

Federal Court



Cour fédérale

Date: 20140428

Docket: IMM-1361-13

Citation: 2014 FC 388

Ottawa, Ontario, April 28, 2014

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**MARIAN KOKY, ZANETA KOKYOVA,
MARIO KOKY AND SAMUEL KOKY**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants are Roma. The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada denied their claims for refugee protection on the grounds that they had not rebutted the presumption of state protection in Slovakia.

[2] The RPD engaged in an extensive review of the documentary evidence about state protection for Roma in the Slovak Republic and concluded that “while the documentary evidence does show harassment and discrimination towards Roma and other minorities in the Slovak Republic exist, the documentary evidence is also clear that the authorities are making serious efforts to address these and that there are results are being seen [*sic*].”

[3] As has been said numerous times before, evidence of efforts is not sufficient; what is relevant are results. Throughout the decision the RPD speaks of various serious efforts, establishment of offices to investigate, the recognition of the Roma language, training of police, setting up complaint systems, adopting action plans, and legislative improvements; however, there is scant detail of the results of any of these. The only results mentioned by the RPD are that “in 2009, there were 24 convictions for racially-motivated violence and during the first half of 2010, there were 14 convictions for racially motivated violence” and that “[s]even of the ten policemen” who were charged for abusing six Romani boys “have been suspended from duty.”

[4] These “results” must be weighed against the following findings by the RPD:

- “there is some documentation which states that attempts made by the state to improve the situation of the Roma have mostly been ineffective and that there are instances when the police have been the perpetrators of abuses against Roma persons;”
- “I accept that many Roma face widespread discrimination and inequality in education, housing, employment, public and health services, as well as persistent prejudice and hostility;”
- “an Inter-Ministerial Task Force has been set up to monitor and evaluate regularly the plan’s implementation which the Advisory Committee noted with satisfaction was composed of a multi-disciplinary group consisting of governmental and non-governmental experts to co-ordinate actions for combating racial discrimination,” but that “this body does not meet on a regular basis and has not produced any tangible results so far;”

- “that multiple sources report that Roma are often the target of racially-motivated crimes, such as those committed by Nazis and skinheads, and that Slovak police sometimes mistreat Roma or do not always properly investigate crimes against Roma;” and
- “the police response to racially-motivated crimes has improved although it continues to face challenges,” and “police brutality against Roma remains a concern”

[5] The conclusion that “results are being seen” and that state protection would be reasonably forthcoming if sought, does not fall “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” given the analysis done by the RPD in this case: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47. For this reason the application is allowed.

[6] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed, the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada is set aside, the Applicants' claims for protection are to be determination by a differently constituted panel, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1361-13

STYLE OF CAUSE: MARIAN KOKY ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 7, 2014

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: APRIL 28, 2014

APPEARANCES:

Dushahi Sribavan FOR THE APPLICANTS

Nicole Rahaman FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rocco Galati Law Firm FOR THE APPLICANTS
Professional Corporation
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario