EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Grand Chamber judgment concerning "old" foreign currency savings deposited in the former Socialist Federal Republic of Yugoslavia

The case of **Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and "The former Yugoslav Republic of Macedonia"** (application no. 60642/08) concerned the applicants' inability to recover "old" foreign-currency savings – deposited with two banks in what is now Bosnia and Herzegovina – following the dissolution of the former Socialist Federal Republic of Yugoslavia (SFRY).

In today's Grand Chamber judgment in the case, which is final[1], the European Court of Human Rights held:

With regard to Mr Šahdanović: unanimously, that there had been **a violation of Article 1 of Protocol No. 1 (protection of property)** to the European Convention on Human Rights **and a violation of Article 13** (right to an effective remedy) of the Convention **by Serbia;**

With regard to Ms Ališić and Mr Sadžak: unanimously, that there had been **a violation of Article 1 of Protocol No. 1** and a **violation of Article 13 by Slovenia**;

With regard to the other respondent States:

by a majority, that there had been **no violation of Article 1 of Protocol No.1 and no violation of Article 13**, and,

unanimously, that there had been **no violation of Article 14 taken together with Article 13 and Article 1 of Protocol No. 1**.

The Court confirmed that Slovenia and Serbia had been responsible for the debts owed to the applicants by the two banks, Ljubljanska banka Sarajevo and the Tuzla branch of the Investbanka, and held that there had been no good reason for the applicants to have been kept waiting for so many years for repayment of their savings. It pointed out that this was a special case, as it was not a standard case of rehabilitation of an insolvent private bank, the banks in question having always been either State- or socially-owned.

The Court further held by a majority, that Serbia and Slovenia had to make all necessary arrangements, including legislative amendments, within one year and under the supervision of the Committee of Ministers, in order to allow Mr Šahdanović , Ms Ališić and Mr Sadžak, nationals of Bosnia and Herzegovina, as well as all others in their position, to recover their "old" foreign-currency savings under the same conditions as Serbian and Slovenian citizens who had such savings in domestic branches of Serbian and Slovenian banks. The Court unanimously decided to adjourn, for one year, examination of all similar cases against Serbia and Slovenia.

Principal facts

The applicants, Emina Ališić, Aziz Sadžak, and Sakib Šahdanović, are nationals of Bosnia and Herzegovina who were born in 1976, 1949 and 1952, respectively, and live in Germany. Emina Ališić is also a German national.

1 Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

They complain that they were unable to withdraw their foreign-currency savings deposited before the dissolution of the Socialist Federal Republic of Yugoslavia with the Ljubljanska banka Sarajevo and the Tuzla branch of the Investbanka.

Until 1989/90, the former Socialist Federal Republic of Yugoslavia (SFRY) made it attractive for its citizens to deposit foreign currency with its banks. They earned high interest and a State guarantee was to be activated at the request of the bank in case of bankruptcy or "manifest insolvency". The depositors were also entitled to collect their savings from the banks at any time, with accrued interest.

With the 1989/90 reforms, Ljubljanska Banka Sarajevo became a branch of Ljubljanska Banka Ljubljana (a Slovenian-based bank) and the latter took over the former's rights, assets and liabilities. Investbanka became an independent bank with its headquarters in Serbia and a number of branches in Bosnia and Herzegovina, including the Tuzla branch.

After the disintegration of the SFRY in 1991/92, foreign currency deposited beforehand was customarily referred to as "old" or "frozen" foreign-currency savings in the successor States. After the savings remained frozen for various periods of time after the disintegration of the SFRY, the successor States agreed to repay some of them. However, the applicants' savings have remained frozen.

In the framework of the negotiations for the Agreement on Succession Issues, four rounds of negotiations regarding the distribution of the SFRY's guarantees of "old" foreign-currency savings were held in 2001 and 2002. As the successor States could not reach an agreement, in September 2002 the Bank for International Settlements ("the BIS") informed them that it would not be further involved in the matter.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants alleged that they had not been able to withdraw their "old" foreign-currency savings deposited with two banks (the Sarajevo branch of Ljubljanska Banka Ljubljana and the Tuzla branch of Investbanka) since the dissolution of the former Socialist Federal Republic of Yugoslavia (SFRY). Relying on Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination), they complained that they had not had at their disposal an effective remedy for their complaints.

The application was lodged with the European Court of Human Rights on 30 July 2005. On 17 October 2011, the Court declared the application admissible. In its Chamber judgment of 6 November 2012, the Court unanimously held that there had been a violation of Article 1 of Protocol No. 1 and a violation of Article 13 by Serbia with regard to Mr Šahdanović. It also held, by a majority, that there had been a violation of Article 1 of Protocol No. 1 and a violation of Article 13 by Slovenia with regard to Ms Ališić and Mr Sadžak. On 18 March 2013, the case was referred to the Grand Chamber at the Serbian and Slovenian governments' request[2]. A Grand Chamber hearing took place in public in the Human Rights Building, Strasbourg, on 10 July 2013.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Josep **Casadevall** (Andorra),
Guido **Raimondi** (Italy),

[2] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final.

Ineta **Ziemele** (Latvia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
David Thór **Björgvinsson** (Iceland),
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
Päivi **Hirvelä** (Finland),
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Ganna **Yudkivska** (Ukraine),
Angelika **Nußberger** (Germany),
Linos-Alexandre **Sicilianos** (Greece),
André **Potocki** (France),
Faris **Vehabović** (Bosnia and Herzegovina),
Ksenija **Turković** (Croatia),

and also Michael **O'Boyle**, *Deputy Registrar.*

Decision of the Court

Preliminary objections on admissibility

The Grand Chamber agreed with the Chamber's decision to dismiss the preliminary objections raised by the Governments concerning the compatibility of the case *ratione personae*[3]. As to the objection that the applicants' claim did not relate to any "possessions" within the meaning of Article 1 of Protocol No. 1, the Grand Chamber noted in particular that it had been demonstrated beyond reasonable doubt that the applicants had had "old" foreign-currency savings and that these deposits had constituted "possessions".

Article 1 of Protocol No.1

It was not disputed that the applicants' inability to withdraw their savings, at least since the dissolution of the SFRY, had a legal basis in domestic law. The Court accepted that the aim pursued by the Governments in this regard had been legitimate, as they had to take measures to protect their respective banking systems following the dissolution of the SFRY.

The Court then examined whether the authorities had struck a fair balance between the general interest of the community and the protection of the applicants' property rights.

The Grand Chamber first agreed with the Chamber's finding that Ljubljanska Banka Ljubljana and Investbanka had remained liable for the "old" foreign-currency savings in all their branches until the dissolution of the SFRY and that they had remained liable for these deposits in their Bosnian-Herzegovinian branches since the dissolution of the SFRY. The Grand Chamber therefore confirmed that there had been sufficient grounds to deem Slovenia and Serbia respectively responsible for Ljubljanska Banka Ljubljana's debt to Ms Ališić and Mr Sadžak and for Investbanka's debt to Mr Šahdanović. Indeed, the Governments had disposed of these banks' assets as they had seen fit.

These conclusions were limited to the circumstances of the *Ališić and Others* case. They did not imply that no State would ever be able to rehabilitate a failed bank without incurring direct responsibility under Article 1 of Protocol No. 1 for the bank's debt. Nor did that provision require that foreign branches of domestic banks always be included in domestic deposit-guarantee schemes. The Court indeed considered the present case to be special as the branches in question were not foreign branches when the applicants had deposited their money, and because it was different from

[3] Compatibility *ratione personae* requires the alleged violation of the Convention to have been committed by a Contracting State or to be in some way attributable to it.

a standard case of rehabilitation of an insolvent private bank (the banks in question had always been either State- or socially-owned).

The Grand Chamber finally examined whether there had been any good reason for the failure of the Governments to repay the applicants for so many years. The States' response on this point was that the international law on State succession required only negotiation in good faith, without any time-limits. However, the succession negotiations had not prevented the States from adopting measures at national level to protect the interests of savers, and that solutions had indeed been found in Slovenia and Serbia as regards some categories of "old" foreign-currency savers in the branches in question. Whereas some delays might be justified in exceptional circumstances, the applicants had been kept waiting too long and, notwithstanding Governments' room for manoeuvre in social and economic policy making, Slovenia and Serbia had not struck a fair balance between the general interest of the community and the property rights of the applicants, who had borne a disproportionate burden. There had therefore been a violation of Article 1 of Protocol No. 1 by Slovenia in respect of Ms Ališić and Mr Sadžak and a violation of that provision by Serbia in respect of Mr Šahdanović. The Court further concluded that there had been no breach of Article 1 of Protocol No. 1 by any of the other States.

Article 13

Concerning the remedies available to the applicants for their claims, the Grand Chamber noted that the Slovenian Government had failed to demonstrate that at least one of the numerous decisions ordering the old Ljubljanska Banka to pay "old" foreign-currency savings in its Sarajevo branch had been enforced. As regards a civil action against that bank in the Croatian courts, it offered the applicants no reasonable prospects of success, as the old Ljubljanska Banka no longer had any assets in Croatia. The Court underlined that the applicants were not asking for a remedy to challenge laws before national authorities but to obtain the repayment of their savings in one way or another. In the absence of remedies available to them to complain about the States' failure to ensure such repayment, there had been a breach of Article 13 by Slovenia in respect of Ms Ališić and Mr Sadžak and by Serbia in respect of Mr Šahdanović. The Court further concluded that there had been no breach of Article 13 by any of the other States.

Article 14

The Court held that there was no need to examine the complaint of the applicants under Article 14 as regards Serbia and Slovenia. It further held that there had been no violation of that Article as regards the other States.

Article 46

The Chamber had decided in its judgment of 6 November 2012 to apply the pilot-judgment procedure in the present case and had indicated general measures to Slovenia and Serbia (see Factsheet on Pilot judgment procedure). The Grand Chamber agreed with the Chamber that it was appropriate to apply such a procedure, as there were more than 1,850 similar applications pending before it, introduced on behalf of more than 8,000 applicants. In view of the systemic situation identified, the Court considered that general measures at national level were undoubtedly called for in the implementation of its Grand Chamber judgment. Serbia and Slovenia must thus make all necessary arrangements, including legislative amendments, within one year and under the supervision of the Committee of Ministers, in order to allow Mr Šahdanović, Ms Ališić and Mr Sadžak and all others in their position to recover their "old" foreign-currency savings under the same conditions as Serbian and Slovenian citizens who had such savings in domestic branches of Serbian and Slovenian banks. Persons who had already been paid their "old" foreign-currency savings should be excluded from the repayment schemes; however where only a part of the savings had been repaid, Serbia and Slovenia were now responsible for the rest, regardless of the citizenship of the depositor and of the branch's location. The applicants must collaborate with any verification

procedures to be set up by the States but their claim should not be rejected on the sole account of missing bank documents. Furthermore, all verification decisions must be judicially reviewed.

While all persons affected by the inability to freely dispose of their "old" foreign-currency savings for more than 20 years undoubtedly suffered distress and frustration, the Court did not indicate that they should get redress from Serbia and Slovenia as a general measure. It might however reconsider this issue in an appropriate future case if Serbia or Slovenia fails to apply the general measures indicated by the Court.

Lastly, the Court adjourned its examination of similar cases against Serbia and Slovenia for one year. This decision was without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list in accordance with the Convention.

Article 41 (just satisfaction)

The Court held that Serbia was to pay Mr Šahdanović EUR 4,000 in respect of non-pecuniary damage, and that Slovenia was to pay Ms Ališić and Mr Sadžak EUR 4,000 each in respect of non-pecuniary damage.

Separate opinions

Separate opinions of Judges Nußberger, Popović and Ziemele are annexed to the judgment.

The judgment is available in English and French.

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