



DECISION ON FURTHER REMEDIES

(delivered on 6 December 2002)

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, Mladen 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 5 December 2002 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 Article XI of the Agreement and Rule 59 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. On 7 September 2001 the Chamber delivered a decision on admissibility and merits in the cases nos. CH/99/2425 *et al.*, *Ubović et al.* (the “decision of 7 September 2001”). 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.

2. The area north of Glamoč, in which the applicants’ property is located, was designated for the construction of a combat training centre of the Federation Army. In July 1997 the Federation started first construction works to build a military training range in the area of the so-called “tank range”, an area of approximately 3 square kilometres, containing property of the applicants Pane Šavija, Zdravko Radičić, Nikola Hajder, Radovan Hajder and Stoja Juzbašić. On 14 May 1998 the Government of the Federation issued a decision declaring the general interest for expropriation for an area of approximately 46 square kilometres. All ten applicants own property within this area. On 6 October 1998 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. No such procedural decisions to expropriate the properties of the individual applicants were issued.

3. In the decision of 7 September 2001 the Chamber found a violation of Article 1 of Protocol No. 1 with regard to all applicants. It also found a violation of Article 8 with regard to the applicants Radovan Hajder, Pane Šavija, Zdravko Radičić, Mladen Ubović, Mihajlo Travar and Pero Krčmar. The Chamber ordered the Federation to pay to each of the ten applicants KM 5,000 as compensation for non-pecuniary damage, and to decide whether to pursue expropriation proceedings in regard to each individual applicant in accordance with the relevant Law on Expropriation or, in the alternative, to abandon those plans for expropriation. The Federation was further ordered to report its decision to the Chamber no later than six months from the delivery of the decision of 7 September 2001, i.e. by 7 March 2002. The Chamber also reserved its right to issue a decision on possible further remedies.

4. The relevant orders in the conclusions of the decision of 7 September 2001 read as follows:

Conclusion no. 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;”

and conclusion no. 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.”

5. On 25 February 2002, 28 May 2002 and again on 12 August 2002 the respondent Party informed the Chamber that it had abandoned the expropriation. However, it appears that until present the respondent Party has failed to take the necessary steps consequential to its decision not to expropriate the applicants’ property. In particular, it has neither formally withdrawn the declaration of general interest passed in May 1998 nor compensated the applicants for the damages arising for the

period of time in which they could not return to their property because of the pending expropriation proceedings.

II. PROCEEDINGS BEFORE THE CHAMBER

6. On 23 January 2001 the respondent Party informed the Chamber that it had paid in full the monetary compensation for non-pecuniary damages and the legal expenses awarded in the Glamoč decision, thereby implementing the orders in conclusions no. 10, 11, 12 and 13 of that decision.

7. On 17 January 2001 the applicant Nikola Hajder sent a letter to the Chamber in which he proposes that the respondent Party should pay 3 Convertible Marks (*Konvertibilnih maraka* "KM") to compensate the expropriation of one square meter of class VIII plough land. He suggested that compensation for other classes of land should be calculated using class VIII plough land as a basis for reference.

8. On 25 February 2002 the respondent Party informed the Chamber that it has decided to abandon the expropriation of the applicants' property. The respondent Party also stated that the Federal Ministry of Defense will compensate the applicants for any damage arisen until then. The Chamber transmitted this letter to the applicants for comments.

9. On 15 March 2002 the Chamber asked the applicants to submit their views on the implementation of the decision of 7 September 2001. The Chamber also requested the respondent Party to state whether it had issued a formal decision to revoke the declaration of general interest, whether it had informed the applicants of its intention not to pursue the expropriation and whether and when there have been military training activities on the applicants' property.

10. On 19 March 2002 Špiro Hajder, the representative of the applicant Nikola Hajder, asked the Chamber to issue a decision on further remedies as provided for in conclusion no. 15 of the decision of 7 September 2001 (see paragraph 3 above). He claims that the respondent Party has not complied with the order in conclusion no. 9 of the Chamber's decision. In March and April 2002 the applicants Zdravko Radičić, Radovan Hajder, Pane Šavija and Mladen Ubović, in his own name and representing the applicants Nedelko Ubović and Ilija Ubović, submitted to the Chamber similar requests asking the Chamber to order further remedies in their cases.

11. On 28 May 2002 the Chamber received the respondent Party's reply to its questions of 15 March 2002 mentioned in paragraph 9 above. The respondent Party stated that it has not yet published a decision revoking the declaration of general interest but that it plans to do so and that it will inform the Chamber about this decision after its publication. The respondent Party also stated that it has not yet informed the applicants of its intention not to pursue the expropriation. Finally, the respondent Party claimed that the last military training activities affecting the applicants' land took place at some unspecified time in the year 2000.

12. On 19 June 2002 the Chamber again asked the respondent Party to inform it about all the steps taken to implement the decision of 7 September 2001. On 12 August 2002 the respondent Party replied, referring to its letters of 25 February and 28 May 2002. The Federation recalled that it had informed the Chamber that the Ministry of Defense of the Federation was willing to compensate the applicants for damage and that a formal decision of the Government to revoke the decision on general interest is in the process of adoption. However, with regard to any recent developments in the implementation of the decision the Agent of the Federation regretted that she had not received any further information. She stated that she would immediately forward any new information to the Chamber. To the date of this decision the Chamber has not received any additional information on further developments regarding the implementation of the decision of 7 September 2001, nor has the formal decision revoking the decision on general interest been adopted.

III. RELEVANT LEGAL PROVISIONS

1. Constitution of Bosnia and Herzegovina

13. 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."

14. 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. The Law on Expropriation

15. The Federation of Bosnia and Herzegovina has not adopted its own Law on Expropriation. Therefore, in accordance with Constitution of Bosnia and Herzegovina the Law on Expropriation of the former Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Socialist Republic of Bosnia and Herzegovina nos. 12/87, 38/89, and 4/90 and Official Gazette of the Republic of Bosnia and Herzegovina no. 15/94) continues to be in effect. It establishes the legal framework for expropriation. The Law on Expropriation contains *inter alia* provisions regulating the case that expropriation proceedings are ended because the beneficiary withdraws his request for expropriation. It also establishes rules, both substantive and procedural, to determine the amount of compensation due. The relevant parts of the Law on Expropriation read as follows:

"CHAPTER IV EXPROPRIATION PRCEEDINGS

Article 31

1. The beneficiary of the expropriation shall acquire the right to the possession of the expropriated immovable property on the date when the procedural decision on expropriation becomes final or on the date as determined in the procedural decision, which may, however, not be before the procedural decision on expropriation becomes final.

2.

3. Exceptionally, the Executive Council may, upon the request of the beneficiary of the expropriation decide that he may enter into the possession of immovable property before the decision on expropriation becomes final, if it finds it is necessary due to the urgency of the case or in order to repair considerable damage.

4. Against the decision of the preceding paragraph, any administrative lawsuit may not be conducted.

5. If any building, another structure or plantation exists on the expropriated land, the competent first instance body may not deliver the possession of that immovable property to the beneficiary of the expropriation in the sense of paragraph 3 of this Article before evidence is provided on the value estimate of these immovable properties and planting.

6. Expropriated residential building or a flat as a separate part of the building and expropriated business premises may not be given into the possession of the beneficiary of expropriation if he does not submit the evidence that he assured an appropriate flat or business premise in the sense of Article 12 of this law, except as otherwise agreed upon between the parties.

7. ...

8....

9. The final procedural decision on expropriation is the basis for the possession of the expropriated immovable properties being entered into and also to enter into possession of residential and business

premises in an expropriated building, regardless of whether any ex-owner or a lessee lives therein or performs any business activity in the residential rooms or business premises.

10. ...

11. If the beneficiary of the expropriation enters into possession of the expropriated property before the procedural decision on expropriation is valid and if the further proceedings for expropriation is validly rejected, the beneficiary of the expropriation shall be obliged to compensate the owner for the damage caused by entering into possession. The valid procedural decision on the rejection of the expropriation proposal is the enforceable title for the owner's repossession of the property.

Article 32

1. The beneficiary of expropriation can withdraw, partly or in whole, the proposal for expropriation before the procedural decision on expropriation has become final.

2. Partial withdrawal of the request for expropriation shall not be accepted if this would violate rights of the owner of the real property under Article 9 of this Law and if the owner files such objection.

3. The final procedural decision on expropriation shall be annulled or amended if the beneficiary of expropriation and the previous owner request so jointly.

4. The final procedural decision on expropriation shall be annulled at the request of the previous owner of an expropriated real property if the beneficiary of expropriation has failed to carry out considerable works, according to the nature of such facility, on the facility due to which the expropriation took place within three years of the date when the procedural decision has become final.

5. The final procedural decision on expropriation under the above Article shall be annulled in part if it has been established that no considerable works have been carried out in one part of an expropriated real property due to which the expropriation took place and if this part does not serve the purpose of expropriation.

6. If in the cases under paragraphs 4 and 5 of this Article the expropriated real properties were in co-ownership the final procedural decision on expropriation shall be annulled if the co-owners of a bigger part of the expropriated real properties have submitted a request to this effect.

7. The previous owner may file a request for the annulment of the final procedural decision on expropriation after the expiry of three years of the date when the procedural decision became final until the time when the beneficiary of expropriation has carried out considerable works. The authority which dealt with the proposal for expropriation in the first instance shall deal with a request for the annulment of the procedural decision on expropriation and with the withdrawal of the request for expropriation and the property relations between the beneficiary of expropriation and the owner of the real property shall be dealt with in case of a dispute before the competent court.

...

Chapter VII

COMPENSATION FOR EXPROPRIATED PROPERTY

1. Amount of Compensation

...

Article 70:

The previous owner shall also be entitled to receive compensation for lost income which he would have realised exploiting the expropriated property in the same way it has been exploited in the past for the period starting from the date on which the possession of real property was delivered to the beneficiary of the expropriation until the date he has gained possession of real property in exchange (*for his expropriated property*) or until the expiry of the time-limits as provided for in the law for the payment or depositing of monetary compensation.

2. Proceedings to determine compensation

Article 75

1. When the procedural decision on expropriation has become effective the competent administrative organ of the municipality is obliged to schedule and hold, without any delay, a hearing to determine the compensation for the expropriated real property by mutual agreement.
2. The above organ shall seek to have the parties reach an agreement on compensation calling their attention to/ advising them of their rights and obligations under the provisions of this law.
3. In preparation of the hearing the parties may submit their written proposals and the above organ shall obtain written information from the administrative organ and other organs and organizations concerning facts which might be of importance to determine the amount of compensation.

Article 76

1. The agreement on compensation for the expropriated real property must contain in particular the form and amount of compensation and the time limit within which the beneficiary of the expropriation is obliged to fulfil the obligation with respect to the compensation.
2. The agreement on compensation shall be entered into a record which must contain all information necessary to fulfil obligations of the beneficiary of expropriation.
3. The agreement on compensation or partial compensation shall be concluded when both parties have signed the record in which the agreement was entered.
4. The record into which the agreement on compensation was entered, has the force of an enforceable procedural decision the enforcement of which shall be carried out by the organ referred to in paragraph 1 of the above Article when it concerns non-pecuniary obligations.
5. A copy of the above record shall be transmitted to the competent social attorney of self-government.
6. When the procedural decision on expropriation has become effective the parties may agree on the amount of compensation outside of the procedure provided in Articles 75 and 76 of this law.

