



RPD File No. / N° de dossier de la SPR : TA9-00698
TA9-00699
TA9-01081
TA9-01082
TA9-10619

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

XXXX XXXX XXXX
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XXXX XXXX XXXX
(a.k.a.XXXX XXXX XXX XXXX)
XXXX XXXX XXXX XXX
(a.k.a.XXXX XXXX XXXX XXXX)

Demandeur(e)(s) d'asile

Date(s) of Hearing

OCTOBER 27, 2011

Date(s) de l'audience

Place of Hearing

TORONTO, ONTARIO

Lieu de l'audience

Date of Decision

NOVEMBER 23, 2011

Date de la décision

Panel

EDWARD C. ROBINSON

Tribunal

**Counsel for the
Claimant(s)**

N/A

**Conseil(s) du / de la / des
demandeur(e)(s) d'asile**

Tribunal Officer

N/A

Agent(e) de tribunal

**Designated
Representative(s)**

XXXX XXXX

Représentant(e)(s) désigné(e)(s)

**Counsel for the
Minister**

N/A

Conseil du ministre

INTRODUCTION

[1] The claimants, XXXX XXXX (hereinafter “the claimant”), XXXX XXXX, XXXX XXXX, XXXX XXXX XXXX and XXXX XXXX XXXX, citizens of Hungary, seek refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (the IRPA). The claimants’ identities have been established through certified copies of the claimants’ passports.¹

[2] The claimant alleges that as a Roma in Hungary she will be discriminated against, harassed and even harmed simply because of her race. The discrimination is felt on many levels including in employment, education, housing, and in the general public.

ALLEGATIONS

[3] The claimant is a 45-year-old female; she alleges that she and her family have suffered many attacks—physically and verbally—from racist Hungarians from childhood into adulthood. She alleged that her sister was raped as a child and her own daughter was also raped when she was 13 years old. She alleged that her, her children and other relatives suffered discrimination, threats and harassments at school, on the streets, in stores, etc.

[4] She also alleged that she received information from a young man (XXXX) who had witnessed a crime committed by a group of Hungarians. She and XXXX reported the crime to the police, and some of the assailants were detained but subsequently released. She alleged that, since then, she and her family have been targeted with threats, abuses and violence against their persons and property.

[5] Fearing for their lives and safety, the claimant and her family left Hungary and arrived in Canada on XXXX XXXX 2008 and filed for refugee status on January 12th 2009.

Unrepresented Claimant

[6] The claimant was asked why she was without counsel; she said that when she spoke to her lawyer, he wanted her to testify to things that were not true; he wanted her to lie, and she did not

¹ Exhibit R/A-2.

want to lie. She stated that he had received money from Legal Aid and because of that she would have to write a letter to them to get another lawyer. She stated that it is very difficult to get a lawyer because they ask for a lot of money, which she cannot afford, and she is unable to get a job. She stated that she contacted an organization, Ronald Lee, which assists Roma people; she mentioned that the organization has a female lawyer, but she does not know her name.

[7] As the claimant has had sufficient time to retain counsel; for example, a hearing for the claimants which was set for September 28, 2011 was postponed on their request specifically for them to retain counsel; but they were advised that the next hearing would proceed with or without counsel. The claimant did not request any further postponement. The panel had ruled to proceed with the hearing without counsel. The claimant was apprised of the hearing process prior to the commencement of the hearing.

Gender-Related Claim

[8] The panel applied the *Gender Guidelines* in a broader sense to include sexual violence as it relates to gender and those who are persecuted, because they do not conform to the typical or traditional expectation of their gender. Since this claim involves gender-related violence, the panel considered the *Chairperson's Guidelines on Gender-Related Persecution*.² The *Chairperson's Guidelines* help to assess the key evidentiary elements in determining to what extent women making a gender-related claim of fear of persecution successfully rely on any Convention ground, and under what circumstances does gender violence constitute persecution. The *Chairperson's Guidelines* also highlight that women refugee claimants may face special problems in demonstrating that their claims are credible and trustworthy. Factors that may affect their ability to provide evidence include difficulty in providing testimony on sensitive matters, cross-cultural misunderstandings as well as social, religious and economic differences. The *Chairperson's Guidelines* was used to help assess the circumstances of this claim and to understand and apply the added sensitivities necessary to properly assess whether any credibility issues are the result of such difficulties, or an attempt to fabricate evidence.

² *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*.

