre in 2009. The claimants' narrative was completed in June 2009 with the help of the interpreter they allege to have met at the centre. This is not possible if they only went to the centre for the first time in 2010. The claimants explained that the interpreter at the time provided assistance with the PIF; she asked what help she could provide.

- [8] Given all of the above, I find the explanation for how the PIFs and narrative were created is not reliable. The claimants introduced the interpreter to their counsel as a friend. There is no reason to believe their friend would have written anything other than what she was told to write. In the end, the claimants signed the narrative indicating the statements were their own. Their PIFs contain declarations that the form and any attachment were interpreted to them and the interpreter signed a declaration that the form and any attachments were interpreted and the claimants told the interpreter they understood. While the narrative in question arrived two weeks after the PIFs, the same interpreter was used and it is reasonable to expect she would have followed the same procedure for the narrative.
- [9] Based on all the above, counsel's request to strike the original PIFs and narrative from the record is denied.

DETERMINATION

- [10] I find that the claimants are neither Convention refugees nor persons in need of protection. My reasons are as follows.

ANALYSIS

Identity

- [11] The claimants' oral testimony and documentary evidence establish that they are citizens of Hungary.⁶

Credibility

- [12] Some of the claimants' evidence was not reliable. For example XXX states in his amended narrative and repeated at the hearing that in XXXX 2009 his cousin and his cousin's were killed when their car was forced off the road by members of the Hungarian Guard. However, in his original narrative the claimant states this happened in XXXX 2008 and it was his friend and his friend's son. The claimant explained that the year was a simple mistake and it was a cousin not a friend. I might accept the mistake on the year since there is likely to be confusion with respect to year around the beginning of a new year. However, it is reasonable to expect the claimants to know whether it was a friend or a cousin. The claimants state in their narratives and said at the hearing that it was a very emotional time to see their "brothers" in their coffins. Also, XXX told Dr. XXXXXX that he becomes frightened whenever he sees a vehicle like the one that forced his cousin off the road, although I cannot see why since the claimant said he was not present when his cousin was forced off the road, but was told of the incident by others. In any event, if it were such a traumatic incident, it is reasonable that the claimants should recall whether those killed were cousins or friends. The incident did not occur as the claimants would have me believe.

- [13] Furthermore, the claimants state in their narrative that police responded to the accident in XXXX 2009, and ruled it an "accident" despite there being witnesses, and in his amended narrative XXX states the police did not believe the witnesses so they ruled it an accident. However, at the hearing the claimants said police arrived and there were several elderly witnesses, both Roma and non-Roma, but the witnesses were afraid to provide any evidence to police and therefore police could only determine it was an accident.
- [14] Furthermore, the claimants said that the incident was reported in the news or on the internet and despite providing me with a website that I could search they did not disclose any evidence to confirm any of the allegations. The claimants were given an opportunity to find the evidence they said existed and instead provided a list of other attacks on Roma in Hungary.⁷ Given the credibility concerns it is reasonable to expect corroborating documentary evidence and more so because the claimants say it is available. I draw an adverse inference from the lack of documentation and conclude the incident is not as the claimants would have me believe. Even if their cousin was in an accident, there is no persuasive evidence that it was caused by the Hungarian Guard as the claimants' evidence on the police response and witness interaction is not reliable.
- [15] Later the claimants blame their original interpreter for these inconsistencies. As noted above, I rejected the argument that the original interpreter could be blamed for the inaccuracies in the original narrative. There is no persuasive evidence that the original interpreter, who was used on several occasions, did anything other than write what the claimants told her.
- [16] The claimants said that they were attacked by a group of skinheads in XXXXX 2009 as they waited for a bus on their way home from grocery shopping. When he first requested protection XXX described how five or six Hungarian Guard attacked them by kicking the bags out of their hands, forcing them to kneel, spitting on them and calling them names.⁸ Then, in their shared narrative the claimants describe how a group of skinheads called them names, threw XXX to the ground and forced his family to kneel while the skinheads slapped and hit them. The skinheads kicked the grocery bags around and when XXX protested they pinned his head to the pavement and kicked him. Then in his amended narrative XXX described how four big skinheads called them names, twisted his arm and punched him in the stomach and to the chin which caused him lose his breath and shiver. His common-law partner's hair was pulled to force her to kneel. His son was slapped many times and both his children were forced to kneel. The skinheads kicked XXX to the face and everywhere they could, his head was pushed into the grocery bags and the bags were kicked as well. There were people standing and watching, even encouraging the skinheads to do more damage.
- [17] Along with these escalating versions of events there are some credibility concerns. XXX said at the hearing that only he was injured due to many kicks, but also his son was slapped a few times. However, the original narrative states that both he and his son had visible signs of injury. The claimants explained that XXX injuries were worse and XXX Jr. was just slapped and there were marks on his face from the slap. Counsel once again argued that the original

narrative was not interpreted properly. However, I have already rejected this argument. Furthermore, in this incident, the claimants do not blame the interpreter, but only say that XXX injuries were worse. If this were the only difficulty with the evidence it might not have been such a concern.

- [18] Furthermore, the claimants said they were rescued by a bus driver. The driver threatened to call police on the skinheads and they stopped the assault and left. However, the motive for stopping the assault as assigned by the claimants changes from version to version. In their original narrative the claimants state the bus driver came out and rescued them and that later police refused to take his statement. From this it would appear the bus driver was willing to help the claimants. In his amended narrative XXX states that the driver told the skinheads to stop or he would call police. However, at the hearing the claimants said the driver said if he was unable to do his job (that is, drive the bus on the route), he would have to call police. This final version would have me believe the driver only intervened because he could not drive his bus, but as noted in the original narrative, the driver was willing to make a statement.
- [19] Also, what happened afterwards when the incident was reported to police is not reliable. In their original narrative the claimants stated the bus driver took them to the police station, but police refused to their statements or the bus driver's statement. At the hearing the claimants said the driver was not willing to act as a witness.
- [20] The claimants said they were made to wait many hours before police dealt with them only to dismiss their complaint as a waste of time. Initially the claimants said they were told to wait so they just sat there and waited for the first few hours even though they could see police walking around. Then, after being asked whether they thought to get up and ask someone for help they said they got up every half hour to go ask. This is completely contradictory and clearly an adaptive answer put forward to enhance the effort made by the claimants to seek assistance.
- [21] Then finally, after police refused to help the claimants they said at the hearing that they went to a Roma Rights centre for assistance, but the counsellor told them they have no authority over police. However, this is not contained in their original narrative. The claimant explained that he told this to the officer at Immigration when he made his claim, and they do not speak English. Counsel further offered that the original narrative was faulty due to the poor interpretation. With respect to the claimants' explanations they are not reasonable because the immigration officer had nothing to do with preparation of the PIFs. Further, the fact that they did not speak English is not relevant because they had interpreters at Immigration and when they completed their PIFs and narrative. As has been noted, claimants cannot simply blame faulty interpretation without providing good reason as to why that should be accepted as an explanation. Such good reason should include contacting the previous interpreter to allow an opportunity to respond. In this case, the claimants' explanations with respect to their interpreter and how their PIFs and narrative were generated have been found to be unreliable. I do not accept that interpreter is responsible

for all the claimants' ills.

- [22] Furthermore, with respect to going to the Roma centre for assistance after police failed to provide assistance, XXXXX said that when the counsellor at the centre listened but said without an official report there was nothing they could do. This is not what XXX said. Further, the alleged reason for going to the centre was to obtain assistance to complain that police refused to take a report. This evidence is inconsistent with the other claimants' evidence and is not reliable. This casts further doubt about whether the claimants went to the Roma centre at all.
- [23] Also, the claimants provided no documentation to support the allegation that they turned to a Roma organization for assistance. The claimants were given an opportunity to provide the documentation and instead provided documents from a Roma organization in Hungary referring to incidents that occurred after the claimants left Hungary.⁹ It is reasonable to expect that if the claimants could get this document and they turned to that centre for assistance, they ought to be able to get a document indicating their visit to the centre as well. Documentation is not always required, but where oral evidence offers reason to suspect that evidence, documentary evidence is required to substantiate an allegation. I draw an adverse inference from the lack of documentation regarding going to the Roma center for assistance. The claimants' evidence on this point is not reliable.
- [24] From all of the above, I find with respect to the attack in XXXXX 2009, the bus driver's involvement, the police response and their resorting to a Roma centre is not as they would have me believe.
- [25] The claimants also blame the interpreter for the confusion about XXX education or alternately the immigration officer who completed their IMM 5611 form. In his narrative he states he has only eight years of education, but on his IMM 5611 form the XXX states he has ten years of education including two at a trade school where he completed a certificate or diploma of XXXX XXXXXXXXXXXX.¹⁰ The claimant also said at the hearing that he completed the trade school after losing his job. The government paid him benefits and he retrained to obtain the certificate. From the claimants own testimony the immigration officer correctly depicted his educational achievement. I find the misstatement of educational achievement on the claimants' PIF to be an exaggeration meant to embellish the nature of the harm they fear and risk they face.

Section 96 - Convention Refugee Grounds

- [26] Much of the evidence with respect to the allegations of mistreatment at the hands of skinheads and the lack of assistance rendered by police has been found to be unreliable. The incidents did not occur as the claimants would have me believe. However, the claimants are Roma and there is evidence that they have suffered various forms of mistreatment because of their ethnicity. They suffered verbal abuse, bullying and harassment at school and at work. Whether the harm feared amounts to persecution is questionable. The

claimants said they were bullied at school, yet XXX was able to complete his education, obtain employment and then retrain to further enhance his employability. XXX became the XXXXXXXXXXXX. XXXXX also experienced harassment from other employees, but agreed that the management was nice. She too was able to become XXXXXXXXXXXX. Even on occasions where they said they were fired because they were Roma, they were able to find alternate employment. Their right to earn a livelihood was not seriously impacted.

- [27] The children experienced discrimination and harassment at school in the form of bullying. Although they told the teachers, on one occasion XXXXX. told the teacher he fell and on another occasion when he was intervening on behalf of his sister, the teacher said his sister told a different story. The teachers were not successful in changing behaviour at least in part because they were not getting accurate information. Ultimately, the children were in school. XXXX completed nine years and XXXXX had completed twelve years of study. None of the claimants were denied access to education and their fundamental rights were not infringed.
- [28] If I accept that there was some kind of an attack in XXXXX 2009, it was likely the humiliation of kneeling and being spit on. While difficult to accept, endure and understand the mentality of these kinds of people, these types of attacks were not serious or persistent or systematic.
- [29] Even if the harm encountered is not serious, cumulatively, the effect of all this mistreatment in society results in discouragement. The Roma do not feel that they are part of the Hungarian society and they are in fact treated differently in many aspects of their lives. When the mistreatment is considered together, it may in some cases rise to the level of serious and systematic harm that would threaten the specific claimant's future existence or lead to a violation of their core fundamental rights. In this case the claimants said they are made to feel like they are not human and not treated with dignity. In this case, XXX said he felt so much despair that he could not protect his family he attempted to take his own life. This is supported by the documentation including a medical report.¹¹ From the psychological report of Dr. XXXXX dated XXXXXXXX, 2010 we are informed that XXX is suffering from post-traumatic stress disorder as well as severe levels of depression and anxiety. It is notable that from the medical report we see that XXX attempted to take his life after a family dispute. In any event, since the diagnosis was premised upon XXX accounts some of which have been found to be unreliable, the reasons for XXX suicidal tendency, depression and anxiety are unknown. Dr. XXXXX recommended that XXX obtain treatment for these conditions. There was no persuasive evidence that this treatment could not be obtained in Hungary. There is evidence that Hungarian health care providers were willing, able and did treat XXX when he attempted to take his life. They too recommended treatment, but the claimants decided he should leave the hospital and then a few weeks later they left Hungary.

- [30] I am willing to accept that the nature of the mistreatment, although it may have been minor, might have had an effect on XXX that other similarly situated people may not have experienced. To XXX, this was persecution, but what was the state doing?
- [31] Sadly, the attitude of some of Hungarian people toward the Roma is certainly discriminatory and prejudicial. While difficult to understand, accept and endure, generally, this does not amount to persecution. The general attitude of some segments of society may have an impact on the claimants' future existence if they become so prevalent, persistent and systematic that their actions confound fundamental human rights. The case may be made that for many Roma they are relegated to subsistence living. Their standard of living is typically much lower than many non-Roma. They are under-educated. They are frequently under-employed than non-Roma. Their housing arrangements are poorer and lower standard than non-Roma. This, over time, has caused the Roma to be disadvantaged and this disadvantage perpetuates the poorer conditions for the Roma. Reliance on the state to survive and turning what we would call the underground economy in some cases then causes resentment in the general population as well which further perpetuates poorer conditions and mistreatment of Roma particularly in difficult economic times.
- [32] As discussed below, the Roma are generally under-employed, under-educated and often live in subsistence housing. To consider the cumulative effect of all of this, is to consider the interplay of complex social issues, including the role of the state to relieve some of these hardships. In considering all of this, including the particular circumstances of the claimants, I find there is no denial of any fundamental rights that would threaten the future existence of the claimants.
- [33] Discrimination is a part of societal behaviour, but when that discrimination threatens a person's fundamental rights or future existence, it then becomes persecution. In this case it is not so much a matter of a threat to the claimants' future existence as a question of the quality of that existence. The question remains whether there is a serious possibility the claimants will be persecuted simply because they are Roma? The determinative issue is whether the claimants have rebutted the presumption of state protection.

State Protection

- [34] There is a presumption that a state is capable of protecting its citizens except in situations where the state is in a state of complete breakdown.¹² To rebut the presumption of state protection, a claimant must provide clear and convincing evidence of the state's inability to protect absent an admission by the national's state of its inability to protect that national.¹³ While the effectiveness of the protection is a relevant consideration, the test is whether the protection offered is adequate.¹⁴ The evidence that state protection is not adequate must be reliable and probative and it must also satisfy me, on a balance of probabilities, that the state protection is inadequate.¹⁵ The claimant must approach the state for protection, providing that state protection might be reasonably forthcoming.¹⁶ Where a state is in effective control of its territory, has military, police and civil authority in place and makes

serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify a claim that the victims are unable to avail themselves of protection.¹⁷ The fact that state protection is not perfect¹⁸ does not constitute clear and convincing proof of the state's inability to protect its citizens, since no state can guarantee the protection of all its citizens at all times. Local failures to provide effective policing do not amount to a lack of state protection unless they are part of a broader pattern of the state's inability to provide protection.¹⁹ The burden of proof that rests on the claimant increases with the level of democracy of the state in question. The more democratic a state is, the more the claimant must have done to exhaust all course of action open to them to demonstrate state protection was or would not be forthcoming.²⁰