Article 77

If the parties fail to reach an agreement on compensation for expropriated real property which is to be determined in money in whole or in part before the competent administrative organ of the municipality, the beneficiary of expropriation is authorized to pay the offered amount of compensation to the previous owner within 15 days of the date when such offer was made in the proceedings on consensual determination of compensation or to deposit it within additional 10 days in the court deposit to the benefit of the previous owner if he/she refuses to receive such amount.

...

Article 79

If no agreement on compensation has been reached within two months of the date when the procedural decision on expropriation became effective, the competent administrative organ of the municipality shall transmit the effective procedural decision on expropriation with all files and evidence of payment to the owner of the amount of compensation as referred to in Article 77 of this law or the owner of the evidence that such amount has been deposited in the court deposit to the competent regular court within whose area of responsibility the expropriated property is located for the purpose to determine the compensation.

Article 80

1. The competent regular court shall decide automatically, in extra-judicial proceedings, on amount of compensation for expropriated property.
2. When determining the amount of compensation for expropriated property the court is obliged to take into account the amount of compensation established during the consensual determination of compensation before the competent administrative organ of the municipality, if the majority of parties concluded such an

agreement within certain area in the procedure of expropriation for the construction for the same or other object.

3. When determining the amount of compensation for expropriated real property the court may not decide on the right of the previous owner to compensation.

Article 81

1. If the competent regular court establishes that the amount of monetary compensation for expropriated real property referred to in Article 77 of this law corresponded to the amount of compensation to which the owner would be entitled according to circumstances at the time of the payment or depositing of this amount, it shall issue a procedural decision determining that this amount constitutes an equitable compensation.

2. If the paid or deposited amount of compensation referred to in the above paragraph was not in whole appropriate to the equitable compensation, the court shall establish in which percent this amount corresponded to the amount of compensation to which the owner would be entitled in accordance with circumstances at the time of payment or depositing of this amount and it shall determine the amount of the remaining part of compensation in accordance with circumstances at the time of the issuance of the first instance procedural decision on compensation.

3. In case of quashing of the first instance procedural decision on compensation the first instance court shall establish to which part of compensation the undisputed/uncontested amount corresponded and it shall determine the remaining part in accordance with circumstances at the time of the issuance of the procedural decision on compensation.

4. The provisions of the preceding paragraphs shall be accordingly applied when determining compensation under Article 70 of this law.

...

Article 84

The proceedings to determine compensation for expropriated real properties are urgent.

Article 85

1. The beneficiary of expropriation is obliged to pay, within 15 days of the receipt of the first instance procedural decision determining monetary compensation, to the previous owner the amount of compensation which was not contested by an appeal, and he is obliged to pay, within 15 days after the procedural decision the remaining part of the compensation becomes effective.

2. If the previous owner, in the case referred to in the above paragraph, refuses to accept the uncontested part of the compensation, the beneficiary of compensation is obliged to deposit it within further 10 days to the court deposit.

3. If the beneficiary of the expropriation fails to pay the determined, uncontested amount of compensation within the time limit set in the agreement determining compensation and within the time limit provided under paragraph 1 of this Article, he is obliged to pay interest on the determined amount of compensation to the previous owner at the rate which is payable in the place of the enforcement to term saving deposits without special purpose for the period of more than one year. The interest is payable from the date when the time limit for the payment expired until the date of the payment.

4. The previous owner is also entitled to an interest under the above paragraph with respect to the difference of the amount determined by the effective court procedural decision counting from the date when the time limit of 15 days expired until the date of the payment.

5. The time limit for the fulfillment of monetary obligations shall be laid down by the procedural decision on compensation.

..."

IV. REMEDIES

16. The Chamber recalls that 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 the decision of 7 September 2001 the respondent Party was ordered to make a decision on the question of expropriation within a time-period of six months from 7 September 2001, the date of the delivery of the decision. The Federation was further ordered to implement the consequences of its decision on the question of expropriation. The Chamber takes note that approximately 15 months have passed since the decision was delivered on 7 September 2001.

17. On 25 February 2002 the respondent Party informed the Chamber for the first time that it had decided to abandon the expropriation of the applicants' property. It repeated this intention in its submissions of 28 May 2002 and 12 August 2002.

18. The Chamber recalls that according to the order in the Chamber's conclusions in the decision of 7 September 2001, the respondent Party, having taken this decision, was obliged to "return the property to the applicants and compensate 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". However, the respondent Party has failed to take further steps necessary to implement its decision to abandon the expropriation, to return the property to the applicants and to compensate them for damages. It appears from the letter of the respondent Party of 28 May 2002 that the respondent Party even failed to inform the individual applicants and all the other persons in the same situation as the applicants about its decision to abandon the intention to expropriate their properties.

19. In conclusion no. 15 of the decision of 7 September 2001 (see paragraph 3 above) the Chamber has reserved the right to order possible further remedies. The Chamber takes note that seven applicants explicitly ask the Chamber to finally resolve their cases by ordering further remedies in accordance with conclusion no. 15. In light of the fact that the respondent Party has failed to take the necessary steps to implement the decision of 7 September 2001 the Chamber finds it is necessary to issue the present decision on further remedies. It will examine the violations found in the decision of 7 September 2001 and establish in detail what steps the respondent Party must take to remedy the violations of the applicants' rights.

a. the obligation to formally renounce the intention to expropriate the applicants' property and "return the property to the applicants"

20. The Chamber finds that the legal uncertainty regarding the status of the applicants' property and the possible expropriation must be ended as soon as possible as it causes a prolonged interference with the applicants' rights. Because of this uncertainty, the applicants are left in doubt as to whether their property will be expropriated or whether and when they may return to their former properties, invest in them and resume farming or sell their properties if they do not wish to return. Therefore the respondent Party must make it clear whether any plots will be subject to expropriation and if so what exact plots will be concerned. The respondent Party must also make it clear which plots will not be subject to expropriation.

21. The Chamber finds that in order to implement conclusion no. 9 of the decision of 7 September 2001 the respondent Party is *inter alia* required to issue a formal decision, published the same way as the decision declaring the general interest for expropriation of 14 May 1998, to withdraw the declaration of general interest.

22. The Chamber therefore considers it appropriate to order the Federation of Bosnia and Herzegovina to pass a formal decision within a time-limit of two months from the date of delivery of this decision to the effect that the Government of the Federation of Bosnia and Herzegovina withdraws its declaration of general interest of 14 May 1998 and renounces its intention to expropriate the applicants' plots. The decision on renouncing its intention to expropriate the property of the applicants should be published in the same way as the decision of 14 May 1998 which declares the general interest for expropriation. The Chamber also considers it appropriate to order the respondent Party to inform the applicants within two weeks from the date of the delivery of this decision that it has given up the intention to expropriate the applicants' property. The Chamber considers it also appropriate to order the Federation to individually inform the applicants as soon as the decision withdrawing the declaration on general interest is published.

b. the obligation “to compensate the applicants for damage”

23. In addition to renouncing the expropriation and reinstating the applicants into the possession of their properties, the decision of 7 September 2001 ordered the respondent Party to compensate “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”.

24. The violations found in the decision of 7 September 2001 are summarised in paragraph 205 of that decision which reads as follows:

“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, Mladen Ubović, Mihajlo Travar and Pero Krčmar to respect for their homes guaranteed by Article 8 of the Convention.”

25. In the decision of 7 September 2001 the Chamber already awarded the applicants non-pecuniary damage. The Chamber finds that the applicants are not entitled to any further non-pecuniary damage. The Chamber will examine in detail which pecuniary damages must be compensated by the respondent Party to remedy the violations found in its decision of 7 September 2001.

aa. compensation for the deprivation of the applicants’ land within the so called “tank range”

26. In the decision of 7 September 2001 in paragraphs 124 to 135 the Chamber found a violation of the principle applicable to deprivation of possession in the second sentence of paragraph 1 of Article 1 of Protocol No. 1 with respect to properties of the applicants Pane Šavija, Zdravko Radičić, Nikola Hajder, Radovan Hajder and Stoja Juzbašić. The Chamber notes that on the properties of those five applicants 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. As a result this land can no longer be used for farming.

27. These constructions, for which the respondent Party is responsible, interfere with the possessions of the applicants. In paragraph 126 of the decision of 7 September 2001 the Chamber has outlined the nature and the consequences of this interference:

“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.”

(i) lost income

28. The applicants Pane Šavija, Zdravko Radičić, Nikola Hajder, Radovan Hajder and Stoja Juzbašić could not use their property which falls within the “tank range” from the beginning of construction works in July 1997 when the respondent Party took *de facto* possession of the “tank range” area. The Chamber considers it appropriate to order the respondent Party to compensate the applicants for lost income for the time period in which they have not been able and will not be able to use their property starting from July 1997.

(ii) compensation for damage directly caused by the respondent Party's actions

29. In order to compensate the applicants "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" the Chamber considers it further appropriate to order the respondent Party to restore the concerned property belonging to the applicants Pane Šavija, Zdravko Radičić, Nikola Hajder, Radovan Hajder and Stoja Juzbašić back into that state in which the property was previous to the *de facto* taking into possession by the respondent Party, unless otherwise agreed between the Parties. In the alternative, the respondent Party must compensate the applicants concerned for all damage since the *de facto* taking possession by the respondent Party in July 1997, when the Federation began building constructions for the establishment of a military training range, until their reinstatement into possession of their property.

(iii) compensation for damages indirectly caused falling within the respondent Party's responsibility due to the obligation to safeguard the applicants' property in its *de facto* possession

30. As far as the scope of responsibility of the respondent Party is concerned the Chamber finds that the respondent Party as the *de facto* possessor of the applicants' property was and is obliged to protect the applicants' property against any form of damage. Hence the damage which must be compensated by the respondent Party shall include, in addition to all damage resulting from actions of the respondent Party itself, all damage caused in any other way.

bb. compensation for the interference with the applicants' peaceful enjoyment of possessions located within the area covered by the declaration of general interest

31. In its decision of 7 September 2001 in paragraphs 136 to 145 the Chamber found a violation of the principle of peaceful enjoyment of possessions in the first sentence of paragraph 1 of Article 1 of Protocol No. 1 with respect to all ten applicants.

32. The Chamber recalls that on 14 May 1998 the respondent Party passed a decision declaring the general interest for expropriation for an area of land including the applicants' property. 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 subject to the declaration of general interest for expropriation before any procedural decisions on expropriation became legally valid.

33. The Chamber recalls also that in paragraph 139 of the decision of 7 September 2001 it made the following findings regarding the interference with the ten applicants' rights as protected by Article 1 of Protocol No. 1 to the Convention:

"... 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."

34. As a result of the failure of the respondent Party to formally revoke the declaration of general interest and to properly inform the applicants about its intention to abandon the expropriation, the situation continues until the present. The applicants cannot fully use and dispose of their properties and cannot be expected to return, repair the war damages, invest in their properties and resume farming.

35. In order to compensate the applicants “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” the respondent Party must compensate the applicants for the interference as set out in paragraph 139 of the decision of 7 September 2001, cited in paragraph 33 above.

36. In this context the Chamber notes that the Law on Expropriation contains the legal concept that under certain circumstances the beneficiary is obliged to compensate the owner also in cases in which the expropriation is abandoned. Article 31 of the Law on Expropriation reads in relevant parts:

“...if the beneficiary of the expropriation enters into possession of the expropriated property before the procedural decision on expropriation is valid and if the further proceedings for expropriation is validly rejected, the beneficiary of the expropriation shall be obliged to compensate the owner for the damage caused by entering into possession. ...”

(i) compensation for lost income

37. The Chamber recalls Article 70 of the Law on Expropriation, providing that in cases of expropriation in which the possession was delivered to the beneficiary before the issuance of an individual decision on expropriation, loss of income must be compensated from the time in which the beneficiary enters into possession of the property to be expropriated. According to the wording and the systematic reading of the Law on Expropriation, Article 70 is not directly applicable to cases in which the expropriation is abandoned. However, the legal concept must find analogous application also to such cases. Article 70 of the Law on Expropriation reads as follows:

“The previous owner shall also be entitled to receive compensation for lost income which he would have realised exploiting the expropriated property in the same way it has been exploited in the past for the period starting from the date on which the possession of real property was delivered to the beneficiary of the expropriation until the date he has gained possession of real property in exchange (*for his expropriated property*) or until the expiry of the time-limits as provided for in the law for the payment or depositing of monetary compensation.”

38. As a consequence of the decision of 14 May 1998 declaring general interest and the decision of 6 October 1998 delivering the possession of the applicants’ land to the Ministry of Defense, the applicants could not be expected to return to their property, make full use of it and, in particular, resume farming. This situation will remain unchanged until the date the respondent Party will issue and publish a formal decision renouncing the declaration of general interest of 14 May 1998. The Chamber therefore considers it appropriate to order the respondent Party to compensate the applicants for lost income for this period. The Chamber recalls that with regard to property that falls within the “tank range” the time period for which loss of income must be compensated starts already from July 1997 and lasts until the applicants’ property is restored or the applicants are compensated for the damage caused by the construction works of the respondent Party (see paragraph 29 above).

(ii) compensation for damage directly caused by the respondent Party’s actions

39. The respondent Party is also obliged to compensate the applicants for any damage to their property that directly resulted from its actions, e.g. as a direct result of military exercises by the Army of the Federation of Bosnia and Herzegovina.

(iii) compensation for indirect damages

40. The Chamber notes that it did not find that the respondent Party took *de facto* possession of the land and that the area is neither fenced off nor guarded. Moreover, 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. Hence the damage which must be compensated by the respondent Party shall not include damages indirectly caused but only damage resulting from actions of the respondent Party itself.

cc. compensation for the violation of respect for home as guaranteed by Article 8 of the Convention

41. In its decision of 7 September 2001 in paragraphs 146 to 176 the Chamber found a violation of Article 8 of the Convention with respect to the applicants Radovan Hajder, Pane Šavija, Zdravko Radičić, Mladen Ubović, Mihajlo Travar and Pero Krčmar. The Chamber considers that, in light of the fact that all applicants have been awarded and also received compensation for non-pecuniary damages, there is no need to order further remedies with respect to the violation of Article 8 of the Convention.

dd. compensation mechanism

42. The Law on Expropriation in Articles 75 to 87 provides for a detailed mechanism of how to establish and pay out compensation in those cases in which the expropriation is carried out in full. Article 75 of the Law on Expropriation provides that as soon as the procedural decision on expropriation becomes effective, the administrative organ of the municipality shall without any delay hold a hearing to determine the compensation for the expropriated real property by mutual agreement. The Chamber recalls that according to the submissions of the Parties in the present cases (see paragraph 37 and 38 of the decision of 7 September 2001), such negotiations were initiated only with the applicants Radovan Hajder, Zdravko Radičić and Pane Šavija. However, in none of these cases any agreement was reached. As no agreement was reached, according to Articles 79 *et seq.* of the Law on Expropriation the case should have been transmitted to the competent court within two months and the competent court should have *ex officio* decided on the amount of compensation in extra judicial proceedings. The Chamber notes that it appears that the cases were never transmitted to the competent court and that the court never initiated such extra judicial proceedings in the present cases so that no decisions on compensation were issued.

43. The Chamber notes that the Law on Expropriation does not provide for a specific procedure to establish the compensation in cases in which the beneficiary gets into the possession of the property before any procedural decisions on expropriation became legally valid and later on decides to give up the expropriation on his own motion.

44. Bearing in mind the fact that in the present cases the respondent Party has persistently failed to fairly compensate the applicants within its own institutional framework, the Chamber finds it necessary to appoint an expert to ascertain the damage and advise the Chamber on the amount of compensation for each individual applicant.

45. The expert will submit to the Chamber a report proposing an adequate compensation for each individual applicant within three months from the date of appointment. In so doing, the expert shall bear in mind the findings of the Chamber on the different categories of damage to be compensated as set out in the present decision in paragraphs 23-40 above and in the decision of 7 September 2001.

46. The expert shall establish the amount of compensation in adversarial proceedings allowing both Parties, i.e. the respondent Party and each applicant, to submit their opinion on all facts relevant to establishing a fair and equitable compensation.

47. Once the Chamber will receive the expert opinion and the observations of the Parties thereon, the Chamber will issue a decision on further remedies, unless the respondent Party and the applicants have in the meantime agreed on an equitable compensation for the applicants. In this decision on further remedies the Chamber will award compensation to every individual applicant taking into account the expert's proposal and the observations received from the Parties.

48. The Chamber considers it appropriate to order the respondent Party to fully co-operate with the expert, granting him unhindered access to all official documents and records.

ee. Orders in relation to the costs of the expert opinion

49. The Chamber recalls Rule 43, paragraph 3 of the its Rules of Procedure, according to which when written expert opinion is obtained by the Chamber or at its request, costs incurred shall be borne by the Chamber.

50. The Chamber, however, considering that the need to appoint an expert arises exclusively from the respondent Party's persistent failure to comply with the Chamber's orders in its decision of 7 September 2001, finds it appropriate to make use of its power under Rule 69(2) to suspend the application of Rule 43(3) in the present case.

51. The Chamber therefore finds it appropriate to order the respondent Party to make, by 20 December 2002, an advance payment of 5000 KM to the Chamber. The Chamber shall use this amount to make an advance payment to the expert. In addition, the Chamber reserves its right to order the respondent Party to bear any costs arising from the appointment of the expert in excess of the advance payment

ff. Further orders

52. The Chamber reserves the right to issue any other orders it deems necessary to remedy the violations found in the decision of 7 September 2001.

c. reporting requirement

53. The respondent Party shall report to the Chamber on the implementation of all orders set out above no later than 6 March 2003.

V. CONCLUSIONS

54. For the above reasons the Chamber decides:

1. unanimously, to issue a decision on further remedies;
2. unanimously, to order the Federation of Bosnia and Herzegovina to pass swiftly, and in any case no later than 6 February 2003, a formal decision to the effect that the Government of the Federation of Bosnia and Herzegovina withdraws its declaration of general interest of 14 May 1998 and renounces its intention to expropriate the applicants' plots. This decision should be published in the same way as the decision of 14 May 1998 which declared the general interest for expropriation;
3. unanimously, to order the Federation of Bosnia and Herzegovina to inform the applicants promptly, but no later than 20 December 2002, that it has given up the intention to expropriate the applicants' property and to also inform the applicants as soon as the decision withdrawing the declaration on general interest is published in accordance with the conclusion no. 2 above;
4. unanimously, to appoint an expert who will, no later than three months from the date of his appointment, submit to the Chamber a report in which he proposes to the Chamber the amount of compensation due with regard to each individual applicant;
5. unanimously, to order the respondent Party to fully co-operate with the expert and to grant him unhindered access to all official documents and records;
6. unanimously, to order the respondent Party to make, by 20 December 2002, an advance payment for the costs of the expert of 5000 KM to the Chamber. In addition, the Chamber reserves its right to order the respondent Party to bear any costs arising from the appointment of the expert in excess of the advance payment;
7. unanimously, to reserve the Chamber's right to issue an additional decision on further remedies. This decision shall include an order for pecuniary compensation for each individual applicant taking into account the observations of the Parties and the expert's report mentioned in conclusion no. 4 above;

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8. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber by 6 March 2003 on the steps taken to implement all orders set out above.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber