FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 60642/08
by Emina ALIŠIĆ and others
against Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia

The European Court of Human Rights (Fourth Section), sitting on 17 October 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Nina Vajić,
Boštjan M. Zupančič,
Ljiljana Mijović,
Dragoljub Popović,
Mirjana Lazarova Trajkovska, *judges,*
and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 30 July 2005,
Having regard to the observations submitted by the parties,
Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms Emina Ališić, Mr Aziz Sadžak and Mr Sakib Šahdanović, are citizens of Bosnia and Herzegovina who were born in 1976, 1949 and 1952, respectively, and live in Germany. The first applicant is also a German citizen. They are represented before the Court by Mr B. Mujčin. The Governments of Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia ("the Governments") are represented by their Agents, Ms M. Mijić, Ms Š. Stažnik, Mr S. Carić, Ms N. Pintar Gosenca and Ms R. Lazareska Gerovska, respectively.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.
3. Before the dissolution of the Socialist Federal Republic of Yugoslavia ("the SFRY"), Ms Ališić and Mr Sadžak deposited foreign currency in Ljubljanska Banka Sarajevo and Mr Šahdanović in the Tuzla branch of Investbanka. It would appear that the balance in their accounts

is 4,715.56 German marks (DEM), DEM 129,874.30 and DEM 63,880.44, respectively. Mr Šahdanović also has 73 US dollars (USD) and 4 Austrian schillings in his accounts.

B. Relevant domestic law and practice

1. The SFRY

4. Until the 1989/90 economic reforms, the commercial banking system consisted of basic and associated banks. Basic banks were as a rule founded and controlled by socially-owned companies[1] based in the same region (that is, in one of the Republics – Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia – or Autonomous Provinces – Kosovo and Vojvodina). The founders of the Ljubljanska Banka Sarajevo, headquartered in Bosnia and Herzegovina, were 16 socially-owned companies from Bosnia and Herzegovina (such as Energoinvest Sarajevo, Gorenje Bira Bihać, Šipad Sarajevo, Velepromet Visoko, Đuro Salaj Mostar) and Pamučni kombinat Vranje from Serbia. At least two basic banks could form an associated bank, while preserving their separate legal personality. In 1978, for instance, Ljubljanska Banka Sarajevo, Ljubljanska Banka Zagreb, Ljubljanska Banka Skopje and a number of other basic banks founded an associated bank – Ljubljanska Banka Ljubljana. Similarly, in 1978 Investbanka and some other basic banks founded Beogradska udružena Banka Beograd. In the SFRY there were more than 150 basic and 9 associated banks (Jugobanka Beograd, Beogradska Udružena Banka Beograd, Vojvođanska Banka Novi Sad, Kosovska Banka Priština, Udružena Banka Hrvatske Zagreb, Ljubljanska Banka Ljubljana, Privredna Banka Sarajevo, Stopanska Banka Skopje and Investiciona Banka Titograd).

5. Being hard-pressed for hard currency, the SFRY made it attractive for its expatriates and other citizens to deposit foreign currency with banks based in the SFRY. Such deposits earned high interest (the annual interest rate often exceeded 10%). Moreover, they were guaranteed by the State (see, for example, section 14(3) of the Foreign-Currency Transactions Act 1985[2] and section 76(1) of the Banks and Other Financial Institutions Act 1989[3]). The State guarantee was to be activated in case of the bankruptcy or "manifest insolvency" of a bank at the request of that bank (see section 18 of the Banks and Other Financial Institutions Insolvency Act 1989[4] and the

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[1] The concept of "social ownership", while it does exist in other countries, was particularly highly developed in the SFRY. For more information, see Medjad, *The fate of the Yugoslav model: A case against legal conformity*, American Journal of Comparative Law 52/1 (2004), pp. 287-319.

[2] *Zakon o deviznom poslovanju*, Official Gazette of the SFRY nos. 66/85, 13/86, 71/86, 2/87, 3/88, 59/88, 85/89, 27/90, 82/90 and 22/91.

[3] *Zakon o bankama i drugim finansijskim organizacijama*, Official Gazette of the SFRY nos. 10/89, 40/89, 87/89, 18/90, 72/90 and 79/90.

[4] *Zakon o sanaciji, stečaju i likvidaciji banaka i drugih finansijskih organizacija*, Official Gazette of the SFRY nos. 84/89 and 63/90.

relevant secondary legislation[5]). None of the banks under consideration in the present case made such a request. It should be emphasised that savers could not request the activation of the State guarantee on their own.

6. Beginning in the mid 1970s, the commercial banks incurred foreign-exchange losses because the dinar exchange rate depreciated. The SFRY therefore introduced a system for "redepositing" of foreign currency, allowing commercial banks to transfer citizens' foreign-currency deposits to the National Bank of Yugoslavia ("the NBY"), which assumed the currency risk (see section 51(2) of the Foreign-Currency Transactions Act 1977[6]). Although the system was optional, commercial banks did not have another option as they were not allowed to maintain foreign-currency accounts with foreign banks, as was necessary to make payments abroad, nor were they allowed to grant foreign-currency loans. Virtually all foreign currency was therefore redeposited with the NBY. It should be emphasised that such redepositing was as a rule a paper transaction: commercial banks actually transferred to the NBY less than USD 2 billion, but their claims against the NBY arising from that scheme amounted to USD 12 billion (see *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, §§ 36 and 39, ECHR 2008-...; see also decision AP 164/04 of the Constitutional Court of Bosnia and Herzegovina of 1 April 2006, § 53).

7. Commercial banks wishing to participate in the redepositing scheme had to sign agreements with the national banks in their territorial units (for example, Investbanka, based in Serbia, had such an agreement with the National Bank of Serbia). Pursuant to such agreements, commercial banks had to transfer all newly received foreign currency to the NBY. At first, Ljubljanska Banka Sarajevo made such transfers via Ljubljanska Banka Ljubljana (in accordance with a 1981 agreement between the National Bank of Bosnia and Herzegovina and Ljubljanska Banka Sarajevo). Later, it made such transfers directly (in accordance with a 1986 agreement between the same parties). Banks were granted dinar loans (initially, interest-free) in return for the value of the transferred foreign currency. The dinars thus received were then used by commercial banks to give credits, at interest rates below the rate of inflation, to their founders and other socially-owned companies headquartered, as a rule, in the same territorial unit (for instance, in the case of Ljubljanska Banka Sarajevo, such credits were given to Polietilenka Bihać, Gorenje Bira Bihać, Šipad Šator Glamoč, Bilećanka Bileća, UPI Sarajevo, Soko Komerc Mostar, Rudi Čajavec Banja Luka, Velepromet Visoko, and so on).

8. In accordance with the Civil Obligations Act 1978[7] savers were entitled to collect their deposits at any time, together with accrued interest, from commercial banks (see sections 1035 and 1045 of that Act). When a saver whose foreign currency had been redeposited with the NBY wished to withdraw foreign currency from his or her account with a commercial bank, the commercial bank would withdraw the same amount of foreign currency from the NBY and at the same time repay the amount of dinars actually received when redepositing that person's foreign

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[5] *Odluka o načinu izvršavanja obaveza Federacije po osnovu jemstva za devize na deviznim računima i deviznim štednim ulozima građana, građanskih pravnih lica i stranih fizičkih lica*, Official Gazette of the SFRY no. 27/90.

[6] *Zakon o deviznom poslovanju i kreditnim odnosima*, Official Gazette of the SFRY nos. 15/77, 61/82, 77/82, 34/83, 70/83 and 71/84.

[7] *Zakon o obligacionim odnosima*, Official Gazette of the SFRY nos. 29/78, 39/85, 45/89 and 57/89.

currency. Given the rapid inflation, the amount to be refunded by commercial banks was negligible.

9. In 1988 the redepositing system was brought to an end (by virtue of section 103 of the Foreign-Currency Transactions Act 1985, as amended on 15 October 1988). Banks were given permission to open foreign-currency accounts with foreign banks. Ljubljanska Banka Sarajevo, like other banks, seized that opportunity and deposited in total USD 13.5 million with foreign banks abroad in the period from October 1988 until December 1989.

10. Within the framework of the 1989/90 reforms, the SFRY abolished the system of basic and associated banks described above. This shift in the banking regulations allowed some basic banks to opt for an independent status, while other basic banks became branches (without legal personality) of the former associated banks to which they had formerly belonged. On 1 January 1990 Ljubljanska Banka Sarajevo thus became a branch (without separate legal personality) of Ljubljanska Banka Ljubljana and the latter took over the former's rights, assets and liabilities. By contrast, Investbanka became an independent bank with its headquarters in Serbia and a number of branches in Bosnia and Herzegovina (including the Tuzla branch at which Mr Šahdanović had accounts). Moreover, the convertibility of the dinar was declared and very favourable exchange rates were fixed by the NBY. It led to a massive withdrawal of foreign currency from commercial banks. The SFRY therefore resorted to emergency measures restricting to a large extent the withdrawals of foreign-currency deposits (see section 71 of the Foreign-Currency Transactions Act 1985, as amended on 21 December 1990, providing that as of 22 December 1990 savers could use their deposits to pay for imported goods or services for their own or close relatives' needs, to purchase foreign-currency bonds, to make testamentary gifts for scientific or humanitarian purposes, or to pay for life insurance with a local insurance company – before, savers could use their deposits also to pay for goods and services abroad; see also section 3 of a decision of the SFRY Government of April 1991, which was in force until 8 February 1992, and section 17c of a decision of the NBY of January 1991, which the Constitutional Court of the SFRY declared unconstitutional on 22 April 1992, limiting the amount which savers could withdraw or use for the above purposes to DEM 500 at a time, but not more than DEM 1,000 per month[8]). It would appear, however, that the above restrictions did not apply to SFRY citizens living abroad, such as the applicants in this case (see sections 8(6) and 17 of the decision of the NBY of 17 January 1991 mentioned above).

11. The dissolution of the SFRY took place in 1991/92: the dates of succession were 8 October 1991 in respect of Croatia and Slovenia, 17 November 1991 in respect of the former Yugoslav Republic of Macedonia, 6 March 1992 in respect of Bosnia and Herzegovina and 27 April 1992 in respect of the Federal Republic of Yugoslavia[9] (see Opinion No. 11 of the

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[8] *Odluka o načinu na koji ovlašćene banke izvršavaju naloge za plaćanje domaćih fizičkih lica devizama sa njihovih deviznih računa i deviznih štednih uloga*, Official Gazette of the SFRY nos. 28/91, 34/91, 64/91 and 9/92, and *Odluka o načinu vođenja deviznog računa i deviznog štednog uloga domaćeg i stranog fizičkog lica*, Official Gazette of the SFRY nos. 6/91, 30/91, 36/91 and 25/92.

[9] The Federal Republic of Yugoslavia was succeeded by Serbia in 2006.

Arbitration Commission of the International Conference on the Former Yugoslavia – "the Badinter Commission"[10]).

12. In all successor States, foreign currency deposited before the dissolution of the SFRY is commonly referred to as "old" foreign-currency savings.

2. Bosnia and Herzegovina

(a) Law and practice concerning "old" foreign-currency savings in general

13. In 1992 Bosnia and Herzegovina took over the statutory guarantee for "old" foreign-currency savings from the SFRY (see section 6 of the SFRY Legislation Application Act 1992[11]). According to the National Bank of Bosnia and Herzegovina, the guarantee covered "old" foreign-currency savings in domestic banks only (see its report 63/94 of 8 August 1994[12]).

14. While during the war all "old" foreign-currency savings remained frozen, withdrawals were exceptionally allowed on humanitarian grounds and in some other special cases (pursuant to decisions of the Presidency of the Republic of Bosnia and Herzegovina of February 1993[13], the National Bank of the Republika Srpska of June 1993[14] and the Parliament of the Republic of Bosnia and Herzegovina of March 1995[15], as amended in June 1995).

15. After the 1992-95 war, each of the Entities (the Federation of Bosnia and Herzegovina – "the FBH" – and the Republika Srpska) enacted its own legislation on "old" foreign-currency savings. Only the FBH legislation is relevant in the present case, given that the branches in issue are situated in that Entity. In 1997 the FBH assumed liability for "old" foreign-currency savings in banks and branches placed in its territory (see section 3(1) of the Claims Settlement Act

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[10] The Arbitration Commission of the International Conference on the Former Yugoslavia was set up by the European Community and its Member States in August 1991. It handed down fifteen opinions pertaining to legal issues arising from the dissolution of the SFRY (see International Law Reports 92 (1993), pp. 162-208, and 96 (1994), pp. 719-37).

[11] *Uredba sa zakonskom snagom o preuzimanju i primjenjivanju saveznih zakona koji se u Bosni i Hercegovini primjenjuju kao republički zakoni*, Official Gazette of the Republic of Bosnia and Herzegovina no. 2/92.

[12] A copy thereof was submitted to the Court by the Bosnia and Herzegovina authorities.

[13] *Odluka o uslovima i načinu isplata dinara po osnovu definitivne prodaje devizne štednje domaćih fizičkih lica i korišćenju deviza sa deviznih računa i deviznih štednih uloga domaćih fizičkih lica za potrebe liječenja i plaćanja školarine u inostranstvu*, Official Gazette of the Republic of Bosnia and Herzegovina no. 4/93.

[14] *Odluka o uslovima i načinu davanja kratkoročnih kredita bankama na osnovu definitivne prodaje deponovane devizne štednje građana i efektivno prodatih deviza od strane građana*, Official Gazette of the Republika Srpska nos. 10/93 and 2/94.

[15] *Odluka o ciljevima i zadacima monetarno-kreditne politike u 1995. godini*, Official Gazette of the Republic of Bosnia and Herzegovina nos. 11/95 and 19/95.

1997[16] and the Non-Residents' Claims Settlement Decree 1999[17]). Such savings remained frozen, but they could be used to purchase State-owned flats and companies under certain conditions (see section 18 of the Claims Settlement Act 1997, as amended in August 2004).

16. In 2004 the FBH enacted new legislation. It undertook to repay "old" foreign-currency savings in domestic banks in that Entity, regardless of the citizenship of the depositor concerned. Its liability for such savings in the local branches of Ljubljanska Banka Ljubljana and Investbanka were expressly excluded (see section 9(2) of the Settlement of Domestic Debt Act 2004[18]).

17. In 2006 the liability for "old" foreign-currency savings in domestic banks passed from the Entities to the State. Liability for such savings in the local branches of Ljubljanska Banka Ljubljana and Investbanka are again expressly excluded, but the State must help the clients of those branches to obtain the payment of their "old" foreign-currency savings from Slovenia and Serbia, respectively (section 2 of the Old Foreign-Currency Savings Act 2006[19]).

(b) Status of the Sarajevo branch of Ljubljanska Banka Ljubljana

18. As stated above, in January 1990 Ljubljanska Banka Sarajevo became a branch of Ljubljanska Banka Ljubljana and the latter took over the former's rights, assets and liabilities. Pursuant to the companies register, the Sarajevo branch acted on behalf and for the account of the parent bank.

19. A domestic bank, Ljubljanska Banka Sarajevo, was founded in 1993. It assumed the liability of Ljubljanska Banka Ljubljana for "old" foreign-currency savings at the Sarajevo branch and the related claims against the NBY. In 1994 the National Bank of Bosnia and Herzegovina carried out an inspection and noted many shortcomings. First of all, its management had not been properly appointed and it was not clear who its shareholders were. The National Bank therefore appointed a director of Ljubljanska Banka Sarajevo. Secondly, as a domestic bank, Ljubljanska Banka Sarajevo could not have assumed the liability of a foreign bank for foreign-currency savings, as this would impose new financial obligations on the State ("old" foreign-currency savings in the Sarajevo branch of the foreign Ljubljanska Banka Ljubljana would become a liability of a domestic bank and, by this mere fact, would be covered by the domestic guarantee for such savings). The National Bank ordered that a closing balance sheet for the Sarajevo branch of Ljubljanska Banka Ljubljana as at 31 March 1992 be drawn up urgently and that its relations with the headquarters be defined. However, this was not done. Ljubljanska

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[16] *Zakon o utvrđivanju i realizaciji potraživanja građana u postupku privatizacije*, Official Gazette of the Federation of Bosnia and Herzegovina nos. 27/97, 8/99, 45/00, 54/00, 32/01, 27/02, 57/03, 44/04, 79/07 and 65/09.

[17] *Uredba o ostvarivanju potraživanja lica koja su imala deviznu štednju u bankama na teritoriju Federacije Bosne i Hercegovine, a nisu imala prebivalište na teritoriju Federacije Bosne i Hercegovine,* Official Gazette of the Federation of Bosnia and Herzegovina no. 44/99.

[18] *Zakon o utvrđivanju i načinu izmirenja unutrašnjih obaveza Federacije Bosne i Hercegovine*, Official Gazette of the Federation of Bosnia and Herzegovina nos. 66/04, 49/05, 35/06, 31/08, 32/09 and 65/09.

[19] *Zakon o izmirenju obaveza po osnovu računa stare devizne štednje*, Official Gazette of Bosnia and Herzegovina nos. 28/06, 76/06 and 72/07.

Banka Sarajevo and the domestic authorities continued to act as if that bank were indeed the successor to the Sarajevo branch of Ljubljanska Banka Ljubljana: Ljubljanska Banka Sarajevo administered the savings of the customers of that branch and allowed withdrawals from the accounts at that branch on humanitarian grounds; similarly, customers of the Sarajevo branch used their savings in the privatisation process pursuant to the Claims Settlement Act 1997 in the FBH (as confirmed by the FBH Privatisation Agency in its letter to the Slovenian Embassy in Sarajevo of 26 July 2002[20]).

20. In 2003 the FBH Banking Agency placed the domestic Ljubljanska Banka Sarajevo under its provisional administration for the reason that it had undefined relations with the foreign Ljubljanska Banka Ljubljana.

21. On 11 November 2004 the Sarajevo Municipal Court decided that the domestic Ljubljanska Banka Sarajevo was not the successor to the Sarajevo branch of Ljubljanska Banka Ljubljana and was not liable for "old" foreign-currency savings in that branch.

22. In May 2006 Ljubljanska Banka Sarajevo sold its assets and let out on a five-year lease premises and equipment belonging to the Sarajevo branch of Ljubljanska Banka Ljubljana to Validus, an investment firm from Croatia. Validus, in return, undertook to pay debts of Ljubljanska Banka Sarajevo. The FBH Government then endorsed that agreement, while making it clear that all premises (including the premises let out to Validus) as well as the archives of Ljubljanska Banka Ljubljana's Sarajevo branch remained under the care of the FBH Ministry of Finance pending the final determination of the status of that branch.

23. Following failed attempts to liquidate the domestic Ljubljanska Banka Sarajevo, in February 2010 the competent court made a bankruptcy order against that bank. The bankruptcy proceedings are still pending.

(c) Status of the Tuzla branch of Investbanka

24. The Tuzla branch of Investbanka, unlike the Sarajevo branch of Ljubljanska Banka Ljubljana, has at all times had the status of a branch without legal personality. It would appear that it closed at the outset of the 1992-95 war and that it has never resumed its activities.

25. In January 2002 the competent court in Serbia made a bankruptcy order against Investbanka. The Serbian authorities then sold the premises of the Tuzla and other branches of Investbanka situated in the FBH (the premises of its branches situated in Republika Srpska had been sold already in 1999). The bankruptcy proceedings are still pending.

26. In April 2010 the FBH Government placed the premises and archives of the branches of Investbanka situated in the FBH under the care of the FBH Ministry of Finance until September 2011, but it would appear that Investbanka no longer has any premises or archives in the FBH.

3. Croatia

27. Croatia agreed to repay "old" foreign-currency savings of its citizens in domestic banks (including their foreign branches) and "old" foreign-currency savings which had been transferred from local branches of foreign banks to domestic banks at the savers' request (section 14 of the

[20] A copy thereof was submitted by the Slovenian Government (annex no. 18).

Old Foreign-Currency Savings Act 1993[21] and the relevant secondary legislation[22]). The Croatian Government stated that the legislation mentioned above also covered "old" foreign-currency savings of foreign citizens, but this is contrary to decisions of the Supreme Court of Croatia Rev 3015/1993-2 of March 1994 and Rev 3172/1995-2 and Rev 1747 /1995-2 of June 1996) [23] holding that *građanin*, the term used in that legislation, meant a Croatian citizen. It is therefore unclear on what basis the Croatian Government repaid "old" foreign-currency savings in Bosnian-Herzegovinian branches of Croatian banks: whether all the savers had Croatian citizenship or whether it was on the basis of an *ad hoc* agreement.

28. Some savers of Ljubljanska Banka Ljubljana's Zagreb branch have been successful in obtaining their "old" foreign-currency savings from a forced sale of assets of that branch located in Croatia (see decisions of the Osijek Municipal Court of 8 April 2005 and 15 June 2010)[24].

4. Serbia

29. Serbia undertook to repay "old" foreign-currency savings in local branches of domestic banks of its citizens and of citizens of all States other than the successor States of the SFRY. Savings of citizens of other successor States in local branches of domestic banks and savings in domestic banks' branches in other successor States remained frozen pending the succession negotiations (section 21 of the Old Foreign-Currency Savings Act 2002[25]). All proceedings concerning "old" foreign-currency savings ceased by virtue of law (section 36 of that Act).

30. In January 2002 a court in Serbia made a bankruptcy order against Investbanka. As a result, the State guarantee on "old" foreign-currency savings was activated (see section 18 of the Banks and Other Financial Institutions Insolvency Act 1989 and section 135 of the Foreign-Currency Transactions Act 1995[26]). The bankruptcy proceedings are still pending.

5. Slovenia

31. Slovenia agreed to repay "old" foreign-currency savings in domestic banks and local branches of foreign banks, regardless of the citizenship of the savers (section 1 of the Old Foreign-Currency Savings Act 1993[27]).

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[21] *Zakon o pretvaranju deviznih depozita građana u javni dug Republike Hrvatske*, Official Gazette of the Republic of Croatia no. 106/93.

[22] *Pravilnik o utvrđivanju uvjeta i načina pod kojima građani mogu prenijeti svoju deviznu štednju s organizacijske jedinice banke čije je sjedište izvan Republike Hrvatske na banke u Republici Hrvatskoj*, Official Gazette of the Republic of Croatia no. 19/94.

[23] A copy thereof was submitted by the Slovenian Government (annexes nos. 242-44).

[24] A copy thereof was submitted by the Slovenian Government (annexes nos. 273-74).

[25] *Zakon o regulisanju javnog duga Savezne Republike Jugoslavije po osnovu devizne štednje građana*, Official Gazette of the Federal Republic of Yugoslavia no. 36/02.

[26] *Zakon o deviznom poslovanju*, Official Gazette of the Federal Republic of Yugoslavia nos. 12/95, 29/97, 44/99, 74/99 and 73/00).

[27] *Zakon o poravnavanju obveznosti iz neizplačanih deviznih vlog*, Official Gazette of the Republic of Slovenia no. 7/93.

32. After fruitless attempts to register the Sarajevo branch of Ljubljanska Banka Ljubljana as a separate bank (see the correspondence between the NBY and the National Bank of Bosnia and Herzegovina of October 1991 stressing the unlawfulness of such proposals because Slovenia had meanwhile become an independent State and Ljubljanska Banka Ljubljana a foreign bank[28]), Slovenia first nationalised and then, in 1994, restructured Ljubljanska Banka Ljubljana itself[29]. A new bank, Nova Ljubljanska Banka, took over the old Ljubljanska Banka's domestic assets and liabilities. The old Ljubljanska Banka retained the liability for "old" foreign-currency savings in its branches in the other successor States and the related claims against the NBY.

33. In 1997 all proceedings concerning "old" foreign-currency savings in the old Ljubljanska Banka's branches in the other successor States were stayed pending the outcome of the succession negotiations[30]. In December 2009 the Slovenian Constitutional Court, upon a constitutional initiative of two savers at the Zagreb branch of the old Ljubljanska Banka, declared that measure unconstitutional[31]. More than 70 sets of proceedings concerning "old" foreign-currency savings in the old Ljubljanska Banka's Sarajevo and Zagreb branches were then resumed. They are still pending.

