DECISION ON ADMISSIBILITY

Case no. CH/03/13022

Nermin SPAHIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 June 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)(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 20 February 2003. The applicant is represented by Zlatan Ibrišimović, a lawyer from Tuzla. The applicant requested that the Chamber order the respondent Party, as a provisional measure, to take all necessary steps to suspend the execution of a conclusion on forcible execution issued by the Municipal Court in Tuzla on 4 February 2003. On 21 February 2003, the President of the Second Panel issued an order for provisional measures suspending the enforcement until 14 April 2003.

2. On 24 February 2003, the case was transmitted to the respondent Party under Article 6 paragraph 1 of the European Convention on Human Rights ("the Convention"). The respondent Party submitted its observations on 25 March 2003 (see paragraphs 15-18 below).

II. FACTS

3. On 1 December 1998, the applicant concluded a contract on a short-term loan with M.S. Then M.S. initiated civil proceedings against the applicant claiming that the applicant did not meet his obligations under the contract.

4. On 19 March 2002, the court scheduled a hearing in this civil lawsuit, which was postponed because the applicant was not timely served the summons.

5. The new hearing was held on 1 April 2002 in the presence of the plaintiff M.S. However, the applicant failed to attend the hearing. As a consequence, the court issued a judgment *in absentia* in favor of M.S. It appears that the applicant's summons for the hearing was delivered to the applicant's mother.

6. The delivery receipt of the Municipal Court in Tuzla for its judgment of 1 April 2002, submitted to the Chamber on 21 February 2003 by the respondent Party as evidence that the judgement was delivered to the applicant in accordance with the Law on Civil Procedure, states as follows:

> "Service attempted on 10 July 2002. Nobody was at home. A notification was left and the service was attempted again on 15 July 2002. Another notification was left, another service attempted, but nobody was at home. On 17 July 2002 at 10.00 a.m., the judgment was posted on the door."

7. On 12 November 2002, M.S. initiated proceedings for enforcement of the judgment of 1 April 2002. On 14 November 2002, the Municipal Court in Tuzla issued a procedural decision on enforcement.

8. On 15 January 2003, the Municipal Court Tuzla issued a conclusion determining the execution of the forcible enforcement by listing, evaluating and selling the applicant's movable property.

9. Execution of the conclusion on enforcement was scheduled for 29 January 2003, but it was not carried out. It was postponed until 24 February 2003, when it also could not take place because the Chamber's order for provisional measure of 21 February 2003 was then in force. The Chamber has no information on whether the execution of the conclusion on enforcement has taken place since then.

III. RELEVANT LEGAL PROVISIONS

10. The Code of Civil Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina no. 42/98 and 3/99) contains provisions regulating the delivery of documents in a civil lawsuit.

11. **Article 131** reads as follows:

> "If the person to whom the writ is to be served happens not to be in his apartment, then the service can be made to one of the adult members of the household, who is liable to accept the writ. If nobody happens to be in the apartment, then the writ shall be served to the housekeeper, or to the neighbour, provided they agree to accept it.
>
> "The service of the writ to another person is not permitted if that person participates in the proceedings as the opponent of the person to whom the writ is to be served."

12. **Article 132** reads as follows:

> "A statement of claims, payment order, extraordinary legal remedy, judgment and decision against which a separate appeal is not allowed, shall be served on the party personally or on its legal representative or agent personally. Other writs shall be personally served when this Law expressly provides so, or when the court is of the opinion that the importance of original attachments or some other reason indicates the need for more caution.
>
> "If the person to whom the writ has to be personally served does not happen to be at the place where the service is to be made, then the deliverer shall be informed when and where the person may be found and the deliverer shall leave with one of the persons mentioned under Article 131, paragraphs 1 and 2 of this Law, a written notification to the person to be in his apartment or at his place of work on the specified date and time. If the deliverer after this does not find the person to whom the writ is to be served, then he shall act in accordance with the provisions of Article 131 of this Law and by doing that, the service shall be considered made."

13. **Article 134** reads as follows:

> "When the person to whom the writ has been sent, or an adult member of his household, or authorised person, or employee in a government body or a legal person, without having any legally acceptable reason, refuses to accept the writ, the deliverer shall leave the writ in the apartment or the premises where the person works, or he shall leave the writ on the door of the apartment or the business premises. He shall note the date, hour, the reasons for refusing acceptance, and the place where the writ was left on the door as proof of service, whereby the writ shall be considered served."

IV. COMPLAINTS

14. The applicant complains that the judgment of 1 April 2002 was not delivered to him personally although it was nevertheless regarded as valid and enforcement proceedings were initiated. He claims that this violates his right to a fair trial as protected under Article 6 paragraph 1 of the Convention.

V. SUBMISSIONS OF THE RESPONDENT PARTY

15. In its submissions of 25 March 2003, the respondent Party recalls that the judgment was issued on 1 April 2002. It claims that on 12 April 2002, service of the judgment to the applicant's address was attempted but the applicant was not available. In the presence of the applicant's brother and father, the judgment was then posted on the door.

16. However, as the court considered such delivery improper, it attempted to deliver the judgment again. On 17 July 2002, the judgment was posted on the applicant's door. The respondent Party considers that this was a delivery in accordance with the law.

17. The respondent Party claims that there were also problems with delivering the procedural decision on enforcement. On 19 and 20 November 2002, service to the applicant of the procedural decision on enforcement was attempted. The procedural decision on enforcement was returned with a delivery receipt noting that the applicant was informed but refused to receive the procedural decision on enforcement. The respondent Party claims that again on 9, 16, and 20 December 2002, service was attempted through a court deliverer. On the latter date, the procedural decision on enforcement was posted on the applicant's door.

18. On 15 January 2003, the court issued a conclusion on enforcement of the procedural decision, scheduled for 29 January 2003. The respondent Party claims that on 17 and 18 January 2003, service to the applicant of the conclusion on enforcement and the procedural decision on enforcement was attempted. However, the decision was returned with a note from the deliverer that the applicant had been informed of the contents of the decision but delivery of the decision itself had failed. The respondent Party further claims that on 12 February 2003, the conclusion on enforcement was posted on the applicant's door. However, because personal delivery of the conclusion to the applicant at his address had failed, the enforcement was postponed until 24 February 2003.

VI. OPINION OF THE CHAMBER

19. 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."
for human rights."

20. The Chamber finds that the respondent Party made several serious attempts to deliver to the applicant the judgment of 1 April 2002, the procedural decision on enforcement of this judgment, and finally, also the conclusion on enforcement. However, it appears that every time such attempts were made, it was impossible to deliver the decisions to the applicant personally.

21. The Chamber finds that the respondent Party acted in accordance with the Code of Civil Procedure when, after all these unsuccessful attempts, it posted the decisions on the applicant's door. In addition, it appears that the applicant's brother and father were present at the first attempt to deliver the judgment, and moreover, that on 17 or 18 January 2003, the applicant was verbally informed about the contents of the conclusion on enforcement to execute the judgment of 1 April 2002, but he refused to receive the decision itself. It thus appears that the applicant deliberately attempted to avoid being served with the decisions in the civil lawsuit initiated by M.S. against him.

21. Therefore, the Chamber cannot find any indication that the applicant's right to a fair trial as protected by Article 6 paragraph 1 of the Convention was violated. The application thus does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. 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.

VII. CONCLUSION

22. 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