SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 17224/03
by Gavrilo NIKAČ
against Serbia

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

Françoise Tulkens, *President,*
Danutė Jočienė,
David Thór Björgvinsson,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Guido Raimondi, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 15 May 2003,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Gavrilo Nikač, is a Montenegrin national who was born in 1932 and lives in Tivat. He was represented before the Court by Ms D. Kisjelica, a lawyer practising in Herceg Novi. The Government of the State Union of Serbia and Montenegro and, subsequently, the Government of Serbia ("the Government") were represented by their Agent, Mr S. Carić.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Relevant background to the applicant's case

3. Problems resulting from the foreign and domestic debt of the SFRY caused a monetary crisis in the 1980s. Once the banking and monetary systems were on the verge

of collapse, the SFRY took emergency measures including legislative restrictions on the repayment of foreign-currency deposits to individuals. Following the dissolution of the SFRY, the statutory guarantees were taken over by the successor States.

4. In April 1992 the Republic of Serbia and the Republic of Montenegro proclaimed the Federal Republic of Yugoslavia ("FRY"), the legal predecessor of the State Union of Serbia and Montenegro (which was itself proclaimed in February 2003). In June 2006 Montenegro declared its independence, while the Republic of Serbia remained the sole successor of its predecessor's states.

5. In a series of specific acts adopted in the 1990s, 2001 and 2002, the FRY accepted to convert the foreign currency deposited in these banks, including the bank here at issue, prior to 18 March 1995 into a "public debt" and then went on to set the time-frame and the amounts to be paid back to their former clients (initially by 2012 and then by 2016). According to the law of 2002, the said public debt should be the debt of the Republic of Serbia and the Republic of Montenegro, respectively, proportionally based on the total amount of savings deposited by the bank's clients with a registered residence in each of the republics (see paragraph 27 below). The said laws also explicitly provided that foreign currency related judicial enforcement proceedings against the banks in question were to be discontinued (see paragraphs 25 and 28 below).

2. Relevant facts of the applicant's case

6. On a number of separate occasions in the 1970s the applicant deposited a significant amount of his foreign currency savings with the Slavija Bank, a State-owned bank based in Belgrade.

7. In 1982 the said bank refused to release the applicant's funds.

8. On 3 February 1992 the applicant issued legal proceedings, seeking that his foreign currency deposits be released together with the interest stipulated. (At the time, the bank in question was already restructured and renamed as the "Belgrade Bank - main branch Slavija Bank".)

9. On 1 June 1992 the First Municipal Court in Belgrade ruled in favour of the applicant and ordered the bank to pay him 26,526.42 US Dollars ("USD"), 270.29 German Marks ("DEM") and 324.06 Austrian Schillings ("ATS"), together with the interest due and the legal costs.

10. On 29 September 1992 this judgment was upheld on appeal by the District Court and thereby became final.

11. On 14 December 1992 and 25 January 1993, the applicant sent two separate letters to the bank in question requesting payment within a period of 15 days, pursuant to the final judgment of the First Municipal Court.

12. Having apparently received no response, on 2 June 1993 he instituted formal enforcement proceedings before the Fourth Municipal Court in Belgrade.

13. On 4 June 1993 the Fourth Municipal Court adopted an enforcement order against the respondent bank and, on 1 September 1993, rejected the bank's complaint against it.

14. On 12 August 1994 the Government of the Federal Republic of Yugoslavia allegedly adopted a decision instructing the courts not to enforce judgments against banks in cases concerning foreign currency savings.

15. On 10 October 2001 the Commercial Court in Belgrade opened insolvency proceedings (*stečajni postupak*) in respect of the "Belgrade Bank - main branch Slavija Bank".

16. On 8 July 2002 the applicant sent three separate letters to the Government of the Federal Republic of Yugoslavia, the Yugoslav Central Bank and the Government of the Republic of Serbia, requesting that the judgment against the bank in question be enforced.

17. On 18 July 2002 the Yugoslav Central Bank responded by stating that, in a series of Acts adopted in the 1990s, 2001 and 2002, the State accepted to convert the foreign currency deposits in a number of failed banks, including the Slavija Bank, into a "public debt", and then went on to set out the time-frame and the amounts to be paid back to their former clients. It further noted that the said Acts provided that any judicial enforcement proceedings instituted with respect to the banks in question were to be discontinued (*obustavljeni*).

18. On 3 June 2004 the applicant filed another enforcement request with the Fourth Municipal Court.

19. On 4 June 2004 he sent a letter to the Supreme Court of Serbia, requesting enforcement of the final judgment adopted by the First Municipal Court.

20. On 3 September 2004 the Fourth Municipal Court suspended the enforcement proceedings (*prekinuo izvršni postupak*) and, in so doing, held that the reason for this was the opening of a separate insolvency procedure in respect of the bank in question by the Commercial Court on 10 October 2001.

21. The applicant subsequently filed two complaints against this decision with the Fourth Municipal Court, on 14 September 2004 and 8 November 2004 respectively, requesting an "explanation" as to why the judgment in question "was not enforced prior to the opening of the said insolvency proceedings".

22. There is no information in the case file that, following the adoption of the relevant legislation, the applicant had requested the conversion of the foreign currency savings deposited with the Slavija Bank into the public debt either from the respondent State or Montenegro, the country of his habitual residence.

B. Relevant domestic law

1. *Act on the Settlement of Obligations Arising from the Citizens' Foreign Currency Savings (Zakon o izmirenju obaveza po osnovu devizne štednje građana; published in the Official Gazette of the Federal Republic of Yugoslavia - OG FRY - nos. 59/98, 44/99 and 53/01)*

23. Articles 1, 2, 3 and 4 provided that all foreign currency savings deposited with the "authorised banks" before 18 March 1995, including explicitly the deposits in the bank at issue in the present case (Slavija Bank), were to become public debts.

24. Under Article 10, the State's responsibility in that respect was to be fully honoured by 2012 through the payment of specified amounts, plus interest, and according to a certain time-frame.

25. Article 22 provided that, as of the date of this Act's entry into force (12 December 1998), "all pending lawsuits, including judicial enforcement proceedings, aimed at the collection of the foreign currency covered by this Act shall be discontinued."

2. Act on the Settlement of the Public Debt of the Federal Republic of Yugoslavia Arising from the Citizens' Foreign Currency Savings (Zakon o regulisanju javnog duga Savezne Republike Jugoslavije po osnovu devizne štednje građana; published in OG FRY no. 36/02)

26. This Act repeals the Act described above. It modifies the time-frame for honouring the debt in question (from 2012 to 2016) and specifies amended amounts, plus interest, to be paid annually.

27. Article 3 states that the said public debt shall be the debt of the Republic of Serbia and the Republic of Montenegro, respectively, proportionally based on the total amount of savings deposited by the bank's clients with a registered residence in each of the republics ("*srazmerno visini devizne štednje građana čije je prebivalište na teritoriji tih republika*").

28. Article 36 reaffirms that "all lawsuits aimed at the collection of the foreign currency savings covered by this Act, including the judicial enforcement proceedings, shall be discontinued."

29. This Act has also been in force since 4 July 2002. It was subsequently amended on two occasions, but these amendments concerned peripheral issues unrelated to the saver's above-described status.

3. The Act on Foreign-Currency Savings Deposited with the Authorised Banks based outside Montenegro (Zakon o isplati devizne štednje građana položene kod ovlašćenih banka sa sjedištem van Crne Gore; published in the OG RM no. 81/06 and 20/09)

30. Articles 1, 2 and 3 provide that this Act shall regulate the reimbursement of foreign-currency savings deposited by individuals residing in Montenegro with the authorised banks based outside Montenegro, which funds were then further deposited with the National Bank of Yugoslavia (*Narodna banka Jugoslavije*).

31. Article 8 provides that Montenegro shall honour this debt by 2017, and specifies the amounts, plus 2% interest, to be paid annually in euros.

THE LAW

32. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the final judgment rendered in his favour on 1 June 1992.

33. The Government submitted that the applicant's complaints were incompatible *ratione temporis* or *ratione personae,* as well as that he had not exhausted all effective

domestic remedies as required by Article 35 § 1 of the Convention. Alternatively, they contended that there had been no violation of the Convention or of the Protocols thereto. The applicant disagreed with the Government's admissibility objections and reaffirmed his complaints.

34. The Court considers that it is not necessary to examine the Government's admissibility objections, since the applicant's complaints are in any case manifestly ill-founded for the reasons outlined below.

35. The Court notes that the applicant is a Montenegrin national with a registered residence in Tivat (Montenegro), as well as that the Republic of Montenegro accepted as its public debt those savings deposited by individuals residing in Montenegro with the authorised banks based outside Montenegro, if their funds were then further deposited with the National Bank of Yugoslavia (see paragraph 30 above; see also, *mutatis mutandis*, *Ajdarpašić and Kadić v. Montenegro* (dec.), nos. 40759/06 and 56888/09, 23 November 2010), as was the case with the Slavija Bank. Nevertheless, since the applicant had designated exclusively Serbia as the respondent State, as well as given the fact that he complained only about the Serbian failure to enforce the final judgment rendered in his favour on 1 June 1992 and not about the manner in which the States had regulated conversion of the foreign currency savings into public debt and its gradual reimbursement, the Court recalls that it has already considered identical legal issues in *Molnar Gabor v. Serbia* (no. 22762/05, §§ 43-51, 8 December 2009) and *Ribić v. Serbia (dec.),* (no. 16735/02, 14 December 2010) in respect of a "non-pyramid scheme" and a "pyramid scheme" bank, respectively, in which it found no violations of Article 6 of the Convention and Article 1 of Protocol No. 1. The Court found in those cases, *inter alia*, that the applicants clearly had no enforceable legal title which would have allowed them to seek judicial execution of the foreign-currency awards rendered in their favour. In particular, the provision of the relevant legislation (described above under paragraphs 23-29) barred the enforcement of the applicants' judgments as of 12 December 1998 and clearly extinguished the impact of the final judgments in question well before the respondent State's ratification of the Convention and Protocol No. 1 on 3 March 2004.

36. The Court further observes that the judgment in the present case became final in September 1992, but that the respondent State had clearly extinguished the applicant's right to the judicial enforcement thereof as of 12 December 1998 (see paragraphs 25 and 28 above). This being so, the Court considers that its conclusions in the *Molnar Gabor* and *Ribić* cases (cited above) are, *mutatis mutandis*, equally applicable in the present case.

37. Therefore, even assuming that the respondent State's responsibility *ratione personae* may be engaged in regards to the applicant's complaints, the Court finds that they are manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Stanley Naismith
Registrar

Françoise Tulkens
President