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Heard at Field House

FD (Sufficiency of Protection-
Roma-Munteanu) Romania
CG [2004] UKIAT 00001

Date: 2 December 2003

IMMIGRATION APPEAL TRIBUNAL

notified:

Date Determination

2004.....

.....12th January

Before

:

Mr G Warr (Chairman)
Mrs E Hurst JP
Mrs S Hussain JP

Between

APPELLANT

And

Secretary of State for the Home Department

RESPONDENT

DETERMINATION AND REASONS

1. The appellant, a citizen of Romania, appeals the determination of an Adjudicator (Mrs C A Parker) who dismissed his appeal against the decision of the Secretary of State to refuse his application for asylum.
2. The appellant was represented before us by Mr I Kumi of Counsel instructed by Rahman & Co. Mr J Gulvin appeared for the Secretary of State.

3. The appellant was born in 1984. He arrived in this country accompanied by his wife and their two daughters. They applied for asylum on 12 November 2002.
4. The appellant and his wife are both of Roma ethnicity. The appellant was treated badly at school and after leaving school he found day-to-day labouring and other jobs. They suffered discrimination and verbal and physical abuse at the hands of Romanian people in the street. The appellant had frequently reported such matters but had never been allowed into the police station. His complaints had not been recorded.
5. On 15 October 2002 the appellant was queuing for bread outside a shop when he was beaten by a man on the head. The appellant went home and then went to the police station together with his family in order to report the attack. The appellant and his family were detained overnight. He was given verbal abuse and he was also beaten. He was told to leave the country and not return. The appellant in due course did just that.
6. The Adjudicator found that the core of the appellant's account was credible. Her conclusions are set out as follows:

"17. Having found the core of the appellant's account credible I must now consider the issues, namely, whether he has a well-founded fear of persecution in Romania for a Convention reason. I have carefully considered the appellant's account and country information to which I was referred by the appellant's representative during submissions. The Human Rights Watch Report 2002 on Romania confirmed that discrimination against Roma continued to permeate society and cited a January 2001 European Roma Rights Centre investigation which found that violations of Roma rights were 'highly unlikely to be prosecuted and the authorities retaliated against complainants. Roma had their houses raided and were detained, beaten and threatened by private citizens and police' The US Department of State Country Report on Human Rights Practices for 2001 (4 March 2002) confirmed that discrimination against Roma continued and that for the most part they are poorly educated with low literacy rates. The Report continued:

'In April a national strategy for improving the condition of the Romani community was announced, with the support of the Prime Minister; a commission to implement the plan was established and held meetings during the year. A number of Roma experts were hired in the Ministries, at the country prefect's office, and in

many local mayoral and county offices. Nevertheless the Roma office within the Government is understaffed, with only three civil servants, and long-term funding for the national Roma strategy has not yet been resolved.'

The Report further confirmed that there had been instances of individuals being denied medical treatment where they could not pay for it and could not prove that they had medical insurance provided by the State. However, 'a partnership protocol, signed by the Minister of Health and the representative for Roma in the Parliament in April, lays out co-operative measures between the Health Ministry and the Romani Party in order to ensure that Roma have access to health care. This protocol helped resolve most complaints of discrimination against Roma in the health system and sponsored several vaccination campaigns for Roma children'. Two further pieces of country information contained in the appellant's bundle detailed specific instances of discrimination of Roma. Having considered all this country information as well as that cited by the respondent in the refusal letter, I conclude that whilst the government is taking steps to improve the position of Roma, discrimination and abuse still persist at a 'grass roots' level. Whilst I have every sympathy for the appellant and, in particular, find his concern for the future of his daughters to be entirely understandable, I do not believe that the treatment he experienced in Romania amounted to persecution. He has been subjected to verbal and physical abuse by the local population and has not been able to seek redress from his local police. However he has made no attempt to complain to any higher authorities nor has he attempted to relocate in order to improve his situation. He was seriously injured on one occasion but this as an isolated event. Again, the treatment he received from the police was appalling he made no attempt to report this to higher authorities so that it could be investigated. The appellant gave little detail of the nature and extent of the abuse and discrimination he suffered. He was living with his parents, wife and daughters and although he was only educated to a very basic level, he has been able to find casual work and support his family. He has claimed that the situation for Roma is the same everywhere in Romania but without having attempted to relocate, his belief in this regard is not based upon experience. I note that there is always a 'time lag' between anti-discriminatory measures being introduced and for social attitudes to change. Government measures to improve the position of Roma have only recently been introduced and it will take some years

before the situation of Roma improves to any significant extent. However it would appear that the situation is likely to improve rather than deteriorate and given my finding that the appellant did not experience treatment which amounts to persecution prior to his departure, I do not believe that there is a reasonable likelihood of him facing persecution upon return."

7. Mr Kumi submitted that the Adjudicator had found the appellant to be credible and he had made thirty complaints to the police and been rebuffed. Mr Kumi referred to the objective material. In the US State Department Report for 2003 it was stated that four persons who were arrested, tried and convicted in a 1993 incident in which three Roma died were released in 2000 after serving their sentences. The victims had appealed to the European Court of Justice arguing that the sentences of two to six years were too light.
8. Counsel submitted that although there might be plans to remedy the situation for Roma it did not mean there was currently a sufficiency of protection. The appellant had not even been allowed into the police station. Reference was made to "state of impunity" prepared by the ERRC, although there was an Ombudsman his role was still not fully clear to the public - see page 11 of the US State Department Report. Reference was made to various Roma human rights reports. Counsel referred to Harakel [2001] EWCA Civ 884.
9. Mr Gulvin submitted that the case of Svazas [2002] EWCA Civ 74 was relevant as was the Tribunal case of Munteanu [2002] UKIAT 04872. It is important to demonstrate with clarity a system in place to enable an appropriate complaint to be made. Reference was made to the Country Information Report for October 2003. It was clear that the appellant could and should have complained to higher authority, the Roma Party or other organisations. He could also have taken his complaint to the Ombudsman.
10. Mr Kumi submitted that the Ombudsman had no executive power and the appellant in Munteanu had only been ill-treated on one occasion unlike the present case. The National Strategy had only just been set up then.
11. At the conclusion of the submissions we reserved our determination. We have very carefully considered the submissions made by both sides and the objective material in the appellant's bundle and in the Country Information Report together with the authorities which have been cited to us.
12. It does appear that the appellant suffered abuse and discriminatory treatment from the general population and when he went to the local police station he was rebuffed on

many occasions and suffered verbal and physical abuse. He does not, however, appear to have taken his complaint any further as the Adjudicator noted.

13. The appellant has suffered at the hands of police officers. We note in Svazas [2002] Imm A R 363 at 377 (see paragraph 38 of the judgment of Sedley L J) that a practical standard of protection does not require a guarantee against police misconduct but it does call for "timely and effective rectification of the situation which is allowing the misconduct to happen". There is clearly a difference between having a fear of the police as opposed to a fear of the local population. Mr Gulvin drew our attention to what was said in Harakel and the apparent approval of the Tribunal's observations in Havlicek. If an appellant does not seek the protection of the police his claim would almost certainly have failed because he had not demonstrated any ground for his alleged inability or unwillingness to avail himself of the protection which was available - see paragraph 10 of Havlicek. Paragraph 29 of Havlicek is also quoted with approval in paragraph 31 of the judgment. At paragraph 32 of the judgment it is stated that the question of whether all reasonable avenues of recourse have been exhausted is fact dependent and fact specific. The Adjudicator found in the instant case that the appellant had made no attempt to report the treatment that he had received to the higher authorities - see paragraph 17 of the determination which we have reproduced above.
14. The objective country information was reviewed by the Tribunal in Munteanu [2002] UKIAT 04872. Mr Kumi sought to distinguish that case where there were credibility issues. However, in paragraph 17 of the determination the Tribunal proceeded on the footing that the totality of the appellant's account had been accepted. On his account he was beaten up by the police in 1999 and released after three days and apparently had some difficulty in filing a case about the police - see paragraph 19 of the determination. He was again taken into the police station later in 1999 and was not beaten but was threatened. The Tribunal states as follows in paragraphs 17 to 18 of the determination:

"17. In any event, we have concluded that even if the totality of the appellant's account were to be have been accepted, this appeal should in any event have been dismissed. It is not suggested on his behalf that violence towards Roma in Romania is state sponsored or state tolerated and the background evidence would not, in any event, lend any support to such a claim. While discrimination against Roma undoubtedly continues to exist on the ground, the government in Romania has taken several major initiatives to address the problems of the Roma minority. These are based upon a National

Strategy for Improving the Condition of Roma adopted in April 2001. It includes measures for improving housing for Roma, increasing their participation in civic life including access to justice, facilitating access to public services and countering discrimination. At a local level police brutality does occur towards Roma but measures have been introduced to combat this including co-operation by the Romanian General Inspectorate of police with Roma associations, to develop a program to improve relations between Roma and police. APADO, the Lawyers Association for the Defence of Human Rights, runs a programme of juridical assistance to Roma. There is evidence to how that those responsible for violence against Roma are being dealt with by the judicial system. In July 1998 a court in Mures sentenced 11 persons who in 1993 burned 13 Romani houses resulting in the deaths of 3 Roma, to 3 to 7 years imprisonment. Roma as a recognized minority are afforded protection under the constitution. Numerous Roma associations have been created to represent Roma, as to have political parties, and there is no evidence of government interference with their activities. There is an Ombudsman whose role is to protect rights and liberties of civilians and a Department for the Protection of National Minorities was set up in 1997. A National Office for Roma has been set up within this department. Measures have been taken to train police and eradicate abuses, particularly those against Roma community member (page 48 of the bundle, ECRI Country report on Romania). Seminars and training courses on human rights in the administration of justice have been organised by the Centre for Human Rights and the Romanian Institute of Human Rights, targeting police trainers, among others. A National Council for Combating discrimination was set up in December 2001.

18. The Home Office CIPU report shows that Romania has established a legislative framework to ensure effective judicial remedies for any person whose rights and freedoms recognized by the international Convention on Civil and political Rights have been violated. The European Commission concluded in November 2002 that the government of Romania had made considerable advances in reforming its judiciary. We note, however, that judicial cases involving the police would appear to be tried in military courts which have been criticized for over lengthy investigations which are often inconclusive. The Romanian Helsinki Committee has reported and investigated numerous reports from individuals who claimed to have been ill-treated by the police in 2000. These accusations are by law investigated by the military Prosecutors office. The General Inspectorate of

Police is responsible for investigating police abuses and it cooperates with monitoring groups, albeit that it is uneven in its response to enquiries from monitoring groups. Notwithstanding these criticisms, there is no evidence to suggest that the protection and benefit of the judicial system and these procedures and systems are not available to Roma in Romania."

15. Mr Kumi submitted that the optimism of the Tribunal was misplaced in that the National Strategy referred to had not had the results hoped for. He referred us to the US State Department Report for 2003 and submitted that the Ombudsman's office lacked executive powers which limited his authority. He submitted that the example of the four persons who had been arrested, tried and convicted in 1993 showed that the Courts were ineffective in sentencing inadequately.
16. The US State Department Report indicates that the Ombudsman's office was receiving an increasing number of complaints although only a small minority fell within its jurisdiction. More than half of the complaints related to social, economic and cultural rights. It is recorded that the Ombudsman was moderately effective. He dealt not only with human rights but with all facets of its citizen's interaction with the government. The Ombudsman's role was still not fully clear to the public and many complaints were rejected because they related to problems with the judiciary and not the administration.
17. The indication that persons were arrested, tried and convicted for the arson attack which resulted in the death of three Roma does not appear to us to be an example of state sanctioned actions. The argument concerned the leniency of the sentencing. These sentences ranged from two to six years. Another theme running through the objective material is the fact that too few perpetrators of assaults go punished by the Courts.
18. It is apparent from the Country Information Report that discrimination against the Roma minority continues to be widespread - see paragraph 6.112 of the October 2003 Assessment. However, it is also recorded that the European Commission considered that the government had made steady progress in implementing the 2001 National Strategy. It is of course true that the implementation of the strategy remained at a very low level and that little resources had been allocated for strategy implementation - see paragraph 6.115. However, the Roma community generally approved the content of the strategy and local Roma offices had been set up in every country and nearly four hundred Roma experts had been hired to carry out the action plan for 2001-2004.

The structures for the implementation of the strategy were progressively established according to the European Commission Report in October 2002. The Roma Party had been involved with the implementation at country level of Roma offices. Courts for the first time had ruled against employers and newspapers for publishing discriminatory job vacancies – see paragraph 6.117. Progress, no doubt painfully slow for those on the ground, does appear to be evident – see paragraph 6.118. Many of the efforts had been improvised and uncoordinated but it was now possible to discern a more coherent and systematic approach. Mr Gulvin drew our attention to numerous Roma political organisations which are referred to in paragraph 6.120, a health programme and the fact that political and cultural rights were better protected (see paragraph 6.127). The Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities considered that acts of violence by the police against Roma were decreasing: see paragraph 6.126. A programme of judicial assistance for Roma is run by a lawyers' association. On 20 September 2002 a National Anti-Poverty and Social Inclusion Promotion Plan was launched.

19. Turning to the experiences of the appellant, it is clear from his interview that it was the appellant's local police station which caused him the problems. He says in answer to Question 15 at his interview that there was only one main police station in Fetesti which was quite a small place. The Adjudicator noted that the appellant had given little detail of the nature and extent of the abuse and discrimination he had suffered. The Adjudicator considered that the injury he had received was an isolated event. He did not feel that what had happened to the appellant had crossed the line to amount to persecution. The remarks of Sedley LJ in Svazas at paragraph 39 may be apposite in this context. The single question is whether what is feared by the asylum seeker amounts to persecution or not. The worse the persecution the more that will be required to demonstrate the availability of adequate state protection – see also the judgment of Sir Murray Stuart-Smith. The gravity of the ill-treatment may be a material consideration. In Bagdanavicius [2003] EWCA Civ 1605 Auld LJ expressed agreement with the approach of Simon Brown LJ and Sir Murray Stuart Smith in Svazas in particular “that the spectrum of intensity of risk for consideration and evaluation runs across the divide between state agency and non-state actor cases. However, generally speaking, state agency cases, in particular those where Article 3 ill-treatment by state agents is rife and/or emanates from the top or where the risk to life or of ill-treatment is exceptionally acute as in Soering and the Lord Saville case, are likely to have a lower threshold of risk for engaging Articles 2 or 3 than non-state actor cases.”

It appears to us that if the treatment experienced by the

appellant did pass the threshold amounting to persecution it may fall towards the lower end of the scale - see paragraph 48 of the judgment of Sir Murray Stuart-Smith at p. 380.

20. What is clear is that the appellant took no steps to file a complaint against the police. There are avenues that he could have resorted to and he did not pursue them. We disagree with Counsel's submissions that the view taken by the Tribunal in Munteanu had been proved to be wrong in the light of subsequent developments. Progress is slow but evidence of progress there undoubtedly is. The appellant's problems were at a local level at a local police station in what he describes as a small place. It is not established that senior police officers were complicit in what happened. The appellant has not tested the system. It is not established that the state would not have taken appropriate action had the appellant pursued the remedies available to him.
21. The Adjudicator found that the appellant had been able to obtain casual work and support his family. He was entitled to conclude that the situation was likely to improve rather than deteriorate. On the totality of the material before us, we find that the appellant has failed to make out his case that there is not a sufficiency of protection for him against both state and non-state actors and he has not established that his human rights will be infringed on his return to Romania.
22. For the reasons we have given, this appeal is dismissed.

**G Warr
Vice President**