

Federal Court



Cour fédérale

Date: 20140918

Docket: IMM-1412-13

Citation: 2014 FC 892

Ottawa, Ontario, September 18, 2014

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

**ROMEO MECI
ANIKO MECINE VASVARI
DANIEL STEFAN MECI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants seek judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the RPD), dated January 16, 2013, which held that they were not Convention refugees nor persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, (SC 2001, c 27) (the Act).

[2] For the reasons that follow, the application is dismissed.

I. Background

A. *The Applicants' Refugee Protection Claim*

[3] The principal applicant, Romeo Meci, his wife, Anik Mecine Vasvari, and their minor son, Daniel Stefan Meci, are citizens of Hungary. Mr. Meci is, however, of Albanian ethnicity and a naturalized citizen of Hungary. The family lived in Budapest before leaving for Canada on June 8, 2011.

[4] Two days after their arrival in Canada, the applicants sought refugee protection under sections 96 and 97 of the Act. They alleged a fear of persecution by right-wing extremists in Hungarian society because of Mr. Meci's origins.

[5] In support of that claim, Mr. Meci stated that, beginning in February 2008, he was subjected to humiliation, harassment, discrimination and physical violence up to a point where he and his family feared for their lives and decided to leave Hungary. In particular, he claimed that he was the victim of a number of incidents, including physical assaults, death threats as well as damages to his property.

[6] The first incident occurred in February 2008 when he was attacked by an unknown group of men based on what he believed was discrimination due to his Albanian origins. Mr. Meci did not, at the time, seek assistance or protection from the police as he feared for his safety. The

second incident took place on March 15, 2011. Mr. Meci was assaulted by members of the Hungarian Guard (the Guardsmen) after noticing his foreign accent. They threatened to kill him if he did not leave Hungary with his family. Mr. Meci sought no medical or police assistance after this assault. In the following two months, Mr. Meci and his family received several death threats and on May 20, 2011, Mr. Meci was severely beaten by the same group of Guardsmen, leaving him unconscious. He was found by a police officer who took him to the police station where he filed a report.

[7] On June 3, 2011, a police officer visited the applicants' home to recommend withdrawing the police report relating to the May 20, 2011 incident. When asked by the applicants whether some form of police protection could be expected, the police officer stated that the police did not have the capacity to accommodate such a request.

[8] As indicated above, the applicants left Hungary for Canada on June 11, 2011 and applied for refugee protection on June 13, 2011.

B. *The Decision Under Review*

[9] The applicants' claim was dismissed on January 16, 2013. The attacks on Mr. Meci and the applicants' fear of persecution in Hungary were not discussed by the RPD. The RPD did not review the events that lead to the refugee claim. Rather, the focus was on the existence of a viable Internal Flight Alternative (IFA) and the rebuttal of the state protection presumption.

[10] With regard to the IFA, the RPD found that no evidence was provided in order to establish that people of Albanian ethnicity are targeted by the Guardsmen across Hungary. The RPD found that the documentary evidence adduced by the applicants referred to the discrimination and persecution of the Roma minority in Hungary and not to other groups, such as Albanians.

[11] As a result, the RPD concluded that it was not unreasonable for the applicants to relocate away from Budapest to a place where minorities other than the Roma are not specifically the object of nationalistic persecution. In particular, the RPD found that Mr. Meci had failed to explain why the Guardsmen would try to locate him anywhere in Hungary and kill him or how they would know where he and his family had relocated.

[12] On state protection, the RPD found that the applicants had failed to rebut the presumption of state protection. In particular, it ruled that Mr. Meci, after having been informed, following the May 20, 2011 incident where he was severely beaten, that the police did not have the capacity to accommodate his request for protection, had failed to seek protection from higher police or government authorities. The RPD concluded that no clear and convincing evidence was adduced of the state's unwillingness to protect the applicants or of the inadequacy of state protection in Hungary.

II. Issue and Standard of Review

[13] The issue raised by this judicial review application is whether the RPD, in concluding as it did, committed a reviewable error as contemplated by section 18.1(4) of the *Federal Courts Act*, RSC, 1985, c F-7.

[14] The applicants contend that the RPD's findings in relation to the IFA were unreasonable and were reached in violation of procedural fairness. They also claim that the RPD misapplied the legal test regarding state protection and that its finding regarding the applicants' failure to rebut the presumption of state protection was unreasonable.

[15] As I have come to the conclusion that there is no basis to interfere with the RPD's state protection finding, it will not be necessary to determine whether the RPD's IFA finding warrants intervention from this Court.

[16] In coming to that conclusion I have applied the standard of reasonableness. Indeed, issues related to state protection are questions of mixed fact and law which, given the RPD's expertise on this subject matter, attracts deference (*Montero Velez v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 589, at para 22; *Romero Davila v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1116, at para 26; *Nzayisenga v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1103 at para 25; *Gulyas v Canada (Minister of Citizenship and Immigration)*, 2013 FC 254, 429 FTR 22, at para 38).

[17] This standard of review, as is well established, means that the Court shall not interfere with the RPD's decision unless it lacks justification, transparency and intelligibility and falls outside the range of possible, acceptable outcomes, defensible in fact and in law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47).

III. Analysis

A. *Introduction*

[18] As I have previously indicated, I am of the view, after a careful review of the record and consideration of the parties' written and oral submissions, that the applicants' judicial review application must be dismissed as I am unable to conclude that the RPD's finding regarding state protection is unreasonable. As the presumption of state protection has not been rebutted, there is no need to consider whether the RPD erred in finding that a viable IFA was available to the applicants.

[19] As stated by this Court in *Katinszki v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1326, 421 FTR 107 at paragraph 12, a finding of state protection normally precedes an analysis with respect to an IFA because if the state is able and willing to protect a refugee claimant, there is no need to consider whether there is a particular area in that state where that claimant would be safe.

[20] The notion of an IFA consists of the two-prong test : the RPD must be satisfied, on a balance of probabilities, that there is no serious possibility of the refugee claimant being

persecuted in the part of the country in which it finds an IFA exists and that the conditions in that part of the country are such that it would not be unreasonable for the claimant to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (C.A.), [1991] FCJ No. 1256 (QL), at para 10; *Katinszki*, above, at para 11; *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 600, at para 4).

[21] The first prong of that test requires the refugee claimant to demonstrate that the state is unable to protect him or her in the proposed IFA. To that extent, there is an overlap between the state protection and IFA analyses as a finding that there is no serious possibility of persecution may flow either from a low risk of persecution or the presence of state resources to protect the claimant (*Katinszki*, above at para 12; *Velasquez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1201, at para 16).

[22] As a result, even accepting that the RPD's IFA finding is fatally flawed in some respect, as contented by the applicants, such outcome would not be dispositive of the present application, as the RPD found that the applicants had not rebutted, with clear and convincing evidence, the presumption that the state of Hungary was able and willing to protect them from possible persecution.

[23] The fact that the RPD proceeded first to an IFA analysis is not fatal either as its decision must be read as a whole (*Katinszki*, above at para 12; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para. 14; *Lainez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 707, at para 21).

B. *There is No Basis to Interfere with the RPD's State Protection Finding*

[24] The applicants' challenge of the RPD's state protection finding is two-fold: first, they claim that the RPD applied the wrong legal test and, second, they submit, in the alternative, that the finding was made without regard for the evidence the RPD had before it and was, therefore, unreasonable.

(1) The RPD Applied the Correct State Protection Legal Test

[25] The applicants first contend that the RPD applied the wrong test in requiring evidence of a "complete breakdown" of the state's apparatus as the only way to rebut the presumption of state protection.

[26] I disagree. The RPD did state that there was no evidence that Hungary was in a state of complete breakdown but this statement was clearly made to support its finding that the presumption of state protection was applicable to the applicants. Nowhere in its state protection analysis did the RPD indicate that this presumption was not rebuttable and that the lack of evidence of a complete breakdown in Hungary's institutions was the end of the analysis. Quite the contrary, the RPD went on to say that the applicants were required, in such context, to provide direct, relevant and compelling evidence of the state's inability or unwillingness to protect them.

[27] This is entirely consistent with the current state of the law which provides that, absent a complete breakdown of the state apparatus, it is presumed that state protection is available for a

refugee claimant and that to rebut this presumption, the claimant must provide clear and convincing evidence of the state's inability or willingness to provide adequate – not perfect - protection (*Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, at para 19; *Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004, at para 29; *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, at para 52).

[28] The RPD's approach to the state protection analysis is equally consistent with the principle that refugee protection is meant to be a form a surrogate protection, invoked only in situations where a refugee claimant has unsuccessfully sought the protection of his home state (*Ward*, above, at para 18).

[29] Therefore, I see no basis for intervention on the applicants' first alleged error regarding the RPD's state protection finding.

(2) The RPD's State Protection Finding Was not Unreasonable

[30] The applicants submit that the RPD's state protection finding was unreasonable on the ground that it ignored evidence on the state's inability to adequately protect victims of hate crimes, such as them. They claim that the RPD ignored as well Mr. Meci's evidence concerning his reluctance to go to the police.

[31] The RPD essentially concluded that the applicants had not succeeded in rebutting the presumption of state protection by reason of the fact that they had made no attempts to seek assistance from higher police authorities or other government agencies and that the evidence

provided did not establish that seeking such assistance would have been objectively unreasonable.

[32] It is well settled that the presumption of state protection is not rebutted by simply submitting a large volume of opinion evidence or by the refugee claimant's perception that he or she could not avail himself or herself of state protection (*Smith v Canada (Citizenship and Immigration)*, 2012 FC 1283, 420 FTR 256 at par 50-51). Rather, the claimant needs to show that he or she has exhausted the available avenues of state protection or that it would have been objectively unreasonable for him or her to do so (*Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at para 56).

[33] The fairly recent case of *Ruszo*, above, is particularly helpful here as it concerned Hungarian refugee claimants of Roma ethnicity, the largest minority group in Hungary which, according to country documentation, has been - and is still – largely persecuted and discriminated against. The RDP concluded in that case that the claimants had failed to demonstrate that they had taken all objectively reasonable steps to avail themselves of state protection and to provide compelling or persuasive evidence to explain their failure to do more than make a single attempt to seek protection from the police. As a result, the RPD dismissed the claimants' refugee claim.

[34] This Court's Chief Justice ruled this finding to be reasonable. In so doing, he applied the following principles:

- a. The onus is on refugee claimants to demonstrate, with clear and convincing evidence, the state's inability or unwillingness to provide adequate protection (*Ruszo*, above at para 29);
- b. In discharging this burden, refugee claimants may demonstrate that they are either unable to obtain adequate state protection or, by reason of a well-founded fear of persecution, unwilling to avail themselves of the protection of their home state (*Ruszo*, above at para 30);
- c. With respect to the "inability" branch of the test, it is not sufficient to simply demonstrate that there has been some local failures of the police to provide state protection; nor is it sufficient to make a mere assertion of a subjective reluctance to engage the state or to doubt the effectiveness of state protection without reasonably testing it (*Ruszo*, above at paras 31 and 33);
- d. What is required at this stage of the analysis is evidence that all objectively reasonable efforts were unsuccessfully made by the claimants to exhaust all courses of action reasonably available to them before seeking refugee protection (*Ruszo*, above at para 32);
- e. Absent a compelling or persuasive explanation, the failure to make those efforts prior to seeking refugee protection will typically provide the RPD with a reasonable basis to conclude that the presumption of state protection has not been displaced (*Ruszo*, above at para 33);

- f. As for the “unwillingness” branch of the test, refugee claimants must show that it was objectively reasonable for them not to have sought the protection of their home state; their reluctance in doing so must be based on well-founded fears (*Ruszo*, above at para 34); and
- g. A subjective perception that one would simply be wasting one’s time by seeking police protection or by addressing local police failures by pursuing the matter with other sources of police protection would not constitute compelling or persuasive evidence in this regard, unless the refugee claimant has unsuccessfully sought police protection on multiple occasions (*Ruszo*, above at para 51).

[35] In *Ruszo*, the refugee claimants left Hungary for Canada as a result of a number of incidents. They reported one of those incidents to the police but the police did not take action. The RPD found that the claimants had not demonstrated that they had taken all reasonable steps to seek state protection in relation to that incident. It reached that conclusion by noting that the claimants had not asked to speak to a police supervisor, had not gone to a different police station, had not complained to the local Roma self-government about lack of police assistance and had not complained to any other authority in Hungary. In sum, the RPD found that the claimants had only made one attempt to report the incident and then failed to pursue the matter further (*Ruszo*, above at para 37).

[36] In the present case, when asked why he had not approached higher police authorities or other government agencies after having been told by a police officer that the police would not take action in relation to the May 20, 2011 incident, Mr. Meci explained that this “would not get

anything” as everybody was aware that “the police would have the same people in higher levels of authority”.

[37] In fact, the evidence in the present case is that not only did Mr. Meci not approach higher police authorities or other government agencies but that he never, on his own at least, reported to the police the various incidents that lead to the applicants departure to Canada. The only incident that was reported was the assault of May 20, 2011, and this only as a result of Mr. Meci being brought to a police station by a police officer following the incident.

[38] Based on *Ruszo*, it cannot be said that it was not open to the RPD to conclude that making additional attempts to obtain state protection would have been objectively unreasonable. Mr. Meci’s explanation for not making these attempts amounts to saying that it would have been a waste of time to seek police protection or to address local police failures by pursuing the matter with other sources of police protection. In the absence of evidence that Mr. Meci had unsuccessfully sought police protection on multiple occasions, it was open to the RPD, as it was in *Ruszo*, to conclude that this explanation did not constitute clear, compelling or persuasive evidence that it was objectively reasonable for the applicants not to have sought the protection of their home state.

[39] The applicants claim that state protection would, in any event, have been ineffective given evidence that the Hungarian police and judiciary are affected with racism and prejudice and are therefore reluctant to assist victims of hate crimes. The applicants’ argument in this regard is based on their assessment of the country documentation.

[40] It is worth reminding that the role of this Court is not to interfere with factual conclusions reached by the RPD, nor is it to re-weight the evidence before it (*Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2003 FC 1225, [2004] 3 FCR 523 at para 102, *Selliah v Canada (Minister of Citizenship and Immigration)* 2004 FC 872, 256 FTR 53 at para 38; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No. 12 at para 59).

[41] The RPD assessed this evidence and found no reference to any other minority group than the Roma being the target of the Guardsmen. What is striking about the country documentation on record is that it discusses, predominantly, the situation of the Roma minority in Hungary and in particular, the discriminatory reluctance of the police to assist Roma victims of hate crimes. Most of the cases referred to by the applicants, both in their written and oral submissions, also concern Hungarian refugee claimants of Roma ethnicity. The case of *Katinszki*, above, on which the applicants placed significant reliance, is one of them.

[42] Apart from the Hungarian Jewish minority, there is very little reference in the country documentation to the faith of other minority groups in Hungary. To the extent that it does refer to it, the groups at risk are identified as those that are perceived to be hostile to the Hungarian cause. As the Minister points out, the applicants have not provided any evidence to suggest that they would be perceived in this manner.

[43] In such context, it was open to the RPD, whose task it was to assess that objective evidence, to conclude that it did not support the applicants' claim that it was objectively

unreasonable for them to seek state protection or that, in any event, state protection would have been inadequate.

[44] In sum, even assuming that the RPD committed a reviewable error in concluding, at the IFA stage of its analysis, that there was no serious possibility that Mr. Meci be identified as a foreigner in other parts of Hungary and that he and his family be, therefore, persecuted, the applicants still had to establish that the state would not be able to protect them. Hungary is a democratic state. Therefore, the applicants had the onus of rebutting the presumption that their home state would be able and willing to protect them. The RPD found that they had failed to do so.

[45] Again, and keeping in mind that it is not the role of this Court to substitute its own opinion to that of the RPD, I see no reason to interfere with this finding as I am of the view that it was reasonably open to the RPD, based on the evidence before it and the applicable legal principles, to conclude as it did.

[46] This application for judicial review is therefore dismissed.

[47] Neither party has proposed a question of general importance. None will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that :

1. The application for judicial review is dismissed; and
2. No question is certified.

“René LeBlanc”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1412-13

STYLE OF CAUSE: ROMEO MECI ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 16, 2014

JUDGMENT AND REASONS: LEBLANC J.

DATED: SEPTEMBER 18, 2014

APPEARANCES:

Diego S. Cariaga Lema FOR THE APPLICANTS

Rafeena Rashid FOR THE RESPONDENT

SOLICITORS OF RECORD:

Brunga Law Offices FOR THE APPLICANTS
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario