

Federal Court



Cour fédérale

**Date: 20110912**

**Docket: IMM-1623-11**

**Citation: 2011 FC 1068**

**Ottawa, Ontario, September 12, 2011**

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

**BETWEEN:**

**SLAVOMIR GREGOR  
LUCIE KOVACIKOVA  
KRISTYNA GREGOROVA  
NELA GREGOROVA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated February 2, 2011. The Board determined that the applicants were not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, RS 2001, c 27 (IRPA).

[2] For the following reasons, this application is dismissed.

I. Facts

[3] Slavomir Gregor (the Principal Applicant) and his wife, Lucie Kovacikova, and their children, Kristyna Gregorava and Nela Gregorova, are citizens of the Czech Republic. They arrived in Canada and filed claims for refugee protection on May 19, 2009.

[4] The Principal Applicant claims he experienced persecution in the Czech Republic because of his Roma ethnicity. His Personal Information Form (PIF) and oral testimony disclose incidents of verbal and physical assaults by skinheads.

[5] In 1996, he was kicked to the back of a streetcar and subjected to insults. He received medical attention for his injuries at the local hospital and reported the incident to police. He claims that police told him there was nothing they could do for him since no one witnessed the assault.

[6] More recently in 2006, a group of skinheads shouted racial slurs at him and his family traveling together on a streetcar. In 2008, he also sought treatment from his family doctor for injuries sustained when he was thrown from another streetcar. According to his testimony, he reported this incident to police who laughed at him.

[7] In addition to the assaults, the Principal Applicant states that he has had difficulty finding employment and been continuously laid off because of his ethnic background. He reports being refused service at a bar and turned away from nightclubs.

## II. Decision

[8] The Board concluded that the Principal Applicant did not have a well founded fear of persecution if returned to the Czech Republic. Although the Applicants were discriminated against, and even harassed, as a result of their Roma ethnicity, the incidents did not rise to the level of persecution. There was no persuasive evidence of sustained or systematic violation of the Applicant's basic human rights demonstrative of a failure of state protection.

[9] Moreover, the Board found that there was adequate state protection available to the Applicants. Since the Czech Republic is a democratic state, there was a greater onus on the Applicants to establish that they had exhausted all available courses of action. Local failures of effective policing, such as being unable to stop the incidents, would not amount to a lack of state protection, unless part of a broader pattern of the state's inability or refusal to provide protection.

[10] The Board noted that although there was evidence of increased skinhead attacks on minority groups, the Czech Republic did not condone this behaviour and was making efforts to correct its record of discrimination against the Roma. Programs put in place by the Czech Republic represented serious efforts to offer protection for the Roma people.

III. Issues

[11] This application raises two issues:

- (a) Was it reasonable for the Board to conclude that discrimination experienced by the Applicants did not amount to persecution?
- (b) Was the Board's assessment concerning the availability of state protection to the Applicants in the Czech Republic reasonable?

IV. Standard of Review

[12] The distinction between discrimination and persecution is a question of mixed fact and law reviewed on a standard of reasonableness (see *Liang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 450, [2008] FCJ No 572 at paras 12-15). The same standard applies in the assessment of state protection (see *Mendez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 584, [2008] FCJ No 771 at paras 11-13).

[13] As articulated in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47, reasonableness is “concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process” as well as “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

V. Analysis

*Issue A: Was it Reasonable for the Board to Conclude that Discrimination Experienced by the Applicants did not Amount to Persecution?*

[14] Persecution is understood as the “sustained or systematic violation of basic human rights demonstrative of a failure of state protection” (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689, [1993] 2 SCJ 74 at 733-734). This Court has recognized that discriminatory treatment will not necessarily be “serious or systematic enough to be characterized as persecution” (*Sagharichi v Canada (Minister of Employment and Immigration)*, 182 NR 398, 1993 CarswellNat 316 at para 3).

[15] The Applicants submit that the Board failed to properly assess the cumulative effect of the discrimination they experienced before concluding that it did not amount to persecution. In addition, the Applicants contend that the Board should have explicitly addressed conflicting documentary evidence.

[16] The Board is expected to assess the cumulative effects of discriminatory incidents and explain why they do not amount to persecution (see *Bledy et al v Canada (Minister of Citizenship and Immigration)*, 2011 FC 210, 2011 CarswellNat 652 at para 31; *Tetik v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1240, 86 Imm LR 154 at para 27). However, I am satisfied by the Respondent’s submission that the Board met this expectation in the present case. The Board considered the discrimination as a whole. It stated that there were several incidents of physical and verbal assaults and proceeded to list them, focusing attention on the most serious ones. These incidents were balanced against evidence that the Applicant was not denied medical treatment or

prevented from bringing information to the attention of the police. Indeed, the Board clarified its approach to assessing the discriminatory incidents at paragraph 12 of its reasons stating that although “the treatment the claimants received for being of Roma ethnicity must have been difficult to go through, it does not, even cumulatively, amount to persecution.”

[17] Although the Board did not explicitly mention the country documentation in its analysis of persecution, it is evident from the remainder of the decision that this material was considered. The Board acknowledged the historical discrimination against Roma as well as increased incidents of skinhead attacks on Roma later in the decision. This implies that evidence of the situation facing Roma in the Czech Republic was considered as part of the Board’s overall assessment of the case. It was also balanced against evidence of efforts on the part of the state to address the problem.

[18] In distinguishing discrimination from persecution, the Court must be guided by *Sagharichi*, above, where it was stated at paragraph 4 that it is the Board’s role to reach a conclusion by proceeding with a careful analysis of the evidence adduced and a proper balancing of the various elements, the intervention of the Court is unwarranted unless that conclusion is capricious or unreasonable.

[19] Having balanced the cumulative effect of discrimination and the situation facing the Roma in the Czech Republic, it was reasonable for the Board to conclude that the Applicants experienced discrimination but it was not sufficiently serious or systematic to amount to persecution. The intervention of the Court is not warranted.

*Issue B: Was the Board's Assessment Concerning the Availability of State Protection to the Applicants in the Czech Republic Reasonable?*

[20] The Applicants submit that the Board's assessment concerning the availability of state protection was unreasonable because it did not consider all of the evidence. Specifically, the Applicants charge that the Board was selective in its treatment of country documents. They point to evidence of ongoing discrimination and negative perceptions among the police of Roma in the Czech Republic that was not explicitly analyzed.

[21] The Applicants further submit that the Board failed to address their unsuccessful attempts to seek protection, particularly evidence that police laughed at the Principal Applicant in 2008 when he attempted to report an assault.

[22] The Respondent takes the position that the Board thoroughly considered all of this evidence. The Board recognized discrimination faced by Roma generally and recent attacks by extremists. It noted that the Czech Republic did not condone recent attacks and was making serious efforts, through a variety of programs aimed at improving police recruiting and assistance as well as promoting social inclusion, to correct past discrimination. It recognized conflicting evidence stating that "critics claim these programs do not go far enough or are just superficial" but still found that "the preponderance of evidence is that there are programs in effect and serious efforts are being made."

[23] Democratic governments are not expected to guarantee the protection of all citizens at all times (*Canada (Minister of Employment and Immigration) v Villafranca* (1992), 99 DLR (4th) 334,

150 NR 232 at 223; *Kadenko v Canada (Minister of Citizenship and Immigration)*, 124 FTR 160, 1996 CarswellNat 2216 at paras 4-5 (FCA)). In considering the evidence of ongoing discrimination as well as efforts designed to assist the Roma, it was reasonable for the Board to weigh this evidence and conclude there was state protection was available, however imperfect.

[24] Similarly, local failures of state protection do not necessarily imply that state protection is unavailable (*Zhuravlev v Canada (Minister of Citizenship and Immigration)*, [2000] 4 FC 3, 2000 Carswell 706 at para 31). The Board mentioned that the Principal Applicant reported the incidents to the police and there was no information that they were refused protection. No witnesses were available to enable the police to investigate the assault. The Board did not specifically refer to the police laughing at him when he reported the second physical assault, but this would not undermine the broader conclusion. The Applicants could have pursued the matter further given the state-wide programs in place to assist the Roma.

[25] While the Applicants would have preferred the Board place greater emphasis on certain evidence of ongoing discrimination and attempts to seek state protection, since these were considered and perfection is not required, the Board's conclusion that state protection was available to the Applicants in the Czech Republic is reasonable.



VI. Conclusion

[26] The Board reasonably concluded that the Applicants did not have a well founded fear of persecution and state protection was available to them.

[27] Accordingly, this application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

“ D. G. Near ”

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Judge

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

**DOCKET:** IMM-1623-11

**STYLE OF CAUSE:** GREGOR ET AL. v. MCI

  

**PLACE OF HEARING:** TORONTO

**DATE OF HEARING:** SEPTEMBER 6, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** NEAR J.

**DATED:** SEPTEMBER 12, 2011

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