Federal Court  Cour fédérale

Date: 20131001

Docket: IMM-5386-12

Citation: 2013 FC 1004

Ottawa, Ontario, October 1, 2013

PRESENT: THE CHIEF JUSTICE

BETWEEN:

ZSOLT RUSZO, ZSOLTNE RUSZO, MARK ZSOLT RUSZO, FANNI DORINA RUSZO and ZSOLT RUSZO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants are citizens of Hungary. They are of Roma ethnicity. They fled Hungary in December 2009 fearing persecution, including physical harm, at the hands of skinheads and the Hungarian Guards, an extremist organization.

[2] Upon their arrival in Canada from Hungary, they claimed refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Their respective

claims were denied by the Refugee Protection Division [RPD] of the Immigration and Refugee Board.

[3] The Applicants submit that the RPD erred by:

i. concluding that the discriminatory treatment to which they were personally subjected, and to which people of Roma ethnicity in general are subjected in Hungary, does not rise to the level of "persecution"; and

ii. unduly focusing on the efforts of the state to provide protection to its Roma citizens, rather than on the operational adequacy of those efforts.

[4] For the reasons that follow, this application is dismissed.

I. Background

[5] Mr. Zsolt Ruszo is the principal Applicant. His spouse and their three children are the other Applicants in this proceeding.

[6] Mr. Ruszo alleges that his two youngest children were segregated together with other Roma children and apart from other children at their primary school, and that his eldest son was constantly harassed at his school. This harassment included being spat at and yelled at, and having their coats, bags and other things taken from them. The number of complaints from Roma parents regarding similar harassment of their children was such that the local government hired guards to work at the school.

[7] In December 2008, Mr. Ruszo, his cousin and one of his sons were attacked by a group of skinheads while waiting for a bus. As they were being beaten and kicked on the ground, they screamed for help. The police were alerted, and as they approached the scene, the skinheads, who had scarves around their faces, fled. After confirming that they had not sustained any serious injuries, the police drove off.

[8] The following day, Mr. Ruszo and his spouse went to the police station to report the incident. However, when Mr. Ruszo was unable to identify his assailants, he and Mrs. Ruszo were told that charges could not be pressed against unknown persons. The police then smiled at them and took no further action. As a result of that response, Mr. and Mrs. Ruszo did not further pursue the matter.

[9] On March 15, 2009, a national holiday in Hungary, skinheads and the Hungarian Guards held demonstrations and apparently chanted death threats to Roma. The situation allegedly escalated to shots being fired at Roma citizens and Molotov cocktails being thrown into Roma homes over the ensuing days.

[10] As a result of the foregoing events, and fearing for the safety of their children, Mr. and Mrs. Ruszo fled to Canada with their children and claimed refugee protection.

II. The Decision under Review

[11] After briefly considering the medical care that the Applicants had received in Hungary, the manner in which the minor Applicants were treated in school, and the principal Applicant's inability

to find steady work, the RPD stated that it was not persuaded that the state of Hungary is denying the Applicants the basic necessities of life.

[12] The RPD then observed that some Hungarian people, including some people in positions of authority, discriminate against people of Roma ethnicity. However, it proceeded to conclude, without further analysis, that such behaviour does not reach the level of persecution.

[13] The RPD then turned to the issue of state protection, which it described as being "determinative … in the case at bar." It addressed this issue in three steps: first, it discussed the presumption that a state is capable of protecting its citizens, absent a situation of complete breakdown of the state apparatus; second, it discussed an applicant's burden to provide "clear and convincing" evidence of the state's inability to protect its citizens; third, it discussed the steps that have been taken by the state of Hungary to provide adequate state protection.

[14] Ultimately, the RPD determined that (i) Mr. and Mrs. Ruszo had not taken all reasonable steps to seek state protection, (ii) steps were taken to protect students at their son's school, (iii) Hungary has undertaken serious and substantial efforts to offer state protection when requested and (iv) it has made significant improvements in providing such protection. Based on these determinations, the RPD concluded that the Applicants had "not provided clear and convincing evidence that, on a balance of probabilities, state protection in Hungary is inadequate."

III. Issues

[15] The Applicants raised the following two issues with respect to the RPD's decision:

i. Did the RPD err by failing to provide adequate reasons for its conclusions that (i) the treatment to which he, his spouse and their children were subjected in Hungary was discriminatory, but not persecutory, in nature; and (ii) the general treatment to which people of Roma ethnicity in Hungary are subjected also does not reach the level of persecution?

j. Did the RPD err in reaching its conclusion with respect to state protection in Hungary?

IV. The Standard of Review

[16] The issue of whether the treatment to which the Applicants were subjected, and the treatment to which people of Roma ethnicity in general are subjected in Hungary, amounts to persecution raises two distinct questions.

[17] The first is a question of statutory interpretation, namely, the meaning of the term "persecution" in section 96 of the IRPA. The IRPA is the RPD's "home statute" or a statute "closely connected to its function, with which it will have particular familiarity." Accordingly, the interpretation of the IRPA by the RPD will generally be reviewed on a standard of reasonableness, unless the interpretation involves (i) a constitutional question, (ii) a question of law that is of central importance to the legal system as a whole and is outside of the RPD's expertise, (iii) a question regarding the jurisdictional lines between two or more competing specialized tribunals, (iv) a true question of jurisdiction or *vires*, or (v) is otherwise exceptional (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654 [*Alberta Teachers*], at paras 30, 34 and 46; *Smith v Alliance Pipeline Ltd*, 2011 SCC 7, at paras 26-28;

Dunsmuir v New Brunswick, 2008 SCC 9, [2008] 1 SCR 190, at paras 54-61 [*Dunsmuir*]; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, at para 36).

[18] In my view, the meaning of the term "persecution" in section 96 of the IRPA raises a question of law that is of central importance to the legal system. However, it would be difficult to maintain that this question is outside the RPD's area of expertise. Indeed, it is difficult to think of a subject matter that would be more squarely within the RPD's expertise.

[19] The meaning of the term "persecution" also does not raise a constitutional question, a question regarding the jurisdictional lines between two or more competing tribunals or a true question of *vires* (*Alberta Teachers*, above, at paras 33-46).

[20] Nevertheless, to the extent that the jurisprudence can be said to have established a clear test for what constitutes "persecution," within the meaning of section 96 (see, e.g., *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 1993 CarswellNat 90, at para 71 [*Ward*]**;** *Rajudeen v Canada (Minister of Employment and Immigration)*, [1984] FCJ No 601, 55 NR 129, at p 133; *Tolu v Canada (Minister of Citizenship and Immigration)*, [2002] FCJ No 447, at para 16 [*Tolu*]; *Prato v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1088, at para 7 [*Prato*]; *Canada (Minister of Citizenship and Immigration) v Hamdan*, 2006 FC 290, at paras 25-26 [*Hamdan*]; *Yurteri v The Minister of Citizenship and Immigration*, 2008 FC 478, at para 34 [*Yurteri*]; *Warner v Canada (Minister of Citizenship & Immigration)*, 2011 FC 363, at para 7; *Mallampally v Canada (Minister of Citizenship & Immigration)*, 2012 FC 267, at paras 23-24; and *Savas v Canada (Citizenship and Immigration)*, 2013 FC 598, at para 7 [*Savas*]), this, in my view, would fall within

the narrow category of "exceptional" situations identified in *Alberta Teachers*, above, at para 34. In the face of settled law on the meaning of the term "persecution," it is not open to the RPD to adopt a different interpretation of that term. Accordingly, the question of whether the RPD erred in interpreting the test for what constitutes "persecution" within the meaning of section 96 is reviewable on a standard of correctness.

[21] The second question raised with respect to the RPD's conclusion on the issue of "persecution" is whether the RPD erred in determining that the discriminatory conduct that formed the basis of the Applicants' claims did not meet the test for what constitutes "persecution", within the meaning of section 96. This is a question of mixed fact and law that is reviewable on a standard of reasonableness (*Dunsmuir*, at paras 51-53; *Liang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 450, at para 12; *Sefa v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1190, at para 21; *Hamdan*, above, at para 17; *Tolu*, above, at para 15; *Prato*, above, at para 8; *Yurteri*, above, at para 33; *Savas*, above, at paras 9-11).

[22] The standard of review applicable to the RPD's assessment of the issue of state protection depends on whether the conclusion reached by Board turned on its understanding of the proper test for state protection or on its application of that test to the facts of this case. For essentially the same reasons discussed at paragraphs 20 and 21 above, the former would be reviewable on a standard of correctness (see also *Koky v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1407, at para 19 [*Koky*]), whereas the latter would be reviewable on a standard of reasonableness. In short, the jurisprudence has established a clear test for state protection (see, e.g., *Burai v Canada (Minister of Citizenship and Immigration)*, 2013 FC 565, at para 28 [*Burai*]; *Lakatos v Canada (Minister of*

Citizenship and Immigration), 2012 FC 1070, at paras 13-14; *Kaleja v Canada (Minister of Citizenship and Immigration)*, 2011 FC 668, at para 25; and *Cosgun v Canada (Minister of Citizenship and Immigration)*, 2010 FC 400, at paras 42-52). Therefore, it is not open to the RPD to apply a different test, and the issue of whether the RPD applied the proper test would be reviewable on a standard of correctness. However, the issue of whether the RPD erred in applying the settled law to the facts in this case would be a question of mixed fact and law that is reviewable on a standard of reasonableness (*Dunsmuir*, above, at paras 51-53; *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at para 38 [*Hinzman*].

[23] In my view, the RPD's decision in this case turned on its application of the settled law to the facts of this case, and is therefore reviewable on a standard of reasonableness.

V. Analysis

[24] In their written submissions, the Applicants maintained that if the RPD committed a reviewable error in its approach to the issue of "persecution," this would constitute an error that tainted its finding on the issue of state protection. However, in their subsequent oral submissions, the Applicants conceded that the RPD's conclusions on these two issues were distinct, and that therefore they (the Applicants) need to prevail on both issues to succeed in this Application.

[25] For the reasons that follow, I am satisfied that the ultimate conclusion reached by the RPD with respect to the issue of state protection was reasonable. Accordingly, it is not necessary to address the issue of whether the RPD erred in concluding that the conduct which formed the basis of the Applicants' claims for refugee protection does not rise to the level of "persecution."

[26] The Applicants submitted that the RPD erred by unduly focusing its assessment on the efforts of the state to provide protection, as opposed to the operational adequacy of that protection (*Salamon v Canada (Minister of Citizenship and Immigration)*, 2013 FC 582, at para 3 [*Salamon*]; *Burai*, above, at paras 29-33; *Olah v Canada (Minister of Citizenship and Immigration)*, 2013 FC 606, at paras 9-14; *Budai v Canada (Minister of Citizenship and Immigration)*, 2013 FC 552, at para 19 [*Budai*]; *Molnar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 296, at para 26; *Gulyas v Canada (Minister of Citizenship and Immigration)*, 2013 FC 254, at paras 78-81; *Koky*, above, at para 59; *Bledy v Canada (Minister of Citizenship and Immigration)*, 2011 FC 210, at para 47 [*Bledy*]; *Cervenakova v Canada (Minister of Citizenship and Immigration)*, 2012 FC 525, at para 74).

[27] I agree. This is readily apparent from a review of paragraphs 25-31 of the RPD's decision, which appear at the end of its analysis. Although the RPD correctly identified (at paragraphs 9, 18, 28 and 31) the test to be applied in terms of "adequate state protection," it failed to assess whether the various steps that have been taken and the various efforts that have been made by the state to provide such protection actually provide adequate protection, at an operational level, to people of Roma ethnicity in Hungary. This is evident from the language used throughout this part of its assessment, which includes phrases such as "Hungary is making best efforts to offer state protection," "serious efforts with adequate protection would be reasonably forthcoming" and "Hungary has undertaken serious and substantial efforts to ensure the future existence of the Roma and other minorities are protected."

[28] Nevertheless, the RPD's misunderstanding or misapplication of the "adequate state protection" test is not necessarily fatal in cases where, as here, the RPD also reasonably concluded on other grounds that the Applicants had failed to rebut the presumption of adequate state protection with "clear and convincing evidence of the state's inability to protect [them]." In this case, those grounds were the failure of the Applicants to demonstrate that they had taken all objectively reasonable steps to avail themselves of state protection, and to provide compelling or persuasive evidence to explain their failure to do more than make a single attempt to seek protection from the police. As discussed below, it is clear from various parts of the decision that these were very important considerations for the RPD, and, indeed, provided an alternate basis for the RPD's decision. Having regard to the RPD's determinations on these points, its decision was not unreasonable.

[29] It is settled law that absent a complete breakdown of state apparatus, it should be presumed that a state is capable of protecting its citizens (*Ward*, above, at para 57). Moreover, "[t]he more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him or her (*Kadenko v Canada (Minister of Citizenship and Immigration*, [1996] FCJ No 1376, at para 5 (FCA); *Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, at para 30). However, in all cases to which the presumption applies, the burden is upon an applicant for refugee protection to demonstrate, with clear and convincing evidence, the state's inability to provide adequate protection (*Ward*, above, at paras 57, 59). This burden must be discharged on a balance of probabilities (*Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, at paras 20, 30 [*Carillo*]).

[30] In discharging this burden, refugee claimants who are outside their country of nationality may demonstrate either that they are "unable" to obtain adequate state protection or that, by reason of a well founded fear of persecution, are unwilling to avail themselves of the protection of their home state. As stated in *Ward*, above, at para 49:

> The distinction between these two branches of the "Convention Refugee" definition resides in the party's precluding resort to state protection: in the case of "inability", protection is denied to the claimant, whereas when the claimant is "unwilling", he or she opts not to approach the state by reason of his or her fear on an enumerated basis.

[31] With respect to the "inability" branch of the definition, it is not sufficient to simply demonstrate that there may have been some local failures of the police to provide state protection (*Carillo*, above, at paras 32 and 36; *Kadenko*, above; *Avila*, above; *Rocque v Canada (Minister of Citizenship and Immigration)*, 2010 FC 802, at paras 17-20; *Gregor v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1068, at para 24; *Gezgez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 130, at para 11).

[32] An applicant for refugee protection is required to demonstrate that he or she took all objectively reasonable efforts, without success, to exhaust all courses of action reasonably available to them, before seeking refugee protection abroad (*Hinzman*, above, at para 46; *Dean v Canada (Minister of Citizenship and Immigration)*, 2009 FC 772, at para 20; *Salamon*, above, at para 5). Among other things, this requires claimants for refugee protection "to approach their home state for protection before the responsibility of other states becomes engaged" (*Ward*, above, at para 25**;** *Kim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1126, at para 10 [*Kim*]; *Hassaballa v Canada (Minister of Citizenship and Immigration)*, 2007 FC 489, at paras 20-22)**;** *Camacho v*

Canada (Minister of Citizenship and Immigration), 2007 FC 830, at para 10; *Del Real v Canada (Minister of Citizenship and (Immigration)*, 2008 FC 140, at para 44; *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1214, at para 28; *Stojka v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1371, at para 3; *Ruiz Coto v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1211, at para 11; *Matthews v Canada (Minister of Citizenship and Immigration)*, 2012 FC 535, at paras 43-45; *Kotai v Canada (Minister of Citizenship and Immigration)*, 2013 FC 693, at para 31; *Muli v Canada (Minister of Citizenship and Immigration)*, 2013 FC 237, at paras 17-18; *Ndoja v Canada (Minister of Citizenship and Immigration)*, 2013 FC 163, at paras 16-18, 25; *Dieng v Canada (Minister of Citizenship and Immigration)*, 2013 FC 450, at para 32)**.**

[33] In this regard, doubting the effectiveness of state protection without reasonably testing it, or simply asserting a subjective reluctance to engage the state, does not rebut the presumption of state protection (*Ramirez*, above; *Kim*, above). In the absence of a compelling or persuasive explanation, a failure to take reasonable steps to exhaust all courses of action reasonably available in the home state, prior to seeking refugee protection abroad, typically will provide a reasonable basis for a conclusion by the RPD that an applicant for protection did not displace the presumption of state protection with clear and convincing evidence (*Camacho*, above).

[34] With respect to the "unwillingness" branch, a claimant for refugee protection will not meet the definition of "Convention refugee" where "it is objectively unreasonable for the claimant not to have sought the protection of his home authorities" (*Ward*, above, at para 56). It bears underscoring

that, on this branch of the test, the grounds for failing to seek state protection must be based on well founded fears.

[35] It is against the backdrop of the foregoing principles that I will now return to the RPD's decision. At paragraph 9 of its decision, after identifying the nexus issue of persecution, the RPD stated: "As well, the Panel has also considered whether or not there is adequate state protection in Hungary, whether the claimants took all reasonable steps to avail themselves of that protection, and whether they have provided clear and convincing evidence of the state's inability to protect them." At paragraphs 21 and 22 of its decision, after elaborating upon the latter two principles, the RPD characterized them as being "directly on point" in this case. After dealing with the persecution versus discrimination issue, the RPD then proceeded to conclude that the Applicants had failed to provide sufficient "objective evidence in the material aspects of these claims and, alternatively, the availability of state protection" (my emphasis).

[36] In the course of reaching this conclusion, the RPD discussed documentary evidence regarding Hungary's democratic institutions and experience. This included evidence that the most recent election was considered to have been free and fair, and that civilian authorities generally maintained effective control of the security forces.

[37] In reaching its determination that the Applicants had not demonstrated that they had taken all reasonable steps in the circumstances to seek state protection with respect to the incident that occurred in December 2008, the RPD twice noted that they did not ask to speak to a police supervisor, did not go to a different police station, did not complain to the local Roma self-

government about the lack of police assistance and did not complain to any other authority in Hungary. In short, the Applicants only made one attempt to report the incident and then failed to pursue the matter further.

[38] The RPD also noted that the police did not pursue the matter because the Applicants were unable to identify their assailants, who were disguised with scarves across their faces. Relying on *Karaseva v Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 5680, at para 28 (FC), the RPD observed that a "claimant must provide the police with sufficient evidence to mount a successful investigation."

[39] The Applicants submitted that *Karaseva*, above, is distinguishable on the basis that, in the present case, there was "total inaction" by the police, whereas in *Karaseva*, the police did get involved, but ultimately did not pursue the matter in question because the applicant could only provide information regarding the colour of the perpetrator's jacket and pants. I disagree. In my view, the two cases are not materially distinguishable on this point. In *Karaseva*, above, the applicant was questioned by police following the stabbing of her fiancé, whereas here, the police attended at the scene of the attack and then declined to take further action at that time and again the following day, because the assailants had fled and could not be identified.

[40] Relying upon *Pinter v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1119, at para 14, the Applicants also asserted that the police had an obligation to investigate the complaint, even if their assailants were unknown. I do not read that case as standing for such a stark proposition. The failure of the police in that case to further investigate the applicants' complaints in

relation to attackers who could not be identified was simply a matter that the Court described as "troubling" at the end of its decision, and after identifying other grounds for setting aside the RPD's decision. However, if I am wrong in this regard, then I respectfully disagree. I am not aware of any obligation on the police in Canada to take further steps to investigate in these types of situations, and it is settled law that claimants for refugee protection are not entitled to greater protection in their home country than is available in Canada (*Smirnov v Canada (Secretary of State)*, [1995] 1 FC 780, at para 11; *Syed v Canada (Minister of Citizenship and Immigration)* (2000), 195 FTR 39, at paras 17-18 (FC); *Mejia v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1180, at para 12; *Samuel v Canada (Minister of Citizenship & Immigration)*, 2008 FC 762, at para 13; *Garcia Rivadeneyra v Canada (Minister of Citizenship & Immigration)*, 2010 FC 845, at para 26; *Kotai v Canada (Minister of Citizenship and Immigration)*, 2013 FC 693, at para 14).

[41] Finally, the Applicants submitted that the police are the main agents of state protection in Hungary and that, in the absence of evidence that other sources of state protection in that country actually provide an adequate level of protection, the RPD erred by basing its state protection finding on the Applicants' failure to attempt to access state protection from those other sources (*Katinszki v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1326, at paras 14-15; *Gonzalez Torres v Canada (Minister of Citizenship and Immigration)*, 2010 FC 234, at para 50).

[42] In my view, this proposition is somewhat in tension with the well settled obligations on applicants for refugee protection to (i) provide clear and convincing evidence that they are unlikely to be able to avail themselves of adequate state protection if they return to their country of origin;

and (ii) demonstrate that they took all objectively reasonable efforts, without success, to exhaust all courses of action reasonably available to them, before seeking refugee protection in Canada.

[43] In any event, as mentioned above, in reaching its conclusion on state protection, the RPD twice stated that the Applicants did not ask to speak to a police supervisor, did not go to a different Miskolc police station, did not complain to the local Roma self government about the lack of police assistance and did not seek protection from any other authority.

[44] The failure to seek additional protection from the police distinguishes this case from the various cases in which the RPD's conclusion appears to have turned largely upon the failure of the applicants to seek protection from other sources of protection (see e.g., *Olah*, above; *Salamon*, above; *Gulyas*, above; *Bledy*, above, at para 46; *Buri v Canada (Citizenship and Immigration)*, 2012 FC 1538, at para 2; *Bali v Canada (Citizenship and Immigration)*, 2013 FC 414, at paras 5-6).

[45] The Applicants did not provide a compelling or indeed any reasonable explanation for failing to take any of these steps with respect to the single incident in December 2008 in which they personally were allegedly persecuted and did not receive adequate state protection. In this regard, they did not adduce any evidence to establish that they had any reasonable basis for believing that taking any of these actions might reasonably expose them to persecution, physical harm, inordinate monetary expense, or would otherwise be objectively unreasonable. This distinguishes this case from cases such as *Budai*, above, where the applicants had a reasonable and compelling basis for fearing the police.

[46] In this context, I am satisfied that the RPD's conclusion falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir, above,* at para 47). The conclusion was also appropriately justified, intelligible and transparent. On the facts of this case, the RPD's decision was "reasonable in light of the outcome and the reasons" that were given (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, at para 15).

[47] The RPD's decision was also entirely consistent with the weight of the jurisprudence discussed at paragraphs 29-34 above, which includes jurisprudence from the Supreme Court of Canada and the Federal Court of Appeal.

[48] I recognize that the decisive emphasis placed by the RPD on an applicant's failure to take all reasonable steps to engage the police was found to be unreasonable in a recent decision of this Court, in circumstances in which the evidentiary record suggested that the police may not have provided adequate protection even if the applicants had sought their protection (*Majoros v Canada (Citizenship and Immigration)*, 2013 FC 421). To the extent that this decision may be inconsistent with the jurisprudence discussed above, I respectfully decline to follow it and it was reasonably open to the RPD to do the same.

[49] In my view, the weight of the jurisprudence establishes that, in the absence of compelling or persuasive evidence which establishes an objectively reasonable basis for refraining from fully exhausting all reasonably available avenues of state protection, it is reasonably open to the RPD to

find that the presumption of state protection has not been rebutted with clear and convincing evidence.

[50] In this regard, compelling or persuasive evidence is evidence that provides an objective basis for the belief that taking any of these actions might reasonably expose the applicant to persecution, physical harm or inordinate monetary expense, or would otherwise be objectively unreasonable. It is not unreasonable to expect a person who wishes to seek the assistance and generosity of Canada to make a serious effort to identify and exhaust all reasonably available sources of potential protection in his or her home state, unless there is such a compelling or persuasive basis for refraining from doing so. In brief, this would not satisfy the requirements of the "unable" branch of section 96, discussed at paragraphs 30-33 above. And in the absence of a demonstration of an objectively reasonable well founded fear of persecution, the requirements of the "unwilling" branch, discussed at paragraph 34 above, also would not be met.

[51] For greater certainty, a subjective perception that one would simply be wasting one's time by seeking police protection or by addressing local police failures by pursuing the matter with other sources of police protection, would not constitute compelling or persuasive evidence, unless the applicant had unsuccessfully sought police protection on multiple occasions, as in *Ferko v Canada (Citizenship and Immigration)*, 2012 FC 1284, at para 49.

[52] My conclusion regarding the reasonableness of the RPD's decision is reinforced by the fact that the state did in fact respond to each of the three allegedly persecutory acts relied upon by the Applicants to advance their claims for refugee protection. With respect to the abuse that the

principal Applicant's son and other Roma children suffered at their school, the local government hired security guards. No evidence was adduced to suggest that this was not an adequate response. With respect to the attack that occurred in December 2008, the police did attend on the scene and cause the masked assailants to flee before inflicting any serious injuries on any of the Applicants. With respect to the demonstration held by skinheads and members of the Hungarian Guard on March 15, 2009, the principal Applicant testified that the police were present in riot gear. In addition, country documentation included at pages 115 of the Applicant's Record and 156-157 of the Certified Tribunal Record indicate that, at the time of publication, (i) there was an ongoing police investigation into the throwing of Molotov cocktails at Roma homes which occurred shortly after that demonstration, (ii) police had initiated legal proceedings against 16 members of the Hungarian Guard for violating the ban on participating in any event of a legally disbanded organization, and (iii) police arrested more than 70 members of the Hungarian Guard at demonstrations in 2010 that appear to be similar to the one that occurred on March 15, 2009.

VI. Conclusion

[53] This application is dismissed.

[54] The parties did not propose a question for certification and I find that no such question arises on the facts of this case.

JUDGMENT

THIS COURT ORDERS AND ADJUGES THAT this application is dismissed. There is no question for certification.

"Paul S. Crampton"
Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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