

Appeal Number : **HX19031-2002**
MC (Persecution - Police -Roma) Latvia CG [2002] UKIAT 06480

IMMIGRATION APPEAL TRIBUNAL

Heard at : Field House (with video link to Birmingham)
on : 4th December 2002
Dictated : 6th December 2002

Determination Promulgated
12 February 2003

Before:

MR A R MACKEY - Chairman
MR R BAINES JP

between

Mr Mihails CUBREVICS

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Mahmood, Counsel
For the Respondent: Mr P Deller, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, who is a citizen of Latvia, of Roma ethnicity, appeals with leave against the determination of an Adjudicator, Dr S S Juss, promulgated 28th June 2002 wherein he dismissed an appeal against the decision of the Respondent who had issued removal directions following refusal of asylum and human rights claims.
2. Leave was granted after the Vice President noted, with some hesitation, that the accepted past ill-treatment of the Appellant, particularly at the hands of the police, could raise arguable issues. Reference is also made to the Court of Appeal decision in **Svazas [2002] EWCA Civ 74 (CA)**.

3. The Appellant had claimed a fear of persecution or serious mal-treatment from “racketeers” and/or the police in Latvia should he be returned to that country.
4. At the outset, we asked Mr Mahmood whether the evidence of the Appellant, at any point in his application or appeal, explained who the “racketeers” were, what they were engaged in, their numbers, their geographic spread in Latvia and any other background to them. He stated that the Appellant had at all times stated that his fear was of “racketeers” and they appeared to be a criminal group who wished to extort money from the Appellant and had some association with the police. He did not have instructions as to the number, geographic spread or other information about these “racketeers”.
5. The Adjudicator noted that the Appellant was a Latvian citizen who had arrived in the United Kingdom in March 2002 on his own passport and claimed asylum. He claimed that he had been paying money to racketeers since 2000 because of his Roma ethnicity. The racketeers had harassed him and beaten him up on two occasions in 2000. He had complained to the police about this but when he complained he was beaten up by the police and shot in the hand (with what appears to have been a pellet from an airgun) the police offered him no assistance against his tormentors. The Appellant’s evidence was that the police were drunk when they were beating him up and shot him in the hand. He also explained that when he did report the matter to the police he had been asked to “eat” his report. To avoid the “racketeers” the Appellant stated that he had moved address (it appears to a street that was close by). The Appellant also explained that he had complained to an elected Roma representative “the Roma president” but he also did not give assistance.
6. The Appellant stated that he had been quite badly beaten by the “racketeers” and on one occasion had coughed blood and passed blood in his urine. He also confirmed that he had never been formally arrested or charged by the police and had not encountered any problems in his Roma area within Latvia. After referring to objective country information on Latvia the Adjudicator found the Appellant to be credible both as to how he was beaten up by the “racketeers” and shot by the police when he endeavoured to complain about his ill-treatment. He concluded however that the Appellant did not qualify for refugee status. He noted that it was significant that the Appellant’s own account stated that the police had been drinking when they abused him and that they were drunk at the time. The Adjudicator considered these to be failures of discipline and supervision were not an example of a concerted policy on the part of the Latvian authorities to persecute the Appellant for being a gypsy. He went on to state that even if he accepted that:

“While the Latvian authorities have established a range of laws to protect the population living in the country, the authorities have struggled with unlawful elements in the country and the police have frequently been unable to protect the populace in the most basic ways.”

He did not consider it would be unduly harsh for the Appellant to relocate to another part of Latvia where it would be possible to be safe from the “racketeers” and among the company of other Romany. He considered the human rights appeal as well but

did not consider there was a real risk of a breach of Article 3 of the ECHR. He dismissed both appeals.

The Appellant's Submissions

7. Mr Mahmood relied on the grounds of appeal presented with the application for leave submitting that inadequate consideration to the factual situation in Latvia had been given by the Adjudicator. There was evidence of past persecution from the bullet in the Appellant's hand and the several occasions he had been beaten up by the "racketeers". He submitted that the objective evidence indicated that the Appellant could not obtain protection from unlawful elements in Latvian society.
8. The human rights assessment of the Adjudicator he considered was not properly dealt with at all. The findings were weak and not reasoned. Therefore that while the findings of the Adjudicator were not well reasoned, and this may have indicated a basis for remittal, he submitted that this would be disadvantageous to the Appellant given that he had favourable findings on the facts made by the current Adjudicator. Accordingly, he submitted that the Tribunal should use these fact findings and go on to allow the appeal under the Refugee Convention and/or Article 3 of the ECHR. He submitted that there was a real risk of persecution from either the "racketeers" or the police and that the evidence indicated they worked in cahoots with each other. The objective evidence indicated that the Roma ethnic minority could not get protection in Latvia. He noted the determination in **Svazas** but submitted that the acts of the police against this Appellant were more than just those of ill-discipline by one drunk policeman. There was therefore a failure of protection. He refers to page 502 of MacDonald as support for his contention.
9. This was a case where not only had the Appellant gone to the police but he had also tried to make complaints to the president of the Roma Association but had been unable to actually speak with him and lodge his complaint. He submitted that the Adjudicator had erred in suggesting that an internal flight alternative was available. The CIPU report notes that Latvia has a population of 2.65 million and that there are only some 9,000 Roma in the country. In this situation the Appellant would be identifiable as a Roma wherever he went and thus would again sustain problems from "racketeers".
10. Finally, he submitted that the Adjudicator had not carefully considered the Article 3 claim as he should have and again the objective country information indicated that the Appellant could not relocate nor could he obtain protection from the Latvian authorities.

The Respondent's Submissions

11. Mr Deller submitted that it appeared the Appellant was claiming fear from both "racketeers" and the police. He initially suggested that there was no Convention reason behind this but acknowledged that at A8 and A10 of the Appellant's SEF statement reference was made by the Appellant to his being maltreated because he was a Gypsy.

12. Mr Deller also submitted that the actions taken by the police against him did not amount to persecution because there was no sustained or systemic nature in the treatment of the Appellant by the police. He had been involved in one incident only when the police were drunk and had shot at him with an air gun. He submitted that this could have happened to anyone, whether Roma or not in Latvia. It should be seen as a one-off incident by rogue police.
13. He referred us to the **Svazas** a Lithuanian case where the Appellant had claimed he could not obtain protection from the Lithuanian police. In that case the court held that within the category of persecution by state agents there was an important distinction to make between abuse that was authorised or tolerated by the state and cases of rogue officials who, from time to time, may abuse their authority. Between those two extremes were cases where the state officials may systemically or endemically abuse their power despite the law and will of the government to stop it. The Court of Appeal stated that a practical standard of application was required from fact-finding Tribunals. This required that in such cases a fact-finding Tribunal should have convincing evidence that the state not only possesses mechanisms for controlling its officials, but operates them with real effect. He submitted that in this case the Latvian authorities were providing a sufficiency of protection and the Appellant had been involved in an unfortunate one-off incident with a drunk policeman. He further submitted that it was possible the Appellant could have reported the matter to higher authorities. He referred us to paragraph 4.17 of the Home Office "Latvia Bulletin 1/02" which states:

"There were some reported incidents of police misconduct, including cases involving mistreatment of persons or use of excessive force, in 1999, 2000 and 2001. In most cases the government took disciplinary measures, or brought criminal prosecutions, against those responsible. Under clauses 317 and 318 of the Latvian criminal code (also applied in conjunction with other clauses) it is a criminal offence for a police officer to abuse his power or position through illegal application of physical force inhuman or debasing treatment, or other activities violating human rights. In 1999, eleven police officers were convicted for criminal offences under clauses 317, 318 and the preceding clause 162: four of these were for abuse of power or position. In conjunction with the Soros Foundation and National Human Rights Office (NHRO) the Ministry of the Interior has been educating police officers about human rights issues."
14. He noted that the numbers were small but this had to be recognised against the size of the country. It indicated however that police did not act with impunity.
15. Under the human rights claim he submitted that the determination of the Adjudicator was somewhat brief but however, as with persecution, the threshold was a high one and that again the issue of sufficiency of protection and the actions of the rogue police officers in this case had to be taken into account.
16. He acknowledged that the Adjudicator did not give sufficient reasoning in his conclusions relating to relocation or internal flight but submitted that this was not particularly relevant in this case as the sufficiency of protection was available from the Latvian authorities. In summary therefore he submitted that the Adjudicator's determination was a sustainable one and the appeal should be dismissed.

17. In reply Mr Mahmood submitted that there clearly was a Convention reason based on the Appellant's ethnicity or in the alternative it could be stated that he was targeted because he was an underclass Latvian, which amounted to a particular social group.
18. He summarised the Appellant's situation stating that he had had problems with "racketeers". This he had attempted to address by paying their protection money. He then went to the police and complained but this resulted in him being abused and shot at himself. He then complained to the president of the Roma Association but this proved to be of no assistance. He submitted that to suggest the Appellant should have then gone to higher authorities was illogical as it would be difficult for him to make such a complaint when he had already been to the police who had not offered him protection. He submitted that this Appellant was in the situation where he was unable to avail himself of the protection of the Latvian authorities and there was not a sufficiency of protection offered. Such situations, he submitted, were envisaged within the sufficiency of protection jurisprudence set out in **Horvath**. Finally he submitted that it was not just one policeman who was involved but there appeared to be others from the Appellant's evidence.

The Issues

19. We found the issues before us to be:
 - (a) From the findings of the Adjudicator and all of the evidence presented by this Appellant, did the Appellant identify the "racketeers" who he feared as non-state parties from whom there was a real risk of him being persecuted on his return to Latvia?
 - (b) If the answer to the first issue is "Yes" then, because they are non-state actors, can the Appellant access a sufficiency of protection from the state authorities in Latvia?
 - (c) If the answer to that is "No", is the harm feared by the Appellant for a Refugee Convention reason?
 - (d) If the answer to the first issue is in the negative, does the Appellant have a well-founded fear of persecution from the police in Latvia? In this regard the conclusions of the Court of Appeal in **Svazas** must be taken into account.
 - (e) If the answer to the above question is "Yes", is the fear of persecution by the police for a Refugee Convention reason or would there be a real risk of a breach of the provisions of the ECHR should this Appellant be returned to Latvia?

Assessment

20. Turning to the first issue we find that the Appellant has not identified the "racketeers" to an extent that it is possible for us to conclude that there is a real risk he will be persecuted or mal-treated in breach of the ECHR by them on return. Mr Mahmood

agreed, when this direct question was put to him by us, that this was a weakness in his client's case.

21. In all of his evidence the Appellant has merely stated that he had troubles with "racketeers". Initially it appeared they were trying to extort money from him and that they beat him up on other occasions. However, as to who these racketeers were, their numbers, the extent of their operations in Latvia and whether they pose a merely very localised threat or otherwise we do not know. At one point in his evidence the Appellant stated that there were four racketeers who came to his home. We have also consulted the relevant objective country information and there is no reference to any organised extortion gangs, mafia or others that would show a logical and realistic fit with the group the Appellant states that he fears. There is no reference in the section of the Latvia Bulletin 1/02 from the Home Office on the Roma minority to them being targeted by "racketeers" or other groups. That report states that there are estimated to be some 9,000 Roma in Latvia and that a high proportion of them are reported to be "unemployed and living in conditions of relative poverty". It states that the president of the LCNKB (Roma National Culture Society) has stated that he did not think Roma were discriminated against in Latvia but were likely to be treated with indifference.
22. It is of course, in every asylum and human rights claim for the Appellant to establish his own case. On the evidence in this case we consider the Appellant has not established that the "racketeers" that he fears can be stated to present him with a reasonable likelihood of persecution on return. We simply have no evidence that supports the reality of such a risk from such people. The best we have is that there were four people in the localised area he lived in. Accepting this, we consider the risks to him must be seen as remote and that while Latvia is a small country relocating elsewhere away from his home district where he was targeted by the "racketeers" is an option available to him and, based on the objective information it would not be unduly harsh or unreasonable to expect him to do so. The first issue is therefore answered in the negative.
23. In this situation it is now necessary for us to consider whether there is any well-founded fear of persecution by the police to this Appellant on return to Latvia. At the outset we noted that the Appellant was not targeted by the police in Latvia. That is, they did not come looking for him to maltreat or persecute him. The maltreatment occurred when he went to complain to the police about the activities of the "racketeers". We would agree with the submissions of Mr Deller that from the evidence the actions of the police officers involved were those of unauthorised drunk policemen. There is nothing in the objective evidence to indicate that there is sustained or systemic persecution or serious maltreatment of Roma by the police in Latvia. Indeed, the provisions of paragraph 4.17 of the CIPU report referred to above show that police officers who abuse power can be successfully prosecuted.
24. We are therefore satisfied that there is not a real risk or reasonable likelihood this Appellant would be persecuted or maltreated in breach of Article 3 of the ECHR by the Latvian police should he return to Latvia. Again, even that very remote risk could be lessened by moving to another site within Latvia away from the police station he reported to on the previous occasion.

25. We find that this is a case where the Appellant has not made out, on the evidence, that he has a well-founded fear of persecution for a Refugee Convention reason nor are there substantial reasons for concluding that there is a real risk there would be a breach of the ECHR should he be returned.
26. The appeal accordingly is dismissed.

**A R MACKEY
VICE PRESIDENT**