



**DECISION ON ADMISSIBILITY AND MERITS**  
(delivered on 5 December 2003)

**Case no. CH/03/12994**

**Vidosava MIČIĆ**

**against**

**BOSNIA AND HERZEGOVINA, THE FEDERATION OF BOSNIA AND HERZEGOVINA,  
and  
THE REPUBLIKA SRPSKA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 4 November 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar  
Ms. Olga KAPIĆ, Deputy Registrar  
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 52, 57, and 58 of the Chamber's Rules of Procedure:

## **I. INTRODUCTION**

1. The applicant is a displaced person of Serb origin who currently lives in Bijeljina, Republika Srpska. Before the armed conflict in Bosnia and Herzegovina, she lived in the village of Potpeć, in Srebrenik Municipality, on the territory of the Federation of Bosnia and Herzegovina. The applicant is the beneficiary of a family pension, and before the armed conflict she received her pension from the Social Fund of Pension and Disability Insurance of Bosnia and Herzegovina (hereinafter the "SRBiH Fund"), but during and after the conflict (from July 1994 until March 1996 and from March 2002 until now) she has received her pension from the Fund for Pension and Disability Insurance of Republika Srpska (hereinafter the "RS Fund"). The applicant requests compensation for the pension amounts that were not paid and payment of her pension from the pension insurance fund from which the pension right was obtained. The application raises issues under Article 1 of Protocol No. 1 to the Convention and issues related to discrimination in the enjoyment of the rights guaranteed by Article 9 of the International Covenant on Economic, Social and Cultural Rights.

## **II. PROCEEDINGS BEFORE THE CHAMBER**

2. The application was submitted to the Chamber on 13 February 2002 and registered on the same day. The application was initially submitted only against Bosnia and Herzegovina. The applicant is represented by Dušan Vanovac. The applicant requested issuance of a provisional measure ordering the respondent Party to pay the applicant all late pensions with legal interest from 1 April 1992.

3. The Second Panel of the Chamber considered the case on 6 March 2003 and decided to reject the request for a provisional measure. The Panel at the same time decided to transmit the case to Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, and Republika Srpska for their observations on the admissibility and merits with regard to Article 1 of Protocol No. 1 to the Convention and the issue of discrimination in the right to social insurance under Article 9 of the International Covenant on Economic, Social, and Cultural Rights (hereinafter the "ICESCR").

4. On 17 March 2003, the Chamber transmitted the case to the respondent Parties.

5. On 14 May 2003, the Republika Srpska summated its observations on admissibility and merits to the Chamber, and the Federation of Bosnia and Herzegovina submitted its observations on 19 May 2003. Bosnia and Herzegovina has not submitted any observations to the Chamber in this case.

6. On 16 May 2003 and 21 May 2003 these observations were transmitted to the applicant. On 27 May 2003, the applicant submitted a reply to the observations of Republika Srpska, and on 29 May 2003 she submitted a reply to the observations of the Federation of Bosnia and Herzegovina. On 30 May 2003, the Chamber transmitted the applicant's replies to the Federation of Bosnia and Herzegovina and to the Republika Srpska.

7. On 23 June 2003, the Federation of Bosnia and Herzegovina submitted additional written observations which were transmitted to the applicant on the same day for her information and possible comments.

8. On 25 June 2003, the Chamber requested the applicant to provide information on whether she is a displaced person, how long she has been living in Bijeljina, and whether she submitted a request for reinstatement into her property in the Federation of Bosnia and Herzegovina, where she realised her family pension rights.

9. On 2 July 2003, the Second Panel again considered the application and decided to transfer the case to the Plenary Chamber.

10. On 3 July 2003, the Federation of Bosnia and Herzegovina submitted additional written observations.

11. On 4 July 2003, the Chamber again considered the application.
12. On 8 July 2003 and 21 July 2003, the applicant submitted information about her displaced person status of and also submitted her reply to the additional written information submitted by the Federation of Bosnia and Herzegovina on 23 June 2003 and 3 July 2003.
13. The Chamber again considered the case on 4 November 2003, when it adopted the present decision.

### III. FACTS

#### A. General facts relating to the pension system

14. In the former Socialist Federal Republic of Yugoslavia (hereinafter "SFRY"), civilian pensions were administered by the six Socialist Republics under their own respective laws and institutions. In addition, the state-level Law on Basic Rights of Pension and Disability Insurance (OG SFRY no. 23/82, 77/82, 75/85, 8/87, 65/87, 87/89, 54/90, and 84/90) granted equal minimum rights to every SFRY citizen and regulated the rights of persons who moved from one Republic to another.

15. Following changes brought about by the armed conflict, pensions in Bosnia and Herzegovina came to be administered by three separate funds: the Social Fund of Pension and Disability Insurance of Bosnia and Herzegovina (hereinafter the "Sarajevo Fund"), the Bureau of Pension and Disability Insurance Mostar (hereinafter the "Mostar Fund"), and the RS Fund. The Sarajevo Fund and Mostar Fund subsequently merged, following a November 2000 decision by the High Representative,<sup>1</sup> into the Federation Pension and Disability Insurance Institute (hereinafter the "Federation Fund"), which has been operational since 1 January 2002. Presently there is one pension fund in the Federation and one in the Republika Srpska, and all legislation directly concerning pension systems is made at the Entity level.

16. The system of pension insurance in Bosnia and Herzegovina, as inherited from the former SFRY, has been based on the "pay/go" principle that salary contributions from current workers support the current pensioners. Thus, money that comes into the system as contributions is immediately paid out as pensions, rather than becoming interest-generating capital from which the interest is paid out as pensions. When the current workers retire, salary contributions from the future generation of workers will finance the current workers' pensions. Therefore, the pension system as a whole has had the character of a general social insurance system. This is also the case with the current Federation and RS Funds. However, the basic calculation schemes for determining rights to pension and disability insurance are different in each entity. One result of this has been significantly lower pensions in the Republika Srpska

17. On 27 March 2000, the Mostar Fund, Sarajevo Fund, and RS Fund entered into the Agreement on Mutual Rights and Obligations in Execution of Pension and Disability Insurance (hereinafter the "Pension Agreement") (OG RS, no. 15/00, 5 June 2000; OG FBiH, no 24/00, 30 June 2000), under which they agreed that the Fund that had made payments to pensioners before the Agreement came into force would continue to pay those pensions regardless of the pensioners' place of temporary or permanent residence. The Pension Agreement entered into force on 18 May 2000. The enabling legislation for the Pension Agreement is listed in the preamble as Article 205, paragraph 2 of the Republika Srpska Law on Pension and Disability Insurance (OG RS nos. 27/93, 14/94, and 10/95) and Article 82, paragraph 4 of the Federation Law on Pension and Disability Insurance (OG FBiH no. 29/98).

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<sup>1</sup> High Representative's *Decision Imposing the Federation Law on Pension and Disability Insurance Organisation*, 12 November 2000 (OG FBiH no. 49/00, 27 November 2000).

18. The RS Fund, with the authorisation of the Republika Srpska government,<sup>2</sup> unilaterally terminated the Pension Agreement in March 2002 (OG RS, no. 10/02, 4 March 2002). According to a June 2002 report<sup>3</sup> by the United Nations High Commissioner for Refugees (hereinafter "UNHCR"), despite its withdrawal from the Agreement, the RS Fund has continued to pay those pensioners already recognised as its beneficiaries. For its part, the Federation Fund has declared that it will continue to follow the Agreement and pay its beneficiaries now living in the Republika Srpska.<sup>4</sup> It appears that, as of the date of the present decision, the Republika Srpska Fund continues to regularly pay pensions pursuant to Republika Srpska law and in a manner consistent with the Agreement.

19. According to the June 2002 UNHCR report, the absence of harmonised legislation between the two Entities and the lack of state-level legislation regulating pension and other social benefits causes problems for displaced pensioners and returnees. Specifically, these problems arise from the different pension calculation schemes and different pension amounts in each Entity.<sup>5</sup>

20. As a practical matter, a person who retired in Sarajevo and held a pension there before the armed conflict, but later began receiving pension payments from the RS Fund after displacement to the Republika Srpska, would continue, after returning to Sarajevo, to receive the lower pension payment from the RS Fund. Such a returnee, while receiving the smaller RS Fund pension, would also face a higher cost of living in the Federation of Bosnia and Herzegovina than in Republika Srpska. Moreover, such a returnee would receive a pension much lower than a person who had made similar pension contributions during their working life but remained in the Federation throughout the armed conflict.

21. Under various inter-state pension benefits agreements, some civil pensioners from the Federation of Bosnia and Herzegovina who moved to other countries during the armed conflict continue to enjoy their full pension rights from the Federation Fund. For example, under the Agreement on Social Insurance Between Bosnia and Herzegovina and the Republic of Croatia (OG BiH Supplement on International Agreements, No. 6/01, 11 October 2001), the responsible domestic insurer is obligated to pay full rights to a pension beneficiary, even if that person is residing in the other contracting state. According to UNHCR, no major problems are reported with regard to refugees from Bosnia and Herzegovina receiving their full pensions in Croatia.<sup>6</sup> As of June 2002, similar agreements had been signed and implemented between Bosnia and Herzegovina and Austria and Turkey, while other such agreements were being negotiated.<sup>7</sup> According to OHR, users of pensions from Bosnia and Herzegovina were receiving pensions in 23 countries (mostly in Croatia and Germany) in June 2002.<sup>8</sup>

22. According to the the United Nations Development Program's (hereinafter "UNDP") Bosnia and Herzegovina Human Development Report for 2002, in 2001 the average pension in the Federation was KM 196.98, while the average pension in the Republika Srpska was KM 110.00. In the same year, there were 410,808 jobholders and 271,199 pensioners in the Federation of Bosnia and Herzegovina, while in the Republika Srpska there were 221,628 jobholders and 179,904 pensioners.<sup>9</sup>

23. According to the Institute for Statistics of the Federation of Bosnia and Herzegovina, the average net salary in the Federation for the month of June 2003 was KM 526.79, and the average

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<sup>2</sup> Under Article 34, paragraph 2 of the law on Government of Republika Srpska (OG RS nos. 3/97 and 3/98), the Government of Republika Srpska at its session on 13 February 2002 adopted a decision granting consent to cancellation of the Agreement.

<sup>3</sup> *Update: Pension and Disability Insurance Within and Between Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia in the Context of the Return of Refugees and Displaced Persons*, United Nations High Commissioner for Refugees, June 2002, at 6 (hereinafter "UNHCR Report").

<sup>4</sup> *Id.* at 7 n.24.

<sup>5</sup> *Id.* at 7.

<sup>6</sup> UNHCR Report at 14-15.

<sup>7</sup> Office of the High Representative, Human Rights and Rule of Law, *Access to Pensions: An Overview of the Current Situation in Bosnia and Herzegovina*, June 2002, at 2-3.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> UNDP Human Development Report for 2002 at p. 69-72.

gross salary was KM 774.69 (OG FBiH no. 40/03). The Institute for Statistics of the Republika Srpska reports that the average Republika Srpska net salary for June 2003 was KM 379.00 and the average gross salary was KM 576.00 (OG RS no. 63/03).

24. In both the Federation and the Republika Srpska, the total rate of pension insurance contributions from salaries is 24 percent. In the Federation, however, this calculation is based on gross salaries, while in the Republika Srpska it is based on lower net salary figures. Based on these facts, the average pension insurance contribution for an employee in the Federation is KM 185.92, while in to the Republika Srpska it is KM 90.96.

**B. Facts related to the applicant's pension rights in the Federation of Bosnia and Herzegovina**

25. The applicant obtained family pension rights in 1987, after the death of her late husband. She received her pension from the Tuzla branch office of the SRBiH Fund until 31 March 1992, when the payments were terminated without any procedural decision due to war circumstances. The applicant states that, because her husband paid pension insurance contributions to the Tuzla branch office of the SRBiH Fund during his entire working life, she filed a request with the Tuzla department of the Federation Pension and Disability Insurance Institute (hereinafter the "Federation Fund") on 29 April 2002 for continuation of the pension payments that were terminated on 31 March 1992.

26. On 17 July 2002, the Tuzla department of the Federation Fund refused the applicant's request as ill-founded. It based its decision on Article 2(2) of the Pension Agreement. According to this provision, the insurer who paid the pension beneficiary after April 1992, but terminated payments before the entry into force of the Pension Agreement, shall be the insurer who pays that beneficiary's pension. The applicant filed an appeal against this procedural decision on 29 August 2002.

27. The applicant states that, because the second instance administrative body failed to issue a procedural decision on her appeal within the legal time limit, she filed an action before the Federation of Bosnia and Herzegovina Supreme Court for silence of the administration on 4 December 2002.

28. The Federation states, however, that the Federation Fund issued a procedural decision on the applicant's appeal on 29 September 2002.

29. The Federation further states that this procedural decision was sent to the applicant on 10 October 2002 and that the applicant filed an administrative dispute with to the Federation Supreme Court on 4 December 2002. In her appeal, the applicant asserted silence of the administration against the Federation Fund for failure to issue a procedural decision on her appeal. The Federation Supreme Court issued an order on 21 April 2003 to have the case delivered from the Federation Fund in Mostar to the Supreme Court. On 4 September 2003, the Federation Supreme Court ordered the Federation Fund to issue a decision in the applicant's appeal; the court was apparently unaware that such a decision had already been issued.

30. The Federation also points out that the SRBiH Fund previously paid the applicant until March 1992, but stopped because the applicant left the Fund's territory and did not inform the Fund of her new address.

31. On 8 July 2003, the applicant submitted information stating that she is a displaced person in Bijeljina. She further stated that she submitted a request for repossession of her property in the Federation, but that she has not reposessed it yet. The applicant pointed out that her late husband, Stojan Mičić, owned the property and that she, as his wife, is co-owner. The applicant submitted a 3 October 2002 decision of the Service for Geodetic, Property and Legal Issues in Srebrenik Municipality (Služba za geodetske i imovinsko pravne poslove Općine Srebrenik) (hereinafter the "Service"), by which her late husband was given the right to repossess two houses. By the same decision, the temporary occupants, displaced persons from Bratunac, were ordered to vacate the houses by 3 January 2003, and one person who used one part of the house was ordered to vacate it within 15 days. On 16 April 2003, the Service issued information that, on 21 January 2003, Mr. Stojan Mičić submitted a request for enforcement of the 3 October 2002

decision but that the temporary occupants had not yet vacated the house. One part of the house had been vacated on 29 October 2002 and sealed. The applicant also submitted an appeal to the second instance body for the silence of the administration because the competent organ did not enforce its decision. The appeal documents show that the applicant's late husband, who died 15 years earlier, ostensibly submitted the appeal, which was also signed with his name. Thus, it is not clear who really requested repossession of the properties. The applicant did not submit evidence showing her ownership of the houses, and she did not provide reasons for not entering into possession of the portion of the house that was vacated and sealed.

**C. Facts related to the applicant's pension rights in the Republika Srpska**

32. The applicant states that, beginning on 20 July 1994, the RS Fund took over to pay her pension without her request. On 23 September 1994, however, the Bijeljina branch office of the RS Fund issued a procedural decision at the applicant's request. This procedural decision determined that the RS Fund began paying the applicant's pension as of 20 July 1994. The decision was based on the fact that the applicant had obtained her right to family pension payments from the SRBiH Fund. It states that the applicant was obliged to inform the RS Fund about every fact relevant to her pension rights.

33. The applicant alleges that on 30 September 1996 the RS Fund terminated her pension payments. She alleges that on 19 March 2002 she filed a request to the RS Fund to continue its payments from the date of termination.

34. On 4 June 2002, the Bijeljina branch office of the RS Fund issued a procedural decision to continue payment of the applicant's pension from 19 March 2002, the date the request was submitted. The procedural decision states that the basis for these pension payments is the right the applicant realized with the SRBIH Fund. The applicant filed an appeal against this procedural decision, and her appeal was refused by a second instance procedural decision of 9 October 2002.

35. On 19 November 2002, the applicant initiated an administrative dispute before the Bijeljina District Court, disputing the legality of the 9 October 2002 procedural decision. The applicant requested the court to annul the disputed procedural decision, order payment of compensation for the pension for the period during which the pension was not paid, and to order continued regular pension payments.

**IV. RELEVANT LEGAL PROVISIONS**

36. Under Article III(3)(a) of the Constitution of Bosnia and Herzegovina, all governmental functions and powers not expressly assigned in the Constitution shall be those of the Entities. The Constitution does not address pension systems, therefore all relevant governing legislation is made at the Entity level.

**A. Legislation related to the cessation of old pension funds and the establishment of new pension funds on the territory of Bosnia and Herzegovina**

**1. Legislation of the Republic of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina**

37. The Law on Cessation of Work of Funds and Institutes (Official Gazette of the Republic Bosnia and Herzegovina no. 27/93), which entered into force on 31 December 1993, provides as follows:

Article 1

"During the state of war, funds and institutes established by Law ... cease to work on 31 December 1993, and those are:

...

“the Social Fund of Pension and Disability Insurance of Bosnia and Herzegovina”

...

#### Article 2

“The business and tasks of the funds and institutes from Article 1 of this Decree will be performed by the corresponding ministries and competent municipal administration authorities.”

38. The Law on Organization of the Pension and Disability Insurance of the Federation of Bosnia and Herzegovina (Official Gazette of Federation of Bosnia and Herzegovina no. 49/00, 32/01) provides as follows:

#### Article 2

“The Federation Pension and Disability Insurance Institute (hereinafter: the “Federation Institute”) is established to perform the pension and disability insurance business.”

#### Article 17

“The Federation Institute shall be established as a result of the re-organization of the Bosnia and Herzegovina Social Pension and Disability Insurance Fund and Mostar Pension and Disability Insurance Fund (hereinafter: “Current insurance carriers”).”

## **2. Legislation of the Republika Srpska**

39. The Decision on Establishment of the Public Fund for Disability Insurance of the Serb Republic of Bosnia and Herzegovina (Official Gazette of the Serb People in Bosnia and Herzegovina no. 10/92), which entered in force on 30 June 1992, provides as follows:

#### Article 1

“In order to ensure and implement the pension and disability insurance in the Serb Republic of Bosnia and Herzegovina, the Public Fund for Pension and Disability Insurance of the Serb Republic of Bosnia and Herzegovina is established.”

40. The Law on Pension and Disability Insurance (Official Gazette of Republika Srpska nos. 32/00, 40/00, 26/01, 37/01, 32/02, 47/02), which entered into force on 30 September 2000, provides as follows:

#### Article 8

“In order to realize the rights from the pension and disability insurance... the Fund for Pension and Disability Insurance (hereinafter: the “Fund”) of Republika Srpska is established.”

## **B. The Agreement on Mutual Rights and Obligations in Execution of Pension and Disability Insurance (the “Pension Agreement”) (OG RS, no. 15/00, 5 June 2000; OG FBiH, no. 24/00, 30 June 2000)**

41. Article 2 of the Pension Agreement provides as follows:

“The Insurer who was paying the pension to the pension beneficiary on the date this Agreement came into force [18 May 2000] shall continue paying the pension regardless of the pension beneficiary’s place of temporary or permanent residence.

“For a pension beneficiary whose pension was being paid from April 1992 but stopped before the entry into force of this Agreement, the pension shall be paid by the insurer who paid the pension last.”

**C. Decisions of the High Representative regarding financial feasibility and independence**

42. The Decision on Amending the Law on Pension and Disability Insurance of the Federation of Bosnia and Herzegovina (OG FBiH no. 49/00) issued by the High Representative on 12 November 2000, provides as follows:

“The Law on Pension and Disability Insurance published in the Official Gazette of the Federation of Bosnia and Herzegovina (number 29/98 of 23 July 1998) is hereby amended as follows:

Article 3

“In Article 51, Paragraphs 1, 2 and 3, shall be amended to read as follows:

Pensions established pursuant to the provisions of this Law shall be adjusted monthly, as necessary, based on the funds allocated for pension payments.”

43. The Decision on Law Amending the Law on Pension and Disability Insurance of the Republika Srpska (OG RS no. 40/00), issued by the High Representative on 12 November 2000, provides as follows:

“The Law on Pension and Disability Insurance published in the "Official Gazette of the Republika Srpska" (Number: 32/2000, of September 22, 2000) is hereby amended as follows:

Article 1

“Article 130 of the Law on Pension and Disability Insurance shall read:

Pensions established pursuant to the provisions of this Law shall be adjusted monthly, based on the funds in the Fund allocated for pension payments.”

**D. Legislation related to compulsory contributions for pension insurance**

**1. Legislation of the Federation of Bosnia and Herzegovina**

44. The Federation Law on Contributions (OG FBiH nos. 35/98, 54/00, 16/01, 37/01 and 1/02) provides as follows:

Article 4

“The contributions are calculated and paid:

1. from the personal income and other revenue of the insured person;
2. for paid personal income on the employer’s charge;
3. from other sources, secured by the contributors”

Article 5

“The contributor in Article 4 Paragraph 1 of this Law is a natural person – resident of the Federation....”

Article 6

“The basis of contribution from Article 4 Paragraph 1 of this Law is:

1. gross salary of the employed worker, executive officer and junior clerk;....”

Article 10

“The highest rates for contributions could be:

“(a) for pension and disability insurance:

1. from the personal income and other revenue of the insured person 17%
2. for paid personal income on the employer’s charge 7%....”

## **2. Legislation of the Republika Srpska**

45. The Republika Srpska Law on Contributions (OG RS no. 51/00) provides as follows:

Article 4

“The contributor is a natural person – resident of Republika Srpska:

who is employed with a legal or natural person – resident of Republika Srpska or legal or natural person that has its headquarters in another entity or district;

...”

Article 8

“The basis for contribution is:

1. net income and all the reimbursements paid by the employer...”

Article 11

“The contribution rates on the basis from Article 8 of this Law amount to:

for pension and disability insurance 24%.”

## **V. COMPLAINTS**

46. The applicant complains that her right to her family pension has been violated, and she considers that the Federation of Bosnia and Herzegovina is obliged to resume paying her pension because her husband, during his working life, paid contributions to pension and disability insurance on the territory of Federation and did not pay into the RS Fund. The applicant further alleges that she was deprived of the full amount of the pension for several years. The applicant alleges that the pension she has received from the RS Fund is a lump sum that is more like welfare than a pension.

## **VI. SUBMISSIONS OF THE PARTIES**

### **A. The respondent Parties**

#### **1. Bosnia and Herzegovina**

47. Bosnia and Herzegovina has not submitted any written observations in this case.

#### **2. The Federation of Bosnia and Herzegovina**

##### **a. As to the facts**

48. The Federation of Bosnia and Herzegovina proffered a certificate issued by the RS Fund from which it is obvious that the applicant received a pension from the RS Fund from 21 June 1994 until 31 March 1996, and from 19 March 2002 to the present. The Federation alleges that this certificate demonstrates that it did not violate the applicant’s pension rights and that her case was handled in accordance with the Pension Agreement. The Federation further asserts that the applicant’s submissions regarding the facts were incomplete.

**b. As to admissibility**

49. The Federation considers the application inadmissible as directed against it. The Federation alleges that the RS Fund is the body competent to resolve the applicant's request. Taking into account Article 2 of the Pension Agreement and the pension and disability insurance practices in the entities, the Federation asserts that the application is inadmissible *ratione personae* against it.

50. The Federation argues that the application is inadmissible as manifestly ill-founded and incompatible with Article VIII(2) of the Agreement. The Federation asserts that the applicant only submitted her request to the Federation Fund when, due to different contribution rates, pensions in the Federation became higher than those in Republika Srpska, and her request was motivated by her desire to collect a higher pension, not to return to her pre-war address.

**c. As to the merits**

51. The Federation asserts that the Pension Agreement protects pension users and enables them to realise their social security rights regardless of their permanent or temporary residence. The Federation further states that both entities' laws on pension and disability insurance provide that pensions are paid to beneficiaries depending on the amount of funds at the insurer's disposal, and therefore the amount paid cannot be the basis for a human rights violation such as discrimination against a pension beneficiary based on where she lives or from which entity's fund her pension is paid. The Federation believes that Article 9 of the ICESCR has not been violated on the ground that the applicant was prevented from realising her right to her pension.

52. Regarding the fact that the applicant did not receive her pension from 1992 until 1994, the Federation points out that the applicant was obliged to inform the relevant pension fund of her new address, and for this reason she did not receive her pension, not due to different treatment related to her ethnic origin.

53. The Federation disputes that its pension fund illegally used her unpaid pension because all contributions and unpaid pensions were immediately used to pay pensions to pensioners then present on the territory of the Federation. The Federation stresses that, during the war, contributions to the pension fund were not paid and pensioners received pensions "*in natura*", mostly in the form of food. Sometimes money was paid from the budget — not from pension contributions — and only to pensioners on the territory of the Federation, because it was not possible to conduct outside transactions. The Federation states that, during and after the war, the Federation's pension funds issued decisions applying the relevant Law and the Agreement without discrimination.

54. The Federation states that it is not true that only its Fund is obliged to pay pensions established by the former SRBIH Fund, because the Federation is not the only successor of the Republic of Bosnia and Herzegovina. Both the Federation Fund and the RS Fund are successors of the SRBiH Fund.

55. The Federation points to attempts to find a uniform state-level solution to replace the Pension Agreement, but states that the Pension Agreement was unilaterally cancelled by Republika Srpska.

**3. The Republika Srpska**

**a. As to the facts**

56. The Republika Srpska disputes the facts stated in the application. Specifically, it disputes the applicant's statement that the payment of her pension by the Republika Srpska was initiated without her request. The Republika Srpska provides information from the RS Fund stating that the applicant submitted a request to the RS Fund on 20 July 1994.

57. The Republika Srpska also disputes the applicant's allegation that the RS Fund stopped her pension payments without any procedural decision. The Republika Srpska states that the payments

were stopped because nine pension payments were returned from the post-office in Janja with an explanation that the applicant had moved away.

**b. As to admissibility**

58. The Republika Srpska considers the application inadmissible for several reasons. It alleges that the applicant initiated an administrative dispute which is not yet complete, and the applicant therefore did not exhaust domestic remedies. The Republika Srpska also considers the application inadmissible *ratione personae* because it is in fact paying a pension to the applicant. The Republika Srpska also considers the application inadmissible as manifestly ill-founded because it has never disputed the applicant's right to her family pension and in fact pays it to her.

**c. As to the merits**

59. The Republika Srpska reminds the Chamber of its decision in case no. CH/02/8923 *et al.*, *Kličković and others*, (decision on admissibility and merits, delivered on 10 January 2003), where the Chamber concluded that the respondent Parties had not violated Article 1 of Protocol No. 1 to the Convention. The Republika Srpska supports this conclusion, as well as the Chamber's conclusion finding no discrimination by the Republika Srpska against the applicants in the *Kličković and others* case in the enjoyment of their rights guaranteed by Article 9 of the ICESCR. Based on this precedent, the Republika Srpska asserts that it is not in violation of the Agreement.

**B. The applicant**

60. The applicant disputes the respondent Parties' allegations regarding the admissibility and merits in their entirety.

**1. The applicant's response to the Federation of Bosnia and Herzegovina's observations**

61. The applicant alleges that the Pension Agreement caused her significant damage. Specifically, she asserts that the Federation Fund is obliged to pay her pension because the contributions were made to that fund. She also points out that the Federation Fund stopped paying her pension due to circumstances beyond her control and that, afterwards, the Federation Fund did not resume payments, justifying its conduct with the Pension Agreement.

62. The applicant also points out that, on the date the Pension Agreement entered into force, neither respondent Party was paying her family's pension to her and the agreement is related to exactly that date.

63. The applicant claims that the Federation, by entering into the Pension Agreement, has discriminated against pensioners who formerly received their pensions in the Federation but now receive them in the Republika Srpska.

**2. The applicant's response to the Republika Srpska's observations**

64. The applicant states that whether the Republika Srpska took over the applicant's pension payments with or without the applicant's request is not relevant. But it is important that the Republika Srpska took over the payments and paid them irregularly. The applicant alleges that she was damaged by these irregular payment of her pension by the Republika Srpska.

65. The applicant points out that, even after she requested payment and provided information about her new address, the Republika Srpska did not pay her pensions accrued for the period during which they had not been paid.

66. The applicant alleges that, by such conduct, the respondent Parties violated her right to her pension and that she was discriminated against in the enjoyment of that right. She requests that the Federation Fund be obliged to pay her pension and that the Federation Fund and RS Fund

compensate her for the entire amount of unpaid pensions. She further requests compensation of EUR 5000.00 for pecuniary damages and EUR 3000.00 for non-pecuniary damages. The applicant requested EUR 2.00 for compensation for legal expenses (although the amount of this request appears to be in error). The applicant requests compensation for all costs incurred in her domestic legal proceedings.

## **VII. OPINION OF THE CHAMBER**

### **A. Admissibility**

67. Before considering the merits of this application, the Chamber must decide whether to accept it, taking into account the admissibility criteria set forth in Article VIII(2) of the Agreement. The Chamber notes that the Federation of Bosnia and Herzegovina generally considers that the application is inadmissible as the admissibility criteria set forth in Article VIII(2) of the Agreement were not met, and it specifically points out that the application is inadmissible *ratione personae* against it. The Republika Srpska, in its observations on the admissibility and merits, considers the case to be inadmissible for non-exhaustion of domestic remedies and inadmissible *ratione personae*. The Republika Srpska considers the application inadmissible against it as manifestly ill-founded because it never disputed the applicant's right to her family pension and it pays it to her.

68. Under Article VIII(2)(a), the Chamber shall consider whether effective remedies exist and, if so, whether the applicants have demonstrated that they have been exhausted. Under Article VIII(2)(c), the Chamber shall dismiss any application that it considers incompatible with the Agreement.

69. The Chamber notes that application contains essentially two main complaints: The first concerns an alleged violation of the applicant's right to be paid accrued but unpaid pensions from 1992 to 2002 under Article 1 of Protocol No. 1 to the Convention; the second concerns the applicant's alleged right to receive her pension from the Federation Fund in relation to her enjoyment of property rights under Article 1 of Protocol No. 1 to the Convention and also in relation to alleged discrimination in the enjoyment of the rights guaranteed by Article 9 of the International Covenant on Economic, Social and Cultural Rights.

#### **1. Admissibility in relation to the applicant's claim of right to compensation for unpaid pensions under Article 1 Protocol No. 1 to the Convention.**

##### **a. As regards Bosnia and Herzegovina**

70. The applicant initially directed her application only against Bosnia and Herzegovina. The Chamber notes, however, that the applicant considers that the Federation Fund and RS Fund are obliged to pay her compensation. Moreover, she has provided no indication that any organ of Bosnia and Herzegovina is in any way responsible for the payment of her unpaid pensions since 1992, nor can the Chamber on its own motion find any such evidence. The Chamber therefore declares this part of the application incompatible *ratione personae* with the Agreement insofar as it is directed against Bosnia and Herzegovina.

##### **b. As regards the Federation of Bosnia and Herzegovina**

71. The applicant complains, citing Article 1 of Protocol No. 1 to the Convention, that the Federation Fund should pay her unpaid pensions from 1 April 1992 until 20 June 1994, regardless of the fact that she did not inform the SRBiH Fund or Federation Fund about her address. In this regard, the Chamber notes that, in the proceedings the applicant initiated on 29 April 2002 before the Federation Fund, she requested that the Fund continue to pay her pension, and this request was rejected. The applicant failed to provide the Chamber with any evidence that she raised the issue of unpaid pension before the Federation Fund, in either the same form or substance that this complaint is now made to the Chamber. Further, if the SRBiH Fund and the Federation Fund refused to pay the applicant her pension, she could initiate proceedings before the competent Federation court and

request compensation. Accordingly, with regard to the applicant's claim of right to be compensated for her unpaid pension since 1992, the applicant has not exhausted domestic remedies as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare the application inadmissible in this respect.

**c. As regards the Republika Srpska**

72. With regard to the applicant's complaint under Article 1 Protocol No. 1 to the Convention that the RS Fund should pay her unpaid pension from 1 April 1996 until 19 March 2002, the Chamber notes that the application in this part is premature because proceedings related to the same request are still pending before the District Court in Bijeljina. Accordingly, domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Chamber therefore decides to declare this part of the application inadmissible.

**2. Admissibility in relation to the applicant's request to receive pension payments from the Federation Fund**

**a. Admissibility *ratione personae***

73. The Chamber will consider whether and to what extent the regulation of matters relevant to the present application falls within the responsibility of each respondent Party. The Chamber notes that the applicant directed her application only against Bosnia and Herzegovina and did not name the Federation of Bosnia and Herzegovina and the Republika Srpska as the respondent Parties. The Chamber recalls, however, that it has consistently held that it is not restricted by an applicant's choice of respondent Party, and that it will examine applications in regard to a respondent Party designated by the Chamber itself. The Chamber transmitted this case to Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, and the Republika Srpska, and will consider all three parties as the respondent Parties.

74. The Chamber notes that Bosnia and Herzegovina has submitted no observations whatsoever regarding this case, and thus has raised no objections to admissibility. The Chamber further notes that Bosnia and Herzegovina is the likely successor to the rights and obligations of the former SRBiH Fund, including obligations toward the present applicants. Moreover, because the present case raises important issues of state-level concern, the Chamber finds that the application is not inadmissible *ratione personae* in respect of Bosnia and Herzegovina.

75. The Chamber further notes that both parties that submitted the observations on admissibility and merits, the Federation of Bosnia and Herzegovina and the Republika Srpska, contend that the application is incompatible *ratione personae* with the Agreement insofar as it is directed against them.

76. The Federation stated that Article 2 of the Pension Agreement and the practice of pension and disability insurance payments in the entities render the application inadmissible *ratione personae* against the Federation.

77. The Republika Srpska contends that the application is incompatible *ratione personae* with the Agreement because the Republika Srpska pays the applicant's pension and therefore cannot be the respondent Party in this case.

78. The Chamber notes that, on 27 March 2000, the two pension funds then existing on the territory of the Federation and the RS Fund entered into the Pension Agreement under which they agreed that the Fund that had made payments to pensioners before the Pension Agreement came into force would continue to pay those pensions regardless of the pensioners' place of temporary or permanent residence. On 13 February 2002, however, the RS Fund, with the authorisation of the Government of the Republika Srpska, unilaterally terminated the Pension Agreement. The Republika Srpska has nonetheless continued to pay those pensioners already recognised as its beneficiaries.

79. Whatever the current status of the Pension Agreement, the Chamber considers that both parties to the Pension Agreement bear responsibility for the position of the present applicant. The Chamber therefore finds that the application is not inadmissible *ratione personae* in respect of each of the respondent Parties.

**b. Manifestly ill-founded**

80. The Federation asserts that the application should be declared inadmissible under Article VIII(2)(c) of the Agreement as manifestly ill-founded. The Federation argues that the applicant has no right to a pension from the Federation Fund because, in accordance with the Pension Agreement, the applicant should continue to receive the pension from the pension fund that last performed the payment of pension, which is the RS Fund.

81. Republika Srpska considers the application should be declared inadmissible under Article VIII(2)(c) as manifestly ill-founded because it has never disputed the right of the applicant to her family pension, and it pays it to her.

82. The Chamber considers that the present application raises legitimate issues regarding the Pension Agreement that are compatible with the Agreement and within the Chamber's competence. Accordingly, the Chamber rejects the suggestion that they must be dismissed as manifestly ill-founded pursuant to Article VIII(2)(c).

**3. Conclusion as to admissibility**

83. With regard to the applicant's claim of right to unpaid pensions for the period from March 1996 to March 2002 under Article 1 of Protocol No. 1 to the Convention, the Chamber has declared the application inadmissible *ratione personae* in relation to Bosnia and Herzegovina, and inadmissible for failure to exhaust effective domestic remedies in relation to the Federation of Bosnia and Herzegovina and the Republika Srpska.

