

Federal Court



Cour fédérale

**Date: 20150706**

**Docket: IMM-1371-14**

**Citation: 2015 FC 825**

**Ottawa, Ontario, July 6, 2015**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**ZSOLT FABIJAN**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Refugee Protection Division [RPD] denied Mr. Fabijan's refugee claim because it found that that he had failed to rebut the presumption of state protection. Whether that assessment was reasonable is the sole issue in this application.

[2] Mr. Fabijan is a citizen of Serbia. He founded his claim for refugee status on alleging discrimination and persecution in Serbia due to his Hungarian heritage.

[3] He testified that he was repeatedly bullied by a neighbourhood boy and his friends and he fears ongoing assaults if he is returned to Serbia. He never approached the police to report these assaults and testified that he did not believe that the police would assist him if he had reported the incidents and sought its help.

[4] While the RPD found some inconsistencies in Mr. Fabijan's evidence, it found him to be credible in his oral testimony and found that he did not embellish or exaggerate where it would have bolstered his claim.

[5] The determinative issue was the conclusion that Mr. Fabijan had failed to rebut the presumption of state protection which was made based on the following findings. First, that Serbia is a fully functioning democracy with no breakdown of state institutions and thus the onus on Mr. Fabijan to overcome the presumption of state protection is high. It was also noted that there is an independent judiciary, although it is susceptible to corruption and political interference. Second, that none of the issues now relied upon were reported to the police. Third, the police are actively investigating ethnic tensions in the Vojvodina region. Lastly, the country condition documentation shows that although protection of minorities is not perfect, there is some protection of minorities based on the creation of national minority councils, hotlines to report minority human rights issues, anti-discrimination laws, and an ombudsman.

[6] The applicant submits that the RPD failed to consider the quality of the democratic institutions in Serbia as well as the protection available at an operation level, as this court has held must be done: See *Sow v Canada (Minister of Citizenship and Immigration)*, 2011 FC 646,

*Cekaj v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1531, and *Navarrete Andrade v Canada (Citizenship and Immigration)*, 2013 FC 436. However, the only aspect raised by the applicant that the RPD does not specifically mention is that it has only existed in its present form since February 2008, and that previously it had a history of violence and was led by “the ultra-nationalist Slobodan Milosevic.” These aspects of the country conditions are not sufficient, in my view, to render the finding that there was a high burden on the applicant, unreasonable.

[7] I do agree with the applicant that some of the evidence cited by the RPD is irrelevant in establishing adequate state protection; namely the establishment of an Ombudsman and hotlines, and the passing of anti-discrimination laws.

[8] Unfortunately for the applicant, the evidence he presented of inadequate police protection in Serbia for Hungarians was scant. The applicant in his amended Personal Information Form narrative recounted listening to a Hungarian radio station on St. Istvan Day (St. Stephen Day) that announced that while young Hungarians were passing out posters for the day’s program for the celebration, the police were “yelling insults at them, saying things like ‘We should be bringing you into the stations’, or ‘We should be shooting you’.” On the other hand, he also recounts that when he was last being beaten up by the neighbouring thug, “the police intervened and I barely managed to escape.”

[9] The RPD cites one incident in the national documentation package which it uses as an illustration of state protection, an incident from September 2012 where eight Hungarian children were attacked:

Tension rose in the Vojvodina region, northeast Serbia, between members of the Serb majority and Hungarian minority. In September, approximately 20 Serbs armed with iron rods attacked eight Hungarian children and young adults in the town of Subotica, allegedly because the victims spoke Hungarian. Police were investigating at this writing. [Human Rights Watch, *World Report 2013: Serbia Events of 2012*]

The RPD observes, in relation to this evidence that “investigation and successful prosecutions continue to be the hallmark of a functioning democracy.” The court notes that this report is from January 2013, and apparently only an investigation had occurred but there is no reference to any arrests or prosecutions having occurred in the 3 months since this vicious attack on children. While this is little evidence of protection, it does show that the police are prepared to investigate complaints of violence against Hungarians and arguably suggests it would have had this applicant made a complaint to the police.

[10] On the other hand, there are very general statements in the document package that point to that protection being less than one would hope, such as “[t]he effectiveness of the police force varied,” “[n]umerous observers noted the existence of a climate of hostility toward national and ethnic minorities, which - according to the most recently released 2011 census figures - constituted 16.7 percent of the country’s population and included ethnic Hungarians, Bosniaks, Roma, Slovaks, Romanians, Vlachs, Bulgarians, Croats, Albanians, Ashkali, Egyptians, and others,” and “[d]espite being granted status as a candidate for European Union membership in

March, Serbia did little to improve its human rights record in 2012 [and the] situation of ethnic minorities remains precarious, especially for Roma.”

[11] Having considered the totality of the record before the RPD, and even assuming that the burden of establishing a lack of adequate state protection was in the mid-range, rather than the high end of the range, I am unable to agree with the applicant that the RPD’s assessment of state protection was unreasonable.

[12] No question was proposed for certification by either party, and there is none on these facts.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-1371-14

**STYLE OF CAUSE:** ZSOLT FABIJAN v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 6, 2015

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