- [35] In this case much of the evidence with respect state response was found to be unreliable or embellished to denigrate the efforts of the state in providing protection. However, even if I were to accept the allegations of attacks, the evidence shows that the authorities did act to assist the claimants. The fact that they are not always able to arrest perpetrators is not convincing evidence that protection is inadequate.
- [36] Even if I were to accept that the claimants were victims of attacks at the hand of skinheads, the evidence with respect to what happened when they reported to police and whether they were willing to take a statement or whether the bus driver was not willing to make a statement is not reliable. The claimants said they waited for hours before police turned them away saying that if they had to spend five minutes with each Roma complaint Hungary would grind to a halt. Even if I accept this as true, and I do not, this is a local failure. The claimants sought no redress from this lack of performance on the part of police.
- [37] If I were to accept the XXXX 2009 incident as true, the claimants did not approach police for assistance.
- [38] If I were to accept that their cousin was forced off the road by members of the Hungarian Guard in XXXXX 2009, the police responded, but witnesses were not forthcoming. What else could the police have done but conclude that it was an accident.
- [39] XXXXXX mother moved into the claimants' apartment after they left. Graffiti was found on their property and she reported it to police. Unfortunately, police suspended the investigation since there was no identifiable attacker.²¹ While the claimants view this as evidence the police do not act, I find the opposite is true. The police took a complete report about the graffiti. The police decision is to suspend the investigation, but states if new information is found they would pursue it. Finally, the mother has a right to appeal the decision to suspend the investigation and she is informed of that right. While the result may not be that the perpetrator has been captured, it cannot be said the police are not willing and able to respond to calls made by Roma.

- [40] The claimants' own experience is that authorities will take action. The fact that authorities are unable to prevent attacks or solve crimes when there is a lack of evidence is not clear and convincing evidence that police are unwilling or unable to provide adequate protection.
- [41] Do the claimants face a serious possibility of persecution simply because they are Roma? The claimants' evidence is taken together with and viewed in the context of the objective documentary evidence. I need to examine what efforts the state as a whole is making to positively affect the lives of the Roma. Are those efforts serious and what effect do those efforts have? Can the claimants reasonably avail themselves of the state's protection and reasonably expect adequate protection? It is the claimants' responsibility to show with clear and convincing evidence that state protection would be inadequate.
- [42] The documentary evidence is mixed with respect to the effect the numerous programs of assistance available to the Roma is having, but serious efforts are being made and there is some effect. It should be considered that the battle against discrimination cannot be assessed in a similar way that a battle against crime could. Where the number of arrests and decreases in crime rates may be indicators of progress, with discrimination it is societal attitudes that must change. It is therefore fair to look at what serious efforts the state is making to change those attitudes in addition to what action is being taken against those that perpetrate discrimination that rises to the level of persecution.
- [43] While there has been progress in many respects, some problems remain such as extremist violence and harsh rhetoric against ethnic and religious minority groups. Extremists increasingly targeted Roma, resulting in injuries and in a few cases death and the police sometimes use excessive force, particularly against Roma. Discrimination against Roma in education, housing, employment, and access to social services continued.²² The claimants also reported this rise in extremist activity and violence against Roma.
- [44] The economic downturn and political opportunism of the far-right extremists who seek to blame minorities, including the Roma, for recent events, is primarily responsible for the increase in extremism. Violent rhetoric and violence increased as did societal discrimination as is reflected by misinformed comments of some politicians. Roma families are deprived access to social housing by discriminatory rules and practices of local authorities; and Roma children are still confronted with segregation in schools, which has a devastating impact on education outcomes for these children and leaves them with correspondingly limited future life choices and employment prospects. There has been a sharp rise in racism in public discourse and anti-Roma discourse appears to be becoming increasingly virulent and wide-spread.²³
- [45] However, the documentary evidence indicates that the resolve of the state has been unchanged and dedicated to the protection and enhancement of the lives of the Roma. Throughout 2009 the battle against the Magyar Garda (Hungarian Guard) continued. On December 15, 2009 the Supreme Court upheld an earlier appeals court decision dissolving the far-right paramilitary group. The Hungarian Guard was formed in 2007 following violent

anti-government demonstrations in 2006. It was formed to preserve the country's traditions and culture. The Hungarian Guard staged marches in various towns wearing uniforms depicting "Gypsy crime" as a threat to security. The court ruled that the Hungarian Guard curtailed the freedom and the rights of others and "triggered a risk of violence" during its rallies.²⁴ Prior to the Supreme Court ruling, the Guard continued to take in new members despite being banned. During one ceremony on private property, police arrived and initiated legal proceedings against 176 people for participating in a banned organization. In November before the Supreme Court decision, in Sajobabony, local Roma attempted to break up a Hungarian Guard assembly during a Jobbik party political rally. After a group of Roma assaulted one of the organizers, Jobbik and the Magyar Garda members proceeded to the Romani section of town. Several clashes and damage to vehicles resulted. Police responded by establishing several checkpoints leading into town.²⁵