DETERMINATION

[9] The panel finds that the claimant has not satisfied the burden of establishing a serious possibility of persecution for a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. Therefore, the panel finds that the claimant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the IRPA.

[10] The determinative issue in this case is whether the claimant's fear is objectively reasonable. In this regard, the panel considered whether or not there is adequate state protection in Hungary, whether the claimant took all reasonable steps to avail herself of that protection, and whether she has provided clear and convincing evidence of the state's inability to protect.

ANALYSIS

Credibility and Subjective Fear

[11] With regard to credibility, the panel is guided by the Federal Court of Appeal which has ruled that testimony given under oath is presumed to be true, unless there is a valid reason to doubt its truthfulness.³ The assessment the panel must use to test the truth of a story of a witness is that it be in harmony with the preponderance of probabilities, which a practical and informed person would readily recognize as reasonable in that place and in those conditions.⁴ Furthermore, the panel cannot be satisfied that, "the evidence is credible or trustworthy unless satisfied that it is probably so, not just possibly so."⁵

[12] The panel, in considering the credibility of the claimant, made an assessment of all the evidence, both oral and documentary.⁶ The evidence was also assessed as a whole so it could be treated in a consistent manner.⁷ However, not every piece of evidence will be referred to, but those

³ *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.).

⁴ *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.), at 357, per O'Halloran, J.A.

⁵ *Orelien v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 592 (C.A.), at 605.

⁶ *Owusu, Kweku v. M.E.I.* (F.C.A., no. A-1146-87), Heald, Hugessen, Desjardins, January 31, 1989.

⁷ *Bosiakali, Mbokolo v. M.C.I.* (F.C.T.D., no. IMM-4948-00), Nadon, December 14, 2001 FCT 1381.

the panel finds relevant to its decision.⁸ Even if a piece of evidence is not referred to, the panel carefully considered it as part of the evidence.⁹ The panel is entitled to make reasonable findings based on implausibility, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole.

[13] The central element in this claim is that the claimants suffered many instances of discrimination, i.e., insults, verbal abuse, physical and sexual assaults, threats and harassment over a period of several years, many of which were reported to the police, but they, as Roma, did not receive any meaningful assistance from the police. The panel believes that the claimants are Roma, and like many Roma, they have suffered discrimination. However, the panel does not believe that the experiences of the claimants have amounted to persecution. The panel also believes that in their attempt to get the panel to believe that they were persecuted, they have engaged in an elaborate scheme of fabrication, exaggeration and embellishment to bolster their claims for refugee status, and the panel rejects it.

[14] In arriving at its decision, the panel considered the omissions of very important details that were not mentioned in the claimant's Personal Information Form (PIF) narrative or port of entry (POE) notes—details that go to the very core of the claim. For example, although the claimant mentioned in her PIF narrative that “her older sister was raped by two Hungarian men when she was 11”,¹⁰ there is no mention of her own daughter's, who is before the panel claiming refugee status, alleged rape. She testified that, one night about 4 to 5 years ago, her house was broken into and her 13-year-old daughter (XXXX) and her son were home alone. The panel notes that not even in XXXX own PIF narrative is any mention of her being raped either.¹¹ But the claimant testified that her son (XXXX) was locked in one room and her daughter raped in another by the men. The claimant explained that she did not write that her daughter was raped because the interpreter was male. The claimant seems to imply some kind of cultural or other forms of sensitivity regarding talking about personal events with non-male members of her family. As indicated earlier, the panel took into consideration, according to the *Gender Guidelines*, the “cultural” concerns, as expressed by the claimant, not wanting to mention that her daughter was raped because the interpreter was male.

⁸ *Cepeda-Gutierrez, Carlos Arturo v. M.C.I.* (F.C.T.D., no. IMM-596-98), Evans, October 16, 1998.

⁹ *Hassan, Jamila Mahdi v. M.E.I.* (1992), 147 N.R. 317 (F.C.A.).

¹⁰ Exhibit C-1, PIF narrative, p. 2, para. 4.

¹¹ Exhibit C-2.

[15] However, in doing so, the panel notes that it is a male, and the panel did not ask any question about her daughter being raped; the panel did not know anything about it, as it was not in the PIF narrative. It was the claimant who volunteered the information, even though she did not include it in her PIF narrative, as she said, because the interpreter was male. Why would she refrain from including this information in her PIF narrative because the interpreter was male but included the information in oral testimony before a male Member? The panel finds that, if the claimant did not include the information about her daughter's alleged rape because the interpreter was male, on a balance of probabilities, she would not have mentioned it either before a male Member. The panel therefore does not believe that the claimant's daughter was raped and finds, on a balance of probabilities, that if she was raped, she would have included it in her PIF narrative.

[16] The panel notes that the *Guidelines* cannot be treated as corroborating any evidence of gender-based persecution so that the giving of the evidence becomes proof of its truth; they are an aid for the Refugee Protection Division (RPD) panel in the assessment of the evidence of women who allege that they have been victims of gender-based persecution. The *Guidelines* do not create new grounds for finding a person to be a victim of persecution. To that extent, the grounds remain the same, but the question becomes whether the panel was sensitive to the factors which may influence the testimony of women who have been the victims of persecution, which Justice Pelletier indicated in *Newton*.¹²

[17] The panel also notes that the claimant tried to link her daughter's alleged rape and other incidents of violence against her and her family to retaliation for a report she allegedly made to the police against a group of Hungarians. She alleged that some Hungarian men had kidnapped and killed her husband's 6-7-year-old cousin. She did not witness this incident, but XXXX, a 20-year-old Roma man, who had witnessed the kidnapping, told her and together they made a report to the police. The police carried out an investigation, and a number of men were detained and questioned two to three weeks after the incident. She testified that one of the men remained in detention for about three weeks but was released. The claimant testified that XXXX left Hungary a long time ago and said that she started to receive threats roughly 4½ years ago.

[18] She was asked who the people are pursuing her; she replied the people she spoke about at the prosecutor's office. The panel notes that nothing about any of this was written in the claimant's

¹² *Newton v. M.C.I.* (2002), 182 F.T.R. 294, at paragraph 17-18.

PIF narrative; this information is central to her claim of fear of persecution, especially as she testified that these individuals are still making threats against her while she is here in Canada. She stated that her sister-in-law has informed her of these threats which warn her not to return to Hungary for she will be killed, yet absolutely nothing about her husband's little cousin being kidnapped and killed by White Hungarians. She made a report to the police and consequently she was being persecuted. There is no newspaper article of this event, no police report, absolutely nothing to corroborate this belated piece of evidence.

[19] The claimant was reminded of and asked why nothing about any of this belated piece of evidence is written in her PIF narrative; she replied that even here she was afraid to mention it. She was reminded that she wrote about several other things that happened to her and members of her family in her PIF narrative, but she never mentioned anything about being targeted because she made a report to the police about her husband's cousin's death; she replied because she was afraid to write it in her PIF narrative. Asked why she was afraid to write down the information, she replied that she was afraid that something like that would happen to her here (in Canada).

[20] Finding her explanation to make no sense at all, she was asked, if she thought that something like this could happen to her here, why did she come to Canada; she said that she was afraid at the beginning to write it in her PIF narrative, but she knows that Canada is different. The panel finds her explanation unreasonable and reject it. The panel also finds that if she was being retaliated against, on a balance of probabilities she would have included it in her PIF narrative. She did not have counsel at the hearing but according to her testimony she was helped by Legal Aid earlier with counsel. The panel therefore find on a balance of probabilities that, if these events had occurred, they would have been mentioned in her PIF narrative.

[21] The panel then listed a number of things that the claimant had included in her PIF narrative, for example, that she spoke about her sister being raped, her husband being attacked and almost killed, her children being attacked, etc., but she did not mention anything about the report she made to the police which resulted in retaliation against her and her family. She was asked to explain why. She replied, "As I said before at the beginning when I came to Canada, I was afraid to write these things down; that is why I did not write that my daughter was raped because the interpreter was male." She added that she was afraid the information would leak out and reach Hungary. The panel finds her explanation unreasonable and that it also undermines her credibility of a subjective

fear basis, especially when it took her almost five years after the threats began, after her daughter's rape, etc. to leave Hungary or the area; she claimed that she did not have the money to do so.

[22] The panel reminds itself that the Court has stated that, "One of the primary ways that the Board tests a claimant's credibility is by comparing the PIF with the claimant's oral testimony. It is intended that all questions concerning the PIF, directed to the claimant, should be answered fully".¹³ The Court has also stated that: "Where a refugee claimant fails to mention important facts in his or her PIF, this may legitimately be considered by the Board to be an omission that goes to a lack of credibility".¹⁴

[23] The Federal Court has also found that where a claimant is found to be lacking in credibility, the panel can legitimately find that there is no subjective fear basis for the claim. In such cases, it is very difficult, if not impossible, to find credible evidence of a claimant's subjective fear, notwithstanding the existing evidence of human rights violations in the claimant's country.¹⁵

[24] Despite the documentary evidence,¹⁶ the oral testimony, this panel finds no basis of a subjective fear in this claim. The panel also took that into consideration the fact that the claimant was not represented at the hearing but found that she did not have a credible subjective fear basis. The claimant also did not provide any objective evidence to corroborate any of her allegations including that her sister-in-law informed her that individuals had left graffiti and threats in the courtyard of where she used to live saying they would kill her if she returned to Hungary. Given the credibility problems with issues that are central to the claim and which no satisfactory explanations were provided, the panel finds that, on a balance of probabilities, the claimant fabricated, exaggerated and embellished her story of discrimination to bolster her claim for refugee status and reject it and find that it also undermines her credibility.

Discrimination vs. Persecution

[25] The claimant testified that she was born in XXXX in XXXX 1966 and ever since she has been the victim of discrimination because of her Roma ethnicity. She said that she and other Roma

¹³ *Castroman (Vezzani), Carlos Adrian v. S.S.C.* (1994), 27 Imm. L.R. (2nd) 129 (F.C.T.D.).

¹⁴ *Grinevich, Vladimir v. M.C.I.* (F.C.T.D., no. IMM-17773-96) Pinard, April 11, 1997.

¹⁵ *Amaniampong, Kofi v. M.E.I.* (F.C.A., no. A-1326-87), Heald (dissenting), Hugessen, Mahoney, May 19, 1989.

¹⁶ Exhibit R/A-1.

children were discriminated against at school; they were placed in special rooms with only five desks and segregated from the Hungarian students. They could not enter the cafeteria and had lunch from the leftovers of the Hungarian students. They were not allowed to play with the Hungarian children; they were treated as if they had diseases.

[26] She testified that she was left outside school by her teacher, as punishment for something she had not done during winter and became sick as a result. She went to buy ice cream from the ice cream truck, but she was not served until all of the Hungarian children were served, after which she was told the ice cream was finished. At age 12, adult men would make sexist remarks at her, and her older sister was raped at age 11. The claimant admits that she knows that these things do not happen only to Gypsy people but stated that they are targeted because they are Gypsies.¹⁷

[27] She was forced to buy items at a store, even if she did not want them because she had touched them; if she refused, they were told that the police would be called. Doctors refused to treat them in a like manner as Hungarians. Schools refused to register her children because they were Gypsies; yet when they went to school they would experience discrimination. Once she said that she and her husband were attacked by six or seven individuals with swords and beaten, but they were also attacked physically and verbally on many other occasions.

[28] The panel finds that there is no persuasive evidence that she had been mistreated by the medical system in Hungary. She presented no corroborative evidence to support any of her allegations of assaults, medical malpractice, etc. The panel finds that, on a balance of probabilities, none of the incidents mentioned indicate that the claimants have been denied adequate medical care in Hungary because of their ethnicity.

[29] There may have been discrimination against the claimants in Hungary because of their ethnicity, but does the discrimination suffered by these claimants amount to persecution when considered singularly or cumulatively? To be considered persecution, the mistreatment suffered or anticipated must be serious. In order to determine whether a particular mistreatment would qualify as “serious”, one must examine what interest of the claimant might be harmed and to what extent the subsistence, enjoyment, expression or exercise of that interest might be compromised. “Persecution”, for example, undefined in the Convention, has been ascribed the meaning of

¹⁷ Exhibit C-1, PIF narrative, p. 2.

sustained or systemic violation of basic human rights demonstrative of a failure of state protection.¹⁸ In the case of *Chan*,¹⁹ La Forest J. (in dissent) reiterated that the essential question is whether the persecution alleged by the claimant threatens his or her basic human rights in a fundamental way.

[30] There is no persuasive evidence that the claimants were persecuted in education, employment, housing or medical care in Hungary.

[31] The physical attacks on the claimants are considered in the following section on state protection. The conclusion reached was that there was no persuasive evidence of a sustained or systemic violation of basic human rights of the claimants, demonstrative of a failure of state protection.

[32] The panel has also considered these matters cumulatively and finds that they do not rise to the level of persecution.

State Protection

[33] According to the Central Statistics Office, in 2007 the Romani community was the largest ethnic minority, accounting for 2% of the population, or about 200,000 persons. However, unofficial estimates, which vary widely, suggest the actual figure was much higher, ranging from between 500,000 and 800,000 persons. Violent attacks against Roma continued and generated strong public concern and intense disputes as to the existence of racially motivated crime in the country. Human rights non-government organizations (NGOs) reported that Roma were discriminated against in almost all fields of life, particularly in employment, education, housing, penal institutions, and access to public places, such as restaurants and bars.

[34] According to the statistics of the Hungarian Institute for Educational Research and Development, Roma were significantly less educated than other citizens, and their incomes and life expectancy were well below average. A 2007 International Labour Organization report estimated the unemployment rate among Roma to be 40%. However, in many underdeveloped regions of the

¹⁸ James C. Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991), pp. 104-105, cited with approval in *Canada (Attorney General) v. Ward*, [1993] S.C.R. 689, 103 D.L.R. (4th) 1, 20 Imm. L.R. (2d) 85.

¹⁹ *Chan v. M.E.I.*, [1995] 3 S.C.R. 593; affirming *Chan v. M.E.I.*, [1993] 3 F.C. 675 (C.A.).

country, it exceeded 90%. Romani unemployment was estimated to be three to five times higher than among the non-Romani population. Inadequate housing continued to be a problem for Roma; their overall living conditions remained significantly worse than the general population's. The attitude of some Hungarian people, including some in positions of authority, toward the Roma is certainly discriminatory and prejudicial. It is clear from the documentary evidence that the effect has been to marginalize the Roma people. Roma are generally under-employed, under-educated, frequently live in subsistence housing, and are now subject to violence from radical elements who are gaining support from the general public to some extent. It is against this background, and in taking into consideration the particular circumstances relating to this claim, that the panel must determine whether or not adequate state protection exists for this particular claimant in Hungary.

[35] The determinative issue in the case at hand is the presumption that countries are capable of protecting its citizens, and this underscores the principle that international protection comes into play only when a refugee claimant has no other recourse available. To rebut the presumption of state protection, a claimant must provide "clear and convincing" confirmation of the state's inability to protect its citizens.²⁰ A claimant who alleges that state protection is inadequate must persuade the Board that the evidence establishes that the state protection is in fact, inadequate. 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.²¹

[36] In view of these principles, the panel finds that the claimant has not provided the requisite clear and convincing evidence that, on a balance of probabilities, state protection in Hungary is inadequate.

[37] The claimant was questioned as to what efforts she made to seek state protection before fleeing Hungary. She stated that she made many complaints to the police for various experiences, including the rape of her daughter. She testified that they told her to go home and a police officer would come to her home, but no one did. She also said that, on one occasion, individuals broke her window, entered the house and beat her children; the police were called and a court case ensued, but nothing came of the case. The panel however notes that, based on the claimant's own testimony, the police seem to have taken action where they could, which suggests that state protection exists

²⁰ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1, 20 Imm. L.R. (2d) 85, at 725, 709 and 724.

²¹ *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 4 F.C.R. 636 (F.C.A.).

even if it is not perfect. For example, the claimant testified that she and XXXX made a report to the police about the kidnapping and death of her husband's cousin. About five people were held for questioning, and one was held for two to three weeks. The claimant testified that she did not witness the kidnapping; it was XXXX who did, but she said that he left the area a long time ago.

[38] The panel finds that the police could not properly pursue their investigation if the main, and perhaps only witness had left the area. The panel also finds that the police can hardly make arrests if the victims of assaults are unable to identify their assailants. For example, XXXX was asked if he had recognized the individuals who broke into their home and raped his sister; he replied that they came into the house punched him, and whatever was in his brain just vanished from it. Asked if he saw the men after the incident, he said no. Asked if he was able to give the police a description, he said no and added that the police started an investigation against unknown perpetrators.

[39] The panel notes that the Court said that random assaults where the assailants are unknown to the victim and there are no independent witnesses are difficult to effectively investigate and protect against. In all such circumstances, even the most effective, well-resourced and highly motivated police forces will have difficulty providing effective protection. This Court should not impose on other states a standard of "effective" protection that police forces in our own country, regrettably, sometimes only aspire to.²²

[40] The claimant was questioned about her views on state protection in Hungary. The claimant responded that, if there was state protection for Roma, she would not be in Canada. The panel found the claimant's responses regarding the effectiveness of state protection were not persuasive, since they were not credible and were largely unsubstantiated and were not consistent with the documentary evidence. The panel prefers the documentary evidence over the claimants' testimony since they are drawn from a wide range of publicly accessible documents, from reliable non-government and government organizations.

[41] The panel would be remiss if it did not acknowledge and consider that there is information in the documentation to indicate that there is widespread reporting of incidents of intolerance, discrimination and persecution of Romani individuals in Hungary. However, weighted against this

²² *Smirnov v. Canada (Secretary of State)*, [1995] 1 F.C. 780 (T.D.), at 786.

is persuasive evidence that indicates that Hungary candidly acknowledges its past problems and is making serious efforts to rectify the treatment of minorities in that country, especially in the case of the Roma. The Board recognizes that there are some inconsistencies among several sources within the documentary evidence; however, the preponderance of the objective evidence regarding current country conditions suggests that, although not perfect, there is adequate state protection in Hungary for Roma who are victims of crime, police abuse, discrimination or persecution, that Hungary is making serious efforts to address these problems, and that the police and government officials are both willing and able to protect victims.

[42] There is considerable activism in Hungary by the country's ethnic minorities for the protection of their rights. In July 1993 the government adopted legislation guaranteeing the cultural, civil and political rights of 12 minority groups and prohibiting ethnic discrimination. Following the approval of this legislation, minority rights activists launched a new campaign to change Hungary's electoral law, with the aim of securing the direct representation of ethnic groups in the legislature. In the 1994 municipal elections, ethnic minorities were able to elect their own local ethnic authorities, with consultative roles on cultural and educational issues affecting the community. In February 1995, Hungary signed the Council of Europe Convention on the Protection of National Minorities. In April, the Roma of Hungary elected their own governing body, the National Autonomous Authority of the Romany minority, which was in power to administer funds and deliberate issues affecting the Roma. In December 2008, the Metropolitan Court in Budapest ordered the dissolution of the extreme nationalist Hungarian Guard, which was responsible for attacks and discriminatory behaviour against the Roma community. A court of appeal upheld the ruling, stating that the organization incited violence and violated the freedom of others. This prohibition was confirmed by the Supreme Court in December, 2008.²³

[43] The National Police Headquarters (NPH), which operates under the direction of the Ministry of Interior, is responsible for enforcing laws and maintaining order nationwide. Twenty regional police departments are directly subordinate to the NPH; city police are subordinate to the regional police and have local jurisdiction.

²³ Exhibit R/A-1, Item 1.2, *The Europa World Year Book 2010*, "Hungary," pp. 2139-2157. London: Routledge.

[44] Penalties for police officers found guilty of wrongdoing include reprimand, dismissal, and criminal prosecution. A legislative amendment that took effect on March 24 mandates the automatic dismissal of police officers convicted of criminal acts committed while on duty.

[45] Victims of lesser police abuses may complain either to the alleged violator's unit or to the Independent Police Complaints Board (IPCB).

[46] In the first 10 months of the year, authorities found 2,914 police officers responsible for breaches of discipline, 868 guilty of petty offences, 310 guilty of criminal offences, and eight unfit for duty.

[47] In the same period, courts sentenced seven police officers to prison terms, gave suspended sentences to 25, fined 315, demoted four, and dismissed 11. In the same period, courts convicted 32 officers of corruption. No information was available on the number placed on probation.

[48] The IPCB, established in 2008, investigated violations and omissions by the police that affected fundamental rights. The five-member body, appointed by a two-thirds majority of the National Assembly, functions independently of police authorities. As of December 8, the Board had received 285 complaints from the public. It reviewed 501 (including some cases filed in 2009) and found legal violations in 157. The Board forwarded the 157 cases to the national police chief, who agreed with the findings in one case, partially accepted the findings in 27, and rejected the remainder. The IPCB's authority is limited to making recommendations to the NPH and reporting its findings to Parliament.²⁴

[49] The expansion of the Roma Anti-Discrimination Customer Service Network means that in 2008 there were 30 lawyers at 47 municipalities in the country, and the coordination of the program in the Ministry is ensured by a desk officer for Roma affairs. Clients can obtain information on the customer service contact details of network lawyers 24 hours a day. There was a nation-wide campaign promoting the network and toll-free number. Since 2004 the Network has handled more than 7,200 cases.²⁵

²⁴ Exhibit R/A-1, Item 2.1, United States (US) Department of State, "Hungary", *Country Reports on Human Rights Practices for 2010*, 8 April 2011.

²⁵ Exhibit R/A-1, item 13.2, Hungary. 4 June 2009. *Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities*.

[50] There is also recourse to the Equal Treatment Authority. Since 2005 it has provided individuals with a direct avenue of redress for violations of the prohibition of discrimination in a variety of public and private law relationships. In the first year, there were nearly 500 complaints lodged and the number has risen steadily every since. There are also other remedies such as seeking compensation through the courts, or turning to one of the Parliamentary Commissioners where public authorities are concerned.²⁶

[51] There is also the Roma Police Officers' Association in Hungary and Roma are able to file a complaint to the association. The complaints mostly concern discrimination in employment, discriminatory treatment, and discrimination by law enforcement authorities or police officers.²⁷

[52] If the claimant faces discrimination, she has recourse to all these programs for assistance should she need it.

[53] The Hungarian government has taken a number of legal and institutional measures to improve the situation of the Romani minority. According to the open Society Institute, Hungary has one of the most advanced systems for minority protection in the region. The Hungarian Government lists a number of institutions within the state apparatus, including the Roma Integration Department within the Ministry of Social Affairs and Labor, the main government body responsible for Romani integration and the Council of Roma Integration, a consultative, advisory body, which coordinates measures between various ministries on the social inclusion of Roma.²⁸ Hungary has taken a number of initiatives relating to the situation of the Roma including, education, employment, housing, health, and political representation.²⁹

[54] Hungary faces criticism regarding the implementation of the laws that it has enacted to address the discrimination and persecution of its minorities, especially the Romani. While there may be motivation within the central government to have its laws enforced, there is difficulty in implementing the enforcement of these laws at the local level, and resources routinely fail to reach

²⁶ Exhibit R/A-1, item 13.3, Council of Europe (COE), 24 February 2009, European Commission Against Racism and Intolerance (ECRI), *ECRI Report on Hungary (Fourth Monitoring Cycle)*; and item 13.10, *Response to Information Request HUN103232.E*, 15 October 2009.

²⁷ Exhibit R/A-1, item 10.1, *Response to Information Request HUN103091.E*, 21 April 2009.

²⁸ Exhibit R/A-1, Item 13.10, *Response to Information Request HUN103232.E*, 15 October 2009, treatment of Roma; state protection efforts.

²⁹ Exhibit R/A-1, Item 13.11, *Response to Information Request HUN103267.E*, 6 October, 2009, Situation of Roma, including education, employment, housing, health, and political participation (2006 – Sept. 2009).

the groups with the greatest needs. The criticism against Hungary may be deserved, but what is important to note is that Hungary is a part of the European Union and is therefore responsible for upholding a number of various standards to maintain its membership in the Union. For instance, the European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specializing in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognized expertise in dealing with racism, xenophobia, anti-Semitism and intolerance. The ECRI published a report on Hungary in which it gives praise to Hungary for its accomplishments, cites issues of concern, and gives recommendation for future action.³⁰

[55] What is important to note in this instance is that Hungary is not an island unto its own, but it is a responsible member of the European Union and reports regularly to the governance structures within that Union. Even if criticism of Hungary's measures to combat racism is warranted, particularly against the Romani population, on a balance of probabilities, Hungary is taking the measures to implement the standards that are mandated as a member of the European Union.

[56] Therefore, having considered the totality of the evidence, the panel find that the claimant, in the circumstances of this case, has failed to rebut the presumption of state protection with clear and convincing evidence and that the claimant did not take all reasonable steps in the circumstances to avail herself of that protection before making a claim for refugee protection. Therefore, the panel is not persuaded that the state of Hungary would not be reasonably forthcoming with state protection, should the claimant seek it.

[57] There is no persuasive evidence before the panel that the claimant would face persecution or, on a balance of probabilities, face a risk to her life or to cruel and unusual treatment or punishment or a danger of torture, if she returned to Hungary.

[58] For all of these reasons, the panel finds that the claimant is not a Convention refugee or a person in need of protection, whether under section 96 or section 97 of the *Act*, as state protection is available to her.

³⁰ Exhibit R/A-1, item 13.2, Hungary, 4 June 2009, *Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities*.

Principles and Jurisprudence Applied

[59] In the case at hand, the panel has applied the following principles and jurisprudence.

[60] The Board, in assessing the issue of state protection, is guided by the jurisprudence from the Supreme Court of Canada and the Federal Court. The courts have established a number of principles relating to state protection, and the panel has applied those principles to the case at hand.

[61] There is a presumption that, except in situations where the state is in complete breakdown, the state is capable of protecting its citizens. The presumption that a state is capable of protecting its citizens underscores the principle that international protection comes into play only when a refugee claimant has no other recourse available. Having canvassed the country conditions documents, the panel finds that Hungary is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country.³¹

[62] To rebut the presumption of state protection, a claimant must provide “clear and convincing” confirmation of the state’s inability to protect its citizens.³² A claimant who alleges that state protection is inadequate must persuade the Board that the evidence establishes that the state protection is, in fact, inadequate. 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.³³ Where a state is in effective control of its territory, has military, police and civil authority in place and makes serious efforts to protect its citizens, the mere fact that the state’s efforts are not always successful will not rebut the presumption of state protection.³⁴ A claimant cannot rebut the presumption of state protection in a functioning democracy by asserting only a subjective reluctance to engage the state.³⁵ Doubting the effectiveness of the protection offered by the state when one has not really tested it does not rebut the existence of a presumption of state protection.³⁶

³¹ Exhibit R/A-1, item 2.1, US Department of State, "Hungary", *Country Reports on Human Rights Practices for 2010*, April 8, 2011.

³² *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1, 20 Imm. L.R. (2d) 85, at 725, 709 and 724.

³³ *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 4 F.C.R. 636 (F.C.A.).

³⁴ *M.E.I. v. Villafranca, Ignacio* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.), at 133.

³⁵ *Camacho, Jane Egre Sonia v. M.C.I.* (F.C., no. IMM-4300-06), Barnes, August 10, 2007; 2007 FC 830.

³⁶ *Rio Ramirez, Leticia Lizet Del v. M.C.I.* (F.C., no. IMM-1301-08), Lagacé, October 31, 2008; 2008 FC 1214.

[63] Refugee protection is meant to be a form of surrogate protection to be invoked only in those situations where the refugee claimant has unsuccessfully sought the protection of their home state. The onus is on the claimant to approach the state for protection in situations where state protection might be reasonably forthcoming.³⁷ To qualify for refugee status, a claimant must satisfy the Board that he or she sought, but was unable to obtain, protection from their home state, or, alternatively, that their home state, on an objective basis, could not be expected to provide protection.³⁸ In the absence of a compelling explanation, a failure to pursue state protection opportunities within the home state will usually be fatal to a refugee claim, at least where the state is a functioning democracy with a willingness and the apparatus necessary to provide a measure of protection to its citizens.³⁹

[64] A 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 them.⁴⁰ In a functioning democracy, a claimant will have a heavy burden when attempting to show that they should not have been required to exhaust all of the recourses available to them domestically before claiming refugee status.⁴¹

[65] The documentary evidence⁴² before the Board indicates that Hungary is a democracy, and there are free and fair elections. There is a relatively independent and impartial judiciary. Therefore, in countries such as Hungary, the claimant must do more than merely show that he or she went to see members of the police force and that those efforts were unsuccessful. A claimant must show that they have taken all reasonable steps in the circumstances to seek protection, taking into account the context of the country of origin, the steps taken and the claimant's interactions with the authorities.⁴³

³⁷ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at 725.

³⁸ *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.

³⁹ *Camacho, Jane Egre Sonia v. M.C.I.* (F.C., no. IMM-4300-06), Barnes, August 10, 2007; 2007 FC 830.

⁴⁰ *M.C.I. v. Kadenko, Ninal* (1996), 143 D.L.R. (4th) 532 (F.C.A.), at 536.

⁴¹ *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.

⁴² Exhibit R/A-1, item 2.1, US Department of State, "Hungary", *Country Reports on Human Rights Practices for 2010*. 8 April 2011.

⁴³ *Peralta, Gloria Del Carmen v. M.C.I.* (F.C.T.D., no. IMM-5451-01), Heneghan, September 20, 2002; 2002 FCT 989.

[66] Local failures by authorities to provide protection do 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.⁴⁴

[67] 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 military, police and civil authorities in place and is making serious efforts to protect its citizens.⁴⁵ Less than perfect protection is not a basis to determine that a state is either unwilling or unable to offer reasonable protection.⁴⁶

CONCLUSION

[68] The panel determines that the claimant is neither a Convention refugee nor a person in need of protection. The Refugee Protection Division therefore rejects her claim. Since the claims of the other claimants rest on the same set of facts, their claims also failed.

(signed) _____ **“Edward C. Robinson”**

Edward C. Robinson

November 23, 2011

Date

⁴⁴ *Zhuravljev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).

⁴⁵ *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

⁴⁶ *Milev, Dane v. M.C.I.* (F.C.T.D., no. IMM-1125-95), MacKay, June 28, 1996.