

Federal Court



Cour fédérale

**Date: 20161102**

**Docket: IMM-1244-16**

**Citation: 2016 FC 1220**

**Ottawa, Ontario, November 2, 2016**

**PRESENT: The Honourable Mr. Justice Gascon**

**BETWEEN:**

**ATTILA CSOKA  
ZOLTAN CSOKA  
ATTILANE CSOKA  
KRISZTIAN CSOKA  
ATTILA CSOKA  
RICHARD CSOKA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The applicants, Mr. Attila Csoka, his common-law partner Ms. Attilane Csoka, their three minor children and Mr. Csoka's brother, are a family from Hungary, and are members of the

Roma community. In June 2015, they arrived in Canada and filed a refugee claim, alleging that they feared returning to Hungary due to the widespread discrimination against the Roma, and the risk of violence they would face from organized racist groups such as skinheads and the Hungarian Guardists.

[2] In October 2015, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada denied their claim, finding that the members of the Csoka family were not 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. In March 2016, the Refugee Appeal Division [RAD] dismissed the appeal of the Csoka family, confirming the RPD's decision. The RAD was not satisfied that the discrimination suffered by the Csoka family in Hungary rose to the level of persecution, or that the presumption of availability of state protection in Hungary for members of the Roma community had been rebutted with clear and convincing evidence.

[3] The Csoka family has applied to this Court for judicial review of the RAD's decision. They argue that the decision is unreasonable as the RAD erred in conducting its state protection analysis. They also contend that the RAD did not apply the right standard of intervention on appeal of the RPD's decision. They ask this Court to quash the RAD's decision and to send it back for redetermination by a different panel.

[4] I agree that the RAD's decision was unreasonable as it wrongly concluded that the Csoka family could approach government institutions and non-governmental organizations [NGOs], rather than the police, to secure adequate state protection. In addition, the RAD unreasonably

resorted to documentary evidence that has been repeatedly discarded by this Court as unreliable proof of state protection in Hungary. This suffices to push the RAD's decision outside the limits of possible, acceptable outcomes. I must, therefore, allow this application for judicial review and send the matter back for redetermination.

[5] The state protection finding made by the RAD is determinative and is the sole issue I need to address in considering this application.

## II. Background

### A. *The RAD's decision*

[6] On the issue of state protection, the RAD found that the evidence before it was mixed. However, it concluded that the Csoka family had not demonstrated that the state protection in Hungary was so inadequate that they would not approach the authorities at all, or that they need not have taken all reasonable efforts to seek protection in their home country. Based on the RAD's assessment, the evidence presented showed that Hungary is a democratic country, without a total breakdown of state apparatus and authority. The RAD also observed that authorities in Hungary have taken actions against extremist organizations. On the other hand, the RAD acknowledged that some Hungarian people, as well as persons in positions of authority and security officials, have a discriminatory and prejudicial attitude toward Roma. However, the RAD determined that state protection remained available in case of such discrimination.

[7] The RAD reiterated that the onus is on the Csoka family to make a reasonable effort to seek state protection in their home country before seeking protection in Canada. The RAD found that the Csoka family “would obtain adequate state protection in Hungary upon return if they were to make a reasonable and diligent effort to seek it”. The RAD further indicated that “[n]o 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”. Even if the evidence was mixed, the RAD considered that the Csoka family “have not demonstrated that state protection in Hungary is inadequate if they were to make a diligent effort to seek it” and that “when complaints are made, the authorities take action”. The RAD therefore found that the Csoka family had not rebutted the presumption of state protection.

[8] As part of its analysis, the RAD accepted that “Roma Minority Government [sic] and other similar organizations as well as NGOs do not provide state protection, and that it is the police whose mandate is to provide state protection”. In reviewing the documentary evidence, the RAD found that many governmental bodies and NGOs were there to inform victims of discrimination and violence about their rights and thus enabled citizens, including Roma, to seek remedies if they suffered from discrimination. The RAD expected such organizations to be available to assist the Csoka family upon their return to Hungary.

**B. *The standard of review***

[9] The issue of the adequacy of state protection is to be reviewed under the reasonableness standard as it involves questions of mixed fact and law (*The Minister of Citizenship and Immigration v Flores Carrillo*, 2008 FCA 94 at para 36; *Hinzman v Canada (Citizenship and*

*Immigration*) 2007 FCA 171 [*Hinzman*] at para 38; *Gomez Florez v Canada (Citizenship and Immigration)*, 2016 FC 659 at para 24; *Moran Gudiel v Canada (Citizenship and Immigration)*, 2015 FC 902 at para 15). In particular, the issue of whether the RAD relied on the police to provide protection is also a question of mixed fact and law part of the RAD's analysis of state protection. It is therefore also reviewable under a reasonableness standard (*Hinzman* at para 38; *Meza Varela v Canada (Citizenship and Immigration)*, 2011 FC 1364 [*Meza Varela*] at para 12).

[10] When reviewing a decision on the standard of reasonableness, the analysis is concerned “with the existence of justification, transparency and intelligibility within the decision-making process”, and the RAD's findings should not be disturbed as long as the decision “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). In conducting a reasonableness review of factual findings, it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any relevant factor (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at para 99). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 17).

**III. Analysis: was the RAD's analysis of state protection unreasonable?**

[11] The Csoka family challenges many elements in the RAD's state protection analysis. According to the Csoka family, the RAD used an incorrect test, focusing on whether the Government of Hungary was making efforts to improve the situation of its minorities, instead of analyzing whether or not such efforts were effective and adequate in providing state protection (*Meza Varela* at para 16; *Orgona v Canada (Citizenship and Immigration)*, 2012 FC 1438 [*Orgona*] at para 11).

[12] I do not subscribe to this assessment. The RAD explicitly acknowledged that it was the actual adequacy of state protection that mattered. Even a cursory reading of the RAD's reasons demonstrates that it focused not only on the efforts but also on the results of the state's intervention. Similarly, the claim that it is impossible to know whether the RAD thought the situation worsened or improved for Roma in Hungary is without merit. There is nothing unreasonable in acknowledging that the Roma people are mistreated in Hungary and that there are frequent failures of state protection, while still finding on balance that this is not sufficient to rebut the presumption of state protection. The weighing of evidence is at the heart of the RAD's expertise. Contrary to what the Csoka family alleges, this does not indicate that the RAD contradicted itself; it simply reflects the fact that the evidence analyzed by the RAD went both ways. The RAD clearly stated, more than once, that the documentary evidence before it was "mixed".

[13] However, I find that the RAD's state protection analysis drifted away from and outside of the range of possible, acceptable outcomes in its consideration of the state protection avenues offered to Roma.

**A. *The role of institutions other than the police***

[14] At the beginning of its analysis, the RAD rightly stated that the police have the mandate to provide state protection. However, its analysis then went on to strictly focus on the protection offered through other government institutions and NGOs. This was an error, sufficient to render the RAD's state protection analysis unreasonable.

[15] The Minister submits that the RAD simply analyzed all the possible options open to the Csoka family to seek protection, including NGOs, and thus performed a complete assessment of all aspects of Hungarian avenues of redress. He mentions that the RAD acknowledged that it was the police whose mandate it is to provide state protection. The Minister further pleads that the Hungarian authorities were also found to be receptive to complaints of discrimination filed by Roma.

[16] I do not agree with this assessment. On the contrary, my review of the RAD's decision leads me to conclude that, throughout its reasons, the RAD continuously implied that the Csoka family should have approached governmental bodies other than the police as well as NGOs in order to obtain state protection, and that those institutions offered acceptable and satisfactory avenues of state protection. A reading of the RAD's reasons reveals that those avenues other than

the police were not simply flagged as another option available to the Csoka family. The evidence instead suggests that the RAD viewed them as sufficient options open to them.

[17] For example, the RAD stated that the Csoka family had not demonstrated that “state protection in Hungary is so inadequate that they need not have approached or would not approach the authorities at all, or that they need not have taken or would not take all reasonable efforts to seek state protection in their home country, such as seeking help from people higher in authority, or with other mechanisms, such as the Minorities Ombudsman’s Office or the Independent Police Complaints Board (IPCB), before seeking international protection in Canada” (emphasis added). There is not a word on police protection in that passage. The RAD later referred to the problem of corruption in Hungary, but was satisfied that the “government has mechanisms in place to investigate and punish police abuse and corruption”. It then discussed reports referring to investigations of police abuse and to the IPCB work. Here again, the focus is on avenues to correct the *shortcomings* and *abuses* of the police, not on state protection actually offered by the police.

[18] Then, the RAD found that “there is no significant reason why [the Csoka family] would not be able to complain to the state agency(ies) that oversee police inaction, misconduct and abuse”. It also concluded that the Hungarian authorities “take action against police officers who abuse their power or engage in illegal practices”. After having referred to a report by the European Roma Rights Centre [ERRC] to illustrate concrete actions by the police, the RAD found that “if [the Csoka family] were to be denied adequate state protection or if their complaints were not to be taken seriously by the police, they could report the police inaction or



denial of security services to people higher in authority, or seek redress by taking their complaints to organizations with powers of oversight before seeking international protection” (emphasis added).

[19] It is well recognized that it is the police who have the mandate to protect citizens (*Katinszki v Canada (Citizenship and Immigration)*, 2012 FC 1326 [*Katinszki*] at paras 14-15; *Zepeda v Canada (Minister of Citizenship and Immigration)*, 2008 FC 491 at paras 24-25). In *Malik*, Justice Tremblay-Lamer indicated that “there is no obligation on an individual to seek counselling, legal advice, or assistance from human rights agencies if the police is unable to help” (*Malik v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 453 at para 21).

[20] Alternate institutions concerned with police corruption or abuse do not constitute substitutes or avenues able to replace the police protection itself: “[t]he jurisprudence of this Court is very clear that the police force is presumed to be the main institution mandated to protect citizens, and that other governmental or private institutions are presumed not to have the means nor the mandate to assume that responsibility” (*Katinszki* at para 15; *Hindawi v Canada (Minister of Citizenship and Immigration)*, 2015 FC 589 at para 27).

[21] Investigations of complaints of police corruption and abuse, or the presence of infrastructure providing redress in case complaints are not dealt with, do not equate with state protection by police. In other words, the RAD did not refer to any solid evidence of state protection offered by the Hungarian police, even though it had acknowledged, earlier in its analysis, that it is the police who are responsible for state protection. In fact, as recognized by

counsel for the Minister in his written submissions and at the hearing before this Court, the sole reference to police action and actual investigations of incidents of violence against Roma was to the ERRC report, a report which has been found repeatedly unreliable by this Court.

**B. *The reports relied on by the RAD***

[22] The RAD's error is indeed compounded by the fact that the examples the panel referred to relate to institutions and reports found to be undependable sources of state protection by this Court in several other cases.

[23] In *Mezei v Canada (Citizenship and Immigration)*, 2016 FC 1025 at paras 12-14, Justice Tremblay-Lamer recently noted that references to actions by the IPCB support the conclusion that refugee claimants could approach a higher authority, but they do not show that state protection is available in practice. This Court has in fact frequently rejected the idea that the IPCB provides state protection in Hungary (*Katinszki* at para 14; *Orgona* at para 14; *Balogh v Canada (Minister of Citizenship and Immigration)*, 2015 FC 76 at para 31). Reports about police training programs have no bearing on the adequacy of state protection and are not strong measures to curtail violence.

[24] As to the ERRC report, this Court found it specifically flawed, in somewhat strong terms, in *Hanko v Canada (Citizenship and Immigration)*, 2014 FC 474 [*Hanko*] at paras 12-14 and *Marosi v Canada (Minister of Citizenship and Immigration)*, (November 26, 2013) IMM-1675-13 at paras 7-8. Contrary to the Minister's submission, this ERRC report was not one of many

such reports considered by the RAD in its decision. It rather stands out as the only piece of evidence cited by the RAD in support of effective police protection.

[25] What is even more troubling is that, in its reasons, the RAD parroted, word for word, the very passage criticized and jettisoned by the Court in *Hanko*. For the RAD to ignore this, and to remain deaf to this issue despite the fact that counsel for the Csoka family specifically drew the RAD's attention to it in its submissions, is beyond comprehension, and certain well outside the boundaries of reasonableness. When a decision-maker disregards prior teachings of this Court in such an unbridled way and invokes as the main proof of adequate state protection by the police a report specifically discarded in previous decisions, this strongly calls for the Court's intervention.

[26] I agree with the Minister that it is not up to the Court to reweigh the evidence. But, here, the evidence cited by the RAD simply did not support a finding that adequate state protection was available. Despite the able attempts by counsel for the Minister to rescue the RAD's decision, the panel's reasons are so heavily anchored in the central role played by organizations other than the police and in unreliable reports regarding police actions that they run aground far beyond the confines of reasonableness. In the circumstances of this case, I am not satisfied that the reasons of the RAD provide the justification, transparency and intelligibility required of a reasonable decision.

[27] I am mindful of the fact that, by returning this matter to the RAD, the outcome of the RAD's redetermination could be the same after a new review is conducted in light of my

decision and focuses on the availability of state protection from the police. However, this is an assessment and a weighing exercise that the RAD, not this Court, has to conduct, and to which the Csoka family is entitled. It is possible that, informed by these reasons of the error committed by the RAD and of the necessity to properly consider the role of the Hungarian police in its state protection analysis and to refrain from using deficient sources, another panel might come to a different conclusion. I cannot say that the case leans so heavily against granting the appeals of the Csoka family that sending the case back to the RAD would serve no useful purpose (*Lemus v Canada (Citizenship and Immigration)*, 2014 FCA 114 at para 38).

#### **IV. Conclusion**

[28] For the reasons detailed above, the application for judicial review filed by the Csoka family must be allowed as the RAD's analysis of state protection is unreasonable and the decision therefore does not represent a possible, acceptable outcome based on the law and the evidence presented before the RAD.

[29] Neither party has proposed a question of general importance for me to certify. I agree there is none.

**JUDGMENT**

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

1. The application for judicial review is allowed, without costs.
2. The RAD's decision is set aside.
3. The matter is referred back to the RAD for redetermination on the merits by a differently constituted panel.
4. No serious question of general importance is certified.

"Denis Gascon"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1244-16

**STYLE OF CAUSE:** ATTILA CSOKA, ZOLTAN CSOKA, ATILANE CSOKA, KRISZTIAN CSOKA, ATTILA CSOKA, RICHARD CSOKA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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**DATED:** NOVEMBER 2, 2016

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