



DECISION ON ADMISSIBILITY

CASE No. CH/01/7556

Drago LUKENDA and Miroljub BEVANDA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 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 VIII(2)(a) of the Agreement and Rules 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicants submitted their application to the Chamber on 2 April 2001. Initially, the application was considered in connection with a related case filed by the same applicants, *Drago Lukenda and Miroljub Bevanda v. the Federation of Bosnia and Herzegovina*, case no. CH/00/5796 (hereinafter referred to as "*Lukenda and Bevanda I*"). Later, on 1 June 2001, this application was registered as a separate case. For additional background and factual information, the Chamber refers to its decision on admissibility in *Lukenda and Bevanda I*, adopted on 5 July 2001.

2. This application appears to give rise to potential claims under Article 1 of Protocol No. 1 to the Convention, which protects the peaceful enjoyment of possessions.

II. ESTABLISHMENT OF THE FACTS AND PROCEDURE

3. The case concerns the attempts of the applicants to construct a mini hydro-electric power plant near the village of Duge in the Prozor-Rama Municipality¹ in the Hercegovnačko-Neretvanski Canton in the Federation of Bosnia and Herzegovina. The proposed location for the power plant is near the Krupić Spring and waterfalls, a site protected as a natural heritage asset since 26 March 1958 according to the procedural decision of the State Institute for Protection of Monuments of Culture and Natural Rarities² issued pursuant to Articles 1 and 19 of the Law on Protection of Monuments of Cultural and Natural Rarities of the former People's Republic of Bosnia and Herzegovina (Official Gazette of the People's Republic of Bosnia and Herzegovina no. 19, dated 30 April 1947).

4. On 13 May 1996 the Department of Physical Planning, Constructions and Housing-Utility Affairs of the Rama Municipality issued the applicants a certificate on conditions of regional development pursuant to Article 64(1) of 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). This certificate established that the applicants could construct the power plant near the village of Duge subject to certain conditions. On 14 May 1996, the Department of Physical Planning, Constructions and Housing-Utility Affairs of the Rama Municipality issued the applicants, pursuant to Articles 26 and 33 of 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), a procedural decision for a building permit for the power plant on the Duščica Stream near the village of Duge. This building permit authorised construction of the power plant near Duge. 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 within the territory of the "Croat Community of Herceg-Bosna" during the time of immediate threat of war or the state of war. On 22 April 1998 the applicants reported to the Municipality the commencement of construction of the power plant, but only preliminary marking and excavation has taken place to date.

5. On 22 January 2001, 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 Hercegovnačko-Neretvanski Canton in

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.

² Under the Law on Protection and Use of Cultural-Historic and Natural Heritage (Official Gazette of the Socialist Republic of Bosnia and Herzegovina nos. 20/85, 12/87, Official Gazette of the Republic of Bosnia and Herzegovina nos. 3/93, 13/94), the name of this Institute was changed to the Institute for Protection of Cultural-Historic and Natural Heritage of Bosnia and Herzegovina.

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 authorities to request and obtain the necessary approval of the Institute for Protection of Cultural-Historic and Natural Heritage prior to authorising any approval or license for construction on the site in question, which is protected as a natural heritage asset.

6. 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.

7. On 2 April 2001 the applicants requested that the Chamber order the respondent Party, as a provisional measure, to cancel the procedural decisions issued in March 2001 (described in paragraph 6 above) which annulled the applicants' approvals and licenses for construction of the power plant. The Chamber refused this request for provisional measures on 9 May 2001.

8. On 13 April 2001, the applicants 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 applicants 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.

III. OPINION OF THE CHAMBER

9. The Chamber must decide whether to accept the application, taking into account the admissibility criteria set out in Article VIII of the Agreement. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted.

10. In this case, each of the three procedural decisions issued in March 2001 by the Ministry of Physical Planning and the Environment of the Federation of Bosnia and Herzegovina, which form the basis of the applicants' application, provide for the right of domestic appeal by initiating an administrative dispute. Each states that while the procedural decision is final in the administrative procedure, the applicants may initiate an administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina. The applicants have initiated such administrative dispute proceedings, and these are still pending before the Supreme Court of the Federation of Bosnia and

Herzegovina. Since that domestic course of action has not yet been fully pursued by the applicants, their application to the Chamber is premature. It follows that the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement.

IV. CONCLUSION

11. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel