DECISION ON ADMISSIBILITY AND MERITS
(Delivered on 6 July 2001)

CASE No. CH/00/5480

Aziz DAUTBEGOVIĆ and 51 Other Villagers from Duge

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 2 July 2001 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

Mr. Peter KEMPEES, 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 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the alleged threat to the applicants, villagers of Duge of Bosniak origin, of imminent damage to their homes, livelihood, and well-being resulting from the planned construction of a mini hydro-electric power plant near their village and within a protected site of natural heritage assets. This construction was approved by the Prozor-Rama Municipality,[1] and the investors in the power plant project obtained, among other approvals, a certificate on conditions of regional development issued on 13 May 1996 and a building permit issued on 14 May 1996. In March 2001, the Ministry of Physical Planning and the Environment of the Federation of Bosnia and Herzegovina annulled both of these approvals, and in April 2001, the investors filed administrative dispute complaints, which are still pending, challenging the validity of such annulments before the Supreme Court of the Federation of Bosnia and Herzegovina.

2. The applicants maintain that if the planned construction of the power plant is allowed to go forward, their rights protected under the European Convention on Human Rights ("the Convention") in Article 8 (right to respect for private and family life and home), Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions), Article 6 (right to a fair hearing), and Article 13 (right to an effective remedy) will be violated. The applicants further allege that they suffer discrimination based on their ethnic origin in the enjoyment of their rights protected by the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 31 July 2000 and registered on 2 August 2000. The application included a request for the Chamber to order, as a provisional measure, the suspension of construction of the hydro-electric power plant and all related facilities. On 4 September 2000, the Chamber ordered the respondent Party, as a provisional measure, to take all necessary measures to ensure that the construction works on the planned hydro-electric power plant near the village of Duge be stopped. This provisional measure originally remained in force until 15 October 2000. On 13 October 2000, the Chamber extended this provisional measure until 15 November 2000. Thereafter, on 13 November 2000 the Chamber again extended the provisional order until such time as it would adopt its final decision in the case or the order was withdrawn.

4. The application was transmitted to the respondent Party on 4 September 2000 under Article 8 of the Convention, Article 1 of Protocol No. 1 to the Convention, and in respect of discrimination in the enjoyment of these rights.

5. On 25 September 2000, the respondent Party submitted its observations on admissibility and merits of the case. Also on 25 September 2000, the applicants submitted a document entitled statement and delivery of power of attorney. On 24 October 2000, the applicants replied to the written observations of the respondent Party and submitted a claim for compensation. Thereafter, on 7 December 2000, the respondent Party submitted its written observations on the applicants' compensation claim. On 10 January 2001, the respondent Party submitted supplemental written observations on the merits of the application.

6. On 10 November and 9 December 2000, the Chamber considered the case and decided to hold a joint public hearing on 11 January 2001 with case no. CH/00/5796, *Drago Lukenda and Miroljub Bevanda against the Federation of Bosnia and Herzegovina* ("*Lukenda and Bevanda I*", the first of two cases filed by the investors in the hydro-electric power plant for alleged human rights violations caused to them as a result of their inability to go forward with construction). The Chamber solicited witness proposals from the parties in both cases, and then summoned the following persons

[1] The name of this Municipality has changed several times in recent years. Relevant to the dates at issue in this case, in 1991 it was called the Prozor Municipality, in 1996-1997 the Rama Municipality, and at the present time the Prozor-Rama Municipality. Throughout this decision the respective names indicated in the procedural decisions and documents at issue are used, all concerning the same Municipality.

to appear at the public hearing: Mr. Emir Avdić from the Public Enterprise "Elektroprivreda BiH", Professor Sulejman Redžlć from the Center for Ecology and Natural Resources, Director Ferhad Mulabegović from the Institute for the Protection of Cultural-Historic and Natural Heritage of Bosnia and Herzegovina, Minister Tahir Dulić from the Ministry of Civil Engineering, Physical Planning and Environmental Protection of the Hercegovačko-Neretvanski Canton, Deputy Minister Vesna Čović from the Ministry of Civil Engineering, Physical Planning and Environmental Protection of the Hercegovačko-Neretvanski Canton, and Mr. Jozo Vukoja, the Head of the Prozor-Rama Municipality. The Chamber also asked representatives of the parties in both cases to be present at the public hearing to provide factual information.

7. The joint public hearing was held in the hearing room of the Cantonal Court in Sarajevo on 11 January 2001. The applicants in the present case were represented by their lawyers, Messrs. Dževad Pazalja and Enes Dautbegović; Messrs. Osman Dautbegović and Ibro Kaltak appeared on the applicants' behalf as well. The applicants in *Lukenda and Bevanda I* were represented by the applicant Mr. Drago Lukenda, and Mr. Miroljub Bevanda was also present. The respondent Party was represented by Ms. Seada Palavrić, Secretary of the Office for Cooperation with and Representation before the Human Rights Commission, Ms. Safija Kulovac, assistant to the Secretary, and Ms. Branka Fetahagić, counselor to the Secretary. All witnesses who were summoned were in attendance as well.

8. At the beginning of the public hearing, the Chamber heard opening comments from representatives for each of the parties: first for the *Dautbegović* applicants, second for the *Lukenda and Bevanda I* applicants, and third for the respondent Party. During the opening presentation of the *Dautbegović* applicants, a videotape was shown depicting the village of Duge and its surroundings. In its presentation, the respondent Party, contrary to its earlier submissions in the case (except the submission of 10 January 2001), admitted that without the provisional measure ordered by the Chamber, the villagers of Duge would suffer irreparable damage, and that a "dormant danger" remained that there could be a violation of the human rights of the *Dautbegović* applicants if construction of the power plant occurred. The respondent Party admitted that all approvals and licenses granted to the investors, Messrs. Lukenda and Bevanda, by the Prozor-Rama Municipality were issued contrary to the law because they did not and could not include the required consent of the Institute for Protection of Cultural-Historic and Natural Heritage of Bosnia and Herzegovina. According to the respondent Party, such consent was necessary because the site in question was declared protected as a natural heritage asset by the procedural decision of 26 March 1958 issued by the State Institute for Protection of Monuments of Culture and Natural Rarities pursuant to the 1947 Law on Protection of Monuments of Culture and Natural Rarities (see paragraphs 19, 42-44 below). The respondent Party did not concede damage as a result of the improper approvals and licenses issued to the investors because construction of the power plant near Duge has not yet occurred to cause any damage and the preliminary activities which have taken place have occurred only on state-owned land allocated to the investors. The respondent Party further stated that it would not maintain its objection to admissibility based on the *Dautbegović* applicants' failure to exhaust domestic remedies.

9. With respect to the *Lukenda and Bevanda I* case, the respondent Party explained at the public hearing that the documentation was not and could never be in order for construction of the power plant because the Institute for Protection of Cultural-Historic and Natural Heritage could not approve construction on or near a protected natural heritage asset. In support of this, the respondent Party submitted two expert opinions prepared in 1999: one opined that "the approval for performance of works on construction of the small hydro-electric power plant on the Buk River in the village of Duge-Prozor cannot be given because the value of the protected natural phenomenon of the waterfall would be distorted," and the other opined that "it is necessary to cease immediately all activities and works of construction on the small hydro-electric power plant in the village of Duge until approvals which correspond to the protected status of the area are obtained." The respondent Party further noted that the competent authorities may withdraw the building permit for the benefit of the public.

10. The agent for the respondent Party requested that the Chamber grant it three months from the date of the hearing to ensure that local authorities declare null and void all approvals and licenses granted to the investors for construction of the power plant and reconsider all requests by the investors in accordance with applicable laws. The agent further requested that the Chamber maintain its provisional order in force during this three-month period.

11. In light of the concessions by the respondent Party at the public hearing, the Chamber released all summoned witnesses with the exception of one: Mr. Jozo Vukoja, the Head of the Prozor-Rama Municipality. The Chamber questioned and heard testimony from Mr. Vukoja, but Mr. Vukoja could offer the Chamber little relevant information because he did not take office until May 2000, after the events complained of. The Chamber next questioned Mr. Drago Lukenda, the agent for the respondent Party, and Mr. Enes Dautbegović. Finally, the parties were given an opportunity to make closing remarks: first Messrs. Dževad Pazalja and Enes Dautbegović for the *Dautbegović* applicants, second Mr. Drago Lukenda for the *Lukenda and Bevanda I* applicants, and third Ms. Seada Palavrić for the respondent Party.

12. On 18 January 2001, following the public hearing, the Chamber transmitted the application once again to the respondent Party, this time under Articles 6 and 13 of the Convention, and sought additional factual information concerning, among other things, protection of the site in question as natural heritage assets and the applicable law and conditions under which such protection was issued. In its letter of 18 January 2001, the Chamber further replied in writing to the respondent Party's request that it be given three months to cure the illegal approvals and licenses granted to the investors in the power plant. The Chamber stated that it did not find it opportune formally to grant this request. None the less, the Chamber agreed to accept until such time as it reached a final decision in these cases any supplemental information the respondent Party might submit to this effect.

13. On 2 February 2001 the respondent Party submitted additional written observations on the merits of the *Dautbegović* application, particularly with respect to Articles 6 and 13 of the Convention. Attached to this submission was a copy of an official notification dated 22 January 2001 provided to the Federal Ministry of Physical Planning and the Environment in Sarajevo and the Ministry of Physical Planning and Protection of the Environment of the Hercegovačko-Neretvanski Canton in Mostar informing them of violations of the law which called for the annulment of certain procedural decisions issued by the Department of Physical Planning, Constructions and Housing-Utility Affairs of the Rama Municipality on 14 May 1996 and 20 June 1997, which authorise necessary phases of construction of the power plant near Duge (see paragraphs 29-31 below).

14. On 19 February 2001, the respondent Party submitted additional written observations on the merits of the *Lukenda and Bevanda I* application, in which it offered information relevant to this case as well, particularly with respect to the validity of the 1958 decision declaring the site in question protected as a natural heritage asset.

15. On 4 May 2001, Mr. Lukenda wrote to the Chamber requesting that the Chamber withdraw its order for provisional measures in the present case which suspended construction of the power plant near the village of Duge. On 9 May 2001, the Chamber rejected this request to withdraw its order for provisional measures.

16. The Chamber deliberated on the admissibility and merits of this case on 10-12 January, 7 February, 9 May, 6 and 8 June, and 2 July 2001, and adopted the present decision on the latter date.

III. ESTABLISHMENT OF THE FACTS

17. The facts presented are not materially disputed between the parties except as specifically indicated below.

18. The applicants, who are of Bosniak origin, are fifty-two residents of the village of Duge in the Prozor-Rama Municipality in the Hercegovačko-Neretvanski Canton in the Federation of Bosnia and Herzegovina. The village is located near the Krupić Spring on the banks of the Buk River which flows into the Duščica Stream, forming two waterfalls along the way. The village is named for the rainbows that often appear in the sky above the waterfalls ("*duge*" means rainbows). The area is renowned throughout Herzegovina for its exceptional natural beauty.

19. On 26 March 1958, the State Institute for Protection of Monuments of Culture and Natural Rarities issued, pursuant to Articles 1 and 19 of the Law on Protection of Monuments of Cultural and Natural Rarities dated 30 April 1947 (see paragraphs 42-44 below), a procedural decision effective 24 June 1959, which placed the site, referred to as "the Krupić Spring and waterfalls near the village of Duge, Prozor Municipality, Mostar District, state property," "under the protection of the State as a natural rarity and significant object for tourism". This procedural decision prohibits all actions which could cause any change to the protected natural rarity, including construction and any damaging action, without approval from the State Institute for Protection of Monuments of Culture and Natural Rarities. It further prohibits any construction or actions causing any change to the appearance of the land in the immediate surroundings of the site without approval from the State Institute for Protection of Monuments of Culture and Natural Rarities. The decision describes the area at issue as including the Krupić Well, which is north of the village of Duge. The water flows out from under Krmska Glava Hill, which is covered with trees and shrubs. One kilometer from the Well, the water flows into the Ljubunička River, over two waterfalls, one surrounded by vegetation, the other surrounded by bare stones. Thereafter, the water enters the Vojna Canyon where the Prozor Stream passes.[2] The decision concludes, "the whole area represents an extraordinary rarity of significant interest that should remain in its present condition."

20. According to the procedural decision of 26 March 1958, the State Institute for Protection of Monuments of Culture and Natural Rarities delivered its decision to a variety of government authorities in Mostar and Prozor, including the District Court Land Registry in Prozor and the Forest Management Administrations in Mostar and Prozor. The Chamber has within its files a delivery notice dated 16 April 1958 confirming such delivery to the People's Committee of the Municipality of Prozor. Moreover, the procedural decision was included in the List of Protected Natural Monuments of Bosnia and Herzegovina published in the Almanac of the Institute for Protection of Nature of Bosnia and Herzegovina[3] of 1962. According to the respondent Party, this Almanac was transmitted to all Municipalities in the former Socialist Republic of Bosnia and Herzegovina in 1989.

21. The Duge villagers consider the river and its waterfalls to be an integral part of their lives. They are farmers in a rural area who support themselves through agricultural production for which they depend upon the river for water necessary to irrigate their crops. They depend upon their natural surroundings for their livelihood and way of living. Additionally, they claim the airflow created by the waterfalls protects the village from smog and air pollution created by a refuse burning facility located in the region.

22. In 1989 two investors, Messrs. Drago Lukenda and Miroljub Bevanda, began to collect the necessary approvals and permissions for construction of a small hydro-electric power plant on the Duščica Stream near the village of Duge. On 31 July 1991 the Prozor Municipality allocated socially-owned property to the investors for construction of the power plant. According to the terms of the procedural decision granting the allocation, the investors would lose their right to use the land if,

[2] The names of the rivers and hills near the village of Duge were later changed. On current maps, the village of Duge is located on the banks of the Buk River, which flows south from the village, forming two waterfalls, and then joins the Duščica Stream, as described in paragraph 18 above.

[3] In 1961 the Law on Protection of Nature (OG PRBiH no. 45/61, dated 17 November 1961) replaced the 1947 Law on Protection of Monuments of Culture and Natural Rarities. Pursuant to Article 5 of this Law, the service of protection of nature was performed by the Institute for Protection of Nature of Bosnia and Herzegovina (see footnote 4 below).

within one year, they did not submit a claim for issuance of the building permit or if, within three years of the issuance of such permit, they did not complete the majority of the construction works. The investors claim that they undertook activities in February 1992 to obtain building permission for construction of the power plant, but these activities were interrupted due to the 1992-95 war in Bosnia and Herzegovina.

23. In 1996 the investors submitted a request for building permission. On 13 May 1996 the Department of Physical Planning, Constructions and Housing-Utility Affairs of the Rama Municipality issued the investors a certificate on conditions of regional development pursuant to Article 64(1) of the Decree on Physical Planning and Regional Development on the Territory of the "Croat Community of Herceg-Bosna" during the war and immediate threat of war (see paragraphs 66-74 below). This certificate stated that a "mini power plant of derivational type may be constructed with water intake from the Duščica Stream" in accordance with certain conditions set forth in the certificate. The "conditions for protection of the environment" set forth in the certificate must ensure "that the facility shall not in any way endanger the environment by its construction or existence" and "that the facility shall secure basic conditions for life and work of the people who will use this facility". On 14 May 1996 the Department of Physical Planning, Constructions and Housing-Utility Affairs of the Rama Municipality issued the investors, pursuant to Articles 26 and 33 of the Decree on Constructions in the Territory of the "Croat Community of Herceg-Bosna" during immediate threat of war or state of war (see paragraphs 75-80 below), a procedural decision for a building permit for the power plant on the Duščica Stream near the village of Duge. The terms of this permit provide that all construction works must be performed in accordance with the requirements of the certificate on conditions of regional development and that the permit will expire if construction is not commenced within one year after issuance. On 20 June 1997, the Department of Constructions of the Rama Municipality extended the validity of the building permit until 14 May 1998 pursuant to Article 35 of the Decree on Constructions in the Territory of the "Croat Community of Herceg-Bosna" during immediate threat of war or state of war (see paragraph 79 below). On 22 April 1998 the investors reported to the Municipality the commencement of construction of the power plant, but only preliminary marking and excavation has taken place to date.

24. In connection with the issuance of the certificate on conditions of regional development and the building permit, the investors were required to obtain numerous other approvals and permissions, including water management approval issued on 25 December 1989, electro-energetic approval issued on 27 February 1996, and a letter confirming permission for construction dated 11 May 1999. Each of these public documents, in addition to others not mentioned herein, were issued by or at the request of the appropriate Ministry of the Hercegovačko-Neretvanski Canton or Department of the Prozor-Rama Municipality. One important public document was not issued or requested by the Canton, however: there is no approval at any stage in the process concerning protection of natural heritage assets issued by the Institute for Protection of Cultural-Historic and Natural Heritage or any other competent authority on this subject matter (see paragraphs 47, 57, 65 below).

25. In 1993, due to hostilities of the 1992-95 war in Bosnia and Herzegovina, the applicants were expelled from their homes in the village of Duge. They returned to their homes sometime after the cessation of the war and after the essential permits and approvals were granted to the investors for construction of the power plant. It appears that the majority of villagers had returned to their homes by the end of 1998 because on 28 December 1998, thirty-three villagers submitted a petition to the Municipality and the Ministries of Agriculture, Water Resources and Forests of the Canton and the Federation of Bosnia and Herzegovina objecting to construction of the power plant.

26. At no point during any of the procedures surrounding the issuance of the essential permits and approvals granted to the investors for construction of the power plant (see paragraphs 23-24 above) were the applicants recognised as interested parties in the administrative procedures. There is also no evidence that the Municipality took any measures to notify them of the existence of these procedures or to invite them to participate. In fact, in a letter to the Chamber dated 11 November 2000, the respondent Party confirmed that the applicants were not involved in the procedures concerning the issuance or extension of the building permit "to any extent or in any way".

27. In mid-1999, after the investors received final permission to continue construction of the power plant, the villagers began to apply significant pressure to attempt to prevent the construction from occurring. In addition to writing and petitioning both the Municipal authorities and the authorities of the Federation of Bosnia and Herzegovina, the villagers also physically attempted to prevent construction by blocking access to the site. In response to a complaint filed by the investors, on 31 July 2000, the Municipal Court in Rama issued a provisional measure ordering the villagers to desist from disturbing in any way the investors' property and from preventing any works on the property. In August and September 2000, the investors sought enforcement of this provisional measure because the applicants were still preventing the construction, and on 5 and 12 September 2000 the Municipal Court requested the assistance of the Prozor-Rama Police Administration with that enforcement.

28. Meanwhile, the applicants sought protection of their human rights from the Chamber. As stated above, this application was introduced on 31 July 2000. On 4 September 2000, the Chamber ordered the respondent Party, as provisional measures, to take all necessary measures to ensure that construction on the planned hydro-electric power plant near the village of Duge cease, and this order for provisional measures, the validity of which has been extended several times, remains in force. On 18 September 2000, the Municipality ordered the investors to suspend construction on the power plant pursuant to the Chamber's order for provisional measures.

29. On 22 January 2001, following the public hearing in this and the *Lukenda and Bevanda I* cases, the respondent Party notified in writing the Ministry of Physical Planning and the Environment of the Federation of Bosnia and Herzegovina in Sarajevo and the Ministry of Physical Planning and Protection of the Environment of the Hercegovačko-Neretvanski Canton in Mostar of violations of the law requiring the annulment of the procedural decisions issued in favour of the investors by the Department of Physical Planning, Constructions and Housing-Utility Affairs of the Rama Municipality on 14 May 1996 and 20 June 1997. These procedural decisions authorise necessary phases of construction of the power plant near Duge. Among the violations of law pointed out by the respondent Party, it highlighted in particular the failure of the competent authoritites to request and obtain the necessary approval of the Institute for Protection of Cultural-Historic and Natural Heritage prior to authorising any construction on the site in question which is protected as a natural heritage asset.

30. In response to the respondent Party's notification of violations of the law, the Ministry of Physical Planning and the Environment of the Federation of Bosnia and Herzegovina issued three procedural decisions annulling previous procedural decisions which authorised construction of the power plant near Duge. On 16 March 2001, the Ministry annulled the decision of 13 May 1996, the certificate on conditions of regional development. On 19 March 2001, the Ministry annulled the decision of 14 May 1996, the building permit. On 21 March 2001, the Ministry annulled the decision of 20 June 1997, the extension of the building permit. The Ministry reasoned in its decision of 16 March 2001 that the Department of Physical Planning, Constructions and Housing-Utility Affairs of the Rama Municipality, which issued the annulled procedural decision, had failed to take into account that the Krupić Spring and waterfalls near Duge were protected as natural heritage assets of the state. The Ministry further explained that approval from the Institute for Protection of Cultural-Historic and Natural Heritage was mandatory prior to issuance of the annulled procedural decision. From there it followed that the subsequent decisions must also be annulled.

31. On 13 April 2001, the investors initiated administrative dispute proceedings by submitting three complaints to the Supreme Court of the Federation of Bosnia and Herzegovina. These complaints challenge the validity of the three procedural decisions issued by the Ministry of Physical Planning and the Environment of the Federation of Bosnia and Herzegovina in March 2001 which annulled the previous approvals and permits for construction of the power plant near Duge. In their complaints, the investors argue that the annulment decisions were issued by a governmental body lacking competence because it was not the applicable second instance body to review the underlying procedural decisions. The investors further argue that the land on which they were granted the right to build their power plant is not subject to any protection by the State as a natural rarity because it is a different plot of land than the one protected under the 1958 decision by the State Institute for

Protection of Monuments of Culture and Natural Rarities. These complaints are still pending before the Supreme Court of the Federation of Bosnia and Herzegovina.

IV. RELEVANT DOMESTIC LAW

32. The relevant parts of domestic law important to this decision are described below.

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

1. Constitution of Bosnia and Herzegovina

33. The Constitution of Bosnia and Herzegovina entered into force "upon signature of the General Framework Agreement", which occurred on 14 December 1995. In Article III, it sets forth the relations and responsibilities between Bosnia and Herzegovina and the Entities, including the Federation of Bosnia and Herzegovina. After specifying certain responsibilities concerning primarily international and financial matters, 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."

34. 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

35. 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."

36. The Constitution of the Federation of Bosnia and Herzegovina describes the division of responsibilities between the Federation Government and the Cantons in Chapter III. According to Chapter III, Article 2, "both the Federation Government and the Cantons are to have responsibilities for the following: ... (c) environmental policy; ... and (i) use of natural resources".

37. 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

38. 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 "justice", "education, science and culture", and "city planning, resources and environment".

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

39. 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 forced 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

40. 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".

41. "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 Applicable in the Federation of Bosnia and Herzegovina

1. Law on Protection of Monuments of Culture and Natural Rarities

42. The Law on Protection of Monuments of Culture and Natural Rarities of the former People's Republic of Bosnia and Herzegovina (Official Gazette of the People's Republic of Bosnia and Herzegovina— hereinafter "OG PRBiH"– no. 19, dated 30 April 1947) provides for the protection of cultural and historic monuments and natural rarities.[4] Article 1 of this Law provides as follows: "All immovable and movable cultural–historic, art and ethnographic monuments, as well as natural rarities of zoological, botanical, geological–palaeontological, mineralogical–petrographical and geographical character or of particular beauty, regardless of whose property they were and in whose possession, are under the protection of the state. Scientific and aesthetic values of these objects are a public asset."

43. In order to protect such monuments of culture and natural rarities, the former People's Republic of Bosnia and Herzegovina founded, on the basis of the Law, the State Institute for Protection of Monuments of Culture and Natural Rarities, with its seat in Sarajevo (Articles 16, 18). Article 19 of the Law provides that: "the State Institute in Sarajevo shall decide which objects shall be considered protected in terms of Article 1 of this Law, as well as the boundaries of the directly protected immovable asset and its surroundings which are subject to the limitations referred to in this Law." The State Institute for Protection of Monuments of Culture and Natural Rarities shall issue a procedural decision on protection, which it shall transmit to the owners and/or possessors of the objects or to their legal representatives and to the competent court land registry in order to have it registered in the land books (Article 19). Moreover, the State Institute for Protection of Monuments of Culture and Natural Rarities shall be responsible for maintaining a central public register of all objects referred to in Article 1 of this Law, which shall serve as the basis for other institutes to keep their public records of protected objects in their areas (Article 20). Article 21 of the Law expressly provides that after registering a procedural decision in the records of the State Institute for Protection of Monuments of Culture and Natural Rarities in Sarajevo, no one may claim not to know that a certain object is under the protection of the State in terms of Article 1 of the Law.

44. Pursuant to Article 2 of the Law, objects protected under Article 1 may not be dug up, excavated, altered, renovated, built into, added onto, adapted, pulled down, smashed, cut, destroyed or exterminated without a licence from the competent organ. Pursuant to Article 4 of the Law, it is prohibited, without a licence from the competent organ responsible for protection, to engage in any construction or shape changing of the terrain within the boundaries of the directly protected immovable asset and its surroundings which are subject to the limitations of this Law. Any person who violated Articles 2 or 4 of the Law could, at the time, be assessed a penalty up to 25,000 dinars, and in more serious cases, sentenced to forced labour without imprisonment for a period of up to one year (Article 25).

2. Law on Protection and Use of Cultural-Historic and Natural Heritage

[4] The 1947 Law on Protection of Monuments of Culture and Natural Rarities (OG PRBiH no. 19) ceased being applicable on 25 November 1961, when the new Law on Protection of Nature was published and came into force (OG PRBiH 45/61, dated 17 November 1961). The Law on Protection of Nature was amended in November 1964 (OG SRBiH no. 41/64). The consolidated text of this Law was published on 5 February 1965 (OG SRBiH no. 4/65). Pursuant to Article 5 of this Law, the service of protection of nature was performed by the Institute for Protection of Nature of Bosnia and Herzegovina. Article 75 stipulates that within one year from the day this Law comes into force, the documents by which the objects of nature were placed under protection as natural rarities under the regulations which were applicable until this Law entered into force shall be amended with a view to harmonising them with the provisions of this Law.

The 1961 Law on Protection of Nature ceased being applicable on 14 February 1978, when the Law on Protection and Use of Cultural-Historic and Natural Heritage entered into force (OG SRBiH no. 3/78, dated 6 February 1978). Pursuant to Article 92 of this Law, the monuments of culture and objects of nature placed under protection pursuant to regulations which were applicable before this Law came into force shall be considered protected under the provisions of this Law. Article 94 provides that the Institute for Protection of Nature of Bosnia and Herzegovina continues to function pursuant to the provisions of this Law under the name the Institute for Protection of Monuments of Culture, Natural Sites and Rarities of Bosnia and Herzegovina. The 1978 Law ceased being applicable on 24 July 1985, when the 1985 Law on Protection and Use of Cultural-Historic and Natural Heritage came into force (see paragraphs 45-48 below).

45. The Law on Protection and Use of Cultural-Historic and Natural Heritage (Official Gazette of the Socialist Republic of Bosnia and Herzegovina—hereinafter "OG SRBiH"–nos. 20/85, 12/87, Official Gazette of the Republic of Bosnia and Herzegovina—hereinafter "OG RBiH"—nos. 3/93, 13/94) entered into force on 24 July 1985. It governs protection of cultural, historical, and natural heritage in Bosnia and Herzegovina. Article 1(2) defines protected natural heritage assets as follows: "the natural heritage, in terms of this law, are considered to be those parts of nature, which are of particular scientific, educational, cultural, historic, ecological and recreational significance" (hereinafter referred to as "natural heritage assets"). Article 3(1) further provides that natural heritage assets include "natural sites and rarities," which are in turn defined in Article 25(3) as "natural monuments, memorial natural assets, shaped nature monuments and individual endangered botanical and zoological species."

46. Article 110 states that "assets of cultural-historic and natural heritage, placed under protection pursuant to the regulations which were in force until the entry into force of this law, shall be considered protected until they become categorised in accordance with the provisions of this law." Article 5 provides that natural heritage assets, "as assets of public interest, enjoy special protection and are used under the conditions and in the manner prescribed by the law." Article 13 provides that natural heritage assets may not be used in any way that will result in harm to it. Moreover, according to Article 48(2), "on natural sites and rarities, all actions and activities, which may disturb spontaneous natural development or deteriorate the basic natural properties for which they were declared protected, are prohibited."

47. Pursuant to Article 51(1), construction on property of natural heritage assets requires the consent of the competent institution: "Works on immovable protected assets and immovable assets of cultural-historic and natural heritage which enjoy the aforementioned protection, as well as in their close surroundings, which could directly or indirectly change their appearance, property, authenticity or originality, may be performed only after previously obtaining an approval of the competent institute". Pursuant to Article 113 of the Law, such institute "continues to work pursuant to the provisions of this law under the name: the Institute for Protection of Cultural-Historic and Natural Heritage of Bosnia and Herzegovina."

48. Furthermore, Article 302 of the Criminal Law of the Federation of Bosnia and Herzegovina (OG FBiH no. 43/98) defines as a crime, with a possible penalty of imprisonment, the "damaging or destroying of a protected natural heritage asset."

3. Law on Physical Planning

49. The Law on Physical Planning (OG SRBiH nos. 9/87, 23/88, 24/89, 10/90, 14/90, 15/90, 14/91, OG RBiH nos. 7/92, 16/92, 13/94, 25/94, 33/94, 20/95) regulates urban plan matters, constructions, and protection and improvement of the human environment, both natural and developed (Article 1). The Law sets forth the conditions and procedures for obtaining urban plan approval and construction approval. If not otherwise provided in this Law, the Law on General Administrative Procedure is applied to the administrative proceedings for issuance of both urban plan approval and construction approval (Articles 135(1) and 154(1)). In order to construct a building, a person must first obtain a procedural decision granting urban plan approval and then a procedural decision granting construction approval, which is based on the urban plan approval (Articles 143(1)-(2), 144, 170(1)). The urban plan approval establishes that the planned building is in accordance with the conditions prescribed by the Law on Physical Planning (Article 122(1)-(2)).

50. Article 131(1) provides that the investor in a construction project shall initiate proceedings for obtaining urban plan approval with the competent municipal authority for urban affairs. Neighbours of the investor towards whom the investor has obligations may also be parties to the proceedings on urban plan approval (Article 124(1)). Article 124 sets forth the requirements of the content of the urban plan approval, including details about the building, an extract of the building plan, a description of the boundaries of the land, conditions for construction, conditions for technical urban issues,

protection of the environment, and any special conditions such as for protected areas. Article 138(1) further provides that urban plan approval on protected areas of natural, historical, and cultural heritage may only be issued in accordance with the consent of the competent protection service (*i.e.*, the Institute for Protection of Cultural-Historic and Natural Heritage), unless the plan for the area already contains conditions for protection. If an urban plan approval is issued contrary to this Law, it is null and void (Article 123(5)).

51. Under Articles 148(1) and 150(1), the investor shall also initiate proceedings to obtain construction approval with the competent municipal authority for building works. Articles 143(1)-(2), 144, and 170(1) provide that construction approval is issued on the basis of urban plan approval, technical documentation, evidence of ownership or the right to use the land, technical building conditions, conditions for the construction site, and other special conditions. In the procedure for issuing construction approval, the municipal authority shall check whether the technical documentation is in accordance with the urban plan approval, the law, and conditions for building. A construction approval issued contrary to this Law is null and void (Article 143(3)).

4. Law on General Administrative Procedure

52. The Law on General Administrative Procedure (Official Gazette of the Socialist Federative Republic of Yugoslavia— hereinafter "OG SFRY"–no. 47/86 (consolidated text) became law in the Republic of Bosnia and Herzegovina on 11 April 1992 pursuant to the Decree with Force of Law on Taking Over the Law on General Administrative Procedure in the Republic of Bosnia and Herzegovina (OG RBiH nos. 2/92, 9/92, 16/92, and 13/94). Later this law was replaced in the Federation of Bosnia and Herzegovina by the new Law on Administrative Procedure (OG FBiH–no. 2/98 and 48/99), which entered into force on 28 January 1998. However, the provisions of the former law that are discussed herein were taken over in the new law with no material changes.

53. Article 5 of the Law on General Administrative Procedure provides that competent bodies are obliged to enable parties to realise their rights as easily as possible, taking care that the exercise of these rights is not against the interests of other persons or contrary to the law (Article 5(1)). Article 49 defines a party to include anyone "who has the right to participate in a procedure for the sake of protection of his/her rights or legal interests." "Any legal person or legal entity may be a party to an administrative procedure. Administrative bodies..., neighbourhoods, groups of persons, etc., which do not have the capacity of a legal entity may be parties to a procedure if they are the holders of rights and obligations which are the subject of the administrative procedure" (Article 50(1)-(2)). "If during the procedure a person who so far did not participate in the procedure as a party appears and requests to participate in the procedure as a party, the official conducting the procedure shall examine his/her right to be a party and make a decision on that request" (Article 139).

54. When issuing an administrative decision, "all facts and circumstances of importance for the decision must be established before issuing the decision" (Article 135(1)).

55. "The official conducting the procedure shall schedule a hearing, either at his/her initiative or on the proposal of a party, in any case where it is useful for the matter to be resolved..." (Article 149). The official must schedule a hearing in "matters involving two or more parties with opposite interests" or "when necessary to make an investigation or hear witnesses or experts" (Article 149(1)-(2)). Whenever there is a possibility that there are interested persons who have not yet appeared as parties, Article 154(1)-(2) requires the competent body publicly to announce scheduled hearings. Such public announcement of a hearing should contain data required for an individual summons plus an invitation for anyone to attend the hearing if the matter concerns his/her legally protected interests. Moreover, when the public announcement is to be delivered to an unknown person, Article 94 requires that it be carried out through a public announcement on a bulletin board of the organ making the announcement.

C. Laws Applied on the Territory of the former "Croat Community[5] of Herceg-Bosna"

56. The Chamber notes that with respect to the present case, the local authorities in fact applied and took into consideration on the Territory of the former "Croat Community of Herceg-Bosna", where the village of Duge is located, the following laws. By citing these laws, 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, cited in paragraphs 42-55 above.

1. Decree on the Application of the Law on Protection and Use of Cultural-Historic and Natural Heritage

57. The Decree on the Application of the Law on Protection and Use of Cultural-Historic and Natural Heritage (Official Gazette of the "Croat Republic of Herceg-Bosna" — hereinafter "OG 'CRHB'" — no. 10/94) came into force on 24 March 1994. This Decree states, in Article 1, that the Law on Protection and Use of Cultural-Historic and Natural Heritage (OG SRBiH nos. 20/85, 12/87) (see paragraphs 45-48 above) "is applied within the territory of the Croat Republic of Herceg-Bosna ..., with the exception of the provisions which are contrary to this Decree".

58. Article 3 of the Decree divides "assets of cultural-historic and natural heritage, according to their significance, into three categories", as follows: "assets of extraordinary significance for history and culture", "assets of great significance for history and culture", and "other significant assets". Article 2 of the Decree provides that such "assets of cultural-historic and natural heritage may not be used in a manner which would harm the cultural heritage, social-economic and cultural development of the [Croat] Republic [of Herceg-Bosna]".

59. "The protection and determination of conditions for the use of cultural-historic and natural heritage are dealt with by: the Institute of the [Croat Republic of Herceg-Bosna] and branch institutes" and "national parks, museums, galleries, archives and libraries" (Article 5). Supervision over the lawfulness of such protection and determination of conditions for use is "performed by the Ministry of Education, Science, Culture and Sports" (Article 6). The Institute of the Croat Republic of Herceg-Bosna shall be administered by a Steering Board and Director, appointed according to a Decision on Establishment of the Institute of the Croat Republic of Herceg-Bosna (Article 8).

60. Article 10 of the Decree amended Articles 105 through 109 of the Law on Protection and Use of Cultural-Historic and Natural Heritage. These five articles set forth specific pecuniary penalties for infringements of the Law. For example, amended Article 105 provides that the Institute of the Croat Republic of Herceg-Bosna shall be assessed a penalty between 1000 and 5000 DEM if it "does not take measures for protection of an asset of cultural-historic and natural heritage which enjoys previous protection". Amended Article 108 provides that a legal person shall be assessed a penalty between 200 and 2500 DEM if it "acts contrary to Article 48 of the Law" (regarding acts which may disturb or deteriorate the natural properties for which an asset of cultural-historic and natural heritage was declared protected) or "performs works on immovable protected assets and immovable assets of cultural-historic and natural heritage which enjoys previous protection, without the approval of the Institute of the [Croat Republic of Herceg-Bosna]".

61. Article 11 of the Decree specifies that Articles 13 through 17, 23, 86, 87, 98 through 102, 104, and 112 through 115 of the Law on Protection and Use of Cultural-Historic and Natural Heritage

[5] At certain times relevant to this decision the territorial name was the "Croat Community of Herceg-Bosna" and at other times the territorial name was the "Croat Republic of Herceg-Bosna". Throughout this decision, the Chamber attempts to use the respective territorial name indicated in the laws at issue and considers both names, interchangeably, to refer to the same territory.

(see paragraphs 45-48 above) "shall not be applied".

2. Decree on Protection of Nature

62. The Decree on Protection of Nature (OG "CRHB" no. 31/94, amended no. 2/95), which entered into force on 5 October 1994, "secures the protection of particularly valuable natural areas and natural assets of historic, cultural, aesthetic and recreational significance" (Article 1). Such protection of nature is enforced by identifying parts of nature subject to special protection, securing rational utilisation of nature without spoiling the natural equilibrium, "preventing development of disturbances in the nature as a consequence of technological development and other activities," and issuing and implementing plans for the protection of identified parts of nature (Article 2).

63. "Protected parts of nature" under the Decree include "protected landscapes" and "natural monuments" (Article 3). A protected landscape is defined as "a natural or cultivated area of great aesthetic, cultural or historic value or a landscape characteristic for a particular area" (Article 8). In such areas, "certain activities which could disturb the features for which the area has been declared protected are not allowed" (Article 8). Similarly, a natural monument is defined as "an individual unchanged part or group of parts of the living or non living nature, which has scientific, aesthetic, cultural or historic value." Among the examples listed in the Decree is nature of "hydrological character", including waterfalls and water currents (Article 9). "Activities which endanger the features and values" of a "natural monument" or "its close vicinity" are not allowed (Article 9).

64. According to Article 12 of the Decree, the House of Representatives of "Herceg-Bosna" declares protected parts of nature upon a previously obtained opinion of the Ministry of Physical Planning, Constructions and Protection of the Environment. The document declaring parts of nature protected pursuant to Article 12 shall be published in the Official Gazette of the respective Canton in "Herceg-Bosna" (Article 13). The Decree also provides for the means to remove protected status for parts of nature: "If those features which lead to some part of nature being declared protected disappear, the competent bodies referred to in Article 12 of this Decree shall issue a document on cessation of that protection, in the manner and through such procedure as stipulated for declaring that protection" (Article 15).

65. Article 31 of the Decree clarifies that "actions which may cause changes and damage on the protected part of nature are not allowed. On the other hand, "on the protected part of nature, such actions and activities which will not cause any damage or change the features for which it has been declared protected are allowed"; however, such actions and activities "are allowed only after obtaining conditions for the protection of nature" from the Ministry of Physical Planning, Constructions and Protection of the Environment (Article 31). Such "conditions for protection of nature are established in the procedure for issuance of conditions for regional development" (Article 31). "A building permit may be issued and performance of other work allowed" in cases which will not cause any damage or change to the protected part of nature "only if the Ministry issues the required and appropriate documents made in accordance with the conditions for the protection of nature" (Article 31).

3. Decree on Physical Planning and Regional Development

66. The Decree on Physical Planning and Regional Development within the Territory of the "Croat Community of Herceg-Bosna" during the time of war or immediate threat of war (Official Gazette of the "Croat Community of Herceg-Bosna" — hereinafter "OG 'CCHB'" — nos. 13/93, 19/94) entered into force on 12 July 1993. This Decree states in Article 1(1) that "physical planning and regional development are based on the right and duty of employees and citizens to dispose of space for human living and work and to preserve natural and man-made assets of the human environment, prevent and eliminate harmful consequences that endanger those assets, as well as ensure that social and economic development result in healthy, safe, and humane life and work for current and future generations." Moreover, "human environment assets are protected, improved and developed through physical planning" (Article 2(3)).

67. Article 6 of the Decree provides that "all users of space are obliged to utilise the space in a manner which will ensure that conditions for preservation and improvement of the environment are met and harmful consequences which might endanger those assets are prevented."

68. The Decree presupposes that each Municipality has a long term physical plan which provides for organisational and regional planning, as well as protection and improvement of the human environment (see Articles 8-10, 14). In the physical plan "particularly valuable areas and endangered parts of the human environment" are determined and measures for protection established, "with a view to protecting and improving the human environment in a certain area" (Article 42(1)).

69. Article 43 provides for special protection of particularly valuable areas as follows:

> "(1) Particularly valuable areas are under special protection in order to preserve their natural appearance or their historic and cultural identity and to ensure that they are used and improved for the needs of current and future generations.
> "(2) Particularly valuable areas are determined through physical planning or by a special decree or some other regulation based on a decree.
> "(3) Particularly valuable areas are:
> - Protected structures and parts of nature,
> - Monument complexes, historic settings and urban or rural units and cultural monuments,
> - The sea, waters, and their shores/banks
> - Agricultural land,
> - Ore deposits and forests,
> - Other areas determined through physical planning by the Croat Council of Defense."

70. In Article 46 the Decree sets forth measures for the protection of the environment. Such protective measures are determined through physical planning with a view to "protecting the natural environment," including "protecting the air from being polluted, protecting the waters and seas from being polluted, and using the waters in a rational manner" (Article 46(1)).

71. When land is developed in order to "make it suitable for construction or reconstruction of residential, economic/production and other facilities/buildings," the development involves certain "preparation of the land for construction". Such preparation involves "resolving legal property relations with owners and/or occupants of real property assets" and preparing necessary documents for "performing work on a cultural monument" and taking "measures for the protection of specially protected natural objects and cultural monuments which might be endangered by work on preparation of the land" (Articles 67-68).

72. "Regional development conditions determine the conditions for construction of facilities or buildings and conditions for land development, and if necessary, also the conditions for the manner of utilising facilities or buildings and land, which must be complied with when constructing or developing land" (Article 53(1)). Regional development conditions include technical conditions and the urban plan (Article 53(2)). The urban plan and technical conditions, in turn, determine the technical and physical aspects of a construction, including "conditions for protection and shaping of the environment" (Article 54). Special construction conditions which are not contained in the physical plan to provide for, among other things, "protection of cultural monuments" and "protection of nature" are "determined by a body competent for the determination of conditions for regional development together with all bodies and organisations which determine those special conditions on the basis of special decrees and other issued regulations" (Article 55(1)).

73. For facilities or buildings which, if constructed or used, may cause the deterioration of the "human environment or adversely effect the development of other activities or human health," "the regional development conditions are determined pursuant to specific conditions for the protection of the environment" after the investor in the project obtains and submits a scientific study by a special

expert commission on how the planned construction will influence "the existing state of the human environment" (Article 59).

74. The competent municipal body determines the conditions for regional development (Article 62). Upon the request for a party, the competent municipal body for regional development issues a certificate on conditions of regional development (Article 64(1)). In issuing such certificate, the competent municipal body must prepare the documentation which supports the regional development conditions set forth in Article 53 (Article 65(3)). Such documentation and approval obtained in the procedure for issuing the certificate on conditions of regional development shall be considered as obtained also for the procedure for issuing the building permit (Article 65(4)). If the proposed "construction is not allowed pursuant to the provisions of this Decree" or the purpose of the construction "would be contrary to the purpose determined by the physical plan," the request for a certificate on conditions of regional development "shall be refused by a procedural decision issued by a competent municipal body for regional development" (Article 64(2)).

4. Decree on Constructions

75. The Decree on Constructions within the Territory of the "Croat Community of Herceg-Bosna" during the time of immediate threat of war or the state of war (OG "CCHB" no. 13/93) came into force on 12 July 1993. The Decree regulates essential issues in designing, constructing, and maintaining constructions, including technical aspects of constructions (Article 1). It sets forth particular requirements for the general design of construction projects and the required conditions, plans, and other documents necessary to make up the general design (Article 21).

76. Under Article 7, construction projects are required to be designed and constructed in accordance with health standards so as to prevent danger to citizens and the environment from poisonous gases, air pollution, water pollution, and ineffective waste disposal.

77. Under the Decree, it is possible for a construction to be built only upon the basis of a building permit (Article 25(1)). A building permit is issued by a competent municipal body for constructions in the area where the construction is to be built, unless some other body is specified by a special decree (Article 26(1)). In order to obtain a building permit, the investor in a construction project must submit a request to the competent municipal body for constructions and such request must include a description of the construction, the general design of the construction, evidence of ownership of the land where the construction is to be built, and "approvals, certificates or opinions of competent bodies or companies related to the general design, when it is specified by a special decree" (Article 28). The competent municipal body is obliged to advise the investor about any necessary conditions to the general design and construction plan or any relevant documents to substantiate that the general design and construction plan are harmonised with established requirements that the investor must obtain (Article 31(1)). The general design and construction plan must then be harmonised accordingly before the investor applies for the building permit (Article 31(2)).

78. The competent municipal body shall issue a building permit within 30 days from the date of the request, provided all conditions prescribed by this Decree are met (Article 33(1)). The building permit shall establish that the general design and construction plan has been made in accordance with the conditions and requirements of the law and the location (Article 33(2)).

79. A building permit ceases to be valid if the construction work does not commence within one year of the date the permit becomes valid. However, in certain circumstances and upon the request of an investor, the validity of the building permit may be extended for one additional year (Article 35).

80. According to Article 53 of the Decree, competent inspectors have the right and obligation to order the removal or suspension of construction "if, during the course of construction, they establish defects which cannot be corrected and which put in danger the stability of the construction or the stability of surrounding constructions or in some other way pose a threat to people's lives or the environment." However, if the construction constitutes cultural property or is located in a protected

area, "the procedural decision on its removal cannot be enforced without the approval of the competent body for the protection of cultural property of the Croat Community of Herceg-Bosna" (Article 53(3)).

5. Law on General Administrative Procedure

81. The Decree on Application of the Decree with the Force of Law on Adopting the Law on General Administrative Procedure and of the Decree with the Force of Law on Application of the Law on General Administrative Procedure was adopted as the law of the "Croat Republic of Herceg-Bosna" during the time of imminent threat of war or during the state of war and was issued on 27 November 1992 (OG "CRHB" no. 9/92).

82. According to Article 1 of the Decree, the two former decrees of the Republic of Bosnia and Herzegovina (Decree with the Force of Law on Adopting the Law on General Administrative Procedure in the Republic of Bosnia and Herzegovina (OG RBiH no. 2/92) and Decree with the Force of Law on Application of the Law on General Administrative Procedure adopted during the time of imminent threat of war or during the state of war (OG RBiH no. 6/92)) were applied in the territory of the "Croat Republic of Herceg-Bosna" during the time of imminent threat of war or during the state of war as of the date when those former decrees were published in the Official Gazette of the Republic of Bosnia and Herzegovina (see paragraphs 52-55 above).

83. Pursuant to Article 2 of the Decree: "appeals in the administrative procedure shall be dealt with by the second instance body on the level of [the Croatian Council of Defence of the Croat Republic of Herceg-Bosna]."

84. The Decree adopted in the "Croat Republic of Herceg-Bosna" was replaced by the new Law on Administrative Procedure (OG FBiH no. 2/98 and 48/99) which entered into force on 28 January 1998. This new Law on Administrative Procedure was applicable throughout the entire territory of the Federation of Bosnia and Herzegovina upon its enactment.

V. COMPLAINTS

85. The applicants claim a violation of their rights under Article 8 (right to respect for private and family life and home), Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions), Article 6 (right to a fair hearing), and Article 13 (right to an effective remedy) of the Convention. They further allege discrimination based on their ethnicity in the enjoyment of their rights protected by the Convention. The applicants contend that if the illegal acts complained of in their application continue, namely, if the hydro-electric power plant is constructed near their village, "their existence and survival in the area [will be] completely endangered". In addition, the village of Duge will suffer irreparable damage, which will in turn result in the destruction of protected natural heritage assets.

VI. SUBMISSIONS OF THE PARTIES

A. The Respondent Party

86. In its written observations, the respondent Party challenged the admissibility of the application on several grounds. Firstly, the respondent Party argued that the procedural decision complained of by the applicants was the result of events surrounding the allocation of land in 1991, and consequently, the application was beyond the competence of the Chamber *ratione temporis*. Secondly, the respondent Party argued that the applicants had not exhausted their domestic remedies because they had not sought an appeal against the "silence of administration" nor submitted a claim to the Inspector of the Prozor-Rama Municipality as interested parties.

87. Furthermore, the respondent Party stated in its written observations that the application was ill-founded on the merits. With respect to Article 8 of the Convention, the respondent Party argued that the disputed land allocated for the power plant did not represent home for the applicants within the meaning of Article 8, and accordingly, there could be no violation of this article. The respondent Party did not discuss the merits of alleged violations under any other provisions of the Convention. The respondent Party did, however, respond to the applicants' compensation claims by arguing that they were imprecise, excessive, unsubstantiated, and ill-founded. The respondent Party pointed out that the Chamber issued a provisional measure halting the planned construction, so no damage had occurred that could have been caused by the respondent Party for which the applicants could be entitled to compensation.

88. At the Chamber's public hearing, as described above, the respondent Party retracted its earlier objections to the application and conceded the potential for irreparable damage to and violations against the applicants. The respondent Party admitted that all approvals and licenses granted to the investors in the power plant by the Prozor-Rama Municipality had not been issued in accordance with the law. The respondent Party did not concede damage as a result of the potential violations, however, because the construction of the power plant had not occurred to cause any damage. The respondent Party further stated that it would not maintain its objection to admissibility based on the applicants' failure to exhaust domestic remedies.

89. After the public hearing, the respondent Party submitted additional written observations particularly with respect to claims under Articles 6 and 13 of the Convention. The respondent Party denied that there is any violation of either Article 6 or 13 of the Convention. The respondent Party pointed out that the Municipal authorities were responsive to the applicants' complaints and that construction of the power plant has not occurred. If the investors in the power plant continue with construction or do not comply with the law, then, according to the respondent Party, the applicants may pursue possible claims in regular civil or criminal proceedings as appropriate.

B. The Applicants

90. With respect to admissibility, the applicants refuted the respondent Party's objections made in its written observations. They argued that the Chamber was competent *ratione temporis* because the official action they were complaining of was the issuance of the building permit for the power plant in 1996, after the Agreement entered into force. Regarding exhaustion of domestic remedies, the applicants emphasised that they were not recognised as parties to the administrative procedures surrounding the issuance of the building permit; accordingly, their attempts to seek redress through these domestic bodies remained unanswered.

91. As to the merits of their claim under Article 8 of the Convention, the applicants alleged that the hydro-electric power plant would destroy, damage, or substantially interfere with the use of their homes. More significantly, however, the applicants argued in detail that the Municipality issued the building permit for the power plant not in accordance with the law in four major respects: 1) the permit expired according to its own terms, 2) the permit was inadequate for a project to construct a power plant, 3) the permit was not issued in compliance with national laws, in particular, the Law on Protection and Use of Cultural-Historic and Natural Heritage, and 4) the applicants were not granted an opportunity to participate in the procedures leading up to the permit.

92. Apart from their claims under Article 8 of the Convention, as they may be relevant, the applicants did not make further arguments supporting the merits of their allegations of violations of Article 1 of Protocol No. 1 to the Convention, or Article 6 and 13 of the Convention. They stated that they are of Bosniak origin and were displaced from their property during the 1992-95 war in Bosnia and Herzegovina. They contended that the competent authorities of the Prozor-Rama Municipality were of Croat origin, and, as a result, it was impossible for them to receive fair treatment in any action aimed at preventing construction of the power plant in their village. Accordingly, they have suffered discrimination in the enjoyment of their rights guaranteed by the Convention.

VII. OPINION OF THE CHAMBER

A. Admissibility

93. Before considering the merits of the application, the Chamber must decide whether to accept the application, taking into account the admissibility criteria set out in Article VIII of the Agreement. Under Article VIII(1) the Chamber shall receive, from any Party or person, non-governmental organisation, or group of individuals claiming to be the "victim" of a violation by any Party, applications concerning alleged or apparent violations of human rights within the scope of Article II(2) of the Agreement. In deciding which applications to accept, the Chamber shall take into account "whether effective remedies exist, and the applicant has demonstrated that they have been exhausted" (Article VIII(2)(a)). The Chamber shall "dismiss any application which it considers incompatible with this Agreement [or] manifestly ill-founded" (Article VIII(2)(c)).

1. Competence *ratione temporis*

94. The Chamber will first address the question whether it is competent, *ratione temporis*, to consider the application, bearing in mind that some of the factual matters underlying the dispute between the parties occurred before the entry into force of the Agreement on 14 December 1995. In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively; therefore, the Chamber must confine its examination of the case to whether the applicants' rights have been violated since that date. However, the Chamber may consider events prior to 14 December 1995 as part of an ongoing violation of rights after that date (case no. CH/96/29, *The Islamic Community in Bosnia and Herzegovina v. the Republika Srpska*, decision on admissibility and merits delivered on 11 June 1999, paragraph 132, Decisions January-July 1999).

95. The respondent Party initially argued that the procedural decisions complained about by the applicants were the result of events surrounding the allocation of land near Duge to the investors in 1991, and is thus beyond the competence of the Chamber. The Chamber notes, however, that the more significant disputed events concern the issuance of the permit for use of that land for construction of a power plant. This building permit was issued in May 1996 and later extended in June 1997. Thus, the official acts complained of by the applicants occurred after the Agreement entered into force. That the actions occurring after 14 December 1995 may relate to or flow from actions occurring prior to 14 December 1995 does not exclude them from the competence of the Chamber *ratione temporis*.

2. Exhaustion of domestic remedies

96. According to Article VIII(2)(a) of the Agreement, the Chamber must also consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In previous cases the Chamber has held that the burden of proof is on the respondent Party to satisfy the Chamber that there was a remedy available to the applicants both in theory and in practice (*see, e.g.*, case no. CH/96/21, *Čegar v. Federation of Bosnia and Herzegovina*, decision on admissibility of 11 April 1997, paragraph 12, Decisions on Admissibility and Merits March 1996-December 1997).

97. In this case the respondent Party has withdrawn its objection to admissibility for failure to exhaust domestic remedies. The agent for the respondent Party stated as follows at the public hearing:

> "Having regard to the fact that [the applicants] were expelled in 1993 and that they could not seek to exhaust any remedies for the protection of their possessions until they returned, and their return started at the end of 1997 and continued in 1998. Of all remedies that were available to them, they only applied to the Head of the Municipality Prozor-Rama and requested that the building permit be annulled. Unfortunately, this request did not render the expected result. Silence of the

> administration occurred, and it is considered, under the Law on Administrative Procedure, that their request was denied. After that this group of applicants did not use the possibility to file an appeal and commence an administrative dispute. However, the respondent Party shall not insist on its original statement that the application is inadmissible with respect to this issue because it is obvious according to the first remedy they used that it was ineffective since they did not receive any answer after two years. Therefore, with regard to admissibility, the respondent Party considers that the application is admissible." (Statement of Mrs. Seada Palavrić, agent for the respondent Party, at the public hearing on 11 January 2001.)

98. Considering this statement, the Chamber finds that the application is admissible with respect to the admissibility requirement of Article VIII(2)(a) of the Agreement.

3. Whether the application is manifestly ill-founded

99. Under Article VIII(2)(c) of the Agreement, the Chamber shall consider whether the application, or any part thereof, is manifestly ill-founded.

a. With respect to Article 1 of Protocol No. 1

100. The applicants raise claims under Article 1 of Protocol No. 1 to the Convention for damage to their farms if construction of the power plant occurs. The applicants explain that they depend upon their farms for their livelihood and existence, and they allege that the power plant will divert necessary water away from their farms.

101. In this case, it should be pointed out that the power plant has not been built and, to date, there has been in fact no interference with the applicants' possessions protected by Article 1 of Protocol No. 1. Moreover, the extensive case file before the Chamber contains insufficient evidence for the Chamber to determine whether and to what extent there would be an interference with the applicants' possessions if the power plant were built. There is some evidence in the file that suggests that because the investors in the power plant planned to construct a modern irrigation system, that actually the applicants' farms would be enhanced by construction of the power plant. In any case, there has not been any substantiation of the allegation that the power plant would interfere with the property of the applicants. It follows that this part of the application is manifestly ill-founded and inadmissible.

b. With respect to Articles 6

102. The right embodied in Article 6 "secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal." Article 6 addresses "the right to court", including the right of access to court and the right to institute proceedings before courts in civil matters (Eur. Court HR, *Hornsby*, judgment of 19 March 1997, Reports of Judgments and Decisions 1997-II). The applicants in the present case, however, never sought to have their rights determined in any civil court. The Chamber therefore finds that this part of the application is inadmissible as manifestly ill-founded.

c. With respect to Discrimination due to Ethnic Origin

103. With respect to the applicants' claim of discrimination as a result of their ethnic origin as Bosniaks, in particular the applicants' claim that the Croat authorities of the Municipality treated them unfairly, the applicants did not provide the Chamber with any documents or other evidence to support these allegations. As a result, a *prima facie* case does not exist against the respondent Party for discrimination with respect to the rights and freedoms guaranteed by the Agreement. The

Chamber thus finds that the applicants' allegations of discrimination are manifestly ill-founded and this part of the application is inadmissible for this reason (*see, e.g.*, case no. CH/97/68, *Simić v. the Republika Srpska*, decision on admissibility of 10 September 1998, paragraph 25, Decisions and Reports 1998).

4. Conclusion on Admissibility

104. For the reasons discussed above, the Chamber declares the parts of the application concerning claims and allegations with respect to Article 1 of Protocol No. 1 to the Convention, Article 6 of the Convention, and discrimination based on ethnic origin in the enjoyment of the rights protected by the Agreement inadmissible. The remaining claims under Articles 8 and 13 of the Convention (right to respect for private and family life and home and right to an effective remedy) are declared admissible.

B. Merits

105. Under Article XI of the Agreement, the Chamber must next address whether this application discloses a breach by the respondent Party of its obligations under the Agreement. Article I of the Agreement provides that the Parties shall secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the Convention and the other international agreements listed in the Appendix to the Agreement. Under Article II(2)(a) of the Agreement, the Chamber may consider alleged or apparent violations of human rights provided in the Convention and its Protocols.

106. The Chamber notes that the respondent Party has conceded potential violations of the applicants' human rights as they result from the approvals and licenses granted to the investors for construction of the power plant by the Prozor-Rama Municipality because such approvals and licenses were not issued in accordance with the law. The respondent Party did not, however, concede that there had been any damage to the applicants as a result of these violations.

1. Right to Respect for Private and Family Life and Home (Article 8 of the Convention)

107. The Chamber will consider the merits of the application under Article II(2)(a) of the Agreement in relation to Article 8 of the Convention, which provides as follows:

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

108. Firstly, the Chamber will consider whether there is an interference with the applicants' right to respect for private and family life and home. The applicants have stated that if constructed, the power plant will destroy or damage their homes and farms and the nearby environment and protected area of natural heritage assets.

109. Secondly, the Chamber will examine whether such interference, if established, is justified under the terms of paragraph 2 of Article 8. In order to be "justified", the interference must be "in accordance with the law", serve "a legitimate aim", and be "necessary in a democratic society". If any one of these conditions is not satisfied, then there is a violation of Article 8 (case no. CH/97/46, *Kevešević v. The Federation of Bosnia and Herzegovina*, decision on the merits of 10 September

1998, Decisions and Reports 1998, paragraphs 36-58). The respondent Party has conceded that approval of the construction of the power plant was not in accordance with the law.

a. Whether there is an interference with private and family life and home

110. The applicants in the present case are farmers in a rural area, and they depend upon their unique natural surroundings for their livelihood and way of living. It is obvious from the submissions in the case that the applicants closely identify with the natural heritage assets of their surroundings. They constitute a specific group of farmers who have lived for generations in the natural environment near the village of Duge, and they contend that if the surrounding natural heritage assets are damaged by construction of the power plant, their way of life will suffer. In particular, they allege that they will not be able to rely upon agricultural production for their livelihood because they will no longer be able to utilise the irrigation system connected to the waterfalls near the village of Duge.

111. The Chamber notes that in its written observations of 10 January 2001 and its oral presentation at the public hearing on 11 January 2001, the agent for the respondent Party stated that "it seemed probable" or "very likely" that if the Chamber had not issued its provisional measure suspending construction of the power plant near the village of Duge, the applicants would have "suffered great damage" which would have been "irreparable". The agent of the respondent Party further commented that there remains a "dormant danger" that there could be a violation of the applicants' right to property under Article 1 of Protocol No. 1 to the Convention if the power plant were constructed, "having in mind the fact that they had used water for irrigation of their agricultural land for centuries because they supported their existence in this way". The Chamber considers this comment relevant to its discussion of a violation of Article 8, particularly since it confirms the applicants' allegations in this respect. Additionally, the respondent Party submitted a written expert opinion dated 20 December 1999 by the Ministry of Physical Planning and the Environment of the Federation of Bosnia and Herzegovina in Sarajevo that "the approval for performance of works on construction of the small hydro-electric power plant on the Buk River in the village of Duge-Prozor cannot be given because the value of the protected natural phenomenon of the waterfall would be distorted".

112. While it seems clear that construction of the power plant would interfere with the protected natural heritage assets near the village of Duge, the Chamber never-the-less has to address the question whether this also constitutes an interference with the applicants' rights to respect for private and family life and home protected by Article 8 of the Convention. The European Court of Human Rights in Strasbourg has recognised, in the context of claims under Article 8, the right of certain applicants who are members of a protected group of persons to maintain their traditional lifestyle (*Coster v. the United Kingdom*, Eur. Court H.R. case no. 24876/94, judgment of 18 January 2001; *Noack and Others v. Germany*, Eur. Court H.R. case no. 46346/99, decision on admissibility of 25 May 2000), and also the right of applicants to be protected from severe environmental pollution which may affect their well-being and prevent them from enjoying their homes (*Guerra and Others v. Italy*, Eur. Court H.R. judgment of 19 February 1998, Series A no. 875; *Lopez Ostra v. Spain*, Eur. Court HR, judgment of 9 December 1994, Series A no. 303).

113. Taking this case law of the European Court of Human Rights into account, it may be argued that the applicants are entitled to protection under Article 8 for their traditional way of living as farmers in a rural area protected as an asset of natural heritage. Admittedly, the potential interference with the environment is much less severe in this case than in the cases cited above from the European Court of Human Rights. None-the-less, construction of the power plant near the applicants' village on a site protected as a natural heritage asset will threaten their traditional way of living, and therefore affect their private and family life and homes. Accordingly, the Chamber finds that the respondent Party's approval of construction of the power plant near the village of Duge in a location that will directly affect the applicants' traditional way of living constitutes an interference with their rights to private and family life and home protected by Article 8(1) of the Convention.

b. Whether the interference is in accordance with the law

114. The Chamber will next examine whether the respondent Party's interference with the applicants' protected rights is justified by the requirements of Article 8(2). As stated above, the respondent Party has conceded that approval of the construction of the power plant was not in accordance with the law. The Chamber will evaluate the applicable domestic legislation to determine whether it agrees with this statement.

115. The Chamber notes, as a preliminary matter, that in 1996-97, the time the essential approvals and licenses were issued for construction of the power plant, two sets of laws concerning the protection of nature and physical planning were being applied on the territory of the Federation of Bosnia and Herzegovina — one set passed by the authorities of the former Republic of Bosnia and Herzegovina and the other set passed by the authorities of the former "Croat Community of Herceg-Bosna" (see paragraphs 45-48, 57-65 above). Pursuant to the Constitution of the Federation of Bosnia and Herzegovina, all laws in effect in the Federation on the day the Constitution entered into force, 30 March 1994, "shall remain in effect to the extent not inconsistent with this Constitution, until otherwise determined by the competent governmental body" (see paragraph 37 above). The Constitution of Bosnia and Herzegovina, which entered into force on 14 December 1995, contains a similar clause carrying forward previously enacted laws on the territory (see paragraph 34 above). Accordingly, laws enacted in the former Republic of Bosnia and Herzegovina and the "Croat Community of Herceg-Bosna" carried forward in effect in the Federation until such time as the competent bodies of the Federation pass new laws superseding the prior ones. On the subject matters important to this case, protection of nature and physical planning, the competent bodies of the Federation have not yet passed new laws.

116. In the present case, the Chamber makes no comment on or determination of the hierarchy between or preferential applicability of the former laws of the Republic of Bosnia and Herzegovina or the "Croat Community of Herceg-Bosna". Rather, the Chamber considers each set of laws individually in analyzing whether the interference with the applicants' rights protected by Article 8 of the Convention is "in accordance with the law".

(1) Pursuant to Laws Applicable in the Federation of Bosnia and Herzegovina

117. In 1958 the State Institute for Protection of Monuments of Culture and Natural Rarities issued a procedural decision placing the Krupić Spring and waterfalls near the village of Duge under the protection of the State as "a natural rarity" (see paragraph 19 above). This decision was issued in accordance with Articles 1 and 19 of the Law on Protection of Monuments of Cultural and Natural Rarities (see paragraphs 42-44 above). It was delivered to the People's Committee of the Municipality Prozor on 16 April 1958 and published in the Almanac of the Institute for Protection of Nature of Bosnia and Herzegovina of 1962 (see paragraph 20 above).

118. In accordance with specific provisions in the Law on Protection of Monuments of Culture and Natural Rarities, and the laws of the Republic of Bosnia and Herzegovina which succeeded this Law, both the protection of the Krupić Spring and waterfalls as natural heritage assets and the authority of the Institute for Protection of Monuments of Culture and Natural Rarities (the precise name of which was changed several times in the applicable laws) have carried forward to the present date (see paragraphs 40-41, 43, 46-47 and footnote 4 above). In 1985, the Law on Protection and Use of Cultural-Historic and Natural Heritage came into force in the Socialist Republic of Bosnia and Herzegovina; it has been amended several times thereafter and remains applicable in the Federation of Bosnia and Herzegovina. At Article 110, this Law states that assets of cultural-historic and natural heritage previously placed under protection pursuant to regulations in force until the entry into force of this Law, "shall be considered protected until they become categorised in accordance with the provisions of this law." Moreover, Article 113 of this Law confirms that the Protection Institute created under the previous Law on Protection of Monuments of Cultural and Natural Rarities "continues its work pursuant to provisions of this law".

119. Under the applicable provisions of both the Law on Protection and Use of Cultural-Historic and

Natural Heritage and the Law on Physical Planning (see paragraphs 45-51 above), any construction on property of natural heritage assets requires the consent of the Institute for Protection of Cultural-Historic and Natural Heritage (Article 51(1) of the Law on Protection and Use of Cultural-Historic and Natural Heritage). Moreover, urban plan approval for construction on sites of natural heritage assets may only be issued with the consent of the Institute for Protection of Cultural-Historic and Natural Heritage (Article 138(1) of the Law on Physical Planning). There is no dispute in this case that the urban plan approval and related construction approval (that is, the certificate on conditions of regional development issued on 13 May 1996 and the building permit issued on 14 May 1996) issued to the investors did not contain the requisite consent of the Institute for Protection of Cultural-Historic and Natural Heritage. In fact, there is no dispute that the Institute for Protection of Cultural-Historic and Natural Heritage was not consulted at all in any of the procedures leading up to issuance of the urban plan approval or building permit. Under Article 123(5) of the Law on Physical Planning, if an urban plan approval is issued contrary to the Law, it is null and void. Without a legally valid urban plan approval, a person cannot construct a building (Articles 143(1)-(2), 144, 170(1) of the Law on Physical Planning).

120. Additionally, the applicable law provides for the applicants' right to participate in the urban plan approval process (see paragraphs 50, 53-55 above). Article 124 of the Law on Physical Planning provides that neighbours and other interested persons may participate in the proceedings for the issuance of the urban plan approval. Article 5 of the Law on General Administrative Procedure further provides that competent bodies are obliged to enable parties to realise their rights as easily as possible, taking care that the exercise of these rights is not against the interests of other persons or contrary to the law. Article 49 defines a party to include anyone "who has the right to participate in a procedure for the sake of protection of his/her rights or legal interests." Whenever there is a possibility that there are interested persons who have not yet appeared as parties, article 154 requires the competent body publicly to announce scheduled hearings. In this case, the respondent Party admits that the applicants were not involved in the process "to any extent or in any way", and it sets forth no explanation of any actions it took to invite the applicants to participate in the process.

121. Thus, among the various procedural irregularities occurring in this case, the competent authorities did not follow the applicable requirements of the Law on Protection and Use of Cultural-Historic and Natural Heritage and the Law on Physical Planning because they failed to obtain the requisite consent from the Institute for Protection of Cultural-Historic and Natural Heritage prior to issuing the building permit for construction on a site protected as an asset of natural heritage. The authorities also failed to allow the applicants a right to participate in the urban plan approval process leading up to issuance of the building permit for the power plant. Accordingly, the Chamber finds that approval for construction of the power plant near the village of Duge was not issued in accordance with the laws applicable in the Federation of Bosnia and Herzegovina.

(2) Pursuant to Laws Applied on the Territory of the former "Croat Community of Herceg-Bosna"

122. Since the Law on General Administrative Procedure was applicable, in substantial and relevant parts, on the territory of the former "Croat Community of Herceg-Bosna" pursuant to the Decree issued on 27 November 1992 (see paragraphs 81-84 above), the Chamber finds that the approval for construction of the power plant was not issued in accordance with the laws applied on the former territory of the "Croat Community of Herceg-Bosna" because the applicants were not permitted to participate in the administrative process, as explained in paragraph 120 above.

123. Additionally, on 24 March 1994, the "Croat Republic of Herceg-Bosna" enacted the Decree on the Application of the Law on Protection and Use of Cultural-Historic and Natural Heritage (see paragraphs 57-61 above). This Decree adopted, in substantial part, the Law on Protection and Use of Cultural-Historic and Natural Heritage, which entered into force in the Socialist Republic of Bosnia and Herzegovina in 1985. Article 1 of this Decree specifically provides that the Law on Protection and Use of Cultural-Historic and Natural Heritage "is applied within the territory of the Croat Republic of Herceg-Bosna..., with the exception of provisions which are contrary to this Decree". Significantly, the Decree did not alter Article 110 (which provides that assets of natural heritage protected under

previous regulations remain protected until categorised in accordance with this law); Article 48(2) (which prohibits all actions and activities which may disturb the natural properties of protected assets of natural heritage); or Article 51(1) (which permits construction on property of natural heritage assets only after obtaining approval from the competent institute for protection). The Decree did alter Article 113 (which continued the work of the previous institute for protection under a new name), but Article 5 of the Decree establishes the Institute of the "Croat Republic of Herceg-Bosna" to perform such protection work. Under Article 6 of the Decree, the Ministry of Education, Science, Culture and Sports supervises the lawfulness of protection and the determination of conditions for use of protected assets.

124. Thus, with respect to the Decree on Application of the Law on Protection and Use of Cultural-Historic and Natural Heritage, the Chamber finds that the approval for construction of the power plant near the village of Duge was not issued in accordance with the laws applied on the former territory of the "Croat Republic of Herceg-Bosna" for the same reasons discussed in paragraphs 117-19 above: namely, the competent authorities granted permission for construction of the power plant without obtaining prior consent from the applicable Institute of the "Croat Republic of Herceg-Bosna", as required by Article 51(1) of the Decree.

125. The Chamber notes that on 5 October 1994, the Decree on Protection of Nature entered into force (see paragraphs 62-65 above). However, the Constitution of the Federation of Bosnia and Herzegovina was adopted on 30 March 1994. Pursuant to Chapter IX, Article 5(1) of the Constitution of the Federation, only laws "in effect within the Federation on the day on which the Constitution enters into force shall remain in effect to the extent not inconsistent with this Constitution, until otherwise determined by the competent governmental body" (see paragraph 37 above). None the less, even under this later Decree, the lawfulness of which may be questionable in light of the Constitution of the Federation of Bosnia and Herzegovina, the Chamber reaches the same conclusion that approval for construction of the power plant was not issued in accordance with the law, as explained below.

126. The Decree on Protection of Nature is substantively different from the Decree on Application of the Law on Protection and Use of Cultural-Historic and Natural Heritage (see paragraphs 57-65 above) and establishes a new scheme for the protection of natural heritage assets. Under Article 1, the Decree "secures the protection of particularly valuable natural assets". Article 31 of the Decree clarifies that "actions which may cause changes and damage on the protected part of nature are not allowed". On the other hand, "on the protected part of nature, such actions and activities which will not cause any damage or change the features for which it has been declared protected are allowed"; however, such actions and activities "are allowed only after obtaining conditions for the protection of nature" from the Ministry of Physical Planning, Constructions and Protection of the Environment (Article 31). Such "conditions for protection of nature are established in the procedure for issuance of conditions for regional development" (Article 31). "A building permit may be issued and performance of other work allowed" in cases which will not cause any damage or change to the protected part of nature "only if the Ministry issues the required and appropriate documents made in accordance with the conditions for the protection of nature" (Article 31).

127. In this case, the investors were issued a certificate on conditions of regional development and a building permit for construction of the power plant by the Department of Physical Planning, Constructions and Housing-Utility Affairs of the Rama Municipality. The certificate for conditions of regional development contains "conditions for protection of the environment" as follows: "that the facility shall not in any way endanger the environment by its construction or existence" and "that the facility shall secure basic conditions for life and work of the people who will use this facility". The Chamber notes that such conditions do not provide any specific, substantive protection for the environment as contemplated by the Decree on Protection of Nature and the Decree on Physical Planning and Regional Development (see paragraphs 62-74 above). Moreover, while such "conditions" are technically present in the certificate on conditions of regional development issued to the investors, there are no "required and appropriate documents made in accordance with the conditions for the protection of nature" issued by the Ministry of Physical Planning, Constructions, and Protection of the Environment, as required by Article 31 of the Decree on Protection of Nature.

128. Thus, while the investors obtained the necessary certificate to construct on or in the vicinity of property protected as natural heritage assets from the competent first instance body (the Department of Physical Planning, Constructions and Housing-Utility Affairs), as required by Articles 62 and 64 of the Decree on Physical Planning and Regional Development, they did not obtain the necessary conditions for the protection of nature from the competent second instance body (the Ministry of Physical Planning, Constructions, and Protection of the Environment), as required by Article 31 of the Decree on Protection of Nature. That being so, the building permit issued to them by the Department of Physical Planning, Constructions and Housing-Utility Affairs pursuant to Article 33 of the Decree on Constructions for construction of the power plant was not issued in accordance with the law applied on the territory of the former "Croat Community of Herceg-Bosna". The Department should have refused the request for the building permit because there were no conditions for protection of nature and no appropriate documents certifying the conditions for protection of nature issued by the Ministry.

c. Conclusion on Article 8 of the Convention

129. In summary, whether applying the laws of the former Republic of Bosnia and Herzegovina or the laws of the former "Croat Community of Herceg-Bosna", the approvals and permits issued to the investors for construction of the power plant near the village of Duge on a site protected as an asset of natural heritage were not issued in accordance with the law. Under both sets of laws, the competent authorities failed to obtain necessary approval for the protection of nature from the governmental body responsible for such protection service and failed to allow the applicants an opportunity to participate in the administrative proceedings surrounding issuance of the construction approvals. In reaching this conclusion the Chamber makes no decision or comment on which, if any, of the various laws is the legally preferred applicable law in the Federation of Bosnia and Herzegovina.

130. This finding that the interference with the applicants' protected rights was not in accordance with the law makes it unnecessary for the Chamber to examine the questions whether the interference pursued "a legitimate aim" or was "necessary in a democratic society".

131. Since the interference with the applicants' rights was not performed in accordance with the law, it follows that the Chamber finds that the respondent Party violated their protected rights under Article 8 of the Convention in approving construction of the power plant near the village of Duge.

B. Right to Effective Remedies (Article 13 of the Convention)

132. The Chamber notes that it has found, in the context of its examination of Article 8, that the respondent Party violated the rights of the applicants by failing to grant them an opportunity to participate in the administrative proceedings surrounding the issuance of the approvals for construction of the power plant. In view of this finding, the Chamber does not consider it necessary to examine whether there has also been any violation of the rights of the applicants as guaranteed by Article 13 of the Convention.

VIII. REMEDIES

133. Under Article XI(1)(b) of the Agreement the Chamber must next address the question of what steps shall be taken by the respondent Party to remedy the breach of the Agreement which it has found, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures.

134. The applicants seek compensation for non-pecuniary damage resulting from their suffering and stress caused by anticipating construction of the power plant and destruction of their homes, farms, and nearby natural heritage assets. They requested 5,000 Convertible Marks each, plus compensation for their legal costs and expenses. The applicants did not submit any substantiation for their claim for compensation for their legal costs and expenses.

135. In its written observations of 7 December 2000, the respondent Party contended that the applicants' claim for compensation is imprecise, unsubstantiated, ill-founded, and excessive in amount.

136. The Chamber takes note of the fact that the respondent Party pursued annulment of the procedural decisions issued in favour of the investors for construction of the power plant because these decisions were issued contrary to the applicable domestic law (see paragraph 29 above). In response to such notification by the respondent Party, the Ministry of Physical Planning and the Environment of the Federation of Bosnia and Herzegovina issued three procedural decisions annulling previous procedural decisions which authorised construction of the power plant (see paragraph 30 above). However, such decisions are subject to pending administrative dispute proceedings filed by the investors in the power plant before the Supreme Court of the Federation of Bosnia and Herzegovina (see paragraph 31 above). As it stands now, construction of the power plant near the village of Duge cannot occur because the investors possess no valid building permit issued in accordance with applicable laws. The Chamber orders the respondent Party, should further steps be necessary for the protection of the applicants' rights in relation to the natural heritage assets near the village of Duge, to prevent construction of buildings or other objects at the site of protected natural heritage assets unless permission for such construction is granted in accordance with the law.

137. The Chamber finds that there has not in fact been any pecuniary damage caused to the applicants by construction of the power plant because no construction has occurred. This is due on the one hand, to the Chamber's provisional order suspending any and all construction on the site near the village of Duge, and on the other hand, to the order of suspension of construction activities issued by the Municipality and to the procedural decisions issued by the Ministry of Physical Planning and the Environment of the Federation of Bosnia and Herzegovina annulling the approvals and licenses for construction of the power plant. In light of these facts, the Chamber does not find it appropriate to award the applicants compensation for pecuniary damage. Nor, in the circumstances, will the Chamber award the applicants compensation for non-pecuniary damage. In the context of this case, the Chamber's decision finding a violation of the rights of the applicants under Article 8 of the Convention constitutes sufficient satisfaction.

138. The Chamber will award the applicants one lump sum amount of 2000 Convertible Marks (*Konvertibilnih Maraka*, "KM") for total compensation for their legal costs and expenses.

IX. CONCLUSIONS

139. For the reasons explained above, the Chamber decides:

1. by 6 votes to 1, to declare the application inadmissible with respect to Article 1 of Protocol No. 1 to the Convention;

2. unanimously, to declare the application inadmissible with respect to Article 6 of the Convention;

3. unanimously, to declare the application inadmissible with respect to alleged discrimination based on ethnic origin in the enjoyment of the rights protected by the Convention;

4. by 5 votes to 2, to declare the application admissible with respect to Articles 8 and 13 of the Convention;

5. by 5 votes to 2, that there has been a violation of the applicants' rights to respect for their homes and private and family life within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article 1 of the Agreement;

6. by 6 votes to 1, that the Chamber does not need to examine whether there has been any violation of the rights of the applicants as guaranteed by Article 13 of the Convention;

7. by 5 votes to 2, to order the respondent Party, should further steps be necessary for the protection of the applicants' rights in relation to the natural heritage assets near the village of Duge, to prevent construction of buildings or other objects at the site of protected natural heritage assets unless permission for such construction is granted in accordance with the law;

8. unanimously, to reject the applicants' claims for compensation for pecuniary damage;

9. unanimously, to reject the applicants' claims for compensation for non-pecuniary damage considering that the Chamber's decision finding a violation of the rights of the applicants under Article 8 of the Convention constitutes sufficient satisfaction;

10. unanimously, to order the respondent Party, within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, to pay to the applicants one lump sum amount of 2000 KM for total compensation for their legal costs and expenses;

11. unanimously, to order the respondent Party to pay simple interest at the rate of 10 % (ten per cent) per annum over the sum specified in conclusion no. 10 or any unpaid portion thereof after the expiry of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure until the date of settlement in full; and

12. unanimously, to order the respondent Party to report to the Chamber on the steps taken by it to comply with these orders within six months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel