



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉS)

IN PRIVATE
HUIS CLOS
TA1-09917

CLAIMANT(S)

DEMANDEUR(S)

s.19(1)

DATE(S) OF HEARING

May 18, 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

May 26, 2004

DATE DE LA DÉCISION

CORAM

Michael Somers

CORAM

FOR THE CLAIMANT(S)

**Richard M. Addinall
Barrister & Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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INTRODUCTION

("the claimant") is a 38-year-old citizen¹ of Uruguay. He claims Convention refugee status on the grounds of alleged membership in a particular social group, being bisexual. He alleges that he left Uruguay for Canada on March 29, 2001 and made a refugee claim upon arrival on March 30, 2001.

The claimant alleges the following:

He got married when he was 23 years old. He had three sons from that marriage. He was separated from his wife on January 1, 1996 and was divorced on January 1, 2001.

He knew that he was bisexual from an early age. During his marriage, he met [redacted] and started a relationship with him. On January 1, 1996, the claimant separated from his wife because he wanted to be in a relationship with only [redacted]

He did not reveal his relationship with [redacted] to his wife because he was afraid of losing access to his children. The claimant told his wife that he was going to live with his mother.

On January 1, 2000, the claimant was with [redacted] in a nightclub named [redacted] which is located on [redacted] Street in [redacted]. When the claimant and [redacted]

¹ Exhibit R/A-2, A photocopy of the claimant's Uruguayan passport was certified true by Canada Immigration.

were leaving the bar, unknown assailants attacked them. The assailants were also screaming derogatory remarks towards them.

The following day, the claimant went to the police station at [redacted] of [redacted] Street with [redacted]. When they were telling the police about the incident, the police started to laugh at them when they realized they were bisexual.

On [redacted] 2001, the claimant and [redacted] were at the [redacted] nightclub again. As they were leaving the nightclub, four men assaulted them. The assailants told the claimant and [redacted] that if they saw them together again, they would be killed. In addition, the assailants threatened the claimant and [redacted] saying not to go the police, because they had good connections, and that the police would not help them.

On [redacted] 2001, the claimant and [redacted] were walking in the [redacted] Park when they were again assaulted. The claimant recognized the voices of the assailants that it was the same four men who had attacked him previously outside the nightclub. This time, the assailants tied up their arms and legs so they could not move. The assailants then untied the claimant's legs and raped him. While this was happening, the claimant could hear a police siren getting closer. When the police approached the claimant and his assailants, he and [redacted] shouted for help to the police. The police did not do anything, and they let the assailants continue to assault the claimant. Afterwards, the police arrested the claimant and [redacted] on the grounds of illegal acts in public.

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The police took the claimant and to the police station on of Street. At the station, the police were shouting derogatory remarks at the claimant and . The police then assaulted the claimant and The police told the claimant and that if they said anything about what happened to them at the police station or at the park, that they would "disappear".

The determinative issue is state protection.

In assessing whether the Government of Uruguay is making serious efforts to provide state protection to its citizens who are victims of crime, the panel examined the documentary evidence.² Uruguay is a constitutional republic with an elected president, a bicameral legislature, and an independent judiciary.³ The government generally respected the human rights of its citizens, and the law and judiciary provided effective means of dealing with individual cases of abuse.⁴ The Public Prosecutor's Office of Police (*Fiscalia Letrada de Policia*) was created by decree on August 22, 1997 to prevent and stamp out irregular actions by police.⁵ The functions of the National Inspection of Police (*Inspección Nacional de Policia*), established as a unit of the Ministry of the Interior on

² Exhibit R-1, Toronto Documentation Package - Uruguay, December 2003.

³ Exhibit R-1, item 2.1, p. 31, Uruguay: Country Reports on Human Rights Practices for 2002, US Department of State, March 31, 2003.

⁴ Ibid.

⁵ Exhibit R-1, item 7.1, p. 12, Response to Information Request URY37188.E, 29 May 2001, DIRB, IRB.

November 1, 1992, were expanded by decree on August 22, 1997 to improve its coordination work with the Public Prosecutor's Office of Police with regard to internal investigations of irregular or illicit police actions.⁶ Although the internal police investigative body is understaffed and can only issue recommendations for disciplinary action, prosecutions have been occurring more frequently.⁷ For instance, at least eight police officers have been jailed for abusing detainees, and over 400 police officers have been indicted in the last three years for violations ranging from corruption to abuse.⁸ Ministry of Interior authorities act promptly if accusations of alleged police brutality are reported.⁹

A Montevideo-based non-government human rights organization, *Servicio de Paz y Justicia* (SERPAJ),¹⁰ published in its annual report a section on the following legal recourses and compensation available in Uruguay: 1) the criminal courts of the judiciary hear in the capital and provinces all matters related to prescribed offences; 2) the civil courts of the judiciary throughout the country which handle all "civil consequences"

⁶ Ibid.

⁷ Ibid.

⁸ Exhibit R-1, Toronto Documentation Package – Uruguay, December 2003, item 2.1, p. 31, United States Department of State (DOS), Uruguay Country Reports on Human Rights Practices – 2002, March 31, 2003.

⁹ Ibid.

¹⁰ Exhibit R-1, item 10.2, p. 132, Response to Information Request URY 40360, January 7, 2003, DIRB, IRB

stemming from offences related to an *amparo* recourse, with such recourse being issued for the protection of a right which cannot be protected through an application of other existing legal provisions; and 3) administration of compensatory justice for government actions that have caused damage. In view of the above, the panel finds that the government of Uruguay is making serious efforts to protect their citizens who are victims of criminality and does take action against corrupt police officers.

In the case at bar, the claimant testified that he did report the first assault that occurred on [REDACTED] 2000. The police laughed at him and did nothing. Regarding the second assault that occurred on [REDACTED] 2001, he did not report the incident to the police. His assailants threatened him not to go to the police.

In the third assault that occurred on [REDACTED] 2001, at the [REDACTED] Park, where the claimant and [REDACTED] were assaulted, the police witnessed the assault but did not assist them. When it was over, the police brought the claimant and [REDACTED] to the station for doing illegal acts in public. At the station the claimant and [REDACTED] were abused and assaulted by the police officers and were threatened that if they mentioned what happened at the police station or at the park, the police would ensure they would disappear.

In the context of the country of origin, and in the circumstances of this particular claimant, the panel finds that he has not taken all reasonable steps to seek state protection in Uruguay. The panel finds that the claimant ought to have reported the actions of the

police at the station at . of] ' Street to The Public Prosecutor's Office of Police (*Fiscalia Letrada de Policia*). The claimant should have made a complaint about the police not investigating the first assault of 2000. In addition, the claimant should have reported the two other assaults of 2001 and 2001 perpetrated by the four unknown men. The claimant should have made a complaint about the lack of investigation, the abuse and the assaults made towards the claimant and so that a possible internal investigation may have developed.

The panel notes in the Refugee Protection Division Documentation Package for Uruguay (December 2003)¹¹ that the Uruguay's Criminal Code has incorporated into the Code pursuant to Law No. 16048 of 16 July 1989 that anyone who incites hatred, contempt or violence against someone due to their sexual orientation or sexual identity, would be punished with 3 to 18 months imprisonment.¹²

Furthermore, the Uruguay Criminal Code had incorporated into it that anyone who commits acts of moral or physical violence involving hatred to contempt against one or more persons on account of their sexual orientation or sexual identity would be punished with 6 to 24 months imprisonment.

¹¹ Exhibit R-1, Toronto Documentation Package – Uruguay, December 2003.

¹² Ibid., p. 101.

The panel also notes that in the Research Directorate Response to Information Request at page 103, no reports of bar raids in Montevideo since 1997 could be found among the sources consulted by the Research Directorate.

However, counsel for the claimant argued that Uruguayan society has strong homophobic traits¹³ and that:

Uruguayan society continues to repeat the same discriminatory patterns, however. The majority of lesbian, gay, transvestite, trans-sexual and bisexual communities live under cover, harassed by an environment that hurts them in ways ranging from the brutal (insults, blackmail, beatings), to the subtle (jokes, systematic denial of information, repetition of obsolete classifications, etc.). On the job harassment, and some times cloaked dismissals, continue to accompany voluntary or involuntary "detection" of homosexual workers (2001).¹⁴

Response to Information Request stated that transgender people get very minimal state protection.¹⁵

Furthermore, in Response to Information Request it states:

According to an August 1996 article in Brecha, although large-scale police raids on gay establishments ceased in 1991, homosexuals continued to be harassed and detained "simply for being gay" ("*simplemente por ser homosexuales*"), and their clubs continued to be the target of police harassment (2 Aug. 1996). The 1997 SERPAJ report corroborated these allegations, stating that transvestites, gays and lesbians continued to face arbitrary detention, harassment and violence on the part of the police. No reports of police harassment or violence

¹³ Response to Information Request URY37044.E, dated 30 May 2001.

¹⁴ Ibid.

¹⁵ Ibid, p. 106.

against members of sexual minority communities could be found among the sources consulted for the period 1997-1999.¹⁶

The panel carefully considered counsel's submission, but relies on the Refugee Protection Division Package for Uruguay. The panel finds that the claimant has not taken all reasonable steps to seek state protection in Uruguay. Therefore, the panel finds that he has not discharged the onus of showing clear and convincing proof of the state's inability or unwillingness to protect him.

Having considered all of the evidence and counsel's submissions, the panel determines that the claimant is not a Convention refugee, and that he is not a person in need of protection pursuant to section 97(1)(a) or (b) of the *Immigration and Refugee Protection Act (IRPA)*.

Accordingly, the Refugee Protection Division rejects the claim of
for refugee protection.

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"Michael Somers"
Michael Somers

DATED at Toronto, Ontario this 26th day of May 2004

¹⁶ Response to Information Request URY3284.E.