



## **DECISION ON ADMISSIBILITY**

**Case no. CH/02/9523**

**Senada FAZLAGIĆ KRIVCA and Mehmed KRIVCA**

**against**

**THE FEDERATION BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 February 2003 with the following members present:

Ms. Michèle PICARD, President  
Mr. Miodrag PAJIĆ, Vice President  
Mr. Dietrich RAUSCHNING  
Mr. Hasan BALIĆ  
Mr. Rona AYBAY  
Mr. Želimir JUKA  
Mr. Andrew GROTRIAN

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. FACTS AND COMPLAINTS**

1. The applicants are the temporary users of business premises in Sarajevo. They use these business premises on the basis of a contract on use concluded on 23 November 1996. The contract on use was signed by the Sarajevo Canton, Ministry of Economy, Main Office for Mediation in Investments and Lease of Real Estates and P.P. "Picikato", represented by the applicant Mehmed Krivca, the director of the company.
2. On 20 March 2001, the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"), issued a decision establishing that L.J. B. was, as of 1 April 1992, a *bona fide* possessor of the business premises in question. On 21 January 2002, the applicants filed a request for reconsideration of the CRPC decision.
3. On 15 January 2002, the Centre Municipality issued a conclusion on enforcement of the CRPC decision. The applicants filed an appeal against the conclusion on 26 January 2002. On 5 March 2002, the Ministry of Internal Affairs sent a letter to the applicants stating that they would be evicted from the business premises on 21 March 2002.
4. The applicants complain that their company operates in the business premise in question and that they employ two persons who support their families from their business. The applicants allege that L.J.B. never was the possessor of the business premises and that he succeeded to obtain the CRPC decision in his favour based upon false documents and a fictitious contract signed by L.J.B. and a company from Montenegro, which is the real owner of the premises. According to the applicants, L.J.B. has no property rights in the business premises in question.

## **II. PROCEEDINGS BEFORE THE CHAMBER**

5. The application was introduced to the Chamber on 14 March 2002 and registered on the same day. The applicants are represented by Muhamed Potogija, a lawyer. The applicants requested the Chamber to order the respondent Party, as a provisional measure, to stop their eviction from their business premises until the proceedings upon their request for reconsideration of the CRPC decision have been completed.
6. On 20 March 2002, the President of the First issued an order for provisional measures ordering the respondent Party to undertake all necessary steps to prevent the applicant's eviction from the business premises. The order was to remain in force until 15 April 2002.
7. On 21 March 2002, the Chamber transmitted the case to the respondent Party for observations in relation to Articles 6 and 13 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention.
8. On 25 March 2002, the Chamber received a letter of the respondent Party in which it stated that the eviction procedure had been suspended until the Chamber adopts a final decision in the case.
9. On 11 April 2002, the Chamber decided to extend the order for provisional measures until 13 May 2002.
10. On 22 April 2002, the Chamber received written observations from the respondent Party.
11. On 10 May 2002, the Chamber extended the order for provisional measures until 13 June 2002. On 10 June 2002, the President of the Chamber extended the order for provisional measures once again until 10 July 2002. On the latter date, the order for provisional measures expired, as the Chamber decided not to prolong it any more.
12. On 20 January 2003 the applicants requested the Chamber to extend the order for provisional measures once again.

### III. OPINION OF THE CHAMBER

13. 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.”

14. The Chamber notes that the applicants have failed to raise the question of the authenticity of the contract signed by L.J.B. and the company in Montenegro, which was presented to the CRPC, before the domestic organs, as envisaged, for instance, in Article 172 of the Law on Civil Procedure<sup>1</sup>. In accordance with Article 172 of the Law on Civil Procedure, the applicants may file a claim to establish the authenticity of a document (tužba za utvrđenje istinitosti isprave), and if the contract is determined to be fictitious, it may be annulled. Such a decision could be presented as evidence to support the applicants' request for reconsideration of the CRPC decision of 20 March 2001. The applicants have not shown that this remedy is ineffective and it does not appear so to the Chamber. Accordingly, the Chamber finds that the applicants have not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Chamber therefore decides to declare the application inadmissible.

### IV. CONCLUSION

15. For these reasons, the Chamber, unanimously,

**REJECTS THE REQUEST FOR PROVISIONAL MEASURES and  
DECLARES THE APPLICATION INADMISSIBLE.**

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the First Panel

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<sup>1</sup> Article 172 of the Law on Civil Procedure (Official Gazette of the Federation of Bosnia and Herzegovina no. 42/98) reads:

“A plaintiff may initiate a lawsuit and request that the court establish the existence or non-existence of some right or legal relationship, and authenticity or non-authenticity of some document, respectively.

“Such a lawsuit may be initiated when a special regulation provides so, when the plaintiff has a legal interest that the court establish the existence or non-existence of some right or legal relationship and authenticity or non-authenticity of some document before the maturity date of the claim for enforcement from the same relationship or when the plaintiff has some other legal interest to initiate such a lawsuit.

“If the decision in the dispute depends on whether some legal interest, which during the lawsuit became disputable, exists or not, the plaintiff may file, in addition to the existing claim, a complaint requesting that the court establish the existence or non-existence of such relationship, if the court before which the lawsuit is pending is competent for such a complaint.

“Filing the complaint under the provision in paragraph 3 of this Article shall not be deemed modification of the lawsuit.”