



DECISION ON REQUEST FOR REVIEW

Case no. CH/00/4861

Milivoje BULATOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 February 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the applicant's request for a review of the decision of the First Panel of the Chamber declaring the application inadmissible;

Having considered the Second Panel's recommendation;

Adopts the following decision pursuant to Article X(2) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina, as well as Rules 63-66 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. In his application, the applicant complained of violations of his rights under Articles 6, 8, and 14 of the European Convention on Human Rights ("the Convention"). He asserts that an apartment exchange contract he entered into in 1995 is null and void because it was executed contrary to existing regulations and because he was forced to sign it due to his personal circumstances and ethnic minority status. He further complains that the judgements of the Sarajevo Municipal and Cantonal Courts against him were not impartial and objective.

2. The applicant requests review of the 5 September 2002 decision of the First Panel declaring his application inadmissible.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CHAMBER

3. Mr. Bulatović submitted his application on 11 May 2000. He subsequently made numerous requests for provisional measures, which were denied on 7 November 2001, 11 July 2002, 22 August 2002, and 5 September 2002.

4. On 5 September 2002, the First Panel adopted a decision in this case, declaring the application inadmissible. Specifically, the First Panel found the application incompatible *ratione materiae* with the Agreement with regard to the applicant's complaints under Articles 8 and 14 of the Convention. The Panel considered that the apartment exchange contract issue was essentially a private dispute that the domestic courts were competent to decide. With regard to the applicant's complaints under Article 6 of the Convention, the First Panel found no evidence that the domestic courts failed to act fairly and the Panel declined to substitute its assessment of the facts and application of domestic law for that of the domestic courts. The First Panel's decision was adopted by four votes in favour, with three against. Mr. Balić attached a dissenting opinion, which Mr. Pajić joined.

5. The decision of the First Panel was delivered to the applicant on 10 October 2002, when he signed for it in person at the offices of the Chamber. On 25 October 2002, the Chamber received the applicant's request for review.

III. SUMMARY OF THE FACTS OF THE CASE

6. 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.

7. 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. B.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.

8. 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.

9. On 8 November 2000, the Municipal Court I in Sarajevo, sitting as a panel of three judges, 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 (5) the applicant only returned to Sarajevo on Mrs. B.T.'s invitation to register himself as owner of the apartment in the land registry so he could meet his obligations under the contract.

10. On 12 July 2001, the Cantonal Court in Sarajevo refused the applicant's appeal, finding that, despite the applicant's illness, he had full capacity to contract. The Court ruled that the contract was concluded legally, without error, coercion, or blackmail, and that the Municipal Court correctly decided the case. The Supreme Court rejected the applicant's request for review against this judgement on 14 January 2002, in accordance with Article 364 paragraph 3 of the Law on Civil Procedure, because the assessed value of the case did not exceed 15,000 KM. On 12 March 2002, the Municipal Court I in Sarajevo allowed enforcement of the valid court judgement of 8 November 2000. 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.

IV. THE REQUEST FOR REVIEW

11. In the request for review, the applicant challenges the First Panel's decision on the grounds that the Chamber failed to deal with the essence of the dispute and failed to properly address his claim that the domestic courts were not impartial and objective.

12. The applicant challenges numerous factual findings and rulings of the courts. Specifically, the applicant alleges that the Municipal Court improperly assessed the value of the dispute, and that he was therefore deprived of proper judicial review. The Municipal Court assessed the value of the dispute as less than 15,000 KM, even though the exchange contract on file in the case listed the combined value of the exchanged properties as 127,272 KM. The improperly low valuation precluded consideration of the case by the Supreme Court, pursuant to Article 364 of the law on Civil Procedure.

13. The applicant further asserts that the Municipal Court proceedings were not fair in that the court improperly assessed the relative values of the properties and intentionally disregarded evidence of his age, health, and ethnic background in assessing his psychological condition when he entered into the exchange contract. The applicant also asserts that the other party's representatives in the domestic court proceedings engaged in improper *ex parte* contacts with the judge in order to obtain rulings in her favour. The applicant asserts that review is appropriate because the Chamber failed to consider these matters in its earlier decision.

V. OPINION OF THE SECOND PANEL

14. The Second Panel notes that the request for review has been lodged within the time limit prescribed by Rule 63(2). The Second Panel recalls that under Rule 64(2) the Chamber shall not accept the request unless it considers (a) that the case raises a serious question affecting the interpretation or application of the Agreement or a serious issue of general importance and (b) that the whole circumstances justify reviewing the decision.

15. The Second Panel is of the opinion that the applicant complains strongly of discrimination and other irregularities in the domestic courts that limited his rights to a fair and impartial tribunal, and that the First Panel failed to adequately address facts that could establish a miscarriage of justice and Article 6 violations in this case. The case was heard by a panel of three judges in the Municipal Court. It appears, however, that the Municipal Court's valuation of the dispute may have intentionally excluded the level of Supreme Court review that should have occurred in this case. Thus, contrary to the decision of the First Panel, there is some evidence that the courts failed to act fairly as required by Article 6 of the Convention. As a result, the facts regarding the alleged substantive violations may not have been properly assessed by the domestic courts.

16. The Second Panel is of the opinion that the omission of the First Panel to discuss the apparent irregularities in the domestic court procedures gives rise to a right to review of this decision. The fact that the First Panel failed to consider essential evidence in establishing the facts of the case in relation to the alleged Article 6 violation raises "a serious question affecting the ... application of

the Agreement” as set out in Rule 64 paragraph 2 of the Rules of Procedure. The Second Panel also considers that the whole circumstances justify reviewing the decision. Accordingly, by 5 votes to 2, the Second Panel is of the opinion that the decision declaring the case inadmissible should be reviewed.

VI. OPINION OF THE PLENARY CHAMBER

17. The plenary Chamber agrees with the Second Panel that, for the reasons stated, the decision declaring the case inadmissible should be reviewed.

VII. CONCLUSION

18. For these reasons, the Chamber, by 8 votes to 6,

ACCEPTS THE REQUEST FOR REVIEW.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber