



RPD File No. / N° de dossier de la SPR : TB2-09948

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et Décision

<b>Claimant(s)</b>	XXXX XXXX XXXX	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of Hearing</b>	December 15, 2017	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, Ontario	<b>Lieu de l'audience</b>
<b>Date of Decision and reasons</b>	January 17, 2018	<b>Date de la décision et des motifs</b>
<b>Panel</b>	R. ROSSI	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Aleksandar Jeremic Barrister and Solicitor	<b>Conseil(s) du (de la/des) demandeur(e)(s) d'asile</b>
<b>Designated Representative(s)</b>	XXXX XXXX XXXX XXXX XXXX	<b>Représentant(e)(s) désigné(e)(s)</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du (de la) ministre</b>

2018 CanLII 97038 (CA IRB)

## REASONS FOR DECISION

[1] This is the decision in the claim of **XXXX XXXX XXXX** (the minor claimant) – a national of Poland who is claiming refugee protection pursuant to section 96 and 97(1) of the *Immigration and Refugee Protection Act*<sup>1</sup> (the *Act*).

[2] The *Act* requires the designation of a representative for all claimants less than 18 years of age.<sup>2</sup> For the purposes of the claimant's claim for refugee protection, in accordance with subsection 167(2) of the *Act*, and by virtue of the claimant being under the age of 18 and therefore not being an adult, the panel appointed **XXXX XXXX XXXX XXXX XXXX** to be the Designated Representative for the minor claimant. The panel was also persuaded that, given the minor claimant's situation as being a person under 18 years of age with his own refugee claim, *Chairperson Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues* should be applied in this case.<sup>3</sup> In this regard, the panel took care to ensure the minor claimant's best interest was its primary consideration and that interest was kept at the fore of these proceedings; and that in eliciting evidence by both the panel and the minor claimant's counsel, questioning was sensitive and appropriate to his circumstances.

## DETERMINATION

[3] The panel finds that the minor claimant is not a Convention refugee as he does not have a well-founded fear of persecution for a Convention ground in Poland. Further, the panel finds that he is not a person in need of protection as his removal to Poland would not subject him personally to a risk to life, to a risk of cruel and unusual treatment or punishment or to a danger of torture.

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<sup>1</sup> *The Immigration and Refugee Protection Act*, S.C. 2001, c.27, as amended.

<sup>2</sup> *Supra* 1.

<sup>3</sup> Guideline 3: *Child Refugee Claimants: Procedural and Evidentiary Issues*, Guideline Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, September 10, 1996 as continued in effect by the Chairperson on June 28, 2002 in section 159(1)(h) of the *Immigration and Refugee Protection Act*.

## IDENTITY

The panel finds the minor claimant has established his identity as a national of Poland based on photocopies of his national identity documents contained in the Minister's information<sup>4</sup> on the Board's file. The panel also accepts his testimony that he is Roma by ethnicity.

## ALLEGATIONS

[4] The minor claimant's experiences are set out in the narrative portion of his Personal Information Form (PIF)<sup>5</sup> and in the amended narrative<sup>6</sup> received by the Board on 6 December 2017. Summarily, the minor claimant comes from XXXX XXXX, a city in southern Poland just west of XXXX. As a 12-year-old boy, the minor claimant was brought to Canada in 2012 by his mother, XXXX XXXX. His minor aged sister, XXXX XXXX, traveled with them. His father, XXXX XXXX (common-law partner of his mother since May 1996) traveled ahead of the family and he met them at the airport upon their arrival in Toronto. Proof of the father's 'termination' of his refugee claim is on the Board's file.<sup>7</sup> The family based their claims on that of the father who alleged mistreatment on the basis of his Roma ethnicity.

[5] While in Canada, the family unit began to unravel. The minor claimant's father returned to Poland in either 2014 or 2015. The minor claimant's sister subsequently married a Canadian citizen and moved into a home with her spouse. She is now a permanent resident in Canada. At the beginning of 2016, the minor claimant left his mother and began a relationship with a young woman named XXXX XXXX who is now the minor claimant's wife. The couple are married and they live at the home of the woman's parents. The minor claimant's daughter was born in May 2016. At this hearing, the panel learned that the minor claimant and his wife are expecting their second child.

[6] The minor claimant told the panel that he lost touch with his mother after he moved out. He subsequently learned through a phone call that, like his father, his mother has also returned to Poland. Their whereabouts are unknown today. Despite having a Designated Representative, the

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<sup>4</sup> Exhibit 1, Package of Information from the referring CBSA/CIC.

<sup>5</sup> Exhibit 2, Personal Identification Form (PIF).

<sup>6</sup> Exhibit 7, New Counsel's Package: PIF Update, Received December 6<sup>th</sup>.

<sup>7</sup> Exhibit 1, Minister's Information Package, file TB2-08839 "Terminated".

minor claimant decided to proceed with his refugee claim and he wrote that he found a lawyer on his own and he began to work on his own claim for refugee protection.

[7] The minor claimant has added other information by means of his narrative, which recounts details of being discriminated against by other schoolchildren. He remembers that his father was assaulted in November 2010. He remembers his mother crying, which he attributes to the effect of being mistreated by ethnic Poles. He recalls seeing the family car vandalized and his young sister being harassed in 2012 by other girls in the neighbourhood. The minor claimant fears returning to Poland because he is Roma. The claimant says he will be recognized as Roma by his skin colour; his accent when he speaks Polish; and since he is darker than fair-skinned Poles who wear clothing that covers their legs and arms. He also alleged that he will be identifiable by the clothes he wears.

[8] The minor claimant also wrote that when he was a small child, other Polish children attacked him as he walked to school. He said the beatings took place ‘all the time’ when he was walking to school but he did not tell his parents because he did not want them to complain to the school in case the other children would continue to beat him. The minor claimant fears being attacked for being a Roma if he returns to Poland.

## ISSUE

[9] The determinative issue in this case is state protection.

## ANALYSIS

[10] In consideration of this claim, the panel has assessed all the information, including the counsel’s submissions. To summarize the counsel’s submission: all Roma in Poland face discrimination in all aspects of their lives; the overall situation is worse in that country for Roma; he will not be able to obtain protection from the police by virtue of his ethnicity; and he will have no family or social community to rely on to help him to reintegrate into society. Conversely, the panel prefers a court-approved approach to these cases by finding that each case must be decided on a case-by-case review and in consideration of the facts presented. The information in each

claim is dependent upon the personal circumstances of the claimant. Based on the information before it in this case, the panel finds that not every Roma person in Poland experiences what amounts to persecution. In adopting such an approach, the panel finds persuasive the opinion of Justice Harrington as stated in *Varga v Canada (Minister of Citizenship and Immigration)*, 2014 FC 510 [*Varga*] at paragraph 20:

Each case turns on the particular history of the claimant, the record, the adequacy of the analysis by the Tribunal and, indeed, the appreciation of that evidence by various judges of this Court: *Banya v Canada (Minister of Citizenship and Immigration)*, 2011 FC 313, [2011] FCJ No 393 (QL), at para 4.<sup>8</sup>

[11] The panel notes that there is evidence before it, both in the National Documentation Packages on file and in the counsel's documents, that Roma in Poland face discrimination, high levels of unemployment and some do experience violence from anti-Roma and racist factions of the population.<sup>9</sup> The issues before the panel is whether adequate state protection is, and would be, available to the minor claimant in Poland. The panel is guided by a number of cases from the Supreme Court of Canada, the Federal Court and the Federal Court of Appeal when assessing state protection. In this regard, the courts have established a number of principles relating to state protection and the panel has applied those principles to these claims.

[12] The courts have found that states *are presumed* to be capable of protecting their citizens, except in the case of a state that is in complete breakdown.<sup>10</sup> The panel finds the starting place then is the notion that states are capable of protecting their citizens. This presumption underscores the principle that international protection comes into play only when a refugee claimant has no other recourse available. In order to rebut the presumption of adequate state protection, there must be *clear and convincing* evidence of the state's inability to protect its citizens.<sup>11</sup> The evidence that state protection is inadequate must not only be reliable and probative; it must also satisfy the Board, on a balance of probabilities, that state protection is inadequate.<sup>12</sup> The test is not if there is

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<sup>8</sup> *Varga, Mario Gyula v. M.C.I.* (F.C., no. IMM-1823-13), Harrington, May 27, 2014; 2014 FC 510.

<sup>9</sup> Exhibit 3, National Documentation Package (NDP) for Poland (31 March 2017), Item 2.1; Item 13.1; Exhibit 5, Previous Counsel's Country Conditions.

<sup>10</sup> *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1, 20 Imm. L.R. (2d) 85.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Flores Carrillo, Maria Del Rosario v. M.C.I.* (F.C., no. IMM-822-06), O'Reilly, March 26, 2007, 2007 FC 320.

**Reported:** *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 1 F.C.R. 3 (F.C.); *Flores Carrillo, Maria Del Rosario v. M.C.I.* (F.C.A., no. A-225-07), Létourneau, Nadon, Sharlow, March 12, 2008, 2008 FCA 94. **Reported:** *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 4 F.C.R. 636 (F.C.A.).

a mere possibility that the states will not offer protection, but the higher test on a balance of probabilities. The protection need not be perfect either,<sup>13</sup> and the burden of proof that rests on a claimant increases with the level of democracy of the state in question. The more democratic the state, the more the claimant must have done to exhaust all courses of action open to them to demonstrate state protection was or would not be forthcoming.<sup>14</sup> It is also insufficient to tell the panel that a person went to the police but the police did nothing; rather, the person must provide information as to what steps the person took to obtain protection.

[13] In the case at hand, and by virtue of his young age, the minor claimant was, for all intents and purposes, incapable of taking steps in Poland that the panel might reasonably characterize as persuasive evidence of his attempt to seek state protection. At the age of 12 and younger, other than attesting to remembrances surrounding vandalism of the family car, his mother crying and his sister being taunted by other children, the minor claimant's total personal experiences at school amount to being bullied at times by other young children at school and a fear on one occasion when his pants were pulled down at school that he might be raped. His evidence was that he did not tell his parents or his teachers about the bullying. As a young boy, the minor claimant never sought protection from the mistreatment of other young children while at school. By age 12, the minor claimant had left Poland with his family.

[14] Accordingly, the panel has considered this evidence in the context of both the forward-looking approach and what the documentary evidence on file says about the adequacy of state protection in Poland should the minor claimant seek protection upon his return to Poland.<sup>15</sup> The panel finds nothing in these documents to indicate that Poland is in a state of breakdown or not in control of its borders. Rather, it is a functioning European democratic state with European and other international obligations as discussed below. Having considered the totality of the documentary evidence then, the panel finds that Poland is a functioning democracy. The panel bases this on the following account in respect to Poland's governing structure and election results:

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<sup>13</sup> *Villafranca: M.E.I. v. Villafranca, Ignacio* (F.C.A., no. A-69-90), Marceau, Hugessen, Décary, December 18, 1992. **Reported:** *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130(F.C.A.).

<sup>14</sup> *Canada (Minister of Citizenship and Immigration) v. Kadenko, Ninal* (F.C.A., no. A-388-95), Hugessen, Décary, Chevalier, October 15, 1996. **Reported:** *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

<sup>15</sup> Exhibit 5, Country Conditions.

The bicameral parliament consists of an upper house, the senate (Senat), and a lower house (Sejm). The president, the prime minister, and the Council of Ministers share executive power. Observers considered the May 2015 presidential elections and the October 2015 parliamentary elections free and fair.<sup>16</sup>

[15] The panel also finds that Poland has both a functioning security apparatus and judicial processes; and the security forces report to civilian authorities. While there were concerns related to some police services in Poland, the evidence suggests that “civilian authorities maintained effective control over the security forces”<sup>17</sup> and the government had in place effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the security forces during the year.<sup>18</sup> The panel finds that neither in the Board’s own documents, nor the documents submitted by the minor claimant’s counsel, that there is any evidence to suggest that Poland is in a state of complete breakdown. As an established democratic state, the panel notes in the evidence that Poland has a high aggregated score according to Freedom in the World for 2016, scoring a 93, with 0 being the least free and 100 being the most.<sup>19</sup> Freedom in the World for 2017 still scored Poland 89 out of 100 and identifies Poland as a “Free” country in its Freedom Status ranking.<sup>20</sup>

[16] The panel recognizes that discrimination against ethnic minorities and foreigners exists in Poland, which include “a number of xenophobic and racist incidents.”<sup>21</sup> Societal discrimination against Roma continued to be a problem. Freedom House reports that “Ethnic minorities generally enjoy generous legal rights and protections. Some groups, particularly the Roma, experience employment and housing discrimination, racially motivated insults, and occasional physical attacks.”<sup>22</sup> The panel read that “Societal discrimination against Roma continued to be a problem.”<sup>23</sup> However, discrimination is not solely directed at the Roma population and the panel noted reports indicating that there were scattered incidents of “racially motivated violence, including verbal and physical abuse, directed persons of African, Asian, or Arab descent”<sup>24</sup> and

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<sup>16</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 2.1, at p. 1.

<sup>17</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 2.1, Executive Summary, para. 2.

<sup>18</sup> Ibid, Section 1 (d), para. 4.

<sup>19</sup> Ibid, Item, 2.3.

<sup>20</sup> Ibid., Item, 2.3

<sup>21</sup> Ibid, Item 2.1, Section 6, National/Racial/Ethnic Minorities, para. 1.

<sup>22</sup> Ibid, Item 2.3, Civil Liberties, Section F, para. 3.

<sup>23</sup> Ibid, Item 2.1, Section 6, National/Racial/Ethnic Minorities, para. 5.

<sup>24</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 2.1, Section 6, National/Racial/Ethnic Minorities, para. 13.

that there were reports that some local officials discriminated against Roma by denying them access to adequate social services. “Romani leaders complained of widespread discrimination in employment, housing, banking, the justice system, the media, and education.”<sup>25</sup> While at the national level, approximately 80 percent of Roma were unemployed, levels of unemployment in some regions reached nearly 100 percent.<sup>26</sup> Based on last year’s reporting as cited above, the panel does find that Roma living in Poland can and do face discrimination. However, the information in the documentary evidence also shows that the Government of Poland is making serious efforts in policy, as well as at the operational level, to combat violence and discrimination against the Roma population.

[17] In this regard, the panel considered the minor claimant’s experience in the context of information on the police in Poland. As stated previously, the panel notes that the minor claimant has never had any experience dealing with the police in Poland yet he bases his concerns that the police might not help him from what he has watched on television while living in Canada. This information, garnered from unnamed television reportage, is not considered persuasive evidence of Poland’s inability to protect its citizens or that the police will be unable to protect the minor claimant should he ever have occasion to seek their assistance.

[18] By extension, the panel notes that minor claimant’s failure to seek assistance, let alone have need to seek such assistance as a young boy in Poland, does not mean that the police, let alone higher authorities at other levels in Poland, would not assist him if he sought their help. The evidence that state protection is inadequate, must not only be reliable and probative – it must also satisfy the Board, on a balance of probabilities that state protection is inadequate.<sup>27</sup> When the state in question is democratic, a claimant like the minor claimant must do more than simply show that his or her efforts were unsuccessful.<sup>28</sup> As this is the case here, the minor claimant has offered no persuasive evidence that state protection in Poland is inadequate. The minor claimant has never

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<sup>25</sup> Ibid, Section 6, National/Racial/Ethnic Minorities, para. 9.

<sup>26</sup> Ibid, Section 6, National/Racial/Ethnic Minorities, para. 12.

<sup>27</sup> *Flores Carrillo, Maria Del Rosario v. M.C.I.* (F.C., no. IMM-822-06), O’Reilly, March 26, 2007, 2007 FC 320. **Reported:** *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 1 F.C.R. 3 (F.C.); *Flores Carrillo, Maria Del Rosario v. M.C.I.* (F.C.A., no. A-225-07), Létourneau, Nadon, Sharlow, March 12, 2008, 2008 FCA 94. **Reported:** *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 4 F.C.R. 636 (F.C.A.).

<sup>28</sup> *Canada (Minister of Citizenship and Immigration) v. Kadenko, Ninal* (F.C.A., no. A-388-95), Hugessen, Décary, Chevalier, October 15, 1996. **Reported:** *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).



had occasion to seek assistance from the state and he has no direct experience with the state apparatus in Poland. By the time the minor claimant returns to Poland, however, he will be 18 years of age and an adult citizen of Poland. The panel finds no evidence before it that the minor claimant will be denied protection in Poland should he seek it, if he ever does need to seek it. By extension, the minor claimant told his counsel with an emphatically affirmative response that if he experienced problems in Poland, he would go to the police notwithstanding his opinion that they might not help him. On this latter opinion, it is speculative of the minor claimant at best given that he experienced no firsthand problems of discrimination in Poland other than as a small child when other Polish children hit him and generally mistreated him. There is no evidentiary basis for the minor claimant to opine that in his particular circumstances, protection would not be forthcoming for him should he seek it. The panel does not consider mistreatment by other children to be persecutory treatment and further the minor claimant never reported these incidents either to his parents or school teachers as a persuasive basis for a fear that the minor claimant will not receive assistance from the police in 2018. As stated, his reliance on what he has seen on television in Canada in respect of the treatment of asylum seekers in Poland, and how the police treat them, cannot necessarily be extended to how he might be treated if he ever sought assistance as a Roma in Poland. Further, the panel's review of all the documents does not support his position that the police are unwilling to aid the Roma.

[19] The panel finds that there is recourse available to the minor claimant should he require such assistance in the future. The panel notes there have been positive actions taken by the authorities to address acts of violence that have targeted Roma; and that the police are making arrests in cases of assaults and attacks on the Roma population.<sup>29</sup> The panel finds that the minor claimant is able to receive protection from the police should he require it in Poland. The panel finds that even here, the government is taking concrete action with the Public Prosecutor, actively pursuing those who instigate violence, those that perpetrate crimes, as well as the police and security guards that fail to protect or act.

[20] Based also on its reading of the report of the European Commission on Racism and Intolerance (ECRI), the panel also notes that the situation between the police and the Roma community has improved:

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<sup>29</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 2.1.

1. Data registered by the Human Rights Protection Team of the Ministry of the Interior does not confirm the existence of cases of racial profiling of Roma community members by the Police. Likewise, the analysis of information coming from the monitoring of hate incidents directed against members of the Roma community shows that the Police react to all reports concerning such incidents coming from the Roma community. There is also no information to corroborate the charges of improper or discriminating attitudes or treatment of Roma people on the part of Police officers or other authorities. For instance, relations between the Police and Roma communities have been characterised by cooperation and dialogue in recent years. No such concrete cases of either racial profiling or discriminatory treatment by the law enforcement officials were ever brought to the attention of the Polish authorities by ECRI and thus they are not in a position to check these allegations. In any case, the policy of the Polish authorities is to oppose and combat any forms of discrimination on the part of public officials.<sup>30</sup>

[21] Furthermore, the panel reviewed the Council of Europe's 'Contribution for the 27<sup>th</sup> UPR session (April-May 2017) regarding Poland<sup>31</sup> and noted that "The authorities of Poland have informed ECRI that the Act on the Implementation of certain provisions of the European Union on Equal Treatments (Anti-Discrimination Act) was enacted and entered into force on 1 January 2011."<sup>32</sup> The ECRI also noted progress made by the Government in a number of areas as follows:

ECRI's fifth monitoring cycle report on Poland was adopted on 20 March 2015 and published on 9 June 2015. It is noted that since the last report on Poland, progress has been made in a number of areas.

An "Act on the implementation of certain provisions of the European Union on equal treatment" was adopted which intrusts the Human Rights Defender with responsibility for protecting the principle of equal treatment. In 2012, the Defender obtained confirmation of the 1999 accreditation, meaning that it complies fully with the Paris Principles.

The Prosecutor General issued various guidelines for prosecutors namely on the treatment of hate speech (including online hate speech) and hate crimes. Prosecutor's offices were designated in each region and, in each of these offices, two prosecutors were appointed to conduct proceedings relating to cases of hate crime and improve practices in preliminary investigations. Measures were taken against two prosecutors who had failed in their duties regarding the fight against racist crime.

Poland started the process of formulating a new integration policy which will apply to all foreigners and will aim to make them socially and economically self-sufficient. The implementation of the governmental programme for the Roma community has brought about an increase in the number of young Roma who complete secondary education. In

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<sup>30</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 2.16, at p. 54, para 1.

<sup>31</sup> Ibid, Item 2.13.

<sup>32</sup> Ibid, page 5, para. 2.

addition, a National Action Plan for Equal Treatment 2013-2016 has been adopted and numerous awareness-raising and training activities in connection with racist crimes, intolerance and discrimination have been carried out by the authorities.<sup>33</sup>

[22] The panel finds persuasive the findings on the situation for Roma in the national report annexed to the Human Rights Council resolution 16/21: Poland of the United Nations Human Rights Council<sup>34</sup>:

#### F. Rights of national minorities and migrants

##### Integration of Roma community and combatting discrimination against Roma

The key part of assistance for the Roma community is the Programme of integration of the Roma community in Poland for 2014–2020 (in continuation of the initiatives in 2004–2013). Funding is mainly provided from the State budget at PLN 10 million per annum.

The Programme's goal is to improve integration of the Roma community in civic society by providing support in four areas: education and cultural education (improved participation in education of pupils and students of Roma origin, measures improving awareness about the Roma community); housing; promotion of employment; and healthcare (recommendation 115).

Education is a priority as it may have a systemic impact improving education and job opportunities of the Roma. The Polish educational system gives Roma children and youth full access to pre-school education as well as education in public schools at all levels of education and in all types of schools.

If necessary, additional free-of-charge make-up classes of the Polish language (for Roma pupils) and other make-up classes are offered.

Educational regulations provide for the option of hiring Roma education assistants in schools (persons of Roma origin) to provide caretaking functions and serve as liaisons between schools and the parents of Roma pupils, as well as auxiliary teachers trained in teaching and education of bicultural and bilingual pupils.

A broad range of measures in support of the education of Roma pupils (e.g., provision of school kits, community day care, access to pre-school education, scholarships for pupils and students of Roma origin) are taken under multiannual government programmes (currently, Programme for 2014–2020).

The implementation of the recommendation to increase access to bilingual education faces difficulty. The law allows for education in the Roma language as a language of an ethnic minority; however, the Roma living in Poland are not interested in exercising this right. This derives from the cultural system which prohibits the Roma from teaching the language outside of the community.

<sup>33</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 2.13, page 6, para. 2-5.

<sup>34</sup> Ibid, Item 2.10 at p. 14, Section IV (F), para 92-98.

[23] From the report's section on "Promotion and protection of rights of minorities, including education, economic rights, employment (recommendations 114, 117):<sup>35</sup>

According to Article 70 of the Constitution, everyone has the right to education and the public authorities ensure universal and equal access to education. Public schools are a responsibility of local governments. As a rule, compulsory education starts at the beginning of the school year in the calendar year when the child turns seven. A child aged six is only required to undergo a one-year pre-school course.

According to Article 68 of the Constitution, everyone has the right to health protection and the public authorities ensure equal access to healthcare services financed with public funds.

Measures have been continued to protect, preserve and develop the cultural identity of minorities by providing special-purpose grants in the amount of PLN 11,197,000.00 in 2014, PLN 12,185,921.00 in 2015 (among other things, for the publication of magazines and books, organisation of festivals, concerts, etc.) and investments in the amount of PLN 1,898,000.00 in 2014, PLN 2,146,831.00 in 2015 (e.g., construction, repairs, purchase of equipment, etc.). Grants have also been provided in the amount of PLN 1,864,854.00 in 2014 and PLN 1,904,000.00 in 2015 to support the statutory activity of minority organisations; replacement of information boards has been financed as a result of adding names of towns and physiographical objects in minority languages (PLN 205,923.56 in 2014, PLN 177,754.66 in 2015).

The Government takes steps to prevent the closing by local governments of small (cost-intensive) schools with instruction in minority languages and schools which offer other forms of language learning, by providing financial mechanisms which reimburse the additional cost of such schools to the entities responsible. The mechanism was extended in 2013 by contributing additional funding for schools with instruction in minority languages. Additional budgets provided to entities responsible for schools which offer language learning or instruction in minority languages are rising year by year despite a demographic downturn. The number of such schools in Poland has also risen.

[24] The panel is highly persuaded by this evidence of an effective, measurable and responsive plan for Roma integration into Polish society at large. The panel finds that the claimant's reintegration into Polish society will be possible and facilitated by the Government of Poland's established efforts as noted by the United Nations following its observations during its monitoring trips to Poland.

[25] The reference to the earlier UN report contains a section on Quality and non-discrimination notes:<sup>36</sup>

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<sup>35</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 2.10, at p. 14, Section IV (F), para 99-102.

Government Plenipotentiary for Equal Treatment (recommendations 30 and 53)

The PET has the responsibilities defined in the Act of 3 December 2010 implementing certain EU legislation on equal treatment.

The National Action Programme for Equal Treatment for 2013–2016 is the main instrument of the Government's equal treatment policy. It is the first horizontal strategy of the Government for equal treatment in all areas of social life. It is implemented by all ministries, the Chancellery, voivodship officers and selected central institutions in cooperation with local governments and NGOs. The Programme is coordinated by the PET. The Programme is under evaluation in the second half of 2016.

In 2014–2016, the PET implemented a range of projects devoted to different aspects of non-discrimination. The Plenipotentiary also takes action based on findings and reports of citizens, groups of citizens, and NGOs.

[26] One of the most persuasive sections of this report addresses the matter of hate crimes;<sup>37</sup>

Preventing racism, xenophobia and hate crimes, combatting racist crimes (recommendations 40, 45, 46, 47, 48, 49, 54, 55, 56, 57, 60, 62, 65)

The Ministry of the Interior and Administration (MIA) has a unit responsible for the monitoring of events which could constitute hate crimes. The monitoring aims to source information about the specificity of hate crimes in Poland and the activity of law enforcement services, in particular the police, in cases of hate crimes. In view of the need to ensure a more comprehensive sourcing of data on hate crimes, a new system was put in place in 2015 to compile hate crime data, which is now shared by the police and the MIA and covers all proceedings opened in cases of hate crimes. The new data registration tool supports the collection of detailed information about the specifics of events and the activity of the police.

The police understand the need to intensify the fight against online hate crimes. Some of the local police departments have established task forces responsible for the work or special investigative groups.

Measures have been taken to encourage hate crime victims and witnesses to report the crimes to the police. The project Migrants against Hate Crimes: How to Enforce Your Rights, co-financed by the European Union, was completed in 2015 and included among other things a social campaign addressed to foreigners entitled Racism. Say it to fight it.

Criminal law as well as a range of specific statutes safeguard the principle of non-discrimination.

According to Article 53 § 2 of the CC, when deciding on the penalty, the court must always take into account the motivation of the perpetrator, including racist motivation.

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<sup>36</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 2.10 at p. 14, Section IV (H), para 117-119.

<sup>37</sup> Ibid, para. 120-129.

Article 53 of the CC applies to all crimes defined in the Code, including among other things battery and slander. The foregoing provisions are general and do not specify or restrict the motivation which the court must take into account. This is particularly important in today's fast-changing reality where new social trends emerge, including discriminatory trends. This ensures that any such motivation will always be considered by the court and that it will not require time-consuming legislative amendments at each time.

The crime defined in Article 212 of the CC includes among other things libel against an individual or a group, attributed with behaviour or qualities which may denigrate them among the general public or expose them to a loss of trust required in a given position, profession or activity. Furthermore, libel in the mass media is a qualified form of the crime. Hence, if a person resorts to libel in order to denigrate a person or a community on grounds of ethnicity, nationality or race, this is penalised. In turn, insult, which is penalised under Article 216 of the CC, is an offence against human dignity understood as the individual's subjective sense of self-worth. In that case, the insulted person may claim protection under Article 216 of the CC. Furthermore, Article 217 of the CC provides protection against violation of bodily integrity.

The Polish CC penalises incitement or glorification of any crime. Furthermore, in view of the special importance of hate crimes, the Polish legislator has introduced special liability for incitement of hate crimes. Liability is stricter for public incitement or public glorification of extermination of a national, ethnic, racial, political, religious group or a group with a specific outlook, and incitement or glorification of violence or illegal threat against a group or an individual on grounds of national, ethnic, racial, political, religious identity or lack of religion.

Incitement of hate on grounds of national, ethnic or racial difference is also a crime, as are among other things dissemination, production, fixation, possession, presentation of print, recording or other object containing such content. The term "incitement of hate" under the CC is understood very broadly. According to the definition coined by the Supreme Court, incitement of hate includes any statement arousing strong resentment, anger, non-acceptance or hostility against an individual or a social or religious group. This provision also applies to statements which, due to their form, perpetuate a negative attitude, emphasising the privileged position and superiority of a nation, ethnic group, race or religion.

The Prosecutor Office regularly monitors cases of racial or xenophobic crimes, prepares reports on such cases, and distributes conclusions from such reports to all regional public prosecutor offices, including comments on irregularities identified in proceedings.

The letter of the General Public Prosecutor of 1 July 2013 orders every district public prosecutor's office to appoint one local public prosecutor's office responsible for proceedings involving racial and xenophobic crimes in the jurisdiction of the local public prosecutor's office (52 local public prosecutor's offices have been so appointed).

[27] In this context of state protection, there is also a section of the UN Report that discusses measures to train police on hate crimes and fighting discrimination. This information, referenced below, represents persuasive evidence of two things: the Government's tangible steps to combat such crimes and its ability to offer operationally adequate state protection should this minor claimant seek it. As excerpted<sup>38</sup>:

Training related to fighting discrimination and hate crimes (recommendation 50)

MIA coordinates the implementation of the Law Enforcement Officer Programme for fighting hate crimes (LEOP). The objective is to improve the skills of police officers in operations involving events which could constitute hate crimes, to train them in handling the victims of hate crimes, and to sensitise the officers to discrimination, including discrimination by police officers. Training of police officers has been delivered under the Programme since 2009. More than 86,000 police officers have participated in such training from the launch of the programme until the end of 2015.

The Programme was updated and extended in 2016 in line with the recent OSCE ODIHR guidance. The new version of the Programme entitled "Training Against Hate Crimes for Law Enforcement" has been approved for implementation as a special course in the police force. The first training rounds under the new programme took place at the turn of August to September 2016.

These measures also include workshops in fighting crimes of prejudice, implemented since 2015 by the Criminal Department of the Central Police Headquarters in cooperation with the MIA, addressed to officers of investigative units of the criminal police responsible for cases of hate crimes. The training programme focuses on specific complex issues of prosecuting hate crimes.

[28] The panel notes the evidence concerning crimes committed for racist reasons shows that in 2012, out of 473 proceedings conducted in the public prosecutor's offices in relation to crimes on racist grounds, 37 proceedings were related to crimes resulting from behaviour of fans and athletes at sporting events, whereas out of a total of 835 proceedings conducted in 2013, relating to crimes on racist grounds – 33 cases concerned crimes resulting from racist behaviour of fans and athletes.<sup>39</sup> In 2012, three cases resulted in indictments and four cases in 2013.<sup>40</sup>

[29] The panel also finds there is redress available to the minor claimant if he ever had occasion to suspect that a police officer, upon filing a report of a crime, was not purposefully investigating that crime.

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<sup>38</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 2.10 at p. 14, Section H, para. 130-132.

<sup>39</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 13.6, at p. 24, Point 87.

<sup>40</sup> Ibid.

In 11 April 2014 correspondence with the Research Directorate, a second lawyer in Warsaw, who also practices criminal law, similarly stated that police can refuse to investigate a case but the decision could be appealed to the district court (Lawyer 11 Apr. 2014). According to the representative of SIP, an individual submitting a complaint “is not given written grounds for the decision,” and the victim may challenge this decision in court (SIP 12 Apr. 2014). Moreover, the SIP representative said that,

[i]f the investigation had been opened but its results are negative, the police or the prosecutor close the investigation due to the lack of evidence or failure to detect an offender. [...] This decision may also be challenged in court by the victim. (ibid.)<sup>41</sup>

[30] In addition, the complainant or victim of a crime can submit a complaint against police officers directly with the chief of police. The following notice on the website of the national police outlines how complaints against police officers or suggestions can be filed with the chief police command:

By mail to the address:

KOMENDA GŁÓWNA POLICJI [KGP, Chief Police Command] ul. Puławska  
148/15002-514 Warszawa

In person – at the KGP Admission Office at ul. Puławska 148/150 daily between  
8:15 and 16:15

By fax – to the number: +48 22 60 135 71<sup>42</sup>

[31] The panel notes there is recourse available to victims of crime if the police refuse to investigate a complaint:

By means of ePUAP – web address [www.epuap.gov.pl](http://www.epuap.gov.pl). [Electronic Platform of Public Administration Services, “a coherent and systematic action program designed and developed to allow public institutions [to] make their electronic services available to the public” (Poland n.d.b)]

By e-mail – to [skargi.kgp@policja.gov.pl](mailto:skargi.kgp@policja.gov.pl) ...

Orally for the record – at the KGP Admission Office at ul. Puławska 148/150 02-514 Warsaw.

Daily between 9:00 and 15:00 (Monday 9:00 to 17:00) in the building of the Chief Police Command, address as above. The KGP Control Bureau officers, acting on behalf of the Chief Commander of Police, receive clients in cases of complaints

<sup>41</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 10.3, p. 2, Section 1.1, para 2.

<sup>42</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 10.3, Section 2.1, para. 1.



and suggestions regarding the activities of police and provide information by telephone (22) 60 – 122 72.<sup>43</sup>

# IMPORTANT!

Complaints / suggestions cannot be filed by telephone.

A complaint / suggestion must contain:

The complete name of the person making the complaint / suggestion,

The detailed address for correspondence,

A detailed description of the incident.<sup>44</sup>

[32] The evidence indicates that complaints on behalf of other persons can be filed only if those persons are aware and consenting. In the absence of consent, such a complaint will remain in complaint records with no answer sent to the applicant.<sup>45</sup>

According to § 8, point 1, of the Cabinet of Ministers' decree of 08 January 2002 *concerning the procedure of reception and examination of complaints and suggestions*, those complaints and suggestions that do not contain the full name and address of the person filing will be left unexamined. (ibid. n.d.a).<sup>46</sup>

[33] Based on the evidence as presented, the panel finds that the minor claimant is not prevented in any way from reporting or filing complaints against the police if necessary. While the panel noted his limited secondary level scholastic education, the minor claimant can seek aid if he requires it. Despite his counsel's submission that the minor claimant will be without a community support structure if he returns to Poland, there are multiple Roma organizations funded by the government and the EU to assist Roma. This includes organizations that can aid the minor claimant in completing forms or filing complaints<sup>47</sup> although the panel finds this minor claimant to have demonstrated at this hearing his substantive intelligence and substantial resourcefulness through researching and obtaining his own lawyer and in preparing his own refugee claim. The panel heard persuasive evidence that he is acting responsibly as a husband and parent, and while unemployed (at the date of the hearing) he has worked and he continues to pursue employment opportunities. There is no evidence that the minor claimant will not be able to

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 13.5.

work upon return to Poland. The panel finds the minor claimant will be able to function well in his home country. And, as the Designated Representative submitted on his behalf, the minor claimant might be a 17-and-a-half year old minor claimant but he functions as a father and parent and he has taken on all of those responsibilities in raising his family. He has worked in construction jobs and he is demonstrably accepting his station and circumstances associated with being a husband and father. As he soon approaches his eighteenth birthday, and if he were to return to Poland, he will be accorded all of the rights accorded to fellow Poles in his home country. There is no evidence before the panel to show the minor claimant would be denied basic rights or access to social services and programs, let alone a right to pursue higher education and employment. If those rights are impeded or if he faces issues associated with his ethnicity, the panel is persuaded by the documentary evidence as referenced that the state is able and willing to protect him.

[34] The panel also notes there is also an Ombudsman who can assist Roma and other citizens in their dealings with the police.<sup>48</sup> The panel finds the documentary evidence provides that the Human Rights Defender is the constitutional authority for legal control and protection.<sup>49</sup> In his activities, the Defender is integral and independent from other state authorities.<sup>50</sup> The Defender acts pursuant to the Constitution of the Republic of Poland and the Human Rights Defender Act of 15 July 1987.<sup>51</sup> Applications for assistance can be made in writing, in person, by electronic form, and by email.<sup>52</sup>

[35] Even where the protective services of the home state have gaps or deficiencies, a claimant who alleges a subjective fear must, in the absence of a compelling justification, take reasonable steps to access those services.<sup>53</sup> As the panel wishes to emphasize, by virtue of his young age at the time he left Poland, the minor claimant is unable to demonstrate that he has taken reasonable steps to access any services, as it relates to the police, because he has never had occasion to

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<sup>48</sup> Ibid, Item. 2.1,

<sup>49</sup> Ibid, Item 10.3, Section 2.2.

<sup>50</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 10.3, Section 2.2.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> *Santos, Marco Antonio Salazar v. Canada (Minister of Citizenship and Immigration)* (F.C., no. IMM-4602-06), Barnes, July 30, 2007, 2007 FC 793, para. 14.

require the assistance of the police in Poland. Moreover, the panel finds that there is effective state protection available to him should he seek it.

[36] The panel has considered the minor claimant's allegations of discrimination at school due to his ethnicity. The panel finds that Poland is a democracy and is part of the larger European Union, with responsibilities as a member of the European Union and reports regularly to the governance structures within that Union. Even if criticism of Poland's measures to combat racism is warranted, particularly against the Roma population, on a balance of probabilities, Poland is taking the measures to implement the standards that are mandated as a member of the European Union:

Since ratifying the Framework Convention in 2000, Poland has continued efforts to protect the rights of persons belonging to national minorities. The authorities have continued to show their commitment to the implementation of the Act on National and Ethnic Minorities and on the Regional Language of 2005 as well as the Framework Convention, and have taken steps to complete the legislative framework pertaining to the protection of persons belonging to national minorities. The adoption in 2010 of the Anti-Discrimination Act introduces an adequate legal basis for protection against discrimination.<sup>54</sup>

[37] The panel notes that Poland does not operate in isolation from the requirements of being a member of the European Union.

The Polish authorities have maintained a constructive approach to the process of monitoring under the Framework Convention. The Advisory Committee welcomes the willingness to co-operate shown by the authorities during the process leading up to the adoption of the third Opinion. Moreover, the Advisory Committee wishes to highlight useful steps taken by the authorities to disseminate the results of the first two cycles of monitoring. It further welcomes the organisation of an event in Lublin in September 2010 related to the 5th anniversary of the entry into force of the Act on National and Ethnic Minorities and on the Regional Language during which the second Opinion of the Advisory Committee was discussed in detail.<sup>55</sup>

[38] The panel is aware that there is a high level of unemployment in Poland for the Roma population, caused in part due to the economic downturn, the lack of education and training of the Roma population, and other issues. As stated, the panel recognizes that the minor claimant has only limited education having dropped out of high school in Canada and his only employment

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<sup>54</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 13.5, Executive Summary.

<sup>55</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 13.5, Section I, para. 6.

experience, as referenced during the hearing, has been in construction. There is nothing before the panel to suggest he could not continue employment in construction if he wished.

[39] The objective evidence also makes it clear that the authorities in Poland have taken a plethora of measures to mitigate the discrimination faced by Roma. The Government of Poland has funded education, health care, employment and improved living conditions for the Roma. Support has been provided regarding social inclusion of persons endangered by social exclusion or socially excluded persons through the development of services with special focus on marginalized Roma. Despite the efforts, the unemployment rate for the Roma in Poland stands at about 30% compared to 11% nationwide.<sup>56</sup> Thus, there are continued programs targeting the underemployed in Poland that the minor claimant might access.

[40] As it relates to housing, the minor claimant will be able to secure housing whether paid for by himself or subsidized by the state. The panel notes that housing is a problem in Poland for all its citizen and while the government is invested in addressing this matter, much like in Canada, the provision of housing for all citizens is challenging. In reviewing the European Commission's Country report – Non-discrimination for Poland 2016<sup>57</sup> in the context of this claimant's concern for housing, the EC notes that "In Poland, national legislation includes housing as formulated in the Racial Equality Directive."<sup>58</sup>

The 2010 Equal Treatment Act *expressis verbis* (Article 6) prohibits unequal treatment in access to services, including housing, if they are offered to the public, on the grounds of sex, race, ethnic origin and nationality. The law does not formulate any exceptions.

According to Article 75.1 of the 1997 Constitution, public authorities are obliged to establish policies enabling them to meet the housing needs of citizens and, in particular, to counteract homelessness, support the development of social building projects and support the efforts of citizens to secure their own housing.

Access to housing is regulated by the following legislation: the Housing Allowances Act and the Act on the Protection of Tenants' Rights. They contain no provisions of a discriminatory nature.

[41] The panel recognizes the challenges for the government to meet the needs of all its citizens but like many countries, including Canada, the government does not allocate adequate financial

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<sup>56</sup> Ibid, Section II, para. 51.

<sup>57</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 2.15.

<sup>58</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 2.15, Section 3.2.10, para. 2-4.

resources to solving the housing needs of everyone. The panel does not find this to be a persuasive factor to prevent the minor claimant from returning to Poland.

[42] Considering all of this evidence, the panel notes the information is mixed on the situation for the Roma in Poland and there are problems in certain local areas with regard to allocation of funding. However, the Polish Government funded 773 projects by 316 agencies, including 77 Roma NGOs active at the local level.<sup>59</sup> The panel finds there is persuasive evidence of concrete action on the part of the central government, for example in improving housing conditions for Roma, which is viewed as one of the priorities in the Polish government's overall plan to improve conditions for Roma, and the implementation of various programmes to combat racial discrimination, xenophobia and related intolerance, and the implementation of the Programme for the Roma Community in Poland (2004–2013).<sup>60</sup>

[43] The panel finds there are legitimate concerns from some groups that there is impunity for racially-motivated attacks and the police responses to these are not sufficient and the documentary evidence supports these concerns. However, the preponderance of evidence indicates that the state is taking action against extremists and others who target Roma.

[44] The panel also notes there is evidence that at the operational level the state is taking action to address the discrimination and violence targeting the Roma population. In the context of these efforts by the Polish Government, statistics still indicate that Roma are underemployed and less educated than ethnic Poles. Critics claim these programs do not go far enough or are superficial. Even so, the panel finds a preponderance of evidence that there are programs in place and the government has taken serious efforts to improve the lives of the Romani minority. Furthermore, the documentary evidence indicates that there are various state-sponsored types of recourse available to Roma who wish to pursue complaints against the police for inaction. Therefore, based on the evidence which has been provided to the panel, the minor claimant has not satisfied the burden with clear and convincing evidence that, on a balance of probabilities, adequate state protection would not be reasonably forthcoming if he should need it.

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<sup>59</sup> Ibid, Item 13.4, Section 8, para. 2.

<sup>60</sup> Exhibit 3, NDP for Poland (31 October 2017), Item 13.4, Section 8, para. 2.

[45] The panel is not persuaded that there are any specific impediments or hardships in returning this minor claimant to Poland. As a Roma, there was no persuasive evidence provided to support the counsel's submission that the minor claimant could be "regarded as a migrant and face the possibility of increased animosity". Even if this speculative submission were realized, the panel has explored comprehensively the various means of protection available to the minor claimant should he require it.

[46] As for the counsel's reference to the minor claimant's lack of familial link to support him, the panel finds this to be an unnecessary factor given that the minor claimant will be an adult shortly and he has been functioning as a *de facto* adult in Canada having married approximately two years ago, and as a father of one child and with another child due in 2018. He has been providing for his family to the best of his ability and he has worked before. Given his skills in functioning as an adult and supporting his family, and given that he will soon be a legally-recognized adult, the panel is not persuaded he is, in his particular circumstances, disadvantaged or otherwise likely to face hardship because he has no ties with his parents. There is also no evidence to support that he cannot or will not re-establish such ties in Poland. In point of fact, he told the panel that he maintains communications with his grandmother who lives in Katowice, who represents a familial link. Further, given the minor claimant's demonstrated living arrangements, his head of family role and his resourcefulness in finding his own lawyer and preparing for his refugee case on his own, the panel is not persuaded the minor claimant will not be able to navigate life as a citizen in his home country where, in fact, he lived for the majority of his childhood. Lastly, the panel is persuaded that state protection is available to him in Poland should he require it.

## CONCLUSION

[47] For these reasons, the panel finds that the minor claimant is neither a Convention refugee nor a person in need of protection. His claim is rejected.

*(signed)*

**“Reid Rossi”**

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**R. ROSSI**

**January 17, 2018**

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**Date**