



RPD File No. / N° de dossier de la SPR : TB2-04703  
TB2-04725  
TB2-04727  
TB2-04728  
TB2-04729  
TB2-04730

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et Décision

<b>Claimant(s)</b>	XXXX XXXX XXXXXXXXXXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXXXX XXXX XXXX XXXXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX XXXX	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of Hearing</b>	November 20, 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>	March 2, 2018	<b>Date de la décision et des motifs</b>
<b>Panel</b>	Rose Andrachuk	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Peter G. Ivanyi Barrister and Solicitor	<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>

2018 CanLII 125244 (CA IRB)

## REASONS FOR DECISION

[1] XXXX XXXX (the principal claimant, 'PC'), his common-law wife, XXXX XXXX (female claimant), and their adult children, XXXX XXXX, XXXX XXXX XXXX and their minor children, XXXX XXXX XXXX and XXXX XXXX XXXX, all citizens of Hungary, seek refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).<sup>1</sup>

[2] The claims were heard jointly as per Rule 55 of IRPA.<sup>2</sup>

[3] The PC was appointed as the Designated Representative for the minor claimants.

[4] In relation to the female claimant the *Chairperson's Guidelines for Women Refugee Claimants Fearing Gender-Related Persecution*<sup>3</sup> were taken into account when considering the process of the hearing and the facts in this case. All relevant factors, such as social and cultural context in which the claimant found herself, along with the issue of state protection and changing country conditions were examined with consideration of the Chairperson's *Gender Guidelines*. Given the sensitive nature of the allegations, I am cognizant of the difficulties faced by the claimant in establishing her claim, including the challenge of remembering difficult and emotionally charged events, and as a result, addressed the claimant with heightened sensitivity and avoided unnecessary detail when asking questions.

---

<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 as amended, sections 96 and 97(1).

<sup>2</sup> Rule 55, Immigration and Refugee Board, Refugee Protection Division Rules, SOR/2012-256.

<sup>3</sup> Guideline 4: *Women Refugee Claimants Fearing Gender-Related Persecution: Update*, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the *Immigration and Refugee Protection Act*.

## IDENTITY

[5] The identity of the claimants as citizens of Hungary is established through the certified true copies of each of their passports currently held by CBSA.<sup>4</sup>

[6] I find, on a balance of probabilities, that based on their testimony, the claimants are Roma.

## ALLEGATIONS

[7] The details of the claimants' allegations are contained in the Personal Information Form (PIF) narrative of the PC. All the claimants rely on the PIF narrative of the PC.

[8] The following is a summary of the allegations:

[9] The claimants fear discrimination and harassment. They fear discrimination in housing, medical care, employment and education. They also fear physical abuse, and even murder.

[10] The PC fears skinheads, the Hungarian Guard, racists (the majority of Hungarians). He fears racist Hungarians (school officials, employers, neighbours, store owners, etc.) He also fears Vederó, Szebjóvo, Betyár Csoport, Csendor, Ostoros, and the Jobbik party.

[11] The Hungarian police do not adequately protect the Roma. They do not take seriously their complaints and do not properly investigate. Many police are racist. Eight to ten times the police took their reports, but then closed the matter. Not once was anyone charged and not once did the matter go to trial. Most of the time the matter was closed citing lack of evidence.

[12] They went to the Mayor for help with getting a home and jobs, but the mayor said that the money they were getting was enough.

---

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

[13] The Roma are segregated in ghettos. The Roma are persecuted everywhere in Hungary, even in Budapest where they once lived.

[14] The PC's son started school in 2000. He faced abuse and violence several times. The claimants complained to the school but the school denied it. For example, he had soup poured on him. When they moved to Budapest the abuse continued at school.

[15] In March of 2011, while taking their son home, some skinheads did not want to let them pass and called them names and threatened them. The police came by and the female claimant stopped the policemen. The police just told them to go home. They said there was nothing they could do unless there was blood.

[16] They only lived in Budapest for three months in 2001, and then returned to Baja. In Baja they were followed in stores, humiliated and harassed in public.

[17] In 2003, the female claimant, who was with her daughter XXXX, was accosted by five or six skinheads who insulted her. One of the men hit the female claimant in the mouth and knocked a tooth out. XXXX was thrown to the ground and cracked her head.

[18] The skinheads left when an older couple came by and cursed them. The couple called an ambulance and the female claimant and her daughter were taken to a hospital. The hospital made a report to the police. The claimants did not make a report as they thought that it was sufficient that the hospital had made a report.

[19] In XXXX of 2004, when the PC was biking home after buying some treats for his children, he was stopped by seven skinheads and beaten up. They broke the PC's hand and arm. Someone called an ambulance and the PC was taken to hospital by ambulance and required surgery. The hospital made a report as did the PC. He gave the police a good description of the men and the white minibus they were in, but there were no arrests. The PC feels the police did not do enough.

[20] They continued to suffer harassment. The only group that tolerated them were the Jews.

[21] In 2005, the PC and his wife went to Italy to see if it would be a good place to live. They only stayed there for a month as they discovered that Italy does not treat Roma well. The Roma live in trailers and camps. Italians also hate the Roma.

[22] In XXXX of 2008, after picking cherries, six Guards stopped the PC, started interrogating him and then hit and beat him. They branded his right forearm with a hot iron. The PC went to the hospital for treatment. The hospital made a report to the police, and the next day the PC also made a report. The police promised to contact him, but they never did. The PC did not follow up on the investigation as he did not see the point.

[23] In October 2009, the female claimant and their 3-year old son XXXX, were forced into a car by four men she believes may have been Hungarian Guards. They were taken to a forest, where the female claimant was raped by the four men, while XXXX remained in the car crying. They did not make a report to the police as they were ashamed. She did not go to a doctor, but she got pregnant as a result of the rape and had an abortion.

[24] On XXXX XXXX, 2010, after attending some festivities they were followed by some Guards. The female claimant ran home with the kids, while the older son XXXX stayed to allow the rest to get away. He called the police. The Guards beat them up. The police came ten minutes later. The PC wanted to make a report but the police discouraged him because there was no blood. The police also told them that no one would believe them.

[25] Their son was subject to violence by local racists when the Guards were marching and on public transit. He did not tell them about most of it.

[26] After the incident in Gyongyospata in XXXX of 2011 when racists terrorized men, women and children, and the police allowed it to happen, their children learned of this incident in the media and decided to flee Hungary.

[27] In the summer of 2011, the PC's son, XXXX, worked as a XXXX doing odd jobs. The brother of the man he worked for knew him from school and identified him as Roma. They both then beat him up and threatened to kill him, and then urinated on him. The PC's son went to the

police. The police brought in his employer's brother, and the claimant identified the brother, but the brother denied everything. The police said that they would notify his son, but they never did, and closed the file.

[28] In 2010 and 2011, men were kicking their doors, broke windows, and threatened to kill them.

[29] In XXXX of 2011, at night, the PC saw a burning item being thrown at the house. He ran out into the yard and put out the flame with a hose. The PC called the police who refused to take a report and they refused to look for the attackers.

[30] During the year 2012, they stayed home much of the time. The PC could not go to work because he was afraid. They sold everything, including their cars and belongings so they could come to Canada.

[31] The PC submitted a lengthy Addendum to his PIF which deals with matters that occurred after the claimants left Hungary. The rental house the family lived in was allegedly demolished in 2013. Also, the PC received from Hungary various photographs. Among them was a large photograph of a man named XXXX who was allegedly the XXXX XXXX of the Hungarian Guard. The PC testified that, when his wife saw that photograph, she told him that Istvan was one of the men who raped her, and that she had not wanted to tell the PC his identity as she was afraid that he may have wanted to take revenge on XXXX and thus get himself in trouble. The other allegations in the PIF deal with what happened to other people in Hungary since the claimants arrived in Canada.

## ISSUES

[32] The main issues to be considered in my analysis of these claims: credibility, discrimination versus persecution and state protection.

## ANALYSIS

### CREDIBILITY

[33] When a claimant swears that certain facts are true, this creates a presumption that they are true unless there is valid reason to doubt their veracity.<sup>5</sup> I am cognizant of the difficulties faced by individuals in establishing their claims, including the cultural factors, the milieu of the hearing room, and the stress inherent in responding to the questions through an interpreter. I have also considered the claimants' level of education. The PC has eight years of education and worked as a XXXX XXXX. The female claimant never went to school and is illiterate. She never worked in Hungary. She is attending ESL classes in Canada and is working part-time in a XXXX.

[34] I find that there are credibility issues that are central to the claim.

[35] The female claimant testified first. I asked her what the worst thing is that happened to her in Hungary. She testified that she was too ashamed to talk about the incident in front of her children. She was obviously referring to the rape by four men. She did not testify further about the incident. However, from the PIF it is not indicated that she knew the rapists, and she did not know if they were Hungarian Guards or not. I accept that this would be a very traumatic event for any woman, especially with her child nearby. However, there is no evidence that the rape was racially motivated. It was an isolated incident.

[36] The female claimant did not go to the doctor after the rape nor to the police. However, in the Addendum submitted by the PC on November 29, 2017, the PC alleges that the female claimant told him that when the PC was showing her photographs he received from Hungary, that she recognized a man named XXXX, a XXXX XXXX of the Hungarian Guard, as one of the man who had raped her. However, in the PIF narrative the female claimant had not indicated that she

---

<sup>5</sup> *Maldonado, Pedro Enrique Juarez v. M.C.I.* (F.C.A., no.A-450-79), Heald, Ryan, MacKay, November 19, 1979  
**Reported:** *Maldonado v. Canada (Minster of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.); 31 N.R. 34 (F.C.A.).

recognized any of the four rapists, and she was not sure that any were Guards. She explained to the PC that she did not want to tell him about XXXX in Hungary, because she was afraid that the PC would try to exact revenge. However, at the time the female claimant told the PC about XXXX, the claimants were about to have a hearing for their refugee claim, and facing a real possibility that they may have to return to Hungary. Therefore, I find it unlikely that the female claimant would tell him about XXXX at this point as the PC could very well have to return to Hungary and still want to exact revenge and thus jeopardize his own safety. I find that this new allegation casts doubt on the female claimant's allegations about the rape. I also note that the female claimant gave no objective medical evidence she had an abortion one month following the alleged rape.

[37] After the parents testified, the claimant, XXXX XXXX, who is now XXXX testified at the hearing. She was 14 years old when she came to Canada. She was vague in her testimony. She remembered having to run fast so "they wouldn't harm us". She also stated that they broke windows and kicked in the door. In regard to school, she testified that she was teased and made fun of, but she did not indicate that she was ever harmed. However, in the PIF the PC wrote that her teacher pulled her hair and slapped her, and that the students abused his children in class, washroom, and on the way home from school. She did not remember any other mistreatment in Hungary. I find that if the claimant was so frequently abused at school that she would be able to recall that abuse. I find that she was probably just teased as she testified, and that the PC is embellishing the story. I draw a negative inference.

[38] XXXX XXXX, the adult son, testified. He is now XXXX years old. He was 19 when he came to Canada. He was asked what bad things happened to him personally. He said he remembered only when they were attacked in the street and beaten up. When asked as to when this happened, he only testified as to the time he was beaten by a former classmate, XXXX, who had been expelled from school because he was a skinhead. He did not give any examples of any other time when they were attacked and beaten. He also did not mention any problems at school except for problems with XXXX, who beat him up and held a knife against him. He testified that he did not remember anything else bad that happened to him in Hungary. However, in the PIF his



father had written, it is indicated that XXXX faced violence and abuse once he started school, and that he had soup poured on him. I find that a young adult would remember if they experienced violence at school. I find, on a balance of probabilities, that the assault by his former schoolmate was an isolated incident. I draw a negative inference from the inconsistency.

[39] The PC testified that they tried to get away from the persecution in Baja by going to Budapest, where they stayed only three months because the conditions there were even worse. However, in his PIF the PC did not indicate in listing his addresses that he ever lived in Budapest. He also did not indicate in his subsequent amendments that he had a Budapest address. He only made an amendment<sup>6</sup> three days before the hearing, to show his Budapest address. I find these omissions cast doubt on the PC's allegations that the claimants ever tried live in another location in Hungary.

### **Documentary Evidence**

[40] The claimants submitted several documents to support their case.

[41] One is a letter to the PC, dated July 1, 2017,<sup>7</sup> from his friend XXXX, describing how he was beaten up by men in black. The men told XXXX to go where his friend XXXX is and threatened the PC's life if he returns. I give this letter little weight as the author cannot be cross examined. I also do not find it credible that these men in black would be referring to and threatening the PC five years after he left Hungary as the PC had no particular profile in Hungary.

[42] However, the claimants did not submit the most important documents to support their case as required by Rule 11.<sup>8</sup> They did not submit any police reports, although the PC testified that they reported to the police eight or nine times. The PC testified that he authorized his mother to get the reports from the police, but when she went there they said that they did not have anything because the events happened a long time ago. I find that the claimants did not make sufficient

---

<sup>6</sup> Exhibit C-10, Addendum to Personal Information Form and Narrative, received November 17, 2017.

<sup>7</sup> Exhibit C-4, Claimants' supporting documents, received September 11, 2017, letter from XXXX XXXX, at pp.3-6.

<sup>8</sup> Rule 11, Immigration and Refugee Board, Refugee Protection Division Rules, SOR/2012-256.

efforts to obtain the reports. Since the PC knew he was coming to Canada to make a refugee claim, it would be reasonable that he would gather corroborative documents he needed to support his case before coming to Canada. The claimants also testified that they have acquaintances who have urged them to come to Canada, and therefore they could have consulted with them as to what documentation would be necessary for a refugee claim. As well, the claimants have an experienced lawyer who could have guided them as to how to obtain documentation from Canada.

[43] The claimants also did not submit any medical documents of receiving medical treatment after being assaulted and, as noted above, the female claimant did not submit any evidence of her abortion. The PC alleged that in XXXX of 2004, he was taken to the hospital by ambulance when he had a broken hand and arm which required surgery and he spent a week in hospital. He also received treatment at a hospital in XXXX of 2008, when he was hit and his forearm branded with a hot iron. The female claimant alleged that she and her daughter XXXX were taken to hospital by ambulance when she and XXXX were attacked. The claimant was hit in the mouth and had a tooth knocked out and XXXX needed stitches. The PC explained that he authorized his mother to get the hospital documents, but she was told that they destroy them after a year. The claimants submitted a letter<sup>9</sup> from the PC's mother confirming that she attempted to get the police reports and medical documentation. The letter also refers to the humiliation and assaults the Roma suffer in Hungary at the hands of the Guards, and that she believes that eventually they will kill the Roma.

[44] My findings as to the lack of medical documentation are the same as for the lack of police reports. As well, I find it highly unlikely that a hospital would keep records for only one year as that does not seem to be good medical practice. The claimants did not provide any reliable evidence that the hospital destroyed records after one year. In addition, the claimants went to Italy in 2005, with the idea of settling there, presumably by making a refugee claim. Therefore, they

---

<sup>9</sup> Exhibit C-4, Claimants' supporting documents, received September 11, 2017, letter from XXXX XXXX, at pp. 7-11.

should have been preserving documentary evidence of their maltreatment in Hungary before 2005.

[45] The claimants submitted the positive decision for some family members and friends. They may be similarly-situated persons, but I note that each case is decided on its own facts and the evidence presented. I, therefore, do not find the decisions persuasive.

[46] In sum, I find that the claimants did not submit sufficient reliable and trustworthy evidence that they were assaulted or persecuted in Hungary, nor that they reported any assaults to the police.

### **Discrimination and persecution**

[47] In reviewing the totality of the documentary evidence, I find that Roma in Hungary face discrimination in many areas of their lives. Some Roma also face harassment and physical abuse at the hands of racist Hungarians, including some rogue police officers, and the extremist right-wing organized groups.

[48] In this case it is difficult to judge which allegations, if any, of the claimants are factual. The claimants basically fear almost all people in Hungary, including groups with which they have had no contact. I do accept that the claimants likely suffered some discrimination and harassment because of their Roma identity. However, it is unlikely that they were severely impacted. For example, in the area of housing, the claimants did not allege that they were unable to obtain housing before coming to Canada.

[49] The PC testified that he is afraid that he will not be able to get housing when he returns, and that he will be forced to live in unauthorized camps or ghettos because his house was demolished by the Baja self-government after he left. The PC stated that the Baja government who owned the houses and had been leasing them to the Roma demolished homes so that Roma would no longer live there. They also did not renew some of the leases when they expired so that the Roma would have to move out. He testified about some of the photographs he submitted where some Roma lived after losing housing. They were forced to live in shanties they erected on

unauthorized sites. Living in such an unregistered place would render the family unable to access any social services, including school for the children, and then the children would be taken away by child welfare authorities. I find that it is merely speculation that the claimants would not be able to obtain housing. The PC was able to move to Budapest and secure housing there, and after three months he was able to return to their home town of Baja and obtain housing there. In addition, the claimant did not provide any documentary evidence that housing would not be available. In fact, the claimants had resources as they traveled to Italy. The PC was also able to approach the mayor in regard to employment and housing, and the mayor told him that they were already receiving enough money. The PC's mother owns a house in Baja, although he says it is too small to accommodate them all.

[50] In regard to employment, the female claimant never worked in Hungary as she was raising her children. She did not get any education due to family circumstances. The PC has indicated in his PIF that he worked for many years in seasonal odd jobs. In the hearing, the claimant testified that he worked as a XXXX XXXX and that now he works as a XXXX in Canada. The PC never indicated in his PIF, or in his testimony, that he had particular problems finding employment nor that he was discriminated at work.

[51] In regard to education, the PC has a grade 8 education. The female claimant never went to school and is illiterate. Her mother abandoned her. The aunt who raised her did not want to send her to a gypsy school, so did not send her to school at all. This to me does not make sense. There is no evidence that they were prevented from obtaining their education because they are Roma. There is no evidence that the PC could not have continued his education had he wanted to. Their children were able to attend school at their appropriate grade level.

[52] In regard to medical care, the claimants did not submit any evidence that they did not receive proper medical care. Both the female claimant and her daughter allegedly were taken to the hospital by ambulance after they were assaulted. They did not allege that they did not receive appropriate care and the hospital made a police report. The PC was also taken to hospital by

ambulance after having his arm and hand broken, he had surgery and stayed in the hospital for a week. There were no allegations that he did not receive good medical care.

[53] In sum, I find that the claimants failed to prove, on a balance of probabilities, that they suffered discrimination in housing, employment or healthcare. I find that the claimants did not establish that the discrimination they may have experienced because of their ethnicity amounted to persecution individually or cumulatively, as the discrimination treatment was not “sustained or systemic violation of human rights demonstrative of a failure of state protection”.<sup>10</sup>

[54] I also find that the claimants did not establish, on a balance of probabilities, that they were assaulted as alleged. I agree that the objective documentary evidence shows that Roma face discrimination in many areas of their lives. However, I find that in this particular case the claimants have not established that they faced persecution, although, I find that they likely faced some discrimination because of their ethnicity.

### **State Protection**

[55] Refugee claimants are expected to make reasonable efforts to seek protection in their own country before seeking it internationally. The responsibility to provide international protection only becomes engaged when national or state protection is unavailable to the claimants. It reinforces the underlying rationale of international protection as a surrogate, coming into play where no alternative remains to the claimant.<sup>11</sup> Except in situations of complete breakdown of the state apparatus, it should be assumed that the state is capable of protecting a claimant.

[56] The presumption of state protection was articulated by the Supreme Court of Canada in the *Ward* decision where the Court stated:

The issue that arises, then, is how, in a practical sense, a claimant makes proof of a state's inability to protect its nationals as well as the reasonable nature of the claimant's refusal actually to seek out this protection. On the facts of this case,

---

<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.*

proof on this point was unnecessary, as representatives of the state authorities conceded their inability to protect Ward. Where such an admission is not available, however, **clear and convincing confirmation of a state's inability to protect must be provided.** For example, a claimant might advance testimony of similarly situated individuals let down by the state protection arrangement or the claimant's testimony of past personal incidents in which state protection did not materialize. Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of state apparatus, such as that recognized in Lebanon in *Zalzali*, it should be assumed that the state is capable of protecting a claimant.<sup>12</sup> [emphasis added]

[57] The Court has established that the onus is on the claimant to produce clear and convincing evidence that the state cannot provide protection. The Court has held that the evidence that state protection is inadequate must not only be reliable but also probative; it must also satisfy the Board, on a balance of probabilities, that state protection is inadequate.<sup>13</sup> The claimant's burden of proof is "...directly proportional to the level of democracy in the state in question: the more democratic the state's institutions, the more the claimant must have done to exhaust all courses of action open to him or her."<sup>14</sup> In a functioning democracy, a claimant will have a heavy burden when attempting to show that one should not have been required to exhaust all of the recourses available to him/her domestically before claiming refugee status internationally.<sup>15</sup> Local failures by authorities to provide protection does not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of the state's inability or refusal to provide protection.<sup>16</sup> No government is expected to guarantee perfect protection to all of its citizens at all times, and the fact that a state is not always successful in protecting its citizens is not enough to justify a claim, especially where a state is in effective control of its territory, has

---

<sup>12</sup> Ibid.

<sup>13</sup> *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 Carillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 4 F.C.R. 636 (F.C.A.).

<sup>14</sup> *M.C.I. 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.), at 536.

<sup>15</sup> *Hinzman, Jeremy v. M.C.I.* and *Hughey, Brandon David v. M.C.I.* (F.C.A., nos. A-182-06; A-185-06), Décary, Sexton, Evans, April 30, 2007, 2007 FCA 171, para. 46.

<sup>16</sup> *Zhuravlyev, Anatoliy v. M.C.I.* (F.C.T.D., no. IMM-3603-99), Pelletier, April 14, 2000. Reported: *Zhuravlyev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).

military, police and civil authorities in place and is making serious efforts to protect its citizens.<sup>17</sup> Less than perfect protection is not a basis to determine that a state is either unwilling or unable to offer reasonable protection.<sup>18</sup>

[58] As stated, the onus is on the claimant, and not on the Refugee Protection Division, to establish that Hungary is either unwilling or unable to provide him effective state protection, that is, it is the claimant who must rebut the presumption of state protection.<sup>19</sup> As Hungary is recognized as a functioning democracy means that the claimants have a heavy burden when they wish to establish that they should not be required to exhaust all of the recourses available to them domestically before claiming refugee status.<sup>20</sup> However, I do realize that documentary evidence indicates that presently democracy in Hungary is low, as identified in the 2016 United States, Department of State Report.

[59] As discussed above, beside the discrimination the claimants alleged, the PC described several incidents of assault. However, there is little evidence to support the allegations of assault. There were no police reports submitted and no medical reports. The adult children who testified did not describe any significant physical assaults they suffered with the exception of the adult son being attacked by a former schoolmate.

[60] The PC testified that they made eight or nine reports to the police, but did not submit any police reports. I find that the PC only made feeble attempts to obtain police reports in spite of

---

<sup>17</sup> *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>18</sup> *Milev, Dane v. M.C.I.* (F.C.T.D., no. IMM-1125-95), MacKay, June 28, 1996.

<sup>19</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.); *Sanchez, Valentin Quintero v. M.C.I.* (F.C., no. IMM-4478-10), Near, April 28, 2011, 2011 FC 491.

<sup>20</sup> *Hinzman, Jeremy v. M.C.I.* (F.C., no. IMM-2168-05), Mactavish, March 31, 2006, 2006 FC 420; **Reported:** *Hinzman v. Canada (Minister of Citizenship and Immigration)* [2007], 1 F.C.R. 561 (F.C.); *Hinzman, Jeremy v. M.C.I. and Hughey, Brandon David v. M.C.I.* (F.C.A., nos. A-182-06; A-185-06), Décary, Sexton, Evans, April 30, 2007, 2007 FCA 171.

having experienced counsel. Therefore, there is no objective evidence that the claimants ever sought protection from the police.

[61] As per *Maldonado*, the sworn testimony of a claimant is to be believed unless there is reason to find that the claimant is not credible. As the PC's allegations were found not to be credible and there was no trustworthy corroborative evidence, such as police reports, I therefore find that the claimants have not provided sufficient objective, credible evidence that could establish that the claimants have made sufficient attempts to obtain state protection from Hungary before coming to Canada.

[62] The claimants allege that, if returned to Hungary, they will be prosecuted based on their ethnicity, or be subject to cruel and unusual treatment or punishment, or be at risk of torture and that state protection would not be forthcoming. Counsel for the claimants submitted that, in light of the documentary evidence, their fear is objectively well founded. I am not persuaded by this argument. Convention refugee protection is granted on a forward looking basis, in the context of the adequacy of state protection. I, however find, on a balance of probabilities that the claimants have failed to rebut the presumption of adequate state protection in Hungary.

[63] Although Hungary is acknowledged as an imperfect democracy, Hungary is described as a multi-party democracy.<sup>21</sup> States are presumed to be capable of protecting their citizens. The courts have stated that, if a claimant alleges that the state cannot or will not protect him or her, the onus lies with the claimant to produce clear and convincing evidence of the state's inability to protect them. With respect to Hungarian claims, there are decisions going both ways. However, the underlying thread to all claims is credibility. Those aspects of the claimants' allegations that I found credible, namely, that the claimants may have been discriminated against in some way because they are Roma and as discrimination is pervasive in Hungary, do not provide a sufficient basis for a determination that they have been persecuted.

---

<sup>21</sup> Exhibit 8, National Documentation Package (NDP) for Hungary (August 31, 2017), Item 2.1.



[64] In several decisions, the Federal Court has underscored that the determination of whether a claimant meets the definition of Convention refugee has to be decided on an individual basis. This introduces the notion of personalised risk.<sup>22</sup> In *Molnar*,<sup>23</sup> Justice Russell stated that:

In a country such as Hungary where there are obvious and fully-acknowledged problems in human rights abuses that have to be confronted by Roma people, a state protection analysis is not easy and there will always be disagreement on this issue. In the present case, the evidence of personalized risk was not strong. As Justice Yves de Montigny held in *Jarada v Canada (Minister of Citizenship and Immigration)* 2005 FC 409 at paragraph 28:

That said, the assessment of the applicant's potential risk of being persecuted if he were sent back to his country must be individualized. The fact that the documentary evidence shows that the human rights situation in a country is problematic does not necessarily mean there is a risk to a given individual.  
[footnotes omitted]

[65] Per Justice Russell, “the Hungarian situation is very difficult to gauge. Much will depend upon the facts and evidence adduced in each case, and on whether the RPD goes about the analysis in a reasonable way.”<sup>24</sup>

[66] In reaching my decision that the treatment the claimants experienced in Hungary did not amount to persecution, I have considered Counsel’s submissions and counsel’s comments on the documentary evidence as it relates to state protection in Hungary.

### **Presumption of State Protection not Rebutted in the Alternative**

[67] To reiterate, unless the authorities concede that they are incapable of protecting a claimant, he or she must show by means of clear and convincing evidence that the state is incapable of providing protection. Without some evidence of a state’s inability to protect its citizens, the claim fails.

---

<sup>22</sup> *Molnar v. Canada (Citizenship and Immigration)*, 2012 FC 530 (CanLII), para. 102.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Molnar v. Canada (Citizenship and Immigration)*, 2012 FC 530 (CanLII), at para 105.

[68] As Russell, J., noted in *Molnar*<sup>25</sup> the acknowledged widespread discrimination against persons who are ethnically Roma makes a state protection analysis difficult. Even the courts are divided as to how to approach the analysis of state protection Hungary. Thus in *Mudrak* the Federal Court stated: “It is well recognized that there is a division in the ranks of judges of the Federal Court on the issue of state protection, particularly as it applies to claimants from the Hungarian Roma community.”<sup>26</sup> The court went on to highlight this division by quoting decisions from the Federal Court which provided divergent opinions on state protection for members of the Roma community.

[69] Although the Court in *Mudrak*<sup>27</sup> certified two questions, pursuant to paragraph 74(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), the Federal Court of Appeal determined that the questions should not have been certified in the first place. The questions were:

- a) Whether the Refugee Protection Board commits a reviewable error if it fails to determine whether protection measures introduced in a democratic state to protect minorities have been demonstrated to provide operational adequacy of state protection in order to conclude that adequate state protection exists?
- b) Whether refugee protection claimants are required to complain to policing oversight agencies in a democratic state as a requirement of assessing state protection, when no risk of harm arises from doing so?

[70] In *Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004, 440 FTR 106, the Chief Justice explained at paragraph 33 that a claimant cannot simply rely on their own belief that state protection will not be forthcoming without testing it:

In this regard, doubting the effectiveness of state protection without reasonably testing it, or simply asserting a subjective reluctance to engage the state, does not rebut the presumption of state protection . . . In the absence of a compelling or persuasive explanation, a failure to take reasonable steps to exhaust all courses of action reasonably available in the home state, prior to seeking refugee protection

---

<sup>25</sup> *Molnar v. Canada (Citizenship and Immigration)*, 2012 FC 530 (CanLII).

<sup>26</sup> *Mudrak, Zsolt Jozsef v. M.C.I.* (F.C., no. IMM-3582-13), Annis, February 18, 2015, 2015 FC 188, at para. 46.

<sup>27</sup> *Mudrak, Zsolt Jozsef v. M.C.I.* (F.C., no. IMM-3582-13), Annis, February 18, 2015, 2015 FC 188.

abroad, typically will provide a reasonable basis for a conclusion by the RPD that an applicant for protection did not displace the presumption of state protection with clear and convincing evidence.<sup>28</sup>

[71] It is in the context of these divergent views on state protection that I must attempt to decide the question of whether the claimants have displaced the presumption of state protection. In this case I find, on a balance of probabilities, the claimants have not credibly established that they have met their evidentiary burden with regard to their attempts to obtain state protection. The claimants have not presented any credible evidence indicating that they sought state protection and were refused.

[72] The female claimant did not report the rape to police or to medical authorities. The PC testified that one time a Molotov cocktail had been thrown into his yard. He extinguished it before he called the police. The police did not want to come. This may have been a reasonable response as it was night, the Molotov cocktail had been extinguished and there was no further danger. The PC did not go to the police station the next day to pursue their complaint. The claimants did not obtain any police reports and, therefore, there is no objective evidence of the assaults. Accordingly, they do not meet the stipulation set out in *Ruszo*<sup>29</sup> that a claimant must take reasonable steps to exhaust all courses of action reasonably available in the home state, prior to seeking refugee protection abroad.

[73] In the context of my negative credibility findings, and without any objective evidence of police involvement, I find that there is not any clear and convincing evidence that the claimants reported assaults to police and sought state protection.

[74] After considering the evidence and counsel's submissions, I rely on the recent decision of the Federal Court in *Kotai*, namely:

The country conditions do not suggest that the situation is so bleak that all Roma, regardless of their particular circumstances, should not be expected to make

---

<sup>28</sup> *Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004, 440 FTR 106, para. 33.

<sup>29</sup> *Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004, 440 FTR 106.

reasonable efforts to seek state protection before seeking refugee protection in another country.<sup>30</sup>

[75] The burden is on the claimants to provide clear and convincing evidence that the state is either unwilling or unable to provide them with adequate protection. I am not obliged to provide proof that the state can offer its citizens effective protection; rather the claimant bears the legal burden of rebutting the presumption that state protection exists by adducing clear and convincing evidence which satisfies me on a balance of probabilities.<sup>31</sup>

[76] I also rely on the dicta in the Federal Court of Appeal in *Mudrak*, which indicates that the Board is under no requirement to demonstrate the operational adequacy of protection measures in a claimant's home country.

With respect, the inference that the onus shifts on the Board to demonstrate "operational adequacy" of protection measures is wrong. The cases cited by the Judge do not stand for that principle. Simply put, these cases determined that the Board's decisions could not stand because they ignored relevant evidence or because the syllogism was flawed, which were legitimate grounds to intervene.<sup>32</sup>

[77] In sum, I find that the issue to be decided is whether adequate state protection is, and would be, available to the claimants should they return to Hungary. While states are presumed to be capable of protecting their nationals, it is, according to the law, for the claimants to rebut the presumption of protection with clear and convincing evidence that adequate protection would not reasonably be forthcoming. I find that the claimants have not rebutted that presumption.

---

<sup>30</sup> *Kotai, Roland v. M.C.I.* (F.C., no. IMM-6803-12), Kane, June 20, 2013, 2013 FC 693, at paragraph 41.

<sup>31</sup> *Nadeem, Choudhry Muhammad v. M.C.I.* (F.C.T.D., no. IMM-6320-00), McKeown, November 15, 2001; 2001 FCT 1263, para 5 (3); *Kaleja, Michal v. M.C.I.* (F.C., no. IMM-4106), Near, June 9, 2011; 2011 FC 668; *Quintero Sanchez, Valentin v. M.C.I.* (F.C., no. IMM-4478-10), Near, April 26, 2011; 2011 FC 491.

<sup>32</sup> *Mudrak, Zsolt Josef et al. v Canada (Minister of Citizenship and Immigration)* 2016 FCA 178, para. 31.

## CONCLUSION

[78] I find that the claimants are neither Convention refugees nor persons in need of protection as defined in sections 96 and 97(1) of the *Immigration and Refugee Protection Act*. The Refugee Protection Division therefore rejects their claims.

(signed)

**“Rose Andrachuk”**

---

**Rose Andrachuk**

**March 2, 2018**

---

**Date**