# DECISION ON THE MERITS

**DELIVERED ON 12 June 1998**

in

**CASE No. CH/97/40**

**Saša GALIĆ**

against

**the Federation of Bosnia and Herzegovina**

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 8 June 1998 with the following members present:

Michèle PICARD, President
Manfred NOWAK, Vice-President
Dietrich RAUSCHNING
Hasan BALIĆ
Rona AYBAY
Vlatko MARKOTIĆ
Želimir JUKA
Jakob MÖLLER
Mehmed DEKOVIĆ
Giovanni GRASSO
Miodrag PAJIĆ
Vitomir POPOVIĆ
Viktor MASENKO-MAVI
Andrew GROTRIAN

Peter KEMPEES, Registrar
Olga KAPIĆ, Deputy Registrar

**Having considered the merits** of the application by Saša GALIĆ against the Federation of Bosnia and Herzegovina (hereinafter the "Federation") registered under Case No. CH/97/40;

**Adopted the following Decision** on the merits of the application in accordance with Article XI of the Human Rights Agreement (the "Agreement") set out in the General Framework Agreement for Peace in Bosnia and Herzegovina and Rules 57 and 58 of its Rules of Procedure.

## I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina (hereinafter "BiH"). The case concerns the eviction of the applicant by personnel of the Army of the Federation from his home which he had purchased from the Yugoslav National Army ("JNA") in 1992. It raises issues under Articles 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the "Convention") and Article 1 of Protocol No. 1 to the Convention.

## II. PROCEEDINGS BEFORE THE CHAMBER

2. The applicant introduced his application to the Chamber on 28 April 1997, in accordance with Article VIII(1) of the Agreement. It was registered at the Chamber on 2 June 1997 under the above case number.

3. The applicant submitted a request for a provisional measure on 19 May 1997. This request was considered by the Chamber on 6 June 1997 and was refused.

4. On 9 October 1997, the applicant submitted a further request for a provisional measure to the Chamber. On 10 October 1997 the Chamber, in accordance with Article X(1) of the Agreement and with Rule 36 of its Rules of Procedure, ordered the Federation, as a provisional measure, to restore possession of the apartment to the applicant pending the Chamber's consideration of the case. This decision was communicated to the applicant and respondent Party on 13 October 1997. The Federation was requested to communicate the order to all relevant authorities in order that it could be carried out as soon as possible. In addition, the Chamber, in accordance with Rule 49 of its Rules of Procedure, invited the Federation to submit observations on the admissibility of the application in accordance with Article VIII(2) of the Agreement. The Federation was also requested to submit observations on the merits of the claim. The Chamber set a time-limit expiring on 10 November 1997 for the receipt of such observations.

5. No response was received from the respondent Party within the time-limit. Accordingly, the Registrar of the Chamber wrote to the High Representative to BiH on 11 November 1997 informing him of the failure by the respondent Party to comply with the order of the Chamber or to submit any observations as requested. A copy of a letter from the Federal Minister of Justice, Mr. Mato Tadić, to the Federal Ministry of Defence dated 14 November 1997 requesting information on the steps taken to comply with the decision of the Chamber was received by the Registrar of the Chamber on 17 November 1997.

6. A copy of the reply of the Army Attorney's Office in the Federal Ministry of Defence to the Federal Justice Minister, dated 8 December 1997, was received at the Registry. In this letter, the Army Attorney stated, *inter alia*, that she was unaware of the contract entered into by the applicant for the purchase of the apartment, as it had allegedly not been presented to her prior to the initiation by the applicant of proceedings before the Supreme Court of the Federation. The letter concluded by claiming that all actions taken had been in accordance with the law and that all claims made by the applicant were ill-founded.

7. The applicant submitted his observations on the above document on 15 February 1998. He contested the allegation of the Army Attorney's Office that he had not provided evidence as to the contract for purchase of the apartment.

8. On 19 February 1998, the Chamber received a letter from the Federal Attorney's Office, stating that the respondent Party was unable to comply with the provisional order (see paragraph 4 above). Enclosed with this letter was a letter from the Ministry of Defence of the Federation dated 7 February 1998, which stated that it was unable to comply with the order for provisional measures made by the Chamber on 10 October 1997, as the apartment in question had been lawfully allocated to another family.

9. On 21 February 1998, the Chamber declared the application admissible.

10. On 21 February 1998, the Chamber decided to hold a public hearing in the case.

11. The hearing, which concerned the merits of the present Application, was held at the Holiday Inn Hotel in Sarajevo on Monday 6 April 1998.

The applicant appeared in person with his representative Mr. Mirko Galić.

The respondent Party was represented by its agent Ms. Vesna Jankijević-Pjaca.

The Chamber heard addresses from the applicant, Mr. Mirko Galić and Ms. Jankijević-Pjaca and also replies from all three of them to its questions.

## III. ESTABLISHMENT OF THE FACTS

### A. The facts of the Case

12. The facts of the case as they appear from the oral and written submissions of the applicant and the respondent Party and the documents in the case-file are established as follows.

13. The applicant possesses the occupancy right over an apartment at Branilaca Sarajeva Street no 19-a in Sarajevo. He entered into a contract for the purchase of the apartment, in accordance with the terms of the Law on Securing Housing for the JNA (SL SFRJ 84/90) on 10 February 1992. On 14 February 1992, he paid the purchase price due under the contract.

14. The applicant was studying in Paris, France when the hostilities commenced. Members of the applicant's family remained in the apartment with his permission. The apartment was subsequently let to the Lika family.

15. The apartment was declared temporarily abandoned by a decision of the Army Housing Fund of the General Staff of the Army of Bosnia and Herzegovina on 22 April 1995 (reference 03/170-2286/92). This decision was made on the basis of the Law on Abandoned Apartments (SL RBiH 6/92 and 12/82; see paragraphs 27-29 below) and was not communicated to the applicant.

16. In accordance with the same law, the apartment was declared permanently abandoned on 24 May 1996 (different dates for this decision have been quoted by the respondent Party. The decision itself carries the date 24 May 1996 and the reference number 8/27-6-NT-1905/96). This decision was not communicated to the applicant. He appealed to the Army Housing Office in Sarajevo on 27 April 1996, seeking to regain possession of his apartment. This appeal was refused by a decision of the General Staff of the Army of BiH on 30 April 1997. The ground given for the refusal was that the appeal had been submitted after the time limit provided for in Article 10 of the Law on Abandoned Apartments. The applicant was never given a copy of this decision.

17. The applicant returned to Sarajevo in August 1996, having completed his studies in France.

18. On 7 May 1997, the applicant applied to the Court of First Instance I in Sarajevo, seeking to regain possession of his apartment. On 17 June 1997, the Court awarded possession of the apartment to the applicant. The Lika family were entitled to appeal the decision within 15 days of its being given.

19. On 1 October 1997, the Lika family contacted the applicant's father to inform him that they were ready to leave the apartment if the applicant was willing to allow them to take some items from the apartment and to provide them with some financial assistance towards the repair of their own apartment in Grbavica. The applicant and the Lika family reached an agreement on such terms.

20. On 28 June 1997, the applicant appealed to the Supreme Court of the Federation against the failure of the Ministry of Defence to rule on his appeal dated 27 April 1996. This appeal was rejected

on 13 November 1997 on the grounds that the General Staff of the Army had issued a decision on the applicant's appeal on 30 April 1997.

21. On 3 October 1997, the decision of the Court of First Instance I was accepted by Mr. Lika and was thus rendered enforceable. The Lika family moved out of the apartment on the same day, whereupon the applicant regained possession of the apartment.

22. The Court of First Instance's decision and the fact that the applicant had regained possession of the apartment were communicated to the Army Housing Department on 4 October 1997 by Mr. Mirko Galić, the applicant's father. Later that day, soldiers from the Army Housing Department came to inspect the documents relating to the transfer of possession of the apartment to the applicant. At approximately 1pm, the applicant was returning to his apartment having been to purchase some paint. He met a woman leaving the apartment next to his. He greeted the woman, who responded by saying "get out, you animal!" ("*marš životinjo*").

23. At approximately 2pm, some soldiers and Military Police ("MP") of the Army of the Federation came to the apartment and informed the applicant that he had to vacate the apartment immediately. They refused to show him any decision authorising the eviction. He asked the soldiers who had ordered the eviction. He was informed that the order had been given not by officers of the MP, but by the Chief of the General Staff of the Army, General Vranj, who occupies the apartment next to the applicant. He further states that their attitude was aggressive and that one of the soldiers waited outside the apartment building to ensure that members of the International Police Task Force (hereinafter "IPTF") did not enter the apartment. The member of the MP who told the soldier to wait outside the building to prevent the entry of members of the IPTF told that soldier to avoid violence if possible, but in any event to prevent the entry of members of the IPTF to the apartment.

24. The applicant's elderly father was assaulted by members of the MP. The applicant states that he was told to sign a document regarding the eviction and an inventory of the contents of the apartment. He only agreed to do so when he was allowed to mark on the document that he did not agree with the eviction. The applicant was allowed to take some personal belongings with him, but states that many of his and his fiancées possessions remained in the apartment. An IPTF patrol arrived soon afterwards.

25. The respondent Party denies that the applicant was evicted from the apartment on the date in question but has proffered no evidence to contradict the claims of the applicant. It states that the Lika family were evicted. The applicant gave a detailed and consistent account of the events surrounding the eviction, both in his written submissions to the Chamber and at the public hearing. The Chamber prefers the evidence of the applicant in this regard and accordingly considers that it was the applicant who was evicted from the apartment on 4 October 1997. There can be no doubt that the applicant was evicted from the apartment on 4 October 1997. No weight can be given to the respondent Party's denial in this regard.

26. The applicant was informed by neighbours on 7 October 1997 that another family had been allowed to move into the apartment. The applicant is currently living in another apartment in Sarajevo.

### B. Relevant Legislation

27. The Law on Securing Housing for the Yugoslav Army (SL SFRJ 84/90) was a Law of the Former Socialist Federal Republic of Yugoslavia, which was passed in 1990 and came into force on 6 January 1991. The effect of this law was that residential property which was the property of the JNA Housing Fund could be purchased by a person resident in that apartment who possessed the occupancy right. In the following years a number of Decrees with Force of Law and laws were issued by the Government of the Socialist Republic of BiH, the Presidency of the Republic of BiH and the Parliament of the Republic of BiH with the aim of regulating "social property issues" in general and social property over which the JNA had jurisdiction in particular (See the Chamber's Decision in the cases of Medan, Bastijanović and Marković v. Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina, Case No. CH/96/3, 8 and 9, paragraphs 9-13). These included, amongst others, a Decree imposing a temporary prohibition on the sale of socially owned property issued on 15 February

1992 by the Government of the Socialist Republic of BiH (SL SRBiH 4/92). A Law on Abandoned Apartments was passed on 15 June 1992 (SL RBiH 6/92).

28. Article 10 of the Law on Abandoned Apartments (as amended on 18 September 1992 by SL RBiH 16/92) states as follows:

> "If the holder of the occupancy right ... does not start to use his or her apartment ... within the time-limits laid down in Article 3, which run from the date when the decision on the cessation of the state of war is issued, he or she shall be considered to have abandoned the apartment permanently.
>
> On the day of expiry of the relevant time-limit cited in paragraph 1 of this Article the holder of the occupancy right over an apartment shall lose that right and that act shall be stated in a decision of the competent authority.
>
> (...)"

29. The time-limits laid down in Article 3 are 7 days for persons within the territory of BiH and 15 days for persons outside the territory of BiH. The decision on the cessation of the state of war was issued on 22 December 1995.

## IV. FINAL SUBMISSIONS OF THE PARTIES

### A. The Applicant

30. The applicant stated at the public hearing held in the case on 6 April 1998 that he had suffered violations of his rights under Article 8 of the Convention and under Article 1 of Protocol No. 1 to the Convention. He requested that he be registered as the legal owner of the apartment and that he be awarded compensation as claimed.

### B. The Respondent Party

31. The representative of the respondent Party submitted certain observations on behalf of the Army Attorney's Office. These observations may be summarised as follows: the applicant has not acquired the right of ownership over the apartment in question as he was not registered as the owner of the apartment in accordance with the law applicable at the time of his purchase of the apartment. The proceedings involving the declaration of the apartment as abandoned had been in accordance with the law.

32. The respondent Party denied that the applicant was evicted from the apartment. It maintained that the Lika family was evicted from it on 4 October 1997 in accordance with a decision of the General Staff of the Army dated 10 June 1997 (reference 8/27-6-51/97).

## V. OPINION OF THE CHAMBER

33. In terms of Article XI(1)(a) of the Agreement the Chamber must, in the present Decision, address the question whether the facts found indicate a breach by the respondent Party of its obligations under the Agreement.

### A. Scope of the case before the Chamber

34. The Chamber first recalls that in paragraph 18 of its Decision on the Admissibility of the case (Decision on Admissibility, Case CH/97/40 Saša Galić v. Federation of Bosnia and Herzegovina, 21

February 1998) it found that the applicant's complaints concerning his eviction from the apartment raised the following issues under the Convention:

1. Whether the eviction of the applicant from his apartment threatened his right to respect for his home under Article 8 of the Convention;

2. Whether the eviction of the applicant violated his right to peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1 to the Convention;

3. Whether any effective remedy was available to the applicant in connection to any of these issues as required by Article 13 of the Convention.

### B. Article 1 of Protocol No.1 to the Convention

35. The applicant complains that his property right over the apartment he contracted to purchase were violated and in particular of the decision declaring the apartment permanently abandoned and his eviction. The Chamber has considered this complaint under Article 1 of Protocol No. 1 to the Convention, which states as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

36. The applicant states that he had purchased a property right in the apartment in accordance with his contract with the JNA Housing Fund. He claims that the decision dated 24 May 1996 (see paragraph 16 above) of the Army Housing Fund declaring the apartment to be permanently abandoned deprived him of his right to peaceful enjoyment of his possessions, being his property right in the apartment and that this deprivation does not fall within the scope of the justifications provided for in Article 1 of Protocol No. 1. The applicant states that he left Sarajevo for a valid reason and that he obtained a certificate from the Ministry of Education, Science, Culture and Sport of the Federation to that effect. He claimed that, as a result, the legal conditions for his apartment to be declared abandoned had not been fulfilled.

37. The respondent Party maintains that the applicant never acquired any property right in the apartment. At the time of the applicant's entry into the contract with the JNA Housing Fund, the former Yugoslavia was disintegrating and BiH was in the process of being recognised as a State. As a result, the Army and other authorities of the Federation were unable to represent the interests of the Federation and therefore his purported purchase of such right was not in accordance with the law in force at that time. The respondent Party maintains that the apartment was allocated to another family in accordance with the Law on Abandoned Apartments. In conclusion, the respondent Party maintains that the applicant had not acquired any rights within the scope of protection of Article 1 of Protocol No. 1.

38. The Chamber will first consider whether, at the time when the decision referred to above was made, the applicant had any rights in relation to the apartment which constituted "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention.

39. The Chamber first recalls that it has previously held that the contractual rights held by persons who had contracted to purchase JNA apartments under contracts similar to the contract at issue in the present case constituted "possessions" for the purposes of Article 1 of Protocol No. 1 (Medan and Others v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, Decision on the Merits delivered on 7 November 1997, paragraphs 32-34). As in the Medan case the contract entered into by the present applicant conferred upon him the right to occupy the apartment as owner, and to have himself registered as owner. Although the contract did not of itself transfer to

him any real right of property it conferred on him valuable personal rights which in the Chamber's opinion constituted "assets" and were "possessions" for the purposes of Article 1 of the Protocol as interpreted by the European Court of Human Rights and by the Chamber itself in the Medan case and other similar cases.

40. In addition to his contractual rights under the purchase contract the applicant also held an occupancy right over the apartment. The Chamber has previously held that such rights are also assets which constitute "possessions" within the meaning of Article 1 of the Protocol as interpreted by the European Court of Human Rights (MJ v. Republika Srpska, Decision on Admissibility and Merits delivered on 3 December 1997, paragraph 32). In accordance with this case-law it finds that the present applicant's occupancy right also constituted a "possession" for the purposes of Article 1.

41. Having established that the applicant had acquired "possessions" within the scope of protection afforded by Article 1 of Protocol No. 1, the Chamber must now establish whether his right to peaceful enjoyment of that possession has been violated by the actions of the respondent Party. The applicant complains of the decision dated 24 May 1996 declaring his apartment permanently abandoned and his eviction from the apartment on 4 October 1997.

42. The applicant's contractual rights were annulled, in common with other such rights, by the Decree with Force of Law issued by the Presidency of the Republic of BiH on 22 December 1995 and adopted as law by the Assembly of the Republic on 18 January 1996. In the Medan case the Chamber held that the annulment of the applicants' contractual rights by this Decree had violated their rights under Article 1 of Protocol No. 1 and that the Federation was responsible for such violation in respect that the Decree in question was recognised and applied as part of its law (Medan Decision sup. cit., paragraphs 35-39). It reached the same conclusion in the similar case of Bulatović (Bulatović v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, Decision on the Merits delivered on 7 November 1997, paragraphs 33-39). It sees no reason to depart from that case-law in the present case. In the Bulatović case it also concluded that the threatened eviction of the applicant from his apartment under the Law on Abandoned Apartments constituted an additional and serious interference with his right to peaceful enjoyment of his possessions and that there was an additional violation of his rights under Article 1 of the Protocol in this respect, for which the Federation was also responsible (ibid paragraphs 46 & 47).

43. In the present case the decision of 24 May 1996 declared the apartment to be permanently abandoned and, as in the Bulatović case, exposed the applicant to the threat of eviction. It also deprived the applicant of his occupancy right. The eviction was actually carried out on 4 October 1997 since when the applicant has been excluded from actual possession of the apartment. In the Chamber's opinion the position of the present applicant is similar to that of the applicant in the Bulatović case, save that in the present case the interference with the applicant's rights under Article 1 is more far-reaching in that the threatened eviction has actually been carried out. The action taken by the authorities is only possible because of their refusal to recognise the applicant's rights under his purchase contract, which was annulled in breach of Article 1. Accordingly the Chamber finds that, for essentially the same reasons as it gave in the Bulatović case, the threatened and actual eviction of the applicant from his apartment, and his subsequent exclusion from the apartment, involved a violation by the respondent Party of his rights under Article 1 of Protocol No. 1. 43. The Chamber further notes that the applicant was not given a copy of the decision of 24 May 1996 declaring his apartment permanently abandoned, or of any decision authorising his eviction. In these circumstances the procedures followed appear to have been arbitrary and unlawful and the authorities' actions cannot be considered to have been taken "subject to the conditions provided for by law" as required by Article 1. For this further reason also, the Chamber considers that the authorities actions violated Article 1.

44. The Chamber concludes that the decision of 24 May 1996 declaring the applicant's apartment to be permanently abandoned and the eviction of the applicant from his apartment on 4 October 1997 violated his rights under Article 1 of Protocol No. 1 to the Convention and that the Federation is responsible for that violation as the acts complained of were carried out by bodies for whose actions the Federation is responsible.

### C. Article 8 of the Convention

45. The applicant also claimed to be a victim of a violation of Article 8 of the Convention which provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

46. The applicant claims that the decision dated 24 May 1996 (see paragraph 16 above) of the Army Housing Fund declaring the apartment to be permanently abandoned and his eviction from the apartment on 4 October 1997 violated his right to respect for his home as guaranteed by Article 8 of the Convention.

47. The respondent Party maintains that the applicant never acquired any property right in the apartment as his purported purchase of such right was not in accordance with the law in force at that time, so that it could not constitute his "home" within the meaning of Article 8 of the Convention. It also maintains that the applicant was not evicted from the apartment on 4 October 1997. It claims that, instead, the Lika family was evicted from the apartment in accordance with a decision of the Army Housing Fund dated 10 June 1997 which was taken in accordance with the law.

48. The Chamber notes that the applicant left Sarajevo before the outbreak of hostilities in order to study in France. Prior to leaving Sarajevo, he had lived in the apartment and accordingly it constituted his "home" at that time. The applicant was awarded possession of the apartment in accordance with a decision of the Court of First Instance I in Sarajevo on 17 June 1997. The applicant regained possession of it on 3 October 1997, when the Lika family moved out. Therefore, in accordance with Article 8 of the Convention, the apartment should be considered his "home" as and from that date.

49. The eviction of the applicant clearly constituted an interference with his right to respect for his home. Accordingly, the Chamber must consider if that interference was justifiable under Article 8(2) as being "in accordance with the law". The phrase "in accordance with the law" does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law. It implies that there must be a measure of protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by, inter alia, Article 8(1) (Olsson v. Sweden, judgment of the European Court of Human Rights of 24 March 1988, Series A No. 130 paragraph 61; Chappell v. United Kingdom, judgment of the European Court of Human Rights of 30 March 1989, Series A No. 152 paragraph 57).

50. As discussed at paragraph 23 above, the applicant was not given a copy of any decision authorising the eviction. It was therefore impossible for the applicant to ascertain upon what legal basis, if any, the eviction was based. Accordingly, the eviction cannot be considered to have been in accordance with the law. It is therefore not necessary to ascertain whether the interference pursued a legitimate aim or was necessary in a democratic society. This reason in itself leads the Chamber to conclude that the interference with the applicant's right to peaceful enjoyment of his home was not "in accordance with the law".

51. Accordingly, the Chamber finds that the rights of the applicant as guaranteed by Article 8 of the Convention have been violated and that the Federation is responsible for that breach.

### D. Article 13 of the Convention

52. The applicant also alleges that no effective remedy is available to him in respect of his complaints of a violation of his rights under the Convention, contrary to Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

53. The respondent Party confined itself to arguing that the applicant had not suffered any violation of his rights entitling him to a remedy.

54. Article 13 "guarantees the availability of a remedy at national level to enforce the substance of the Convention rights in whatever form they may happen to be secured in the domestic legal order" (Murray v. United Kingdom, judgment of the European Court of Human Rights of 28 October 1994, Series A No. 300-A, paragraph 100). Although normally absorbed by other Articles of the Convention (see, e.g. the Chamber's Decision on the Merits in Medan and Others, sup. cit., paragraph 43), Article 13 is also capable of being considered in its own right.

55. The Chamber notes that it has found violations of the applicant's rights as guaranteed by Article 8 and Article 1 of Protocol No. 1 to the Convention. In Powell and Rayner v. United Kingdom (judgment of the European Court of Human Rights of 21 February 1990, Series A No. 172, paragraph 31), the European Court of Human Rights stated that "Article 13 has been consistently interpreted by the Court as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention ...." Accordingly, it is not necessary for the applicant to show an actual violation of his rights; it is sufficient that he has an arguable claim that such a violation has occurred.

56. "Effectiveness" in the context of Article 13 comprises 4 elements: institutional effectiveness, which requires that a decision-maker be independent of the authority at fault for the alleged or actual violation; substantive effectiveness, which requires that the applicant be able to raise the substance of the right at issue before the national authority before which he is seeking the remedy; remedial effectiveness, which requires that the national authority be capable of finding a violation of the right or rights of the applicant which are at issue and material effectiveness, which requires that any remedy the applicant may have awarded in his favour be such that the applicant may take effective advantage of it.

57. The applicant clearly had an arguable claim that his rights had been violated and accordingly he was entitled to an effective remedy in respect of those claims.

58. The respondent Party did not suggest that there was any mechanism in domestic law by which the applicant could seek redress for the violations of his rights found by the Chamber. The applicant was not given any copy of a decision authorising his eviction from his apartment and accordingly he could not be expected to know to which body he should submit any appeal. In addition, the failure to supply him with a copy of the decision would have prevented him from properly framing any appeal, as he had no knowledge of what legal provisions, if any, it was based on.

59. Accordingly, the Chamber finds that the rights of the applicant as guaranteed by Article 13 of the Convention have been violated and that the Federation is responsible for that breach.

## VI. REMEDIES

60. Under Article XI(1)(b) of the Agreement the Chamber must address in its Decision the question what steps shall be taken by the respondent Party or Parties, in this case the Federation of BiH, to remedy the breaches of the Agreement which it has found.

61. The applicant lodged a request for compensation. He claimed 500 German Marks ("DEM") for each month since he was evicted from his apartment (i.e. starting from 4 October 1997) and also 3,000 DEM in respect of the trauma he suffered as a result of the ill-treatment of his father by the MP officers. The applicant also requested that he be reinstated in his apartment.

62. At the public hearing, the agent of the respondent Party confined herself to stating that she considered the applicant's claims to be too high.

63. In accordance with Article III(3) of the Constitution of BiH, property matters are within the competence of the Entities. As the Chamber has held in its Decision on the Merits in the case of Medan and Others (sup. cit., paragraph 49), it is the responsibility of the Federation to take the necessary action to remedy the violations' of the applicant's rights which it has found.

64. The Chamber considers that it is the responsibility of the Federation to take the necessary administrative or legislative action to allow the applicant have himself registered as the owner of the apartment at Branilaca Sarajeva 19-a in Sarajevo.

65. In addition, the Chamber considers it appropriate to order the Federation to take all steps, whether by way of administrative or legislative action, to rescind the decision of 24 May 1996 by the Army Housing Fund declaring the apartment permanently abandoned.

66. Bearing in mind its provisional order which was not followed, the Chamber again orders the Federation to take all executive, administrative or legislative action to allow the applicant regain possession of the apartment in question without any further delay.

67. The Chamber considers that 500 DEM (five hundred German marks) is an appropriate sum to reflect the value to the applicant of the use of his apartment and therefore decides to award him that sum in respect of each month for which he has been deprived of the use of his apartment. Accordingly, it decides to award him the sum of 4,132 DEM (four thousand one hundred and thirty two German marks) in respect of the deprivation by the Federation of the use of the apartment. This sum is arrived at on the following basis: 8 full calendar months from 4 October 1997 to 3 June 1998 inclusive and 8 days, at a *per diem* rate of 16.50 DEM (sixteen and one half German marks), from 4 June 1998 until midnight 11 June 1998. Further compensation at the above rate will continue to be payable to the applicant from today until he regains possession of his apartment.

68. Since the Chamber did not consider the trauma which the applicant suffered as a result of the alleged ill-treatment of his father under Article 3 of the Convention, as it was not within the scope of the case before the Chamber (see paragraph 34 above), it cannot award him any compensation in respect of that issue.

## VII. CONCLUSIONS

69. For the reasons given above the Chamber:

1. **Decides** (by 13 votes to 1) that there has been a violation of Article 1 of Protocol No. 1 to the Convention and that the respondent Party is thereby in breach of its obligations under Article I of the Agreement;

2. **Decides** (by 13 votes to 1) that there has been a violation of Article 8 of the Convention and that the respondent Party is thereby in breach of its obligations under Article I of the Agreement;

3. **Decides** (by 13 votes to 1) that there has been a violation of Article 13 of the Convention and that the respondent Party is thereby in breach of its obligations under Article I of the Agreement;

4. **Decides** (by 13 votes to 1) to **order** the Federation of Bosnia and Herzegovina to take all necessary steps by way of legislative or administrative action to allow the applicant to take appropriate steps to have himself registered as the owner of his apartment located at Branilaca Sarajeva 19-a in Sarajevo;

5. **Decides** (by 13 votes to 1) to **order** the respondent Party to take all necessary steps by way of legislative, administrative or executive action to render ineffective the decision of 24 May 1996 declaring the apartment abandoned;

6. **Decides** (by 13 votes to 1) to **order** the respondent Party to take all necessary steps by way of legislative, administrative or executive action to allow the applicant to regain possession of his apartment located at Branilaca Sarajeva 19-a in Sarajevo without further delay;

7. **Decides** (by 13 votes to 1) to **order** the Federation of Bosnia and Herzegovina:

(a) to pay to the applicant within three months the sum of 4,132 German Marks ("DEM") (four thousand one hundred and thirty two German marks) (or an equivalent amount in any currency which shall replace the DEM as a legal tender or generally accepted currency in general circulation in Bosnia and Herzegovina from time to time, converted at the prevailing rate of exchange, if any, on the date of payment) in respect of his inability to enjoy the use of his apartment;

(b) to pay to the applicant the sum of DEM 16.50 (sixteen and one half German marks) for each day from the date of delivery of the present Decision until the applicant regains possession of the apartment

(c) that simple interest at an annual rate of 4% will be payable over this sum or any unpaid portion thereof from the day of expiry of the above-mentioned three-month period until the date of settlement;

8. **Decides** (unanimously) to **order** the Federation of Bosnia and Herzegovina to report to the Chamber by 12 August 1998 on the steps taken by it to comply with this decision.

(signed) Peter KEMPEES
Registrar of the Chamber

(signed) Michèle PICARD
President of the Chamber