



DECISION ON ADMISSIBILITY

Case no. CH/00/4861

Milivoje BULATOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 September 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Article VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. FACTS

1. Mr. Bulatović is a citizen of Bosnia and Herzegovina of Montenegrin descent. His application concerns a contract for an exchange of real properties, under which he was to exchange his apartment, located at Ulica Branilaca Sarajeva 19-B in Sarajevo, for the apartment of Mrs. B.T., who is of Bosniak origin, in Igalo, Montenegro. The private parties concluded the contract on 15 November 1995 before the Municipal Court I in Sarajevo.

2. Mr. Bulatović is a retired member of the Yugoslav National Army ("JNA"). In 1992, he purchased the apartment in Sarajevo pursuant to the Law on Securing Housing for the JNA. (The applicant's ownership rights in this apartment were the subject of an earlier case before the Chamber, case no. CH/96/22, *Bulatović*, decision on the merits of 3 November 1997, in which the Chamber ordered the Federation of Bosnia and Herzegovina, *inter alia*, to lift the annulment of the applicant's apartment purchase contract.)

3. The applicant complains that the property exchange contract is void because: (1) he signed it under circumstances of war at a time when he and his wife were in poor health and in need of medical treatment abroad; (2) the state forbade such transactions in real property during the relevant time period, of which he was not aware; (3) neither he nor Mrs. T. were owners of the real property they exchanged; (4) the properties were not of equal value; and (5) the exchange does not suit him, and he would not accept it now.

4. The applicant submits that the apartment in Sarajevo is worth between EUR 130,000 and 150,000, while the apartment in Igalo is worth only EUR 21,000. In this regard, the applicant asserts that he was given a fraudulent description of the property in Igalo. The applicant also contends that Mrs. T. did not own the apartment in Igalo; the exact nature of her rights in that apartment is not apparent from the documents.

5. Mrs. T. filed an action against the applicant before the Municipal Court I in Sarajevo, requesting delivery of the apartment under the 15 November 1995 contract. The applicant claimed, in those court proceedings, that the exchange contract was null and void.

6. On 8 November 2000, the Municipal Court I in Sarajevo established that the contract was legally valid and confirmed the parties' rights and obligations under the contract. The Court based its judgement on its findings that: (1) there was no deficiency of will in concluding the contract; (2) the properties were of similar value; (3) the parties were aware of the legal status of the properties; (4) the applicant registered himself as the owner of the property in Igalo and otherwise demonstrated that he intended to live there; and (4) the applicant only returned to Sarajevo on Mrs. T.'s invitation to register himself as owner of the apartment in the land registry so he could meet his obligations under the contract.

7. The applicant filed an appeal against this judgement with the Cantonal Court in Sarajevo. On 12 July 2001, the Cantonal Court rejected the appeal and affirmed the first instance judgement of the Municipal Court. The Cantonal Court found that, despite the applicant's illness, he had full capacity to contract. Further, the contract was concluded legally, without error, coercion, or blackmail, and the Municipal Court correctly decided the case.

8. On 24 September 2001, the applicant requested review of the Cantonal Court's decision before the Supreme Court of the Federation of Bosnia and Herzegovina. The Supreme Court rejected this request on 14 January 2002.

9. On 12 March 2002, the Municipal Court I in Sarajevo allowed enforcement of the valid court judgement of 8 November 2000. Under that judgement, Mrs. T. is to be registered as the owner of the apartment located at Ulica Branilaca Sarajeva 19-B in Sarajevo, and the applicant's registered ownership is to be deleted from the land registry. Further, the applicant is to be evicted from the apartment and his movable property sold.

10. On 24 April 2002, the Municipal Court I refused the applicant's appeal against the 12 March 2002 procedural decision as ill-founded. The applicant appealed to the Cantonal Court of Sarajevo against the decision of 24 April 2002, but his appeal was refused by the Cantonal Court.

II. PROCEEDINGS BEFORE THE CHAMBER

11. Mr. Bulatović submitted his application on 11 May 2000. On 18 October 2001, the applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prevent his eviction from an apartment which he occupies. On 7 November 2001, the First Panel decided not to order the provisional measure requested. On 19 November 2001, the applicant was informed that the Chamber had rejected his request for a provisional measure.

12. The applicant renewed his request for a provisional measure on 3 July 2002, but offered no additional reasoning for reconsideration of the Chamber's decision of 7 November 2001. This second request for a provisional measure was rejected on 11 July 2002. A third request for provisional measures by the applicant was rejected on 22 August 2002. The applicant made a fourth request for provisional measures on 3 September 2002, which was denied on 5 September 2002.

III. COMPLAINT

13. The applicant complains of violations of his rights under Articles 6, 8, and 14 of the European Convention on Human Rights ("the Convention"). He considers the exchange contract null and void because it was executed contrary to existing regulations and because he was forced to sign it due to his circumstances in 1995. He further complains that the judgements of the Municipal and Cantonal Courts were premeditated and tendentious.

IV. OPINION OF THE CHAMBER

14. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

15. The applicant complains that there has been an interference with his rights under the Convention because the contract is not valid and because the courts did not judge his situation fairly.

16. The Chamber notes that relevant domestic legislation addresses the problems created by transfers of real property after 30 April 1991. The Federation of Bosnia and Herzegovina Law on Cessation of the Application of the Law on Temporary Abandoned Property Owned by Citizens (OG FbiH Nos. 11/98, 29/98, 27/99, 43/99, 37/01, 56/01) took effect on 4 April 1998. At the time the Municipal Court I and Cantonal Court decided Mr. Bulatović's case, the Article 17b of this law provided as follows:

"The provisions of this Law shall also apply to the abandoned real property, the ownership of which has been acquired after 30 April 1991 based on any legal transfer of real property rights (contracts on exchange, sale, gift etc.)

"In case of a dispute as to the lawfulness of the transferred real property right, the competent body shall refer the matter to the competent court according to the provisions of the Law on Administrative Procedures regulating preliminary issues, in order to rule on the allegation."

17. The Municipal Court I and Cantonal Court did not mention this Article in their decisions, but employed a straightforward assessment of the validity of the contract.

18. This law was later amended by the High Representative's Decision Enacting the Law on Amendments to the Law on the Cessation of Application of the Law on Temporary Abandoned Real Property Owned by Citizens (FbiH) of 4 December 2001 (OG FbiH 56/01, 21 December 2001). Article 17b of the new law, which took effect on 29 December 2001, provided as follows:

"The provisions of this Law shall also apply to the abandoned real property, the ownership of which has been acquired after 30 April 1991 based on any legal transfer of real property rights (contracts on exchange, sale, gift etc.)

"In case of a dispute as to the lawfulness of the transferred real property right, the competent body shall refer the matter to the competent court according to the provisions of the Law on Administrative Procedures regulating preliminary issues, in order to rule on the allegation. *Notwithstanding the provisions of the Law on Civil Procedures (OG FbiH 42/98), the burden of proof shall lie upon the party claiming to have acquired rights to the real property through the transaction to establish that the transaction was conducted voluntarily and in accordance with the law. Where one of the transferred properties is located in the territory of another republic of the former SFRY, the burden of proof shall lie upon the party claiming that the transfer of property was not conducted voluntarily and in accordance with the law to demonstrate that the status of the parties prior to the transfer of property shall be restored.*"

(Emphasis added.) This amendment took effect sixteen days before the Supreme Court rejected the applicant's request for review on 14 January 2002 and before the subsequent enforcement proceedings in the lower courts. There is no indication that the amendment was raised by the parties or addressed by the courts.

19. The Chamber considers that the domestic courts are competent to apply domestic laws in deciding relevant disputes, and that they did so in deciding Mr. Bulatović's case.

20. Under the circumstances, the Chamber considers that the issue of the validity of the contract is essentially a private dispute that is entirely for the domestic courts to decide.

21. It follows that the application is incompatible *ratione materiae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible with regard to the applicant's complaint that the contract is not valid in violation of his rights under Articles 8 and 14 of the Convention.

22. The applicant further complains that the court decisions were prejudged and tendentious. In this regard, the applicant essentially asserts that the Municipal and Cantonal courts wrongly assessed the facts pertaining to his case and misapplied the law. Article 6 of the Convention guarantees the right to a fair hearing. However, the Chamber has stated on several occasions that it has no general competence to substitute its own assessment of the facts and application of the law for that of the national courts (see, e.g., case no. CH/99/2565, *Banović*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999, and case no. CH/00/4128, *DD "Trgosirovina" Sarajevo (DDT)*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000). There is no evidence that the court failed to act fairly as required by Article 6 of the Convention. It follows that the application is manifestly ill-founded within the meaning of Article VIII(2)(c) of the Agreement. The Chamber therefore decides to declare the application inadmissible with regard to the applicant's complaints under Article 6 of the Convention.

V. CONCLUSION

23. For these reasons, the Chamber, by 4 votes to 3,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel

Annex

Dissenting opinion of Mr. Hasan Balić joined by Mr. Miodrag Pajić

ANNEX

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Hasan Balić.

DISSENTING OPINION OF MR. HASAN BALIĆ JOINED BY MR. MIODRAG PAJIĆ

This case has raised three serious issues before the Chamber and, according to my opinion, none of them has been solved. Instead, the Chamber issued the decision declaring the application inadmissible. I do not agree with this decision of my colleagues for the following reasons:

The applicant complains that he had no access to an impartial tribunal within the meaning of Article 6 of the Convention. Instead of examining the merits of the case, the Chamber is satisfied to resolve this matter by applying the legal principle according to which domestic courts are competent to apply "domestic laws" (see the reasoning in paragraph 19). This finding is not challenged. But, considering that it is not disputable that the applicant is a retired JNA General, of Montenegrin origin, and that he conducted proceedings before the Chamber succeeding to prove that he is the owner of the apartment (see the reasoning under paragraph 2), the question arises why the first dispute had not been resolved before domestic courts. They did not resolve the case as they were not independent. Now, although it is obvious that the applicant concluded the contract on exchange of the apartment under pressure, as war is a serious threat and exercise of force by those in power, the Chamber is satisfied with the finding that this issue has been resolved by domestic courts and that this matter is within their competence.

The other issue is the damage for more of the half or "*lesio enormis*". The fact is that the applicant's apartment is in a new building in the center of Sarajevo and that it covers 129 square meters with its price amounting to about EUR 150,000, while the apartment of B.T.'s family is in a small place in Montenegro. Its value amounts to EUR 21,000, and in addition it has never been established who is the owner of that apartment. This issue should have been discussed before an impartial tribunal. The Chamber did not deal with the essence of this issue.

The third question is the question of all questions, the question of discrimination. The applicant is at the age of 75 and his health is damaged. His wife is in a similar situation. Their children do not live in Sarajevo. Therefore, they are alone in such a large apartment. In this situation Mrs. B.T. finds the applicant, misleads him using the war and the fears arising from it, especially those based on discrimination.

These are the reasons why I could not agree with the decision on inadmissibility, but advocated holding a public hearing to clarify the disputed facts and then to take a decision.

(signed)
Hasan Balić

(signed)
Miodrag Pajić