- [46] Between June and August 2008, a series of physical attacks against Roma resulted in the killing of nine persons and injuries to many others. In response, the national police chief doubled the number of detectives in the special unit assigned to the case to 100. On August 21, 2008 police arrested four suspects and no additional attacks of this nature occurred after the arrests. When non-governmental groups criticized the investigation into the crimes, police ordered an internal disciplinary proceeding to identify the alleged mistakes, and these resulted in disciplinary measures against two police officers.²⁶ On August 9, 2010 the National Bureau of Investigation announced the completion of its investigation into the series of physical attacks against Roma in 2008 and 2009. As a result of the investigation, the Pest County Prosecutor charged four suspects with the murder of six persons, the serious injury of five others, and threats to the safety of an additional 55.²⁷ While the murder of some Roma is no doubt troubling, the actions of the state clearly show serious effort to bring forward adequate protection, with results.
- [47] From January 2008 until July 2010 there were a number of attacks committed against Roma which were reported by the European Roma Rights Centre.²⁸ Although the report is not exhaustive and does not address state response to the attacks, some of the incidents mention action taken by authorities. It is clear, police can and will take action in cases involving crimes against Roma.
- [48] On some occasions leaders in authority, including the Parliamentary Commissioner for Civil Rights, made some disparaging remarks with respect to the Roma. In each case there was investigation and consequences. There has been effort to bolster public relations efforts to garner support for tolerance such as efforts to encourage public personalities to speak out against racism.
- [49] To help Roma with any problems they may encounter, the Ministry of Justice and Law Enforcement operated the Roma Anti-discrimination Customer Service Network, a legal service network that provides free legal aid to Roma in cases where they encountered discrimination based on their ethnicity.²⁹ The expansion of the Roma Anti-Discrimination Customer Service Network means that in 2008 there were 30 lawyers at 47 municipalities in

the country and the coordination of the program in the Ministry is ensured by a desk officer for Roma affairs. Clients can obtain information on the customer service contact details of Network lawyers in 24 hours a day. There was a nation-wide campaign promoting the network and toll-free number. Since 2004 the Network has handled more than 7,200 cases.³⁰

- [50] There is also recourse to the Equal Treatment Authority. Since 2005 it has provided individuals with a direct avenue of redress for violations of the prohibition of discrimination in a variety of public- and private-law relationships. In the first year, there were nearly 500 complaints lodged and the number has risen steadily every since. There are also other remedies such as seeking compensation through the courts, or turning to one of the Parliamentary Commissioners where public authorities are concerned.³¹ There is also the Roma Police Officers' Association in Hungary and Roma are able to file a complaint to the association. The complaints mostly concern discrimination in employment, discriminatory treatment, and discrimination by law enforcement authorities or police officers.³²
- [51] If the claimants face discrimination, they have recourse to all these programs for assistance. Their rights are worth defending, but they need to take an active role in defending them as well.

Programs for Inclusion

- [52] There is evidence that the state does not condone and for the most part does not acquiesce to the racial and discriminatory behaviour by the authorities or the public. The state has undertaken serious and a substantial effort to ensure the future existence of the Roma, and other minorities, is protected. Documentary evidence indicates there are a number of programs developed to assist Roma to find work, to obtain education and with housing.
- [53] Hungary has laws to combat discrimination wherever it is faced by Roma. The 1993 law for the protection of minorities was reinforced in 2003 with the law on equal treatment and promoting equal opportunity. Then in January 2005 the Equal Treatment Authority was established to supervise proper implementation of law and is empowered to put a stop to contraventions and to impose fines and penalties under other legislation as applicable.³³
- [54] In 2006, a state secretary responsible for equal opportunities in the Ministry of Social Affairs and Labour was established to supervise the execution of the tasks of Roma integration. The Ministry established a Department for Roma Integration to coordinate governmental tasks. The Ministry pays attention to the enhancement of the labour market opportunities of the Roma population, operates a scholarship scheme for the young Roma, and cooperates with organizations for the protection of the rights and interests of Roma people. Further, in 2009 the Prime Minister's Office had a state secretary responsible for Roma affairs, and the ministries of education, culture and economy had ministerial commissioners to coordinate the tasks which served the promotion of the social integration of the Roma and the improvement of their living conditions.³⁴

[55] In April 2007 the state adopted the Strategic Plan of the Decade of Roma Inclusion Programme. The overall objectives of the program are in four priority areas including education, employment, housing and health care with regard to the enforcement of equal treatment, and also in the fields of culture, media and sports.³⁵ Most ministries and county labour affairs centers had special officers for Romani affairs focused on the needs of the Romani community. The Ministry of Education and Culture continued to offer financial incentives to encourage schools to integrate Romani and non-Romani children in the same classrooms and to reintegrate Roma inappropriately placed in remedial programs. The Ministry of Social Affairs and Labor operated a program to finance infrastructure development in Romani communities. The Ministry of Public Administration and Justice (formerly the Ministry of Justice and Law Enforcement) operated an antidiscrimination legal service network that provided free legal aid to Roma in cases where they encountered ethnic discrimination.³⁶ Roma, like the other 12 official minorities, are entitled to elect their own minority self-governments (MSGs), which organize minority activities and handle cultural and educational affairs. The president of each MSG also has the right to attend and speak at local government assemblies.³⁷

Employment

[56] Serious under-employment of the Roma is recognized as a serious problem that has serious social implications. To address this, the state has implemented a number of programs. Since 2003, billions of forints have been dedicated to employment and opportunity programs to promote employment and training to unemployed Roma. In 2006 the Regional Training Centre in Pécs carried out a complex program in employment with assistance from the National Council for Adult Education to improve the chances of the Roma. Since 2003 there have been 55 complex programs under the auspices of the labour centres to help those in long-term unemployment situations, including the Roma; programs continued in 2008. The government runs a number of programs to improve the employment prospects of Roma that assist Roma in finding employment, offer training sessions to help them develop marketable skills, provide financial incentives to employers who hire minorities, and provide Roma desk officers in every labour exchange centre and employment office. Employers are fined for acting in contravention to the principle of equal treatment which disqualifies them from state aid for two years. For example, in 2008 a company was fined for refusing to hire Roma as cleaners on account of their ethnicity.³⁸ Under these kinds of programs, tens of thousands of Roma have found employment.³⁹

[57] There has been criticism that many of these initiatives have been taken, often with a twin aim of assisting in finding employment and in developing new skills, but these measures are often short-term and can only help a small number of Roma at a time.⁴⁰ Even if this were the case, it cannot be denied that the state has been making serious efforts and there has been some progress.

Education

- [58] Segregation of Roma students was and continues to be a serious problem as it continues to lower education standards and rates for the Roma and, thus contributes to under-employment and poverty. However, wide-ranging programs address segregation through facilitating access to kindergarten, introducing stricter requirements how local authorities draw the boundaries between catchment areas or may organize the composition of classes within schools, and the drawing up of new cognitive tests designed to take better account of cultural differences and socioeconomic disadvantage in testing children's development.⁴¹ However, the efforts of the central authorities are frequently hampered by the manner in which local authorities interpret the measures and translate them into practice. Flaws in the assessment system allow for further segregation and parents of Roma and non-Roma contribute by willfully moving their children to preferred schools.
- [59] Although progress is much slower than anyone would hope for, there are positive signs. According to the European Roma Rights Centre (ERRC), desegregation efforts by the national government in Hungary have been amongst the strongest in the Central European region including efforts to subsidize schools that integrate Roma and non-Roma in the same classroom or reintegrate Roma inappropriately placed in remedial programs, getting schools to accept disadvantaged children in order to prevent non-Romani parents from withdrawing their children from certain schools and a scholarship program for young Roma which in 2007-2008 there were 11,352 recipients.⁴² Also, on 19 November 2008 the Supreme Court upheld a provision of the ruling of first instance in a school segregation lawsuit against primary schools in Hajdúhadháza, according to which two primary schools of the municipality violated the law in an act of illegal segregation and the Ministry of Education and Culture issued a statement agreeing with the judgment.⁴³ In August 2010, the Supreme Court issued compensation for segregated children recognizing the value of education and cost of segregation.⁴⁴ This indicates the justice system, at the highest levels, are sending a message that this type of discrimination cannot continue without costs.

Housing

- [60] Roma are concentrated in economically disadvantaged areas in rural communities or urban slums. Access to public housing is often contingent upon financial resources which many Roma do not have and the Roma are generally not aware of their rights or judicial recourse available to them.⁴⁵ The authorities have stated their aim is to reduce segregation in housing by eliminating Roma ghettos. A program was introduced to refurbish social housing and encourage Roma living in segregated settlements outside towns and villages to move into the refurbished social housing inside the town or village. Further, to ensure that the principle of desegregation is taken into account in the award of state or European Union funding for various projects, the authorities are introducing an equal opportunities subsidy policy. To receive funding for urban development projects, whether or not these are directly related to desegregation efforts, a town will be required to submit a desegregation plan

aimed at the elimination of segregated living in the town.⁴⁶ There are, however, reports of occasional resistance from local authorities and individuals when a Roma family has sought to move into a new neighbourhood sometimes causing damage. Societal attitudes are not easy or quick to change, but the work of the authorities is ongoing and persistent. Although progress is slow, the serious efforts of the state and progress achieved so far must be acknowledged.

- [61] In 2007, the United Nations reported that the Hungarian government was financing housing renovations in nine Romani localities, "dramatically improving living conditions for some families".⁴⁷ The Ministry of Social Affairs and Labour earmarked a total of HUF 2.875 billion for the implementation of the 'Housing and Social Integration Programme for Residents of Roma Colonies' in 30 municipalities of the country. 11 municipalities were awarded support under the call for applications announced at the end of 2007 for the third time.⁴⁸ NGO Roma Civil Rights Foundation (RCRF) accused some municipalities of using a variety of methods to prevent Roma from moving to more desirable neighbourhoods such as auctioning off social housing units to the highest bidder, or evicting Roma from housing under renovation and providing inadequate compensation. On the other hand, authorities will take action against such maneuvers. For example, in 2009, the Budapest Court fined the 2nd district of Budapest about 400 Euros per capita for having evicted 40 Roma, half of whom were children, from housing that they were occupying without entitlement.⁴⁹
- [62] There is of course criticism that the efforts are meaningless and that racism prevails. The Supreme Court decision in Hungary which said radio stations erred by not allowing an advertisement referring to "gypsy crime" to be made in an election might show that racist attitudes pervade even the highest levels in the judiciary.⁵⁰ However, the Jobbik Party, often cited as having racist attitudes and policies, wanted to use the phrase "Gypsy criminals" referring to how the Roma are free to do what they want while the rest of Hungarians are fearful of them. The National Election Committee ruled that the radio stations breached election fairness by not allowing the advertisements. The court's decision has to be understood for what it was. The court simply upheld the right of a party to have equal time for campaigning and that the broadcasters are not responsible for the content. This court case highlights the difficult decisions that are faced between competing values. It is understandable that in a former communist country where expression was seriously repressed, there would be a heightened sense to the protection of the political exchange.
- [63] Several sources already cited that indicate the efforts are only theoretical but with little real effect. However, the same documentation indicates that progress is slow. The fact that progress is slow is indication that while not as dramatic or rapid as anyone would wish for, there is progress. Further, although there are many instances of the failure of the state to provide protection to the Roma, there are also instances where the state has responded to provide protection. This combined with the serious efforts to affect the lives of Roma in Hungary, lead me to conclude that the evidence is not clear or convincing that state would not be reasonably forthcoming with adequate protection.

- [64] The claimants experienced mistreatment in various aspects of their lives. All of the above shows that there is recourse for Roma who face mistreatment in Hungary. It is reasonable for the claimants to expect the state would be reasonably forthcoming with serious efforts at protection. Unfortunately, as noted by the Council of Europe's European Commission against Racism and Intolerance (ECRI), it is a failure of the local authorities in implementing centrally enacted legislation that is at the heart of much of the mistreatment experienced by Roma in daily life.⁵¹ However, others note that Hungary has one of the most advanced systems for minority protection in the region. Despite these efforts funding routinely fails to reach groups with the greatest needs.⁵²
- [65] On the other hand, Hungary is a democracy. Freedom House notes in its 2009 report that democratic institutions are robust and likely to hold despite reckless party politics, illiberal rhetoric, high-profile corruption, and radicalization on the political right aimed at the minority Roma population.⁵³ The burden is on the claimants to provide clear and convincing evidence that the state protection available would not be adequate. Evidence shows that state's efforts are serious, that progress is slow but that there are positive signs and results. The claimant has not satisfactorily rebutted the presumption of state protection.
- [66] Therefore, I find the claimants are not Convention refugees and their claims under section 96 of the IRPA fail. The rest of the analysis of this decision will be under section 97 of the IRPA.

Section 97 - Persons in Need of Protection

- [67] The determinative issue in this section 97 analysis is also whether the claimants have rebutted the presumption of state protection. There was no residual information that was not considered in the assessment above upon which a claim under section 97 could be assessed separately or differently.
- [68] There was no persuasive evidence that the claimants would be in danger of torture.
- [69] Therefore, I find the claimants are not persons in need of protection and their claims under section 97 of the IRPA fail.

CONCLUSION

- [70] There is not a serious possibility of persecution and the claimants do not have a well-founded fear, they would not be subjected personally, on a balance of probabilities, to a risk to life, a risk of cruel and unusual treatment or punishment, or a danger of torture, should they return to Hungary. Accordingly, the claimants are neither a Convention refugees nor a persons in need of protection.
- [71] Their claims are rejected.

(signed)

"Berto Volpentesta"

Berto Volpentesta

September 6, 2011

Date

REFUGEE PROTECTION DIVISION / ETHNICITY / ETHNIC ORIGIN / ECONOMIC, SOCIAL AND CULTURAL RIGHTS / PORT OF ENTRY NOTES / PERSONAL INFORMATION FORM / TRANSLATION / INTERPRETATION SERVICES / CREDIBILITY / INCONSISTENCY / STATE PROTECTION / MALE / SPOUSE / CHILDREN / NEGATIVE / HUNGARY

1 Immigration and Refugee Protection Act, S.C. 2001, c. 27.

2 Exhibit C-1, Personal Information Forms for all claimants received 01 JUN 2009.

3 Exhibit C-1(a), shared narrative received 17 JUN 2009.

4 Exhibits C-2, C-3, and C-4, amended narratives received 01 DEC 2010.

5 Exhibit C-6, Letter from XXXXXXXXXXXXXXXXXXXXXXXX Centre dated XXXXX 2011.

6 Exhibit R/A-2, copy of passports.

7 Exhibit C-7, European Roma Rights Centre, Attacks against the Roma in Hungary.

8 Exhibit R/A-2, IMM 5611 of XXXXXX dated 04 MAY 2011.

9 Exhibit C-8, letter to XXXXX mother from Hungarian Roma Organization dated 06 MAY 2011.

10 Exhibit R/A-2, IMM 5611 of XXX dated 04 MAY 2009.

11 Exhibit C-5, Outpatient Treatment Report of April 11, 2009 dated 22 NOV 2010.

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

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

14 Flores, Nubia Victoria Suarez v. M.C.I. (F.C., no. IMM-4613-07), Mosley, June 9, 2008, 2008 FC 723

15 Flores Carillo v. Canada (Minister of Citizenship and Immigration), [2008] 4 F.C.R. 636 (F.C.A.)

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

17 Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

18 Zalzali v. Canada (Minister of Employment and Immigration), [1991] 3 F.C. 605 (F.C.A.)

19 Zhuravljev v. Canada (Minister of Citizenship and Immigration), [2000] 4 F.C. 3 (T.D.)

20 Canada (Minister of Citizenship and Immigration) v. Kadenko (1996), 143 D.L.R. (4th) 532 (F.C.A.).

21 Exhibit C-8, Decision on suspension of investigation dated 25 JAN 2011.

22 Exhibit R/A-3, item 2.1, United States (US). 8 April 2011. Department of State. "Hungary." Country Reports on Human Rights Practices for 2010.

23 Exhibit R/A-1, item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). ECRI Report on Hungary (Fourth Monitoring Cycle).

24 Exhibit R/A-1, item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." Country Reports on Human Rights Practices for 2009.

25 Exhibit R/A-1, item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." Country Reports on Human Rights Practices for 2009.

26 Exhibit R/A-1, item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." Country Reports on Human Rights Practices for 2009.

27 R/A-3, item 2.1,

28 Exhibit R/A-1, item 13.5, also disclosed as C-7.

29 Exhibit R/A-1, item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." Country Reports on Human Rights Practices for 2009.

30 Exhibit R/A-1, item 13.2, Hungary. 4 June 2009. Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.

31 Exhibit R/A-1, item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). ECRI Report on Hungary (Fourth Monitoring Cycle); and item 13.10, Response to Information Request HUN103232.E. 15 October 2009.

32 Exhibit R/A-1, item 10.1, Response to Information Request HUN103091.E. 21 April 2009.

33 Exhibit R/A-1, item 13.2, Hungary. 4 June 2009. Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.

34 Exhibit R/A-1, item 13.2, Hungary. 4 June 2009. Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.

35 Exhibit R/A-1, item 13.2, Hungary. 4 June 2009. Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.

36 R/A-3, item 2.1

37 Exhibit R/A-3, item 2.1, item 2.1,

38 Exhibit R/A-1, item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.

- 39 Exhibit R/A-1, item 13.2, Hungary. 4 June 2009. Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.
- 40 Exhibit R/A-1, item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). ECRI Report on Hungary (Fourth Monitoring Cycle).
- 41 Exhibit R/A-1, item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). ECRI Report on Hungary (Fourth Monitoring Cycle).
- 42 Exhibit R/A-1, item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.
- 43 Exhibit R/A-1, item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.
- 44 Exhibit R/A-1, item 13.1, The Guardian [United Kingdom]. 1 August 2010. Balazs Sahin-Toth and Rachel Nicholson. "Roma: Hope in Hungary."
- 45 Exhibit R/A-1, item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.
- 46 Exhibit R/A-1, item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). ECRI Report on Hungary (Fourth Monitoring Cycle).
- 47 Exhibit R/A-1, item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.
- 48 Exhibit R/A-1, item 13.2, Hungary. 4 June 2009. Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.
- 49 Exhibit R/A-1, item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.
- 50 Exhibit R/A-3, item 2.1
- 51 Exhibit R/A-1, item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.
- 52 Exhibit R/A-1, item 13.10, Response to Information Request HUN103232.E. 15 October 2009.
- 53 Exhibit R/A-1, item 2.2, Freedom House. 2010. Balázs Áron Kovács and Bálint Molnár. "Hungary." Nations in Transit 2010, pp. 231-248.

RPD.15.7 (February 12, 2009)

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