# DECISION ON ADMISSIBILITY

## Case no. CH/02/12478

## Nada MITROVIĆ and Jasmina KUŠLJIĆ

## against

## THE REPUBLIKA SRPSKA

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.      Nada Mitrović is an employee of the Kušljić Company in Srpski Brod. Jasmina Kušljić is the wife of the owner of this company. Both applicants claim to act on behalf of all the company's employees.

2.      On 28 May 2002, inspectors of the Tax Administration of the Republika Srpska conducted an inspection in the Kušljić Company related to the time period of 16 September 2001 to 30 April 2002.

3.      On 3 June 2002, the Ministry of Finance and Tax Administration in Banja Luka, Sector of Investigations, Information and Inspection of Major Taxpayers, issued a procedural decision based on the above-mentioned inspection in which it ordered the Kušljić Company to pay taxes in the amount of 3,382,852.23 KM plus interest in the amount of 361,836.50 KM.

4.      The Kušljić Company appealed against this procedural decision, and on 16 September 2002, the Ministry of Finance and Tax Administration, Board for Deciding on Tax Complaints, refused the appeal.

5.      On 26 July 2002, the Kušljić Company initiated an administrative dispute before the Supreme Court of the Republika Srpska.  These proceedings are still pending.

6.      On 14 November 2002, the Department for Inspection and Payment, Regional Centre Doboj, of the Tax Administration of the Ministry of Finance of the Republika Srpska issued an order to seize the property of the Kušljić Company because the company had failed to comply with the procedural decision of 3 June 2002.

## II.      PROCEEDINGS AND COMPLAINTS BEFORE THE CHAMBER

7.      The application was introduced to the Chamber on 2 December 2002.

8.      The applicants requested the Chamber to order the respondent Party, as a provisional measure, to suspend enforcement of the decisions of 3 June 2002 and 14 November 2002 by the Tax Administration and the Ministry of Interior of the Republika Srpska until the Supreme Court of the Republika Srpska issues its decision in the administrative dispute proceedings.  On 6 December 2002, the Chamber decided not to order the provisional measure requested.

9.      The applicants allege that the Republika Srpska violated their right to a fair trial and the right to work of their employees. The applicants further allege that Article 5 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention have been violated by the Republika Srpska.

## 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 applicants' complaints are premature as the administrative dispute proceedings are still pending before the Supreme Court of the Republika Srpska.  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)                                        (signed)
Ulrich GARMS                            Mr. Mato TADIĆ
Registrar of the Chamber          President of the Second Panel