Federal Court  Cour fédérale

Date: 20150120

Docket: IMM-4870-13

Citation: 2015 FC 76

Ottawa, Ontario, January 20, 2015

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

TIMEA MARIA BALOGH

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision of a senior immigration officer [Officer], dated July 10, 2013 [Decision], which rejected the Applicant's Pre-Removal Risk Assessment [PRRA] application.

II. BACKGROUND

[2] The Applicant is a citizen of Hungary. She fears persecution due to her Roma ethnicity. She also fears being harmed by her former partner and her step-mother's former partner.

[3] The Applicant left Hungary and entered Canada on November 25, 2008. She made a claim for refugee protection in January 2009. The Applicant's claim was denied on September 27, 2011 because she failed to rebut the presumption of state protection.

[4] The Applicant submitted her PRRA application on June 17, 2013. The Applicant claims that the situation for Roma people in Hungary has deteriorated since her refugee hearing. She also claims that her step-mother's former partner has threatened to harm her if she returns to Hungary. The Applicant also says that her former partner has threatened to kill her if she returns to Hungary.

III. DECISION UNDER REVIEW

[5] The Applicant's PRRA application was rejected on July 10, 2013.

[6] The Officer began by stating that the PRRA was neither an appeal of the Refugee Protection Division of the Immigration and Refugee Board [RPD] decision nor a humanitarian and compassionate application. He described the PRRA as an opportunity to present new evidence regarding the risk that the Applicant may face if she returns to Hungary.

[7] The Officer noted that the Applicant had submitted a police report that she had been unable to obtain before her refugee hearing. The Applicant claimed that she went to the police after her step-mother's former partner threatened her in Canada. She also claimed that the man had stalked her after this incident. The Officer accepted the police report as new evidence. He noted, however, that the perpetrator's name was redacted. The Officer also noted that there was little evidence to show that the Applicant had sought assistance regarding the stalking allegation.

[8] The Officer noted that the Applicant had submitted a photocopy of a letter in which she says her former partner threatens to kill her. The Officer noted that the letter was not addressed to the Applicant and that it was signed "Pecs N.A." There was no explanation regarding the initials "N.A."

[9] The Officer reviewed the documentary evidence which included news articles and documentary research concerning the discrimination and violence suffered by Roma people in Hungary, including for victims of domestic violence. He concluded that the adequacy of state protection was the determinative factor in the application (Certified Tribunal Record [CTR] at 9):

> I recognize that people of Roma ethnicity suffer widespread societal discrimination in Hungary and at times are even victims of racially motivated violence. I also acknowledge that high profile individuals and groups and [*sic*] have been very outspoken and have publicly voiced their anti-Roma sentiments. In addition, I note that the IRB cites that "domestic violence against Roma women is quite widespread and quite serious". However, I find the determinative factor in this application is adequacy of state protection available in Hungary.

[10] The Officer reviewed the police service structure in Hungary as well as the various internal complaint procedures. He also reviewed the Hungarian government's efforts to protect the rights of Roma people and to foster the social integration of minorities. The Officer also reviewed the resources available for victims of domestic violence in Hungary. The Officer concluded (CTR at 13):

> I acknowledge that there are problems relating to discrimination and violence towards people of Roma ethnicity in Hungary and there are concerns of corruption regarding the police force. I also recognize there are reports that the law failed to provide appropriate protection for abuse victims and services operated with limited capacity. However, I find the research before me demonstrates the Hungarian government is making serious efforts to integrate and improve the standard of living of Roma people and is actively addressing police corruption, notably with the authorities and justice system reprimanding officers and finding them responsible for breaches of discipline and guilty of petty and criminal offences. I further find, while subject to budgetary constraints, the government has adequate services available for victims of domestic violence.

[11] The Officer acknowledged the Applicant's claim that she had attempted to file police reports in Hungary which were denied because of her Roma ethnicity. However, he said "I do not find these refusals by the police amount to a broader pattern of the state's inability or refusal to extend protection to the applicant. I further find the applicant provided little information or evidence indicating that she exhausted all reasonable avenues of state protection available to her in Hungary" (CTR at 13). The Officer further found that if the Applicant was not receiving the police assistance that she required, she could use the police complaint reporting schemes available in Hungary.

[12] The Officer concluded that while the state protection in Hungary for Roma people was not perfect, it was adequate.

IV. ISSUE

[13] The Applicant raises one issue in this proceeding:

1. Did the Officer conduct an unreasonable state protection analysis?

V. STANDARD OF REVIEW

[14] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[15] The Applicant says that the issue raises a question of fact and mixed fact and law and should be reviewed on a standard of reasonableness: *Dunsmuir*, above. The Respondent says that PRRA officers are specialized decision-makers who are owed significant deference. The Respondent says that PRRA decisions are reviewed on a standard of reasonableness: *A.B. v*

Canada (Citizenship and Immigration), 2008 FC 394 at paras 12-13, 15; *Pillai v Canada (Citizenship and Immigration)*, 2008 FC 1312 at para 28; *Cabral De Medeiros v Canada (Citizenship and Immigration)*, 2008 FC 386 at para 15.

[16] The Officer's findings in relation to state protection are findings of fact. The Court agrees that the jurisprudence is clear that these findings are reviewed on a standard of reasonableness: see *Kim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 437; *Johnson v Canada (Citizenship and Immigration)*, 2010 FC 311 at para 12; *Bautista v Canada (Citizenship and Immigration)*, 2009 FC 1187 at para 25.

[17] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": see *Dunsmuir*, above, at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[18] The following provisions of the Act are applicable in this proceeding:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a	96. A qualité de réfugié au

person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

[…]

[…]

Application for protection

Demande de protection

112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in

112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou

a certificate described in subsection 77(1).	nommée au certificat visé au paragraphe 77(1).
[…]	[…]
Consideration of application	**Examen de la demande**
113. Consideration of an application for protection shall be as follows:	113. Il est disposé de la demande comme il suit :
(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;
[…]	[…]
(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;	c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;
[…]	[…]

VII. ARGUMENT

A. *Applicant*

(1) The Officer relied on ineffective efforts of the state to provide protection

[19] The Applicant says that the Officer erred in his state protection analysis by relying on the "efforts" of the state to provide protection. The Applicant says that this is an error because the evidence shows that these efforts have been ineffective.

[20] The Applicant says that the Officer must consider what is actually happening rather than what the state plans to put in place. She says that the Hungarian government's willingness to ameliorate the situation of the Roma minority does not establish state protection unless the efforts are given effect in practice: see *Hercegi v Canada (Citizenship and Immigration)*, 2012 FC 250; *Rezmuves v Canada (Citizenship and Immigration)*, 2012 FC 334 [*Rezmuves*].

(2) The Officer relied on irrelevant evidence

[21] The Applicant says that the Officer also erred in relying on irrelevant factors to conclude that state protection exists in Hungary: *Rezmuves*, above, at para 11. Efforts to socially integrate Roma people in Hungary are irrelevant to the issue of whether state protection is available to Roma people who are victims of racist crimes. The Applicant also says that it was an error for the Officer to rely on statistics regarding police corruption and reprimand rates.

B. *Respondent*

[22] The Respondent says that the Applicant is relying on the same risks that were assessed by the RPD and has failed to establish that the situation in Hungary has worsened for Roma people. The Applicant has raised domestic violence as a new risk, but the Officer was satisfied that state protection is available for victims of domestic violence.

[23] The Respondent says that the Officer properly assessed the adequacy of state protection, rather than requiring a standard of perfection: see *Cruz Rosales v Canada (Citizenship and Immigration)*, 2008 FC 257 at para 20; *The Minister of Citizenship and Immigration v Flores*

Carillo, 2008 FCA 94 at paras 30, 36. The Respondent further submits that the Officer assessed the Hungarian government's efforts and also the adequacy of the efforts.

[24] The Respondent also submits that the Officer is presumed to have considered all of the evidence submitted: *Nation-Eaton v Canada (Citizenship and Immigration)*, 2008 FC 294 at paras 18-23.

[25] The Respondent says that the fact that some of the Applicant's assertions are substantiated by the documentary evidence does not mean that there is an error. The documentary evidence regarding the availability of state protection for Roma persons in Hungary is mixed, which is not a sufficient ground to overturn a decision: *G.M. v Canada (Citizenship and Immigration)*, 2013 FC 710 at para 88.

VIII. ANALYSIS

[26] The Officer refers to various problems with the Applicant's evidence (notably that: the perpetrator's name was redacted from the police report; the letter from Gabor Nagy, her former partner, was not dated and did not mention the Applicant by name; and, there was little information to say who "N.A." was), but the Officer makes no adverse credibility or insufficient evidence findings. The Officer says that "the determinative factor in this application is adequacy of state protection available in Hungary" (CTR at 9) and then goes on to provide five and a half pages of discussion and analysis on this determinative issue.

[27] The discussion of state protection in this Decision contains several issues that this Court has repeatedly identified as reviewable errors. I will address each in turn.

A. *Lack of operational adequacy*

[28] The analysis, for the most part, is content with the evidence that the "police and judicial system of Hungary are making serious efforts to protect Roma citizens in Hungary from anti-Roma groups, including the Hungarian Guard" rather than looking at operational adequacy (see *Meza Varela v Canada (Citizenship and Immigration)*, 2011 FC 1364 at para 16; *Majoros v Canada (Citizenship and Immigration)*, 2013 FC 421 at para 12 [*Majoros*]) or focusing upon the evidence that deals with domestic violence against women in Hungary, which is the specific risk faced by the Applicant.

B. *Irrelevant discussion*

[29] Some of the discussion and evidence cited is irrelevant to the Applicant's domestic abuse situation. For example, the Officer's discussion of the internal structure of the Hungarian police (CTR at 10-11); the role of the Independent Police Complaints Board [IPCB] in investigating complaints from victims of "lesser police abuses" (CTR at 11); the creation of a "new, integrated ombudsman system" which replaced four ombudsmen with one ombudsman and two deputies (CTR at 11-12); and, the passage of law which permits self-government for "registered ethnic group[s]" (CTR at 12).

C. *"Alternative avenues of recourse"*

[30] The Officer relies upon "several alternative avenues of recourse" such as "a higher level of authority... the Independent Police Complaints Board" and the "Equal Treatment Authority, ombudsman and deputies, a 24-hour hotline, shelters, and free legal aid" that are available to "victims of domestic violence" without explaining how these alternatives will result in adequate protection to the Applicant whose former partner has threatened to kill her. These alternative avenues of recourse have been dealt with by the Court before and they do not provide protection. In *Gulyas v Canada (Citizenship and Immigration)*, 2013 FC 254 at paras 31 and 79, I had the following to say:

> [31] The IPCB has been called a credible and independent watchdog, but there have been criticisms that the police only followed up on a small proportion of IPCB's recommendations. Counsel also submitted that there has been a rise in violent crime against Roma. In response to criticism of Hungary's investigation of these crimes, a special investigation unit (with 100 members in 2009) was created to investigate attacks. The RPD found that the evidence indicated that police still do commit abuses against Roma, but that it is reasonable to expect authorities to take action in these cases and that the police are capable of protecting Roma.
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> […]
>
> [79] On very similar evidence, Justice Yves de Montigny had the following to say on point in the recent case of *Katinszki v Canada (Minister of Citizenship and Immigration)* 2012 FC 1326 (CanLII) at paragraphs 14 to 18:
>
> > The Board also points to various organizations that can provide protection to the Applicants and again seems to assume that these organizations would be in a better position to provide protection in Budapest since their head offices are located there. The problem with this assertion is that there is no evidence on the record that these organizations would be better able to "protect" the Applicants in Budapest than in the rest of the country. More

importantly, the mandate of each of the organizations referred to by the Board (the Independent Police Complaints Board, the Parliamentary Commissioners' Office, the Equal Treatment Authority, the Roma Police Association, the Complaints Office at the National Police Headquarters) is not to provide protection but to make recommendations and, at best, to investigate police inaction after the fact.

The 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. As Justice Tremblay-Lamer aptly stated in *Zepeda v Canada (Minister of Citizenship and Immigration)*, 2008 FC 491 (CanLII), [2009] 1 F.C.R. 237 at paras 24-25:

> In the present case, the Board proposed a number of alternate institutions in response to the applicants' claim that they were dissatisfied with police efforts and concerned with police corruption, including National or State Human Rights Commissions, the Secretariat of Public Administration, the Program Against Impunity, the General Comptroller's Assistance Directorate or through a complaints procedure at the Office of the Attorney General (PGR).
>
> I am of the view that these alternate institutions do not constitute avenues of protection *per se*; unless there is evidence to the contrary, the police force is the only institution mandated with the protection of a nation's citizens and in possession of enforcement powers commensurate with this mandate. For example, the documentary evidence explicitly states that the National Human Rights Commission has no legal power of enforcement ("Mexico: Situation of Witness to Crime and Corruption, Women Victims of Violence and Victims of Discrimination Based on Sexual Orientation").

> See also: *Risak v Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1581, 25 Imm. L.R. (2d) 267, at para 11.

Accordingly, I find that it was not open to the Board to decide on a balance of probabilities that there is no serious possibility of the Applicants being persecuted in Budapest. The male Applicant has been attacked in Budapest because of his Roma ethnicity. There is nothing in the Board's IFA analysis or in the evidence that suggests that Budapest is safer than any other parts of the country, other than the fact that "Budapest is a large city" and "host to a number of organizations and government services for ...Roma who are discriminated against." Neither the size of the city nor the organizations listed offer effective protection against persecution in Budapest.

The Board also erred in relying on the efforts deployed by the state to deal with the difficulties faced by the Roma people. At paragraph 15 of its reasons, the Board member wrote: "The panel acknowledges that violent crimes against the Roma continue to exist; however, it is reasonable to expect authorities to take action when reports are made." It is at the operational level that protection must be evaluated. This is all the more so in a state where the level of democracy is at an all time low, according to the documentary evidence found in the record. Furthermore, the *2010 Human Rights Report: Hungary* (US DOS, April 8, 2011) upon which the Board purports to rely for its finding that Roma can expect state authorities to protect them, explicitly contradicts such a finding. It states in its overview portion, at page 1:

> Human rights problems included police use of excessive force against suspects, particularly Roma; new restrictions on due process; new laws that expanded restrictions on speech and the types of media subject to government regulation; government corruption; societal violence against women and children; sexual harassment of women; and trafficking in persons. Other problems continued, including extremist violence and

> harsh rhetoric against ethnic and religious minority groups and discrimination against Roma in education, housing, employment, and access to social services.
>
> Nothing in that report suggests that it is reasonable to expect that authorities will take action if a complaint is filed. In fact, the US DOS Report implies the opposite.

[31] The Court has rejected the idea that the IPCB provides state protection. Justice Zinn had the following to say in *Orgona v Canada (Citizenship and Immigration)*, 2012 FC 1438:

> [14] The RPD also makes reference to the IPCB as an avenue of redress if the police do not act properly. It writes that it is an independent body reviewing complaints of police actions which makes recommendations to the head of the National Police and if the recommendations are not accepted, the matter can be referred to a court. On its face, that appears to be an effective tool to ensure that complaints about the police are dealt with; however, another document states that "in practice" the head of the National Police "'neglect[s]' 90 percent of the Complaints Body's decisions." Thus, there appears to be no real avenue for redress for the vast majority of the complainants. The RPD's determination that this process provides a reasonable opportunity for Roma to seek redress is unreasonable.

[32] The evidence does not suggest that the IPCB's efficacy has improved. The Officer says that the IPCB reviewed three hundred and sixty-four complaints in 2012 and found legal violations in about half of the complaints. Only eighty-one of these complaints were forwarded to the National Police Chief. The National Police Chief agreed with the findings in four of the cases (that is, five per cent of the complaints forwarded to him and one per cent of the total cases reviewed). The National Police Chief partially accepted the findings in twenty-three cases, rejected the findings in twenty-six cases, and the rest of the cases remain pending. There is no indication of the remedy available to the few complainants who have had their complaints

accepted by the National Police Chief. Further, the Officer describes the IPCB's mandate and authority as "limited to making recommendations to the National Police Headquarters and reporting its findings to parliament" (CTR at 11).

[33] Similarly, the Court has rejected the idea that a summary of the Hungarian police structure constitutes a state protection analysis. Justice Zinn had the following to say in *Rezmuves*, above:

> [11] The Board's state protection analysis is also problematic. The Board reviews evidence related to arbitrary detention in Hungary, the structure of the Hungarian police forces, police corruption, the Roma Police Association and its protection of Roma members of the police and military, other related police associations in Hungary and Europe for Roma military and police officers, the Independent Expert, and the body responsible for the monitoring of the implementation of legislation dealing with anti-discrimination. However, the Board fails to focus on the relevant question: Is there adequate state protection available for Roma in Hungary?

[34] The Court rejected the Equal Treatment Authority [ETA] as a means of state protection in *Beri v Canada (Citizenship and Immigration)*, 2013 FC 854. Justice Strickland said that the ETA could not provide state protection and concluded "it is difficult to see how state protection would be any more forthcoming or effective had the Applicants redirected their complaints to such agencies" (at para 57).

[35] The Court has also rejected the proposition that state protection exists due to a new law in which the police have the authority to issue emergency restraining orders in domestic violence cases. In *Sebok v Canada (Citizenship and Immigration)*, 2012 FC 1107, Justice Snider discussed the efficacy of these emergency restraining orders:

> [22] In discussing the adequacy of state protection for victims of domestic violence, the Board relies heavily on the availability of restraining orders pursuant to a Hungarian law passed in 2009. However, according to documentary evidence cited by the Board itself, the adequacy of this initiative is questionable. The Board acknowledges that NGOs believe that these new provisions do not effectively protect victims or promote accountability of perpetrators. The Board also notes that there are no special training or law enforcement units that can facilitate effective implementation of the legislation. As reflected in the documentary evidence, restraining orders were issued in only 12% of reported domestic violence cases in 2010 and there was no data concerning breaches of these orders. In view of this evidence, the Board's conclusion that the Female Applicant and even the Male Applicant could have obtained meaningful state protection through this new legislation is not well founded.

[36] In this Decision, the Officer also fails to reconcile the availability of this police power with the evidence that indicates a "Roma females [sic] who complains about domestic violence is likely to face prejudice, discrimination, and dismissal by the authorities or when accessing state services" (CTR at 12). The Officer also fails to acknowledge the evidence which indicates that non-governmental organizations are critical of this police power for failing to provide adequate protection to victims (CTR at 354, 385).

[37] The Court has also rejected the proposition that an ombudsman can provide state protection. Justice Rennie discussed the previous ombudsman system in *Salamon v Canada (Citizenship and Immigration)*, 2013 FC 582 at para 9:

> The Ombudsman cannot issue binding decisions, only encourage consensus and advocate for policy changes. While the Ombudsmen may play a valuable role, they, like the IPCB and Hungarian Helsiki Committee, have no mandate or capacity to provide protection.

[38] The Officer says that a new ombudsman has been established with the "enhanced authority… to initiate proceedings to defend the basic rights of large groups of citizens from violations committed by state-run institutions, banks, businesses, and social organizations" (CTR at 12). There is no indication that the new ombudsman's "enhanced authority" includes the mandate or capacity to provide state protection.

[39] In conclusion, in reviewing the alternative avenues of state protection available to the Applicant, the Officer fails to answer the same question as stated by Justice Zinn in *Majoros*, above, at para 20: "[H]ow would state protection be more forthcoming if the applicants had followed up with, e.g., the Minorities Ombudsman's Office? Would they be any safer or any more protected?" The Officer lists a number of agencies in Hungary and concludes that they will provide state protection for the Applicant but fails to actually address *how* these agencies will protect the Applicant.

D. *Evidence supports Applicant's position*

[40] When the Officer does cite evidence on domestic violence it supports the Applicant's position that there is no state protection available (CTR at 8, 12):

> According to the response, *Hungary: Domestic violence in the Roma community, including legislation, state protection, and services available to victims (2008-February 2012)*, the IRB states that sources indicate that Roma women in Hungary face discrimination based on both their gender and their ethnicity. The response further reports a Roma woman who complains about domestic violence is likely to face "scorn and punishment from her own community". In addition, sources indicate that the police and Roma women do not trust each other and the police often treat domestic violence cases among Roma as something that should be resolved within the family. Concerning domestic violence against

> women, I note US DOS reports that the law does not specifically prohibit domestic violence or spousal abuse. The charge of assault and battery, which carries a maximum prison term of eight years, was used primarily to prosecute domestic violence cases.
>
> […]
>
> According to the response, *Hungary: Domestic violence in the Roma community, including legislation, state protection, and services available to victims (2008-February 2012)*, the IRB states that several sources indicate that there are no government programs and services specifically designed for Roma victims of domestic violence. Furthermore, it states that Roma females who complains [*sic*] about domestic violence is [*sic*] likely to face prejudice, discrimination, and dismissal by the authorities or when accessing state services.

E. *Officer cites evidence selectively*

[41] The Officer cites evidence selectively and omits references to lack of protection (see *Hanko v Canada (Citizenship and Immigration)*, 2014 FC 474). For example, the Decision cites and discusses the United States Department of State, *2012 Country Reports on Human Rights Practices – Hungary*, 19 April 2013 (CTR at 12-13):

> According to the US DOS report, it notes that during the first 10 months of 2012, the Hungarian National Police Headquarters recorded 10, 927 cases of violence against women and 3, 581 cases of domestic violence against women. Furthermore, US DOS states that under the law police called to the scene in domestic violence cases may issue an emergency restraining order valid for three days in lieu of immediately filing charges, while courts may issue 30-day restraining orders in civil law cases and a maximum of 60-day orders in criminal procedures. Moreover, US DOS states that the Ministry of Human Resources continued to operate a 24-hour hotline for victims of abuse. During the year the ministry operated the Regional Crises Management Network at 14 different locations around the country for victims of domestic violence, providing immediate accommodation and complex care for abused individuals and families. The ministry continued to operate four halfway houses around the country, providing long-term housing opportunities (maximum five years) and professional assistance for

> families graduated from the crises centers. In addition, the government sponsored a secret shelter for severely abused women whose lives were in danger.

[42] This discussion is taken almost verbatim from the report. The missing sentences are noteworthy for their discussion of the inability of these services to provide state protection (CTR at 385-86):

> The law does not specifically prohibit domestic violence or spousal abuse. The charge of assault and battery, which carries a maximum prison term of eight years, was used primarily to prosecute domestic violence cases. Under the law police called to the scene in domestic violence cases may issue an emergency restraining order valid for three days in lieu of immediately filing charges, while courts may issue 30-day restraining orders in civil law cases and a maximum of 60-day orders in criminal procedures. Women's rights NGOs have long criticized the law for failing to provide appropriate protection for victims and for not placing sufficient emphasis on the accountability of perpetrators.
>
> During the first 10 months of the year, the Hungarian National Police Headquarters recorded 10, 927 cases of violence against women and 3, 581 cases of domestic violence against women.
>
> The Ministry of Human Resources continued to operate a 24-hour hotline for victims of abuse. During the year the ministry operated the Regional Crises Management Network at 14 different locations around the country for victims of domestic violence, providing immediate accommodation and complex care for abused individuals and families. The ministry continued to operate four halfway houses around the country, providing long-term housing opportunities (maximum five years) and professional assistance for families graduated from the crises centers. In addition the government sponsored a secret shelter for severely abused women whose lives were in danger. According to women's rights NGOs, services for victims of violence against women either operated with limited capacity or did not meet international standards of good practice.
>
> [emphasis added]

F. *Conclusion*

[43] The Officer's concluding paragraph is indicative of the general problem with this Decision (CTR at 13-14):

> I note the European Roma Rights Centre states in the IRB's response, *Hungary: Treatment of Roma and state protection efforts (2009-June 2012)*, that state authorities are not effective in responding to violence against Roma. I acknowledge that state protection may not be perfect; however, based on the information and evidence before me I find that state protection in Hungary for Romani individuals continue to be adequate. I note there is little evidence before me demonstrating the applicant has exhausted or availed herself to all reasonable avenues of state protection in Hungary. I further find the applicant failed to rebut the presumption of state protection in Hungary with clear and convincing evidence. Since I find adequate state protection is available to the applicant in Hungary, I note that this finding nullifies the applicant's claims under both sections 96 and 97 of the *IRPA*. As a result, I further find the applicant is not a *Convention* refugee or a person in need of protection.

[44] It is difficult to understand how a statement which says that "state authorities are not effective in responding to violence against Roma" supports a conclusion that "state protection may not be perfect" or that state protection is adequate. Also, this conclusion makes it clear that the Officer assessed the Applicant's claim from the perspective of Roma people in general and did not focus on the real issue which is that she is a Roma woman who faces death threats from a former partner. The evidence cited by the Officer on point says that "Roma women in Hungary face discrimination based on both their gender and their ethnicity" and that

> … a Roma woman who complains about domestic violence is likely to face 'scorn and punishment' from her own community. In addition, sources indicate that the police and Roma women do not trust each other and the police often treat domestic violence cases among Roma as something that should be resolved within the family.

(CTR at 8)

[45] The Officer appears to think that this fundamental problem for Roma women can be overcome if the Applicant seeks assistance from "a higher level authority or from the Independent Police Complaints Board" or the "Equal Treatment Authority Ombudsman and deputies" or a "24-hour hotline" and "shelters," but the Officer's view that these alternative avenues of recourse "can provide adequate protection to someone in the Applicant's position" is entirely speculative and does not address the specifics of this case.

[46] The onus is upon the Applicant to refute the presumption of adequate state protection but, in deciding whether or not the Applicant has done this, the Decision does not adequately focus on the gender and domestic abuse issues that are the basis of the claim, or deal with the evidence that Roma women do not receive protection.

[47] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The Decision is quashed and the matter is referred back for reconsideration by a different officer; and
2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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