



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

Cases nos. CH/98/232 and CH/98/480

Milan BANJAC and M.M.

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5
June 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 applications 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) and Article XI of the Agreement and Rules 52, 57 and 58 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The applicants are citizens of Bosnia and Herzegovina living in the territory of the Federation of Bosnia and Herzegovina. They are former officers of the Yugoslav National Army ("JNA") who retired before 1992. Until the outbreak of the war in Bosnia and Herzegovina they received their pensions from the Institute for Social Insurance of Army Insurees in Belgrade, to which they had paid contributions during their life as active soldiers. In September 1992 the Republic of Bosnia and Herzegovina issued a decree with force of law to the effect that pensioners of the JNA would be paid a pension amounting to 50 percent of their previous pension. This decree was confirmed by a law of the Republic of Bosnia and Herzegovina passed in June 1994 and by Article 139 of the Law on Pensions and Disability Insurance of the Federation of Bosnia and Herzegovina, which entered into force on 31 July 1998.

2. The applications raise issues under Article 1 of Protocol No. 1 to the European Convention on Human Rights, and of discrimination in the enjoyment of the right to social security guaranteed by Article 9 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR").

3. On 9 March 2000 the Chamber adopted a first decision on the admissibility and merits of three applications concerning the issue of the pensions paid by the Pension and Disability Insurance Fund of Bosnia and Herzegovina (Fond za penzijsko i invalidsko osiguranje BiH –hereinafter "PIO BiH") to JNA pensioners (*Šećerbegović, Biočić and Oroz v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, cases nos. CH/98/706, 740 and 776, delivered on 7 April 2000, Decisions January-June 2000). In deciding the present cases, the Chamber has relied on its findings made in the *Šećerbegović, Biočić and Oroz* decision, which was adopted after proceedings involving a public hearing and ample submissions by both respondent Parties and the Ombudsperson for Bosnia and Herzegovina as *amica curiae*.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application of Mr. Banjac was introduced on 13 October 1997 and registered on 25 November 1997. The application of M.M. was introduced on 13 October 1997 and registered on 10 April 1998. The applicants are not represented by lawyers.

5. On 10 June 1998 the Chamber decided to join the two cases. The applications were transmitted to the respondent Parties for their observations on the admissibility and merits of the cases on 17 June 1998. No such observations were received. On 8 October 1998 both applicants submitted their claims for compensation, which were transmitted to the respondent Parties. No reply to the compensation claims was received.

6. On 10 April 2000 the Chamber requested that the Federation offer submissions in relation to certain allegations made by the applicants. A reply was received on 28 April 2000, which, however, did not address the issues raised by the Chamber. On 10 May 2000 the Chamber again requested that the Federation offer submissions in relation to the same issue. The Chamber received the Federation's submissions on 25 May 2000 and transmitted them to the applicants. The Chamber received the applicants' reply observations on 7 June 2000 and an additional observation from applicant M.M. on 17 April 2000.

7. The Chamber considered the cases on 4 April 2000, 10 May 2001, and 5 and 8 June 2001. On 5 June 2001, the Chamber adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

1. Case no. CH/98/232 Milan Banjac

8. The applicant is a citizen of Bosnia and Herzegovina living in Sarajevo. He was born in 1923 and fought as a partisan during the Second World War from 1 July 1941 to 8 May 1945. After the

Second World War he became a JNA officer. He retired as of 31 October 1963 with the rank of lieutenant colonel. From April 1992 until January 1994, due to the hostilities in Bosnia and Herzegovina, the applicant has not received any payments on account of his pension from the Institute for Social Insurance of Army Insurees in Belgrade (hereinafter "the JNA Pension Fund"). Since January 1994, however, the applicant has been receiving an amount equivalent to 50 percent of his original pension from the PIO BiH in Sarajevo. In November 1997 the applicant was receiving a monthly pension of 250 Convertible Marks (*Konvertibilnih Maraka*; KM).

2. Case no. CH/98/480 M.M.

9. The applicant is a citizen of Bosnia and Herzegovina living in Sarajevo. He was born in 1923 and fought as a partisan during the Second World War from 1941 to 1945. After the Second World War he became a JNA officer. The applicant has not indicated the date of his retirement and the rank with which he retired. Since April 1992, due to the hostilities in Bosnia and Herzegovina, the applicant has not received any payments on account of his pension from the JNA Pension Fund. Since January 1994, however, the applicant has been receiving an amount equivalent to 50 percent of his original pension from the PIO BiH in Sarajevo, with the exception of July, August and September 1996, for which the applicant did not receive any pension in cash (instead, the applicant was given certificates for these unpaid pensions which are registered in the unique citizen's accounts for use in the privatization process). In July 1997 the applicant received a pension of KM 240.

IV. RELEVANT DOMESTIC LEGISLATION REGARDING THE PENSION SYSTEM, IN PARTICULAR JNA PENSIONS

A. Legislation of the Socialist Federal Republic of Yugoslavia and of the Socialist Republic of Bosnia and Herzegovina

1. Civilian pensions

10. According to Article 281, paragraph 3, of the 1974 Constitution of the Socialist Federal Republic of Yugoslavia (hereinafter "SFRY"), the SFRY established the fundamental rights of the workers with regard to pensions and social security. This constitutional provision was implemented through the Law on Fundamental Rights of Pension and Disability Insurance (Official Gazette of the SFRY - hereinafter "OG SFRY" – nos. 23/82, 77/82, 75/85, 8/87, 65/87, 44/90 and 84/90).

11. The regulation of the pension system beyond the principles established in the SFRY law was within the competence of the republics of the SFRY, so that each Republic had its own pension legislation and its own (public) pension fund. In the Socialist Republic of Bosnia and Herzegovina (hereinafter "SRBiH") pensions were governed by the SRBiH Law on Pension and Disability Insurance (OG SRBiH nos. 38/90 and 22/91).

12. All employees, except for the military personnel of the JNA, paid into the pension fund of their republic of residence. This applied also to the employees of the ministries and agencies of the Federal Government. The pension funds in the republics worked together closely. If an individual worked and contributed into a pension Fund in one republic, he or she could choose to retire to a second republic and still receive his or her pension from the first republic's pension fund through the distribution system of the second republic. If an individual lived and worked and therefore paid his contributions in more than one republic throughout his working life, upon retirement he would be entitled to receive his pension from the fund to which he had contributed most.

2. Military pensions

13. According to Article 281, paragraph 6, of the 1974 Constitution of the SFRY, the SFRY regulated and secured through the federal authorities the pension rights of the military staff of the JNA and of the members of their families.

14. The specific aspects of military pensions were regulated by the Law on Pensions and Disability Insurance of Insured Military Personnel (OG SFRY nos. 7/85, 74/87 and 20/89). This law provided for several mechanisms which rendered the pension treatment of former JNA military personnel more favourable than that of other categories. For the purpose of their pension treatment JNA pensioners were generally credited 15 months of service for every year of actual service. Moreover, the determination of the salary relevant to the calculation of the amount of the pension was more favourable than for the other categories of pensioners (in the case of the JNA pension the basis for calculation was the salary of the last December in active service, while for the other categories the basis was the average of the ten consecutive years with the highest income, now raised to the consecutive fifteen years with the highest income by the 1998 Federation Law on Pension and Disability Insurance).

15. The JNA military employees paid their contributions to and received their pensions from the JNA Pension Fund. This was the only pension fund existing at the Federal level.

B. Legislation of the Republic of Bosnia and Herzegovina

16. The SFRY Law on Pensions and Disability Insurance of Insured Military Personnel was taken over as a law of the Republic of Bosnia and Herzegovina by the Decree with force of law on the Adoption and the Application of Federal Laws applicable in Bosnia and Herzegovina as Republic Laws (Official Gazette of the Republic of Bosnia and Herzegovina - hereinafter "OG RBiH" - no. 2/92).

17. Article 5 of the Decree with Force of Law on Pension and Disability Insurance During the State of War or Immediate Threat of War (OG RBiH nos. 16/92, 8/93) of 18 September 1992, however, provided that:

"(1) The Fund decides on the right to pension and disability insurance of the military insurees who are citizens of the Republic of Bosnia and Herzegovina and who reside within the territory of the Republic of Bosnia and Herzegovina.

"(2) The pensions of military insurees are paid in the amount of 50 percent of the pension as determined in accordance with the Law on Pensions and Disability Insurance of Insured Military Personnel and are adjusted to the amount and in the way established by the Law on Fundamental Rights of Pension and Disability Insurance and the Law on Pension and Disability Insurance.

"(3) The pensions of military insurees are paid in the amount and in the way determined in paragraph 2 of this Article, starting with April 1992."

18. This provision was amended by the Law on the Amendments and Changes to the Decree with Force of Law on Pensions and Disability Insurance During the State of War or Immediate Threat of War (OG RBiH no. 13/94), which entered into force on 9 June 1994. Article 2 of this Law reads:

"Article 5 is amended as follows:

"Pensions of Insured Military Personnel of the former JNA who are citizens of the Republic and who reside within the territory of the Republic (hereinafter "Insured Military Personnel") will be paid 50 percent of the pension established under the Law on Pensions and Disability Insurance of Insured Military Personnel.

"Where the pension of Insured Military Personnel established under the Law on Pensions and Disability Insurance of Insured Military Personnel is lower than the guaranteed pension established under the Law on Pensions and Disability Insurance (hereinafter "guaranteed pension"), pensions will be paid in the amount established under the Law on Pensions and Disability Insurance of Insured Military Personnel.

“Where the pension established under the Law on Pensions and Disability Insurance of Insured Military Personnel is higher than the guaranteed pension, and by the application of paragraph 1 of this Article is an amount lower than the guaranteed pension, the amount of the guaranteed pension will be paid.”

C. Legislation of the Federation of Bosnia and Herzegovina

19. Article III(1) of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement) establishes the matters that are the responsibility of the institutions of (the State of) Bosnia and Herzegovina. Article III(3)(a) provides that all governmental functions and powers not expressly assigned in the Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities, *i.e.*, the Federation of Bosnia and Herzegovina and the Republika Srpska. The pension system is not among the matters listed in Article III(1).

20. The Law on Pensions and Disability Insurance of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, - hereinafter “OG FBiH” - no. 29/98, as amended by OG FBiH 49/00), which entered into force on 31 July 1998, establishes at Article 4 that:

“Pension and disability insurance shall be funded, in accordance with this law, from contributions and other resources.”

21. Article 139 is the provision concerning JNA pensioners. It reads:

“To the military insured members of the former JNA, who are citizens of Bosnia and Herzegovina residing within the territory of the Federation, the pension will be paid in the amount of 50 percent of the amount of the pension determined in accordance with the rules on pension and disability insurance of the military insured in force until the day of coming into force of this law.”

22. Article 140 provides for the cases in which the pension as determined under the preceding Article is below the guaranteed minimum pension. It reads:

“If the pension of the military insured of former JNA, determined in accordance with the military insured rules, is below the minimum guaranteed pension determined in the Article 72 of this law, the pension will be paid in the amount defined in accordance with the military insured rules.

“If the pension determined in accordance to the military insured rules amounts to more than the minimum pension guaranteed by this law, but is below the guaranteed minimum pension after application of paragraph 1 of Article 139 of this law, the pension will be paid in the amount of guaranteed minimum pension determined by this law.”

23. Article 141 provides that:

“If the holder of the insurance, *e.g.*, the insured, does not have at his disposal the records on his salary in order to determine the pension basis of the military insured of the former JNA, the pension will be determined on the basis of the average pension of the pensioners holding the same rank as the insured pension being determined.”

24. Article 148 of the law envisages that separate legislation shall provide for compensation for the difference between the amounts pensioners were entitled to and the amounts actually paid from 1992 to the entry into force of the law, *i.e.*, the arrears accumulated within the pension system in that period. On 23 October 1998 the Law on Claims in the Process of Privatisation on the Ground of Difference in Payment to the Holders of Pension and Disability Insurance Rights (OG FBiH no. 41/98, 55/00) entered into force. This law entitles pensioners to receive certificates to be used in the privatisation process for the part of their pension that has remained unpaid. At the public hearing in the *Šećerbegović, Biočić and Oroz* case, the Federation clarified that the 50 percent of the original pension that was not paid out to the JNA pensioners since June 1992 does not constitute an arrear owed to them for the purposes of this law. The applicants are therefore not entitled to certificates to use in the privatisation process on account of the 50 percent of their JNA pension that was not paid

out to them. They are, however, entitled to certificates for any amount due to them under the 1992 Decree which was not paid to them.

25. As to the pension treatment of those employees of the JNA who subsequently served in the Army of the Republic of Bosnia and Herzegovina or in the Army of the Federation, and who have retired or will retire after 30 July 1998, the Federation submits that their pension is determined in full accordance with the Federation Law on Pension and Disability Insurance. For these pensioners, the length of the service in the JNA before 6 April 1992 is taken into account in order to determine whether they fulfil the conditions to be entitled to a pension, but not for the purposes of calculating the amount to which they are entitled.

26. Those former JNA employees who subsequently served in the Army of the Republic of Bosnia and Herzegovina or in the Army of the Federation, and who retired before 30 July 1998, receive credit for the time served in the JNA also for the purposes of calculating the amount to which they are entitled.

V. GENERAL FACTUAL BACKGROUND CONCERNING THE NATIONAL PENSION SYSTEM

27. The following information is based on the report "Falling Through the Cracks: the Bosnian Pension System and its Current Problems" issued by the Organization for Security and Co-operation in Europe (OSCE) – Mission to Bosnia and Herzegovina, on statistical data contained in the economic *Newsletter* of the Office of the High Representative (OHR) of February 2000, and on the submissions of the respondent Parties at the public hearing in the *Šećerbegović, Biočić and Oroz* case (see paragraph 3 above).

28. During the war, the Pension and Disability Insurance Fund of the Republic of Bosnia and Herzegovina split into three separate funds, headquartered in Sarajevo, West Mostar, and Pale, each fund becoming exclusively competent for the pensioners living within its region. The 1998 Federation Law on Pension and Disability Insurance provides for the continued existence of two pension funds within the Federation on a transitional basis (Article 6 of the Law). Unless otherwise specified, the Chamber has in the following decision disregarded the separate existence of two funds within the Federation, as it is not relevant to its decision. The applicants receive payments from the PIO BiH with its headquarters in Sarajevo. The Chamber notes that on 12 November 2000, the High Representative imposed the Decision on the Law on the Organisation of Pension and Disability Insurance in the Federation of Bosnia and Herzegovina (OG FBiH no. 49/00), in which it is established one Federal Institute for Pension and Disability Insurance with its headquarters in Mostar. This Decision on the Law entered into force on 5 December 2000, and it provides that the deadline for commencing the Federal Institute is 30 April 2001.

29. The assets and obligations of the JNA Pension Fund in Belgrade are among the subjects of the Yugoslav succession negotiations among the former Republics of the SFRY. The Chamber has not received any information as to when the negotiations on the pension issue are expected to be concluded, or whether they actually have begun at all.

30. According to the Federation, approximately 1,500 JNA pensioners are currently receiving pension payments from the PIO BiH. The average monthly pension of the JNA pensioners, *i.e.*, the average benefit paid to JNA pensioners in accordance with Article 139 of the Federation Law on Pension and Disability Insurance, amounts to about KM 325, according to the information submitted at the public hearing in the *Šećerbegović, Biočić and Oroz* case. This is about 80 percent higher than the average of the pensions paid to all other categories of pensioners, which amounts to KM 180. The maximum monthly pension paid by the PIO BiH amounts to KM 613.

31. The economic *Newsletter* published by the OHR in February 2000 contains the following data

concerning the income distribution structure of the beneficiaries of the Sarajevo-based PIO BiH:

Monthly amount of pension in KM	No. of pensioners
less than 117	57,829
117-170	67,347
170-190	18,871
190-250	41,867
250-400	30,386
400-550	4,008
550-613	800
Total	221,108

32. According to information provided by the Federation in the *Šećerbegović, Biočić and Oroz* case, in September 1999 the average pension paid by the PIO BiH under the 1998 Law on Pension and Disability Insurance to former JNA personnel that subsequently served in the Army of the Republic of Bosnia and Herzegovina or in the Army of the Federation, amounted to KM 573.50.

33. According to the submissions made by respondent Parties in the *Šećerbegović, Biočić and Oroz* case, one of the conditions imposed by the World Bank for its continued financial support is that the PIO BiH may not incur debt, which also means that it may not receive means from sources different than the contributions paid. (This condition appears to have been taken into account in The Decision of Amendments of the Law on Pensions and Disability Insurance (OG FBiH 49/00), which entered into force on 19 December 2000, which provides that the successor pension fund to PIO BiH may only distribute pensions in accordance with available funds.) On 24 February 2000 the Federation stated that the PIO BiH is currently paying the pensions due in September 1999.

VI. COMPLAINTS

34. The applicants allege a violation of their right to receive the full pension in accordance with the procedural decisions on their retirement. They add that they have not received any procedural decision establishing the revised amount to which they are entitled, that it was not explained to them on which basis their pensions were reduced, and that their pensions were not increased in accordance with the general increases of salaries and pensions in the Federation. The applicants further complain that they are being treated differently from their former colleagues living in the Republika Srpska and in the Federal Republic of Yugoslavia, who still receive their full JNA pensions. Mr. Banjac states that the JNA pensioners do not deserve to have inflicted upon them "such a serious and long lasting penalty by the respondent Party". M.M. claims that he is being subjected to a "punishment inappropriate for a democratic society".

VII. SUBMISSIONS OF THE PARTIES

35. The State of Bosnia and Herzegovina submitted no observations on the applications or the applicants' claims for compensation. The Federation of Bosnia and Herzegovina, in response to a specific inquiry by the Chamber, filed observations on 28 April 2000 and 25 May 2000 concerning harmonisation of pensions with the increase of salaries. The Federation further objects to the applications as ill-founded on the merits.

36. The applicants confirmed their complaints and claim full compensation for the difference between the amounts due to them on the basis of the procedural decisions on their retirement, as adjusted in accordance with the factors for the automatic increase of salaries and pensions in the Federation since 1992, and the amounts actually paid to them by the PIO BiH.

VIII. OPINION OF THE CHAMBER

A. Admissibility

37. Before considering the cases on their merits the Chamber must decide whether to accept them, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Under Article VIII(2)(c) the Chamber shall dismiss any application which it considers incompatible with the Agreement.

38. The Chamber notes that pensions are not among the matters within the responsibilities of the Institutions of the State of Bosnia and Herzegovina listed in Article III of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement). However, until 31 July 1998, when the Federation Law on Pensions and Disability Insurance entered into force, the payment to the applicants of 50 percent of their JNA pension was due to legislation enacted by organs of the Republic of Bosnia and Herzegovina, which, according to Article I paragraph 1 of the Constitution, is to "continue its legal existence under international law as a state", henceforth named "Bosnia and Herzegovina".

39. The Chamber recalls that also in the "JNA apartment cases" it was called upon to decide whether legislation enacted by organs of the Republic of Bosnia and Herzegovina, in subject matters that under the Constitution are within the competence of the Entities, gives rise to responsibility of Bosnia and Herzegovina (see cases nos. CH/96/3, 8 and 9, *Medan, Baštijanović and Marković*, decision on the merits delivered on 7 November 1997, paragraphs 44-47, Decisions on Admissibility and Merits 1996-97). However, in those cases the former institutions of the Republic, including the legislative institutions, had continued to operate after the entry into force of the State Constitution, while the legislative organs provided for in the Constitutions of both the State and the Federation had not yet been established. On 22 December 1995 the Presidency of the Republic had issued the Decree which annulled the applicants' purchase contracts. This Decree was adopted as law by the Assembly of the Republic of Bosnia and Herzegovina on 16 January 1996. The Chamber found that insofar as the former institutions of the Republic, including the legislative institutions, continued to operate, they functioned as institutions of the continuing State of Bosnia and Herzegovina, which was therefore responsible for their actions. It concluded that since institutions of the State were responsible for passing the legislation which annulled the applicants' contracts, the State was responsible for the violations of Article 1 of Protocol No. 1 which the Chamber found (see *Medan, Baštijanović and Marković*, paragraph 47).

40. In the present case, however, the State of Bosnia and Herzegovina has not taken any legislative or administrative action affecting the applicants, nor have institutions of the Republic of Bosnia and Herzegovina done so, since the entry into force of the Agreement. The Chamber therefore concludes that no responsibility for the matters complained of can attach to Bosnia and Herzegovina and that it has no competence *ratione personae* to continue consideration of the applications insofar as they are directed against Bosnia and Herzegovina. The applications are, therefore, inadmissible insofar as they are directed against Bosnia and Herzegovina.

41. The Federation of Bosnia and Herzegovina objects to the admissibility of the applications only on the ground that the applications are ill-founded on the merits. The Chamber does not see the need to raise *proprio motu* any other issues regarding admissibility, and the applications are declared admissible insofar as they are directed against the Federation and relate to the following issues: whether the applicants have a protected interest within the meaning of Article 1 to Protocol No. 1 of the Convention to full pension payments, and whether the applicants suffered unlawful discrimination in the payment of their pensions. Insofar as the applicants' claim that their pension payments were not increased in accordance with general increases of salaries and pensions in the Federation, the Chamber notes that there is no such right protected under the Convention; therefore, such claims are inadmissible as manifestly ill-founded. The applicants' claims with respect to discrimination in the increase of their pension payments are inadmissible as manifestly ill-founded because the applicants did not substantiate these claims. The remainder of the claims raised in the applications are also declared inadmissible as manifestly ill-founded.

B. Merits

42. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above indicate a breach by the Federation of its obligations under the Agreement. In terms of Article I of the Agreement the Parties are obliged to “secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms”, including the rights and freedoms provided for in the Convention and the other international agreements listed in the Appendix to the Agreement.

43. Under Article II(2) of the Agreement the Chamber has competence to consider (a) alleged or apparent violations of human rights as provided in the Convention and its Protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the 16 international agreements listed in the Appendix to the Agreement (including the Convention), where such a violation is alleged to or appears to have been committed by the Parties, including by any organ or official of the Parties, Cantons or Municipalities or any individual acting under the authority of such an official or organ.

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

44. The applicants complain primarily of the fact that under the 1992 Decree and the 1998 Law on Pension and Disability Insurance they are entitled to receive only 50 percent of their original JNA pensions. The Chamber has examined whether this constitutes a violation by the Federation of Article 1 of Protocol No. 1 to the Convention, which reads:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

“The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

45. The Chamber notes that the European Commission of Human Rights has held that where a person has contributed to an old age pension fund, this may give rise to a property right in a portion of such a fund, and a modification of the pension rights under such a system could in principle raise an issue under Article 1 of Protocol No. 1 to the Convention. The Commission has, however, also held that the Convention does not guarantee a right to a specific social welfare benefit (see, e.g., *Müller v. Austria*, decision of 1 October 1975, application no. 5849/72, D.R. 3, p. 31; and *Tricković v. Slovenia*, application no. 39914/98, decision of 27 May 1998). In particular, the Commission has emphasised that there is no right to receive social welfare benefits in a specific amount. The European Court of Human Rights has stated that the right to a certain social security benefit – insofar as it is provided for in the applicable legislation – is an economic right for the purposes of Article 1 of Protocol No. 1 (Eur. Court H.R., *Gaygusuz v. Austria*, judgment of 31 August 1996, Reports of Judgments and Decisions 1996-IV, paragraph 41).

46. The applicants argue that they are entitled to receive from the PIO BiH the full amount of their JNA pension.

47. The Chamber notes that it is true that the language both of Article 5 of the 1992 Decree, as amended by Article 2 of the 1994 Law, and of Article 139 of the 1998 Law might be interpreted in the sense that the Republic of Bosnia and Herzegovina first, and then the Federation, took over the obligation of the JNA Pension Fund to pay the applicants’ JNA pensions and thereafter decided to pay only 50 percent of the amount due. The amended Article 5 of the 1992 Decree (see paragraphs 17 and 18 above) provided:

“Pensions of Insured Military Personnel of the former JNA who are citizens of the Republic and who reside within the territory of the Republic (...) will be paid 50 percent of the pension established under the Law on Pensions and Disability Insurance of Insured Military Personnel.”

Article 139 of the 1998 Law (see paragraph 21 above) reads:

“To the military insured members of the former JNA, who are citizens of Bosnia and Herzegovina residing within the territory of the Federation, the pension will be paid in the amount of 50 percent of the amount of the pension in accordance to the rules on pension and disability insurance of the military insured being in force until the day of coming into force of this Law.”

48. The Chamber recalls that at the public hearing in the *Šećerbegović, Biočić and Oroz* case, the representative of Bosnia and Herzegovina explained that the decision to pay JNA pensioners a pension in the amount of 50 percent of the pension they were entitled to under the Law on Pensions and Disability Insurance of Insured Military Personnel was taken in order to ensure that these persons, who at the outbreak of the war had ceased to receive their pension payments, had the means to survive. The Chamber furthermore recalls that the assets of the Belgrade JNA Pension Fund are among the subjects of the succession negotiations (see paragraph 29 above).

49. The Chamber notes that the applicants have not paid any contributions to the PIO BiH in Sarajevo, nor to any other pension fund in the Republic of Bosnia and Herzegovina or in the Federation. They had no legal relation to the PIO BiH before the issuing of the 1992 Decree with Force of Law on Pension and Disability Insurance During the State of War or Immediate Threat of War. Moreover, the competent authorities of the Federation do not have access to the employment records of the former JNA employees, so they are not in a position to determine the entitlement of these pensioners and the amount to which they are entitled under provisions - different from Articles 139 to 141 - of the Federation Law on Pension and Disability Insurance.

50. The Chamber concludes that the applicants have no claims against the PIO BiH or against the Federation beyond those attributed to them by the 1992 Decree and 1998 Law or which could be regarded as a possession for the purposes of Article 1 of Protocol No. 1 to the Convention. The applicants' claim towards the JNA Pension Fund, which is not at issue before the Chamber, appears to remain untouched by the mentioned legislation. The Chamber concludes that the applications do not reveal any interference with the applicants' enjoyment of their possessions by the Federation, and, accordingly, no violation of Article 1 of Protocol No. 1 to the Convention can be established.

2. Discrimination in the enjoyment of the right to social security guaranteed by Article 9 of the ICESCR

(a) Alleged discrimination in comparison to JNA pensioners living in the Republika Srpska and in the Federal Republic of Yugoslavia

51. The applicants complain that that they are being treated differently from their former colleagues living in the Republika Srpska and in the Federal Republic of Yugoslavia, who still receive their full JNA pensions.

52. The Chamber finds that the pension treatment former JNA members receive in the Republika Srpska and in the Federal Republic of Yugoslavia is outside the responsibility of the Federation. Moreover, as the Chamber has found in the *Šećerbegović, Biočić and Oroz* case, the applicants' claim towards the JNA Pension Fund in Belgrade, from which the JNA pensioners living in the Republika Srpska and in the Federal Republic of Yugoslavia receive their pension payments, appears to remain untouched by the legislation enacted by the Republic of Bosnia and Herzegovina and by the Federation. Therefore, the Chamber concludes that the applicants' complaint of discrimination is ill-founded.

(b) Alleged discrimination in comparison to other categories of pensioners

53. The Ombudsperson found in her Special Report that under Article 139 of the Federation Law on Pension and Disability Insurance, JNA pensioners were treated differently from the military

pensioners of the Army of the Republic of Bosnia and Herzegovina and the Army of the Federation, and from the civilian pensioners. She further considered that this difference in treatment was not based on an objective and reasonable justification and concluded that the JNA pensioners were being discriminated against on the ground of their status.

54. The Chamber has found that the fact that former JNA members in the Republika Srpska and in the Federal Republic of Yugoslavia still receive their full pensions from the JNA Pension Fund does not raise any issues under the Agreement. The Chamber notes, however, that the JNA pensioners are the only category of pensioners in the Federation who are paid by the PIO BiH a pension in the amount of 50 percent of the pension entitlement accrued before 1992. The Chamber shall therefore examine *proprio motu* whether the applications reveal discrimination against the applicants in the enjoyment of the right guaranteed by Article 9 of the ICESCR, which reads:

“The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.”

55. The Chamber will first compare the pension treatment of the applicants to that of the civilian pensioners of the PIO BiH, and then to the treatment of the military pensioners of the PIO BiH who served in the JNA before joining the Army of Bosnia and Herzegovina or the Army of the Federation.

(c) Possible discrimination in comparison to the civilian pensioners

56. In order to determine whether the applicants have been discriminated against, the Chamber must first determine whether they were treated differently from others in the same or relevantly similar situations. Any differential treatment found is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised (see case no. CH/97/67, *Zahirović*, decision on admissibility and merits, delivered on 8 July 1999, paragraph 120, Decisions January-July 1999).

57. In accordance with the approach outlined above, the Chamber has considered whether the other categories of pensioners mentioned by the Ombudsperson constitute “others in the same or relevantly similar situations”. As to the civilian pensioners, the Chamber is of the opinion that they are not in a relevantly similar position. Firstly, the civilian pensioners paid their contributions into the PIO BiH and thereby acquired a right to a pension from that fund in accordance with the provisions of the SRBiH Law on Pension and Disability Insurance, as subsequently taken over and amended by the Republic of Bosnia and Herzegovina and the Federation. Secondly, the JNA pension scheme contained mechanisms that rendered it unique and very favourable to JNA pensioners. The Chamber recalls that JNA pensioners were generally credited 15 months of service for every year of actual service for the purposes of the calculation of the years of service attained. Moreover, the determination of the salary relevant as basis for the calculation of the amount of the pension was significantly more favourable than for the other categories of pensioners. In light of these considerations, the Chamber concludes that no issue of differential treatment of the applicants, and therefore no issue of discrimination in the enjoyment of the right to social security, arises in relation to the civilian pensioners, since they do not constitute a relevantly comparable group.

58. The Chamber additionally notes that the pensions the applicants receive from the PIO BiH are higher than the average pension paid by that fund to its insurees, by 38.8 percent in the case of Mr. Banjac and by 33.3 percent in the case of Mr. M.M. (see paragraphs 8-9 and 30 above). Considering that the applicants did not contribute to the PIO BiH, and considering that the fund is not able to meet its obligations towards its insurees (see paragraph 33 above), the Chamber does not find that the applications could reveal any possible discrimination to the detriment of the applicants in the enjoyment of the right to social security, even if the civilian pensioners were to be considered a comparable group.

(d) Possible discrimination in comparison to former JNA members who retired after having served in the Army of the Republic of Bosnia and Herzegovina or the Army of the Federation

59. The situation is different in relation to the former JNA members who retired after having served in the Army of the Republic of Bosnia and Herzegovina or the Army of the Federation, in particular those who retired before 30 July 1998 (see paragraphs 25 and 26 above). The latter category apparently receive the full pension as established under the Federation Law on Pension and Disability Insurance and full credit is given for the time served in the JNA, both for the purpose of the determination of the entitlement and of the amount of the pension to which they are entitled. The Chamber notes that the mechanism by which this category's entitlement to pensions is calculated has not been completely clarified. The fact, however, that the average pension of the pensioners of the Army of the Republic of Bosnia and Herzegovina and of the Army of the Federation amounts to KM 573.50, whereas the average pension of the JNA pensioners is KM 325 and the maximum pension obtainable is KM 613, leaves little doubt as to the favourable treatment of these pensioners (see paragraphs 30-32 above).

60. This statistical data show that veterans of the 1991-95 war in Bosnia and Herzegovina are put in a position of considerable economic advantage in comparison to the entire remaining population of the Federation, not only as compared to members of the JNA who retired before 1992 and did not join the Army of the Republic of Bosnia and Herzegovina, the HVO, or the Army of the Federation. Furthermore, the JNA pensioners who joined these armed forces served either the government of the Republic of Bosnia and Herzegovina or of the Federation and thereby established a legal relationship to one or both of these governments. The Chamber notes that the privileged treatment of veterans is a feature that is not peculiar to the society of the post-war Federation of Bosnia and Herzegovina. Also the applicants received double credit for the years served as partisans during the Second World War for the purposes of their entitlement to their pension.

61. In the light of these considerations, the Chamber concludes that the difference in treatment between the JNA pensioners on the one hand, and the pensioners of the Army of the Republic of Bosnia and Herzegovina and of the Army of the Federation on the other hand, including the former JNA members who served in these armed forces, has an objective justification in the fact that the members of the second group are former soldiers of the armed forces of the country or government whose pension fund is paying their pensions. As the applicants still receive a pension that is higher than the average pension paid by the PIO BiH, the Chamber does not find that the Federation exceeded its margin of appreciation in not extending the favourable treatment granted to its own pensioners to the JNA pensioners. Therefore, the Chamber concludes that there is no discrimination against the applicants in the enjoyment of the right to social security in comparison to the military pensioners of the Army of the Republic of Bosnia and Herzegovina and of the Army of the Federation either.

(e) Conclusion on discrimination in the enjoyment of the right to social security guaranteed by Article 9 of the ICESCR

62. In summary, the Chamber finds that the position of the applicants, and of the JNA pensioners in general, within the pension and social security system of the Federation of Bosnia and Herzegovina, is characterised by elements which exclude any comparison to the civilian pensioners as a group in the same or a relevantly similar position. As to the difference in treatment with regard to pensioners of the Army of the Republic of Bosnia and Herzegovina and of the Army of the Federation, the Chamber finds that the difference in treatment is justifiable in the light of the above considerations. Thus, the Chamber concludes that the cases before it do not disclose discrimination against the applicants in the enjoyment of their right to social security guaranteed by Article 9 of the ICESCR.

X. CONCLUSIONS

63. For the above reasons the Chamber decides:

1. by 6 votes to 1, to declare the applications inadmissible insofar as they are directed against Bosnia and Herzegovina;
2. unanimously, to declare the applications admissible against the Federation of Bosnia and Herzegovina insofar as they relate to whether the applicants have a protected interest within the meaning of Article 1 to Protocol No. 1 of the Convention to full pension payments, and whether the applicants suffered unlawful discrimination in the payment of their pensions;
3. unanimously, to declare the remainder of the applications inadmissible as manifestly ill-founded insofar as they are directed against the Federation of Bosnia and Herzegovina;
4. by 6 votes to 1, that there has been no violation of the applicants' right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights; and
5. by 6 votes to 1, that there has been no discrimination against the applicants in the enjoyment of their right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel