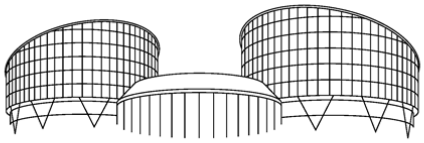

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 41698/06
Fahrudin MURATOVIĆ
against Serbia

The European Court of Human Rights (Third Section), sitting on 21 March 2017 as a Chamber composed of:

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Alena Poláčková,
Georgios A. Serghides, *judges,*

and Stephen Phillips, *Section Registrar*,

Having regard to the above application lodged on 10 October 2006,

Having regard to the decision to apply the pilot-judgment procedure and to adjourn its consideration of applications deriving from the same systemic problem identified in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* ([GC], no. 60642/08, § 150 and point 12 of the operative part, ECHR 2014),

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Fahrudin Muratović, is a Bosnian-Herzegovinian and Swiss national, who was born in 1949 and lives in Switzerland.

A. The circumstances of the case

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

3. Prior to the dissolution of the Socialist Federal Republic of Yugoslavia ("SFRY"), the applicant deposited foreign currency in the Tuzla branch of Investbanka (for the relevant background see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, §§ 12-52, ECHR 2014). The balance in his accounts cannot be determined on the basis of the material in the Court's possession.

B. Relevant domestic law

4. For the relevant domestic law see *Ališić and Others*, cited above, §§ 53-58. In addition, under the Ališić Implementation Act[1], which entered into force on 30 December 2016, Serbia has undertaken to pay all unpaid "old" foreign-currency savings of citizens of the SFRY successor States other than Serbia deposited in Serbian banks, as well as all such savings of Serbian citizens in foreign branches of Serbian banks, together with contractual interest accrued up until 31 December 1997. Interest for the period from 1 January 1998 until 31 May 2016 is to be paid at an annual rate of 2% and for the subsequent period at an annual rate of 0.5% (sections 1 and 4 of the Ališić Implementation Act). Interest is to be calculated on the basis of the simple-interest formula. In order that the actual amount due may be assessed, all those concerned must lodge a request for verification by 23 February 2018 (see section 11(1) of the Act). The amount determined in the verification proceedings will then be reimbursed in the form of Government bonds, which are to be paid off by 28 February 2023 in ten biannual instalments (on 28 February and 31 August every year from 31 August 2018 to 28 February 2023). As Government bonds are redeemable before their maturity, once issued they may be traded on the stock exchange. All verification decisions are subject to judicial review in accordance with section 16 of the Ališić Implementation Act. Under section 13 of the Act, those who no longer have original contracts or bankbooks may pursue civil proceedings in order to prove the existence and the amount of their claims.

1. *Zakon o regulisanju javnog duga Republike Srbije po osnovu neisplaćene devizne štednje građana položene kod banaka čije je sedište na teritoriji Republike Srbije i njihovim filijalama na teritorijama bivših republika SFRJ*, Official Gazette of the Republic of Serbia, no. 108/16.

COMPLAINT

5. Relying on Articles 6 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant essentially complained that he had been unable to withdraw his "old" foreign-currency savings.

THE LAW

6. The applicant complained that it had been impossible for him to withdraw the money he had deposited in foreign-currency on his accounts at the Tuzla branch of Investbanka.

He invoked Articles 6 and 14 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention.

In so far as relevant, those provisions read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 14

"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."

Article 1 of Protocol No. 1

"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."

7. The Court should first determine whether, as required by Article 35 § 1 of the Convention, the applicant has exhausted the domestic remedies which were available to him, in the light, *inter alia*, of the principles stated in its pilot judgment and of the entry into force of the Ališić Implementation Act.

A. The pilot judgment

8. The Court recalls that on 16 July 2014 the Grand Chamber adopted a pilot judgment regarding "old" foreign-currency savings in, *inter alia*, the Tuzla branch of Investbanka (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, ECHR 2014). It found, in respect of Serbia, a breach of Article 13 of the Convention and Article 1 of Protocol No. 1 and held that Serbia should make all necessary arrangements, including legislative amendments, in order to allow persons in a position similar to Mr Šahdanović to recover their "old" foreign-currency savings under the same conditions as Serbian citizens who had such savings in domestic branches of Serbian banks (ibid., points 2, 5 and 10 of the operative part). It further indicated that no claim should be rejected only because of a lack of original contracts or bankbooks and that any and all verification decisions must be subject to judicial review. Lastly, the Court held that all those concerned must comply with the requirements of any verification procedure, as long as it met the above criteria (ibid., § 148).

9. In the present case, the Court will, accordingly, first examine whether the Ališić Implementation Act fulfils the above criteria and, if so, whether the applicant has used the remedy introduced by that Act (namely, a request for verification).

B. The Ališić Implementation Act

1. First criterion ("the same conditions")

10. As to the question whether under the Ališić Implementation Act the applicant and persons in a position similar to his will be able to recover their "old" foreign-currency savings under the same conditions as Serbian citizens who had such savings in domestic branches of Serbian banks, the Court observes that Serbia has undertaken to pay all unpaid "old" foreign-currency savings held in Serbian banks, under the conditions set out above (in paragraph 4). The conditions that were applied to "old" foreign-currency savings of Serbian citizens in domestic branches of Serbian banks have been set out in the pilot judgment (see *Ališić and Others*, cited above, § 45; see also *Molnar Gabor v. Serbia*, no. 22762/05, 8 December 2009). The Court notes that the conditions are essentially the same. Taking into consideration the respondent State's wide margin of appreciation (see *Ališić and Others*, cited above, §§ 106-107), the Court finds that the Ališić Implementation Act, in principle, fulfils the first criterion.

2. Second and third criteria (lack of original contracts or bankbooks and judicial review)

11. In this regard, it suffices to note that those who no longer have original contracts or bankbooks may pursue civil proceedings in order to prove the existence and the amount of their claims and that all verification decisions are subject to judicial review (see paragraph 4 above). The Ališić Implementation Act, therefore, fulfils also those two criteria.

12. The Court emphasises in this respect that the object of the present decision is to assess the potential compatibility of the domestic repayment scheme with the principles stated in the pilot judgment and with the general principles on accessibility and effectiveness of domestic remedies, and not address the question whether, in view of the outcome of verification proceedings, the applicant has lost his or her victim status. This second type of assessment can be made, in every individual case, only after the relevant national remedy has been tried (see, *mutatis mutandis*, *Bizjak v. Slovenia* (dec.), no. 25516/12, § 43, 8 July 2014).

C. Exhaustion of domestic remedies

1. General principles

13. According to the Court's settled case-law, it is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This Court is concerned with supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged breach. The rule is therefore an indispensable part of the functioning of this system of protection (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 *et al*., § 69, 25 March 2014).

14. States do not have to answer before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see *Vučković and Others*, cited above, § 70, and *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, § 115, ECHR 2016). The Court cannot emphasise enough that it is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the

calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see *Demopoulos and Others v. Turkey* [GC] (dec.), nos. 46113/99 *et al*., § 69, ECHR 2010).

15. Nevertheless, the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198; *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV; and *Dalia v. France*, 19 February 1998, § 38, *Reports* 1998-I). In addition, in accordance with the "generally recognised principles of international law", there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his or her disposal (see *Selmouni v. France* [GC], no. 25803/94, § 75, ECHR 1999‑V). However, the Court points out that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Akdivar and Others*, cited above, § 71; *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX; and *Grzinčič v. Slovenia*, no. 26867/02, § 84, 3 May 2007).

16. An 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. However, as the Court has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Demopoulos and Others*, decision cited above, § 87, with further references therein). Among such exceptions are situations where, following a pilot judgment on the merits in which the Court found a systemic violation of the Convention, the respondent State has made available a specific remedy to redress at the domestic level grievances of persons in a similar situation (see *Łatak v. Poland* (dec.), no. 52070/08, § 79, 12 October 2010, and *Stella and Others v. Italy* (dec.), no. 49169/09, § 41, 16 September 2014).

2. Application of those principles to the present case

17. The Court has found above that the Ališić Implementation Act meets the criteria set out in the pilot judgment (see paragraphs 10 and 11 above). Consequently, and as the Court finds it justified to apply the exception to the principle on exhaustion of domestic remedies (see paragraph 16 above), the present applicant and all others in his position must use the remedy introduced by that Act, namely, a request for verification (see *Ališić and Others*, cited above, § 148).

18. The Court emphasises that under section 11(1) of the Act (see paragraph 4 above), the applicant has until 23 February 2018 to lodge a request for verification. Should he do so and ultimately be unsuccessful, it would be open to him to lodge a fresh application with the Court within a period of six months from the date on which the final domestic decision was taken.

19. The Court also points out that it is ready to change its approach as to the potential effectiveness of the remedy in question, should the practice of the domestic authorities show, in the long run, that savers are being refused on formalistic grounds, that verification proceedings are excessively long or that domestic case-law is not in compliance with the requirements of the Convention (see, for example and *mutatis mutandis*, *Bizjak*, decision cited above, § 44, and *Uzun v. Turkey* (dec.), no. 10755/13, § 41, 30 April 2013, and the authorities cited therein). Any such future review will involve determining whether the national authorities have applied the Ališić Implementation Act in a manner that is in conformity with the pilot judgment and the Convention standards in general.

20. In view of the fact that the applicant has not yet submitted a request for verification, the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 30 March 2017.

Stephen Phillips
Registrar

Helena Jäderblom
President