Federal Court Cour fédérale

Date: 20190926

Docket: IMM-2115-18

Citation: 2019 FC 1239

Ottawa, Ontario, September 26, 2019

PRESENT: Mr. Justice Pentney

BETWEEN:

TAMAS PAVA
IZABELLA PAVA
SANDORNE PAVA
SANDOR ZSOLT PAVA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Tamas Pava (the Principal Applicant), his wife, Izabella Pava, his brother, Sandor Zsolt Pava, as well as his mother, Sandorne Pava, are all citizens of Hungary who say they fled that country in 2011 because they feared persecution on the basis that they are Roma. Their claim for refugee protection was denied by the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) on April 17, 2018.

[2] The Applicants seek judicial review of that decision. They claim that the RPD did not properly analyze their claim of persecution, nor did it apply the law correctly in considering whether they would receive protection if they were returned to Hungary. They also submit that the RPD erred when it failed to give due weight to the fact that similar refugee claims by their family members had previously been accepted. Finally, they argue that the RPD member denied them procedural fairness by taking on an adversarial role against them, in particular by conducting independent research into the situation in Hungary and then only citing evidence that was not favourable to the Applicants, while ignoring the evidence which suggested that their claims were valid.

[3] I find that the decision is not reasonable because the reasons do not make clear whether the RPD analyzed the cumulative impact of the discrimination experienced by the Applicants, and it failed to adequately assess the state protection available to the claimants if they return to Hungary. I am therefore granting this application for judicial review.

II. Context

A. *The Applicants' Claims*

[4] The Applicants are citizens of Hungary of Roma ethnicity who fled that country in 2011 and came to Canada, claiming refugee status because they fear persecution from racist groups. They claim that they will experience discrimination in access to housing, education, employment and health care because of rampant discrimination against Roma in Hungary. They fear that the Hungarian police will not protect them.

[5] The Applicants testified about a number of incidents of discrimination and mistreatment. The Principal Applicant and his wife were denied entry to a club by persons saying, “it was not open to Gypsies.” On one occasion, unknown persons threw gravel at the windows of their house and shouted death threats at them. The Principal Applicant called the police, who came but did not file any report because the assailants could not be identified. On another occasion, the Principal Applicant took his goddaughter to the park but other parents told their children not to play with her because she was Roma. When the Principal Applicant went to police, they refused to intervene.

[6] Izabella Pava, the wife of the Principal Applicant, claims that she experienced discrimination when she was pregnant. The first two doctors who examined her made discriminatory comments because she is Roma, and suggested she abort her baby because it might develop Down syndrome. A third doctor found that the baby was healthy and that there was no reason to have an abortion.

[7] In addition, the brother and mother of the Principal Applicant claim that they also experienced discrimination in health care, education, employment, and housing. The Principal Applicant and his brother experienced “carding” by the police in Hungary, who stopped them and gave them fines for petty offences because they are Roma.

[8] The Applicants’ claim for refugee status was based on their ongoing experience of discrimination and mistreatment in Hungary on the basis of their Roma ethnicity. They argued that the police would not offer them protection against such persecution by members of the Jobbik party, skinheads, and other racist Hungarians. They argued that if they were returned to

Hungary they would be unable to find employment or housing and would not qualify for social assistance.

B. *The RPD Decision*

[9] The RPD reviewed the Applicants' claim in a lengthy decision. The member noted that the claimants had provided an amended Personal Information Form (PIF) narrative, admitting that the original PIF forms included fabrications which they had inserted on the advice of their previous counsel. The Principal Applicant's brother and mother admitted that certain of the incidents mentioned in their original PIFs had not occurred. The RPD noted "its appreciation of the truthfulness of the principal claimant's mother in identifying which information was true and which was not true" (at para 11).

[10] The RPD reviewed the various claims advanced by the Applicants in support of their assertion that they feared persecution based on their experiences in Hungary. In regard to education, the RPD accepted that the claimants were not always treated as equals when they were in the education system in the 1980s, and that classroom segregation continues to be a problem for many Roma in Hungary. However, the panel found that the Principal Applicant and his spouse received a higher level of education than the majority of Roma in Hungary, and that "these claimants were not deprived of an academic education in Hungary" (at para 16). The panel found there was no persuasive evidence that their children would be denied an education if they returned to Hungary.

[11] The RPD also found that the employment history of the Applicants did not support a claim of persecution. The panel noted that each of the Applicants had a history of intermittent

work, and that the Principal Applicant and the brother had participated in the workfare program, having six months of paid employment followed by a corresponding period of social assistance payments. The experience of the Applicants did not amount to discrimination rising to the level of persecution.

[12] Similarly, the RPD examined the alleged discrimination in medical treatment and found that there was no credible evidence that either the Principal Applicant and his wife, or the brother, had experienced discrimination in the medical care they received. The brother's complaints about his treatment following surgery to remove his appendix did not establish any connection to his ethnicity. The complaints of the Principal Applicant and his wife about the way the doctors treated them during her pregnancy did not establish that she received a lower quality of care because she is Roma. In the end, the Applicants all received medical care, including specialist care, and there was no evidence to substantiate their claims of discrimination.

[13] The RPD found the Applicants to be credible witnesses, and accepted their allegations that they faced discrimination while in Hungary. The RPD noted, however, that it was required to make a forward-looking determination, and thus it turned to the question of whether the Applicants would receive state protection if they returned to Hungary.

[14] The RPD's analysis of state protection began with a summary of the applicable legal principles, and then considered the claims of the Applicants that they feared the Guardists, members of the Jobbik party, the police, politicians, as well as racists and skinheads. The RPD accepted as credible the Applicants' statements that they did not trust the police because they are racist. However, it concluded that the experience of the Applicants did not demonstrate that these

fears were valid. When the Applicants had reason to call the police, the police responded, took notes and otherwise did what would be expected of a police service. The fact that the police were unable to investigate incidents when the alleged perpetrators could not be identified was not an indication of racist neglect; it was simply a reflection of the fact that without further information it was not possible for the police to do more. The RPD found that police in Canada would likely have responded in a similar manner.

[15] The RPD found that the Applicants' fears of the Guardists and members of the Jobbik party were not well-founded in 2018, given developments in Hungary since they fled in 2011. The panel noted that the Hungarian Guards had been formally disbanded in 2013, and that the Jobbik party had re-cast itself as a more inclusive, but still nationalist, party. Based on a review of the documentary evidence, the panel concluded that while incidents of racially-motivated violence and pervasive discrimination linked to radical far-right parties, including the Jobbik party, had been demonstrated during the period from 2000 to 2012, more recent information indicated that the change of the party towards the mainstream had become permanent. This resulted in a decline in the incidents involving attacks against the Roma population in Hungary.

[16] The RPD found that the personal experiences of the Applicants did not amount to persecution, and noted that this Court had found that merely being Roma did not, in and of itself, establish a basis for fearing more than a mere possibility of persecution on return to Hungary, citing *Varga v Canada (Citizenship and Immigration)*, 2014 FC 510 at para 20; and *Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426 at para 19 [*Balogh*].

[17] The decision recites in some detail the efforts of the government of Hungary to improve the situation of the Roma population, including its National Social Inclusion Strategy to address the issues of poverty, unemployment, and segregation that have characterized the Roma experience in Hungary. The RPD cites the European Commission's 2016 Report on the implementation of this strategy, and notes that the government has committed significant funds to this effort. It finds that the government of Hungary has made substantial efforts to improve the situation of the Roma, and that it is operating under "the watchful eye" of the European Commission and the European Court of Human Rights (at para 59).

[18] The RPD notes that much of the evidence in the National Documentation Packages as well as the documentary evidence submitted by the Applicants contains both older and more recent information. In light of this, the decision states: "[t]o ensure that a fair and accurate reading of the most recent information available was made, and so that the panel could assess the most recent country condition information, the panel included a Disclosure Package of more up-to-date information and documents to assess the issue of state protection" (at para 60). This information will be analyzed in greater detail later in this decision.

[19] The decision reviews the various state mechanisms charged with the protection of minorities in Hungary, as well as institutions that deal with complaints against the police. These include the Commissioner for Fundamental Rights, the Roma Affairs Council, and the Equal Treatment Authority. Based on its review of the evidence, and in particular the more recent documents detailing the efforts and progress made, the RPD concludes: "[t]herefore, while the panel acknowledges that the situation in Hungary is not perfect, operationally adequate state protection will be reasonably forthcoming to these claimants if they require it and if they

diligently avail themselves of the modalities and remedies as presented by the state should they seek such protection upon return to Hungary" (at para 82).

[20] The state protection analysis ends with a lengthy quotation from a speech given by the Hungarian Prime Minister, Victor Orbán, in January 2018. The speech was delivered to an organization representing a collection of independent Christian Roma colleges operating across Hungary, and the RPD notes that the principal theme of the speech was encapsulated in the statement "[w]e do not see the Roma community as victims, but as a resource" (at para 87). The RPD states that "[t]he panel finds the information contained in this article to be highly persuasive evidence of the Government's commitment to Roma" (at para 88).

III. Issues and Standard of Review

[21] The Applicants argue that the RPD erred in four ways in its analysis of their claim:

A. By failing to carry out an assessment of whether the cumulative impact of the discrimination they experienced while in Hungary amounted to persecution;
B. By failing to conduct an appropriate assessment of state protection, in accordance with the tests and approaches required by the jurisprudence;
C. By failing to assess the relevance of the successful refugee claims of other family members, regarding the same type of persecution, in the same place, by the same actors, and during a similar time-frame; and
D. By taking on an adversarial role against the Applicants, and in particular by conducting independent research of the situation in Hungary to gather further evidence and then only referring to evidence which was adverse to the Applicants.

[22] The standard of review in relation to the first and third issue is reasonableness (*Ruszo v Canada (Citizenship and Immigration)*, 2019 FC 296 at para 6 [*Ruszo*, 2019]). The standard of review on the issue of state protection is more complicated. The assessment of state protection is subject to review on a standard of reasonableness (*Canada (Citizenship and Immigration) v Neubauer*, 2015 FC 260 at para 11); the question of whether the decision-maker applied the correct test is assessed on a correctness standard (*Szalai v Canada (Citizenship and Immigration)*, 2018 FC 972 at para 27 [*Szalai*]).

[23] The fourth issue involves a question of procedural fairness, and the approach resembles the "correctness" standard of review, as explained by Justice Rennie in *Canadian Pacific Railway Company v Canada (Attorney Genera*l), 2018 FCA 69:

> [54] A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances, including the *Baker* factors. A reviewing court does that which reviewing courts have done since *Nicholson*; it asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed. I agree with Caldwell J.A.'s observation in *Eagle's Nest* (at para. 20) that, even though there is awkwardness in the use of the terminology, this reviewing exercise is "best reflected in the correctness standard" even though, strictly speaking, no standard of review is being applied.

IV. Analysis

A. *Cumulative assessment of whether the discrimination amounted to persecution*

[24] The Applicants submit that the RPD analyzed each of their claims of discrimination separately and individually, and failed to consider whether these amounted to persecution when considered on a cumulative basis. The Respondent argues that this is a microscopic analysis of the reasons, and that the member clearly considered the particular allegations as well as the

cumulative impacts. Most importantly, the RPD correctly considered whether the Applicants had established a risk of persecution upon return to Hungary. The Court should not interfere unless the conclusion is unreasonable.

[25] The Federal Court of Appeal and this Court have consistently held that a series of incidents of discrimination in different spheres of life, for example, education, health care, housing, or employment, may amount to persecution when considered in their totality (*Divakaran v Canada (Citizenship and Immigration)*, 2011 FC 633 at paras 23-28, cited with approval in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 53). This requires an analysis of whether the discriminatory conduct is “serious or systematic enough to be characterized as persecution” (*Sagharichi v Canada (Employment and Immigration)* (1993), 182 NR 398, [1993] FCJ No 796 (QL) (FCA)).

[26] The RPD decision does not include a specific discussion or analysis of cumulative impact, but this in itself does not amount to a reversible error. The question is, rather, whether the analysis, considered as a whole and in light of the record, demonstrates that the RPD properly applied the law to the facts.

[27] The difficulty here is how to reconcile the findings of the RPD on the individual incidents with its overall conclusion on this question. As noted above, the core of the RPD’s findings on each of the incidents was that they did not amount to discrimination. The Applicants had regular, if sporadic, employment; they received medical treatment when they required it; and were not deprived of an education or denied social assistance. If that was the basis of the RPD’s analysis, it would not be unreasonable for the RPD, having found that the incidents did not amount to

discrimination, to then conclude that it was not necessary to continue with an analysis of whether the cumulative impact amounted to persecution.

[28] The problem arises, however, because there are other references in the decision that contradict these findings. For example, in its conclusion on this part of the analysis, the member states:

> [28] These are credible witnesses and the panel accepts their allegations that they faced discrimination in Hungary on the basis of their ethnicity at various stages of their lives as detailed. However, the Convention definition is forward looking, and the panel must assess whether state protection would be available to them if they returned to Hungary.

[29] Later, in its analysis of whether the Applicants have demonstrated that they are at risk upon their return to Hungary, the decision states "…the panel nevertheless finds that, cumulatively, the types of incidents that the claimants have experienced when they lived in Hungary amount to discrimination…" (at para 47).

[30] The decision continues, finding that not every Roma in Hungary has experienced discrimination amounting to persecution, and then stating: "[b]ased on these claimants' evidence at the hearing, their personal experiences do not support a finding from this panel that they have faced discrimination amounting to persecution or that they face a forward-looking risk of persecution simply because they are Roma" (at para 49).

[31] In summary, the issue of concern is that the reasons include contradictory findings: that the Applicants did not experience discrimination; but also that they did experience discrimination but it did not rise to the level of persecution. There is no separate discussion or analysis of the

cumulative effects or impacts of the discrimination, but rather, simply statements that it did not amount to persecution.

[32] While there is no doubt that the RPD was required to engage in a forward-looking analysis of risk upon return, it was also required by the jurisprudence to consider whether the cumulative impact of the incidents of discrimination these Applicants experienced amounted to persecution. From the passages cited above, it remains entirely unclear whether this was done.

[33] The RPD is owed considerable deference in making these sorts of determinations on questions of mixed law of fact (*Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 at paras 17-18; *Balogh* at para 16). However, review on a standard of reasonableness requires that the decision be “intelligible” and “transparent.” The reasons are to be examined as a whole, in conjunction with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62). A reviewing court is to approach the reasons with a view to “understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression”: *Canada (Citizenship and Immigration) v Ragupathy*, 2006 FCA 151 at para 15, cited with approval in *Galamb v Canada (Citizenship and Immigration)*, 2016 FC 1230 at para 51 [*Galamb*]. Put another way, the reasons need only to demonstrate that the decision-maker engaged with the evidence in light of the appropriate legal tests, and to show the parties, the public, and a reviewing court how the analysis of the facts and the law lead to the conclusion reached. In the words of Justice Rennie in *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11 [*Komolafe*]:

> [11] *Newfoundland Nurses* is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue…. *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn. Here, there were no dots on the page.

(See also *Delta Air Lines Inc v Lukács*, 2018 SCC 2 at paras 23-24.)

[34] Under a reasonableness standard, a reviewing court should not intervene as long as the process and outcome fit within the concepts of justification, transparency, and intelligibility, and the decision is justified as falling within a range of reasonable outcomes in light of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[35] I am simply unable to determine which of the two statements reflects the finding of the RPD on the Applicants' claims of discrimination or, whether a cumulative assessment was done. I am unable to follow the RPD's line of reasoning– to "connect the dots on the page where the lines, and the direction they are headed, may be readily drawn" (per *Komolafe*). This alone could be sufficient to demonstrate that the reasons, considered in light of the record and viewed as a whole, are simply not adequate. While I would be reluctant to reverse the decision on this basis alone, I find that the decision is unreasonable, considering this issue together with my findings on the state protection analysis.

B. *Assessment of state protection*

[36] Under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, a refugee claimant must establish a well-founded subjective fear of persecution. However, if adequate state protection was reasonably available to the person in their home country, refugee

protection will be denied because the subjective fear is not objectively reasonable (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689, at p 712 [*Ward*]). There is a presumption that adequate state protection is available in the claimant's country of origin (*Ward* at 724-25), particularly if that state is democratic (*Canada (Citizenship and Immigration) v Kadenko* (1996), 124 FTR 160, 143 DLR (4th) 532 at page 534 (FCA); *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 57). As noted by Justice Alan Diner in *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 at para 19 [*Lakatos*]: "[h]owever, not all democracies are equal. Rather, they exist across a spectrum, and what is required to rebut the presumption of state protection varies with the nature of the democracy in the state" (see also *AB v Canada (Citizenship and Immigration)*, 2018 FC 237 at para 22 [*AB*], and *Alassouli v Canada (Citizenship and Immigration)*, 2011 FC 998 at paras 38-42).

[37] A refugee claimant has both an evidentiary and legal burden to rebut the presumption of state protection. The claimant must demonstrate, through clear and convincing evidence, that state protection is inadequate (*Minister of Citizenship and Immigration v Flores Carrillo*, 2008 FCA 94 at paras 17-21). Typically, this involves demonstrating either that the claimant sought state protection but it was not forthcoming, or that the person did not try to obtain it because of a well-founded fear that it would not be provided.

[38] In assessing whether state protection is adequate, a decision-maker must examine the actual operational adequacy of the state's actions, rather than its intentions or "efforts" to protect its citizens. As stated by Diner J. in *Lakatos* at paragraph 21: "[i]n other words, lip service does not suffice. The protection must be real, and it must be adequate." It is often said that the test does not require perfection, but rather simply an assessment of whether the results of the state's

actions are “adequate”; this is unassailable, but it does not permit a decision-maker to ignore systemic problems that indicate a particular group is not likely to receive an effective state response to persecution (*AB* at para 19; *Shaka v Canada (Citizenship and Immigration)*, 2012 FC 235).

[39] The question is, therefore, whether the RPD properly applied the correct test, and whether its assessment of the evidence was reasonable.

[40] The analysis of the RPD on this question begins by examining the Applicants’ interactions with law enforcement. It notes that when they contacted the police after several incidents, the police responded in a manner which did not support the claimants’ fears that they would not be protected. The RPD accepts the Applicants’ evidence that they did not trust the police, but finds that “on the occasions when they had reason to call the police, the police responded, took notes and otherwise did what one reasonably expects them to do particularly in cases where the claimants cannot identify the culprits” (at para 32). The RPD also notes that the Applicants did not seek redress for any other alleged wrongs, such as being denied entry to a business or being denied employment.

[41] On the basis of these findings, the RPD concludes that the Applicants did not meet their onus to produce “clear and convincing evidence” that the state cannot provide protection. This burden is proportional to the level of democracy in the state in question, such that in a “functioning democracy” an applicant “will have a heavy burden when attempting to show that one should not have been required to exhaust all of the recourses available to him/her domestically before claiming refugee status internationally” (at para 35).

[42] The RPD concluded that the experience of the Applicants in Hungary did not support their claim that they would not receive the protection of the state if they returned to that country. The RPD reviewed the developments in the country since the Applicants had left in 2011, and found that both the political and legal situation had improved for the Roma minority. It noted the absence of any reports of attacks by persons linked to the now-disbanded Guardists, and found that the evidence demonstrated that the Jobbik party had become less radical. The RPD contrasts the evidence showing widespread discrimination and frequent attacks against members of the Roma minority in the period before 2015, with the more recent information showing a decline in such problems, which it attributes to the efforts of the Hungarian government to improve the situation of the Roma, as well as the Jobbik party's move towards the mainstream.

[43] The RPD concludes this part of its analysis with the following:

> [47] While the panel is not satisfied that there has been some fundamental shift in circumstances regarding the general discriminatory attitude toward Roma in Hungary, and as there is no evidence to suggest such a shift, and there is persuasive evidence that Roma are still discriminated against, the panel nevertheless finds that, cumulatively, the type of incidents that the claimants have experienced when they lived in Hungary amount to discrimination and that state protection in respect of these experiences is available to them should they return to Hungary.

[44] The Applicants submit that the RPD erred by relying on agencies other than the police as a means of state protection, by failing to determine whether the efforts undertaken by the government had resulted in protection which was operationally effective, by failing to conduct a forward-looking analysis, and by overstating the level of democracy in Hungary.

[45] I agree that the RPD's analysis on this issue is unreasonable, for the following reasons.

[46] First, the RPD finds that in the two years prior to its decision, there was an absence of any reports of violence or persecution of the Roma minority in Hungary (in contrast to the evidence about the period before 2015). There is no consideration of the evidence of ongoing discrimination that was submitted by the Applicants, including reports as recent as February and March of 2018 (the RPD decision is dated April 17, 2018), or available to the RPD in the country condition reports produced by the Immigration and Refugee Board.

[47] Second, the RPD decision traces in some detail the efforts of the government of Hungary to improve the situation of the Roma minority, including the funding it has allocated to various programs. The decision also refers to various complaints and investigation mechanisms which have been created, including the Independent Police Complaints Body (IPCB) and the Equal Treatment Authority. It points to a recent decision of a Hungarian court that upholds a complaint against certain police officers that they had discriminated against Roma citizens in a particular location by failing to take action against extremist organizations. The decision does not, however, address any specific evidence that demonstrates that the police are responsive and effective when actually called upon to investigate or to try to prevent violence, threats or persecution against the Roma minority.

[48] This Court has held on several occasions that it is an error for a decision-maker to focus on evidence of government efforts, rather than to examine the operational effectiveness of the police response. This has been discussed in several decisions of this Court dealing with the situation of Roma refugee claimants from Hungary: see, for example: *Galamb*; *Olah v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 899 [*Olah*]; *Ruszo*, 2019; *Lakatos*; and *Szalai*. A common thread in these decisions is that the assessment of state protection must be done on an

individual basis (see the helpful discussion by Diner J. in *Lakatos* at paras 22-23). Another constant from these decisions is that it is an error to focus on government efforts or aspirations, rather than examining the evidence of whether those efforts are achieving operationally effective results.

[49] In this case, the decision includes a substantial discussion of the efforts, programs, and oversight bodies put in place by the government of Hungary. It also refers in a general way to documentary evidence that shows that the government "prosecutes and punishes officials who commit abuses, whether in the security services or elsewhere in the government" (at para 64). The RPD does not, however, address the question of whether state protection is operationally effective or adequate, at a practical level, when members of the Roma minority seek such protection.

[50] I find that this is exactly the same error as has been commented upon in previous decisions of this Court (see, for example: *Balogh*, and *Csoka v Canada (Citizenship and Immigration)*, 2016 FC 1220; *Majoros v Canada (Citizenship and Immigratio*n), 2017 FC 667). As stated by Justice Susan Elliott in *Olah*:

> [29] As has been said many, many times by this Court, the taking of a complaint against the police for non-action is not, in any way, the equivalent of providing state protection. Mr. Justice Zinn put it this way: "Actions, not good intentions, prove that protection from persecution is available" (see *Orgona v Canada (Citizenship and Immigration)*, 2012 FC 1438 at para 11 and cases cited therein).

[51] In addition to this, I find that the RPD's treatment of the evidence it cites in its decision to be unreasonable. For example, the decision "notes that Roma are permitted to complain about

police behaviour if they feel they have not received satisfactory treatment or assistance" (at para 65), and it cites an IRB document from October 2011 as evidence for that. It omits to consider, however, the final sentence of the report that is cited in the decision, which calls into question the operational effectiveness of the whole apparatus. This report describes the role of the IPCB and the requirement that the National Police Commissioner submit monthly reports of complaints submitted to the police to the IPCB, which shall then investigate such complaints. If the investigation reveals a violation of fundamental rights, the IPCB sends its decision to the Police Commissioner who shall deliver a resolution within 30 days. The portion of the report cited by the RPD ends with the following statement: "The Minorities Ombudsman said that although the Police Commissioner can accept or refuse a decision from the Complaints Body, '[i]n practice,' he 'neglect[s]' 90 percent of the Complaints Body's decisions."

[52] This is not analyzed or discussed, yet it contradicts the conclusion reached by the RPD, is from an apparently reliable source, and it has the effect of calling into question whether the complaints and oversight mechanisms are, in practice, contributing to more effective policing. This extract is cited twice by the RPD, which concludes its review of this aspect of the question in the following way:

> [67] The panel does not find the steps required to deal with a police officer whom a citizen might think has been unhelpful to be onerous ones. It is also a testament to a functioning democracy like Hungary that such processes and mechanisms, as outlined above, are in place to assist all citizens in ensuring they are afforded equal treatment under the law and that they can access operationally adequate state protection. The panel finds there are sufficient and effective mechanisms available to these claimants and to all Roma to bring complaints against the police.

[53] The RPD has failed to assess whether the state protection available to these claimants if they return to Hungary is adequate at an operational level. Much of its analysis focuses on wider government efforts to improve the situation of Roma in Hungary, as well as the institutions and mechanisms that have been put in place to investigate complaints after the fact. I do not find this to be a reasonable analysis of the evidence, because it is not clear that the RPD directed itself to the proper legal test, or that it was applied properly to the facts of this case. This is sufficient to render the decision unreasonable.

[54] In light of my findings on these questions, it is not necessary to consider the other arguments raised by the Applicants. I will, however, add a few comments, in view of the way in which this case unfolded, and because they may possibly be of some assistance to the decision-maker who will re-consider it.

C. *Assessment of similarly situated persons*

[55] The Applicants raised a concern about the failure of the RPD to refer to the refugee claims of the Principal Applicant's wife's immediate family, which had previously been accepted by the RPD. The argument is that the RPD had a duty to consider the claims of similarly situated persons, and since these earlier refugee claims involved members of the same family who had experienced similar acts of discrimination and mistreatment in the same area of Hungary during approximately the same time-frame, it was unreasonable for the RPD to fail to consider them.

[56] There is support in the jurisprudence for this proposition (see *Mendoza v Canada (Citizenship and Immigration)*, 2015 FC 251 at paras 25-26, citing *Siddiqui v Canada*

(Citizenship and Immigration), 2007 FC 6 at paras 18-20; see also *Ruszo*, 2019). It remains the case, however, that each claim must be assessed on its merits (*Uygur v Canada (Citizenship and Immigration)*, 2013 FC 752 at para 28; *Coli v Canada (Citizenship and Immigration)*, 2016 FC 963 at para 12), and whether it is reasonable to come to different conclusions in regard to the claims of various family members will depend, in part, on the evidence before the RPD as to the degree of similarity of the claims (see *Gombos v Canada (Citizenship and Immigration)*, 2017 FC 850 at paras 65-66; *Gutierrez v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 4 at para 58). As I do not need to make a finding on this point, I simply note it here.

D. *Independent research by RPD panel member*

[57] The Applicants also raised a concern about an apprehension of bias on the part of the RPD member, because he conducted independent research on the country conditions in Hungary and disclosed this prior to the hearing. The Applicants contend that this research, and the use of it by the member in the decision, reflects a one-sided view of the evidence and a pre-disposition against their claim. In light of my findings above, I do not need to address this. I would observe, however, that the way in which this process unfolded, and the manner in which this decision was written, may have fuelled these concerns.

[58] I agree with the Respondent that a refugee protection hearing before the RPD is “inquisitorial” in nature, and fact-finding is at the centre of the RPD’s specialized expertise (*Restrepo Benitez v Canada (Citizenship and Immigration)*, 2007 FCA 199 at paras 15, 19). Paragraph 170(a) of *IRPA* provides that the RPD can “inquire into any matter it considers relevant to establishing whether a claim is well-founded.” In light of the nature of refugee protection hearings before the RPD, it is natural that this may include research into more up-to-

date information regarding country conditions and risks of persecution. That is what the RPD member said was done in this case, and it was disclosed prior to the hearing and the Applicants did not object to it at the first available opportunity.

[59] It is worth observing, however, that where this further research is done by the individual member conducting a hearing, a concern may arise whether the information gathered represents in an objective manner the actual developments on the ground. That is what happened here. The concern may have been exacerbated by the way some portions of the decision were written.

[60] I would only observe that if more up-to-date information is required about country conditions, it may reduce the concerns of applicants if that work is done by the IRB staff, rather than the individual member who is hearing their case.

V. Conclusion

[61] For the reasons above, I find the decision of the RPD in this case to be unreasonable. The application for judicial review is granted. The case is remitted back for re-consideration by a different member.

[62] No question of general importance was proposed for certification, and none arises in this case.

JUDGMENT in IMM-2115-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The case is remitted back for re-consideration by a differently constituted panel.

2. No question of general importance is certified.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2115-18
STYLE OF CAUSE:	TAMAS PAVA, IZABELLA PAVA, SANDORNE PAVA, SANDOR ZSOLT PAVA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 19, 2018
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	SEPTEMBER 26, 2018

APPEARANCES:

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Asha Gafar	FOR THE RESPONDENT

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