

Federal Court



Cour fédérale

**Date: 20101125**

**Docket: IMM-1090-10**

**Citation: 2010 FC 1163**

**Ottawa, Ontario, this 25<sup>th</sup> day of November 2010**

**Before: The Honourable Mr. Justice Pinard**

**BETWEEN:**

**Ervin BAKU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the decision of Immigration and Refugee Board – Refugee Protection Division Member Paule Robitaille (the “Board”), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, by Ervin Baku (the “applicant”), rejecting the applicant’s claim for refugee status.

[2] The Board determined that the applicant had failed to show that there was inadequate state protection in his home country of France, and therefore had not satisfied the requirements necessary to be a Convention refugee or a person in need of protection.

[3] The applicant is a 40-year-old journalist who is a dual citizen of Albania and France. He obtained his French citizenship by applying for refugee status in that country.

[4] On June 8, 2007, *Muslim Forum of Albania*, a daily newspaper, sent out a press release in which the applicant was accused of Islamophobia and, on June 17, 2007, ran an editorial which singled out the applicant as an enemy of Islam. Subsequent to this, the applicant received ongoing death threats.

[5] The applicant claims that on August 2, 2008, he was kidnapped by two men outside of his home. He was pulled into a car and told, in Albanian, that he should cease speaking out against Islam. The kidnappers then made threats towards the applicant's children, beat him, and threw him out of the car in front of his home.

[6] The next day, the applicant went to the police in Strasbourg, but claims that his story was not taken seriously and he was told to return the following week. He then fled to his brother's house in Germany before deciding to leave for Canada. He arrived in this country on August 15, 2008 and made a claim for refugee status on August 19, 2008.

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[7] Credibility was not an issue in the hearing before the Board. Instead, the latter found that the applicant had not adequately refuted the presumption of state protection.

[8] The applicant raises only one issue in this judicial review: Did the Board err in its state protection analysis?

[9] The question of adequacy of state protection is one of fact and should be reviewed on a standard of reasonableness (*Jabbour et al. v. The Minister of Citizenship and Immigration*, 2009 FC 831, at paragraph 18).

[10] The applicant states that failure to take all steps to seek protection is not fatal to a claim unless a panel also determines that protection would have been reasonably forthcoming. The presumption of state protection, he contends, was refuted by the evidence of the experiences of individuals in situations similar to his.

[11] The applicant makes a further claim that the Board failed to examine the “unique characteristics” of power and influence of the alleged agent of harm, and the willingness of the state to protect. The Board was obliged to examine the motivation of the persecuting agent and its ability to pursue the applicant locally or throughout the country.

[12] It is the responsibility of the applicant to refute the presumption of state protection on a balance of probabilities using clear and convincing evidence (see *Samuel v. Minister of Citizenship and Immigration*, 2008 FC 762, at paragraph 10). The more democratic a state, the higher the

burden on the applicant to show both that the avenues for state protection were exhausted, and that state protection would not be reasonably forthcoming (*Hinzman et al. v. Minister of Citizenship and Immigration*, 2007 FCA 171, 282 D.L.R. (4<sup>th</sup>) 413, at paragraph 57).

[13] It is well established that local failures to provide adequate policing do not amount to a lack of state protection (see *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 4 F.C.R. 636 (C.A.); *Rocque et al. v. Minister of Citizenship and Immigration*, 2010 FC 802). In addition, state protection may be expected to be sought from sources other than the police, such as state-run agencies (*Nagy v. Minister of Citizenship and Immigration*, 2002 FCT 281). An applicant will only be exempted from the obligation to exhaust the available avenues of state protection when it would have been objectively unreasonable for him to do so (*Hinzman*, above, at paragraph 56).

[14] The applicant approached one police officer in Strasbourg on one occasion, did not follow up when told to return the following week, and did not attempt to approach any other police officers or agencies in other areas of France. I agree with the respondent's contention that this single attempt cannot constitute an adequate search for state protection, especially in a democratic state. Further, the evidence provided by the applicant does not establish that making additional attempts to obtain state protection would have been objectively unreasonable. Rather, the evidence that was before the Board shows that France takes the threat of radical religious groups and the protection of its citizens very seriously. The applicant's mere belief that the state is unable to protect him, without sufficient supporting evidence, will not be enough to warrant a finding of inadequate state protection (*Judge v. Minister of Citizenship and Immigration*, 2004 FC 1089).

[15] The applicant seems to suggest that the evidence of similarly situated individuals in France (*i.e.* those receiving death threats from Islamic groups) should be determinative of the lack of state protection in that country. This cannot be the case; a member is required to evaluate an applicant's claim based on the specific situation of that applicant, and the state's ability to protect him or her given the specific circumstances. While potentially enlightening, evidence of the comparable circumstances of others cannot be the final word on the availability or adequacy of state protection. In any event, this was a strange position for the applicant to take, as the evidence he refers to shows that one of the individuals was under police protection, and the other is still under police protection, although it essentially requires him to live in hiding. If anything, this indicates that state protection could reasonably be considered to be forthcoming. It is trite law that state protection need not rise to the level of perfection (*Mendez et al. v. Minister of Citizenship and Immigration*, 2008 FC 584), and just because the applicant does not think that the state has proffered adequate protection does not make it objectively so.

[16] The Board properly took into account the relevant considerations for determining whether the applicant had exhausted the available mechanisms of state protection. Its finding that the applicant had not refuted the presumption of state protection in France on a balance of probabilities was a reasonable one.

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[17] For the above-mentioned reasons, the application for judicial review is dismissed.

[18] No question is certified.

**JUDGMENT**

The application for judicial review of the decision rendered on February 1, 2010 by the Refugee Protection Division of the Immigration and Refugee Board rejecting the applicant's claim for refugee status is dismissed.

“Yvon Pinard”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-1090-10

**STYLE OF CAUSE:** Ervin BAKU v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** October 19, 2010

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

**DATED:** November 25, 2010

**APPEARANCES:**

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