

INTERNATIONAL COURT OF JUSTICE

COMPROMIS

**BETWEEN THE REPUBLIC OF ARPENIA AND STATE OF BELLOMACH TO
SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE THE
DIFFERENCES ARISING BETWEEN THE STATES CONCERNING THE
INTERPRETATION OF THE RURITANIA FREE TRADE AGREEMENT**

Jointly notified to the Court on August 1, 2011

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

**ENTRE LA RÉPUBLIQUE DE ARPENIA ET LA
DEBELLOMACH SOUMETTRE À LA COUR INTERNATIONALE DE
JUSTICE LE DIFFERENCES TEMPORAIRES ENTRE LES ETATS
CONCERNANT L'INTERPRETATION DE L'ACCORD DE LIBRE-ÉCHANGE
RURITANIE**

Conjointement notifié au Tribunal le 1 août, 2011



JOINT NOTIFICATION

ADDRESSED TO THE REGISTRAR OF THE COURT:

The Hague, 1 August, 2011

On behalf of the Republic Of Arpenia (“the Applicant”) and the State Of Bellomach (“the Respondent”), in accordance with Article 40(1) of the Statute of the International Court of Justice, we have the honour to transmit to you an original of the Compromis for submission to the International Court of Justice of the Differences between the Applicant and the Respondent concerning the interpretation of The Ruritania Free Trade Agreement, signed in New Delhi, India on August 1 , 2011.

Ambassador of the Republic of Arpenia

Ambassador of the State of Bellomach

to the Kingdom of The Netherlands

to the Kingdom of The Netherlands



COMPROMIS

SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE

BY THE REPUBLIC OF ARPENIA AND THE STATE OF BELLOMACH

ON THE DIFFERENCES BETWEEN THEM

**CONCERNING DIFFERENCES ARISING OUT OF THE
INTERPRETATION OF THE RURITANIA FREE TRADE AGREEMENT**

The Republic of Arpenia and the State of Bellomach,

Conscious that the Republic of Arpenia and the State of Bellomach are Members of the United Nations and the United Nations Charter which calls upon all Members to settle dispute international disputes by peaceful means.

Acknowledging that the Republic of Arpenia and the State of Bellomach are parties to the Ruritania Free Trade Agreement

Bearing in mind the importance of free and fair trade to the economic development of the Republic of Arpenia and the State of Bellomach

Noting that the Republic of Arpenia and the State of Bellomach have been unable to settle their differences through a process of negotiation and mediation

Desiring that the International Court of Justice, hereinafter referred to as the Court, consider these differences



Have agreed as follows

Article I

The Parties submit to the International Court of Justice the questions contained in the Compromis (together with Clarifications to follow) to the International Court of Justice pursuant to Article 40(1) of the Statute of the International Court of Justice.

Article II

- (a) The Parties request the Court to decide this matter on the basis of the provisions of the Ruritania Free Trade Agreement, rules and principles of general international law and all applicable treaties.
- (b) The Court is also requested to determine the legal consequences, including the rights and obligations of the Parties, arising from its Judgment on the questions presented with respect to the present dispute.

Article III

- (a) Questions of procedure and rules shall be regulated in accordance with the provisions of the Official Rules of the 4th GNLU International Moot Court Competition, 2012.
- (b) The proceedings shall comprise written submissions and oral pleadings.

Article IV

- (a) The Parties shall accept any Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
- (b) Immediately after the transmission of any Judgment, the Parties shall enter into negotiations on the modalities for its execution.



Article V

This special agreement shall enter into force upon signature.

Done at New Delhi, India, on the fifteenth day of July 2011, in two copies in the English language.

For the Republic of Arpenia

/s/

Eduardo Nero

Minister for Foreign Affairs

For the State of Bellomach

/s/

Simon Sanko

Minister for Foreign Affairs



COMPROMIS

THE REPUBLIC OF ARPENIA V. THE STATE OF BELLOMACH

The Case Concerning Ruritania Free Trade Agreement

1. The Republic of Arpenia is a middle income country situated in the continent of Ruritania that is enjoying a period of peace and prosperity following a decade of civil war. Formerly a colony of the State of Bellomach, Arpenia's economy is still predominantly based on manufacturing of primary products with Bellomach being one of the main exports markets. . In the last decade, however, it has begun to promote R&D in various high technology fields and has also attracted attention as the home to several internationally-known super-athletes. Of these, the football players are the most famous. With the rising fame of these players, the youth of Arpenia have begun to invest great sums of money in training to make the cuts for one of Arpenia's three major league football teams. The investment pays off for those who are good enough: the salaries of major league players are extraordinarily high – up to one hundred times the salary of the average Arpenian citizen – as well as being tax-free. Over the past five years, the competition has become fiercer as foreign players come to Arpenia hoping for a spot on the teams as well.
2. One of the biggest companies in Arpenia is Sight and Sound (S&S) which manufactures a device named as “Virtual Eye”. The device helps blind people to read non Braille books. The company has been granted many patents in this area and is considered a world leader in this field. The company exports these devices all over the world including Bellomach which is one of the biggest markets for S&S.
3. With a slow-down in the economy due to a drop in Bellomach's demand for primary materials, the recently elected government of Arpenia has embarked on a program to foster the disadvantaged youth of the country. The program, called Youth Employment of Arpenia Initiative (YEA Initiative), has three main components. First, to address the need for more employment opportunities for young people, the YEA Initiative lowers the mandatory retirement age of all workers to 60 years. There are no exceptions to this provision, and it covers both the public and private sectors. Second, to encourage national loyalties, the Federal Football Board (FFB) has passed a rule that to play in national league



competitions, at least six of the players on the field at any point in the game must be players that fulfill the qualifications for the national team. Under the FFB's Rule 48*bis*, the six players must either be citizens or have resided in Arpenia for at least ten of the past fifteen years to qualify as "Arpenian" for national league games.

4. Finally, the federal judiciary has undertaken a study on the role of language disadvantages in the court system and passed it on to the state courts with a recommendation that measures be taken to ensure access to courts. In response, the High Court of Larront, the largest state in Arpenia, in an attempt to eliminate the disadvantages the tribal youth face in rising out of their traditional low-paying jobs, passes a binding rule that all documents submitted to the court and all pleadings before the court must be made in either the state language or one of the federal languages (Arpenian and Bellomachese) and one of the two main tribal languages. Several of the large law firms in the state raised a protest, but the court remained firm. In a public statement, the Chief Justice spoke for the Bench: "We must remove the disadvantage of language for the benefit of our native peoples. Without language, they will continue to suffer their position in silence."
5. Bellomach is a parliamentary monarchy also situated in the continent of Ruritania. Once a colonial power, Bellomach has lost much of its political influence since it relinquished its overseas territories thirty years ago even though its language and many of its civil laws remain in place in those former colonies.
6. Bellomach, now a middle-income country is proud of its combination of economic liberalism and socially progressive programming. Following its ratification of the UN Convention on Disabilities, the parliament passed legislation to make all public buildings wheelchair accessible and sight- and hearing-impaired friendly. To do so, they made a public offer for bids (*Braille and Audio Contract*) to re-fit the public buildings with ramps and elevators to permit access to the physically handicapped. They also decided to install "Virtual Eye" devices in all the public libraries which would help blind people read non Braille books. The government's tender documents state the value of this contract to be B\$ 2 million.¹ For refitting the buildings, it was specified that constructions are to be

¹ The B\$ is pegged to the US dollar at 1:1.



undertaken according to the “highest safety standards” and subject to the approval of both the federal and responsible local commission for building safety, the only design requirement explicitly set out in the tender is that each installation should “match the local aesthetics in terms of building style and neighborhood tastes”.

7. The tender for installation of “Virtual Eye” device was not subject to an open tender. As per the terms of the tender, companies who are based in countries which are party to the Government Procurement Agreement (GPA) of WTO were only eligible. It is to be noted that Bellomach is part to the GPA while Arpenia is not.
8. Similarly the “*Braille and Audio contract*” was not subject to an open tender. Rather, the government gave these to a Helping Limbs (“HL”), a local non-governmental, non-profit organization that helps train disabled workers. The HL management and training staff are generally graduates of the world-famous Institute on Disability Studies, located in the Bellomach capital and owned by a private financier. The Braille and audio contract provides for a payment of 15% above the costs of materials and labor. The estimated total to be paid is B\$ 32,000. This charge is to be put into a separate bank account maintained by HL to help fund the foundation’s other beneficial programs. (Such programs include physical therapy, employment counseling for both the workers and employers, employer-oriented workshops, and assisted vacation opportunities for the disabled workers.) Moreover, the government of Bellomach issued a mandatory waiver of copyright for the information provided in the buildings in Braille and on audio, although not for the information in regular text form. Although most of the texts will be composed by the staff of the Bellomach Department of the Interior, the prominent Bellomachian poet Ra Ephrama, a permanent resident of Arpenia, will write seven out of ten of the introductory descriptions of the landmarks.
9. The Arpenian company, Sight and Sound (S&S) has installed disabilities assistance-installations for private businesses in Bellomach as well as in Arpenia, but were not requested for a bid in this case. An Arpenian newspaper reported that S&S’s president responded to a question of her opinion on the Bellomach project with the words, “Well, we could have done a better job, but not for the price offered”.



10. In order to promote between the two countries, Republic of Arpenia and State of Bellomach concluded the *Ruritania Free Trade Agreement* which adopts all WTO rules and commitments as FTA rules and commitments, but provides that in case of dispute, parties are to turn to the ICJ for a resolution of their differences. The FTA has a broad scope, covering trade in goods, trade in services, intellectual property rights, market access rights for investors in agriculture, and also allows for automatic approval of tourist visas for up to two months.
11. Arpenia and Bellomach are Parties to the WTO as well as United Nations. Arpenia has ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Bellomach has ratified the International Covenant on Civil and Political Rights, and has signed but not ratified the International Covenant on Economic, Social and Cultural Rights and the United Nations Convention on the Rights of Persons with Disabilities.
12. Generally enjoying friendly relations, Arpenia and Bellomach's leaders have been receiving numerous complaints from their publics about the other's regulations. Football fans from both countries protest the six-nationals rule that Arpenia introduced, although Bellomach's National Football Commission has called the rule "worth considering" if Arpenia is going to persist in enforcing it.
13. Bellomach's legal community, however, have protested vigorously to Arpenia's rules on court language. The National Attorneys Association of Bellomach called it "unwarranted nationalism", and demanded that the issue be pursued legally.
14. For its part, Arpenia accuses Bellomach of unfair procurement behavior as well as of illegally denying intellectual property protection.
15. Both countries exchanged formal diplomatic protests, but to no avail. After six months of subsequent consultations, the negotiators of Arpenia and Bellomach could not come to an agreement, so they decided to invoke the provisions of their *Ruritania FTA* and proceed to the ICJ.



ANNEXURE I

RURITANIA FREE TRADE AGREEMENT (RFTA)

**AGREEMENT ON SETTLEMENT OF DISPUTES ARISING OUT OF THE
RFTA**

(EXCERPTS)

ARTICLE 27: RULES OF INTERPRETATION

1. The RFTA shall be interpreted in accordance with the rules of treaty interpretation under public international law.
2. The decision of the WTO Panel & Appellate Body, other international tribunals and “the general principles of law recognized by civilized nations” shall serve as a subsidiary source of law in the interpretation of the provisions of the RFTA.

ARTICLE 31: DISPUTE RESOLUTION

1. Any differences which may arise between the Member States of the RFTA concerning the interpretation or application of the RFTA or any agreement annexed thereof, shall, as far as possible, be settled amicably between the Member States. Wherever necessary Member States may refer their dispute to the International Court of Justice or any international tribunal set up by mutual agreement between the Member States.

**ANNEXURE - 2****ARPENIA – GATS SCHEDULE OF SPECIFIC COMMITMENTS**

MODES OF SUPPLY:			
1) Cross-border supply			
2) Consumption abroad			
3) Commercial presence			
4) Presence of natural persons			
SECTOR OR SUBSECTOR	LIMITATIONS ON MARKET ACCESS	LIMITATIONS ON NATIONAL TREATMENT	ADDITIONAL COMMITMENTS
I. HORIZONTAL COMMITMENTS			
All Sectors Included In This Schedule	1)None 2)None 3)Unbound 4)Unbound	1)None 2)None 3)Unbound 4)Unbound	
II. SECTOR-SPECIFIC COMMITMENTS			
Recreational Cultural And Sporting Services <u>Entertainment,</u> <u>Recreational and Other</u>	1) None 2) None 3) Minimum of	1) Unbound 2) None 3) President of the	



MODES OF SUPPLY:			
1) Cross-border supply			
2) Consumption abroad			
3) Commercial presence			
4) Presence of natural persons			
SECTOR OR SUBSECTOR	LIMITATIONS ON MARKET ACCESS	LIMITATIONS ON NATIONAL TREATMENT	ADDITIONAL COMMITMENTS
1. BUSINESS SERVICES	60% of capital stock must be held in local bank	Board of Directors must reside within 20 km of headquarters	
	4) Unbound	4) Unbound	
<u>Legal Services, including consultancy and litigation before courts</u>	1) None	1) None	
	2) None	2) None	
	3) Under the same rules as local suppliers	3) None	
	4) Based on principle of reciprocity	4) Unbound	



ANNEXURE - 3

BELLOMACH – GATS SCHEDULE OF SPECIFIC COMMITMENTS

MODES OF SUPPLY:			
1) Cross-border supply			
2) Consumption abroad			
3) Commercial presence			
4) Presence of natural persons			
SECTOR OR SUB-SECTOR	LIMITATIONS ON MARKET ACCESS	LIMITATIONS ON NATIONAL TREATMENT	ADDITIONAL COMMITMENTS
I. HORIZONTAL COMMITMENTS			
All Sectors Included In This Schedule	1) None 2) None 3) Unbound 4) Unbound	1) None 2) None 3) Unbound 4) Unbound	
1. RECREATIONAL CULTURAL AND SPORTING SERVICES			
<u>Entertainment,</u>	1) Unbound	1) None	
<u>Recreational and Other</u>	2) None 3) None	2) None 3) None	



MODES OF SUPPLY:			
1) Cross-border supply			
2) Consumption abroad			
3) Commercial presence			
4) Presence of natural persons			
SECTOR OR SUB-SECTOR	LIMITATIONS ON MARKET ACCESS	LIMITATIONS ON NATIONAL TREATMENT	ADDITIONAL COMMITMENTS
2. BUSINESS SERVICES <u>Foreign Legal Consultants</u>	4) Unbound 1) None 2) None 3) Must be in the form of legal proprietorships or legal partnerships 4) Unbound	4) Unbound 1) None 2) None 3) None 4) Natural persons may not engage in secondary employment while in Bellomach	



ANNEXURE - 4

ARPENIA – GPA SCHEDULE OF SPECIFIC COMMITMENTS

APPLICATION	<u>CONSTRUCTION:</u>	<u>GOODS:</u>	<u>SERVICES:</u>	<u>SUBNATIONAL ENTITIES:</u>
Applying to all federal executive, administrative, and parliamentary offices, with the exception of the Department of Defense.	minimum \$500000	minimum \$1,50,000	minimum \$150,000	minimum \$300,000



ANNEXURE - 5

BELLOMACH – GPA SCHEDULE OF SPECIFIC COMMITMENTS

APPLICATION	<u>CONSTRUCTION:</u>	<u>GOODS</u>	<u>SERVICES:</u>	<u>SUBNATIONAL ENTITIES:</u>
Applying to all federal executive, administrative, and parliamentary offices, with the exception of the Department of Defense.	minimum \$50,000	minimum \$30,000	minimum \$30,000	minimum \$100,000