



RPD File No. / N° de dossier de la SPR: TB1-20929  
TB1-20939  
TB1-20930

*Private Proceeding / Huis clos*

***De Novo***

**Reasons and Decision – Motifs et Décision**

<b>Claimant(s)</b>	XXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of Hearing</b>	May 8, 2019	<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>	July 25, 2019	<b>Date de la décision et des motifs</b>
<b>Panel</b>	M. Wakim	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Peter G. Ivanyi	<b>Conseil(s) du (de la/des) demandeur(e)(s) d'asile</b>
<b>Designated Representative(s)</b>	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>

## REASONS FOR DECISION

[1] XXXX XXXX (the principal claimant), his spouse, XXXX XXXX (the co-claimant), and their nephew, XXXX XXXX, claim to be citizens of Poland and are claiming refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.<sup>1</sup> The claims are based on membership in a particular social group, namely Ethnic Roma of Poland.

### Profile of this family since their return to Poland from 2005-2012

[2] The principal claimant was appointed to be the Designated Representative (DR) for the mentally challenged adult child in accordance to section 167 (2) of the *IRPA*.<sup>2</sup> The panel considered the *Chairperson's Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues*.<sup>3</sup>

[3] The principal claimant was the principal witness. At the end of his oral testimony his wife was given the opportunity to express herself verbally. The panel has taken into consideration the *Chairperson's Gender Guidelines*<sup>4</sup> in this matter. All relevant factors were examined and guided in respect to the *Chairperson's Gender Guidelines* in coming to its decision, such as the social and cultural context in which the claimant's wife found herself.

### HISTORY OF THESE CLAIMS

[4] The initial hearing was held on November 2, 2012. Written reasons were issued on January 30, 2013. The claimants were determined not to be Convention refugees.

[5] On XXXX XXXX, 2014, Madam Justice Strickland granted the appeal for judicial review. The hearing for judicial review was heard by Mr. Justice Harrington on XXXX XXXX, 2014 and the application was granted. The matter was remitted back to the RPD to be determined by a different panel.

[6] Miss Geraldine Mac Donald was the lawyer representing the claimant at the Federal Court for the judicial review and was retained by the claimants for the De Novo hearing. However, due to the death of Miss Mac Donald in February 2018, new counsel was retained and eventually present counsel was retained for this De Novo hearing.

## **ALLEGATIONS and SUMMARIES FROM INITIAL RPD HEARING**

[7] The principal claimant was the author of the narrative contained in Personal Information Form (PIF)<sup>5</sup> that was signed by the claimant on January 17, 2012.

[8] The principal claimant, his spouse and nephew are Roma from Kalisz, Poland. They are identified by appearance, attire and Romani dialect. His nephew, who is mentally challenged, is the son of his deceased brother. The claimant and his spouse have raised his nephew since the age of one. His nephew was removed from school by the principal claimant due to abuse from teachers and students. His nephew rarely left the house because of treatment at the hands of Polish youth and skinheads.

[9] The principal claimant alleged that his home was vandalized many times and swastikas as well as racist messages such as “Gypsies go to gas chambers” were sprayed on the walls. Windows were broken on many occasions and his car was vandalized. They were compelled to live in the Gypsy Ghetto because the Polish citizens did not want them in their neighborhoods.

[10] In 2002 the principal claimant was swarmed by skinheads and his arm was slashed with a knife. He went to the police who advised him to go to the hospital. The police installed security cameras surrounding houses in his neighborhood. He reported fights with skinheads to the police but he asserts that the cameras were not working. He was involved in fights with skinheads and when he complained to the police he also told them to look at the camera footage around his area but they refused.

[11] In XXXX 2011, skinheads attacked the principal claimant in the square. He was injured and taken to the hospital for one week.

[12] In XXXX 2011, three skinheads attempted to sexually attack the co-claimant. Her front teeth were knocked out.

[13] In XXXX 2011, skinheads set the claimants house on fire by throwing a bottle through the window. They left Poland shortly afterwards.

## **REASONS FOR APPEAL**

[14] On XXXX XXXX, 2014, Mr. Justice Harrington heard the appeal of the claimants. On XXXX XXXX, 2014, he issued written reasons. The application for judicial review was granted and the decision of the RPD was quashed. The matter was referred back to another member of the RPD for redetermination. The Federal Court did not agree with the negative credibility findings and the lack of analysis of state protection. Essentially, the findings were of “procedural unfairness”.