84. With regard to the applicant's claim of right to receive future pension payments from the Federation Fund, no ground for declaring the case inadmissible has been established by any of the respondent Parties. Thus, the Chamber declares the application, insofar as it relates to this claim, admissible against all three respondent Parties in relation to the applicant's right to property under Article 1 of Protocol No. 1 to the Convention and her right to be free from discrimination in her enjoyment of the social security rights guaranteed by the ICESCR.

**B. Merits**

85. Under Article XI of the Agreement, the Chamber will next address the question of whether the facts established disclose any breaches by the respondent Parties of their obligations under the Agreement. Under Article 1 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 its Protocols.

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

**a. General considerations**

86. The applicant complains that her property rights under Article 1 of Protocol No. 1 to the Convention has been violated. This provision reads as follows:

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

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

**b. Whether the respondent Parties have interfered with the applicants' property rights**

87. The system of pension insurance in Bosnia and Herzegovina, as inherited from the former SFRY, has been based on the "pay/go" principle that salary contributions from current workers support the current pensioners. Thus, when the current workers retire, salary contributions from the future generation of workers will finance the current workers' pensions. Therefore, the pension system as a whole has had the character of a general social insurance system. This is also the case with the current Federation and RS Funds.

88. The Chamber has previously held that contributions to an old age pension fund may give rise to a property right in a portion of such a fund, but that there is no right to receive social welfare benefits in a certain amount (case no. CH/99/1554, *Pezer*, decision on admissibility of 7 June 2000, paragraph 5, Decisions January-June 2000). Given the nature of the Socialist Republic of Bosnia and Herzegovina pension system and its successor funds, the same analysis applies to the present cases, and the applicant does not have a right to receive a particular amount of pension payment.

89. The Chamber therefore finds, on the basis of the evidence presented to it, that the fact that the applicant receives a smaller pension than she expected and that her pension is smaller than that of persons paid by the Federation Fund does not interfere with her rights under Article 1 of Protocol No. 1 to the Convention.

**c. Conclusion**

90. Accordingly, the Chamber concludes that there has been no violation by Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, or the Republika Srpska of the applicant's rights to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the Convention.

**2. Discrimination in the enjoyment of the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights**

91. The applicant in the present case claims that the Federation of Bosnia and Herzegovina is obliged to pay her pension because her husband, during his working life, paid pension and disability insurance contributions to the fund on the territory that is now the Federation of Bosnia and Herzegovina, and he did not pay into the RS Fund. She claims that, because she is a displaced person living in the Republika Srpska, under the provisions of the Pension Agreement, she receives the pension from the RS Fund. As a consequence, her pension is lower than the pension she would receive from the Federation Fund, which she regards as the only body competent to pay her pension.

92. The complaint concerns the applicant's rights to social security and therefore falls within the scope of the rights protected by Article 9 of the International Covenant on Economic, Social and Cultural Rights. Pursuant to Article II(2)(b), the Chamber can consider alleged violations of such rights only in conjunction with discrimination "on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status". The applicant alleges discrimination, and the Chamber has therefore considered her application in light of 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."

93. In order to determine whether the applicant has been discriminated against in the enjoyment of social security rights, the Chamber must first determine whether she was treated differently from others in the same or relevantly similar situations. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means

employed and the aim sought to be realised (see case no. CH/97/67, *Zahirović*, decision on admissibility and merits delivered on 8 July 1999, paragraph 120, Decisions January-July 1999).

**a. Whether the applicant was treated differently from others in the same or relevantly similar situations**

94. In accordance with the approach outlined above, the Chamber has considered whether other categories of pensioners constitute “others in the same or relevantly similar situations”. It appears that the applicant is a displaced person who has not repossessed her pre-war property in the Federation and still lives in Bijeljina, in the Republika Srpska. The applicant submitted to the Chamber, on its request, documentation concerning property repossession proceedings. Each submitted document, however, lists the applicant’s late husband, who died 15 years ago, as the person who requested repossession, and his signature, ostensibly, is on each document. Regardless of who requested repossession, the current status of the property in Municipality Srebrenik is that the temporary occupants have not yet vacated the house, except for one part of the house that has been sealed. The applicant submitted no information regarding her intentions to return to her pre-war home, and she gave no reason why the requests were submitted in the manner described above or why she did not repossess the vacant, sealed portion of the house.

95. As a result of her displacement, the applicant receives her pension from the Republika Srpska pursuant to Republika Srpska law in a manner consistent with the Pension Agreement. She does not receive her pension from the Federation Fund due to application of the Pension Agreement.

96. The situation of the applicant can be compared to those of SRBiH pensioners whose pension rights matured before the conflict broke out in 1992 and who remained in the Federation. The applicant’s late husband paid his contributions into the SRBiH Fund during his working life and thereby acquired rights to a pension from that fund in accordance with the provisions of the SRBiH Law on Pension and Disability Insurance, which was in effect when he retired. Under current practice, the pension of a former SRBiH pensioner from what is now Federation territory who is now paid by the RS Fund because he or she was displaced to the Republika Srpska during the armed conflict is significantly lower than the average pension of a similarly situated SRBiH pensioner who remained in the Federation. This is true for the present applicant, who would receive a greater pension if she was paid by the Federation Fund.

97. To sum up, the Republika Srpska recognised the pension rights of the applicant in accordance with its laws and in a manner consistent with the Pension Agreement, and it did not treat her differently from other Republika Srpska pensioners. At the same time, the Federation – on the basis of the Pension Agreement – refused to recognise the right of the applicant to receive pension payments from the Federation Fund. Thus, the Chamber concludes that the Federation of Bosnia and Herzegovina treated the applicant differently from recipients of family pensions who, during the war, stayed on what is now the territory of the Federation, by not recognising her right to receive her pension from the Federation Fund.

**b. Whether the differential treatment is justified**

98. The Chamber notes that the SRBiH Fund does not exist any more. The applicant’s husband, like all employed civilians in the former Socialistic Republic of Bosnia and Herzegovina, paid his contributions to the SRBiH Fund, and that Fund paid pensions to its contributing pensioners and their families until the outbreak of the armed conflict in Bosnia and Herzegovina. After the conflict began, as early as 30 June 1992, the Public Fund for Disability Insurance of the Serb Republic of Bosnia and Herzegovina was established. On 31 December 1993, the SRBiH Fund ceased operations pursuant to the Law on Cessation of Work of Funds and Institutes. Presently, there is one pension fund in the Federation and one in the Republika Srpska, and all legislation directly concerning pension systems is made at the Entity level. The Chamber notes that the system of pension insurance in both entities is the same and is based on the principle that salary contributions from current workers support the current pensioners. The basic calculation schemes for determining rights to pension and disability insurance, however, are different in each entity. In both the Federation and the Republika Srpska, the total rate of pension insurance contributions from salaries is 24 percent. In the Federation, however, that rate is calculated from gross salaries, while in the Republika Srpska it is calculated on

the basis of net salaries (see paragraphs 23-24 and 44-45 above). Moreover, gross salaries in the Federation are higher than those in the Republika Srpska. As a result, in June 2003, the average pension insurance contribution of a Federation worker was KM 185.92, while in the Republika Srpska it was KM 90.96. The Chamber notes, however, that the cost of living in the Federation is higher than in the Republika Srpska.

99. The Chamber notes that, on 27 March 2000, the two pension funds then existing on the territory of the Federation and the RS Fund entered into the Pension Agreement under which they agreed that the Fund that had made payments to pensioners before the Pension Agreement came into force would continue to pay those pensions regardless of the pensioners' place of temporary or permanent residence (see paragraph 17 above). On 13 February 2002, however, the RS Fund, with the authorisation of the Government of the Republika Srpska, unilaterally withdrew from the Pension Agreement. The Republika Srpska has nonetheless continued to pay those pensioners already recognised as its beneficiaries.

100. The Chamber notes the findings of the June 2002 UNHCR Report that the absence of harmonised legislation between the two Entities and the lack of state-level legislation regulating pension and other social benefits causes problems for displaced pensioners and returnees. The Chamber must take into account, however, that, after the SRBiH Fund ceased its operations, considering the chaotic situation caused by the armed conflict, it may have been in the public interest for the then-existing Funds to find a solution for paying existing pensioners, many of whom had been displaced from their pre-war homes.

101. The Chamber recalls that in case nos. CH/02/8923 *et al.*, *Kličković and others*, decision on admissibility and merits, delivered on 10 January 2003, the applicants, who were retired before the war, resided in the Republika Srpska during the war and received pensions from RS Fund. After being reinstated into possession of their Sarajevo apartments, they continued to live on Republika Srpska pensions, pursuant to the Pension Agreement. In these circumstances, the Chamber concluded that they were discriminated against in their enjoyment of the right to social security, as guaranteed by Article 9 of the ICESCR. The Chamber stated:

“89. Moreover, the prospect of returning to live in the Federation (where the cost of living is higher than in the Republika Srpska) on a smaller RS Fund pension presents a significant obstacle to the return of displaced persons. The present applicants attest to these difficulties, and the Federation, in its observations, admits that they should have been aware of them.... One of the important objectives of the settlement of the conflict in Bosnia and Herzegovina was to facilitate the return of displaced persons (see generally the General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7). The Chamber considers that displaced person status is a status relevant for the purposes of Article II(2)(b) and further finds that the current situation regarding displaced persons' pensions is inimical to the goals of Annex 7. The only reason put forward for the different treatment is the Pension Agreement, which, by its terms, makes displaced person status the basis for different treatment. But displaced person status cannot serve as a justification for disparate treatment, especially where, as here, it carries with it a connotation of discrimination on ethnic grounds. Under the circumstances, the Chamber concludes that the different, poorer treatment of the applicants with regard to their pension payments has no objective justification.”

102. The Chamber notes that this case differs significantly from *Kličković and Others*. There, the applicants returned to their pre-war homes in Sarajevo, where, pursuant to the Pension Agreement, they had to live on lower Republika Srpska pensions while facing a higher cost of living in the Federation. In the present case, the applicant has not returned to her pre-war home, but still lives in the Republika Srpska, where the cost of living is lower. She enjoys full recognition of her pension and social security rights from the RS Fund. The applicant is not a returnee to the Federation who has been placed at a disadvantage in the enjoyment of the right to social security compared to other pensioners of the Federation. The Chamber recalls, as it did in *Kličković and Others*, that one of the most important objectives of the settlement of the conflict in Bosnia and Herzegovina was to facilitate the return of displaced persons, like the applicant. As such, the differential treatment found here may not be allowed to stand as an obstacle, should the applicant desire to return and live on her property in the Federation. As the Chamber firmly stated in *Kličković and Others*, inferior

treatment of returnees with regard to pension payments constitutes discrimination.

103. The Chamber considers, however, that in pursuing the public interest to solve the pension problem following the dissolution of the SRBIH Fund, it was within the Federation's margin of appreciation not to recognise the rights of pensioners currently living on the territory of the Republika Srpska, considering that the RS Fund had also come into existence. Therefore, the difference in treatment between the applicant and pensioners living in the Federation is proportional and does not constitute a violation of the rights claimed by the applicant.

104. The Chamber concludes that, at present, the applicant, as an internally displaced person who has not returned to the Federation and receives her pension from the Entity in which she lives, has not been discriminated against by the Federation of Bosnia and Herzegovina in the enjoyment of her right to social security in comparison to similarly situated persons who remained in the Federation.

### **VIII. CONCLUSION**

105. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible against Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska in relation to the complaint under Article 1 of Protocol No. 1 to the European Convention on Human Rights and the complaint of discrimination in the enjoyment of the rights protected under Article 9 of the International Covenant on Economic, Social and Cultural Rights;

2. by 9 votes to 3, to declare the application inadmissible insofar as the applicant complains that she has not received any pension benefits for the periods from 1 April 1992 to 20 June 1994 and from 1 April 1996 to 19 March 2002 because the applicant's claim against Bosnia and Herzegovina in this regard is incompatible *ratione personae* with the Agreement and because she has failed to exhaust domestic remedies in relation to the Federation of Bosnia and Herzegovina and the Republika Srpska;

3. by 9 votes to 3, that there has been no violation of the applicant's right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights;

4. by 9 votes to 3, that the applicant has not been discriminated against in the enjoyment of her right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights.

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the Chamber