

Federal Court



Cour fédérale

Date: 20121012

Docket: IMM-42-12

Citation: 2012 FC 1191

Ottawa, Ontario, October 12, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

**ONODI, PETER ZOLTAN and
VARGA, EMESE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants seek judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated December 12, 2011, which found that they were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is dismissed.

Background

[2] Mr. Onodi (the applicant) and his common law wife, Ms. Varga (collectively, the applicants), are citizens of Hungary. The applicant is Roma and Ms. Varga is Jewish.

[3] The applicant has experienced discrimination and violence in Hungary, starting with harassment at his high school. In 2006, skinheads shouted threats and threw a beer bottle at him. Also that year, extremists threw a Molotov cocktail in front of his apartment building. He reported this to the police but they did not believe him. In 2010 members of the Hungarian Guard, a now disbanded racist organization, shouted threats at him and his sister.

[4] The Board decided that the determinative issue was state protection and concluded that the applicants did not provide clear and convincing evidence of Hungary's inability to provide adequate protection. The Board found that their assertions concerning Hungary's inability to protect its citizens to be unsubstantiated and inconsistent with the documentary evidence. The Board preferred the documentary evidence with respect to state protection because it was drawn from a wide range of sources including government and non-government organizations.

[5] The Board acknowledged that Roma face discrimination and racially motivated crime. There are also reports of police corruption and misconduct. However, the Board noted that police officers are disciplined for that behaviour. The Board also considered several organizations where one could complain about police abuse, including the Independent Police Complaints Board, the Parliamentary Commissioners' Office, the Equal Treatment Authority and the Roma Police Officers' Association. Individuals can also file lawsuits against the police for inaction or human

rights violations. Additionally, Hungary is part of the European Union and is accountable to the European Commission against Racism and Intolerance.

[6] The applicant sought police assistance on one occasion. He described an incident where a Molotov cocktail was thrown at the entrance of the building where he lived. He testified that the police chased him away from the police station. The Board noted that the applicant did not seek redress through any of the available avenues. He did not describe any other problems with the police.

[7] The Board found that the applicant's one attempt to engage state protection did not provide the requisite clear and convincing evidence that, on a balance of probabilities, state protection in Hungary is inadequate.

Issue

[8] The issue for this judicial review is whether the Board reasonably decided that the applicants had not rebutted the presumption of state protection: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

Discussion

[9] An individual claiming refugee protection must overcome the presumption of state protection. The claimant has the burden of establishing, on a balance of probabilities, that state protection is inadequate: *Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94.

[10] In the case of a functioning democracy, refugee claimants face a heavy evidentiary burden in demonstrating that they exhausted their domestic options: *Hinzman v Canada (Minister of Citizenship)*, 2007 FCA 171. Generally speaking, refugee claimants must first seek protection from their country of citizenship, unless it is reasonable to expect that protection would not have been forthcoming. As this Court set out in *Sow v Canada (MCI)*, 2011 FC 646, the mere existence of free and fair elections does not indicate that state protection is present. The Board must consider in addition, the robustness of the institutions which constitute a democratic state, including the judiciary, defence bar and the professionalism of the police force.

[11] In this case, the Board conducted a detailed analysis of the Hungarian constitution, judiciary and legislation that protects minority rights. The Board found that Hungary is a functioning democracy, not just because it has elections, but also because of strong government institutions.

[12] The applicants also submit that the Board relied on the mere fact that Hungary had taken steps to protect Roma citizens, without considering whether those steps had resulted in adequate protection. Additionally, the applicants submit that, where the Board relies on non-police agencies as evidence of protection, those agencies must actually have the ability to offer protection.

[13] This is not a case, such as in *Rezmuves v Canada (Citizenship and Immigration)*, 2012 FC 334, where the Board described the institutional protections available to protect Roma, but failed to examine their effectiveness. Nor is this a case like *Bledy v Canada (Citizenship and Immigration)*, 2012 FC 679, where the Board failed to consider recent evidence of attacks on ethnic minorities.

[14] The Board acknowledged Hungary's imperfect record regarding ethnic minorities, especially Roma citizens. In particular, the Board noted the low rates of education, employment and adequate housing among Roma Hungarians. The Board also noted that Roma face discrimination by law enforcement officers and are targeted for violent crime because of their ethnicity.

[15] The Board weighed this against evidence which demonstrated that the police were responding to protect Roma. It noted that the National Bureau of Investigation had recently laid charges against four individuals suspected of murder, violent attacks and threats to the Roma community, and the courts have also offered protection. In 2008, a Budapest court ordered the Hungarian Guard disbanded because of its attacks on the Roma community. This decision was upheld on appeal.

[16] The applicants submit that state protection cannot be adequate because the applicant was attacked recently and violent attacks against Roma and Jews are increasing. However, no country can offer its citizens perfect protection. It is not sufficient for a refugee claimant to show that the government's efforts have not always been successful: *Canada (Minister of Employment and Immigration) v Villafranca*, [1992] FCJ No 1189.

[17] It is important to recall that the applicants have the burden of displacing the presumption of state protection. It is not the Board which is required to demonstrate that state protection is adequate. While the applicant did seek police protection on one occasion in 2006, the Board

reasonably expected him to do more in the context. Its finding that the presumption of state protection had not been displaced survives judicial review.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-42-12

STYLE OF CAUSE: ONODI, PETER ZOLTAN and VARGA, EMESE v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto

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**REASONS FOR JUDGMENT
AND JUDGMENT:** RENNIE J.

DATED: October 12, 2012

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