



MALTA

**QORTI CIVILI  
PRIM' AWLA  
(GURISDIZZJONI KOSTITUZZJONALI)**

**ONOR. IMHALLEF  
JOSEPH AZZOPARDI**

Seduta tat-13 ta' Novembru, 2006

Rikors Numru. 26/2003/1

**Luiza Merujian Zakarian and Simony Merujian  
Zakarian.**

**-vs-**

**The Minister of Home Affairs and the Principal  
Immigration Officer.**

**The Court;**

Examined the applicants' application presented on the 21<sup>st</sup> August, 2003 whereby they shewethed with respect:

That the applicants are the citizens of the Republic of Armenia and are respectively aged 18 and 16.

That after the applicants entered the Maltese jurisdiction they undertook the necessary procedures with the competent authorities with a view to procuring the issue of a refugee status in their regard.

That such proceedings were couched in the sense that had applicants to be deported to their country of origin, namely the Republic of Armenia, they would be subjected inter alia to political persecution and oppression by the Armenian State to the extent that their personal security will likely be jeopardised and that as such political persecution would be perpetrated by the Armenian police, the Armenian State would be unable to protect applicants.

That in fact it transpires that applicant's family were deeply involved in political activity in Armenia. During the course of such involvement in Armenian politics, applicant's aunt, Armalia Zakarian was forced to flee from Armenia together with her minor daughter after her life was threatened by the Armenian police. In fact Amalia Zakarian had been seriously injured by the Armenian police prior to her flight from that country (Dok. E). This occurred after Amalia Zakarian's husband and his mother, who were citizens of Azerbaijan had been murdered during inter-communal fighting involving the Armenians and Azeri communities. Amalia Zakarian eventually managed to enter the jurisdiction of the United Kingdom and applied for the grant of a refugee status in that country. To date Amalia Zakarian has been resident in the UK for the last five years pending the processing of her claim to be granted a refugee status in that jurisdiction together with her minor daughter.

That in the meantime, applicant's father Merujian Simony Zakarian, who was Amalia Zakarian's brother remained in Armenia and continued with his involvement in Armenian politics notwithstanding that the political party of which both

Amalia and Simony Zakarian were activists had lost the elections which were held in March 1998. He was also subjected to political persecution by the Armenian Police and was eventually assassinated by them in 2000 at a time when the political party against which the Zakarians had struggled, had assumed executive power in Armenia following the results of the 1998 elections, as stated supra. (Dok. A and Dok. D.)

In consequence of further political persecution subsequent to the murder of their father by the Armenian police, the personal security of the applicants was compromised to the extent that arrangements were undertaken for applicants to be in a position to flee from Armenia. On their arrival in Malta, applicants immediately applied for the grant of a refugee status. (Dok. B and Dok. C.)

That applicants request for the grant of a refugee status was rejected by the Refugee Commissioner and by the Refugee Appeals Board on the grounds that they did not satisfy the statutory criteria required for the grant of a refugee status although it ought to be emphasised that the said entities were not in a position to have sight of Dok. B and Dok. C as same were not available at that juncture.

That it has already transpired that the applicant's father was murdered by the Armenian police, whilst applicant's aunt felt the dire necessity to flee from her country of origin in order to protect her personal security and her minor daughter's security which were objectively threatened by the Armenian police. The same course of action was taken by the applicants in as much as they also felt that their personal security was threatened, like their father's who had already been beaten to death by the Armenian police earlier as stated supra. It is in this context respectfully submitted that no person flees his/her country of origin, with all the attendant consequences resulting from the up-rooting of his/her existence, unless cogent reasons justify

such an extreme course of action. In fact applicants, at the apex of their youth, have even forfeited their personal freedom in their quest to obtain a refugee status in this jurisdiction and to date have been detained in various detention centres for the last seven months.

That there is no doubt that the Police are an essential pillar of the executive power of any state and that the assassination of applicants father at the hands of the Armenian police consequent to his involvement in political activity would evidently be tantamount to statal persecution on political grounds. Consequently, if the Armenian state was unable to afford protection to the personal security of applicant's father and aunt, it is unlikely that the Armenian state will be willing and able to protect applicant's personal security in the event of their deportation to Armenia, regard being had to the inexperience of the applicants, one of whom is still a minor.

That had applicants to be deported to Armenia such a state of affairs would undoubtedly undermine their personal security and indeed, in the last analysis place their life in manifest jeopardy.

That Section 33(1) of the Constitution provides that every person is entitled to the protection of his/her life and that no person shall be intentionally deprived of his/her life. So that in the eventuality of the deportation of applicants to Armenia, applicants lives would be placed in manifest danger notwithstanding that the said provision is entitled "Protection of Right to life". To deport applicants to Armenia would amount to exposing their lives to evident peril and indeed their father has already been murdered by the Armenian police whilst their aunt's would have been in dire peril has she remained in the Armenian jurisdiction rather than fleeing from that country.

That the said disposition of the Constitution should be

interpreted in the sense that no person should be intentionally deprived of his life and that furthermore no person's life should knowingly be exposed to the peril of its forfeiture, even if such an eventuality is merely likely to materialise, regard being had to the provisions of Section 46 of the Constitution.

That section 36(1) of the Constitution provides furthermore that no person shall be subjected to inhuman treatment. Undoubtedly, were applicants to be deported to Armenia such a state of affairs would be tantamount to the subjection of same to inhuman treatment in that no person's well-being and welfare and indeed his/her life should be treated recklessly especially when a strong probability subsists that such person's welfare, well-being and life will be exposed to dire peril.

That it transpires that in the light of the rejection by the Refugee Commissioner and the Refugee Appeals Board of the claims set up by applicants, the Principal Immigration Officer is undertaking all the necessary preparations in connection with the deportation of applicants to Armenia.

That the deportation of the applicants to Armenia will inevitably give rise to the breach of their fundamental rights as protected by the said provisions of the Constitution as such deportation would not only expose their lives to manifest danger but would amount to inhuman treatment, in accordance with the said constitutional provisions.

That no state is entitled to expose the life of any person situate in its jurisdiction by deporting any such person to another jurisdiction were same would be likely to be politically persecuted even to the extent of endangering his/her life. Such statal behaviour woul violate the

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constitutional provisions embodied in section 43 of the Constitution relative to the prohibition of deportation.

Consequently applicants humbly pray this Honourable Court:-

1. To order the issuance of all the required orders and to provide the remedies which might appear appropriate in the circumstances, in order that their fundamental rights, as protected by the Constitution might be rendered effectual and enforceable.

With costs as against respondents.

Examined respondents' reply presented on the 16<sup>th</sup> September, 2003 whereby they submitted with respect:

That the application is unfounded in fact and in law for the following reasons:

1. That the application has not been filed in the Maltese language as the language of the Court and it does not result that the filing of proceedings in the English language has been authorised by the Court as required by Article 21 of the Code of Organisation and Civil Procedure (Cap 12) and by the Judicial Proceedings (Use of English Language) Act (Cap 189).

2. Without prejudice to the above, the respondents submit that the applicant's claim is unfounded on its merits and has been filed merely to delay the applicants' deportation from Malta. In this regard the respondents point out that claims such as that put forward by the applicant (i.e. that their lives 'are likely to be in manifest peril in the event of their deportation of Armenia') are investigated in terms of the Refugees Act by the Commissioner for Refugees who interviews persons who apply for refugee status and examines their claims scrupulously and at length. The decisions of the Commissioner for Refugees are moreover subject to

appeal to the Refugees Appeals board composed of two lawyers and a Chairman with vast experience in matters concerning refugees.

That the claims of the applicants have already been dismissed as being unfounded both by the Commissioner for Refugees and by the Refugees Appeals Board who are the competent authorities in these matters and there is no evidence to substantiate the claims of the applicants as being 'prima facie' well founded before the present Court. On the contrary the fact of the dismissal of the claims as unfounded by the competent authorities in the field of refugee law militate against the acceptance of the demand for the issue of a warrant of prohibitory injunction which would effectively stultify the decision of the competent authorities without the applicants having in any way shown that the decisions of the competent authorities were defective.

Moreover, given the procedures available under the Refugees Act it is clear that there are more than sufficient reasons for the present Court to decline the exercise of its powers under Article 46 of the Constitution and under Article 4 of the European Convention Act in view of the availability of alternative remedies for the complaint under the Refugees Act.

For the above reasons the respondents submit that this Court should deny the demand for the issue of a warrant of prohibitory injunction.

Examined respondents' reply by the Minister for home Affairs and the Principal Immigration Officer on the 9<sup>th</sup> October, 2003 whereby it is respectfully submitted:

That Simony Merujian Zakarian, being a minor cannot pursue this action personally since she lacks legal capacity. That the applications for refugee status by the present applicants have already been examined by the

Commissioner for Refugees and by the Refugees Appeals Board who after having examined the

same applications in terms of the Refugees Act and have found them to be unfounded.

That therefore adequate means of redress for the contravention of rights alleged by the applicants have been available to them under Maltese law and that it is consequently 'desireable' in terms of the provision to subarticle (2) of Article 46 of the Constitution and to Article 4 of the European Convention Act for this Court to decline to exercise its powers under the said articles.

That the applicants have brought no proof that their aunt Amalia Zakarian is staying in the United Kingdom on the basis of refugee status.

That the applicants have neither brought forward any proof that there are credible grounds to believe that they personally would be subjected to breaches of fundamental human rights which would result from political persecution and oppression if they were to be returned to their country of origin.

That the defendants have indeed failed to indicate the articles of the Constitution and of the European Convention on Human Rights under which they allege to be victims.

That the Republic of Armenia, albeit being a 'new democracy', is a State with a democratic Constitution which is a member of the Council of Europe and which has ratified the European Convention on Human Rights and therefore also assumed international obligations to respect the fundamental rights and freedoms guaranteed by that Convention. That the fulfillment of those obligations are subject to monitoring by the Council of Europe.



That the applicants' claims are unfounded and should be rejected.

Took cognisance of the whole case file including the *verbal* of the 30th March, 2006 whereby the case was put off for judgement.

Considered;

That applicants are asking the Court to provide the remedies in order that their fundamental human rights are not infringed. In reality they are asking the Court to declare that the decision of the Refugee Appeals Board be revoked and thus they would not be deported back to their country. They are not contesting the Board's decision on the usual criteria – i.e. that the decision was flawed by non-observance of the rules of natural justice but because they are arguing that their deportation would constitute an infringement of the human rights and freedoms.

In the text **European Human Rights Law – Text and Materials** one can find some useful comments in this regard (page 151 et sequitur);

*“An increasingly important and difficult question for the European Human Rights system concerns attempts by a contracting state to deport an applicant to a non contracting state where, the applicant claims, he or she will be subject to torture or inhuman or degrading treatment. The Court first considered this issue in Soering vs United Kingdom (7th July, 1989) in which the UK sought to extradite Soering to Virginia in the US to stand trial for murder. The Virginia authorities planned to seek the death penalty. Soering claimed that the circumstances surrounding the administration of death sentences in Virginia particularly the typical delay of six to eight years between imposition and execution constituted inhuman treatment or punishment.*

*The Court held that the extraditing state id have some responsibility under the convention for the potential subsequent*

*maltreatment of extradited individuals. 'For a state to knowingly surrender a fugitive to another state where there were substantial ground for believing that there would be a danger of being subjected to torture or inhuman or degrading treatment however heinous the crime would plainly be contrary to the spirit and intendment of Article 3.'*

*As movement about the world becomes easier and crime takes on a larger international dimension it is increasingly in the interest of all nations that suspected offenders who flee abroad should be brought to justice. Conversely the establishment of safe havens for fugitives would not only result in danger for the state obliged to harbour the protected person but also tend to undermine the foundations of extradition. It is not normal for Convention institutions to pronounce on the existence or otherwise of potential violations of the convention. However where an applicant claims that a decision to extradite him would, if implemented be contrary to Article 3 by reason of its foreseeable consequences in the requesting country, a departure from this principle is necessary in view of the serious and irreparable nature of the alleged suffering risked, in order to ensure the effectiveness of the safeguard provided by the Article.*

*In sum the decision by a contracting state to extradite a fugitive may give rise to an issue under Article 3 and hence engage the responsibility if that State under the convention where substantial grounds have been shown for believing that the person concerned if extradited faces a real risk of being subjected to torture or to inhuman and degrading treatment in the requesting country. The establishment of such responsibility inevitably involves an*

*assessment of the conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless there is no question of adjudication on or establishing the responsibility of the receiving country whether under general international law, under the convention*

*or otherwise. In so far as any liability under the convention is or may be incurred it is liability incurred by the extraditing Contracting state by reason of its having taken action which has a direct consequence the exposure of an individual to proscribed ill-treatment.”*

The Court adopted a similar approach in Cruz Varas vs Sweden (20<sup>th</sup> March, 1991) where the applicant and his family challenged Sweden's deportation of them to Chile claiming that in Chile they faced the possibility of political persecution. The Court held that the standards set out in Soering applied to expulsion as well as to extradition but concluded that substantial grounds for believing the existence of real risk of treatment contrary to Article 3 had not been shown. It also was influenced by the fact that a considerably more liberal political atmosphere had begun to develop in Chile.

The facts of Cruz Varas also presented questions under the 1951 Geneva Convention and 1967 protocol relating to the Status of Refugees. That convention defines refugees as those who have left their country because of a well founded fear of persecution. A reasonable threat of execution or imprisonment on prohibited grounds triggers a right of asylum under the Geneva Convention and Protocol.

The Court is satisfied that the political and human rights situation in Armenia has improved considerably since the events mentioned by applicants. Armenia is now a member of the Council of Europe and this is sufficient guarantee that human rights are observed in that country.

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The facts of this case are similar to the Cruz Varas case above mentioned in that the situation now in that country is very much different to the one prevailing when the facts in question occurred. The Court is also satisfied that the evaluation of the Refugees Appeals Board was correct since applicants failed to prove otherwise.

**For these reasons the Court accepts respondents' pleas and rejects applicants' claims.**

**Each party is to bear its own costs because of the particular facts of the case.**

**Read.**

**< Sentenza Finali >**

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