



## **DECISION ON ADMISSIBILITY**

**Case no. CH/02/12379**

**Kristina and Petar BAHUN**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 December 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 Articles VIII(2)(c) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

## **I. INTRODUCTION**

1. The application was introduced on 28 October 2002 and registered on the same day. The applicants complain about their eviction from an apartment located at Albina Herljevića Street no. 19 in Tuzla, which was ordered by a decision of the Municipal Court in Tuzla.
2. The applicants requested the Chamber to order the respondent Party, as a provisional measure, to postpone their eviction from the apartment in question. On 29 October 2002 the Vice-President of the First Panel rejected the provisional measure requested.

## **II. STATEMENT OF FACTS**

3. On 3 October 2001 the Municipal Court in Tuzla issued a decision rejecting the applicants' claim to be established as the heirs of Kristina Bahun's brother, V.M., who owned a 1/2 portion of the apartment in question. The Court also rejected the applicants' alternative claim to be established as the owners of the apartment on the basis of investing money to purchase it. In the same decision, the Court established that V.D., the son of V.M. and the applicants' opponent in the proceedings, is V.M.'s heir and the sole owner of the apartment in question. The Court ordered the applicants to hand over possession of the apartment to V.D.
4. The applicants timely filed an appeal against the decision of 3 October 2001. On 16 July 2002 the Second Instance Court in Tuzla rejected their appeal.
5. The applicants filed a request for an extraordinary remedy against the valid decision, and this procedure is still pending before the Supreme Court of the Federation of Bosnia and Herzegovina.
6. On 1 August 2002 the Municipality Court in Tuzla issued a procedural decision allowing enforcement of its valid decision. After rejecting the applicants' appeal for postponement of the enforcement, the eviction of the applicants was scheduled for 31 October 2002.

## **III. COMPLAINTS**

7. The applicants complain that the competent courts wrongly established the facts and misapplied the law in their case. They consider that their right to a fair hearing guaranteed by Article 6 of the European Convention on Human Rights (the "Convention") and their right to peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention have been violated.

## **IV. OPINION OF THE CHAMBER**

8. 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."
9. The Chamber notes that the applicants complain that the competent courts wrongly assessed the facts pertaining to their 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 courts 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.

**V. CONCLUSION**

10. For these reasons, the Chamber, unanimously

**DECLARES THE APPLICATION INADMISSIBLE.**

signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the First Panel