DECISION ON ADMISSIBILITY AND MERITS
(delivered on 7 September 2001)

Cases nos.
CH/99/2425, CH/99/2426, CH/99/2427, CH/99/2428
CH/99/2429, CH/99/2430, CH/99/2431,
CH/99/2433, CH /99/2434 and CH/99/2435

Neđeljko UBOVIĆ, Ilija UBOVIĆ, Mlađen UBOVIĆ, Radovan HAJDER, Mihajlo TRAVAR, Pero KRČMAR, Stoja JUZBAŠIĆ, Nikola (Riste) HAJDER, Pane ŠAVIJA and Zdravko RADIČIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 3 September 2001 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, 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 cases concern the attempts of the ten applicants, all citizens of Bosnia and Herzegovina of Serb ethnic origin, who were displaced in 1995, to return to their privately-owned property consisting of agricultural land and buildings in the municipality of Glamoč in the Federation of Bosnia and Herzegovina (the "Federation"). The properties concerned are located within a military training range used by the Army of the Federation of Bosnia and Herzegovina (the "Federation Army").

2. The area north of Glamoč, in which the applicants' 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 18-21 September 2000.

4. The applicants Radovan Hajder, Nikola Hajder, Pane Šavija, Stoja Juzbašić and Zdravko Radičić own or co-own property in this "tank-range". The other five applicants' property is situated within the wider area of the military range. No constructions have been built there so far.

5. The cases primarily raise 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. All ten applications were submitted on 16 November 1999 and registered on the same day. Each application included a request for a provisional measure to be ordered pursuant to Article X(1) of the Agreement. The applicants are not represented by lawyers.

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 applicants' property. 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 applications 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 applicants. The applicants responded through written observations including claims for compensation which were received from Mr. Neđeljko and Mr. Ilija Ubović on 31 March 2000, from Mr. Mlađen Ubović on 31 March 2000, from Mr. Radovan Hajder on 24 February 2000, from Mr. Mihajlo Travar on 24 February 2000, from Mr. Pero Krčmar on 6 March 2000, from Ms. Stoja Juzbašic on 25 February 2000, from Mr. Nikola (Riste) Hajder on 24 February

2000, from Mr. Pane Šavija on 25 February 2000 and from Mr. Zdravko Radičić on 24 February 2000.

12. On 25 January 2000 the Chamber transmitted the written statements of the applicants including their claims for compensation to the respondent Party. The respondent Party's reply to the written observations and the claims for compensation were 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 applicants 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. Of the applicants Mr. Radovan Hajder, Mr. Zdravko Radičić, Mr. Pane Šavija, Ms. Stoja Juzbašić and Mr. Mlađen Ubović attended. Mr. Špiro Hajder attended to represent Mr. Nikola Hajder. He also spoke on behalf of all other applicants, as did Mr. Mlađen Ubović. 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. The parties and the *amicus curiae* addressed the Chamber, after which they answered questions put to them.

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

18. In March 2001 the Chamber requested and received further written information from all applicants, except for Mr. Mihajlo Travar, regarding the identification of the plots allegedly owned by each applicant.

19. 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 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. 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.

20. The Chamber received additional information and an update to the compensation claim of Radovan Hajder on 17 May 2001, of Zdravko Radičić on 17 May 2001, of Stoja Juzbašić on 18 May 2001, of Nikola Hajder on 30 May 2001 and a new compensation claim of Pane Šavija on 6 June 2001. The respondent Party received these submissions for information and comments and replied to the Chamber on 5 July 2001.

21. On 3 September 2001, the Chamber decided to join the applications in accordance with Rule 34 of the Chamber's Rules of Procedure.

22. The Chamber deliberated on the admissibility and merits of the applications on 7 December 2000 and 8 February, 8 March, 7 June, 5 July and 3 September 2001.

III. ESTABLISHMENT OF THE FACTS

A. General facts of the cases

23. 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 cadasteral 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.

24. 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.

25. 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. The rail tracks are close to the properties of the applicants Pane Šavija and Radovan Hajder.

26. 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.

27. In early 1997, the Ministry of Defence of the Federation made a request to the Stabisation 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.

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

29. 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.

30. 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.

31. 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.

32. 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.

33. In November 1999, in view of the fact that the applicants 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.

34. The applicants learned of the respondent Party's intention to carry out expropriations of their land through this media campaign, and by the fact that construction works had commenced on their land, and through relatives, friends and Mr. Jose Maria Aranaz of the Office of the High Representative ("OHR"). They applied to the Chamber in November 1999 without seeking relief from any domestic courts.

35. 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.

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

37. 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. None of these cases concern any of the applicants. All 250,000 KM that the respondent Party in August 1999 deposited into a special bank account (see paragraph 32) was spent to compensate property owners but none of it was spent to compensate the applicants in the present cases.

38. In seven cases negotiations have not led to any agreement. These cases include the cases of the applicants Radovan Hajder, in which 50,200 KM was offered by the Federation as compensation; Zdravko Radičić in which 26,000 KM was offered for 1/3 of the property (1/3 is Zdravko Radičić's share in the property); and Pane Šavija in which no offer was made.

39. In 2001 the respondent Party stopped the hearings on expropriation due to lack of funds. It is the respondent Party's stated intention to expropriate land and houses as soon as sufficient funds are available.

B. The facts of the individual applicants' cases

40. All ten applicants own or co-own property within the area originally designated as a military training range. Not all property is registered in the name of the present owners.

41. The applicants Pane Šavija, Zdravko Radičić, Nikola Hajder, Radovan Hajder and Stoja Juzbašić own or co-own property within the designated military training range in an area referred to as the tank-range. In this area constructions for the purpose of military training have been built. It is circa 2.5 square km in size and includes the villages of Kula and Reljino Selo.

42. The other five applicants, Ilja Ubović, Mlađen Ubović and Nedjelko Ubović, Mihajlo Travar, Pero Krčmar, own or co-own various plots of land and buildings within the area for which the general interest for expropriation was declared but on which no constructions have been made so far.

43. The land owned by the applicants is agricultural land of varying quality, used as plough land, hay-making land or pasture. The quality of the land is reflected by the classification of each individual plot in the cadasteral lists. The applicants and the respondent Party agree that this classification should be used as the basis for valuation of the land. All applicants own or co-own houses and other facilities built on their plots.

44. The applicants Neđjelko Ubović, Mlađen Ubović and Ilja Ubović applied to the Commission for Real Property of Displaced Persons and Refugees ("CRPC") on 15 April 1998; the applicant Mihajlo Travar on 5 May 1998. None of these applications have been decided by the CRPC so far.

45. The applicants Radovan Hajder, Pane Šavija, Pero Krčmar, Mlađen Ubović, Zdravo Radičić and Mihajlo Travar lived on their plots of land in the area now designated to be used for the military training range until they fled in 1995 due to the hostilities. They were farmers who worked on the land, generating most of their income from farming sheep and cultivating potatoes and barley.

46. The applicants Ilija and Neđeljko Ubović, Nikola Hajder and Stoja Juzbašić were officially registered as residents in other places in 1995. Nevertheless, they all retained close ties to the Glamoč region where relatives farmed their land. Nikola Hajder claimed at the meeting on 11 May 2001, in addition, that before the hostilities he had wanted to permanently return to his Glamoč property as he was a pensioner and spent much of his time there.

47. The applicant Mihajlo Travar alleged that his shed and a barn burnt down in June 1998 and his house in June 1999. At the meeting in May 2001 the respondent Party admitted the possibility of a large fire in that area at that time. However, it maintained that no military training exercises had been carried out then.

C. Oral evidence received at the public hearing on 6 December 2000 from *amicus curiae*

48. 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.

49. 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.

50. 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.

51. 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.

52. 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.

IV. RELEVANT LEGISLATION

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

1. Constitution of Bosnia and Herzegovina

53. 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."

54. 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

55. 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."

56. 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

57. 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

58. 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

59. 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".

60. "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

61. 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 81 *et seq.* below).

62. 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.

63. Article 1 of the law states that land may be expropriated if it is necessary 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".

64. 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.

65. 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.

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. 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.

76. 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.

77. 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.

78. 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).

79. 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).

80. 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")

81. 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.

82. 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.

83. 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.

84. 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.

85. 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.

86. 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.

87. 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.

88. 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

89. The Law on Administrative Procedure (OG FBiH no. 2/98) 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.

90. 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.

91. 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

92. 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). The laws regulate conditions and the cessation of legal right of ownership and possession and other rights over movable and immovable property.

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

94. 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).

95. 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.

96. 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.

97. 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

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

99. 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

100. The applicants claim that their rights as guaranteed by the Agreement have been violated as a result of the establishment of a combat training centre for the use of the Federation Army. In particular, they allege violations of Article 8 of the European Convention of Human Rights (the "Convention") and of Article 1 of Protocol No. 1 to the Convention. In addition, the applicants allege a violation of Article 2, first paragraph, of Protocol No. 4 to the Convention, as they could not choose their residence in the area affected by the plans for the combat training centre. The applicants further complain of discrimination because allegedly only persons of Serb ethnic origin are affected by the military training range. They also complain of a violation of their rights guaranteed under Article 6 of the Convention, more specifically their rights to access to the courts. They claim that due to their lack of information about the status of the expropriation proceedings, they were unable to go before the courts and that courts in Canton 10 are biased against non-Croats. Finally, all ten applicants complain of a violation of their rights guaranteed under Article 9 of the Convention because they cannot visit the churches and cemeteries in the area.

VI. FINAL SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

101. The respondent Party first argues that the relevant law regulating the expropriation complained of by the applicants is the Law on Expropriation (OG SRBiH no. 12/87) and gives a summary of those legal provisions. The Federation submits that the applications are inadmissible for non-exhaustion of domestic remedies. In its further observations on the compensation claims, the respondent Party considers the applications also to be inadmissible *ratione personae,* stating that the military training range falls within the responsibility of SFOR.

102. 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 applicants' rights under Article 1 of Protocol No. 1. In a more recent statement, 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".

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

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

105. 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.

106. 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.

107. In regard to the alleged violation of Article 2 of Protocol No. 4 to the Convention, the respondent Party argues that all applicants requested to be expropriated and to receive compensation, from which the Federation draws the conclusion that they do not intend to move back to the area in question. The Federation further submits that there will be proper expropriation proceedings, that there is a general interest for the construction of the combat training centre and that the restrictions of the applicants' freedom to move to the area of the military range were for their own safety. It concludes that there was no violation.

108. In its observations of 21 April 1999, the respondent Party contests both the basis and the amount of compensation claimed by the applicants and points to the fact that no evidence was submitted in regard to alleged pecuniary damage. In regard to the additional compensation claims made by the applicants present 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. It further points out that the claims of the applicants are not substantiated. In particular, the applicants did not submit material evidence in respect to the alleged costs for travel expenses and alternative accommodation.

B. The applicants

109. The applicants maintain their claims. They emphasise that the respondent Party did not act in accordance with the Law on Expropriation. In particular, they claim that their 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 applicants about its actions. The applicants further note 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 the applicants.

VII. OPINION OF THE CHAMBER

A. Admissibility

110. 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

111. 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.

112. 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.*).

113. The respondent Party argues that the application should be declared inadmissible because the applicants did not indicate that there were no domestic remedies available, nor did they show that they had exhausted the available remedies. The respondent Party in its observations on admissibility and merits of 28 December 1999 stated that the applicants could have complained to the courts and relevant administrative bodies about the fact that they were 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 applicants. 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 applicants assert that due to the inefficiency of the competent organs, all remedies available would prove to be ineffective.

114. 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).

115. In the present case, the respondent Party has not indicated which remedies were or would be available to the applicants under the given circumstances. In particular, the applicants cannot 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.

116. On the information available to it, the Chamber finds that no effective remedy was available to the applicants 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*

117. In its additional written observations of 21 April 2000 on the applicants' 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.

118. 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 applications are correctly directed against the Federation as the respondent Party.

3. Conclusion as to the admissibility

119. As the Chamber finds that none of the other grounds for declaring the cases inadmissible have been established, the applications are declared admissible.

B. Merits

120. 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

121. The applicants complain of a violation of their rights to peaceful enjoyment of their 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."

122. It is an undisputed fact between the parties that all applicants are either owners or co-owners of property within the area designated as the combat training centre for the Federation Army. It is further established between the parties that five applicants, Pane Šavija, Zdravko Radičić, Nikola Hajder, Radovan Hajder and Stoja Juzbašić, own or co-own property within the area referred to as the tank-range on which the constructions for military training have been built. The other five applicants, Ilija Ubović, Mlađen Ubović and Neđeljko Ubović, Mihajlo Travar and Pero Krčmar, own or co-own various plots of land and buildings within the area for which the general interest for expropriation was declared but in which no constructions have been built so far.

123. 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).

a. Cases of the applicants who own or co-own property within the so-called tank-range (Pane Šavija, Zdravko Radičić, Nikola Hajder, Radovan Hajder and Stoja Juzbašić)

124. The Chamber will first consider the cases of the above-listed applicants who own or co-own property within the so-called tank-range.

125. As noted above, on the properties of five applicants (of Pane Šavija, Zdravko Radičić, Nikola Hajder, Radovan Hajder and Stoja Juzbašić), constructions for military training have been built, including two gravel paths used as tank-lanes, two connecting roads, an embankment with rail tracks behind it, a tower, four firing positions and ten target pits. The fertile layer of soil has been removed to build five further tank-lanes still under construction. These constructions, for which the respondent Party is responsible, interfere with the possessions of the applicants.

126. This interference constitutes a "deprivation of possession" within the meaning of the second sentence of Article 1 of Protocol No. 1 to the Convention even though the applicants are still formally owners of the property. In light of the fact that the respondent Party has taken the land for its own use, it has taken *de facto* possession of the area of the tank-range. It is not possible for the applicants to enjoy their property in the way they wish. In particular, it is impossible for them to use the land for farming due to the permanent constructions built on the land, the ongoing works and the movement of heavy vehicles and tanks.

127. Any deprivation of possessions must always be subject to conditions provided for by law. The Chamber will now examine whether these conditions were followed in the cases of these five applicants.

128. The Chamber notes that the construction works depriving the applicants of their possessions started in 1997, even before the general interest for expropriation was declared. The *de facto* taking of possessions by the respondent Party took place without any legal justification. The Chamber recalls that the Law on Expropriation provides that a declaration of the general interest is the compulsory first step in any expropriation proceedings.

129. The Chamber notes that the decision of 6 October 1998 of the Government of the Federation allowing the Ministry of Defence to take possession before individual procedural decisions on expropriation became final and binding was issued without any compensation paid or offered to the applicants. The respondent Party also failed to secure any evidence of the value of the applicants' possessions in question.

130. The Chamber further notes that the respondent Party also failed to pass individual expropriation decisions against any of the ten applicants. Moreover, only with the applicants Radovan Hajder, Zdravko Radičić and Pane Šavija did negotiations take place with a view to their compensation, none of which, however, led to an agreement.

131. Consequently, the respondent Party did not act in accordance with the legal provisions on which the decision was based, namely Article 28, paragraph 2 of the "Herceg-Bosna" Law on Expropriation and Article 31, paragraph 4 of the Law on Expropriation. Article 28, paragraph 2 of the "Herceg-Bosna" Law provides that it is obligatory for the beneficiary to offer and to pay compensation to the owner before a decision could be passed allowing the beneficiary to take possession. Article 31, paragraph 4 obliges the respondent Party to secure evidence of the value of the real property in question. The Chamber makes no comment on or determination of the present validity of, hierarchy between, or preferential applicability of the former laws of the Republic of Bosnia and Herzegovina and the "Croat Republic of Herceg-Bosna". Rather, the Chamber considers each set of laws individually in analysing whether the interference with the applicants' rights protected by Article 1 of Protocol No. 1 to the Convention is justified.