6. The former Yugoslav Republic of Macedonia

34. This respondent State agreed to repay "old" foreign-currency savings in domestic banks and local branches of foreign banks, regardless of the citizenship of the savers[32].

C. Relevant international law and practice

1. Relevant international law concerning State succession

35. The matter of State succession is regulated by customary rules, partly codified in the 1978 Vienna Convention on Succession of States in respect of Treaties and the 1983 Vienna

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[28] A copy thereof was submitted by the Bosnia and Herzegovina authorities.

[29] *Ustavni zakon o dopolnitvah ustavnega zakona za izvedbo Temeljne ustavne listine o samostojnosti in neodvisnosti Republike Slovenije*, Official Gazette of the Republic of Slovenia no. 45/94.

[30] *Zakon o dopolnitvah zakona o Skladu Republike Slovenije za sukcesijo*, Official Gazette of the Republic of Slovenia no. 40/97.

[31] Official Gazette of the Republic of Slovenia no. 105/09.

[32] *Закон за преземање на депонираните девизни влогови на граѓаните од страна на Република Македонија*, "Official Gazette of the Republic of Macedonia" no. 26/92; *Закон за гаранција на Република Македонија за депонираните девизни влогови на граѓаните и за обезбедување на средства и начин за исплата на депонираните девизни влогови на граѓаните во 1993 и 1994*, "Official Gazette of the Republic of Macedonia" nos. 31/93, 70/94, 65/95 and 71/96; and *Закон за начинот и постапката на исплатување на депонираните девизни влогови на граѓаните по кои гарант е Република Македонија*, "Official Gazette of the Republic of Macedonia" nos. 32/00, 108/00, 4/02 and 42/03.

Convention on Succession of States in respect of State Property, Archives and Debts[33]. Although the latter treaty is not yet in force and only three respondent States are parties to it as of today (Croatia, Slovenia and the former Yugoslav Republic of Macedonia), it is a well-established principle of international law that, even if a State has not ratified a treaty, it may be bound by one of its provisions in so far as that provision reflects customary international law, either codifying it or forming a new customary rule (see *Cudak v. Lithuania* [GC], no. 15869/02, § 66, 23 March 2010, and judgment of the International Court of Justice in the *North Sea Continental Shelf Cases* of 20 February 1969, § 71).

36. The fundamental rule is that States must together settle all aspects of succession by agreement (see Opinion No. 9 of the Badinter Commission, § 4, and Article 6 of the 2001 Guiding Principles on State Succession in Matters of Property and Debts of the Institute of International Law). If one of the States concerned refused to cooperate, it would be in breach of that fundamental obligation and would be liable internationally (see Opinion No. 12 of the Badinter Commission, § 2). While it is not required that each category of property and debts of a predecessor State be divided in equitable proportions, an overall outcome must be an equitable division (Article 41 of the 1983 Vienna Convention; Opinion No. 13 of the Badinter Commission; and Articles 8, 9 and 23 of the 2001 Guiding Principles).

2. Agreement on Succession Issues

37. This Agreement was the result of nearly ten years of intermittent negotiations under the aegis of the International Conference on the former Yugoslavia and the High Representative (appointed pursuant to Annex 10 to the General Framework Agreement for Peace in Bosnia and Herzegovina). It was signed on 29 June 2001 and entered into force between Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia (succeeded in 2006 by Serbia), Slovenia and the former Yugoslav Republic of Macedonia on 2 June 2004.

38. The issue of "old" foreign-currency savings was a contentious one. First, the successor States had different views as to whether that issue should be dealt with as a private-law issue between savers and banks under Annex G (Private Property and Acquired Rights) or as a financial liability of the SFRY under Annex C (Financial Assets and Liabilities). The latter view eventually prevailed[34]. Second, the successor States could not agree whether the guarantees of the SFRY of "old" foreign-currency savings should be taken over by the State in which the bank in issue had its head office or by the State in the territory of which the deposit had been made. That question was eventually left open, but the successor States agreed to negotiate it, without delay, under the auspices of the Bank for International Settlements ("the BIS"). The relevant provisions of the Agreement read as follows:

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[33] On 24 October 1983 the SFRY signed that treaty. By a notification dated 8 March 2001, received by the UN Secretary-General on 12 March 2001, the Government of the Federal Republic of Yugoslavia lodged an instrument advising its intent to maintain the signature made by the SFRY. In 2006 the Federal Republic of Yugoslavia was succeeded by Serbia.

[34] See the *travaux préparatoires* of the Agreement submitted by the Slovenian Government (annexes nos. 265-70).

Article 2 § 3 (a) of Annex C

"Other financial liabilities [of the SFRY] include:

(a) guarantees by the SFRY or its National Bank of Yugoslavia of hard currency savings deposited in a commercial bank and any of its branches in any successor State before the date on which it proclaimed independence; ..."

Article 7 of Annex C

"Guarantees by the SFRY or its NBY of hard currency savings deposited in a commercial bank and any of its branches in any successor State before the date on which it proclaimed its independence shall be negotiated without delay taking into account in particular the necessity of protecting the hard currency savings of individuals. This negotiation shall take place under the auspices of the Bank for International Settlements."

39. In 2001/2 four rounds of negotiations regarding the distribution of the SFRY's guarantees of "old" foreign-currency savings were held. As the successor States could not reach an agreement, in September 2002 the BIS informed them that the expert, Mr Hans Meyer, had decided to terminate his involvement in the matter and that the BIS had therefore no further role to play in this regard. It concluded as follows:

"If, however, all five successor States were to decide at a later stage to enter into new negotiations about guarantees of hard currency savings deposits and were to seek the BIS' assistance in this regard, the BIS would be prepared to give consideration to providing such assistance, under conditions to be agreed."[35]

It would appear that four successor States (all but Croatia) notified the BIS of their willingness to continue the negotiations shortly thereafter. Croatia did so in October 2010 and received a response in November 2010 which, in so far as relevant, reads as follows:

"...the BIS did recently reconsider this issue and believes that its contribution to any new round of negotiations, as part of a good offices role, could not bring added value, also bearing in mind the amount of time which lapsed since the last round of negotiations, as well as its current priorities in the field of monetary and financial stability. However, we would like to emphasise that the organisation of the bi-monthly meetings in Basel offers the practical opportunity for the governors of the successor States to discuss this matter between them on an informal basis at the BIS."[36]

40. It should be noted that a comparable issue of the SFRY's guarantees of savings deposited with the Post Office Savings Bank and its branches had been settled outside the negotiations of the Agreement on Succession Issues, in that each of the States had taken over the guarantees as to the branches in its territory.

41. Pursuant to Article 4 of this Agreement, a Standing Joint Committee of senior representatives of the successor States was established to monitor the effective implementation of the Agreement and to serve as a forum in which issues arising in the course of its implementation could be discussed. It has so far met three times: in Skopje in 2005, in Ljubljana in 2007 and in Belgrade in 2009. It would appear that Slovenia requested every time that the question of "old" foreign-currency savings be put on the agenda and that the other successor States rejected that request. The fourth meeting of the Standing Joint Committee was to be held in Sarajevo in 2010, but it would appear that it has not yet taken place.

42. The following provisions of this Agreement are also relevant in this case:

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[35] A copy of that letter was submitted by the Croatian Government.

[36] A copy of that letter was submitted by the Croatian Government.

Article 5

"(1) Differences which may arise over the interpretation and application of this Agreement shall, in the first place, be resolved in discussion among the States concerned.

(2) If the differences cannot be resolved in such discussions within one month of the first communication in the discussion the States concerned shall either

(a) refer the matter to an independent person of their choice, with a view to obtaining a speedy and authoritative determination of the matter which shall be respected and which may, as appropriate, indicate specific time-limits for actions to be taken; or

(b) refer the matter to the Standing Joint Committee established by Article 4 of this Agreement for resolution.

(3) Differences which may arise in practice over the interpretation of the terms used in this Agreement or in any subsequent agreement called for in implementation of the Annexes to this Agreement may, additionally, be referred at the initiative of any State concerned to binding expert solution, conducted by a single expert (who shall not be a national of any party to this Agreement) to be appointed by agreement between the parties in dispute or, in the absence of agreement, by the President of the Court of Conciliation and Arbitration within the OSCE. The expert shall determine all questions of procedure, after consulting the parties seeking such expert solution if the expert considers it appropriate to do so, with the firm intention of securing a speedy and effective resolution of the difference.

(4) The procedure provided for in paragraph (3) of this Article shall be strictly limited to the interpretation of terms used in the agreements in question and shall in no circumstances permit the expert to determine the practical application of any of those agreements. In particular the procedure referred to shall not apply to

(a) The Appendix to this Agreement;

(b) Articles 1, 3 and 4 of Annex B;

(c) Articles 4 and 5(1) of Annex C;

(d) Article 6 of Annex D.

(5) Nothing in the preceding paragraphs of this Article shall affect the rights or obligations of the Parties to the present Agreement under any provision in force binding them with regard to the settlement of disputes."

Article 9

"This Agreement shall be implemented by the successor States in good faith in conformity with the Charter of the United Nations and in accordance with international law."

3. International practice concerning a pactum de negotiando *in inter-State cases*

43. The obligation flowing from a *pactum de negotiando*, to negotiate with a view to concluding an agreement, must be fulfilled in good faith according to the fundamental principle *pacta sunt servanda*.

44. The International Court of Justice stated in its judgment of 20 February 1969 in the *North Sea Continental Shelf Cases* (§ 85):

"...the parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modifications of it..."

45. The decision of the Arbitral Tribunal for the Agreement on German External Debts in the case of Greece v. the Federal Republic of Germany of 26 January 1972 reads, in so far as relevant, as follows (§§ 62-65):

"However, a *pactum de negotiando* is also not without legal consequences. It means that both sides would make an effort, in good faith, to bring about a mutually satisfactory solution by way of a compromise, even if that meant the relinquishment of strongly held positions earlier taken. It implies a willingness for the purpose of negotiation to abandon earlier positions and to meet the other side part way. The language of the Agreement cannot be construed to mean that either side intends to adhere to its previous stand and to insist upon the complete capitulation of the other side. Such a concept would be inconsistent with the term 'negotiation'. It would be the very opposite of what was intended. An undertaking to negotiate involves an understanding to deal with the other side with a view to coming to terms. Though the Tribunal does not conclude that Article 19 in connection with paragraph II of Annex I absolutely obligates either side to reach an agreement, it is of the opinion that the terms of these provisions require the parties to negotiate, bargain, and in good faith attempt to reach a result acceptable to both parties and thus bring an end to this long drawn out controversy...

The agreement to negotiate the disputed monetary claims, in this case, necessarily involves a willingness to consider a settlement. This is true, even though the dispute extends not only to the amount of the claims but to their existence as well. The principle of settlement is not thereby affected. Article 19 does not necessarily require that the parties resolve the various legal questions on which they have disagreed. For example, it does not contemplate that both sides are expected to see eye to eye on certain points separating them, such as whether the disputed claims legally exist or not, or whether they are government or private claims. As to these points, the parties, in effect, have agreed to disagree but, notwithstanding their contentions with regard to them, they did commit themselves to pursue negotiations as far as possible with a view to concluding an agreement on a settlement...

The Tribunal considers that the underlying principle of the *North Sea Continental Shelf Cases* is pertinent to the present dispute. As enunciated by the International Court of Justice, it confirms and gives substance to the ordinary meaning of 'negotiation'. To be meaningful, negotiations have to be entered into with a view to arriving at an agreement. Though, as we have pointed out, an agreement to negotiate does not necessarily imply an obligation to reach an agreement, it does imply that serious efforts towards that end will be made."

COMPLAINT

46. The applicants complained that they were still not able to withdraw their "old" foreign-currency savings from their accounts at Ljubljanska Banka Ljubljana's Sarajevo branch and Investbanka's Tuzla branch. They relied on various Articles of the Convention.

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47. Although the applicants relied on various Articles of the Convention, the Court considers that the application falls to be examined under Article 1 of Protocol No. 1 taken alone and in conjunction with Articles 13 and 14.

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

Article 13 provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 14 provides:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Preliminary remarks

48. It is noted that the Court has already dealt with various aspects of the issue of "old" foreign-currency savings in the following cases: *Trajkovski v. "the former Yugoslav Republic of Macedonia"* (dec.), no. 53320/99, ECHR 2002-IV, concerning a Macedonian bank; *Kovačić and Others*, cited above, concerning the Zagreb branch of Ljubljanska Banka Ljubljana; *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, 3 November 2009, concerning a Bosnian-Herzegovinian bank; and *Molnar Gabor v. Serbia*, no. 22762/05, 8 December 2009, concerning a Serbian bank).

49. Turning to the present case, the Slovenian Government argued that the applicants had failed to prove that they had not withdrawn their savings or that they had not used them in the privatisation process in Bosnia and Herzegovina or that they had not otherwise obtained payment. They referred to two similar cases (*Kovačić and Others*, cited above, and *Višnjevac v. Bosnia and Herzegovina* (dec.), no. 2333/04, 24 October 2006) in which the applicants had been repaid their "old" foreign-currency savings in the Sarajevo and Zagreb branches of Ljubljanska Banka Ljubljana. Given the applicants' response, the comments of the Governments of Bosnia and Herzegovina and Serbia, and the documents in the file, the Court sees no reason to doubt that the applicants still have "old" foreign-currency savings in the amounts indicated in paragraph 3 above.

B. Jurisdiction *ratione materiae*

1. The parties' submissions

50. The Slovenian Government argued that the applicants did not have "possessions" within the meaning of Article 1 of Protocol No. 1, but a mere hope of recognition of the survival of an old property right which had long been impossible to exercise effectively, on the grounds that the SFRY had applied emergency measures that significantly restricted the withdrawal of foreign-currency savings as early as 1990/91. They added that the conditions for the activation of the State guarantee on foreign-currency savings in the banks in issue had not been met before the dissolution of the SFRY. What is more, even if those conditions had been met, the applicants would not have had an individual claim against the SFRY under the SFRY law (in other words, the SFRY guarantee could not have been enforced by the savers themselves, but only by insolvent or bankrupt banks). Therefore, no financial obligations towards the applicants could have passed to the successor States following the dissolution of the SFRY (even assuming that there was automatic succession in respect of financial obligations of dissolved States, which was not the case in the opinion of the Slovenian Government). Nor did the duty of the successor States to negotiate the distribution of the SFRY's guarantee of "old" foreign-currency savings, arising from international law and the Agreement on Succession Issues in particular, create an individual right for the applicants to obtain the payment of their savings from Slovenia.

The submissions of the Serbian Government were in line with those of the Slovenian Government. In contrast, by referring to *Suljagić*, cited above, the remaining Governments submitted that the applicants' savings undoubtedly constituted "possessions" within the meaning of Article 1 of Protocol No. 1.

51. The applicants admitted that they had not been able to use their "old" foreign-currency savings in any meaningful way since 1990/91 and that they had been in a contractual relation with their banks only, as opposed to the SFRY. However, they argued that their claims had nevertheless survived.

2. The Court's assessment

52. In accordance with the Court's established case-law, Article 1 of Protocol No. 1 does not guarantee the right to acquire property (see *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II). An applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his "possessions" within the meaning of this provision. The concept of "possessions" has an autonomous meaning which is not limited to the ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 63, ECHR 2007-I, and the authorities cited therein).

53. The applicants in the present case, upon depositing foreign currency with commercial banks, acquired an entitlement to collect at any time their deposits, together with accumulated interest, from the banks (see paragraphs 5 and 8 above). While it is true that the SFRY and its commercial banking sector had difficulties in honouring their financial obligations from late 1990 onwards and the SFRY had to apply emergency measures restricting significantly the withdrawals of foreign-currency deposits, the Court agrees with the applicants that their claims have nevertheless subsisted for the following reasons.

54. The legislation of the successor States has never extinguished the applicants' claims or deprived them of legal validity in any other manner and there has never been any doubt that some or all of those States will in the end have to repay the applicants. Indeed, the successor States have on many occasions clearly demonstrated their unequivocal commitment to ensuring that those in the present applicants' situation obtain the payment of their "old" foreign-currency savings in one way or another (contrast *Bata v. the Czech Republic* (dec.), no. 43775/05, 24 June 2008, where the respondent State has never demonstrated any sign of acceptance or acknowledgment of the applicant's claim and has remained hostile to all such claims since the fall of the communist regime). Moreover, those States have accepted that the "old" foreign-currency savings were part of the financial liabilities of the SFRY which they should divide, as they divided other financial liabilities and assets of the SFRY (see paragraph 38 above). Given the special features of this case, it must be distinguished from cases such as *X, Y and Z v. Germany* (no. 7694/76, Commission decision of 14 October 1977, Decisions and Reports (DR) 12, p. 131), *S.C. v. France* (no. 20944/92, Commission decision of 20 February 1995, DR 80, p. 78), and *Abraini Leschi and Others v. France* (no. 37505/97, Commission decision of 22 April 1998, DR 93, p. 120) in which it was held that the impugned international treaties, in the absence

of any implementing legislation, had not created individual rights to compensation for the applicants which could fall within the scope of Article 1 of Protocol No. 1.

55. The present case must also be distinguished from the cases regarding the effect of inflation on national-currency savings in which the Court held that Article 1 of Protocol No. 1 did not impose any general obligation on States to maintain the purchasing power of sums deposited with banks by way of a systematic indexation of savings (see *Rudzińska v. Poland* (dec.), no. 45223/99, ECHR 1999-VI; *Gayduk and Others v. Ukraine* (dec.), nos. 45526/99, 46099/99, 47088/99, 47176/99, 47177/99, 48018/99, 48043/99, 48071/99, 48580/99, 48624/99, 49426/99, 50354/99, 51934/99, 51938/99, 53423/99, 53424/99, 54120/00, 54124/00, 54136/00, 55542/00 and 56019/00, ECHR 2002-VI; *Appolonov v. Russia* (dec.), no. 67578/01, 29 August 2002; and *Kireev v. Moldova and Russia* (dec.), no. 11375/05, 1 July 2008), in that the present case does not concern the purchasing power or indexation, but a general access to the applicants' savings.

56. The Court concludes that this objection of the Serbian and Slovenian Governments must thus be dismissed.

C. Jurisdiction *ratione personae* and *ratione loci*

1. The parties' submissions

57. The respondent States maintained that the applicants were not within their jurisdiction, but within the jurisdiction of another respondent State on various grounds, such as the location of the branch in question and the head office of the parent bank as well as the private-law nature of the relationship between savers and banks.

The applicants responded that all the States, as the successors of the SFRY, were responsible for this succession issue.

2. The Court's assessment

58. As regards the argument of some respondent States that the issue of "old" foreign-currency savings was not a succession issue, but a private-law issue, the Court notes that that proposition has already been considered in the context of the respondent States' succession negotiations and they have accepted that the "old" foreign-currency savings were part of the SFRY's financial liabilities which they should share (paragraph 38 above). Given also the obligation of the respondent States to together settle all aspects of succession by agreement (see paragraph 36 above), this objection must be dismissed.

D. Jurisdiction *ratione temporis*

1. The parties' submissions

59. The Croatian, Serbian and Slovenian Governments maintained that the case concerned events which had taken place before the entry into force of the Convention and Protocol No. 1 in respect of them. The applicants stated that the impugned situation was of a continuing nature.

2. The Court's assessment

60. In accordance with its established case-law, the temporal jurisdiction of the Court covers only the period after the ratification of the Convention or its Protocols by the respondent State.

From the ratification date onwards, all the State's alleged acts and omissions must conform to the Convention or its Protocols, and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation. Accordingly, the Court is competent to examine the facts of the present case for their compatibility with the Convention and Protocol No. 1 only in so far as they occurred after 28 June 1994 as regards Slovenia, 10 April 1997 as regards the former Yugoslav Republic of Macedonia, 5 November 1997 as regards Croatia, 12 July 2002 as regards Bosnia and Herzegovina and 3 March 2004 as regards Serbia. It may, however, have regard to facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *Broniowski v. Poland* (dec.) [GC], no. 31443/96, § 74, ECHR 2002-X). The Court is obliged to examine its competence *ratione temporis* of its own motion, even in the absence of a plea of incompatibility (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III).

61. Turning to the present case, the Court notes that the applicants did not complain of the SFRY's emergency measures limiting the withdrawals of foreign-currency deposits in 1990/91 or the domestic legislation of the respondent States assuming liability for "old" foreign-currency savings in certain commercial banks under certain conditions. Nor is this case about any single specific decision or measure taken before the critical dates. The applicants indeed complained about the respondent States' failure to settle the succession issue of the "old" foreign-currency savings of those who, like the present applicants, had placed their money in branches situated in one former Republic of the SFRY of parent banks based in another former Republic. Given that both the applicants' claims and the respondent States' obligation to settle this issue continue to exist (see paragraphs 53-54 above), the Court dismisses this objection.

E. Exhaustion of domestic remedies

1. The parties' submissions

62. The Macedonian Government stated, without going into any details, that the applicants had failed to exhaust all domestic remedies.

The Slovenian Government maintained that the applicants should have brought an action against the Republic of Slovenia before the Ljubljana District Court. In case of a negative decision on the merits or a decision to stay such proceedings (see paragraph 33 above), they would have at their disposal a constitutional complaint. The Slovenian Government submitted a copy of a first-instance judgment of the Ljubljana District Court of 9 March 2011 in the case of Mr Andro Perić and Mr Alan Perić (with deposits at Ljubljanska Banka Ljubljana's Zagreb branch) against the old Ljubljanska Banka, Nova Ljubljanska Banka and the State. The court ordered the old Ljubljanska Banka to pay Mr Andro Perić and Mr Alan Perić their "old" foreign-currency savings and dismissed their claims against Nova Ljubljanska Banka and the Republic of Slovenia. The judgment is subject to appeal.

The Serbian Government were also of the opinion that the applicants had failed to exhaust all domestic remedies. They added that Mr Šahdanović should have registered his claim against Investbanka in the bankruptcy proceedings.

In contrast, the Governments of Bosnia and Herzegovina and Croatia maintained that there were no effective remedies at the applicants' disposal, given notably the statutory stay on proceedings concerning "old" foreign-currency savings in the Investbanka and Ljubljanska Banka Ljubljana branches located in other successor States (see paragraphs 29 and 33 above).

The Croatian Government also stated that even if the applicants obtained a judgment ordering the old Ljubljanska Banka to pay them their savings, it would most likely not be enforced because the 1994 legislation had left the old Ljubljanska Banka with limited assets (see paragraph 32 above).

The applicants agreed with the Governments of Bosnia and Herzegovina and Croatia.

2. The Court's assessment

63. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the European Court for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13, that the domestic system provides an effective remedy in respect of the alleged breach. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there were special circumstances absolving him or her from the requirement (see, amongst many other authorities, *T. v. the United Kingdom* [GC], no. 24724/94, § 55, 16 December 1999). It should be reiterated that, although there may be exceptions justified by the particular circumstances of each case, the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V, and *Babylonová v. Slovakia*, no. 69146/01, § 44, ECHR 2006-VIII).

64. The Court has also held that in cases concerning the redistribution of liability for "old" foreign-currency savings among the successor States of the SFRY, such as the present case, claimants can reasonably be expected to seek redress in fora where other claimants have been successful located in any of the successor States (see *Kovačić and Others*, cited above, § 265).

65. The Court notes that this question goes to the heart of the Article 13 complaint. It would thus be more appropriately examined at the merits stage (compare *Broniowski*, cited above, § 86).

F. Compliance with Article 1 of Protocol No. 1 of the Convention taken alone and in conjunction with Articles 13 and 14

66. As regards compliance with Article 1 of Protocol No. 1 taken alone and in conjunction with Articles 13 and 14, the Court considers, in the light of the parties' submissions, that the application raises serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits.

67. No other ground for declaring the application inadmissible has been established.

For these reasons, the Court unanimously

Joins to the merits the question of the exhaustion of domestic remedies;

Declares the application admissible, without prejudging the merits of the case.

Lawrence Early
Registrar

Nicolas Bratza
President