



DECISION ON ADMISSIBILITY

Case no. CH/ 02/12312

**Marko DUSPARA, Fatima ĐULOVIĆ, Ćazim RAMIĆ, Seid HASANOVIĆ, PIF “Euro fond I” dd,
Bahto MEKIĆ, “Mi grup” Association for Administration with Funds Sarajevo,
Abdulah AVDAGIĆ, Mersudin NUKANOVIĆ and attorney of dd “Salines” Tuzla**

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 4
February 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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 application was introduced on 4 October 2002. The applicants requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary action to prohibit temporarily the sale and misappropriation of the property of the bankruptcy debtor and new owners of the bankruptcy debtor until the civil proceedings following the appeals of dd Salines Tuzla and of a labor union have been concluded. On 2 December 2002 the Chamber decided not to order the provisional measure requested.

2. The applicants complain that their rights as guaranteed by Articles 6 and 13 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention have been violated by the opening of the bankruptcy proceedings against dd "Salines" Tuzla.

II. STATEMENT OF FACTS

3. On 1 September 2000, the Cantonal Privatization Agency of the Tuzla Canton (the "Agency") issued a procedural decision approving the program of privatization and initial balance sheet of the company dd "Salines" Tuzla.

4. On 5 December 2000, the Cantonal Court in Tuzla issued a procedural decision to open a preliminary procedure in order to establish whether the conditions for opening bankruptcy proceedings against dd Salines Tuzla as the bankruptcy debtor existed. A court expert in economics and finances assessed the conditions for opening bankruptcy proceedings and stated that the conditions were met.

5. On 14 June 2001, the Agency issued a procedural decision by which it approved the company's registration in the court register for privatization proceedings.

6. On 5 July 2001, the Cantonal Court in Tuzla issued a procedural decision opening bankruptcy proceedings against dd Salines Tuzla as the bankruptcy debtor upon a request by doo Tost Tuzla lodged on 24 October 2000. This procedural decision was also issued pursuant to the Court's previous judgment of 9 May 2000, by which it decided upon a monetary claim amounting to 32,500 DM which could not be forcibly collected from the bankruptcy debtor in the executive procedure.

7. The Association of Trade Unions of Employees in Agriculture, Food Processing and Tobacco Industry, Water Management, Catering Services, Tourism and Trade, and dd Salines Tuzla filed appeals against the procedural decision of 5 July 2001. The Cantonal Court in Tuzla issued a procedural decision on 21 May 2002 by which it rejected the appeals.

8. The company dd Salines Tuzla and the Independent Trade Union filed appeals to the Supreme Court of the Federation of Bosnia and Herzegovina against the procedural decision of 21 May 2002. These appeal proceedings are still pending.

9. On 6 September 2002, the shareholders of the bankruptcy debtor filed a request to the Cantonal Court – Bankruptcy Panel for termination of the bankruptcy proceedings of dd Salines Tuzla. The applicants state that the Bankruptcy Panel has not replied to this request.

III. OPINION OF THE CHAMBER

10. 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"

11. The Chamber notes that the applicant's complaint is premature as the bankruptcy proceedings are still pending before the Cantonal Court in Tuzla. Accordingly, the domestic remedies

have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible.

IV. CONCLUSION

12. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel