

Federal Court



Cour fédérale

**Date: 20150331**

**Docket: IMM-3078-13**

**Citation: 2015 FC 407**

**Ottawa, Ontario, March 31, 2015**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**LJUBISA GALOGAZA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr Ljubisa Galogaza, a citizen of Croatia, claimed refugee protection in Canada based on his fear of persecution due to his Serbian ethnicity and his sexual orientation. A panel of the Immigration and Refugee Board rejected his claim, finding that adequate state protection was available in Croatia.

[2] Mr Galogaza argues that the Board's decision was unreasonable, mainly because the Board relied on Croatia's efforts to protect its citizens rather than its actual ability to do so. Mr Galogaza asks me to quash the Board's decision and order another panel to reconsider his claim.

[1] I agree with Mr Galogaza that the Board erred in its analysis of state protection, and as a result, arrived at an unreasonable conclusion. I must, therefore, allow this application for judicial review and grant the relief Mr Galogaza requested.

[2] The sole issue is whether the Board's analysis of state protection was unreasonable.

## II. The Board's Decision

[3] The Board noted that the burden fell on Mr Galogaza to present clear and convincing evidence of a lack of state protection in Croatia. It also declared that a failure to seek protection is normally fatal to a refugee claim originating from a democratic state.

[4] The Board reviewed the documentary evidence and found that:

- Serbs and homosexuals face pervasive discrimination and violence in Croatia;
- The government of Croatia is attempting to prosecute those who abuse human rights, but there is no guarantee of punishment;
- Violent protests marked the first Pride Parade in Split, and police did little to prevent them;
- A later Pride Parade in Zagreb received greater police protection;
- Police have been criticized for failing to protect sexual minorities;

- Only 6% of sexual minorities subjected to violence make police reports;
- Areas outside Zagreb are generally hostile to sexual minorities – hate crimes in those areas are common;
- Crimes motivated by an animus against sexual minorities are treated more seriously than other crimes;
- Legislation prohibits discrimination based on sexual orientation and leaders have condemned acts of discrimination;
- However, laws on the books are not implemented and have done little to reduce discrimination for sexual minorities.

[5] Based on this evidence of Croatia's serious efforts to protect minorities, the Board found that adequate, albeit not perfect, state protection was available to Mr Galogaza, and rejected his claim.

III. Was the Board's analysis of state protection unreasonable?

[6] The Minister argues that the Board's analysis was reasonable in light of the evidence before it. Further, according to the Minister, the Board rightly found that Mr Galogaza had a duty to approach state officials to seek out protection, and having failed to do so, his claim cannot stand.

[7] I disagree.

[8] In my view, the Board unduly emphasized Croatia's efforts to improve the situation faced by minorities and downplayed its failure to achieve concrete results. Further, the Board imposed an obligation on Mr Galogaza to seek out state protection which, in his circumstances, is not legally required.

[9] The measures that a state has taken to deal with discrimination and persecution are obviously relevant to refugee claims given that the definition of a refugee refers to those who are unable to avail themselves of the protection of their country of origin (see *Immigration and Refugee Protection Act*, SC 2001, c 27, s 96 [IRPA]; see Annex).

[10] However, a state's efforts, on their own, do not establish that protection was actually available to the claimant:

[E]vidence of a state's efforts does not help answer the main question that arises in cases of state protection – that is, looking at the evidence as a whole, including the evidence relating to the state's capacity to protect its citizens, has the claimant shown that he or she likely faces a reasonable chance of persecution in the country of origin? To answer that question, the Board has to decide whether the evidence relating to the state resources actually available to the applicants indicated that they would probably not encounter a reasonable chance of persecution if they returned to [their country of origin] (*Moczó v Canada (Minister of Citizenship and Immigration)*, 2013 FC 734, at para 10; *Beri v Canada (Minister of Citizenship and Immigration)*, 2013 FC 854, at para 46).

[11] Here, the Board never answered that main question. In addition, the evidence before it actually showed that Mr Galogaza would face a reasonable chance of persecution notwithstanding the state's efforts to address discrimination against ethnic and sexual minorities.

[12] Further, there is no absolute requirement to approach state authorities for protection. The definition of a refugee specifically includes those who are unwilling, out of fear of persecution, to avail themselves of state protection (IRPA, s 96). Mr Galogaza feared openly disclosing his sexual orientation because it could well have led to further persecution, not protection. The evidence shows that most homosexuals in Croatia choose, out of fear, not to disclose their sexual orientation or to report the violence to which they are subjected. On the evidence, therefore, Mr Galogaza's fear was not unreasonable.

[13] In addition, any obligation to approach state authorities for protection could only arise in circumstances where protection was likely to be provided. Again, the documentary evidence before the Board did not support the existence of protection for persons in Mr Galogaza's circumstances. Therefore, his failure to seek protection was not fatal to his claim.

#### IV. Conclusion and Disposition

[14] The Board's conclusion on state protection did not represent a defensible outcome based on the law and the evidence before it. Therefore, I must allow this application for judicial review and order another panel of the Board to reconsider Mr Galogaza's claim. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. The matter is returned to another panel of the Board for reconsideration.

"James W. O'Reilly"

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Judge

Annex

*Immigration and Refugee Protection Act, SC 2001, c 27*

*Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27*

Convention refugee

Définition de « réfugié »

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3078-13

**STYLE OF CAUSE:** LJUBISA GALOGAZA v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 30, 2014

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** MARCH 31, 2015

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