## **EXHIBIT LIST FOR THIS DENOVO HEARING**

- Exhibit 1 -Package of information from CBSA/CIC and exhibits from initial RPD hearing of November 2, 2012 including Federal Court Documents and Decisions;
- Exhibit 2 -Personal Information Form of principal claimant TB1-20929 signed January 17, 2012;
- Exhibit 3 -Personal Information Form of co-claimant TB1-20939 signed January 17, 2012;
- Exhibit 4 -Personal Information Form of nephew TB1-20930 signed January 17, 2012;
- Exhibit 5 -NDP for Poland version 29 MARCH, 2019;
- Exhibit 6 -Personal Documents including handwritten letter from a psychiatrist and translated articles -23 pages in total; and
- Exhibit 7-copies of RPD decisions and unindexed documentary evidence dated from 2010-2014. Entered as an exhibit for purposes of identification.

## ISSUES

[15] The issues in these joined claims are identity, identity as Roma, credibility, subjective fear including failure to claim in the U.S.A., and state protection.

### Identity

[16] The panel finds, on a balance of probabilities that the claimants are citizens of Poland based on information contained in the certified true copies<sup>6</sup> of their passports that were seized by CBSA/CIC.

### Identity as Members of the Roma Ethnicity

[17] The claimants were determined to be members of Roma ethnicity at the initial hearing in 2012.

### Failure to claim asylum in the U.S.A. in 2005

[18] The claimants alleged that they have been targeted by skinheads and that they have experienced violence in Poland because of their Roma ethnicity. They went to the U.S.A. in 2005 for permanent status. The principal claimant said that he was going to attend an immigration office but he did not do so because he had no time. Despite the fact that he was arrested and detained together with the services of a lawyer while in the U.S.A., he was unaware of the asylum process. As a result, he was deported to Poland where the family remained until 2012. The principal claimant has not provided a reasonable explanation for not claiming asylum in the U.S.A. in 2005. The panel finds, on a balance of probabilities that the failure to claim negates a subjective fear of persecution.

## SUMMARY OF ALLEGATIONS OF WRITTEN NARRATIVE

[19] The principal claimant in his narrative stated that he and his wife raised his nephew since the age of one. This child is the son of his deceased brother. The principal claimant removed his nephew from school at an early age because of abuse he received at school.

[20] The principal claimant's house was vandalized, windows were broken and swastikas and racist messages were sprayed with paint on the walls. He was swarmed by skinheads and he was physically injured with a knife slash on his arm in 2002. He went to the police but they were unable to help him because there were no witnesses. The police told him to go to the hospital. He went to the USA in 2005 and returned to Poland in 2005.

[21] The principal claimant narrated three incidents that occurred after his return to Poland in 2005.

[22] In XXXX 2011, the principal claimant was attacked by skinheads and he required hospitalization for one week.

[23] In XXXX 2011, there was an attempted rape of the co-claimant. She fought her attackers and her front teeth were knocked out.

[24] In XXXX 2011, a bottle of liquid was thrown through a window of his house that started a fire. The principal claimant tried to get footage from cameras but the authorities refused [to assist]. They then left Poland.

## **SUMMARY OF ORAL TESTIMONY**

[25] The principal claimant, a 56 year old man, in oral testimony, said that he was born and brought up in the suburban area of Kalisz, a city some 235 kilometers from Warsaw, the capital. He lived in the Roma Ghetto. He said there were about 30 families and he lived in a home that initially had been granted by the government to his grandparents.

[26] The principal claimant said he only completed grade 2. However, he is able to read, do math calculations and he has a driver's licence. He said he can easily read road signs and directions. He was employed initially on a casual basis and he then worked for a private XXXX.

[27] The principal claimant went to the U.S.A. in 2005, in order to get permanent status. He was accompanied by his wife and nephew. He was not legally married at that time. He raised money from his work, family and friends. He intended to go to an immigration office but he did not have time. He did not make a claim for asylum in the U.S.A. He said he did not know about

making a claim despite having had a lawyer for a criminal matter. He was detained and he was eventually deported back to Poland in 2005. The principal claimant married his wife in 2011, and he legally took her family name. He said the reason for his name change was that it was his wife's wish.

[28] When asked what caused him to come to Canada the principal claimant said when his wife was attacked in the square, his wife lost her front teeth due to the physical assault. He said a couple on a bicycle screamed and the skinheads ran away. When asked if he took the dental report to the police, he said no because they were threatened. When it was pointed out to the principal claimant that his wife received dental care for her missing tooth, he said she was treated by a friend of his who was a dentist. He also said that skinheads tried to set fire to his house. He said he called the police, a fire truck arrived but he had put out the fire himself.

[29] The claimants came to Canada in XXXX 2011. The principal claimant said the authorities at the airport wanted to send him back to Poland because he did not have money. An Immigration Officer told him that he could claim refugee status. His cousin was waiting in reception for the family and they stayed with this cousin for two weeks. They were then taken to another office in Toronto where they were assigned accommodations in an apartment. The principal claimant eventually obtained a work permit and was able to be legally employed. He together with his nephew, XXXX XXXX.

[30] The panel noted that it has been over seven years since the principal claimant left Poland and referred to some changes contained in Response to Information Request POL104838.E<sup>7</sup> wherein it is stated the procedure to file a complaint against police officers. The principal claimant said that there is no change because of what happened to him. When asked about relatives in Poland and their difficulties with police, he said everyone is scared. The principal claimant said that his wife sees a doctor who is a specialist on a regular basis and his nephew works with him XXXX XXXX.

[31] The principal claimant's wife, was asked if she agreed with her husband's testimony and she said yes. When asked if she had anything to add, she said that she does not want to go back [to Poland] and she is scared.

[32] When questioned by counsel, the principal claimant said he will not have health care for his wife and nephew. He said that his mother's home has a small square footage. He said that he does not trust doctors. He does not think he could get adequate health care. He said that 50% of Polish people are racist.

## STATE PROTECTION

[33] In consideration of these claims, the panel has assessed all the information, including Counsel's submissions,<sup>8</sup> including the RPD decisions by other RPD Members as they relate to other Roma who were granted Convention refugee status. To summarize Counsel's submissions: the Roma face discrimination in all facets of their lives. The claimants, in a forward-looking manner, would not get protection from the police. The panel finds that each case is decided on a case-by-case review and consideration of the facts presented. The information in each claim is dependent upon the personal circumstances of the claimant. The panel finds that not every Roma in Poland has experienced what amounts to persecution. The panel agrees with 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>9</sup>

[34] The panel notes that the evidence states that Roma in Poland face discrimination, high levels of unemployment, and some experience violence by anti-Roma and racist factions of the population.<sup>10</sup> The issues before the panel is whether adequate state protection is and would be available to the claimants in Poland should they return to Poland in 2019, over seven years since they left in 2011. The panel is guided by a number of cases when assessing state protection from the Supreme Court of Canada, the Federal Court and the Federal Court of Appeal. 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.



[35] The courts have found that states *are presumed* to be capable of protecting their citizens, except in the case of state that is in complete breakdown.<sup>11</sup> The panel finds the starting place then is the notion that states are capable of protecting their citizens.

[36] 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>12</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>13</sup> This is not a simple statement that a person just went to the police and they did nothing, but to provide information as to what steps did the person take to obtain protection.

[37] Furthermore, a claimant who alleges that state protection is inadequate must persuade the Board on a balance of probabilities that the evidence establishes that the state protection is inadequate.<sup>14</sup> The test is not if there is 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,<sup>15</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 is, the more the claimants must have done to exhaust all courses of action open to them to demonstrate state protection was or would not be forthcoming.<sup>16</sup> The panel has considered the evidence of the claimants, including the packages of country documents provided.<sup>17</sup> There is nothing in these documents to indicate that Poland is in a state of breakdown or not in control of its borders. Having considered the totality of the documentary evidence, the panel finds that Poland is a functioning democracy. The panel notes that Poland's bicameral National Assembly consists of an upper house, the Senate and a lower house (Sejm). The president, the prime minister, and the council of ministers share executive power. Observers considered October 2018, nationwide regional and local elections were free and fair.<sup>18</sup>

[38] The panel finds that Poland has a functioning security apparatus and judicial processes, the security forces report to civilian authorities. While there were concerns related to police services in Poland, the evidence suggests that civilian authorities maintained effective control over the security forces, and the government had effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the security forces during the year.<sup>19</sup>

The panel finds neither in the Board's own documents nor the documents submitted by the claimants, is there any evidence to suggest that Poland is in a state of complete breakdown. Thus, the panel finds that Poland is a democracy. In fact, the evidence indicates that Poland has a high aggregated score with 0 being the least free and 100 being the most, Poland scores 85.<sup>20</sup>

[39] The panel recognizes that discrimination exists in Poland, which includes "racially-motivated verbal abuse and physical attacks." Societal discrimination against Roma continued to be a problem. The 2011 national census recorded 16,723 Roma, although an official government report on the Romani community estimated that 20,000-25,000 Roma resided in the country.<sup>21</sup> Discrimination is not solely directed at the Roma population, though societal discrimination against Roma continued. The panel notes that reports indicated that there were scattered incidents of "racially motivated violence, including verbal and physical abuse, directed persons of African, Asian, or Arab descent"<sup>22</sup> and that there were reports that some local officials discriminated against Roma by denying them adequate social services. "Romani leaders complained of widespread discrimination in employment, housing, banking, the justice system, the media, and education."<sup>23</sup> While at the national level, approximately 80 percent of Roma were unemployed, levels of unemployment in some regions reached nearly 100 percent.<sup>24</sup>

[40] Thus, the panel does find that the Roma as a population in Poland face discrimination. However, the information in the documentary evidence also shows that the Polish government is making serious efforts in policy and at the operational level to combat violence and discrimination against the Roma population.

### **Police**

[41] The panel notes that the principal claimant went to the police in 2002, when his arm was slashed by skinheads. The police told him that they were unable to assist him because there were no witnesses and they advised him to go to the hospital. The principal claimant did not present a hospital report to substantiate his medical treatment. It is also reasonable to expect that the principal claimant could not receive help from the police when he was unable to identify the skinheads who assaulted him. The panel does not find that the police were unwilling to help the

principal claimant with respect to the 2002 incident. The panel finds that, on a balance of probabilities that the police in Canada could not assist in this situation.

[42] The claimants went to the U.S.A. in 2005 and returned the same year. In fact, the principal claimant was deported. The principal claimant referred to three incidents that occurred in 2011. The first incident was in XXXX 2011, when he was attacked by skinheads and he was hospitalized for a week.

[43] The second incident was in XXXX 2011, when there was an attempted rape of the co-claimant and an assault that knocked out her front teeth. The third incident was in XXXX 2011, when the principal claimant's house was set on fire. At no time did the principal claimant or his wife report the incidents to the police. The Courts have held that the police must be given the tools to aid them in their investigation.<sup>25</sup>

[44] The panel finds that there are recourses available to the claimants that they did not utilize. The panel notes that failure at the local level does not mean that the authorities at other levels in Poland would not have aided them. 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>26</sup> When the state in question is democratic, a claimant must do more than simply show that he or she went to see *some members of the police force* and that his or her efforts were unsuccessful.<sup>27</sup> As this is the case here, the panel does not find that there was a denial of protection, more of reluctance of the claimants' part to seek it. They cite historical statements that police are unwilling to aid the Roma, but the review of the documentation does not support their position.

[45] The panel notes there have been positive actions taken by the authorities to address violence targeting the Roma population, that the police are making arrests in cases of assaults and attacks on the Roma population.<sup>28</sup>

[46] The panel also finds there is redress available to the claimants if they truly believed that the police were purposefully not investigating the crimes.

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>29</sup>

[47] 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>30</sup>

[48] 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 and suggestions regarding the activities of police and provide information by telephone **(22) 60 – 122 72**.<sup>31</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; and

a detailed description of the incident.<sup>32</sup>

[49] 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>33</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>34</sup>

[50] The panel notes there is also an Ombudsman who may offer aid to the co-claimant in her dealings with the police.<sup>35</sup> The panel finds the documentary evidence provides that the Human Rights Defender is the constitutional authority for legal control and protection.<sup>36</sup> In his activities, the Defender is integral and independent from other state authorities.<sup>37</sup> The Defender acts pursuant to the Constitution of the Republic of Poland and the Human Rights Defender Act of 15 July 1987.<sup>38</sup> Applications for assistance can be made in writing, personally, by electronic form and by email.<sup>39</sup>

[51] 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>40</sup> The claimants have failed to demonstrate they have taken reasonable steps to access any services as it relates to the police.

[52] 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 grounds. The government has funded education, health care, employment and improved living conditions for the Roma. Support of social inclusion of persons endangered by social exclusion or socially excluded persons through the development of services with special focus on marginalized Roma.

[53] As it relates to housing, the claimants lived in a house that was assigned to the principal claimant's grandparents. There is nothing before the panel to suggest the claimants could not return to that home. In addition, the claimants have family who reside in Poland and who previously assisted the claimants financially, in coming to Canada. The panel notes that housing is a problem in Poland for all its citizens, while the government is investing in addressing this matter, much like Canada it takes time.

[54] The panel notes the information is mixed on the situation for the Roma in Poland, there are problems at the certain local areas with the allocation of funds, however, the Polish government funded 773 projects by 316 agencies, including 77 Roma NGOs active at the local level.<sup>41</sup> The panel finds there is evidence of concrete action on the part of the central government, for example 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>42</sup>

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

[56] The panel notes there is also evidence that at the operational level, the state is taking action to address the discrimination and violence targeting the Roma population. Despite these efforts by the Polish government, statistics indicate that Roma are still underemployed and less educated. Critics claim these programs do not go far enough or are just superficial. Even so, the

panel finds the preponderance of evidence is 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 recourses 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 claimants have not satisfied the burden by providing clear and convincing evidence that, on a balance of probabilities, adequate state protection would not be reasonably forthcoming if the claimants should need it.

### **Health Care**

[57] The principal claimant alleged that he and his family would not get social assistance and health care in Poland. He alleged long wait times and the fact that he had to pay. The principal claimant presented a letter from a psychiatrist in Poland with respect to his nephew's XXXX XXXX XXXX XXXX that is dated XXXX XXXX, 2012.<sup>43</sup> The letter indicated that his son was treated from 2009-2011 by the same psychiatric facility in Poland. A handwritten letter from a psychiatrist in the Toronto area was submitted by counsel.<sup>44</sup> The letter is general in nature and states that the principal claimant's wife and nephew are treated with psychiatric medication and are dependent on the principal claimant.

[58] According to the documentary evidence<sup>45</sup> the Roma have full access to pre-school education as well as education in public schools at all levels of education and in all types of schools. Eighty per cent of Roma children attend school. Roma pupils have free access to make up classes of the Polish language and other subjects. Roma education assistants are hired to teach bicultural and bilingual pupils. Other measures support community daycare and scholarships for pupils of Roma origin.

[59] According to the same documentary evidence, in a report submitted in February 2017, to the U.N. Human Rights Council, the Polish government indicates that the Programme for the integration of the Roma community for 2014 – 2020 receives 3.5 million dollars (Canadian) annually for education, housing, promotion of employment and health care.

[60] Roma access and use of healthcare are limited because of a lack of trust of the Roma population in non-Roma individuals. There is no reliable evidence before the panel that the Roma population does not have access to healthcare.

[61] The principal claimant has not provided a reasonable explanation as to why he could not get adequate health care in Poland.

## RECENT CASE LAW AND STATE PROTECTION IN POLAND

[62] The panel had considered the recent Federal Court decision of *Jaworowska*<sup>46</sup> which is a review of a Refugee Appeal Division (RAD) decision that confirmed the decision of the Refugee Protection Division (RPD) which pertained to the claims of a married Roma couple from Poland who were assaulted by unknown individuals because of their Roma ethnicity. The facts in *Jaworowska* are similar to the present case. Madam Justice Walker found that both the RPD and RAD correctly identified and applied the test for state protection. The decision reads in part as follows:

The RAD also conducted its own assessment of the documentary evidence regarding the treatment of the Roma population in Poland. The panel considered the Applicants' evidence relating to the December 2014 attack and the reasons they provided for why they did not seek police protection or action. The RAD referred to the Applicants' background, employment history, education, and living arrangements in Poland. The RAD noted both the efforts of the Polish government to provide protection and the concrete results of those efforts as confirmed in the documentary evidence.

In my view, the RAD did not make its Decision in a factual vacuum. Its consideration of the documentary evidence for Poland and the Applicants' narrative and evidence was transparent and intelligible. Its conclusion regarding the Applicants' failure to rebut the presumption of adequate state protection was based on the lack of clear and convincing evidence of attempts to involve the police or other authorities outside of the statement Mr. Dyszko gave to police in the hospital. The RAD's assessment of the weight of this statement against the additional recourses available to the Applicants was reasonable and its denial of the Applicants' appeal was within the possible outcomes for the case.

[63] When all of the above is taken into consideration, the panel finds that the claimants have not rebutted the presumption that Poland is able to protect its citizens.



[64] The claimants have been in Canada since 2012. They have relatives in Canada. However, Humanitarian and Compassionate Consideration is not the mandate of the Refugee Protection Division.

## CONCLUSION

[65] The panel concludes that the claimants are neither Convention refugees nor persons in need of protection.

[66] Therefore the panel rejects these claims.

(signed)

**“M. Wakim”**

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**M. Wakim**

**“July 25, 2019”**

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**Date**

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

<sup>2</sup> *Immigration and Refugee Protection Act*, S.C.200, c.27.

<sup>3</sup> Guidelines issued by the Chairperson pursuant to Section 65(3) of the *Immigration Act*.

<sup>4</sup> Guidelines on *Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines issued by the Chairperson pursuant to section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

<sup>5</sup> Exhibit 2.

<sup>6</sup> Exhibit 1, RPD file.

<sup>7</sup> Exhibit 5, item no. 10.3. Number: POL104838.E. Date: 17 April 2014. Subject: Poland: Recourse available to victims of crime if the police refuse to investigate a complaint; internal and external investigative mechanisms, including in a voivodship, available for complaints submitted against the police for accusations of inaction, abuse, and corruption and effectiveness of these mechanisms.

<sup>8</sup> Exhibit 7, written submissions dated April 26, 2019, copies of RPD decisions and country documentation.

<sup>9</sup> *Varga, Mario Gyula v. M.C.I.* (F.C., no. IMM-1823-13), Harrington, May 27, 2014; 2014 FC 510.

<sup>10</sup> Exhibit 5, National Documentation Package (NDP) for Poland (29 March 2019), item 2.1, United States.

Department of State, Poland. Country Reports on Human Rights Practices for 2018, Ibid., item 13.1, Response to Information Request (RIR) no. POL104911.E, 16 July 2014.

<sup>11</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>12</sup> Ibid.

<sup>13</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>14</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>15</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>16</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>17</sup> Exhibit 6 and 7, Country Articles.

<sup>18</sup> Exhibit 5, NDP for Poland (29 March 2019), item 2.1, United States. Department of State, Poland. Country Reports on Human Rights Practices for 2018, at p. 1.

<sup>19</sup> *Ibid.*, item 2.1.

<sup>20</sup> Exhibit 5, NDP for Poland (29 March 2019), item, 2.3, Freedom House, Poland. Freedom in the World 2018, p. 1.

<sup>21</sup> *Ibid.*, item 2.1 at p. 22.

<sup>22</sup> *Ibid.*, item 2.1.

<sup>23</sup> *Ibid.*, item 2.1.

<sup>24</sup> *Ibid.*, item 2.1.

<sup>25</sup> *Karaseva, Tatiana v. M.C.I.* (F.C.T.D., no. IMM-4683-96), Teitelbaum, November 26, 1997.

<sup>26</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>27</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>28</sup> Exhibit 5, NDP for Poland (29 March, 2019), item 2.1.

<sup>29</sup> *Ibid.*, item 10.3, RIR no. POL104838.E, 17 April 2014.

<sup>30</sup> Exhibit 5, item 10.3, RIR no. POL104838.E, 17 April 2014.

<sup>31</sup> *Ibid.*, item 10.3, RIR no. POL104838.E, 17 April 2014.

<sup>32</sup> *Ibid.*, item 10.3, RIR no. POL104838.E, 17 April 2014.

<sup>33</sup> *Ibid.*, item 10.3, RIR no. POL104838.E, 17 April 2014.

<sup>34</sup> *Ibid.*, item 10.3, RIR no. POL104838.E, 17 April 2014.

<sup>35</sup> *Ibid.*, item. 2.1, United States. Department of State. Poland Country Report on Human Rights Practices for 2016, 3 March 2017.

<sup>36</sup> *Ibid.*, item 10.3, RIR no. POL104838.E, 17 April 2014.

<sup>37</sup> *Ibid.*, item 10.3, RIR no. POL104838.E, 17 April 2014.

<sup>38</sup> *Ibid.*, item 10.3, RIR no. POL104838.E, 17 April 2014.

<sup>39</sup> *Ibid.*, item 10.3, RIR no. POL104838.E, 17 April 2014.

<sup>40</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.

<sup>41</sup> *Ibid.*, item 13.4. RIR no. POL106173.FE.

<sup>42</sup> *Ibid.*, item 13.4. RIR no. POL106173.FE.

<sup>43</sup> Exhibit 1, C4 - personal documents from original hearing.

<sup>44</sup> Exhibit 6, Letter from Dr. XXXXX XXXX, Psychiatrist.

<sup>45</sup> Exhibit 5, item 13.4 RIR no. POL 106173.FE, 11 October 2018.

<sup>46</sup> *Jaworowska v. Canada (Citizenship and Immigration)*, IMM-4388-18, Walker, May 8, 2019, FC 626.