



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

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

IN PRIVATE
HUIS CLOS
TA2-22740

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

June 9, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

June 13, 2003

DATE DE LA DÉCISION

CORAM

Harindar Aulach

CORAM

FOR THE CLAIMANT(S)

**Ricardo Aguirre
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

P. Hawkins

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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s.19(1)

The claimant states that he is a gay in Costa Rica. He took up with a woman named _____ to maintain a façade of normality. This upset the women's brothers. They threatened the claimant with death and even beat him up once. The claimant did not go to the police following that beating or on any other occasion.

This claim turns on the question of state protection. Despite the threats that he was subjected to, the claimant did not go to the police. He gave two reasons for this for not doing so.

One, the resultant publicity would have hurt his reputation. Two, his friend .

_____ had sought police help and had been given nothing.

I find the first reason to be an unsatisfactory one. The claimant had been threatened with death. When a choice is to be made between possible protection and reputation, safety should come first. I do not see how it can be otherwise.

The other reason does not prove that if the claimant had gone to the police, he would have received the same treatment as did . The latter had complained to the police about being called a faggot. The claimant had been badly beaten. The two sets of circumstances were different.

With respect to a claimant's obligation to go to the state for protection, the Federal Court of Appeal has held in *Kadenko*,¹ that:

¹ *M.C.I. v. Kadenko, Ninal* (FCA, no. A-388-95), Hugessen, Decary, Chevalier, October 15, 1996. Reported: *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (FCA)

When the state in question is a democratic state...the claimant must do more than simply show that he or she went to see some members of the police force and that his or her efforts were unsuccessful. The burden of proof that rests on the claimant is, in a way, directly proportional to the level of democracy in the state in question: the more democratic the state's institutions, the more the claimant must have done to exhaust all the sources of action open to him or her.

Costa Rica is a functioning democracy with a freely chosen government where "the law and judiciary provide effective means of dealing with individual instances of abuse."² The claimant fell far short of what is required by *Kadenko*. His efforts at securing state protection were non-existent. The claimant cannot, having inadequately explored avenues of protection reasonably available to him in his own country, turn to Canada for surrogate protection.

Consequently, I conclude that the claimant is not a Convention refugee nor a person in need of protection in Canada. Accordingly, the claim for refugee protection is rejected.

"Harindar Aulach"
Harindar Aulach

DATED at Toronto this 13th day of June 2003.

² Exhibit R-1, U.S. Department of State, Country Reports on Human Rights Practices (2002).