132. The Chamber recalls Article 25 of the Law on Expropriation. 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.

133. Thus, the respondent Party concedes in a letter of 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".

134. The Chamber recalls that there is an obligation for the State to pay compensation for expropriation, which derives from an implicit condition in Article 1 of Protocol No. 1 to the Convention read as a whole. Article 1 of Protocol No. 1 furthermore embodies the principle that a fair balance between the interests of the State and the possessor must be struck. Compensation terms are material to the assessment of whether a fair balance has been struck between the various interests at stake and whether or not a disproportionate burden has been imposed on the person who has

been deprived of his possessions (see, e.g., European Court on Human Rights, *Lithgow et al. v. The United Kingdom,* judgment of 18 July 1986, Series A no. 102, paragraphs 109, 120).

135. Hence, the deprivation is not justified as the respondent Party has not met the conditions set out in the second sentence of the first paragraph of Article 1 of Protocol No 1 to the Convention. The deprivation of the possessions of those five applicants constitutes a violation of Article 1 of Protocol No. 1 to the Convention.

b. Cases of all ten applicants who own or co-own property within the area of general interest

136. As noted above, all ten applicants own or co-own property within the military training range.

137. 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.

138. It should be recalled that the authorities did not proceed to expropriate the property of the applicants. The applicants were, therefore, not formally deprived of their possessions at any time: they were entitled to use, sell, divide, donate or mortgage their properties.

139. 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 applicants, as manifested in the two decisions of 1998, caused the applicants' rights to property to become precarious and defeasible. Under these circumstances the applicants cannot be expected to return, repair the war damages, invest in their properties 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 applicants. 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.

140. However, the Chamber considers the two decisions of 1998 of the respondent Party to constitute an interference with the applicants' rights to the peaceful enjoyment of their possessions. This interference is 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. Thus, it affects all ten applicants.

141. 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 applicants' 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).

142. As already discussed above (see paragraphs 131-133 above), the Federation violated the legal provisions on which it based its decision of 6 October 1998, which allowed the beneficiary of the expropriation to take possession of the property before any procedural decisions on expropriation became legally valid.

143. The respondent Party further did not 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. Hence, the respondent Party did not act in accordance with the principle of legality.

144. In conclusion, the Chamber finds a violation of Article 1 of Protocol No. 1 in regard to all ten applicants 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.

145. With regard to Pane Šavija, Zdravko Radičić, Nikola Hajder, Radovan Hajder and Stoja Juzbašić, owners or co-owners of property within the so-called tank-range, the Chamber in addition finds a violation of the second sentence of paragraph 1 of Article 1 of Protocol No. 1 to the Convention, in that they were unlawfully deprived of their possessions.

2. Article 8 of the Convention

146. In their applications to the Chamber, all ten applicants claimed to be victims of a violation of Article 8 of the Convention, which reads 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."

147. The Chamber notes that the applicants' situations can be divided into three different categories:

a) The applicants Neđeljko Ubović, Ilja Ubović, Nikola Hajder and Stoja Juzbašić were not ordinary residents before the hostilities in houses on their properties affected by the declaration of the general interest for expropriation.

b) The pre-war homes of the applicants Radovan Hajder, Pane Šavija and Zdravko Radičić fall within the so-called tank-range.

c) The pre-war homes of Mlađen Ubović, Mihajlo Travar and Pero Krčmar are situated within the wider area for which the general interest for the construction of a combat training centre was originally declared.

a. Applicants who did not have their permanent residence in the area of the combat training centre

148. In their observations received at the Chamber on 31 March 2000, the applicants, Neđeljko Ubović, Ilja Ubović, Nikola Hajder and Stoja Juzbašić, are of the opinion that their rights to respect for their homes as protected by Article 8 of the Convention have been violated. They argue that although they no longer had their permanent residences in the area, even before the outbreak of the hostilities, they had retained strong ties to their houses in which they were born and raised and where their ancestors had lived. The applicant Nikola Hajder, a pensioner, added at the public hearing in December 2000 that he had had the intention of taking up permanent residence in the area concerned.

149. The Chamber finds that for Neđeljko Ubović, Ilija Ubović, Stoja Juzbašić and Nikola Hajder these properties did not constitute a home, as protected under Article 8 of the Convention. It is not

enough to maintain close ties to a previous home. The fact that one was born at a place or that one's ancestors had lived and were buried at a place is not sufficient for the place to be considered a "home" for the purposes of Article 8 of the Convention. Also, in the case of Nikola Hajder, the mere intention to establish permanent residence does not make this place his home (see European Court of Human Rights, *Loizidou v Turkey,* judgment of 18 December 1996*,* Reports 1996-VI, fasc. 26, p. 2216 *et seq.,* paragraph 66).

150. The Chamber concludes that in regard to the applicants Neđeljko Ubović, Ilja Ubović, Stoja Juzbašić and Nikola Hajder, Article 8 of the Convention has not been violated.

b. Applicants who lived in the now so-called tank-range

151. The applicants Radovan Hajder, Pane Šavija and Zdravko Radičić complain of violations of Article 8 of the Convention. At the time of the respondent Party's actions in question in 1998, these applicants no longer inhabited their properties.

152. The applicants had their homes within the so-called tank-range. They left their houses in 1995 due to the hostilities, and they state that they would have returned there after the end of the hostilities if the respondent Party had not begun the construction of the combat training centre.

153. The Chamber has previously held that the links that a person retained to his dwelling were sufficient for the dwelling to be considered his "home" within the meaning of Article 8 of the Convention in cases in which the applicant had to leave his house or apartment due to the hostilities and wanted to return when it was safe to do so (see, e.g., case no. CH/97/46, *Kevešević*, decision on the merits delivered on 10 September 1998, paragraph 3, Decisions and Reports 1998). The respondent Party, in the meeting on 11 May 2001, agreed to consider the pre-war residences to be the homes of the applicants.

154. The Chamber therefore finds that the properties are to be considered the applicants' homes for the purposes of Article 8 of the Convention.

155. The Chamber notes that the applicants were forced to leave their homes in 1995 as a result of the hostilities. Ongoing construction works, movement of tanks and heavy vehicles for the construction works and the constructions built adjacent to the applicants' homes affected the applicants' properties in such a way that they were prevented from returning to their homes. The uncertainty of possible military exercises aggravated the applicants' situation further.

156. In light of these facts, the Chamber finds that the respondent Party interfered with the applicants' rights to respect for their homes.

157. In order to examine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, 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). All these requirements need to be met to justify the interference with the right granted by paragraph 1 of Article 8 of the Convention. The respondent Party argues that the expropriation is in the general interest, follows a legitimate aim and is necessary in a democratic society.

158. However, as already found above, the respondent Party has admitted that it did not act in accordance with the Law on Expropriation. It took *de facto* possession of the applicants' plots and started construction works without observing the required formalities of the Law (see paragraph 133 above).

159. This finding dispenses the Chamber from examining whether the acts complained of pursued a legitimate aim or were necessary in a democratic society.

160. In conclusion, the Chamber finds that there has been a violation by the respondent Party of the rights of the applicants Radovan Hajder, Pane Šavija and Zdravko Radičić to respect for their homes as guaranteed by Article 8 of the Convention.

c. Applicants who lived in the wider area of the military training range

161. The pre-war residences of the applicants Mlađen Ubović, Mihajlo Travar and Pero Krčmar are situated in the northern villages of the military training range which fall within the wider area for which the general interest for the construction of a combat training centre was originally declared. These four applicants used their houses as their homes until such time as they were forced to leave in 1995 due to the hostilities. It was their intention to return to their homes when it was safe to do so.

162. The Chamber 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 applicants.

163. 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 their homes, was to leave the applicants in legal uncertainty about the future of those properties. This uncertainty was further aggravated by the fact that the applicants were not informed whether further military training exercises would be conducted.

164. 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 applicants in the wider area of the military training range also had reasons not to return to their pre-war homes. The uncertainty of the situation caused by acts of the respondent Party made it unattractive for them to repair the damage caused to their homes during the hostilities and to resume farming the land in the area. 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.

165. 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.

166. 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".

167. In conclusion, the Chamber finds that there has been a violation by the respondent Party of the rights of the applicants Mlađen Ubović, Mihajlo Travar and Pero Krčmar to respect for their homes as guaranteed by Article 8 of the Convention.

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

168. All applicants complain of a violation of their rights 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."

169. 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

170. The applicants complain of a violation of their 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] …."

171. The Chamber notes that it has already found violations of all the applicants' rights protected by Article 1 of Protocol No. 1 to the Convention and violations of some of the applicants' rights protected by Articles 8 of the Convention. It must now consider whether the applicants have suffered discrimination in the enjoyment of these rights.

172. In examining whether there has been discrimination in violation of the Agreement, the Chamber recalls the jurisprudence of the European Court of Human Rights and the United Nations Human Rights Committee. As the Chamber noted in its decision in *Đ.M.* (case no. CH/98/756, decision on admissibility and merits delivered on 14 May 1999, paragraph 73, Decisions January–July 1999), these bodies have consistently found it necessary first to determine whether the applicant was treated differently from others in the same or relevantly similar situations. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin. In previous cases, the Chamber has taken the same approach (see, e.g., case no. CH/97/45, *Hermas*, decision on admissibility and merits delivered on 18 February 1998, paragraphs 86 *et seq.*, Decisions and Reports 1998).

173. The Chamber recalls that the obligation of the Parties to the Agreement to "secure" the rights and freedoms mentioned in the Agreement to all persons within their jurisdiction not only obliges a Party to refrain from violating those rights and freedoms, but also imposes on that Party a positive obligation to protect those rights (see the aforementioned decision in *Đ.M.*, paragraph 75). Analogous obligations are also contained in the Constitutions of Bosnia and Herzegovina, of the Federation of Bosnia and Herzegovina and of the Republika Srpska.

174. The Chamber notes that all the applicants are citizens of Bosnia and Herzegovina of Serb ethic origin who were displaced in 1995 due to the hostilities.

175. The Chamber further notes that the area for which the general interest in the expropriation proceedings was declared was an area which, before the hostilities, was owned by citizens of Bosnia and Herzegovina of Serb ethnic origin. However, this area was indicated to the respondent Party as a suitable military training ground by SFOR. SFOR operates an adjacent training range on which joint training can take place. Furthermore, even before the hostilities, the Yugoslav National Army previously conducted military exercises in the Glamoč area. On these facts, the Chamber cannot find that the selection of the area for a military training range was connected to the applicants' ethnicity.

176. The Chamber finds that there is no indication that the failure of the respondent Party to fulfil its obligations under the Law on Expropriation amounts to differential treatment toward the applicants. 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 to compensate anyone, regardless of his or her ethnic origin.

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

5. Article 6 of the Convention

178. All the applicants complain of a violation of their 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 ...."

179. 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

180. The applicants allege a violation of freedom of religion. In particular, the applicants claim discrimination in the enjoyment of this right because they cannot visit the churches and graveyards within the area that is subject to the declaration of the general interest for expropriation.

181. Article 9 of the Convention reads as follows:

> "1. 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.
>
> "2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as 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."

182. It is an undisputed fact that it is possible at all times, except during military exercises, 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 and in respect of paragraph 1 of Article 2 of Protocol No. 4 to the Convention, the Chamber does not consider it necessary to examine the case separately under Article 9 of the Convention.

VIII. REMEDIES

183. 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.

184. With regard to possible compensatory awards, the Chamber first recalls that in accordance with its order to organise the proceedings in the respective cases, all applicants were afforded the possibility of claiming compensation within the time-limit fixed by the Chamber. On 25 January 2001 the Registry invited all the applicants in writing to submit their compensation claims within one month from the date of the Registry's letter. All applicants, with the exception of the applicant in case no. CH/99/2430, Mr. Krčmar, submitted detailed compensation claims, requesting compensation for alleged damages resulting from their inability to use their properties, for their loss of properties and for mental suffering.

185. In addition, all the applicants present at the hearing on 11 May 2001, Radovan Hajder, Nikola Hajder, Pane Šavija, Zdravko Radičić and Stoja Juzabšić, also submitted additional compensation claims in respect to costs and expenses and an update on lost income in May and June 2001.

186. Mr. Neđeljko Ubović on 1 March 2000 submitted a compensation claim for a total of 135,000 KM. The sum consists of compensation of 100,000 KM for the deprivation of land (alleged value according to the cadaster), 30,000 KM for the deprivation of forest (alleged value according to the cadaster) and 5000 KM for mental suffering resulting from not being able to visit family graves.

187. Mr. Ilija Ubović on 1 March 2000 submitted a compensation claim for a total of 135,000 KM. The sum consists of compensation of 100,000 KM for the deprivation of land, 30,000 KM for the deprivation of forest and 5000 KM for mental suffering resulting from not being able to visit family graves.

188. Mr. Mlađen Ubović on 1 March 2000 submitted a compensation claim for a total of 945,000 KM. The sum consists of compensation of 600,000 KM for lost income, 200,000 KM for the destruction of the family house and other buildings on the applicant's property, 10,000 KM for "destruction of land", 100,000 KM for the deprivation of land, 30,000 KM for the deprivation of forest and 5000 KM for mental suffering resulting from not being able to visit family graves.

189. Mr. Radovan Hajder on 24 February 2000 submitted a compensation claim for a total of 568,800 KM. The sum consists of compensation of 140,000 KM for lost income (35,000 KM per year as of 1 January 1996). He further claimed compensation of 200,000 KM for the destruction of family houses and other buildings, 40,000 KM for the destruction of land within his property and 180,000 KM for the deprivation of land. He also claimed compensation of 3800 KM for alternative accommodation (100 KM per month since 1 January 1996) and 5000 KM for mental suffering resulting from not being able to visit family graves.

190. On 17 May 2001, Mr. Radovan Hajder updated his compensation claim, which now amounts to the total sum of 680,800 KM. He added lost income for the years 2000 and 2001, making his total claim for lost income 210,000 KM (35,000 KM per year as of 1 January 1996). He further requested 5800 KM for alternative accommodation because he was forced to rent a house that cost 200 KM per month. He also submitted a compensation claim of 40,000 KM for two houses (20,000 KM per house) that were allegedly in good condition in 1999 and are now destroyed. In addition, he stated that he maintains his earlier claims in regard to mental suffering, the destruction of houses and deprivation of land.

191. Mr. Mihajlo Travar on 24 February 2000 submitted a compensation claim for a total of 1,110,000 KM. This sum consists of 600,000 KM for lost income, 200,000 KM for the destruction of the family house and other buildings and 10,000 KM for the "destruction of land he owns". In addition, he claimed 250,000 KM for the deprivation of his land. He also claimed 50,000 KM for mental suffering due to the fact that he could not visit the family cemetery.

192. Mr. Pero Krčmar, in his compensation claim of 6 March 2000, requested only just and fair compensation for pecuniary and non-pecuniary damages, without further specification of his claim.

193. Ms. Stoja Južbašić on 25 February 2000 submitted a compensation claim for a total of 645,000 KM. The sum consists of 140,000 KM for lost income (35,000 KM per year starting from 1 January 1996), 200,000 KM for the destruction of the family house and other buildings, and 300,000 KM for the deprivation of land. She further claimed 5000 KM for mental suffering due to the fact that she could not visit family graves.

194. On 17 May 2001, Ms. Stoja Juzbašić updated her compensation claim to a total of 675,000 KM. She increased her compensation claim for lost income to a total of 170,000 KM, including lost income for the year 2001.

195. Mr. Nikola (Riste) Hajder on 24 February 2000 submitted a compensation claim for total compensation of 213,000 KM. The sum consists of 28,000 KM for lost income, 60,000 KM for the

destruction of the family house, 120,000 KM for the deprivation of land and 5000 KM for mental suffering due to the fact that he could not visit family graves.

196. On 30 May 2001, Mr. Nikola (Riste) Hajder updated his compensation claim. He now claimed 17,000 KM lost income per year starting from 1 January 1996. He further claimed compensation in the total amount of 274,000 KM for his house and four ruins of which only walls remain. In detail, he claimed 154,000 KM for the house (154 square meters x 1000 KM), 42,000 KM for ruin no. 1, 26,000 KM for ruin no. 2, 39,000 KM for ruin no. 3 and 13,000 KM for ruin no. 4. (He calculated the value of the ruins as the area in square meters within the remaining walls multiplied by 700 KM). He also claimed total compensation of 316,20 KM for expenses for attending the two hearings before the Chamber: 4 x 50 KM = 200 KM daily allowance for the hearings on 6 December 2000 and 11 May 2001 plus four bus tickets totalling 116,20 KM (29.20 KM for each bus ticket). He further requested 10% legal interest on all sums not paid by the respondent Party.

197. Mr. Pane Šavija on 25 February 2000 submitted a compensation claim of 2,415,000 KM. This sum consists of 2 million KM for lost income, 100,000 KM for the destruction of the family house and other buildings, 120,000 KM for "the destruction of land he owns", 170,000 KM for the deprivation of his land and 5000 KM for mental suffering due to the fact that he could not visit family graves.

198. On 6 June 2001, Mr. Pane Šavija submitted a revised compensation claim in which he claimed only a total of 356 400 KM. This sum consists of 75,000 KM for his house, 70,000 KM for two stables (35,000 KM each), 20,000 KM for a small house used as a summer kitchen, 25,000 KM for a plum orchard, 145,000 KM for lost income since August 1995, 21,000 KM for alternative accommodation since August 1995 (calculation based on 300 KM per month) and 400 KM for travel expenses to attend the two public hearings in Sarajevo.

199. Mr. Zdravko Radičić on 24 February 2000 submitted a compensation claim for a total of 325,000 KM. This sum consists of 140,000 KM for lost income, 60,000 KM for the "destruction of land he owns", 120,000 KM for the deprivation of land and 5000 KM for mental suffering due to the fact that he could not visit family graves.

200. On 17 May 2001, Mr. Zdravko Radičić updated his compensation claim to a total of 335,000 KM. He claimed additional lost income for 2000 and 2001, making his total claim for lost income 90,000 KM (15,000 KM per year from 1 January 1996). He further requested an unspecified sum for travel expenses to the two public hearings before the Chamber and per diems for those days that are not included in the sum of 335,000 KM.

201. The Federation argued in its observations of 21 April 2000 that the applicants' compensation claims are unsubstantiated, that the compensation claims were not submitted within the time-limit and that the compensation claims of Radovan Hajder, Stoja Juzbašić, Pane Šavija and Zdravko Radičić are ill-founded as they could not provide excerpts from the land-books. Fair compensation should rather be established within the framework of the Law on Expropriation. This law prescribes that if no agreement can be reached, then the competent court shall decide *ex officio* in extra-judicial proceedings on the amount of compensation (Article 79 of the Law on Expropriation).

202. In its observations of 5 July 2001 relating to the updated compensation claims submitted by applicants Nikola Hajder, Stoja Juzbašić, Zdravko Radičić, Radovan Hajder and Pane Šavija, the respondent Party reaffirmed its view that the compensation claims were unsubstantiated and thus ill-founded. In addition, the respondent Party argued that the updated compensation claims should be rejected as out of time.

203. The Chamber notes that applicants Mr. Radovan Hajder, Mr. Mihajlo Travar, Ms. Stoja Juzbašić, Mr. Nikola (Riste) Hajder, Mr. Pane Šavija and Mr. Zdravko Radičić lodged their compensation claims on time. The compensation claims of applicants Mr. Neđeljko Ubović, Mr. Mlađen Ubović Ilija Ubović submitted on 31 March 2000 and Pero Krčmar submitted on 6 March 2000 were lodged after the Chamber's deadline of 25 February 2000. The submissions made by Mr. Radovan Hajder, Mr. Nikola Hajder, Mr. Pane Šavija, Mr. Zdravko Radičić and Ms. Stoja Juzbašić in

May and June 2001 cannot be regarded as new compensation claims but are mere updates of previously existing compensation claims.

204. The reply of the respondent Party in regard to the compensation claims was received by the Chamber on 21 April 2001 by facsimile and on 25 April by mail. The fact that four compensation claims were lodged late does not put the respondent Party at a procedural disadvantage as the claims were very similar and the respondent Party was able to respond to all claims in a single document.

205. The Chamber recalls that the actions of the respondent Party have violated all ten applicants' rights of peaceful enjoyment of their properties protected by Article 1 of Protocol No. 1 to the Convention. In addition, the respondent Party violated the rights of applicants Radovan Hajder, Pane Šavija, Zdravko Radičić, Mlađen Ubović, Mihajlo Travar and Pero Krčmar to respect for their homes guaranteed by Article 8 of the Convention.

206. The Chamber considers it appropriate to order 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 respondent Party shall report its decision to the Chamber no later than six months from the delivery of the Chamber's decision. Any further decision of the Chamber on remedies relating to pecuniary damages will be deferred until that time.

207. The Chamber recalls that in the event the respondent Party decides to go ahead with the expropriation, it must pay compensation not only for land, forest, buildings and other facilities within the property of the applicants, but also, in accordance with Article 71 *et seq.* of the Law on Expropriation, for lost income. The applicants may also, as provided by Article 9 of the Law on Expropriation, request to be expropriated and compensated for plots outside the area of the general interest if the conditions of paragraph 1 of Article 9 of the Law are met. In the event the respondent Party decides to go ahead with its plans for expropriation, it must make available the necessary funds for fair and equitable compensation and take further steps in the expropriation proceedings, in particular, issue procedural decisions on expropriation in regard to each individual applicant**.**

208. In the event the respondent Party decides to abandon the expropriation, it still must pay to the applicants compensation for the damage suffered by them until this decision takes effect. The Chamber will, for the time being, refrain from making any decision on these points, bearing in mind that the applicants and the respondent Party may reach an agreement on these issues among themselves within the six-month time limit.

209. The Chamber considers it appropriate to award each applicant the sum of 5000 KM for non-pecuniary damage up to and including the date of this decision, to be paid by the Federation.

210. The Chamber will further order the respondent Party to pay to the applicants Nikola (Riste) Hajder the amount of 316 KM, to Zdravko Radičić the amount of 300 KM and to Pane Šavija the amount of 400 KM as reimbursement for expenses necessary to attend the public hearings before the Chamber in December 2000 and in May 2001.

IX. CONCLUSIONS

211. For the above reasons the Chamber decides:

1. unanimously, to declare the applications admissible;

2. unanimously, that that there has been a violation of all ten applicants' rights to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, 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 rights of the applicants Radovan Hajder, Pane Šavija, Zdravko Radičić, Mlađen Ubović, Mihajlo Travar and Pero Krčmar to respect for their homes 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 there has been no violation of the rights of the applicants Neđeljko Ubović, Ilija Ubović, Stoja Juzbašić and Nikola Hajder to respect for their homes within the meaning of Article 8 of the European Convention on Human Rights;

5. unanimously, that it is not necessary to rule on the applicants' complaints under Article 2 of Protocol No. 4 to the Convention;

6. unanimously, that no discrimination against the applicants has been established;

7. unanimously, that it is not necessary to rule on the applicants' complaints under Article 6 of the Convention;

8. unanimously, that it is not necessary to rule on the applicants' complaints under Article 9 of the Convention;

9. unanimously, to order the Federation of Bosnia and Herzegovina, within a period of six months from the date of this decision:

   a) to decide either to pursue the expropriation in regard to the property of each individual applicant in accordance with the relevant Law on Expropriation,
   or
   not to pursue the planned expropriations, returning the property to the applicants and compensating them for all damage that has arisen from the actions of the Federation of Bosnia and Herzegovina which led to the violations of the applicants' rights; and

   b) In either case, to take steps to comply with the consequences of its decision and to make available funds for the necessary compensation of the applicants;

10. unanimously, to order the Federation of Bosnia and Herzegovina to pay to each of the ten applicants, no later than 7 October 2001, 5,000 KM (five thousand Convertible Marks) by way of compensation for non-pecuniary damages;

11. unanimously, to order the Federation of Bosnia and Herzegovina to pay, no later than 7 October 2001, to the applicant Nikola (Riste) Hajder, 316 KM (three hundred and sixteen Convertible Marks) by way of compensation for travel expenses to attend the hearings of the Chamber on 6 December 2000 and 11 May 2001;

12. unanimously, to order the Federation of Bosnia and Herzegovina to pay, no later than 7 October 2001, to the applicant Zdravko Radičić, 300 KM (three hundred Convertible Marks) by way of compensation for travel expenses to attend the hearings of the Chamber on 6 December 2000 and 11 May 2001;

13. unanimously, to order the Federation of Bosnia and Herzegovina to pay, no later than 7 October 2001, to the applicant Pane Šavija 400 KM (four hundred Convertible Marks) by way of compensation for travel expenses to attend the hearings of the Chamber on 6 December 2000 and 11 May 2001;

14. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber within two weeks of the expiry of the time-limits referred to in conclusions numbers 9 to 13 on the steps taken by it to give effect to this decision; and

15. unanimously, to reserve its decision on possible further remedies in light of the respondent Party's decision under conclusion number 9 after the expiry of the six-month period noted in that conclusion.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

The present decision is subject to editorial revisions before its reproduction in final form in Decisions July-December 2001.