DECISION ON ADMISSIBILITY AND MERITS
(delivered on 5 December 2003)

Case no. CH/99/2432

Nikola IVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 November 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
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 Articles VIII(2) and XI of the Agreement and Rules 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the attempts of the (now deceased) applicant, a citizen of Bosnia and Herzegovina of Serb ethnic origin, who was displaced in 1995, to return to his privately-owned property consisting of agricultural land and buildings in the municipality of Glamoč in the Federation of Bosnia and Herzegovina (the "Federation"). The property concerned is located within a military training range used by the Army of the Federation of Bosnia and Herzegovina (the "Federation Army"). The applicant was originally part of a group of eleven applicants whose cases were decided in the decision on admissibility and merits in the cases nos. CH/99/2425 *et al., Ubović et al*. of 7 September 2001 (see decisions July-December 2001). Due to the applicant's death in April 2001 and the fact that the Chamber subsequently temporarily lost contact with the applicant's representative, the applicant's case was not included in the decision of 7 September 2001. On 19 December 2001 the applicant's representative informed the Chamber that the applicant's heirs want to pursue his case.

2. The area north of Glamoč, in which part of the applicant's private property is located, was designated for the construction of a combat training centre of the Federation Army in May 1998. In October 1998 the Government of the Federation passed a procedural decision allowing the Ministry of Defence of the Federation to take possession of the real estate before valid procedural decisions on expropriation were issued. Previously, in 1997, the Federation had started construction works on a so-called "tank-range", an area of approximately 2,5 square km in the southern part of the military training range.

3. From 9 July 1998 to 22 August 1998 two training exercises took place during which no high explosive ammunition was fired. A third so-called "laser-exercise", in which tanks used laser light instead of ammunition, was held from 18 to 21 September 2000.

4. The applicant owned property situated within the wider area of the military range. No constructions have been built there so far.

5. The case primarily raises issues under Article 1 of Protocol No. 1 to the European Convention on Human Rights and Article 8 of the European Convention on Human Rights.

II. PROCEEDINGS BEFORE THE CHAMBER

6. The application was submitted on 16 November 1999 together with ten applications in similar cases, which were the subject of the decision on admissibility and merits in the cases nos. CH/99/2425 *et al., Ubović et al*. of 7 September 2001 (see decisions July-December 2001) and registered on the same day. It included a request for a provisional measure to be ordered pursuant to Article X(1) of the Agreement.

7. On 29 November 1999 the Chamber issued an order for a provisional measure, pursuant to Rule 36 (2) of the Chamber's Rules of Procedure, ordering the Federation to refrain from any action causing further harm to the property of the applicant and the ten co-applicants. The order stated that it would remain in force until the Chamber had given its final decision in the cases, unless it was withdrawn by the Chamber before then.

8. On 29 November 1999 the Chamber transmitted the application to the respondent Party for observations on the admissibility and merits of the cases. The Chamber received these observations by the Federation on 28 December 1999.

9. Ambassador Dieter Woltmann, Deputy Head of Mission of the Organisation for Security and Co-operation in Europe ("OSCE") and Chairman of the Combat Training Centre Commission (hereinafter "CTC Commission"), requested information on the applications before the Chamber in a letter received on 15 December 1999. On 20 December 1999 the President of the Chamber answered his letter.

10. On 31 January 2000, the Chamber received a letter from Ambassador Dieter Woltmann, in his capacity as Chairman of the CTC Commission, with information about the work of that Commission.

11. On 25 January 2000, the Chamber transmitted the written observations on the admissibility and merits of the respondent Party to the applicant. The applicant responded through written observations including claims for compensation which were received on 9 February 2000.

12. On 25 January 2000 the Chamber transmitted the written statements of the applicant and the co-applicants, including their claims for compensation, to the respondent Party. The respondent Party's reply to the written observations and the claims for compensation was received on 21 April 2000 after an extension of the time-limit for that purpose.

13. On various dates in May, June, July and August 2000 the Chamber requested and received further information from the respondent Party. The applicant submitted observations in response to this additional information.

14. In a letter dated 27 August 2000, Ambassador Woltmann communicated to the Chamber his willingness to attend a public hearing. On 17 October 2000 and again on 23 November 2000 he was invited as *amicus curiae* to the public hearing on 6 December 2000 in accordance with Rule 32(1) of the Chamber's Rules of Procedure.

15. On 6 December 2000 the Chamber held a public hearing on the admissibility and merits of the applications in the Cantonal Court building in Sarajevo. Several of the ten co-applicants attended, however, not the applicant himself. The Federation was represented by its agent, Ms. Seada Palavrić, assisted by Ms. Ljiljana Savić-Branković and Colonel Franjo Čačija of the Federation Army. The OSCE, appearing as *amicus curiae*, was represented by Ambassador Dieter Woltmann.

16. On 18 January and on 7 February 2001 the Chamber received written information from the applicant with regard to issues raised at the public hearing. The respondent Party sent further written information on 24 January 2001.

17. In March 2001 the Chamber requested and received further written information regarding the identification of the plots allegedly owned by each applicant.

18. On 11 May 2001, an information meeting took place before Mr. Rauschning, who presided over the meeting, and Mr. Popović, who both had been commissioned under Rule 33(2) of the Chamber's Rules of Procedure. This hearing was held exclusively to establish the facts. No legal argument was heard. Of the co-applicants, Mr. Pane Šavija, Mr. Zdravko Radičić, Mr. Radovan Hajder and Ms. Stoja Juzbašić were present. Mr Špiro Hajder attended to represent Mr. Nikola Hajder. Mr. Radovan Hajder also spoke on behalf of the absent applicants, including the applicant in the present case. The respondent Party was represented by its agent Ms. Seada Palavrić, assisted by Mr. Samuel Thompson and Mr. Ed Beville. As *amici curiae*, Ambassador Dieter Woltmann, in his capacity as Chairman of the CTC Commission, and Ms. Maria Prša, executive assistant to the OSCE Deputy Head of Mission, appeared.

19. On 19 December 2001 the applicant's representative informed the Chamber that the applicant had died in April 2001 and that the applicant's heirs intended to pursue his case. In February 2003 the applicant's representative again addressed the Chamber in the name of the applicant's heirs and requested that the applicant's case be dealt with.

20. The Chamber deliberated on the admissibility and merits of the present application on 7 December 2000 and 8 February, 8 March, 7 June, 5 July and 3 September 2001, on 7 January 2002 and on 6 November 2003. On the latter date the present decision on admissibility and merits was adopted.

III. ESTABLISHMENT OF THE FACTS

A. The general factual background

21. In 1997 the Federation began building constructions for the establishment of a military training range in the valley to the north of Glamoč. Main constructions included two tank-lanes, each two kilometers long, from which tanks can fire into an impact area of circa six to seven kilometers.

These lanes were completed in June 1999. On 14 May 1998 the Government of the Federation issued a decision titled "The Decision on the Construction of the Centre for Combat Training of the Army of the Federation of Bosnia and Herzegovina". In this decision the public interest for expropriation of the owners of the land affected and the construction of such a training centre was declared without defining the boundaries of the subject area. Instead, the decision refers to a list of all affected cadastral plots archived in the Ministry of Defence. This list was amended by the respondent Party at least three times, from originally covering approximately 49 square kilometres to presently covering approximately 46 square kilometres.

22. From 9 July 1998 to 22 August 1998 two military training exercises, with the participation of one battalion in each, took place. No high explosive ammunition was fired during these two exercises. The training took place on the two tank-lanes.

23. On the area of the so-called tank-range, in addition to two gravel paths used as tank-lanes, the fertile top-layer of soil has been removed to build five further tank-lanes still under construction. In addition, a road in the south, a road in the north, an embankment with rail tracks behind it, a tower, four firing positions and ten target pits have been built. Around the two cemeteries that are situated within this area embankments were built for protection.

24. It was possible at all times, except for those days on which military exercises took place, to enter the area and to visit the graveyards. The area is not fenced off or guarded.

25. In early 1997, the Ministry of Defence of the Federation made a request to the Stabilisation Force ("SFOR") to establish a Combat Training Centre for the Federation Army in the area of Glamoč. This Training Center would be an expansion of the military training range in the Glamoč area, which existed already before 1991 and is currently used by SFOR. The respondent Party was promised substantial support from the Government of the United States of America as part of the "Equip and Train" programme for this project. As part of that support the American firm MPRI, which is a contractor within the "Equip and Train" programme, was engaged to direct the development of the Center.

26. The CTC Commission, an advisory commission comprised of international agencies with Ambassador Dieter Woltmann of the OSCE as Chairman, was set up in late 1997 to oversee the proper resolution of the civilian issues in connection with the project.

27. On 6 October 1998, the Government of the Federation issued a decision entitling the Ministry of Defence of the Federation to take possession of the real property which was subject to the declaration of general interest for expropriation before any procedural decisions on expropriation became legally valid.

28. Also in late 1998 SFOR took aerial photographs of houses and other buildings in the area designated for the military training range. These photographs were meant to document the state of these houses for the purpose of compensation.

29. On these photographs most houses in the villages of Relijno Selo and Kula have roofs. However, on recent pictures, taken in 2001, it appears that these roofs have disappeared. It remains unclear how this happened.

30. In August 1999 the Federation set up a special bank account with an initial sum of 250,000 KM for compensation to the property owners.

31. In November 1999, in view of the fact that the persons who own property concerned by the planned expropriation were displaced persons living not in the Federation, but in the Republika Srpska and the Federation of Yugoslavia, the respondent Party, with the help of the CTC Commission, tried to inform the owners of the concerned property about the construction of the combat training centre and the planned expropriation in a public media campaign publicised on OBN TV and in newspapers including *Nezavisne Novine*. A press release issued on that occasion also included an early version of the map of the area for which the public interest was declared to give the public some idea of the area in question.

32. In May 2000 a group of Swedish experts, at the request of the OSCE and the CTC Commission, delivered a report on the value of the real property concerned for the purpose of compensation. In this report the Swedish experts suggested awarding an average of approximately 1.10 DM per square meter for cultivated land. They suggested 0.36 KM per square meter as the average compensation when looking at all types of land including cultivated land. The applicants pointed out at the meeting on 11 May 2001, that the valuation was based on rocky land and not on land classified in the cadasteral records as first class. The applicants also stated that they had not been consulted in the process and were not involved in the valuation process.

33. A third military training exercise was held from 18 to 21 September 2000, in which tanks used laser light. No ammunition was fired.

34. So far, the respondent Party has reached an expropriation and compensation agreement with 12 owners of properties that fall within the area for which the general interest was declared. Not all of these properties fall within the tank-range. The respondent Party must pay a total of 445,520 KM compensation for land, ranging from 220 KM to 65,000 KM per owner. Housing objects, backyards and woods will be subject to special valuation. All 250,000 KM that the respondent Party in August 1999 deposited into a special bank account (see para. 30 above) was spent to compensate property owners but none of it was spent to compensate the applicant in the present case.

35. In 2001 the respondent Party stopped the hearings on expropriation due to lack of funds.

36. On 7 September 2001 the Chamber delivered a decision on admissibility and merits in the cases nos. CH/99/2425 *et al., Ubović et al*. that raise the same issues as the applicant's case. The Chamber found a violation of Article 1 of Protocol No. 1 with regard to all applicants. It also found a violation of Article 8 with regard to some of the applicants. The Chamber ordered the Federation to pay to each of the ten applicants KM 5,000 as compensation for non-pecuniary damage, and to decide whether to pursue expropriation proceedings in regard to each individual applicant in accordance with the relevant Law on Expropriation or, in the alternative, to abandon those plans for expropriation. The Federation was further ordered to report its decision to the Chamber no later than six months from the delivery of the decision of 7 September 2001, i.e. by 7 March 2002. The Chamber also reserved its right to issue a decision on possible further remedies.

37. In February, May and August 2002 the respondent Party informed the Chamber that it had abandoned the expropriation of the properties of the ten applicants in the CH/99/2425 Ubović *et al.* decision of 7 September 2001.

38. Because the respondent Party failed to take the necessary steps consequential to its decision not to expropriate the applicants' property, on 6 December 2002 the Chamber issued a decision on further remedies in the cases nos. CH/99/2425 *et al., Ubović et al*.. The Chamber ordered the Federation of Bosnia and Herzegovina to pass before 6 February 2003 a formal decision to the effect that the Government of the Federation of Bosnia and Herzegovina withdraws its declaration of general interest of 14 May 1998 and renounces its intention to expropriate the applicants' plots. This decision should be published in the same way as the decision of 14 May 1998 which declared the general interest for expropriation. It further ordered the Federation of Bosnia and Herzegovina to inform the applicants by 20 December 2002, that it has given up the intention to expropriate the applicants' property and of the revocation of the declaration of general interest once this decision had been published. The Chamber also decided to appoint an expert who will submit to the Chamber a report in which he proposes to the Chamber the amount of compensation due with regard to each individual applicant. The Chamber reserved its right to issue an additional decision on further remedies including an order for pecuniary compensation for each individual applicant taking into account the observations of the Parties and the expert's report.

39. Up to date, the Government of the Federation of Bosnia and Herzegovina has failed to withdraw its declaration of general interest of 14 May 1998. It has also failed to officially inform the applicants of the Ubović decision that the plan to expropriate their land has been given up, nor has it, of course, informed the applicant in the present case or his heirs of this intention.

B. The specific facts of the present applicant's case

40. Before his death in April 2001 the applicant owned land within the wider area subject to the declaration of general interest on which no constructions have been built to date. Until he fled due to the hostilities in 1995, he was a farmer who worked on the land, generating most of his income from farming sheep and cultivating potatoes and barley. The plot of land with the applicant's former home in which he lived was situated within the area originally planned to be turned into a military training range and subject to the original declaration of interest.

41. Sometime in 1999, the applicant learned, through a media campaign, through relatives and friends, of the respondent Party's intention to carry out an expropriation of his land. He applied to the Chamber in November 1999 without seeking relief from any domestic court.

42. Sometime before 2001, the respondent Party allegedly revised its plans and reduced the envisaged size of the range and shortened the list of plots subject to the declaration of general interest. According to these revised plans, one part of the applicant's property on which his former home is located would no longer be part of the military range. The applicant, however, was never informed about the revision of the declaration of general interest and the fact that his former home was no longer subject to the declaration of general interest. It is undisputed that even after the revision of the declaration of general interest, the applicant still owned plots of land within the area covered by the declaration.

C. Oral evidence received at the public hearing on 6 December 2000 from the OSCE as *amicus curiae* in the related cases CH/99/2425 *et al.*, Ubovič *et al.*

43. At the hearing, Ambassador Dieter Woltmann, Senior Deputy Head of the OSCE Mission to Bosnia and Herzegovina, in his capacity of Chairman of the CTC Commission, appeared as *amicus curiae*. The CTC Commission was set up in response to the request made in 1997 by the Ministry of Defence of the Federation to SFOR for approval to establish a Combat Training Centre for the use of the Federation Army. It comprises members of OSCE, the United Nations High Commissioner for Refugees ("UNHCR"), OHR and CRPC. The CTC Commission's mandate from SFOR is to advise upon the conditions under which the Federation Army range could become fully operative.

44. The CTC Commission required the respondent Party to carry out expropriation proceedings of all owners of property in the concerned area in accordance with national law. Ambassador Woltmann estimated a number of roughly 1000 expropriation procedures.

45. The CTC Commission has undertaken information campaigns to inform all affected owners of real property of their rights. So far, it has not recommended that SFOR approve the taking into use of the range by the Federation Army; the reason being mainly that there is currently no reasonable prospect that sufficient funds for compensating the owners of affected real property will be forthcoming in the near future.

46. The World Bank and the International Monetary Fund required the Federation to reduce its military budget from 730 million KM as originally envisaged to 290 million KM in 2001. The Federation should further reduce the military budget by at least an additional 15 percent each following year. This makes it almost impossible for the Federation to fund the necessary compensations in the expropriation proceedings. Therefore, the Municipality of Glamoč plans to make funds available step by step in small sums.

47. Ambassador Woltmann pointed out that very close to the planned military training range of the Federation there is an SFOR range on which there are frequent exercises. The Federation Army participates in these exercises. In media coverage and amongst the public there has been confusion between the different military training grounds of the Federation Army and the SFOR because both are commonly referred to as the "Barbara" or "Barbare" range.

D. Evidence submitted by the UNHCR

48. On 27 October 2003 the UNHCR submitted to the Chamber information regarding the situation in the area of the Glamoč training ranges and the question whether return to this area was possible. To the knowledge of the UNHCR, as at the end of 2002, over 550 owners in the Glamoč area had claimed compensation for their expropriated properties. Out of these only eighteen owners had reached agreement with the Federation Ministry of Defence on the amount of compensation and only ten had actually received compensation from the initial budget allocated for this purpose. Many of those who had reached agreement with the Federation on the compensation amount for their expropriation but had not obtained payment, have approached UNHCR's Network of Legal Aid and Information Centres for legal assistance. They have not been able to obtain enforcement of these agreements and obtain payment, due to lack of funds as well as to difficulties related to implementation or interpretation by the courts of the Federation Law on Enforcement Procedure.

49. The UNHCR further stated that there are returnees in the Pelikan area in the villages of Stekerovci (app. 15 families/35 persons) and Hotkovci (5 families/10 persons). Different Non Governmental Organisations ("NGOs") such as World Vision, and Dorcas Aid implemented their respective reconstruction projects in these villages. A number of persons visit their destroyed homes in the summer. The UNHCR concludes that the level of return is minimal.

50. The UNHCR further informed the Chamber that generally the area has been considered as not mined. It adds that it knows of suspicions by current and potential returnees that the area around Hotkovci might be mined, or contaminated by unexploded ordnance, but UNHCR has no reliable information in this regard.

IV. RELEVANT LEGISLATION

A. Constitutions and Other Laws governing Transitional Arrangements in the Federation of Bosnia and Herzegovina

1. Constitution of Bosnia and Herzegovina

51. The Constitution of Bosnia and Herzegovina entered into force on 14 December 1995. In Article III, it sets out the relations and responsibilities between Bosnia and Herzegovina and the Entities, including the Federation of Bosnia and Herzegovina. Article III, Section 3(a) states: "All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities."

52. Annex II to the Constitution of Bosnia and Herzegovina provides for transitional arrangements, including the continuation of laws. In Article 2 of Annex II, it provides as follows:

> "All laws, regulations, and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina."

2. Constitution of the Federation of Bosnia and Herzegovina

53. The Constitution of the Federation of Bosnia and Herzegovina entered into force on 30 March 1994 at midnight. It provides, in Article 1, as amended on 5 June 1996, for the establishment of the Federation of Bosnia and Herzegovina:

> "(1) Bosniacs and Croats as constituent peoples, along with Others, and citizens of Bosnia and Herzegovina from the territories of the Federation of Bosnia and Herzegovina, in the exercise of their sovereign rights, transform the internal structure of the Federation territories, … so the Federation of Bosnia and Herzegovina is now composed of federal units with equal rights and responsibilities.
>
> "(2) The Federation of Bosnia and Herzegovina is one of two entities composing the state of Bosnia and Herzegovina, and has all power, competence and responsibilities which are not

> within, according to the Constitution of Bosnia and Herzegovina, the exclusive competence of the institutions of Bosnia and Herzegovina."

54. Chapter IX of the Constitution of the Federation of Bosnia and Herzegovina provides for transitional arrangements, including the continuation of laws. Article 5(1) of Chapter IX provides as follows:

> "All laws, regulations, and judicial rules of procedure in effect within the Federation on the day on which this Constitution enters into force shall remain in effect to the extent not inconsistent with this Constitution, until otherwise determined by the competent governmental body."

3. Agreement on Implementation of the Federation of Bosnia and Herzegovina

55. The Agreement on Implementation of the Federation of Bosnia and Herzegovina was concluded at Dayton and signed on 10 November 1995 by representatives of the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republic of Croatia. This Agreement, which was a side agreement to the General Framework Agreement for Peace in Bosnia and Herzegovina which entered into force on 14 December 1995, clarified, among other things, the competencies of the State of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. Chapter II, Section 5 states that the Federation of Bosnia and Herzegovina is responsible for "defence".

4. Decision on Cessation of Application of the Decision on Declaration of Immediate Threat of War on the Territory of the Federation of Bosnia and Herzegovina

56. On 19 December 1996, the Parliament of the Federation of Bosnia and Herzegovina issued the Decision on Cessation of Application of the Decision on Declaration of Immediate Threat of War on the Territory of the Federation of Bosnia and Herzegovina, which entered into force on 23 December 1996 (Official Gazette of the Federation of Bosnia and Herzegovina— hereinafter "OG FBiH"– no. 25/96). Part II of this Decision states as follows:

> "Federal Ministries and other bodies and institutions of authority in the Federation of Bosnia and Herzegovina, Cantons, Municipalities and Cities, as well as Companies and other legal persons on the territory of the Federation of Bosnia and Herzegovina shall undertake all necessary actions and organise work in accordance with valid peace-time regulations that are applied on the territory of the Federation of Bosnia and Herzegovina in accordance with the Constitution of the Federation of Bosnia and Herzegovina."

5. Law on Recognition of Public Documents within the Territory of the Federation of Bosnia and Herzegovina

57. The Law on Recognition of Public Documents within the Territory of the Federation of Bosnia and Herzegovina (OG FBiH no. 4/98) entered into force on 26 February 1998. This law regulates and recognises "all kinds of public documents in legal transactions within the territory of the Federation of Bosnia and Herzegovina issued by administrative, judicial and other bodies and institutions, as well as legal persons exercising powers within the territory of the Federation in the period of 6 April 1992 through 14 October 1997" (Article 1). Article 4 further defines "public documents" in terms of this Law to include "all kinds of public documents, diplomas, certificates on graduation, certificates, attestations, excerpts from public books and other excerpts issued on the basis of official records, as well as court decisions and procedural decisions from the court register, and then verifications of signatures and transcripts of those and other public documents, issued and verified in accordance with the laws applied within the territory of the Federation until the day of entry into force of this law".

58. "Public documents issued by bodies and legal persons referred to in Article 1 of this law are recognised as public documents issued by competent bodies and have the same legal effect throughout the territory of the Federation" (Article 2).

B. Laws regulating substantive matters concerning the case

1. The Law on Expropriation

59. This law is referred to in the text of this decision simply with the expression "Law on Expropriation" without any further addition, as opposed to "the Herceg-Bosna Law on Expropriation" or simply the "Herceg-Bosna" law, which refers to the Law on Expropriation of the former "Croat Republic of Herceg-Bosna" ("Official Gazette of "Croat Republic of Herceg-Bosna"— hereinafter "OG HR HB"–no. 29/95, see paragraph 79 *et seq.* below).

60. The Law on Expropriation (Official Gazette of the Socialist Republic of Bosnia and Herzegovina—hereinafter "OG SRBiH"–no. 12/87, 38/89, 4/90 and Official Gazette of the Republic of Bosnia and Herzegovina—hereinafter "OG RBiH"–no. 15/94), as amended, establishes the legal framework for expropriation.

61. Article 1 of the law states that land may be expropriated if it is necessary for the construction of facilities in the "general interest". The examples of the "general interest" listed include "special importance for the defence of the country or state security" and "for the benefit of the army".

62. According to Article 9, in cases of partial expropriation the owner may request the expropriation of the remaining part of his property if he has no economic interest in the remaining part or if the expropriation of one part of his property disables or considerably deteriorates his previous subsistence.

63. Article 13 provides that the general interest can be established by the authorities by law, decree, decision or procedural decision. According to Article 17, the act must also define the boundaries of the land which is to be expropriated.

64. Chapter IV of the law sets out the expropriation proceedings. After the general interest has been established the beneficiary may present a motion for expropriation to the competent administrative organ of the municipality. The motion for expropriation must, according to Article 24, identify: a) the beneficiary of the expropriation, b) the real property to be expropriated as well as the location of the real property, c) the owner of the real property and his/her residence, and d) the structures or works for which the expropriation is required.

65. Article 25 then sets out a list of documents that must be attached to the motion of expropriation: a) excerpts from the land register as documentary evidence of the ownership over the real properties and information on the real property; if no such registers exist, then excerpts of cadaster records or other information must be provided, b) a decision that the construction will be in accordance with the regulations on investment, c) a certificate of the public audit service or any other document as evidence that the beneficiary of the expropriation has secured funds for compensation of the owners that are to be expropriated in a special account, and d) evidence that the general interest has been established.

66. After receipt of the motion, the competent administrative organ shall, according to Article 26, inform the owner of the property concerned without delay. At the request of the beneficiary, the expropriation shall be registered in the land register or other public documents in which the ownership is normally registered. After such registration on behalf of the beneficiary has been perfected, changes in regard to any rights over the real property do not affect the legal position of the beneficiary.

67. Article 27 provides that the competent administrative organ shall issue a procedural decision on the expropriation in accordance with the Law on Administrative Proceedings. Before doing so, the administrative organ shall hear the owners of the properties concerned in regard to any facts relating to the expropriation. If no cadaster records exist for the area, the competent organ shall determine ownership rights over the real property in question. Only then may it issue a procedural decision on the expropriation.

68. Article 28 provides that the motion for expropriation shall be accompanied by the required documents. If from these documents the necessary facts can be established, a procedural decision on expropriation shall be granted. Otherwise the motion shall be refused. Article 30 grants the owner of the expropriated property the right to appeal against the procedural decision.

69. Article 31 sets out in its first paragraph that the beneficiary shall have the right to the possession of the expropriated real property only once the procedural decision on expropriation becomes final and binding. In paragraph 3 of Article 31 the law provides that in cases of urgency the beneficiary may be exceptionally allowed to take possession before the legal validity of the procedural decision. However, according to paragraph 4 of Article 31, in case there is a building or any other facility or crops grown on the land with a market value, the decision to give the beneficiary the right to take possession can only be issued after the authority has established and provided evidence of the value of the property in question.

70. Article 32 of the law allows the beneficiary to withdraw, in whole or in part, the proposal for expropriation before the procedural decision on expropriation has become final.

71. In Chapter VII, the law sets out the regulations in regard to compensation. In Articles 50 to 74 the law provides for a detailed regime on how to calculate the appropriate compensation in regard to different kinds of property, e.g., forests, orchards, fertile and infertile land or buildings. Article 49 sets out as the general rule the factors determining the value of the expropriated land, namely, the market price, the price of corresponding agricultural land, the income that can be generated from regular use of the land and the profit the former owner actually made from the land.

72. The expropriated owner is, according to Article 70, also entitled to receive compensation for lost income from the day when the beneficiary took possession of the real property.

73. Articles 75 to 87 prescribe the proceedings in regard to the determination of compensation. According to Article 75, once the procedural decision on expropriation becomes effective the competent administrative organ of the municipality must without delay hold a hearing to effect an agreement on compensation for the real property. This public hearing should be prepared by an exchange of written proposals and information between all parties concerned. Article 76 states that any agreement reached must contain the form of compensation and the amount to be paid. It also must contain a time-frame within which the beneficiary has to fulfil his obligations. Both parties must sign a record of the agreement. This signed record has the force of an enforceable procedural decision.

74. Article 77 concerns the case that the parties fail to reach an agreement on the compensation. In that event the beneficiary may all the same try to pay the owner the sum offered as compensation in the expropriation proceedings. He must do so within 15 days of the offer. If the owner refuses to accept the money, the beneficiary can deposit the money with the court on behalf of the owner within 10 days after the refusal.

75. If no agreement on compensation is reached within two months of the date on which the procedural decision on expropriation becomes effective, the competent administrative organ of the municipality shall transmit the procedural decision and all the files to the competent regular court of the area in which the expropriated property is located for determination of the compensation (Article 79). The transmitted files should include evidence of any payment made by the beneficiary in accordance with Article 77.

76. The competent court shall then decide *ex officio* in extra-judicial proceedings on the amount of compensation. The court shall take into account the amount of compensation paid in similar cases in the same area where an agreement has actually been reached, provided that an agreement was reached in a majority of cases (Article 80).

77. Should the court find that the amount deposited by the beneficiary in the expropriation procedure is not sufficient for an equitable compensation for the value of the property at the time of the deposit of the money, the court shall determine how much compensation remains to be paid (Article 81).

78. Article 85 of the law provides that the beneficiary is obliged to pay the compensation to the former owner within 15 days after the court decision enters into force. In case the pervious owner refuses to accept the compensation, it must be paid into a deposit at the court within another 10 days. If the beneficiary fails to do so he must pay legal interest on the amount to the previous owner.

2. Law on Expropriation ("Croat Republic of Herceg-Bosna")

79. The respondent Party bases its decisions on the declaration of the general interest of May 1998 on the relevant legal provision of the Law on Expropriation and also on Article 9 of the Law on Expropriation of the former "Croat Republic of Herceg-Bosna" (OG HR HB no. 29/95). In the decision of October 1998 allowing the Ministry of Defence the taking into possession, both laws, Article 31 of the Law on Expropriation of the Republic of Bosnia and Herzegovina and Article 28 of the "Herceg-Bosna" Law on Expropriation, were invoked.

80. The Chamber notes that with respect to the present case, the Government of the Federation in fact applied and took into consideration the Law on Expropriation of the former "Croat Republic of Herceg-Bosna", citing the relevant provisions in the decision of 14 May 1998 and of 6 October 1998. By citing the "Herceg-Bosna" law, the Chamber does not intend to imply any recognition of the existence of the "Croat Community of Herceg-Bosna" or the "Croat Republic of Herceg-Bosna". The Chamber also does not intend to take any position, nor does it need to take any position to reach its conclusions, on the relationship between or preferential validity or applicability of these laws as compared to the laws applicable in the Federation of Bosnia and Herzegovina.

81. The Chamber notes that the respondent Party in its observations on the admissibility and merits names only the Law on Expropriation of the Republic of Bosnia and Herzegovina as the relevant legal provision. All further legal arguments of all parties concerned are based exclusively on this law and not on the provisions of the "Herceg-Bosna" law.

82. The "Herceg-Bosna" Law on Expropriation was published on 27 August 1995. Article 48 of the law states that from the day of entry into force, which the law sets out to be the eighth day after its publication, this law of the "Croat Republic of Herceg-Bosna" purports to replace the Law on Expropriation of the old Republic of Bosnia and Herzegovina. It establishes a detailed framework for the proceedings on expropriation, similar to the one provided in the Law on Expropriation, including the necessity of compensation of the previous owner. The law regulates how to establish a general interest and sets out the proceedings.

83. Article 9 of the "Herceg-Bosna" law provides for the establishment of the general interest for expropriations in the territory of the "Croat Republic of Herceg-Bosna". To establish such an interest the Government shall consult the Municipal Council and in certain cases also the Board for Economy, Finances and Survey of the House of Representatives and the Ministry of Physical Planning, Civil Engineering and the Protection of the Environment.

84. Article 28, paragraph 1, states that generally the beneficiary of the expropriation shall acquire the right to the possession of the expropriated real property on the day the procedural decision on expropriation becomes legally valid if the established compensation is paid to the previous owner.

85. Article 28, paragraph 2, provides for an exception in which the beneficiary can enter into possession even before the procedural decision becomes final and binding. The beneficiary can enter into possession, if he has reasons to do so urgently or in order to prevent considerable damage. Additionally, the compensation must be established and the beneficiary must have paid this compensation to the previous owner. In case the owner to be expropriated refuses to accept the compensation, the beneficiary must prove that he made an offer.

86. According to Article 28, paragraph 3, the exception of paragraph 2 must not be invoked in cases of expropriation of residential or business premises where the beneficiary has not secured to provide the previous owner with other adequate real estate in exchange for the expropriation.

3. The Law on Administrative Procedure

87. The Law on Administrative Procedure (OG FBiH no. 2/98 and 48/99) regulates administrative procedure in the Federation of Bosnia and Herzegovina. Article 7 of the law provides that all facts must be established in administrative proceedings in order to establish the *de facto* state of affairs. Article 8 sets out the general principle that the parties must be heard before a decision is passed.

88. The procedure envisaged by the law may be briefly summarised as follows. The deciding organ may receive evidence both by written submission and by oral hearing. The law allows for the issuance of deadlines at various stages of the procedure, which are to be adhered to by the person or persons subject to them, in order to ensure that the proceedings are conducted expeditiously.

89. In matters involving two or more parties with opposing interests, or whenever it is necessary to conduct an investigation or a hearing of witnesses, the responsible administrative authorities shall order a public hearing (Article 147, paragraph 1(1) and (2)). Where it appears that persons may be affected by the proceedings but have not yet appeared as parties in the proceedings or when other reasons of a similar nature require it, the public hearing must be publicly advertised. The public announcement of the hearing must include an invitation for everyone who believes the matter to concern his/her legal interests to come to the hearing. The announcement must contain all data that would be necessary for an individual summons. Article 92 and Article 152 (2) of the law set out the manner in which the announcement of the public hearing is to be published. The announcement should be made on a bulletin board of the competent organ, in the newspapers or other media or in some other appropriate manner.

4. The Law on Fundamental Property Relations and the Law on Property Law Relations

90. The Law on Fundamental Property Relations (the old law) (Official Gazette of SFRY nos. 6/80 (consolidated text), 36/90) was adopted as a law of the former Republic of Bosnia and Herzegovina on 11 April 1992 (Official Gazette of RBiH 2/92, 9/92,16/92 and 13/94). In the Federation this law was replaced in 1998 by the new Law on Property Law Relations (Official Gazette of FBiH no. 6/98 and 29/03, came into force on 17 March 1998). The laws regulate conditions and the cessation of legal right of ownership and possession and other rights over movable and immovable property.

91. The following provisions of the old law were adopted in the Federation Law on Property Law Relations of 1998 without substantial changes:

92. Ownership can be acquired by immediate operation of the law itself, through legal transfer or by inheritance. Ownership can also be acquired by a decision of a state organ in a manner and under conditions established by the law (Article 20). In the case that ownership is acquired by inheritance, transfer generally takes place at the moment of the opening of the inheritance over the deceased person's estate (Article 36).

93. Article 15 of the Law on Property Law Relations defines the notion of co-ownership. Co-ownership exists in the case that an undivided asset is owned by two or more persons so that each person's interest is expressed in proportion to the whole (so-called "ideal share", which may be expressed *pro rata*, e.g., 1/5).

Each co-owner may use and dispose of his share, in which case the other co-owners may have an option of purchase of the *pro rata* interest provided for by the law. Any co-owner may request the division of the asset, which then is decided by consensus of all co-owners. In case no such consensus can be reached, the court shall decide upon the division.

94. The law defines immediate possession in Article 70 paragraph 1. Under this provision the immediate possessor is any person who directly exercises control over a movable or immovable object.

95. The law also defines the notion of constructive possession. Heirs, for example, become constructive possessors of the deceased's estate at the moment of death, regardless of the moment when they obtain *de facto* control over the assets.

5. The Law on Inheritance

96. The Law on Inheritance (OG SRBiH no. 7/80 (consolidated text), and no. 15/80) regulates inheritance in the Federation of Bosnia and Herzegovina.

97. According to Article 6 the heir generally inherits on the basis of the law or on the basis of a will immediately upon death of the *de cuius* (Article 126). The inheritance proceedings are initiated *ex officio* as soon as the court learns about the death. The registrar who recorded the death in the register of deaths must submit a death certificate to the probate court within 30 days after the registration. This death certificate must among other facts contain the personal details of the deceased and of his close relatives, the approximate value of his property and the place where this property is located and the names of witnesses (Article 173). When the court determines the persons entitled to inherit it shall declare these persons heirs by a procedural decision on inheritance (Article 233, paragraph 1). Under Articles 145 and 146 of the law, the heirs may jointly manage and dispose of the inheritance until a division is made. Such a division may be requested by each heir.

V. COMPLAINTS

98. In his application and subsequent submissions the applicant claimed that his rights as guaranteed by the Agreement have been violated as a result of the establishment of the combat training centre for the use of the Federation Army on the land that used to be his home and property. In particular, he alleged a violation of the right to respect for home under Article 8 on the European Convention of Human Rights (the "Convention") and of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention. In addition, the applicant alleged a violation of Article 2, first paragraph, of Protocol No. 4 to the Convention, as he could not choose his residence in the area affected by the plans for the combat training centre. The applicant further complained of discrimination because allegedly only persons of Serb ethnic origin are affected by the military training range. He also complained of a violation of his rights guaranteed under Article 6 of the Convention, more specifically the right of access to the courts. He claimed that due to the lack of information about the status of the expropriation proceedings, he was unable to go before the courts and that courts in Canton 10 were biased against non-Croats. Finally, the applicant complained of a violation of his right to freedom of religion guaranteed under Article 9 of the Convention, because he could not visit the churches and cemeteries in the area.

VI. FINAL SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

99. The observations of the respondent Party were all submitted with regard to the applicant and the ten co-applicants (the applicants in the cases CH/99/2425 *et al.,* Ubović *et al.*) before the decision on admissibility and merits in the cases CH/99/2425 *et al.,* Ubović *et al.* of 7 September 2001. The respondent Party has not submitted any additional observations relating specifically to the applicant's case or in reply to the applicant's submissions after the decisions in the CH/99/2425 *et al.*, Ubović *et al.* cases were passed.

100. The respondent Party first argues that the relevant law regulating the expropriation complained of by the applicant is the Law on Expropriation (OG SRBiH no. 12/87) and gives a summary of those legal provisions. The Federation submits that the application is inadmissible for

non-exhaustion of domestic remedies. In its further observations on the compensation claims of the applicant and the ten co-applicants, the respondent Party considers the applications also to be inadmissible *ratione personae,* stating that the military training range falls within the responsibility of SFOR.

101. In respect of Article 1 of Protocol No. 1 to the Convention, the Federation submits in its first observations of 28 December 1998 that it established the general interest for expropriation and that it took extensive preliminary action to ensure that the procedure of expropriation would be complied with. Because of the complexity of the situation the process of expropriation requires time. The international community has been involved in all activities regarding the construction of the combat training centre. There is, therefore, no violation of the applicant's right under Article 1 of Protocol No. 1. In a letter of 4 January 2001, the respondent Party admits, however, that "it is evident that some parts of the Law on Expropriation were not fully complied with".

102. As to the merits, the respondent Party submits that Article 6 of the Convention has not been violated at the applicant's expense as he could have initiated proceedings before the competent courts at any time and never even attempted to do so.

103. In regard to Article 8 of the Convention, the Federation states that only an applicant who lived in the area designated for the military training range can claim a right to respect for his home. The respondent Party is of the opinion that in light of the general interest, however, any interference with the right to home would be justified.

104. With respect to Article 9 of the Convention, the Federation submits that the churches and cemeteries could be visited at all times except while military exercises were in progress.

105. The Federation is of the opinion that discrimination (Article 14 of the Convention and Article II(2)(b) of the Agreement) is not at issue. In the area concerned members of all three ethnic groups of Bosnia and Herzegovina live, and the site for the range was chosen for purely military reasons by SFOR and not by the respondent Party itself.

106. In regard to the alleged violation of Article 2 of Protocol No. 4 to the Convention, the respondent Party argues that the applicant requested to be expropriated and to receive compensation, from which the Federation draws the conclusion that he did not intend to move back to the area in question. It concludes that there was no violation.

107. In its observations of 21 April 1999, the respondent Party contests both the basis and the amount of compensation claimed by the applicant and points to the fact that no evidence was submitted in regard to alleged pecuniary damage. In regard to the additional compensation claims made on behalf of the applicant at the hearing on 11 May 2001, the respondent Party in its written observations of 5 July 2001 suggests to reject those claims as out of time.

B. The applicant

108. In reply to the respondent Party's observations the applicant and his representative maintained the applicant's claims. They emphasised that the respondent Party did not act in accordance with the Law on Expropriation. In particular, they claimed that the applicant's rights were already interfered with by the fact that the respondent Party did not establish and make public clear boundaries of the area for expropriation. The Federation was obliged to do so in accordance with Article 17 of the Law on Expropriation. The respondent Party also did not properly inform the applicant about its actions. They further noted that the respondent Party failed to fulfil its obligations under the law to secure adequate funds for the compensation of the expropriated land and other property and thus to compensate him.

VII. OPINION OF THE CHAMBER

A. Admissibility

109. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

1. Requirement to exhaust effective domestic remedies

110. According to Article VIII(2)(a) of the Agreement, the Chamber shall take into account whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

111. The Chamber has already found that the existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, e.g., case no. CH/96/17, *Blentić*, decision on admissibility and merits delivered on 3 December 1997, paragraphs 19-21, with further references, Decisions on Admissibility and Merits 1996-1997). It is necessary to take realistic account not only of the existence of formal remedies in the legal system, but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicants (*ibid.*).

112. The respondent Party argues that the application should be declared inadmissible because the applicant did not indicate that there were no domestic remedies available, nor did he show that he had exhausted the available remedies. The respondent Party in its observations on admissibility and merits of 28 December 1999 stated that the applicant could have complained to the courts and relevant administrative bodies about the fact that he was not properly compensated in accordance with Article 30 of the Law on Expropriation. Article 30 provides the right to appeal against a procedural decision of expropriation. However, such decisions were never passed in regard to the property of the applicant. Moreover, the respondent Party, in the hearing on 11 May 2001, stated that it would postpone any procedural expropriation decisions for the time being as it lacked funds for the necessary compensation. The respondent Party also admitted in a letter on 4 January 2001 that: "It is a fact that it is evident that some segments of the Law on Expropriation have not been fully complied with". The applicant asserted that due to the inefficiency of the competent organs, all remedies available would prove to be ineffective.

113. The burden of proof is on a respondent Party arguing non-exhaustion of domestic remedies to satisfy the Chamber that there was an effective remedy available to the applicant both in theory and in practice (see, e.g., case no. CH/96/21, *Čegar*, decision on admissibility of 11 April 1997, paragraph 12, Decisions on Admissibility and Merits 1996-1997).

114. In the present case, the respondent Party has not indicated which remedies were or would be available to the applicant under the given circumstances. In particular, neither the applicant, nor his heirs could be required to go before the courts in the given situation, the respondent Party having stated repeatedly that it would like to comply with the Law on Expropriation, but cannot, because of lack of funds to satisfy the compensation requirements. In addition, the Chamber notes that there is no individual decision on expropriation in the applicant's case which he could have challenged before the courts.

115. On the information available to it, the Chamber finds that no effective remedy was or is available which could have afforded redress in respect of the breaches alleged. The Chamber therefore concludes that the admissibility requirement in Article VIII (2)(a) of the Agreement has been met.

2. Competence of the Chamber *ratione personae*

116. In its additional written observations of 21 April 2000 on the applicant's compensation claims, the respondent Party claims that the applications are inadmissible as incompatible with the Agreement *ratione personae,* stating that the combat training centre is an SFOR project for which the Federation is not responsible.

117. The Chamber notes that in early 1997 the Ministry of Defence of the Federation made a request to SFOR for permission to establish a Combat Training Centre for the Federation Army in the Glamoč area. Substantial support from the United States of America within the "Equip and Train" Programme was promised. The CTC Commission was set up to advise SFOR as to when and under what conditions to give permission to the Ministry of Defence of the Federation to carry out its plans. The decision number V 89/98 of 14 May 1998, published in the Official Gazette of the Federation of Bosnia and Herzegovina and signed by the Prime Minister Edhem Bičakčlć, sets out the legal basis for the "Construction of the Combat Training Centre for the Army of the Federation of Bosnia and Herzegovina" (heading of the decision). The combat training centre project thus cannot be understood to be for the benefit of SFOR, but it is designed for the purposes of the Federation Army. The Chamber notes further that any expropriation attempts in regard to the area affected by the military training range have been carried out by the Federation in its own interest. The Chamber concludes that the application is correctly directed against the Federation as the respondent Party.

3. Conclusion as to the admissibility

118. As the Chamber finds that no other ground for declaring the cases inadmissible has been established, the application is declared admissible.

B. Merits

119. Under Article XI of the Agreement the Chamber must address the question whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement.

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

120. The applicant has complained of a violation of his right to peaceful enjoyment of possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. This provision reads 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."

121. It is an undisputed fact between the parties that the applicant was the owner of property within the area designated as the combat training centre for the Federation Army. His plots of land and buildings are located within the area for which the general interest for expropriation was declared but in which no constructions have been built so far.

122. Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, which is of a general nature, announces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to the condition that the deprivation must be in the public interest and subject to conditions provided for by law and by the general principles of international law; it appears in the second sentence of the same paragraph. The third rule recognises that States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for that purpose; it is contained in the second paragraph (see, e.g., case no. CH/96/29, *Islamic Community*, decision on admissibility and merits of 11 June 1999, paragraph 190, Decisions January-July 1999).

123. In May 1998 the respondent Party passed a decision declaring the general interest for expropriation. In October 1998 it passed a decision to allow the Ministry of Defence to take possession of the area before the individual procedural decisions on expropriation became effective.

124. It should be recalled that the authorities did not proceed to expropriate the property of the applicant. The applicant was, therefore, not formally deprived of his possessions at any time: he was

entitled to use, sell, divide, donate or mortgage his properties.

125. In the absence of any formal expropriation, that is, transfer of ownership, the Chamber considers that it must look behind the appearances and investigate the realities of the situation complained of (see*, mutatis mutandis*, European Court of Human Rights, *Van Droogenbroeck v. Belgium*, judgment of 24 June 1982, Series A no. 50, paragraph 38). Since the Convention is intended to guarantee rights that are "practical and effective" (see European Court of Human Rights, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, paragraph 24), it has to be ascertained whether the situation amounted to a *de facto* expropriation. In the Chamber's opinion, the will of the respondent Party to expropriate the property of the applicant, as manifested in the two decisions of 1998, caused the applicant's right to property to become precarious and defeasible. Under these circumstances the applicant could not be expected to return, repair the war damages, invest in his property and resume farming. Although legally the decisions of 1998 did not directly impair the owners' rights to use and dispose of their possessions, they nevertheless in practice significantly reduce the possibility of such exercise. The decisions also affect the very substance of the ownership by creating legal uncertainty for the applicant. Although the right to property lost some of its substance, it did not disappear. The effects of the measures involved are not such that they can be assimilated to a deprivation of possessions.

126. However, the Chamber considers the two decisions of 1998 of the respondent Party to constitute an interference with the applicant's right to the peaceful enjoyment of his possessions. This interference is to be considered under the rule contained in the first sentence of Article 1 of Protocol No. 1 to the Convention (see, e.g., European Court of Human Rights, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52). This interference affects the entire area designated for the construction of a Combat Training Centre, and therefore also the applicant's property.

127. The Chamber must determine whether a fair balance was struck between the demands of the general interest of the community and the requirement of the protection of the applicant's fundamental rights, as guaranteed under Article 1 of Protocol No. 1, against the interference, and whether the respondent Party acted in accordance with the principle of legality (see, e.g., European Court of Human Rights, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52).

128. The respondent Party failed to follow the procedure set out in the Law on Expropriation and its formal requirements. Amongst other things, it is the duty of the beneficiary of the expropriation to identify the owners of the land in question and to provide documentation in this regard (Articles 28 and 29 of the Law on Expropriation). The respondent Party's authorities produced no sufficient documentation of ownership.

129. The Chamber further notes that the respondent Party failed to pass an individual expropriation decision against the applicant and did not initiate any negotiations with a view to his compensation. Consequently, the respondent Party did not act in accordance with the legal provisions on which the decision on declaration of general interest was based. Article 31, paragraph 4 of the Law on Expropriation obliges the respondent Party to secure evidence of the value of the real property in question. The Chamber also recalls Article 25 of the Law on Expropriation. It provides that a motion for expropriation must be accompanied *inter alia* by the certificate of the competent audit institution or another legally valid document, which provides evidence that the beneficiary of the expropriation has secured funds necessary for the compensation of all expropriated property in a special account. The fact that the respondent Party has not secured the necessary funding for the expropriation and thus does not have any such documents is undisputed. Hence, the respondent Party did not act in accordance with the principle of legality.

130. In conclusion, the Chamber finds a violation of Article 1 of Protocol No. 1 as a result of an unlawful interference with the peaceful enjoyment of property, as guaranteed by the first sentence of paragraph 1 of Article 1 of Protocol No. 1 to the Convention.

2. Article 8 of the Convention

131. The applicant also claims to be victim of a violation of Article 8 of the Convention, which reads as follows:

> "Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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."

132. The applicant's pre-war residence is situated within the wider area for which the general interest for the construction of a combat training centre was originally declared. He used his house as his home until such time as he was forced to leave in 1995 due to the hostilities. It was his intention to return to his home when it was safe to do so. The Chamber also notes that sometime before 2001 the respondent Party reduced the area for which it had declared general interest slightly without, however, publishing this amendment of the declaration of general interest. The Chamber notes that the applicant's house which he used as his home only falls within the original area but not within the revised area of general interest, although other property of the applicant still falls within the area of general interest as revised.

133. The Chamber further notes that the military exercises of 1998 mainly affected the area of the so-called tank-range, which has no defined borders. The exercises also affected a wider area up to approximately 6.5 km north of the tank-range, the so-called range-fan, into which the ammunition was fired. The exercises were not explicitly announced to the applicant or any other resident of the area.

134. The practical effect of the declaration of the general interest and the decision of 6 October 1998, which allowed the respondent Party to take possession at any time of the land on which the applicants had his home, was to leave the applicant in legal uncertainty about the future of his properties. This uncertainty was further aggravated by the fact that the applicant was not informed whether further military training exercises would be conducted.

135. The Chamber finds that, in light of the persisting legal uncertainty resulting from the 6 October 1998 decision of the respondent Party and the unannounced military exercises conducted by the respondent Party in an undefined area, the applicant also had reasons not to return to his pre-war home in the wider area of the military training range. The uncertainty of the situation caused by acts of the respondent Party made it unattractive for him to repair the damage caused to his home during the hostilities and to resume farming the land in the area.

136. The Chamber does not find that the applicant's situation was altered in any material way by the fact that, at some point in time, his house ceased to fall within the area of general interest. In light of the fact that this revision was never properly communicated to the applicant and the fact that the respondent Party might have decided to change its mind again, the legal uncertainty continued to affect the applicant as if his former home had remained within the area for which a declaration of general interest was in force.

137. The acts of the respondent Party thus constitute an interference with the right to respect for home as protected by Article 8 of the Convention.

138. In order to establish whether this interference has been justified under the terms of paragraph 2 of Article 8, the Chamber must examine whether it was "in accordance with the law, served a legitimate aim and was necessary in a democratic society" (case no. CH/97/58 *Onić v. the Federation of Bosnia and Herzegovina*, decision on the admissibility and merits delivered on 12 February 1999, paragraph 49, Decisions January-July 1999). Article 8 is violated if any of these conditions is not satisfied.

139. As already stated above, the interference was not "in accordance with the law" because the expropriation proceedings initiated by the respondent Party were not carried out in accordance with

the appropriate law. Therefore, it is not necessary for the Chamber to examine whether the acts complained of pursued a "legitimate aim" or were "necessary in a democratic society".

140. In conclusion, the Chamber finds that there has been a violation by the respondent Party of the applicant's right to respect for his home as guaranteed by Article 8 of the Convention.

3. Article 2 of Protocol No. 4 to the Convention

141. The applicant complained of a violation of his right to freedom of movement as guaranteed by paragraph 1 of Article 2 of Protocol No. 4 to the Convention. Paragraph 1 of Article 2 of Protocol No. 4 to the Convention, in relevant part, provides as follows:

> "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

142. In view of its findings that there has been a violation of Article 1 of Protocol No. 1 to the Convention, and also in view of its findings in respect of Article 8 of the Convention, the Chamber does not consider it necessary to examine the cases separately under paragraph 1 of Article 2 of Protocol No. 4 to the Convention.

4. Discrimination

143. The applicant complained of a violation of his rights guaranteed by Article 14 of the Convention, which prohibits discrimination on certain specified grounds in the enjoyment of the rights and freedoms set forth in the Convention. The Chamber will consider this allegation in the context of Article II(2)(b) of the Agreement, which states that the Chamber shall consider:

> "alleged or apparent discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Agreement ...."

144. The Chamber notes that it has already found violations of the applicant's rights protected by Article 1 of Protocol No. 1 to the Convention and by Article 8 of the Convention. It must now consider whether the applicant has suffered discrimination in the enjoyment of these rights.

145. As discussed in the related cases CH/99/2425 *et al., Ubović et al. (ibid,* par. 172-177), the Chamber cannot find it established that the respondent Party deliberately discriminated against the applicant. In particular, there is no indication that the selection of the area for a military training range was connected to the applicants' ethnicity. Also, there is no indication that the failure of the respondent Party to fulfil its obligations under the Law on Expropriation has amounted to differential treatment towards the applicant. In light of the drastic reduction of the military budget required by the World Bank and the International Monetary Fund, it seems that the Federation in general has problems in compensating anyone, regardless of his or her ethnic origin.

146. In conclusion, the Chamber finds that no discrimination on the ground of national origin against the applicant can be established.

5. Article 6 of the Convention

147. The applicant complained of a violation of his rights guaranteed by paragraph 1 of Article 6 of the Convention. That provision reads, in relevant part, as follows:

> "In the determination of his civil rights and obligations …, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law …."

148. The Chamber has already decided that the case primarily raises issues under Article 1 of Protocol No. 1 to the Convention. It considers that, in light of the findings it has made in respect of that Article, and also in respect of Article 8 of the Convention, it is not necessary for it to examine the case under Article 6 of the Convention.

6. Article 9 of the Convention

149. The applicant alleged a violation of freedom of religion. In particular, he claimed discrimination in the enjoyment of this right because he could not visit the churches and graveyards within the area that is subject to the declaration of the general interest for expropriation.

150. Article 9 of the Convention reads as follows:

> "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> Freedom to manifest one's religion or beliefs shall be subject only to such limitationsas are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

151. It is an undisputed fact that it is possible at all times, except during military exercises, which have not taken place since 1998, to enter the area of the combat training centre and to visit the churches and cemeteries in the area, which are protected by embankments. Under these circumstances, and in light of the findings it has already made in respect of Article 1 of Protocol No. 1 to the Convention, the Chamber does not consider it necessary to examine the case separately under Article 9 of the Convention.

VIII. REMEDIES

152. Under Article XI(1)(b) of the Agreement, the Chamber must address the question of what steps shall be taken by the respondent Parties to remedy the established breaches of the Agreement. In this context, the Chamber shall consider issuing orders to cease and desist, monetary relief, as well as provisional measures.

153. The Chamber recalls that the applicant died in April 2001 and that his legal successors, whoever they may be, pursue his case before the Chamber. The Chamber will therefore order that any remedies, including any pecuniary compensation ordered, shall be payable to whoever the domestic courts have determined as the applicant's legal successors. Those legal successors are hereinafter referred to as "the applicant's heirs".

154. On 9 February 2000, within the time-limit set to him by the Chamber, the applicant submitted a compensation claim asking for just and fair compensation for material and immaterial damage without specifying this claim any further.

155. The Chamber recalls that in its decision in the cases CH/99/2425 *et al.,* Ubović *et al.* it ordered the Federation to decide whether to pursue expropriation proceedings in regard to each individual applicant in accordance with the relevant Law on Expropriation or, in the alternative, to

abandon those plans for expropriation. The Federation was further ordered to implement the consequences of its decision on the question of expropriation. On 25 February 2002, 28 May 2002 and again on 12 August 2002 the respondent Party informed the Chamber that it had abandoned the expropriation without, however, taking any steps to communicate formally or informally this decision to the applicants concerned, and more in general, to the pre-war inhabitants of that area.

156. The Chamber is of the opinion that the respondent Party's decision not to expropriate the property of the applicants in the cases CH/99/2425 *et al.,* Ubović *et al.* can only mean that also in the present case the respondent Party has decided not to go ahead with the expropriation of the applicant's property.

1. Revocation of the declaration of general interest

157. The Chamber therefore finds, as it already did in its decision on further remedies in the cases CH/99/2425 *et al.,* Ubović *et al.,* of 6 December 2002 that the legal uncertainty regarding the status of the applicants' property and the possible expropriation must be ended as soon as possible because it causes a prolonged interference with the applicant's rights.

158. The Chamber therefore considers it appropriate to again order the Federation of Bosnia and Herzegovina to pass a formal decision to the effect that the Government of the Federation of Bosnia and Herzegovina withdraws its declaration of general interest of 14 May 1998 and renounces its intention to expropriate the applicant's plots. This decision must be published no later than 5 February 2004. It should be published in the same way as the decision of 14 May 1998 which declares the general interest for expropriation. The Chamber also considers it appropriate to order the respondent Party to inform the applicant's heirs no later than 5 January 2004 that it has given up the intention to expropriate the applicant's property. The Chamber considers it also appropriate to order the Federation to inform the applicant' s heirs as soon as the decision withdrawing the declaration on general interest is published.

2. Compensation for lost income

159. The Chamber recalls that, as a consequence of the decision of 14 May 1998 declaring general interest and the decision of 6 October 1998 delivering the possession of the applicant's land to the Ministry of Defense, the applicant, while still alive, could not be expected to return to his property, make full use of it and, in particular, resume farming. The Chamber therefore considers it appropriate to order the respondent Party to compensate the applicant's heirs for the applicant's lost income for the period from 14 May 1998 until the applicant's death in April 2001.

3. Compensation mechanism

160. The respondent Party is obliged to set up an appropriate mechanism to pay an equitable compensation to the applicant's heirs for the pecuniary damages set out in the paragraph 159 above, e.g. by appointing a group of experts to evaluate the damage. The Chamber further considers it appropriate to order the respondent Party to pay to the applicant's heirs an initial sum of 1000 KM in total, by 5 February 2004, as an advance for the compensation due. The Chamber also finds it appropriate to order the respondent Party to pay out the compensation awarded for pecuniary damages to the applicant's heirs no later than 5 May 2004.

4. Non-pecuniary compensation

161. In light of the fact that the applicant died the Chamber does not find it appropriate to award compensation for non-pecuniary damage.

162. Bearing in mind the fact that the respondent Party has failed to properly implement the Chamber's decisions on admissibility and merits and on further remedies in the related cases CH/99/2425 Ubović *et al.,* the Chamber finds it appropriate to reserve the right of its successor institution, the Human Rights Commission within the Constitutional Court, to issue a decision on possible further remedies.

163. The Chamber considers it appropriate to order the Federation of Bosnia and Herzegovina to report to the Human Rights Commission within the Constitutional Court no later than on 5 January 2004 and again on 5 May 2004 on the steps taken in order to implement this decision.

XI. CONCLUSIONS

164. For the above reasons the Chamber decides:

1. unanimously, to declare the application admissible;

2. unanimously, that that there has been a violation of the applicant's right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that there has been a violation of the applicant's right to respect for his home within the meaning of Article 8 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, that it is not necessary to rule on the applicant's complaint under Article 2 of Protocol No. 4 to the Convention;

5. unanimously, that no discrimination against the applicant has been established;

6. unanimously, that it is not necessary to rule on the applicant's complaint under Article 6 of the Convention;

7. unanimously, that it is not necessary to rule on the applicant's complaint under Article 9 of the Convention;

8. unanimously, to order the Federation of Bosnia and Herzegovina to pass swiftly, and in any case no later than 5 February 2004, a formal decision to the effect that the Government of the Federation of Bosnia and Herzegovina withdraws its declaration of general interest of 14 May 1998 and renounces its intention to expropriate the applicant's plots. This decision should be published in the same way as the decision of 14 May 1998 which declared the general interest for expropriation;

9. unanimously, to order the Federation of Bosnia and Herzegovina to inform the applicant's heirs promptly, in any event no later than 5 January 2004, that it has given up the intention to expropriate the applicant's property and also to inform the applicant's heirs as soon as the decision withdrawing the declaration on general interest is published in accordance with the conclusion no. 8 above;

10. unanimously, to order the Federation of Bosnia and Herzegovina to compensate the applicant's heirs no later than 5 May 2004 for the applicant's lost income for the period from 14 May 1998 until the his death in April 2001;

11. unanimously, to order the Federation of Bosnia and Herzegovina to set up an appropriate mechanism to pay an equitable compensation to the applicant's heirs for the pecuniary damages set out in conclusion 10 above, and to pay to the applicant's heirs, by 5 February 2004, an initial sum of 1000 KM (*one thousand convertible marks*) in total as an advance payment for the compensation due;

12. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant's heirs in the preceding paragraph. The interest shall be paid as of 5 January 2004 on the advance payment in conclusion 11 above or any unpaid portion thereof until the date of settlement in full;

13. unanimously, to reserve the right of the Human Rights Commission within the Constitutional Court to issue a decision on further remedies;

14. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Human Rights Commission within the Constitutional Court no later than on 5 February 2004 and again on 6 May 2004 on the steps taken in order to implement this decision.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber