



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
TA1-15793

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

September 29, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

November 10, 2003

DATE DE LA DÉCISION

CORAM

William T. Short

CORAM

FOR THE CLAIMANT(S)

**Howard Gilbert
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

A. Martin

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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(the claimant), is a 34-year-old citizen of Bulgaria who claims to have a well-founded fear of persecution in that country on account of being a bisexual man. The claimant also claims to be a person in need of protection within the meaning of subsection 97(1) of the Immigration and Refugee Protection Act.

ALLEGATIONS

The claimant alleges that because of his sexual orientation, he was subject to persecution in the form of arbitrary arrest, abuse while in police detention, as well as persecutory abuse from society at large.

DETERMINATION

The panel accepts the valid Bulgarian passport as tendered into evidence¹ and finds that the claimant is a Bulgarian citizen. The panel further finds that the claimant is a Convention refugee.

ANALYSIS

The panel finds that the claimant, by alleging that he is a bisexual, is alleging that he is a member of a particular social group and has accordingly established a nexus to a Convention ground. The panel further finds that, based upon the claimant's evidence

¹ Exhibit M-1.

which consisted of his Personal Information Form (PIF)² narrative, various personal and country materials,³ as well as his oral testimony, the claimant is a homosexual or bisexual male. The panel does not consider itself qualified to draw with any exactitude the distinction, if any between a homosexual and a bisexual male. The panel does find, as a fact, that the claimant's sexual orientation is heavily male oriented and the panel further finds that the claimant is, to use the expression coined by Professor ⁴ a member of a sexual minority.

The claimant gave his testimony in a matter-of-fact, straightforward manner, with no internal contradictions, implausibilities or apparent attempts at embellishments. The claimant testified that although he had been attracted to women, at about the age of eighteen, he discovered an attraction to men. The claimant related how he and some homosexual friends were at a cottage near Plovdiv one night in 1994, when the police arrived, searched the premises and upon discovering a gay magazine, arrested the claimant and his friends. The police held the claimant for four hours, during which time he was threatened. The claimant's gay friends were told to leave the cottage. The next day, the claimant was fired from his job when his supervisor told him that he didn't want

² Exhibit C-1.

³ Exhibit C-2, pp. 34-36.

⁴ Nicole LaViolette, Assistant Professor, Law Faculty, Ottawa, Ontario, Sexual Orientation and the Refugee Determination Process: Questioning a Claimant About Their Membership in the Particular Social Group, May 1999.

s.19(1)

any trouble with the police. The claimant also related how he and a business partner opened a restaurant, which became popular with gays. That led to continual problems with the authorities. Over time, the claimant and his business partner, who was a married man, became sexually involved. The partner's wife found out about the relationship and the claimant was summoned by the police. The claimant was held for three hours, during which time the claimant was accused of influencing the partner to become a homosexual and causing his marriage to collapse. The claimant was struck on the back of the head, called derogatory names and threatened with jail. His relationship with his business partner terminated.

Throughout the years, the claimant was the victim of a number of homophobic attacks, which required medical treatment. After one of these attacks, when the claimant attempted to secure the assistance of the police, he was told that there were no rights for people like him in Bulgaria. Indeed, a recent Information Request on Bulgaria notes that the criminal justice system, including the police and the judiciary, have not been very effective in protecting homosexuals, who are the victims of violence or the threats of violence.⁵

The panel is in agreement with the submission of the Refugee Protection Officer that the claimant was a credible witness and finds that the facts as alleged by the claimant in his PIF narrative and his oral testimony did in fact occur.

⁵ Exhibit R-1, item 9.1, Information Request BGR 37530.E, p. 9.1-1.

Country documentation indicates that Bulgaria, still faces considerable challenges in bringing its state institutions, particularly those concerned with law enforcement and the administration of justice, into line with modern European norms. Although the constitution provides for an independent judiciary, the judiciary suffers from corruption and is not completely independent.⁶ Public order services, such as the police, are not subject to adequate judicial, executive or legislative oversight. Some members of the police commit serious human rights abuses.⁷ Security forces commonly beat suspects and detainees and criminal suspects in police custody run a significant risk of being mistreated⁸. The overall picture is not good. There are problems with accountability and government attempts to address the problem of police abuse have met with little success.⁹

All of this makes the situation of sexual minorities, in general and homosexual/bisexual men in particular, problematic if not precarious. Although homosexuality is not illegal in Bulgaria, the law treats homosexual acts as perversion. Section 157 of the Penal Code reads in part:

⁶ Exhibit R-2, U.S. DOS Reports, Bulgaria, March 31, 2003, pp 1 and 5.

⁷ Ibid., p. 1.

⁸ Exhibit R-2, p. 3.

⁹ Ibid., p. 1.

Whoever does homosexual acts in public or in a scandalous way or in a way to lure somebody else into the way of perversion is punished with imprisonment of up to two years or with correctional labour, or with public censure.¹⁰

When the claimant was called in by the police to answer accusations that he had influenced his lover to become a homosexual, the provisions of section 157 would have been a very real threat.

On the basis of the country documentation before it, the panel finds that the claimant, as a homosexual or bisexual man, would not in the future, be able to live freely in Bulgaria without the constant fear of legal sanction, from an abusive and hostile police service, nor could he reasonably expect to receive protection from homophobic attacks upon his person. In the circumstances, the panel finds that the situation in Bulgaria is persecutory and the claimant accordingly has a well-founded fear of persecution.

CONCLUSION

The Refugee Protection Division determines that the claimant,
is a Convention refugee and his claim for refugee protection is hereby accepted.

"William T. Short"
William T. Short

DATED at Toronto this 10th day of November, 2003.

¹⁰ Exhibit R-1, item 9.1, Information Request BGR 37530.E, p. 9.1-1.