Federal Court  Cour fédérale

Date: 20130503

Docket: IMM-8730-12

Citation: 2013 FC 463

Ottawa, Ontario, May 3, 2013

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

Janos JONAS

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, (the Act) for judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board (RPD), who determined that Janos Jonas (the applicant) is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Act.

Facts

[2] The applicant is a Hungarian citizen of Roma ethnicity and is now 61 years old. Prior to coming to Canada, the applicant lived in Ecseg, a village located some 70 km from Budapest; the village is 30% Roma. He says he fears he would be persecuted because of his ethnic origin if he were sent back to Hungary.

[3] It appears that the applicant is referring specifically to three incidents that he was involved in. In August 2010, he was attacked by a group of skinheads while at a bus stop. He was insulted, beaten, and someone spit in his face. The applicant was able to escape and filed a complaint with the police the next day. The police asked him to describe his attackers and, it seems, began an investigation. A few months later, in October 2010, the applicant discovered that the case had been closed for lack of evidence.

[4] The second incident occurred in September 2010. While the applicant was driving on the main street of another village, a group of skinheads began rocking his car. The applicant took refuge in a café and alerted the police. The police spoke to the skinheads and then escorted the applicant outside the village.

[5] Last, in 2010, the skinheads shattered the windshield of the applicant's car with a baseball bat, this time in another village called Csenyi. The applicant was not inside the vehicle when the attack occurred, but he witnessed it. Other cars belonging to Roma were also vandalized. The police went to the scene and prepared a report. Apparently there was no arrest in this case.

[6] He recounted other events to the RPD where he had not been attacked. In the spring of 2010, the applicant noticed skinheads driving in an all-terrain vehicle in the woods behind his house. It seems that this happened several times. The mayor of the village sent a volunteer patrol twice to search the area. The applicant's house, which he claims was particularly targeted because of its location, was never attacked. In December 2010, the applicant reported his observations to the police a few times; he says the police never followed up. The applicant stated that in December 2010 some skinheads set up camp in Gyöngyöspata, the village next to his, and engaged in activities against Roma, ranging from attacks to even shooting at them. It should be pointed out in this regard that the event in question attained some notoriety; in fact, the RPD noted that these events occurred in 2011, not in 2010, hence after the applicant had left. In fact, counsel for the applicant admitted this.

[7] The applicant arrived in Canada on December 6, 2010, and claimed refugee protection on December 8 of the same year.

Impugned decision

[8] The Refugee Protection Division rejected the application for refugee protection because the applicant had not rebutted the presumption that a national benefits from state protection and because what the applicant was complaining about was discrimination that did not reach the level required to constitute persecution.

[9] Relying on *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, the RPD determined that the applicant had not adduced the clear and convincing evidence that is required to rebut the

presumption. The burden of proof is proportional to the level of democracy in the state in question (*Kadenko v Canada (Minister of Citizenship and Immigration)* (1996), 143 DLR (4th) 532).

[10] The RPD noted, on the facts of this case, that the applicant had benefited from state protection for the incidents he recounted.

[11] Examining the documentary evidence, the RPD acknowledged at the outset that there had been attacks against Roma in recent years but stated that the Hungarian government has taken steps to protect them. Moreover, the report on Hungary by the European Commission against Racism and Intolerance states that the steps taken by Hungary have had a positive impact. The RPD noted, in particular, that most ministries now have an officer dedicated to the needs of Roma and that there are various programs to promote their employment and education.

[12] Discrimination that may constitute persecution has substantial harmful ramifications on the right to earn income, practise one's religion, access employment, health care or education.

[13] In this case, the RPD found that the applicant had suffered some discrimination but had not been persecuted. For a finding of persecution to be made, the discrimination suffered by a person must lead to severe restrictions in employment, religious practice or access to health care or education. There was no such evidence in this case. In fact, it was noted that the applicant had worked for various employers all his life and that, even after the year 2000 when the situation in Hungary worsened, he continued to be able to live in peace.

Position of the parties

[14] At the hearing, the applicant emphasized the lack of protection in Hungary. His counsel pointed out that protection has to be prospective. In fact, to show that the RPD's decision was not reasonable, she focused on reviewing it to demonstrate that the RPD had selected passages from the documentary evidence.

[15] When questioned by the Court about the scope of her argument, counsel for the applicant insisted that she was not trying to demonstrate that all Roma should benefit from sections 96 and 97 of the Act because of the documentary evidence she had analyzed before the panel. Rather, she wanted to show that the decision was unreasonable because it did not adequately consider all the documentary evidence.

[16] For his part, the respondent submits that the applicant's position is simply an expression of his disagreement with the decision. The review, he says, must be confined to the particular case that was before the panel. The evidence clearly shows that the applicant received state protection. There is nothing to indicate that this protection would not be available should he return to Hungary. The applicable standard is not perfection.

Analysis

[17] The parties agreed that the appropriate standard of review is reasonableness. The Court agrees.

[18] However, there are consequences that ensue for the person who attacks the reasonableness of a decision, as the applicant is doing in this case. In *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, the Court provided the parameters to be used in a case such as ours. Paragraph 47 states:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[19] This standard was further articulated in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708. I note the following passages from paragraphs 14 and 16:

> [14] Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses — one for the reasons and a separate one for the result . . .
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> . . .
>
> [16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion . . . In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether

> the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[20] Therefore, that is the test. Because the applicant submits that all Roma should not be able to benefit from the protection of sections 96 and 97 of the Act, it follows that it is reasonable that some will not benefit from it. This stems from the fact that each case must be considered individually. In this case, the RPD found that state protection was available to this applicant and that, consequently, he could be returned to Hungary. This was, appropriately, a personalized decision. The mere fact that the documentation may also, in some cases, be used to favour an applicant does not mean that the decision in our case is unreasonable. The applicant would perhaps have liked to read more in the RPD's decision than what is there. But to repeat the words of the Supreme Court of Canada, "that does not impugn the validity of either the reasons or the result under a reasonableness analysis".

[21] In the case that was before the panel, it is not difficult to understand why the RPD made the finding it did. The applicant was not persecuted, and he received state protection. It is certainly worth noting that the presumption of state protection must be rebutted by clear and convincing evidence. I reproduce the following passage from pages 724 and 725 of *Ward* (above):

> The issue that arises, then, is how, in a practical sense, a claimant makes proof of a state's inability to protect its nationals as well as the reasonable nature of the claimant's refusal actually to seek out this protection. On the facts of this case, proof on this point was unnecessary, as representatives of the state authorities conceded their inability to protect Ward. Where such an admission is not available, however, clear and convincing confirmation of a state's inability to protect must be provided. For example, a claimant might advance testimony of similarly situated individuals let down by the state protection arrangement or the claimant's testimony of past personal incidents in which state protection did not materialize. Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete

> breakdown of state apparatus, such as that recognized in Lebanon in *Zalzali*, it should be assumed that the state is capable of protecting a claimant.

[22] In this case, not only was this evidence not adduced to rebut the presumption that the state was capable of protecting the applicant, but it was put forward that such protection had been provided to this applicant. It was reasonable for the RPD to make the finding it did. Similarly, the finding that the applicant had not been persecuted was also reasonable having regard to the circumstances of this case.

[23] It follows that the application for judicial review cannot be allowed. No question under section 74 of the Act was certified.

JUDGMENT

The application for judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board dated July 27, 2012, is dismissed.

"Yvan Roy"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8730-12
STYLE OF CAUSE:	Janos JONAS v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
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