

Federal Court



Cour fédérale

**Date: 20201014**

**Docket: IMM-5745-19**

**Citation: 2020 FC 966**

**Montréal (Québec), October 14, 2020**

**PRESENT: Mr. Justice Gascon**

**BETWEEN:**

**GABOR BURAI et al**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The applicants, Mr. Gabor Burai and Mrs. Sarolta Forgacs, are a married couple from Hungary and members of the Roma ethnic group. When they arrived in Canada in 2011, they claimed refugee protection based on their fear of discrimination and violence in Hungary due to their Roma ethnicity. In a decision issued in September 2019 [Decision], a panel of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada determined that Mr.

Burai and Mrs. Forgacs were neither 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 [IRPA]. The RPD found that there was less than a mere possibility that Mr. Burai and Mrs. Forgacs would be persecuted because of their Roma ethnicity if they returned to Hungary. The RPD also concluded that no evidence demonstrated that Mr. Burai and Mrs. Forgacs would face a particularized risk of harm and that, on a balance of probabilities, their removal to Hungary would not subject them to a risk to life, of cruel and unusual treatment or punishment, or to a danger of torture. The RPD further determined that Mr. Burai and Mrs. Forgacs had not rebutted the presumption that state protection was available to them in Hungary.

[2] Mr. Burai and Mrs. Forgacs now seek judicial review of the RPD Decision. They argue that the Decision is unreasonable because the RPD erred in conducting its state protection analysis. They ask this Court to quash the Decision and to send it back to the RPD for redetermination by a differently constituted panel. The sole issue raised by their application for judicial review is whether the RPD conducted an unreasonable state protection analysis.

[3] Having considered the evidence before the RPD and the applicable law, I can find no basis for overturning the Decision. I have carefully reviewed the RPD's reasons, and I am satisfied that the Decision is justified and intelligible, and that the RPD considered all relevant evidence on state protection in its Decision. The reasons demonstrate that the Decision is based on an internally coherent and rational chain of analysis, and that it is justified in relation to the facts and law that constrain the RPD. There are no sufficient grounds to justify this Court's intervention, and I must therefore dismiss the application for judicial review.

## II. Background

### A. *The factual context*

[4] Mr. Burai and Mrs. Forgacs are citizens of Hungary. They came to Canada in March 2011 and made a claim for refugee protection, based on an alleged fear of persecution due to their Roma ethnicity. They alleged that they faced harassment and discrimination in all aspects of their lives because of their Roma background. On several occasions, Mr. Burai and his sons have been attacked by a group of racist men threatening them and uttering racial slurs, and they sustained physical injuries from these attacks.

[5] More specifically, Mr. Burai submitted that he was persecuted by the Hungarian Guard, a nationalist militia with headquarters located close to his home. In November 2007, several young men threatened him and used racial insults. In May 2008, he was attacked by four members of the Guard. In July 2008, his car was vandalized after he was again the subject of racial slurs. In August 2008, Mr. Burai's older son, Gabor, was attacked by men yelling racial slurs. He was stabbed in the shoulder and required medical treatment in a hospital. The attack was reported to the police but the investigation did not result in the arrest of the attackers because their identities were unknown. In January 2011, Mr. Burai's younger son, Tamas, was attacked by three men in black uniforms. His friend was stabbed but Tamas managed to escape. The friend's mother asked Mr. Burai not to file a complaint to the police because the attackers had threatened further violence if it were reported. No other incidents or attacks were reported to the police.

[6] Mr. Burai and Mrs. Forgacs also alleged that they have faced discrimination and harassment at the hands of the Hungarian police. Whenever their sons encountered police officers, they were asked for identification and their cellphones were searched. The police would also warn their sons that they did not want to see them again. When their sons insisted that they were residents of the area, the police called them "Gypsy bastards" and told them to disappear.

[7] Mr. Burai and Mrs. Forgacs' refugee claim (and the claim of their son, Tamas) were dismissed by the RPD in July 2012. The RPD found that Mr. Burai, Mrs. Forgacs and Tamas were credible and accepted their allegations, but rejected their claims on the ground that they failed to rebut the presumption of state protection. Mr. Burai, Mrs. Forgacs and Tamas sought judicial review of the RPD's decision and their application was granted by this Court in May 2013. The Court overturned the RPD's decision on the basis that the panel unreasonably rooted its state protection analysis in the incorrect "serious efforts" test, rather than properly considering the adequacy of those efforts on the ground.

[8] Mr. Burai and Mrs. Forgacs' claims were heard *de novo* by the RPD in July 2019. By that time, their son, Tamas, had acquired Canadian permanent residence through spousal sponsorship.

**B. *The RPD Decision***

[9] In the Decision, the RPD found that, cumulatively, the allegations of discrimination and harassment did not rise to the level of persecution, as set out in section 96 of the IRPA. The RPD determined that Mr. Burai and Mrs. Forgacs had also failed to establish that they would face a particularized risk of harm pursuant to subsection 97(1) of the IRPA, as their removal would not

subject them to a risk to life, cruel and unusual treatment or punishment, or to a danger of torture. The RPD further found that Mr. Burai and Mrs. Forgacs had not rebutted the presumption of state protection.

[10] With regard to state protection, the RPD found that Hungary did in fact offer adequate state protection. The RPD recognized that, although this protection was less-than-perfect, the fact that “the state’s efforts are not always successful will not rebut the presumption of state protection”. In the Decision, the RPD acknowledged that Roma people did face violence and harassment in Hungary but, since Hungary is a democracy which “holds free and fair elections and, as a member state of the EU, has accountability beyond its own borders”, it was presumed able and willing to provide protection to its citizens.

[11] The RPD further observed that the interaction between the police and the Roma community in Hungary was somewhat problematic, but that the Hungarian government had taken “some steps to prosecute and punish officials who committed abuses”. The RPD also found that, based on the evidence, Hungary seemed to be enforcing the law against corrupt police and that “[i]mpunity for human rights abuses was not widespread”.

[12] The RPD acknowledged that the evidence regarding the situation for Roma citizens in Hungary was mixed and that the Roma citizens faced problems, including discriminatory treatment by the police. The RPD weighed the mixed evidence contained in the National Documentation Package [NDP] for Hungary. The RPD notably considered a submission from the European Roma Rights Centre [ERRC] dating from 2015 and recognizing that “national

bodies in Hungary responsible for protecting Roma against violence suffer institutional racism, particularly institutional anti-Gypsyism”. The RPD also referred to judicial decisions, including a Hungarian Supreme Court ruling dating from February 2017, which found that local Hungarian police had failed to protect Roma from harassment by extremist groups.

[13] The RPD found that the state was not an agent of persecution, as there were no allegations of police brutality or impunity brought before the panel.

[14] The RPD considered that the Hungarian state had deployed serious actions of operational improvement, which had proven to be successful in diminishing police abuse. These included programs providing hate crime training for authorities as well as legal assistance for victims. The RPD also considered programs implemented in order to involve Roma in the state’s security apparatus and encourage enrollment. The panel observed that Hungarian authorities “had some success in curtailing abuse by the police by increasing the recruitment of Roma police officers, providing training in human rights, and filling complaints against misbehaviour of the police”.

[15] Additionally, the RPD also noted Hungary’s efforts to protect minorities by developing policies in that sense. In the Decision, the RPD mentioned that, since the time Mr. Burai and Mrs. Forgacs fled the country in 2011, the situation for Roma individuals had improved in Hungary and that “important changes have been made with respect to state protection for Roma individuals”. The RPD noted that, subsequent to their departure from Hungary, multiple programs had come into effect, ensuring the arrest and prosecution of perpetrators of crimes against minorities. Hungarian courts had also shown more willingness to actively intervene in

cases of discrimination by the police against Romani communities. On this point, the RPD referred to two cases in particular, namely a ruling of January 2017 before the European Commission on Human Rights [ECHR] and a ruling of February 2018 rendered by the Supreme Court of Hungary. The RPD also pointed to specific programs and mechanisms (such as the Independent Police Complaints Board [IPCB] and legal aid) to which Mr. Burai and Mrs. Forgacs could turn to if they were dissatisfied with the police's response. The RPD concluded that the state protection was therefore adequate and operationally effective.

[16] When establishing that Mr. Burai and Mrs. Forgacs were unable to rebut the presumption of adequate state protection, the RPD further noted that they failed to look for assistance when needed. Mr. Burai and Mrs. Forgacs admittedly did not seek state protection, although it was available, as they did not believe it protected the Roma. However, when they did go to the police, no investigation was conducted because the culprits were unknown. The RPD observed that "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." Since Mr. Burai and Mrs. Forgacs were unable to identify the perpetrators when they did seek assistance from the police, the RPD found that this could not translate to the inability or refusal to provide protection. The RPD added that the onus was on the claimants to seek assistance from other police members if they believed the actions of some police officers were racially motivated, something that Mr. Burai and Mrs. Forgacs did not do.

**C. *The standard of review***

[17] The presumption of reasonableness, as set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], applies to the issue of state protection. Although such presumption may be rebutted by the rule of law or when legislature explicitly prescribes a specific standard of review or appeal mechanism, none of these exceptions apply in the present case (*Vavilov* at paras 16-17, 23-25). I underline that, prior to *Vavilov*, the standard of reasonableness was applicable to issues dealing with the application of the test of adequacy of state protection to the facts of the case (*Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 [*Hinzman*] at para 38; *Brzezinski v Canada (Citizenship and Immigration)*, 2019 FC 25 at para 17; *Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 [*Ruszo 2018*] at para 16).

[18] When reasonableness is the applicable standard, the reviewing court must consider “the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome”, to determine whether the decision is “based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paras 83, 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at paras 2, 31). *Vavilov*’s revised framework for reasonableness requires the reviewing court to take a “reasons first” approach to judicial review (*Canada Post* at para 26). Where a decision maker has provided reasons, the reviewing court must begin its inquiry into the reasonableness of the decision “by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by



the decision maker to arrive at its conclusion” (*Vavilov* at para 84). The reasons must be read holistically and contextually in light of the record as a whole and with due sensitivity to the administrative setting in which they were given (*Vavilov* at paras 91-94, 97). However, “it is not enough for the outcome of a decision to be *justifiable* [...] the decision must also be *justified*” (*Vavilov* at para 86).

[19] Before a decision can be set aside on the basis that it is unreasonable, the reviewing court must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). An assessment of the reasonableness of a decision must be robust, but it must remain sensitive to and respectful of the administrative decision maker (*Vavilov* at paras 12-13). Reasonableness review is an approach anchored in the principle of judicial restraint and in a respect for the distinct role and specialized knowledge of administrative decision makers (*Vavilov* at paras 13, 75, 93). In other words, the approach to be followed by the reviewing court is one of deference, especially with respect to findings of facts and the weighing of evidence. Absent exceptional circumstances, the reviewing court will not interfere with an administrative decision maker’s factual findings (*Vavilov* at paras 125-126).

### **III. Analysis**

[20] With regard to state protection, Mr. Burai and Mrs. Forgacs argue that, whereas the correct test requires the RPD to focus on actual protection, the tribunal simply looked at the “efforts” made by Hungary to protect its Roma citizens. They further plead that the RPD’s conclusions concerning the programs put in place in Hungary were made despite overwhelming

evidence of the contrary. In their opinion, extensive evidence reflected the inability of the Hungarian government to provide state protection and the RPD unreasonably overlooked it. Relying on numerous decisions from this Court dealing with the Roma situation in Hungary, they contend that the RPD did not properly deal with the mixed country conditions evidence.

[21] After a careful review of the Decision, I am not persuaded by the submissions made by Mr. Burai and Mrs. Forgacs as, in my view, they do not reflect what the RPD has actually done in its Decision.

**A. *The legal test for state protection***

[22] Mr. Burai and Mrs. Forgacs first submit that the RPD erred by repeating the precise error previously identified by the Court in overturning the tribunal's previous decision. In *Burai v Canada (Citizenship and Immigration)*, 2013 FC 565 [*Burai*], Justice O'Keefe had found that the RPD's state protection analysis could not withstand scrutiny because the RPD had conflated Hungary's serious efforts to provide state protection with adequate state protection on the ground. Mr. Burai and Mrs. Forgacs argue that the RPD's language in the Decision is strikingly similar to what the Court had singled out in 2013 as evidence of the tribunal's failure to employ the proper legal test (*Burai* at paras 30-31). Here again, say Mr. Burai and Mrs. Forgacs, the RPD often invoked "adequacy" in its language and purported to consider whether Hungary's "efforts" have been effective at the operational level; however, in reality, the RPD once again employed the incorrect "serious efforts" test.

[23] I do not subscribe to this assessment.

[24] I am instead satisfied that, in its Decision, the RPD stated and used the correct legal test for assessing state protection. Even a cursory reading of the RPD's reasons demonstrates that it focused not only on the efforts but also on the results of the state's intervention. In fact, not only did the RPD state the correct test, but it also reviewed recent and relevant case law concerning state protection in Hungary. The RPD noted that there is a presumption that the state is capable of protecting its own citizens. This presumption can only be displaced upon clear and convincing evidence of the state's inability to protect its citizens. The RPD further observed that the state is not required to guarantee perfect protection and that less-than-perfect protection is not a basis to determine that a state is unwilling or unable to offer reasonable protection (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*] at p 724; *The Minister of Citizenship and Immigration v Flores Carrillo*, 2008 FCA 94 [*Carrillo*] at paras 17-19, 28, 30).

[25] It is not disputed that the appropriate test in a state protection analysis commands an assessment of the adequacy of that protection at the operational level, not the efforts or intentions of the state (*Vidak v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 976 at para 8; *Mata v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1007 at paras 13-14; *Burai* at para 28). Adequate protection requires that the existence of an actual outcome of protection be examined, whereas serious efforts at protection rely merely on measures contemplated by the state to provide protection (*Kumati v Canada (Citizenship and Immigration)*, 2012 FC 1519 at paras 27-29). Put another way, the state protection test must focus on actual results: “[i]t is what state protection is *actually provided* at the *present time* that is relevant” [emphasis in original] (*Hercegi v Canada (Citizenship and Immigration)*, 2012 FC 250 at para 5). Efforts made by a government to achieve state protection may, of course, be relevant to determine if operational

adequacy has been achieved. However, what counts are the results in terms of what is concretely accomplished by the state, and this is what needs to be measured (*Bakos v Canada (Citizenship and Immigration)*, 2016 FC 191 at para 29; *Molnar v Canada (Citizenship and Immigration)*, 2015 FC 273 at para 46).

[26] Mr. Burai and Mrs. Forgacs maintain that the RPD conflated adequacy with efforts and that, at the end of day, “efforts” and “steps” essentially boil down to the same thing. I do not share that view. In this case, I am satisfied that the RPD did not unreasonably focus on the fact that Hungary was making “efforts” to protect the Roma from discrimination and persecution. In its analysis, the RPD assessed the documentary evidence showing the effect of the implementation of the state’s efforts. Throughout the Decision, the RPD examined the adequacy of state protection at an operational level, listed multiple examples of measures implemented by the Hungarian government and looked at concrete results stemming from these measures. The wording of the Decision demonstrates that the panel did go beyond simple references to “efforts” and effectively referred to actual results of state protection (*Ruszo 2018* at para 29).

[27] I acknowledge that, in some passages of the Decision, the RPD appears to stray away from the proper legal test, when it refers to the state continuing “its vigorous efforts to develop policies designed to protect national minorities”. However, when the reasons are read as a whole in the overall context of the Decision, I am not persuaded that the terms employed by the RPD reflect the application of an improper legal test. As stated in *Kotai v Canada (Citizenship and Immigration)*, 2013 FC 693 [*Kotai*], when a decision is read holistically and is considered as a

whole, the use of terms such as “serious steps” may not imply that a decision maker has wrongfully applied the test for state protection (*Kotai* at para 37). This is the situation here.

**B. *The application of the test***

[28] Turning to the application of the test, Mr. Burai and Mrs. Forgacs submit that the RPD misapplied the proper legal test and confusingly relied on the failures of the Hungarian state to protect its Roma minority as support for its determination that there is proper state protection. For example, the RPD found that, since the courts have “become involved in cases where the police have failed to exercise their discretion,” this means that the government’s efforts have “actually translated into adequate state protection at the operational level”. Mr. Burai and Mrs. Forgacs argue that this approach cannot withstand scrutiny. In their view, there is simply no justification for the RPD’s puzzling determination that the police will protect Roma at the operational level in Hungary because the courts have found that the police have failed to do so. They take particular exception with the reference to an ECHR ruling which found that the Hungarian police failed to provide protection to two Roma individuals who were attacked by paramilitary groups, and that the police failed to conduct a proper investigation into the matter. Mr. Burai and Mrs. Forgacs submit that the same is true about the RPD’s repeated reliance on a Hungarian court ruling which found that the police failed to protect Roma inhabitants in the village of Gyöngyöspata from violent extremist groups.

[29] Mr. Burai and Mrs. Forgacs also argue that the RPD erred when it stated that Hungary’s “efforts” have translated into operationally adequate state protection because there are avenues for recourse against police misconduct and societal discrimination against Roma. They maintain

that the RPD unreasonably relied on the availability of redress rather than actual protection on the ground. Mr. Burai and Mrs. Forgacs contend that this is fundamentally incompatible with the Court's repeated affirmation that "the taking of a complaint against the police for non-action is not, in any way, the equivalent of providing state protection" in Hungary (*Olah v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 899 [*Olah*] at para 29; *Racz v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 824 at para 38; *Csoka v Canada (Citizenship and Immigration)*, 2016 FC 1220 [*Csoka*] at para 21). Mr. Burai and Mrs. Forgacs add that the RPD's determination about the availability of redress against police misconduct and inaction was also at odds with the country evidence, which speaks to the lack of actual redress, the persistent discrimination against Roma, the unchecked police brutality and racism toward Roma, and the unwillingness of the police to help Roma victims.

[30] In the same vein, Mr. Burai and Mrs. Forgacs assert that the RPD lacked an evidentiary basis for its finding that the "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". In their view, this finding was made in ignorance of the vast country evidence indicating that the lack of police protection is part of a "broader pattern" and a widespread and systemic unwillingness and inability to protect Hungarian Roma.

[31] Mr. Burai and Mrs. Forgacs further claim that the RPD erred by repeatedly relying on the fact that Hungary is a functioning democracy as support for its finding that the Hungarian state can protect its Roma citizens. They argue that this is significant because the onus on refugee

claimants to rebut the presumption of state protection directly correlates to the level of democracy in their home country. While the RPD relied on the fact that Hungary is a democratic functioning country and a member of the European Union [EU], it failed to acknowledge the serious decline in democratic norms, values and institutions in Hungary. Mr. Burai and Mrs. Forgacs maintain that it was unreasonable for the RPD to rely on Hungary's EU membership when the reality is that Hungary is brazenly flouting its obligations under EU law. This has resulted in a series of infringement proceedings against Hungary including, in September 2018, a resolution passed by the European Parliament questioning the independence of the Hungarian judiciary as part of a broader concern for the rule of law situation in the country and calling on the EU Council to initiate a breach of the rule of law procedure against Hungary. Relying on the Court's decision in *Katinszki v Canada (Citizenship and Immigration)*, 2012 FC 1326 [*Katinszki*], Mr. Burai and Mrs. Forgacs plead that the RPD's failure to acknowledge the overwhelming evidence that democracy is under siege in Hungary resulted in a state protection assessment that was divorced from the reality on the ground (*Katinszki* at para 17).

[32] I do not share the views articulated by Mr. Burai and Mrs. Forgacs.

[33] As already noted by this Court, the situation in Hungary is difficult to gauge and the assessment of the adequacy of state protection will depend on the evidence in each specific case. Sometimes state protection will be adequate, sometimes it will not (*Ruszo 2018* at para 28; *Olah v Canada (Citizenship and Immigration)*, 2016 FC 316 at para 35; *Molnar v Canada (Citizenship and Immigration)*, 2012 FC 530 [*Molnar*] at para 105). As reflected by the submissions of Mr. Burai and Mrs. Forgacs, there are indeed numerous precedents where this Court has granted

applications for judicial review and quashed state protection determinations with regard to Roma citizens from Hungary and other countries. Conversely, the reverse is also true. In the end, each matter must be considered and decided on its own facts and merits. The starting point is the decision itself and what the reasons actually say, with the recognition that the administrative decision maker has the primary responsibility to make this type of factual findings.

[34] Further to my review of the Decision and the evidence before the panel, I am satisfied that, in the present case, the RPD considered not only the efforts of Hungary to offer state protection to Mr. Burai and Mrs. Forgacs, but also the concrete results stemming from the steps undertaken by the Hungarian government in terms of investigations, prosecutions, police effectiveness and convictions. The RPD thoroughly analyzed the evidence on state protection over 20 paragraphs and made multiple references to documentary evidence in the NDP showing actual results of state protection in Hungary. For example, in its reasons, the RPD noted that:

- “There is evidence that Hungary enforces the law against corrupt police”;
- The “government took some steps to prosecute and punish officials who committed abuse”;
- This “demonstrates the government’s actions of operational improvement”;
- The government “has implemented programs that provide hate crime training” for authorities and also “provide legal assistance and support to victims of hate crime”;
- The authorities “had some success in curtailing abuse by the police by increasing the recruitment of Roma police officers, providing training in human rights and filling [sic] complaints against misbehaviour of the police”;
- “Hungary has taken serious steps to improve the Roma situation”;
- The situation “has improved” for Roma individuals since 2013 and “important changes have been made with respect to state protection for Roma individuals”,



including specialized police units on hate crime, training sessions, and police monitoring of areas at risk of conflict;

- The documentary evidence indicates that the “police arrest and prosecute the perpetrators of crimes, including crimes committed against Roma and other ethnic minorities and their property”;
- The courts “have become involved in cases where the police have failed to exercise their discretion”.
- [emphasis added]

[35] These statements, in my view, eloquently reflect a focus on actual results on the ground, as opposed to mere efforts. Throughout the Decision, the RPD considered the general documentary evidence, acknowledged that some of that evidence was conflicting, and repeatedly conceded that the evidence is mixed. However, the RPD ultimately found that, in the circumstances of this case, Mr. Burai and Mrs. Forgacs failed to rebut the presumption of state protection with clear and convincing evidence (*Kotai* at para 40).

[36] Mr. Burai and Mrs. Forgacs’ reference to general documentary evidence does not demonstrate the RPD erred in its consideration of state protection. This is not a case where the panel made general observations about Hungary without considering the specific evidence before it, or where the RPD referred only to good intentions without considering implementation and actual results. Contrary to Mr. Burai and Mrs. Forgacs’ submissions, it is not the role of this Court on judicial review to determine the state of a country’s conditions. Its role is to determine whether the RPD’s consideration of the evidence was reasonable.

[37] I am also not persuaded that the RPD ignored relevant evidence. When considering the RPD's reasons as a whole, it is clear that the RPD acknowledged the mixed evidence brought before the panel. Despite its finding, the RPD was well aware of the contradictions and certain deficiencies of state protection in Hungary, and it acknowledged the mixed evidence in its reasons. The RPD took care to mention multiple sources of evidence referring to several reports and articles of different sources in support of its analysis. The RPD has not omitted to mention evidence; it instead concluded that the state protection was adequate after weighing all the evidence.

[38] It is trite law to presume that a decision maker has weighed and considered all the evidence brought before him/her (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). A failure to mention a particular piece of evidence does not mean that it was ignored, and a decision maker is not required to refer to each and every piece of evidence supporting his or her conclusions (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). It is only when an administrative decision maker is silent on evidence clearly pointing to an opposite conclusion that the Court may intervene and infer that the decision maker overlooked the contradictory evidence when making findings of fact (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9-10; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) [*Cepeda-Gutierrez*] at paras 16-17). However, *Cepeda-Gutierrez* does not stand for the proposition that the mere failure of a tribunal to refer to an important piece of evidence that runs contrary to the tribunal's conclusion necessarily renders a decision unreasonable and results in the decision being overturned. To the contrary, *Cepeda-*

*Gutierrez* says that it is only where the non-mentioned evidence is critical and squarely contradicts the tribunal's conclusion that the reviewing court may decide that its omission means that the tribunal did not have regard to the material before it. This is not the situation here, and Mr. Burai and Mrs. Forgacs have not referred the Court to any such evidence.

[39] Contrary to the submissions made by Mr. Burai and Mrs. Forgacs, I am not persuaded that the RPD selectively reviewed the documentary evidence. It instead appears from the Decision that the RPD considered thoroughly Hungary's country documentation. The RPD's reasons are detailed and contain several references to specific portions of the documentary evidence forming part of the NDP. In the end, and on the basis of the evidence before it, the RPD gave more weight to the documentary evidence relating to the adequacy of state protection than to the concerns expressed by Mr. Burai and Mrs. Forgacs or to other documentary evidence singled out by them. I might not have arrived at the same conclusion as the RPD but, further to my review of the Decision and of the record before the RPD, I am not convinced that its assessment was unreasonable.

[40] During oral argument, counsel for Mr. Burai and Mrs. Forgacs insisted on the RPD's alleged failure to mention in its Decision a specific document contained in the NDP for Hungary that, they say, directly contradicted the panel's finding, namely the NDP *Response to Information Request* dating from 2018. According to them, this document demonstrates the failure of police on the ground. However, a careful review of the Decision reveals that, at several paragraphs in the Decision, the RPD did in fact consider this document and did not ignore it, as the RPD specifically acknowledged the mixed evidence before it. Moreover, there was evidence

supporting the fact that police had implemented measures and taken actions to improve the protection of Roma. This is not a piece of evidence that fits within the narrow *Cepeda-Gutierrez* exception.

[41] Mr. Burai and Mrs. Forgacs also vehemently condemned the RPD's reliance on judicial decisions which in fact confirmed the failures of the police and the discrimination suffered by the Roma. I concede that, at first glance, the RPD's use of that evidence in support of a finding of adequate state protection at an operational level looks illogical and counter-intuitive. I also acknowledge that the RPD's assessment on this point could have been better worded and deserved perhaps more explanation. However, when the passages impugned by Mr. Burai and Mrs. Forgacs are read in conjunction with the rest of the reasons, I am satisfied that these were examples of the judicial system at work and that it was not unreasonable for the RPD to rely on that evidence as reflections of concrete results in terms of state protection.

[42] More generally, and contrary to the situation in *Pava v Canada (Citizenship and Immigration)*, 2019 FC 1239, the Decision addresses the evidence demonstrating that the police are responsive and effective when actually called upon to investigate or to try to prevent violence, threats or persecution against the Roma minority.

[43] With respect to the police, it is well-established law that local failures to provide effective policing do not automatically amount to a lack of state protection. A single refusal by the authorities to assist will not meet the high threshold necessary to rebut the presumption of state protection. It is simply insufficient for an applicant to give up trying merely because of a single

bad experience with local police officials (*Kadenko v Canada (Solicitor General)* (1996), 143 DLR (4th) 532 at 534 (FCA); leave to appeal to SCC refused, [1996] CSCR no 612; *Morales Lozada v Canada (Citizenship and Immigration)*, 2008 FC 397 at paras 27-28; *Sanchez v Canada (Citizenship and Immigration)*, 2008 FC 134 at paras 9, 12).

[44] In this case, Mr. Burai and Mrs. Forgacs did not report certain incidents and attacks to the police. Furthermore, in the case of the August 2008 attack on their son Gabor, in which he was hospitalized and the police were notified, Gabor was unable to identify his attackers. Similarly, Mr. Burai was unable to identify the members of the Hungarian Guard who attacked him in May 2008. Where Mr. Burai and Mrs. Forgacs have not reported incidents to police or the police cannot pursue the matter because the attackers are unknown, it is reasonable for the RPD to find that they have not rebutted the presumption of state protection.

[45] I now turn to Mr. Burai and Mrs. Forgacs' arguments on Hungary's democracy. I do not dispute that the presumption of state protection varies with the nature of the democracy in a country. But, here, given the mixed evidence about Hungary, I find that it was open to the RPD to recognize Hungary as a democracy, despite the country's recent shift to the right.

[46] It is settled law that Canadian courts must presume that state protection is available in the country of origin of the refugee claimant, particularly when the state is democratic, as is the case for Hungary. Clear and convincing evidence is needed to rebut this presumption of state protection (*Ward* at p 724; *Carrillo* at paras 18, 30; *Kotai* at para 32), and it requires more than showing that state protection is not perfect or not always effective (*Canada (Minister of*

*Employment and Immigration) v Villafranca*, [1992] FCJ No 1189 (FCA) (QL) at para 7). As stated by the Federal Court of Appeal in *Hinzman*, “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 protections of his home state” (*Hinzman* at para 41).

[47] I acknowledge that the RPD’s references to the availability of the Prosecutorial Investigation Office for complaints about police work, of the ICPB or of legal aid services in Hungary do not amount to actual steps and cannot serve as a basis for adequate state protection (*Csoka* at paras 14-21). This Court has repeatedly affirmed that these alternate government institutions and non-governmental organizations are not acceptable and satisfactory avenues of state protection, and that they do not constitute substitutes able to replace the police protection itself. Therefore, the RPD erred when it referred to that evidence in support of its finding of state protection. However, when the evidence is considered as a whole, I am not persuaded that this error is sufficient to tip the balance and to render the RPD’s conclusion on state protection unreasonable.

[48] Having regard to all of the above, I am satisfied that the RPD’s determination is well founded, and that it is both justifiable and amply justified in its reasons. In my view, the detailed reasons provided by the RPD demonstrate that the Decision on adequate state protection was based on an internally coherent and rational chain of analysis and that it conforms to the relevant legal and factual constraints that bear on the tribunal and the issue at hand (*Canada Post* at para 30; *Vavilov* at paras 105-107).

[49] Further to *Vavilov*, the reasons given by a decision maker are the starting point of the analysis. They are the principal tool allowing the administrative decision makers “to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner” (*Vavilov* at para 79). I am satisfied that the Decision explains the conclusions reached by the RPD in a transparent and intelligible manner (*Vavilov* at paras 81, 136; *Canada Post* at paras 28-29; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 48), and that the reasons allow me to understand the basis on which the RPD concluded that Mr. Burai and Mrs. Forgacs had not rebutted the presumption of state protection. The standard of reasonableness requires the reviewing court to pay “[r]espectful attention to a decision-maker’s demonstrated expertise” and specialized knowledge, as reflected in their reasons (*Vavilov* at para 93). Deference to decision makers includes more specifically deferring to their findings of facts and assessment of the evidence, and reviewing courts should refrain from reweighing and reassessing the evidence considered by the decision makers (*Canada Post* at para 61; *Vavilov* at para 125).

[50] Here, this is not a situation where the decision maker has fundamentally misapprehended or failed to account for the evidence. The RPD has rather meaningfully grappled with the key issues and central arguments raised by Mr. Burai and Mrs. Forgacs and it was alert and sensitive to the evidence. When the reasons are considered as a whole, and not through a piecemeal approach, I am persuaded that that the RPD conducted a thorough and detailed assessment of the evidence before concluding as it did on the issue of state protection. In the case at bar, I find that the RPD engaged with the evidence, referred to several reports, was cognizant of the personal incidents involving Mr. Burai and Mrs. Forgacs and was aware of the contradictions and

deficiencies of state protection in Hungary. After weighing all the evidence on the record, the decision maker came to the conclusion that state protection was adequate. Concrete examples of state protection being effective at an operational level were numerous and the RPD did not omit to incorporate contradictory evidence in its assessment; the RPD instead acknowledged the ongoing difficulties faced by the Roma community in Hungary, the mixed evidence and the persistent challenges that plague some of the policies and programs being implemented. It is apparent that the evidence was thoroughly considered by the RPD, but it was insufficient to rebut the presumption of state protection.

[51] In sum, I conclude that the RPD's reasons in the current case set out an extensive analysis of the state protection documents. This analysis is not only comprehensive, it is comprehensible. Given its review of the legal principles surrounding state protection, its acknowledgement of the widespread persecution of Roma people disclosed by the documentary evidence, as well as its assessment of the personal experiences of Mr. Burai and Mrs. Forgacs and of the measures implemented by the Hungarian State, the RPD's analysis of state protection has the attributes of transparency, intelligibility and justification by which the reasonableness standard is defined,

### **C. *Other issues***

[52] Mr. Burai and Mrs. Forgacs also submit that, in assessing the determinative issue of state protection, the RPD mischaracterized their claim by finding that the Hungarian state was not identified as an agent of persecution and that there were "no allegations of police brutality or impunity". Mr. Burai and Mrs. Forgacs argue that this finding is fundamentally at odds with their allegations, evidence and testimony as Mr. Burai explicitly identified the Hungarian justice



system and police as agents of persecution and discussed the ongoing mistreatment of his sons by the Hungarian police.

[53] Again, I am not convinced that the RPD erred as alleged. Whereas Mr. Burai and Mrs. Forgacs testified that they feared the police and the judicial system, the RPD reasonably held that the state is not the agent of persecution. I agree with the RPD about the absence of allegations of police brutality or impunity made before the panel, as Mr. Burai and his sons were unable to identify the perpetrators of the acts of violence committed towards them. Once again, it was open to the RPD to conclude as it did on this point.

[54] Mr. Burai and Mrs. Forgacs further argue that the RPD unreasonably found that they had failed to rebut the presumption of state protection because they only approached the police on one occasion, when their son Gabor was assaulted. I do not agree. Mr. Burai and Mrs. Forgacs' evidence was that they did not approach the police on other occasions because they were not assisted by the police when they did complain and because the police discriminate against Roma and will not protect them. The RPD found that these were not reasonable explanations for "failing" to approach the police. The RPD further found that Mr. Burai should have approached the state for protection "even if he believed that the police did not protect Roma".

[55] Mr. Burai and Mrs. Forgacs submit that the RPD's finding is at odds with its explicit acknowledgment that "anti-Roma prejudice is present among police officers in Hungary, and Roma are subject to ethnic profiling by the police [and are] disproportionately penalised by the police for petty offences". They also claim that it is at odds with the established jurisprudence

indicating that there is no obligation on refugee claimants to seek state protection unless there is evidence that protection would be reasonably forthcoming. Where, as in Hungary, persecution is widespread and indiscriminate, the Court has held that a failure to report mistreatment to the authorities is of “doubtful evidentiary significance” (*Muntyan v Canada (Citizenship and Immigration)*, 2013 FC 422 at para 9).

[56] Mr. Burai and Mrs. Forgacs argue that their belief that the police would not help them was substantiated by both their personal experiences with law enforcement and the objective country documentation. With respect to their subjective experiences, these included the police inaction in purporting to investigate the incident when their son was beaten by Guardsmen uttering racial slurs. They also included repeated incidents when their son was randomly stopped by police, who would search his cellphone, force him up against a wall, and tell him to disappear from the neighbourhood.

[57] Contrary to Mr. Burai and Mrs. Forgacs’ arguments, I agree with the Minister that it was reasonably open for the RPD to find that a failure to go to police was not sufficient to rebut the presumption that state protection is available (*Poczodi v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 956 at para 41; *Cheema v Canada (Citizenship and Immigration)*, 2015 FC 441 at paras 25-28; *Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004 [*Ruszo 2013*] at para 33; *Molnar* at para 92). Although Roma people face difficult conditions in Hungary, they are still expected to make reasonable efforts to seek state protection (*Kotai* at para 41).

[58] While Mr. Burai and Mrs. Forgacs alleged to have suffered multiple attacks between 2007 and 2011, they only reported one incident to the police – the attack on their son Gabor in 2008 –. The police closed the investigation without apprehending the attackers because Gabor was unable to identify his attackers. A subjective perception that one would simply be wasting one’s time by seeking police protection does not constitute compelling or persuasive evidence (*Ruszo 2013* at para 51; *Mudrak v Canada (Citizenship and Immigration)*, 2015 FC 188 [Mudrak] at para 77). In other words, Mr. Burai and Mrs. Forgacs failed to “demonstrate that [they] took all objectively reasonable efforts, without success, to exhaust all courses of action reasonably available to them, before seeking refugee protection abroad” (*Ruszo 2013* at para 32; *Mudrak* at para 77).

[59] I accept that a failure to seek state protection at the time of the refugee claim is not determinative of the assessment made by the RPD of state protection at the time of the hearing. It is well established that the test for state protection is forward-looking, meaning that what must be considered is the state’s ability to provide adequate protection when a claimant should return to his/her country (*Mileva v Canada (Minister of Employment and Immigration)*, [1991] 3 FC 398 (FCA); *Srichandradas v Canada (Minister of Citizenship and Immigration)*, 2003 FC 829 at para 4). The determination of state protection must be made “at the time of the decision and must be based on an objective evaluation of country conditions” (Lorne Waldman, *Immigration Law and Practice*, 2nd ed (LexisNexis Canada, 2005) (loose-leaf updated August 2020, release 83), ch 8 at para 8.289.12). The relevant question is whether there is evidence to establish that the state will be willing or able to provide protection in the future, with the applicant’s past experience of

seeking or obtaining such protection being one factor in the assessment. Therefore, the sole failure to seek state protection in the past does not suffice to reject a claim.

[60] But a failure to seek state protection in the past remains part of the equation and it was reasonable for the RPD to consider this fact along with other factors in determining if there was adequate state protection (*Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1157 at para 61; *Majoros v Canada (Citizenship and Immigration)*, 2013 FC 421 at paras 10-11; *Gonzalez Torres v Canada (Citizenship and Immigration)*, 2010 FC 234 at para 37). Again, I do not find that the RPD erred in its analysis of the past behaviour of Mr. Burai and Mrs. Forgacs.

#### **IV. Conclusion**

[61] For the above reasons, the RPD's Decision represents a reasonable outcome based on the law and the evidence before it. I detect nothing irrational or arbitrary in the RPD's conclusion that state protection is available to Mr. Burai and Mrs. Forgacs in Hungary, and that they would not be exposed to a serious risk of persecution if they returned to this country. On a reasonableness standard, it is sufficient that the reasons detailed in the Decision demonstrate that the conclusion is based on an internally coherent and rational chain of analysis and that it is justified in relation to the facts and law that constrain the decision maker. This is the case here. Therefore, I cannot overturn the RPD's Decision and I must dismiss this application for judicial review.

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

**JUDGMENT in IMM-5745-19**

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

1. The application for judicial review is dismissed, without costs.
2. No question of general importance is certified.

"Denis Gascon"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5745-19

**STYLE OF CAUSE:** GABOR BURAI et al v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HEARING HELD BY VIDEOCONFERENCE IN  
MONTREAL (QUEBEC)

**DATE OF HEARING:** SEPTEMBER 23, 2020

**JUDGMENT AND REASONS:** GASCON J.

**DATED:** OCTOBER 14, 2020

**APPEARANCES:**

Mr. Michael Korman FOR THE APPLICANTS

Ms. Neeta Logsetty FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Korman and Korman LLP FOR THE APPLICANTS  
Toronto (Ontario)

Attorney General of Canada FOR THE RESPONDENT  
Toronto (Ontario)