



DECISION ON ADMISSIBILITY

Case no. CH/02/8917

Hamzalija ĐONLAGIĆ and 97 Others

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)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicants were shareholders of the Kredit Bank Tuzla, where they held 90% of the share capital. According to the applicants, Kredit Bank Tuzla was the first privately-owned bank in Bosnia and Herzegovina and the third one in pre-war Yugoslavia. It was incorporated in 1989 as a joint stock company and officially opened on 6 February 1990. Its year-end balance sheet for 1991 states the value of the bank as 148 million DEM. Due to the hostilities during the war the value of the company decreased to 25.8 million DEM in 1995.

2. On 22 July 1999 the Agency for Banking Business of the Federation appointed a provisional administrator to run the bank. The provisional administrator was also an official of a state-owned bank, the Tuzlanska Banka. The decision appointing the provisional administrator alleged several serious instances of unsound business practices. The applicants assert that the provisional administrator was appointed by the Agency at a time when the bank fulfilled all its obligations towards the state and towards its own employees. The applicants also note that the bank was in a state of day-to-day liquidity not characteristic of many other banks in Bosnia and Herzegovina at the time. The applicants did not initiate an administrative dispute against this decision.

3. During the provisional administration the financial situation of the bank worsened. The shareholders prepared a merger of their bank with three other banks of private legal forms. According to the applicants, this merger could potentially have solved the problems alleged in the decision of the Agency for Banking. However, the Banking Agency prevented any activities proposed by the shareholders. Instead, on 22 June 2000, the last day the provisional administrator managed the bank, the Banking Agency withdrew the operating license for the bank and initiated insolvency proceedings, contrary to earlier assurances given to the bank employees and press announcements that the bank would not be liquidated.

4. On 7 September 2001 the bankruptcy trustee sold the bank for three million KM, which the applicants claim to be greatly underrated, to the ABS Bank. Specifically, according to the contract between the Kredit Bank Tuzla and the ABS Bank, the Kredit Bank Tuzla sold itself to the ABS Bank.

II. APPLICANTS' COMPLAINTS

5. The applicants filed their application to the Chamber on 15 February 2002. The applicants complain that the appointment of the provisional administrator and her conduct during her tenure violated their property rights.

6. The applicant's first claim is that the appointment of the provisional administrator denied the shareholders their right to participate in the decision-making process of the bank. They observe that the Bank was fulfilling all its obligations both towards the employees and towards the state and that it maintained day-to-day liquidity exceeding that of other banks in Bosnia and Herzegovina. Consequently, the applicants imply that there was no basis for the appointment and that the legal requirements for the appointment of a provisional administrator were not met.

7. The applicants' second claim involves the provisional administrator's management of the bank between 22 July 1999 and 22 June 2000. The applicants allege that the administrator was negligent and incompetent, that she neglected the regular activities of the bank and conducted affairs ignorantly. They claim that the administrator, together with the Banking Agency, protected regional interests of the city of Tuzla at the expense of the Bank shareholders' interests. If the sale of Kredit Bank Tuzla is allowed to go through, the applicants will lose all their shares in the company.

III. PROCEEDINGS BEFORE THE CHAMBER

8. The applicants requested the Chamber to order provisional measures preventing the execution of the contract on sale of the bank. The applicants further claimed 9,272,000.00 KM as pecuniary damages and additionally 100,000.00 KM to compensate for the costs of litigation.

9. Without transmitting the application, the Chamber decided to request submissions from both parties on the subject of domestic remedies available to the applicants. In particular, the request included four questions: whether the applicants had available a remedy (a) against the appointment of the provisional administrator on 22 July 1999; (b) against the administrator's decisions during her tenure; (c) against the bankruptcy proceedings; and (d) to prevent the sale of the bank to the ABS Bank.

10. In their response to the Chamber's request, the applicants claimed that no remedies were available to them. The respondent Party, on the other hand, indicated that Article 222(5) of the Law on Administrative Procedure covered the appointment of the provisional administrator and provided that an administrative dispute could have been initiated to challenge the appointment. The respondent Party further showed that the Tuzla Cantonal Court decision of 29 June 2000 opening the bankruptcy proceedings had a provision allowing appeal. That decision provided, in relevant part:

"... [an] appeal may be filed against this procedural decision to the Supreme Court of the Federation of Bosnia and Herzegovina in Sarajevo within 15 days from the date of announcement of this procedural decision..."

IV. OPINION OF THE CHAMBER

11. 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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application has been filed with the Commission within six months from such date on which the final decision was taken."

A. Appointment of the provisional administrator

12. The Chamber first considers the applicants' claim that the appointment of the provisional administrator was illegal. The Chamber notes that the application was lodged on 15 February 2002. It notes also that the provisional administrator was appointed by a procedural decision of the Agency for Banking Business of the Federation of Bosnia and Herzegovina on 22 July 1999. That decision was final and entered into force on the day of its issuance. Even if, as the respondent Party observes, the applicants could have initiated an administrative dispute, no such dispute was, in fact, initiated. This date is more than six months before the date on which the application was filed with the Chamber. Accordingly, the application does not comply with the requirements of Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

B. Mismanagement of the bank by the provisional administrator and opening of the bankruptcy proceedings

13. The Chamber next considers the admissibility of the applicants' claims that the provisional administrator mismanaged the bank during her tenure and that the bankruptcy proceedings were opened illegally. The Chamber notes that the provisional administrator's tenure ended on 22 June 2000. The Chamber also finds that the final decision for the purposes of Article VIII(2)(a) of the Agreement was the decision opening the bankruptcy proceedings issued by the Cantonal Court in Tuzla on 29 June 2000. These dates are more than six months before the date on which the application was filed with the Chamber. Accordingly, the application does not comply with the requirements of Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare these parts of the application inadmissible.

C. Criminal fraud during bankruptcy proceedings

14. The Chamber last considers the applicants' claims that criminal acts of fraud were committed during the bankruptcy proceedings. The Chamber has examined the application and finds that the applicants failed to initiate criminal proceedings before domestic courts. The applicants have not shown that this remedy was ineffective and it does not appear so to the Chamber. The Chamber finds

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that the applicants have therefore not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. It follows that this part of the application must be rejected.

V. CONCLUSION

15. For the foregoing reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel