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

GRAND CHAMBER

CASE OF ALIŠIĆ AND OTHERS v. BOSNIA AND HERZEGOVINA, CROATIA, SERBIA, SLOVENIA AND THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 60642/08)

JUDGMENT

STRASBOURG

16 July 2014

This judgment is final but may be subject to editorial revision.

In the case of Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President,*
Josep Casadevall,
Guido Raimondi,
Ineta Ziemele,
Mark Villiger,
Isabelle Berro-Lefèvre,
David Thór Björgvinsson,
Danutė Jočienė,
Dragoljub Popović,
Päivi Hirvelä,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska,
Angelika Nußberger,
Linos-Alexandre Sicilianos,
André Potocki,
Faris Vehabović,
Ksenija Turković, *judges,*

and Michael O'Boyle, *Deputy Registrar,*

Having deliberated in private on 10 July 2013 and 28 May 2014,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 60642/08) against Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three citizens of Bosnia and Herzegovina, Ms Emina Ališić, Mr Aziz Sadžak and Mr Sakib Šahdanović ("the applicants"), on 30 July 2005. The first applicant is also a German citizen.

2. The applicants alleged that they had not been able to withdraw their "old" foreign-currency savings from their accounts at the Sarajevo branch of Ljubljanska Banka Ljubljana and the Tuzla branch of Investbanka since the dissolution of the Socialist Federal Republic of Yugoslavia. They relied on Articles 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention.

3. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 17 October 2011 a Chamber of that Section composed of the following judges: Nicolas Bratza, Lech Garlicki, Nina Vajić, Boštjan M. Zupančič, Ljiljana Mijović, Dragoljub Popović and Mirjana Lazarova Trajkovska, and of Lawrence Early, Section Registrar, joined to the merits the issue of the exhaustion of domestic remedies and declared the application admissible.

4. In its judgment of 6 November 2012, the Chamber dismissed by six votes to one the Governments' objections as to the exhaustion of domestic remedies and held:

- unanimously that there had been a violation of Article 1 of Protocol No. 1 to the Convention by Serbia with regard to Mr Šahdanović;

- by six votes to one that there had been a violation of Article 1 of Protocol No. 1 to the Convention by Slovenia with regard to Ms Ališić and Mr Sadžak;

- unanimously that there had been no violation of Article 1 of Protocol No. 1 to the Convention by the other respondent States;

- unanimously that there had been a violation of Article 13 of the Convention by Serbia with regard to Mr Šahdanović;

- by six votes to one that there had been a violation of Article 13 by Slovenia with regard to Ms Ališić and Mr Sadžak;

- unanimously that there had been no violation of Article 13 by the other respondent States; and

- unanimously that there was no need to examine the complaint under Article 14 taken together with Article 13 of the Convention and Article 1 of Protocol No. 1 with regard to Serbia and Slovenia and that there had been no violation of Article 14 taken together with Article 13 of the Convention and Article 1 of Protocol No. 1 with regard to the other respondent States.

The dissenting opinion of Judge Zupančič was appended to the judgment.

5. On 18 March 2013, pursuant to requests by the Serbian and Slovenian Governments, a Panel of the Grand Chamber decided to refer the case to the Grand Chamber in accordance with Article 43 of the Convention.

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24. Boštjan M. Zupančič, the judge elected in respect of Slovenia, decided to withdraw from the Grand Chamber (Rule 28). The Slovenian Government accordingly appointed Angelika Nußberger, the judge elected in respect of Germany, to sit in his place (Article 26 § 4 of the Convention and Rule 29). David Thór Björgvinsson and Danutė Jočienė, whose term of office expired on 31 October 2013, continued to sit in the case (Article 23 § 3 of the Convention and Rule 24 § 4).

7. The parties filed further written observations (Rule 59 § 1).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 10 July 2013 (Rule 59 § 3). There appeared before the Court:

(a) *for the applicants*
Mr B. MUJČIN,
Mr E. ESER, *Counsel*,
Mr A. MUSTAFIĆ, *Assistant;*

(b) *for the Government of Bosnia and Herzegovina*
Ms M. MIJIĆ, *Agent*,
Ms B. SKALONJIĆ, *Assistant Agent*,
Ms E. VELEDAR ARIFAGIĆ,
Mr Z. KELIĆ,
Mr T. ĆURAK,
Mr S. BAKIĆ,
Mr E. KUBAT,
Ms V. TUFEK,
Ms N. TROSSAT,
Mr M. MAHMUTOVIĆ, *Advisers*;

(c) *for the Croatian Government*
Ms Š. STAŽNIK, *Agent*,
Ms N. KATIĆ,
Ms A. METELKO-ZGOMBIĆ,
Ms M. BAŠIĆ,
Ms J. VLAŠIĆ,
Ms B. GRABOVAC,
Ms V. ZVONAR, *Advisers*;

(d) *for the Serbian Government*
Mr S. CARIĆ, *Agent*,
Ms V. RODIĆ,
Ms D. DOBRKOVIĆ,
Mr N. PETKOVIĆ,
Mr B. MILISAVLJEVIĆ,
Mr B. KURBALIJA,
Ms S. ĐURĐEVIĆ, *Advisers*;

(e) *for the Slovenian Government*
Ms N. PINTAR-GOSENCA, *Agent*,
Ms C. ANNACKER, *Counsel*,
Ms A. NEE,
Ms M. PREVC,
Mr R. GABROVEC,
Ms A. POLAK-PETRIČ,
Mr A. KULICK, *Advisers*;

(f) *for the Macedonian Government*

Mr K. BOGDANOV, *Agent*,
Ms V. STANOJEVSKA, *Adviser*.

The Court heard addresses by Mr Mujčin, Ms Mijić, Ms Stažnik, Mr Carić, Ms Annacker and Mr Bogdanov.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

9. The applicants were born in 1976, 1949 and 1952, respectively, and live in Germany.

10. Prior to the dissolution of the Socialist Federal Republic of Yugoslavia ("the SFRY"), two of the present applicants, Ms Ališić and Mr Sadžak, had deposited foreign currency in Ljubljanska Banka Sarajevo[1]. In 1990, within the context of the 1989/90 economic reforms (see paragraph 21 below), Ljubljanska Banka Sarajevo became a branch of Ljubljanska Banka Ljubljana, a Slovenian bank. Also prior to the dissolution of the SFRY, the third applicant, Mr Šahdanović, had deposited foreign currency in the Tuzla branch, located in Bosnia and Herzegovina, of Investbanka, a Serbian bank. According to the material in the Court's possession, on 31 December 1991 the balance in Ms Ališić's and Mr Sadžak's accounts at the Sarajevo branch of Ljubljanska Banka Ljubljana was 4,715 Deutschmarks (DEM) and DEM 129,874, respectively; on 3 January 2002 the balance in Mr Šahdanović's accounts at the Tuzla branch of Investbanka was DEM 63,880, 4 Austrian schillings and 73 US dollars (USD).

11. The applicants' complaints under the Convention concern their inability to withdraw their foreign-currency savings from the bank accounts described above. In their submission, this constituted a breach of Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention, by all of the respondent States. They also alleged a violation of Article 13 of the Convention.

[1]. This bank is different from and should not be confused with the homonymous bank, set up in 1993, mentioned in paragraph 30 below.

B. Factual background

1. Commercial banking in the SFRY before reform in 1989/90

(a) Basic banks, associated banks and national banks

12. Before the economic reforms that were carried out in the SFRY in 1989/90, its commercial banking system consisted of *basic* and *associated* banks. Basic banks had separate legal personality, but were integrated into the organisational structure of one of the nine associated banks. As a rule, basic banks were founded and controlled by socially-owned companies based in the same territorial unit (that is, in one of the Republics – Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia – or Autonomous Provinces – Kosovo and Vojvodina). Socially-owned companies were the flagship of the Yugoslav model of self-management: neither private nor State-owned, they were a collective property controlled by their employees, based on a communist vision of industrial relations (the phenomenon and the current status of such companies in Serbia, where they continue to exist, has been described in *Kačapor and Others v. Serbia*, nos. 2269/06 *et al*., §§ 71-76 and 97, 15 January 2008). At least two basic banks could form an associated bank. Ljubljanska Banka Ljubljana, one of those associated banks, was composed of Ljubljanska Banka Sarajevo, in which two of the present applicants had opened accounts, Ljubljanska Banka Zagreb[2], Ljubljanska Banka Skopje[3] and a number of other basic banks. Similarly, Investbanka, in which one of the present applicants had opened accounts, together with some other basic banks, formed an associated bank called Beogradska udružena Banka.

13. In the SFRY there were also nine *national* banks, the National Bank of Yugoslavia (“the NBY”) and a national bank in each of the six Republics and two Autonomous Provinces.

(b) Foreign-currency deposits

14. Being hard-pressed for hard currency, the SFRY made it attractive for its expatriates and other citizens to deposit foreign currency with its banks. Such deposits earned high interest, the annual rate often exceeding 10%, and were guaranteed by the State (section 14(3) of the Foreign-

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[2]. See paragraph 43 below.

[3]. See paragraph 52 below.

Currency Transactions Act 1985[4] and section 76(1) of the Banks and Other Financial Institutions Act 1989[5]).

15. The State guarantee was to be activated in case of a bank's bankruptcy or "manifest insolvency" at the request of the *bank* (section 18 of the Banks and Other Financial Institutions Insolvency Act 1989[6] and the relevant secondary legislation[7]). None of the banks under consideration in the present case made such a request.

16. *Savers* could not request the activation of the guarantee of their own volition, but were entitled, in accordance with the Civil Obligations Act 1978[8], to collect their deposits at any time, together with accrued interest. Section 1035 of that Act thus provided:

> "1. A contract for a monetary deposit shall be formed when the bank agrees to accept and the depositor agrees to deposit a certain sum of money in the bank.
>
> 2. Under such a contract, the bank shall have the right to use the deposited money and the obligation to return it in accordance with the terms set out in the agreement."

Section 1043(1) of the Act read as follows:

> "If a savings account is opened, the bank or financial institution shall issue the saver with a savings book."

Section 1044 of the Act provided:

> "1. All deposits and withdrawals shall be recorded in a savings book.
>
> 2. Signed and stamped entries in savings books shall constitute proof of deposits and withdrawals.
>
> 3. Any agreement to the contrary shall be null and void."

Furthermore, section 1045 of that Act read as follows:

> "Interest shall be paid on savings deposits."

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4. Here and in the footnotes below are reproduced the full names in the original language of domestic legislation: *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.

5. *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.

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

7. *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.

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

(c) Re-depositing scheme

17. Beginning in the mid-1970s, the banks incurred foreign-exchange losses because of depreciation of the dinar exchange rate. In response, the SFRY introduced a system for "re-depositing" foreign currency, allowing banks to transfer citizens' foreign-currency deposits to the NBY, which assumed the currency risk (section 51 of the Foreign-Currency Transactions Act 1977[9]). Although the system was legally optional, in practice the banks did not have another option as they were not allowed to maintain foreign-currency accounts with foreign banks, which were necessary to make payments abroad, nor were they allowed to grant foreign-currency loans. Virtually all foreign currency was therefore re-deposited with the NBY according to one of the following two methods: either the accounting or "pro forma" method or the method of actual transfer of foreign currency to foreign accounts of the NBY. The accounting method was used far more often, as it enabled commercial banks to shift currency risks to the NBY without having to pay fees to foreign banks (see *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, § 36, 3 October 2008; see also decision AP 164/04 of the Constitutional Court of Bosnia and Herzegovina of 1 April 2006, § 53). According to an internal report of the NBY of September 1988[10], by 30 June 1988 an equivalent of approximately USD 9 billion had been re-deposited with the NBY, of which only around USD 1.4 billion (that is, slightly above 15%) had been physically transferred to the NBY's many foreign accounts. It would appear that the funds in the NBY's foreign accounts have recently been divided among the successor States (see paragraph 65 below).

18. With regard to Ljubljanska Banka Sarajevo[11], where the first two applicants held their accounts, the re-depositing scheme operated as follows. Pursuant to a series of agreements (between Ljubljanska Banka Sarajevo, Ljubljanska Banka Ljubljana, the National Bank of Bosnia and Herzegovina and the National Bank of Slovenia), Ljubljanska Banka Sarajevo was to transfer every month to the National Bank of Slovenia, for the account of Ljubljanska Banka Ljubljana, any difference between the foreign currency deposited and the foreign currency withdrawn. Some of those funds were transferred back to Ljubljanska Banka Sarajevo at the request of that bank in order to meet its liquidity needs (during periods when more foreign currency was withdrawn than deposited). Indeed, in the period from 1984 to

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[9]. *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.

[10]. A copy thereof was provided by the Slovenian Government (annex no. GC10).

[11]. As noted in footnote 2 above, this bank should not be confused with the homonymous bank, set up in 1993, mentioned in paragraph 30 below.

1991 DEM 244,665,082 was transferred to Ljubljana and DEM 41,469,528 (that is, less than 17%) back to Sarajevo. The funds which had not been transferred back to Sarajevo were re-deposited with the NBY according to one of the two methods described in paragraph 17 above: the accounting or "pro forma" method (in which case there is no proof that they actually left Ljubljana) or the method of actual transfer of foreign currency to foreign accounts of the NBY. Regardless of the re-depositing method used, all those funds were recorded as a claim of Ljubljanska Banka Sarajevo against the NBY.

19. Under the agreements mentioned in paragraph 18 above, Ljubljanska Banka Sarajevo was granted dinar loans (initially interest-free) by the NBY, *via* the National Bank of Bosnia and Herzegovina, in return for the value of the re-deposited foreign currency. The dinars so received were used by that basic bank to offer loans, at interest rates below the rate of inflation, to companies based, as a rule, in the same territorial unit.

20. In late 1988 the re-depositing system was stopped (by an amendment to section 103 of the Foreign-Currency Transactions Act 1985). Banks were given permission to open accounts with foreign banks. Ljubljanska Banka Sarajevo, like other banks, seized that opportunity and deposited around USD 13.5 million with foreign banks in the period from October 1988 until December 1989. There is no information in the file as to what has happened to those funds.

2. The 1989/90 reform of commercial banking in the SFRY

21. 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, mentioned above, thus became a branch (without legal personality) of Ljubljanska Banka Ljubljana; the latter assumed the former's rights, assets and liabilities. Investbanka, mentioned above, became an independent bank with its seat in Serbia and a number of branches in Bosnia and Herzegovina.

22. Moreover, the convertibility of the dinar was declared and this led to a massive withdrawal of foreign currency. The SFRY therefore resorted to emergency measures restricting to a large extent the withdrawals of foreign-currency deposits. For example, as of December 1990, when section 71 of the Foreign-Currency Transactions Act 1985 was amended, savers could withdraw their savings only to pay for imported goods or services for their own or their 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. In addition, section 3 of

the SFRY Government's decision of April 1991[12], which was in force until February 1992, and section 17(c) of the NBY's decision of January 1991[13], which the Constitutional Court of the SFRY declared unconstitutional in April 1992, limited 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 (see paragraph 53 below).

3. The dissolution of the SFRY in 1991/92

23. The SFRY disintegrated in 1991/92. In the successor States, foreign-currency savings deposited beforehand were placed under a special regime and are usually referred to as "old" or "frozen" foreign-currency savings. Below can be found a survey of the relevant domestic law and practice concerning such savings in each of the five successor States – presented in alphabetical order –, which are also the respondent parties to the present case.

C. Circumstances pertaining to the respective respondent States

1. Bosnia and Herzegovina

(a) Measures concerning "old" foreign-currency savings

24. 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[14]). Although the relevant statutory provisions were not clear in that regard, the National Bank of Bosnia and Herzegovina held the view that the guarantee covered such savings in domestic banks only (see its report 63/94 of 8 August 1994[15]).

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12. *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.

13. *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.

14. *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.

15. A copy thereof was provided by the Bosnian-Herzegovinian Government.

25. While during the war all "old" foreign-currency savings remained frozen, withdrawals were exceptionally allowed on humanitarian grounds and in some other special cases (see the relevant secondary legislation[16]).

26. 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 1997[17] and the Non-Residents' Claims Settlement Decree 1999[18]). Although such savings remained frozen, that Act provided that they could be used to purchase State-owned flats and companies (see section 18 of the Claims Settlement Act 1997, as amended in 2004).

27. 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 branches of Ljubljanska Banka Ljubljana, Investbanka or other foreign banks, in which the applicants had their accounts, was expressly excluded pursuant to section 9(2) of the Settlement of Domestic Debt Act 2004[19].

28. In 2006 the liability for "old" foreign-currency savings in domestic banks passed from the Entities to the State. Liability for such savings at the local branches of Ljubljanska Banka Ljubljana and Investbanka was again expressly excluded, but the State was to help the clients of those branches to obtain the payment of their savings from Slovenia and Serbia, respectively

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

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

18. *Uredba o ostvarivanju potraživanja lica koja su imala deviznu štednju u bankama na teritoriju Federacije, a nisu imala prebivalište na teritoriju Federacije,* Official Gazette of the FBH no. 44/99.

19. *Zakon o utvrđivanju i načinu izmirenja unutrašnjih obaveza Federacije*, Official Gazette of the FBH nos. 66/04, 49/05, 35/06, 31/08, 32/09 and 65/09.

(see section 2 of the Old Foreign-Currency Savings Act 2006[20]). In addition, all proceedings concerning "old" foreign-currency savings ceased by virtue of law (see section 28 of that Act; that provision was declared constitutional by decision U 13/06 of the Constitutional Court of Bosnia and Herzegovina of 28 March 2008, § 35).

(b) Status of the Sarajevo branch of Ljubljanska Banka Ljubljana and Ljubljanska Banka Sarajevo set up in 1993

29. As stated in paragraph 21 above, in January 1990 Ljubljanska Banka Sarajevo became a branch, without legal personality, of Ljubljanska Banka Ljubljana; the latter assumed the former's rights, assets and liabilities. Pursuant to the companies register, the branch acted on behalf of and for the account of the parent bank. At the end of 1991 the foreign-currency savings at that branch amounted to around DEM 250 million, but less than DEM 350,000 had been placed in its vault (the flow of foreign currency between Sarajevo and Ljubljana is described in paragraph 18 above).

30. A new bank, with the same name as the predecessor of the Sarajevo branch of Ljubljanska Banka Ljubljana – Ljubljanska Banka Sarajevo – was incorporated under the law of Bosnia and Herzegovina in 1993. It assumed unilaterally the liability for "old" foreign-currency savings at the Sarajevo branch of Ljubljanska Banka Ljubljana, a Slovenian bank.

31. In 1994 the National Bank of Bosnia and Herzegovina carried out an inspection and noted many shortcomings. First of all, the management of that new Ljubljanska Banka Sarajevo had not been properly appointed and it was not clear who its shareholders were. The National Bank, for that reason, appointed a director of that bank. Secondly, as a domestic bank, Ljubljanska Banka Sarajevo could not have assumed a foreign bank's liability for "old" foreign-currency savings, as this would impose new financial obligations on the State of Bosnia and Herzegovina (as the State was the statutory guarantor for "old" foreign-currency savings in all domestic banks). 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 parent bank be defined.

32. However, according to the companies register, that newly-founded Ljubljanska Banka Sarajevo had remained liable for "old" foreign-currency savings at Ljubljanska Banka Ljubljana's Sarajevo branch until late 2004 (see paragraph 35 below). Consequently, it continued to administer "old" foreign-currency savings at Ljubljanska Banka Ljubljana's Sarajevo branch; around 3% of those savings were used in the privatisation process in the FBH (see paragraph 26 above); and in one case a civil court ordered

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[20]. *Zakon o izmirenju obaveza po osnovu računa stare devizne štednje*, Official Gazette of Bosnia and Herzegovina nos. 28/06, 76/06, 72/07 and 97/11.

Ljubljanska Banka Sarajevo to repay a client of Ljubljanska Banka Ljubljana's Sarajevo branch (see *Višnjevac v. Bosnia and Herzegovina* (dec.), no. 2333/04, 24 October 2006).

33. The Constitutional Court of Bosnia and Herzegovina described the pre-2004 situation as "chaotic" (decision AP 164/04 of 1 April 2006, § 55). The Human Rights Chamber for Bosnia and Herzegovina, a domestic human-rights body, held that the legal uncertainty surrounding the issue of "old" foreign-currency savings in, *inter alia*, domestic branches of Ljubljanska Banka Ljubljana and Investbanka during that period amounted to a violation of Article 1 of Protocol No. 1 to the Convention (see decision CH/98/377 *et al*. of 7 November 2003, § 270).

34. 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 Ljubljanska Banka Ljubljana, a foreign bank located in Slovenia.

35. By virtue of an amendment to the Companies Register Act 2000[21], in 2003 the FBH Parliament extended the statutory time-limit for the deletion of war-time entries in the companies register until 2004. Shortly thereafter, in November 2004 the Sarajevo Municipal Court decided that the domestic Ljubljanska Banka Sarajevo was not the successor of the Sarajevo branch of the Slovenian Ljubljanska Banka Ljubljana; that it was not liable for "old" foreign-currency savings in that branch; and that, as a result, the 1993 entry in the companies register stating otherwise ought to be deleted.

36. In 2006 the domestic Ljubljanska Banka Sarajevo sold its assets to a Croatian company which, in return, undertook to pay debts of that bank. At the same time, premises of the Sarajevo branch of the Slovenian Ljubljanska Banka Ljubljana, under the care of the FBH Government pending the final determination of the status of that branch, were let out to the same Croatian company on behalf and for the account of the Ljubljanska Banka Ljubljana.

37. In 2010 the competent court opened bankruptcy proceedings against Ljubljanska Banka Sarajevo in Bosnia and Herzegovina. They are still pending.

(c) Status of the Tuzla branch of Investbanka

38. The Tuzla branch of Investbanka always had the status of a branch without legal personality. The size of the "old" foreign-currency savings at that branch was approximately USD 67 million (approximately DEM 100 million) on 31 December 1991. The branch closed in June 1992 and it has never resumed its activities. It is not clear what happened with its funds.

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[21]. *Zakon o postupku upisa pravnih lica u sudski registar*, Official Gazette of the FBH nos. 4/00, 49/00, 32/01, 19/03 and 50/03.

39. In 2002 the competent court in Serbia made a bankruptcy order against Investbanka. The Serbian authorities then sold the premises of the FBH branches of Investbanka (those in the Republika Srpska had been sold in 1999). For example, for premises in Džafer Mahala in Tuzla the Serbian authorities obtained 2,140,650 euros. The bankruptcy proceedings against Investbanka are apparently still pending.

40. In 2010 the FBH Government decided to place the premises and archives of the FBH branches of Investbanka under its care, but it would appear that Investbanka no longer had any premises or archives in the FBH.

41. In 2011, at the request of the FBH authorities, the Serbian authorities started a criminal investigation into the manner in which the archives of the Tuzla branch had been transferred to the Serbian territory in 2008.

2. *Croatia*

(a) Measures concerning "old" foreign-currency savings

42. The Croatian Government stated that they had repaid "old" foreign-currency savings in domestic banks and their foreign branches, regardless of the citizenship of the depositor concerned. Indeed, it is clear that they repaid such savings of Bosnian-Herzegovinian citizens deposited in Bosnian-Herzegovinian branches of Croatian banks. However, the Slovenian Government provided decisions of the Supreme Court of Croatia (Rev 3015/1993-2 of 1994, Rev 3172/1995-2 of 1996 and Rev 1747 /1995-2 of 1996) holding that the term used in the relevant legislation (*građanin*) meant a Croatian citizen (see and compare *Kovačić and Others*, cited above, § 77).

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

43. Croatia allowed its citizens to transfer their "old" foreign-currency savings from the Zagreb branch of Ljubljanska Banka Ljubljana to Croatian banks (see section 14 of the Old Foreign-Currency Savings Act 1993[22] and the relevant secondary legislation[23]). Apparently, about two thirds of all clients of that branch used that possibility. In March 2013 Croatia and Slovenia signed a memorandum of understanding, urging further succession negotiations regarding those transferred savings. As to the clients who did not transfer their savings from the Zagreb branch of Ljubljanska Banka Ljubljana to Croatian banks, whose savings amounted to approximately

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

[23]. *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.

DEM 300 million, some of them pursued civil proceedings in the Croatian courts and sixty-three of them obtained their "old" foreign-currency savings from a forced sale of assets of that branch located in Croatia (decisions of the Osijek Municipal Court of 8 April 2005 and 15 June 2010[24]; see also *Kovačić and Others*, cited above, §§ 122-33). Some other savers from that category have pursued or are currently pursuing civil proceedings in the Slovenian courts (see paragraph 51 below). According to official papers provided by the Croatian Government, Ljubljanska Banka Ljubljana and its Zagreb branch no longer have any assets in Croatia.

3. *Serbia*

(a) Measures concerning "old" foreign-currency savings

44. After the dissolution of the SFRY, "old" foreign-currency savings in Serbian banks remained frozen. However, withdrawals were exceptionally allowed on humanitarian grounds regardless of the citizenship of the saver concerned and the location of the branch in issue (see the relevant secondary legislation[25]). Furthermore, the Serbian courts ruled on at least one occasion that the banks based in Serbia were liable for "old" foreign-currency savings at their branches located in Bosnia and Herzegovina (see *Šekerović v. Serbia* (dec.), no. 32472/03, 4 January 2007).

45. In 1998 and then again in 2002 Serbia agreed to repay, partly in cash and partly in government bonds, "old" foreign-currency savings in domestic branches of domestic banks of its citizens and of citizens of all States other than the successor States of the SFRY together with "old" foreign-currency savings in foreign branches of domestic banks (such as the Tuzla branch of Investbanka) of citizens of all States other than the successor States of the SFRY. Those government bonds were to be amortised by 2016 in twelve annual instalments and earned interest at an annual rate of 2% (section 4 of

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

25. *Odluka o uslovima i načinu davanja kratkoročnih kredita bankama na osnovu definitivne prodaje deponovane devizne štednje građana*, Official Gazette of the Federal Republic of Yugoslavia nos. 42/93, 49/93, 71/93 and 77/93; *Odluka o uslovima i načinu isplate dela devizne štednje građana koja je deponovana kod NBJ*, Official Gazette nos. 42/94, 44/94 and 50/94; *Odluka o uslovima i načinu isplate dela devizne štednje građana koja je deponovana kod NBJ*, Official Gazette nos. 10/95, 52/95, 58/95, 20/96, 24/96 and 30/96; and *Odluka o privremenom obezbeđivanju i načinu i uslovima isplate sredstava ovlašćenim bankama na ime dinarske protivvrednosti dela devizne štednje deponovane kod NBJ isplaćene građanima za određene namene*, Official Gazette nos. 41/96, 21/98 and 4/99.

the Old Foreign-Currency Savings Act 2002[26]). As regards the amount to be repaid, Serbia undertook to reimburse original deposits with interest accrued by 31 December 1997 at the original rate and interest accrued after that date at an annual rate of 2% (section 2 of the same Act).

46. However, other "old" foreign-currency savings (that is, the savings of citizens of the SFRY successor States other than Serbia deposited in all branches of Serbian banks, both domestic and foreign, as well as the savings of Serbian citizens in Serbian banks' branches located outside Serbia) were to remain frozen pending succession negotiations, as was the case for example of the third applicant's deposits. Furthermore, all proceedings concerning "old" foreign-currency savings ceased by virtue of law pursuant to sections 21 and 22 of the Old Foreign-Currency Savings Act 1998[27] and sections 21 and 36 of the Old Foreign-Currency Savings Act 2002.

(b) Status of Investbanka and its branches

47. According to the companies register, Investbanka is State-owned. It is controlled by the Deposit Insurance Agency of Serbia. As a State-owned entity, it had to write off its large claims against State- and socially-owned companies in order to enable their privatisation pursuant to the Privatisation Act 2001[28]. In January 2002 the competent court made a bankruptcy order against Investbanka. The bankruptcy proceedings are pending. Hundreds of savers at Bosnian-Herzegovinian branches of Investbanka unsuccessfully applied to be paid back within the context of the bankruptcy proceedings. Twenty of them then pursued civil proceedings against Investbanka, but to no avail.

4. *Slovenia*

(a) Measures concerning "old" foreign-currency savings

48. In 1991 Slovenia assumed the statutory guarantee from the SFRY for "old" foreign-currency savings in domestic branches of all banks (including Investbanka and other foreign banks), regardless of the citizenship of the depositor concerned (see section 19(3) of the 1991 Constitutional Act on the Implementation of the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia – "the 1991

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

27. *Zakon o izmirenju obaveza po osnovu devizne štednje građana*, Official Gazette of the Federal Republic of Yugoslavia nos. 59/98, 44/99 and 53/01.

28. *Zakon o privatizaciji*, Official Gazette of the Republic of Serbia nos. 38/01, 18/03, 45/05, 123/07 and 30/10.

Constitutional Act”[29]), and converted the banks’ liabilities towards depositors into public debt (see the Old Foreign-Currency Savings Act 1993[30]). Slovenia thus undertook to repay original deposits and interest accrued by 31 December 1990 at the original rate, as well as interest accrued from 1 January 1991 until 31 December 1992 at an annual rate of 6% (section 2 of the Old Foreign-Currency Savings Act 1993). As regards the period thereafter, the interest rate depended on whether a depositor had opted for government bonds or cash. The depositors were entitled to obtain either government bonds, which were to be amortised by 2003 in twenty biannual instalments and earned interest at an annual rate of 5%, or cash from the banks in which they had money, together with interest at the market rate plus 0.25% in ten biannual instalments. In the latter case, the banks were to be issued with government bonds. Some depositors opted for bonds as they could use them to purchase State-owned flats and companies and to pay taxes and pension contributions.

(b) Status of Ljubljanska Banka Ljubljana and its branches

49. Shortly after its declaration of independence, Slovenia nationalised and then, in 1994, restructured Ljubljanska Banka Ljubljana by virtue of an amendment to the 1991 Constitutional Act. Most of its assets and a part of its liabilities were transferred to a new bank – Nova Ljubljanska Banka (see section 22(b) of that Act, cited in paragraph 54 below). The old bank retained liability for “old” foreign-currency savings in its branches in the other successor States and the related claims against the NBY (ibid.). On the basis of that Act, domestic courts rendered a number of decisions ordering the old Ljubljanska Banka to pay “old” foreign-currency savings to clients at its Sarajevo branch; at the same time, domestic courts considered that the Slovenian State itself had no liabilities in this regard (see the Supreme Court judgments II Ips 415/95 of 27 February 1997; II Ips 613/96 of 1 April 1998; and II Ips 490/97 of 21 January 1999). The old Ljubljanska Banka was initially administered by the Bank Rehabilitation Agency. It is now controlled by a Slovenian Government agency – the Succession Fund.

50. In 1997 all proceedings concerning “old” foreign-currency savings in the old Ljubljanska Banka Ljubljana’s branches in the other successor States (with the exception of third-instance proceedings before the Supreme Court) were stayed pending the succession negotiations (see the Succession

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29. *Ustavni zakon za izvedbo Temeljne ustavne listine o samostojnosti in neodvisnosti RS*, Official Gazette of the Republic of Slovenia nos. 1/91 and 45/94.

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

Fund of the Republic of Slovenia Act 1993[31], as amended in 1997, and the Succession Fund and the Senior Representative for Succession of the Republic of Slovenia Act 2006[32]). In December 2009 the Constitutional Court of Slovenia, upon a petition of two Croatian savers, declared that measure unconstitutional[33].

51. The Ljubljana District Court has since given many judgments ordering the old Ljubljanska Banka Ljubljana to pay "old" foreign-currency savings in its Sarajevo branch together with interest (see, for example, judgment P 119/1995-I of 16 November 2010, which became final and binding on 4 January 2012 when it was upheld by the Ljubljana Higher Court; judgment P 9/2007-II of 7 December 2010; and judgment P 1013/2012-II of 10 January 2013). The court explained that according to the SFRY law, branches had acted on behalf and for the account of parent banks. Moreover, according to the Slovenian law, the old Ljubljanska Banka Ljubljana retained liability for "old" foreign-currency savings in its Sarajevo branch. The court considered it irrelevant that a homonymous bank, Ljubljanska Banka Sarajevo, had assumed the liability of the old Ljubljanska Banka Ljubljana for savings at the Sarajevo branch in 1993 (see paragraph 30 above) as that had been done without the approval of the parent bank or the depositors. In any event, the competent court in Bosnia and Herzegovina had deleted the 1993 entry in the companies register to that effect in 2004 (see paragraph 35 above). The Ljubljana District Court also considered it irrelevant that some foreign currency had been transferred to the NBY's foreign accounts in accordance with the re-depositing scheme set out above.

5. The former Yugoslav Republic of Macedonia

52. The former Yugoslav Republic of Macedonia paid back "old" foreign-currency savings in domestic banks and local branches of foreign banks, such as the Skopje branch of Ljubljanska Banka Ljubljana, regardless of the citizenship of the depositor concerned[34].

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31. *Zakon o Skladu Republike Slovenije za sukcesijo*, Official Gazette of the Republic of Slovenia nos. 10/93, 38/94 and 40/97.

32. *Zakon o Skladu Republike Slovenije za nasledstvo in visokem predstavniku Republike Slovenije za nasledstvo*, Official Gazette of the Republic of Slovenia nos. 29/06 and 59/10.

33. The decision published in the Official Gazette of the Republic of Slovenia no. 105/09.

34. *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 nos. 31/93, 70/94, 65/95

II. RELEVANT DOMESTIC LAW

53. As noted in paragraph 22 above, certain restrictions on withdrawals of foreign-currency savings already existed before the dissolution of the SFRY. For example, section 17(c) of the NBY's decision of January 1991[35], which the Constitutional Court of the SFRY declared unconstitutional in April 1992, read as follows:

> "Authorised banks shall execute orders to pay domestic nationals foreign currency deposited in their foreign-currency accounts ... on receipt from such persons of prior notice of their intention to use the foreign currency as follows:
>
> (i) amounts not exceeding DEM 500: 15 days for the first withdrawal and 30 days for subsequent withdrawals;
>
> (ii) amounts not exceeding DEM 1,000: 30 days for the first withdrawal and 45 days for subsequent withdrawals;
>
> (iii) amounts not exceeding DEM 3,000: 90 days; and
>
> (iv) amounts not exceeding DEM 8,000: 180 days."

That provision, however, did not apply to Yugoslav expatriates who worked and lived abroad, such as the applicants in the present case (see sections 8(6) and 17 of that decision). The present applicants' inability to withdraw their savings from their respective accounts resulted from the application of the following provisions of domestic law, presented in chronological order.

54. The relevant part of the 1991 Constitutional Act of Slovenia, as amended in 1994, reads as follows:

> **Preamble**
>
> "Considering the reluctance of certain States that have emerged on the territory of the former [SFRY] and the banks based in those States;
>
> Considering the current impossibility of reaching a succession agreement in respect of the financial assets and liabilities of the former SFRY and the legal persons on its territory, because of the practical and legal consequences of the war in the territory of the former SFRY, international sanctions imposed on the so-called FRY (Serbia and Montenegro), the breakdown of the financial and economic systems in some successor States, and the use of the financial assets of the former SFRY by the so-called FRY to finance the war of aggression;
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> ...;

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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 nos. 32/00, 108/00, 4/02 and 42/03.

[35]. *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.

And with the purpose of finding, through negotiations with foreign creditors, a fair solution to the assumption of an adequate share of the State debts of the former SFRY in cases where the final beneficiary may not be established...”

Section 22(b)

“Ljubljanska Banka Ljubljana and Kreditna Banka Maribor shall transfer their respective businesses and assets to the new banks created hereunder.

Notwithstanding the provisions of the preceding paragraph, Ljubljanska Banka Ljubljana and Kreditna Banka Maribor shall retain:

...

(iii) full liability for foreign-currency ordinary and savings accounts not guaranteed by the Republic of Slovenia;

...

(v) the claims related thereto.

Ljubljanska Banka Ljubljana shall maintain its links with its existing branches and subsidiaries based in the other republics on the territory of the former SFRY, and shall retain the corresponding share of claims against the National Bank of Yugoslavia in respect of foreign-currency savings accounts.”

55. The relevant part of the Succession Fund of the Republic of Slovenia Act 1993, as amended in 1997, provides:

Section 1

“In order to realise claims and discharge liabilities of the Republic of Slovenia and natural and legal persons on the territory of the Republic of Slovenia in the process of division of the rights, assets and liabilities of the [SFRY], the Succession Fund of the Republic of Slovenia is hereby created.”

Section 15(č)(1)

“If court proceedings or enforcement proceedings are pending against persons based or domiciled in Slovenia, the claimant or the creditor is based or domiciled in ... one of the Republics of the former SFRY ... and the claim concerns a legal transaction or enforceable judicial decision, the court shall stay the proceedings of its own motion.”

56. The relevant part of the Old Foreign-Currency Savings Act 2002 of Serbia reads as follows:

Section 21(1)

“Citizens of [Bosnia and Herzegovina, Croatia, Slovenia and the former Yugoslav Republic of Macedonia] who have old foreign-currency savings at banks with the seat in Serbia and Montenegro[36], as well as citizens of Serbia and Montenegro who have old foreign-currency savings at branch offices of such banks located in the territory of

[36]. This Act was enacted by the Federal Republic of Yugoslavia which existed from 1992 until 2003. It was made up of Serbia and Montenegro. Serbia is the sole legal successor of the Federal Republic of Yugoslavia.

[Bosnia and Herzegovina, Croatia, Slovenia and the former Yugoslav Republic of Macedonia] shall realise their old foreign-currency claims in a manner to be agreed upon among the successor States of the SFRY."

Section 36

"All proceedings, including enforcement proceedings, concerning foreign-currency savings covered by this Act shall cease by virtue of this Act."

57. Section 2 of the Old Foreign-Currency Savings Act 2006 of Bosnia and Herzegovina reads as follows:

"1. Under this Act, old foreign-currency savings are foreign-currency savings in banks located in the territory of Bosnia and Herzegovina as at 31 December 1991, including interest earned until that date, less any payment after that date and any funds transferred to special privatisation accounts.

2. Old foreign-currency savings defined in paragraph 1 above shall not include foreign-currency savings in branch offices located in the territory of Bosnia and Herzegovina of the *Ljubljanska Banka*, *Investbanka* or other foreign banks.

3. In accordance with the 2001 Agreement on Succession Issues, foreign-currency savings defined in paragraph 2 above shall be the liability of the successor States in which the banks in issue had their seats. Bosnia and Herzegovina shall provide assistance, within the scope of its international activities, to the holders of such foreign-currency accounts ..."

58. Section 23 of the Succession Fund and the Senior Representative for Succession of the Republic of Slovenia Act 2006 provided as follows:

"(1) Any and all decisions of the courts in Slovenia to stay proceedings concerning foreign-currency savings in a commercial bank or any of its branches in any successor State of the former SFRY rendered pursuant to the Succession Fund of the Republic of Slovenia Act 1993 shall remain in force. Any and all proceedings referred to in the previous sentence that have already resumed shall be further stayed or suspended.

(2) Proceedings referred to in the previous paragraph shall resume automatically upon the settlement of the issue of the guarantees of the SFRY or its NBY for foreign-currency savings pursuant to Article 7 of Annex C to the Agreement on Succession Issues."

On 3 December 2009 the Constitutional Court of Slovenia declared that provision unconstitutional.

RELEVANT INTERNATIONAL LAW AND PRACTICE

I. INTERNATIONAL LAW CONCERNING STATE SUCCESSION

59. The matter of State succession is regulated, at least partly, by rules of general international law reflected in the 1978 Vienna Convention on Succession of States in respect of Treaties and, to a certain extent, in the 1983 Vienna Convention on Succession of States in respect of State

Property, Archives and Debts[37]. Although the latter treaty is not yet in force and only three of the respondent States are parties to it as of now (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, ECHR 2010, and judgment of the International Court of Justice in the *North Sea Continental Shelf Cases*, Judgment of 20 February 1969, § 71, ICJ Reports 1969).

60. The obligation to negotiate in good faith with a view to reaching an agreement is the basic principle for the settlement of the various aspects of succession (see Opinion No. 9 of the Arbitration Commission of the International Conference on the Former Yugoslavia[38], and Article 6 of the 2001 Resolution on State Succession in Matters of Property and Debts of the Institute of International Law – "the 2001 Resolution"). Failing an agreement, the territoriality principle is of vital importance in so far as succession in respect of State property is concerned (Article 18 of the 1983 Vienna Convention and Article 16 of the 2001 Resolution). As regards State debts, the applicable principle is the "equitable proportion" principle. The relevant provision of the 1983 Vienna Convention is Article 41 which reads as follows:

> "When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States otherwise agree, the State debt of the predecessor State shall pass to the successor States in equitable proportions, taking into account, in particular, the property, rights and interests which pass to the successor States in relation to that State debt."

Article 23 § 2 of the 2001 Resolution similarly provides that "the equitable proportion" principle is the governing principle in so far as State debts are concerned:

> "Failing an agreement on the passing of State debts of the predecessor State, the State debt shall, in each category of succession, pass to the successor State in an equitable proportion taking into account, notably, the property, rights and interests passing to the successor State or successor States in relation with such State debt."

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[37]. In 1983 the SFRY signed that treaty. In 2001 the Federal Republic of Yugoslavia lodged an instrument advising its intent to maintain the signature made by the SFRY.

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

Nevertheless, Articles 27-29 of the 2001 Resolution make a distinction between *national*, *localised* and *local* debts and provide that the territoriality principle applies specifically to local debts:

Article 27 (National Debts)

"1. State debts made by the predecessor State to the benefit of the whole State (national debts) are subject to the rules contained in Articles 22 and following of this Resolution.

2. The debts of public institutions and State owned enterprises which operate nationally are subject to the same rules regardless of the location of their registered office."

Article 28 (Localised Debts)

"1. State debts contracted by the predecessor State or a public institution or enterprise operating nationally, for particular projects or objects in a specific region (localised national debts), are governed by the rules contained in the previous Article.

2. However, the apportionment of this debt in accordance with the demands of equity shall take account of the passing of property (objects/installations) connected to the debt and any profit from these projects or objects benefiting the successor State on whose territory they are situated."

Article 29 (Local Debts)

"1. Debts of local public institutions (communes, regions, federal entities, departments, public utilities and other regional and local institutions) pass to the successor State on whose territory this public institution is situated.

...

6. The predecessor State and the successor State or States may by agreement otherwise settle the passing of local debts. For settlements involving private debts, the private creditors shall participate in the drafting and conclusion of this agreement."

Lastly, as regards the effect of State succession on private persons, the 2001 Resolution, in the relevant part, read as follows:

Article 24 §§ 1 and 2

"1. A succession of States should not affect the rights and obligations of private creditors and debtors.

2. Successor States shall, in their domestic legal orders, recognise the existence of rights and obligations of creditors established in the legal order of the predecessor State."

Article 25

"Successor States shall in so far as is possible respect the acquired rights of private persons in the legal order of the predecessor State."

II. AGREEMENT ON SUCCESSION ISSUES AND RELEVANT PRACTICE

61. This Agreement was the result of nearly ten years of negotiations under the auspices of the International Conference on the former Yugoslavia and the High Representative (an international administrator appointed under 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, Serbia and Montenegro (later succeeded by Serbia), Slovenia and the former Yugoslav Republic of Macedonia on 2 June 2004.

62. The issue of "old" foreign-currency savings was a contentious one. The successor States had different views as to whether that issue should be dealt with as a liability of the SFRY under Annex C (Financial Assets and Liabilities) or as a private-law issue under Annex G (Private Property and Acquired Rights)[39]. Neither could those States agree whether the guarantees of the SFRY of "old" foreign-currency savings should be taken over by the State in which the parent bank in issue had its head office or by the State in which the deposit had actually been made. The following provisions were eventually included in Annex C to the Agreement:

Article 2 § 3 (a)

"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

"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 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."

63. 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 Bank for International Settlements ("the BIS") informed them that the expert, Mr Meyer, had decided to terminate his involvement in the matter and that the BIS had no further role to play in this regard. It concluded as follows:

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

> "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."[40]

It appears 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."[41]

64. 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.

65. The SFRY's financial assets were divided according to the following proportions: Bosnia and Herzegovina – 15.5%, Croatia – 23%, the former Yugoslav Republic of Macedonia – 7.5%, Slovenia – 16%, and Serbia and Montenegro (later succeeded by Serbia) – 38% (pursuant to Article 5 of Annex C to the Agreement). It would appear that in the period from 2003 until 2012 practically all foreign currency at foreign accounts of the former NBY, in the amount of around USD 237 million in US banks and USD 221 million in other banks, was divided between the successor States according to those proportions[42].

66. In accordance with Article 4 of the Agreement on Succession Issues, 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 questions arising during its implementation could be discussed. It has so far met three times: in 2005, 2007 and 2009.

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

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[40]. A copy of that letter was provided by the Croatian Government.

[41]. A copy of that letter was provided by the Croatian Government.

[42]. A copy of relevant SWIFT correspondence and other relevant documents was provided by the Serbian 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."

III. INTERNATIONAL CASE-LAW CONCERNING A *PACTUM DE NEGOTIANDO* IN INTER-STATE CASES

68. 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*. On 26 January

1972 the Arbitral Tribunal for the Agreement on German External Debts in the case of *Greece v. the Federal Republic of Germany* stated, in this regard, 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.”

69. The International Court of Justice has recently summarised the relevant case-law as follows (judgment of 5 December 2011 in *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, § 132, ICJ Reports 2011):

> “The Court notes that the meaning of negotiations for the purposes of dispute settlement, or the obligation to negotiate, has been clarified through the jurisprudence of the Court and that of its predecessor, as well as arbitral awards. As the Permanent Court of International Justice already stated in 1931 in the case concerning *Railway Traffic between Lithuania and Poland*, the obligation to negotiate is first of all ‘not only to enter into negotiations, but also to pursue them as far as possible, with a view to concluding agreements’. No doubt this does not imply ‘an obligation to reach an agreement’ (*Railway Traffic between Lithuania and Poland, Advisory Opinion, 1931, P.C.I.J., Series A/B, No. 42*, p. 116; see also *Pulp Mills on the River Uruguay*

(Argentina v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 68, para. 150), or that lengthy negotiations must be pursued of necessity (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 13). However, States must conduct themselves so that the 'negotiations are meaningful'. This requirement is not satisfied, for example, where either of the parties 'insists upon its own position without contemplating any modification of it' (*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 47, para. 85; see also *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 67, para. 146) or where they obstruct negotiations, for example, by interrupting communications or causing delays in an unjustified manner or disregarding the procedures agreed upon (*Lake Lanoux Arbitration (Spain/France) (1957), Reports of International Arbitral Awards (RIAA)*, Vol. XII, p. 307). Negotiations with a view to reaching an agreement also imply that the parties should pay reasonable regard to the interests of the other (*Fisheries Jurisdiction (United Kingdom* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 33, para. 78). As for the proof required for finding of the existence of bad faith (a circumstance which would justify either Party in claiming to be discharged from performance), 'something more must appear than the failure of particular negotiations' (Arbitration on the *Tacna-Arica Question (Chile/Peru) (1925), RIAA*, Vol. II, p. 930). It could be provided by circumstantial evidence but should be supported 'not by disputable inferences but by clear and convincing evidence which compels such a conclusion' *(ibid.).*"

IV. JUDGMENT E-16/11 OF THE EFTA COURT OF 28 JANUARY 2013

70. Landsbanki, a privately-owned Icelandic bank, had branches in the Netherlands and the United Kingdom, which provided online savings accounts under the brand name Icesave. Such deposits were covered by the Icelandic deposit-guarantee scheme, as well as the Dutch and UK schemes, respectively.

71. In 2008 Landsbanki collapsed and the Icelandic Government set up New Landsbanki pursuant to its emergency legislation to prevent a systemic crisis. Domestic deposits were transferred to New Landsbanki. The Dutch and UK deposits were not so transferred. Shortly after the setting up of New Landsbanki and the transfer of the domestic deposits to that bank, the obligation to pay was triggered under the Icelandic deposit-guarantee scheme, including for Dutch and UK deposits. Unlike domestic depositors, depositors with the branches in the Netherlands and the United Kingdom received no compensation from the Icelandic scheme, but they eventually received payment from the Dutch and UK schemes.

72. In 2011 the Surveillance Authority of the European Free Trade Association (EFTA) lodged an application with the EFTA Court. It sought a determination that Iceland, a Contracting Party to the European Economic Area ("EEA") Agreement, had failed to abide by its obligations resulting from the Directive 94/19/EC of the European Parliament and the Council of 30 May 1994 on deposit-guarantee schemes because it did not ensure

payment of the minimum amount of compensation (20,000 euros[43]) to depositors in the Netherlands and the United Kingdom within the given time limits. The application was supported by the European Commission as intervener.

73. In its judgment of 28 January 2013, the EFTA Court concluded that, although the EU law rules concerning the single market had been transposed into the EEA legal order, there had been no violation of that Directive by Iceland. Notably, it held that the Directive did not oblige States and their authorities to ensure compensation if a deposit-guarantee scheme was unable to cope with its obligations in the event of a systemic crisis. It also emphasised that States enjoyed "a wide margin of discretion in making fundamental choices of economic policy in the specific event of a systemic crisis".

THE LAW

74. The applicants submitted that their inability to withdraw their "old" foreign-currency savings from their accounts at branches located in Bosnia and Herzegovina of a Slovenian bank, in the case of the first two applicants, and of a Serbian bank, in the case of the third applicant, amounted to a breach of Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention by all of the respondent States. They also alleged a violation of Article 13 of the Convention.

I. THE GOVERNMENTS' PRELIMINARY OBJECTIONS

75. The Governments invited the Grand Chamber to review the Chamber's decision of 17 October 2011 declaring the application admissible. Each of the respondent Governments argued that the applicants were not within their own "jurisdiction" (Article 1 of the Convention), but within that of other respondent Governments. The Serbian and Slovenian Governments further submitted that the applicants' claims did not relate to any "possessions" within the meaning of Article 1 of Protocol No. 1 and that their application was consequently incompatible *ratione materiae* with the Convention. All the Governments relied on precisely the same grounds as before the Chamber (see paragraphs 49-50 of the admissibility decision).

76. The applicants disputed these objections and relying, *inter alia*, on the findings of the Chamber, requested the Court to reject them.

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[43]. The coverage level was increased from 20,000 euros to 100,000 euros in 2010 (Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes).

77. The Chamber held that the applicants were within the jurisdiction of all the respondent States given that the latter had accepted in the context of the succession negotiations that “old” foreign-currency savings were part of the SFRY’s financial liabilities which they should share (see paragraphs 38 and 58 of the admissibility decision). It further took into account the obligation of successor States under international law to settle together all aspects of succession by agreement (see paragraphs 36 and 58 of that decision). As to the issue of compatibility *ratione materiae*, the Chamber found it established on the evidence that there was no reason to doubt that the applicants indeed had “old” foreign-currency savings in the amounts indicated by them. It also held that the applicants’ claims had survived the dissolution of the SFRY for a number of reasons (see paragraphs 52-55 of the admissibility decision). It emphasised, notably, that the legislation of the successor States had never extinguished the applicants’ claims or deprived them of legal validity in any other manner and there had never been any doubt that some or all of the successor States would 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... 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.”

78. It is noted that the Grand Chamber is not precluded from deciding in appropriate cases questions concerning the admissibility of an application under Article 35 § 4 of the Convention, as that provision enables the Court to reject any application which it considers inadmissible “at any stage of the proceedings”. Therefore, even at the merits stage and subject to Rule 55, the Court may reconsider a decision to declare an application admissible where it concludes that it should have been declared inadmissible for one of the reasons given in the first three paragraphs of Article 35 of the Convention (see *Odièvre v. France* [GC], no. 42326/98, § 22, ECHR 2003-III).

79. However, the Grand Chamber, having examined the Governments’ objections, finds that they do not justify reconsidering the Chamber’s decision to dismiss the preliminary objections which the Governments had

raised before it. Indeed, the Grand Chamber cannot but note that, in addition to the reasons relied on by the Chamber, the decisions of the Serbian and Slovenian courts set out in paragraphs 44, 49 and 51 above show that claims such as those under consideration in this case survived the dissolution of the SFRY. Furthermore, as regards the Slovenian Government's questioning of the existence and exact amount of the applicants' savings, the Grand Chamber has again examined all the evidence in the file, notably a copy of bank statements showing the balance in the accounts of Ms Ališić and Mr Sadžak on 31 December 1991, a copy of Mr Sadžak's deposit contract, excerpts from Mr Šahdanović's bankbook indicating the balance in one of his accounts on 17 April 1992, official data provided by the Serbian Government in the proceedings before the Chamber indicating the balance in Mr Šahdanović's accounts on 3 January 2002, data on microfiche regarding the accounts of Ms Ališić and Mr Sadžak provided by the Government of Bosnia and Herzegovina, and a document issued by the FBH Privatisation Agency stating that the applicants had not used their "old" foreign-currency savings in the privatisation process.

80. The Grand Chamber, also taking into consideration the exceptional circumstances of the present case, concludes that it has been demonstrated beyond reasonable doubt that the applicants have "old" foreign-currency savings in the amounts indicated in paragraph 10 above and finds it sufficiently established that these deposits did constitute "possessions" for the purposes of Article 1 of Protocol No. 1 (see, among other authorities, *Gayduk and Others v. Ukraine* (dec.), no. 45526/99, decision of 2 July 2002, with regard to the initial deposits; *Merzhoyev v. Russia*, no. 68444/01, § 48, 8 October 2009; *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, § 35, 3 November 2009; *Boyajyan v. Armenia*, no. 38003/04, § 54, 22 March 2011; *Kotov v. Russia* [GC], no. 54522/00, § 90, 3 April 2012; and *A. and B. v. Montenegro*, no. 37571/05, § 68, 5 March 2013).

81. Consequently, the Grand Chamber rejects the preliminary objections of the respondent Governments. It is noted that, unlike their position before the Chamber, none of the Governments raised an objection in their submissions to the Grand Chamber alleging the applicants' failure to exhaust domestic remedies.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

82. 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."

A. The Chamber's conclusions

83. The Chamber found that the issue of "old" foreign-currency savings in the Sarajevo branch of Ljubljanska Banka Ljubljana and the Tuzla branch of Investbanka was a succession matter (see the admissibility decision in the present case). Further, while emphasising that it was not the Court's task to settle this issue in the place of the respondent States, it held that it could nevertheless examine whether the applicants' inability to use their savings for more than twenty years, precisely because of the failure of the respondent States to settle it, had amounted to a violation of Article 1 of Protocol No. 1 by any of those States. The Chamber found in the affirmative with respect to Slovenia (as to Ms Ališić and Mr Sadžak) and with respect to Serbia (as to Mr Šahdanović), taking into account a number of factors, such as the ownership of the banks, legislative and other measures taken regarding the banks' assets, the status of the branches at stake after the dissolution of the SFRY, the transfer of the funds of those branches to the parent banks, the collapse of the negotiations conducted under the auspices of the Bank for International Settlements in 2002 and a lack of any meaningful negotiations as to this matter thereafter (see paragraphs 66-74 of the Chamber judgment). It further concluded that there had been no breach of that Article by any of the other respondent States.

B. The parties' submissions

1. The applicants

84. The applicants argued that all the respondent States, as the successor States of the SFRY, should pay back their "old" foreign-currency savings in view of the fact that they had failed to settle this remaining succession issue. The applicants submitted that they should do so according to the proportions used for the division of the SFRY's assets (see paragraph 65 above).

2. The respondent Governments (in alphabetical order)

(a) Bosnia and Herzegovina

85. The Government of Bosnia and Herzegovina asserted that the issue of the applicants' "old" foreign-currency savings was of a civil-law nature. The applicants and the banks under consideration had entered into civil-law contracts which entitled the applicants to withdraw their savings at any time, either from one of the branches or directly from the headquarters (pursuant to Yugoslav civil law, banks were liable for the debts of their branches). Admittedly, all foreign-currency deposits had been guaranteed by the

SFRY, but the guarantee had never been activated as the banks under consideration had remained solvent until the dissolution of the SFRY. Liability had thus not shifted from the banks to the SFRY. Accordingly, the question at stake regarding the applicants' savings was not a succession issue. They were of the opinion that the Slovenian and Serbian Governments should be held responsible for the debts of Ljubljanska Banka Ljubljana and Investbanka, respectively, since they were responsible for those banks' inability to service their debts. Notably, the Slovenian Government had, by virtue of law, transferred most of the assets of Ljubljanska Banka Ljubljana to a new bank (see paragraph 49 above); the Serbian Government had written off the debts of State-owned companies to Investbanka in order to be able to privatise them and gain millions in profit.

86. The Government of Bosnia and Herzegovina added that the branches of Ljubljanska Banka Ljubljana and Investbanka had been required to transfer foreign currency collected from their clients to the headquarters. As a result, the vaults of the branches situated in Bosnia and Herzegovina had been almost empty when the SFRY dissolved, this being a further reason to hold Slovenia and Serbia responsible in the present case.

(b) Croatia

87. The Croatian Government submitted that Slovenia and Serbia should be held responsible for the reasons advanced by the Bosnian-Herzegovinian Government (paragraphs 85-86 above). They added that the restructuring of Ljubljanska Banka Ljubljana had not been needed to prevent the collapse of that bank, as claimed by the Slovenian Government, but had been aimed at shielding that bank from liability towards savers at its branches located outside Slovenia. In this connection, the Croatian Government provided a copy of a report issued by Moody's in 1997 showing that the assets of Nova Ljubljanska Banka, which had been founded with assets of Ljubljanska Banka Ljubljana only a couple of years earlier (see paragraph 49 above), were around USD 3.7 billion.

88. The Croatian Government also pointed out that the Memorandum of Understanding between Croatia and Slovenia of 11 March 2013, urging further succession negotiations, had concerned only the savings which had been transferred from the Zagreb branch of Ljubljanska Banka Ljubljana to Croatian banks in the 1990s (see paragraph 43 above). Therefore, contrary to what was argued by the Slovenian Government, the Memorandum should not be interpreted as an acceptance that all "old" foreign-currency savings in the branches of Ljubljanska Banka Ljubljana located outside Slovenia were a succession issue (see paragraph 92 below).

(c) Serbia

89. The Serbian Government argued that it had an obligation pursuant to international rules of State succession and the Agreement on Succession

Issues only to negotiate in good faith the issue of "old" foreign-currency savings in the branches of Investbanka located outside Serbia. Accordingly, the Court should limit its analysis to the question whether such negotiations had been pursued, rather than consider the substantive question as to which State should pay back the applicants' savings. If the Court were nevertheless to decide to deal with that question, the Serbian Government maintained that Bosnia and Herzegovina should be held responsible in the present case. They relied on different grounds, notably the territoriality principle and the measures taken by that State with regard to "old" foreign-currency savings (see paragraphs 24-28 above). They also claimed that Bosnia and Herzegovina had benefitted the most from "old" foreign-currency savings in the Tuzla branch of Investbanka. By way of example, they submitted a copy of loan contracts between the Tuzla branch of Investbanka, on the one hand, and a Bosnian-Herzegovinian company, a branch of a Serbian company located in Bosnia and Herzegovina and a resident of Bosnia and Herzegovina, on the other.

90. The Slovenian Government's claim (see paragraph 95 below) that foreign currency had ended up either in the NBY's foreign accounts or at the NBY in Belgrade had not been substantiated. The Serbian Government underlined the fact that foreign currency had, as a rule, been re-deposited with the NBY according to the accounting or "pro forma" method, which did not require physical transfer of funds (see paragraph 17 above). Moreover, foreign currency which had been transferred to the NBY's foreign accounts had already been divided between the successor States (see paragraph 65 above).

91. Lastly, the Serbian Government admitted that Mr Šahdanović's savings had been frozen for many years pursuant to the Serbian legislation (namely, the 1998 and 2002 Old Foreign-Currency Savings Acts), but maintained that the measure was necessary in order to "protect the liquidity of the State funds in the light of the difficult economic situation and financial collapse the country was going through". Furthermore, it did not impose an excessive individual burden on the applicant. The issue of Mr Šahdanović's savings and those of many others in branches of Serbian banks located outside Serbia should be agreed upon amongst the successor States of the SFRY in succession negotiations. They further relied on *Molnar Gabor v. Serbia* (no. 22762/05, 8 December 2009), where the Court had indeed held that the legislation in question had struck a fair balance between the general interest of the community and the applicant's persisting legitimate claim to his original savings, as well as the rights of all others in the same situation.

(d) Slovenia

92. The Slovenian Government affirmed that the issue of the applicants' "old" foreign-currency savings in the Sarajevo branch of Ljubljanska Banka

Ljubljana and the Tuzla branch of Investbanka was a succession issue. They relied in that regard on, *inter alia*, the Agreement on Succession Issues (see paragraphs 62-63 above) and the Memorandum of Understanding between Croatia and Slovenia of 2013 (see paragraph 43 above). In their opinion, the Court should therefore limit its analysis to the question whether negotiations concerning that issue had been pursued in good faith, rather than examine the substantive question as to which State should repay the applicants. If the Court were nevertheless to decide to deal with that question, they argued that Bosnia and Herzegovina should be held responsible, on the basis of the territoriality principle, for "old" foreign-currency savings in the branches in issue. A further reason was the fact that Bosnia and Herzegovina had not expressly excluded its liability for such savings until 2004 (see paragraphs 24-28 above).

93. Furthermore, as Ljubljanska Banka Ljubljana had been on the verge of bankruptcy, they had had to restructure it in 1994. However, the Slovenian State should not be held liable for debts of that bank only because it had become its owner as a result of the rehabilitation process. Otherwise, it was argued, no State would be able to rehabilitate a bank with negative capital without incurring full liability for its debt. In any event, they submitted that Ljubljanska Banka Ljubljana had never exercised public functions; that it had never acted on specific instructions of the State as to the non-payment of the applicants' "old" foreign-currency savings; and that it was subject to the ordinary law (that is, Slovenian company law). The mere fact that a State was the owner of a company, and in that sense controlled it, was not sufficient to attribute its activities to the State or to hold the State liable for the company's debts pursuant to customary international law, as codified in the International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts.

94. The Slovenian Government further submitted that they had not been obliged to rehabilitate Ljubljanska Banka Ljubljana's Sarajevo branch. They referred to the deposit-guarantee schemes adopted by several member States of the Council of Europe, including Belgium, France, Portugal, Switzerland, the United Kingdom and the Netherlands, which accorded deposit guarantees only to branches of domestic banks located on their respective territories. In addition, they relied on judgment E-16/11 of the EFTA Court of 28 January 2013 (see paragraphs 71-73 above). The EFTA Court had emphasised that States enjoyed a "wide margin of discretion in making fundamental choices of economic policy in the specific event of a systemic crisis". The same was true under Article 1 of Protocol No. 1.

95. Lastly, whilst it was true that foreign currency had been transferred on a regular basis from Ljubljanska Banka Ljubljana's Sarajevo branch to the National Bank of Slovenia, some funds had subsequently been sent back to Sarajevo (see paragraph 18 above). The funds that had not been sent back to Sarajevo had been recorded as a claim of the Sarajevo branch against the

NBY and had been physically transferred to foreign accounts of the NBY. In support of their claim, the Slovenian Government submitted documents showing some transfers of foreign currency from Ljubljana to the NBY's accounts at foreign banks (notably, LBS Bank – New York and LHB Internationale Handelsbank A.G. Frankfurt, both owned by Ljubljanska Banka Ljubljana, but also some other foreign commercial banks) in the period before the dissolution of the SFRY.

(e) The former Yugoslav Republic of Macedonia

96. The Macedonian Government, like the Governments of Bosnia and Herzegovina and of Croatia, argued that the issue of the applicants' savings was of a civil-law nature. In their view, since there was no link between the applicants and the Macedonian authorities, the Macedonian Government had clearly not breached the Convention.

C. The Grand Chamber's assessment

1. Applicability of Article 1 of Protocol No. 1

97. As the Court has already found in paragraph 80 above, the foreign currency deposits forming the subject-matter of the applicants' complaints did constitute "possessions" within the meaning of Article 1 of Protocol No. 1. As a result, that Article is applicable in the present case.

2. Compliance with Article 1 of Protocol No. 1

(a) Applicable rule

98. As the Court has stated on many occasions, Article 1 of Protocol No. 1 comprises three rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of property and subjects it to conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be read in the light of the general principle laid down in the first rule (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II; *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V; *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V; and *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 93, 25 October 2012).

99. Turning to the present case, it is to be observed that as a result of different measures adopted at national level, the applicants have not been able to use their savings for more than twenty years. Whilst, initially at least, the freezing of the bank accounts could be viewed as intended to control the use of their possessions in the sense of the third rule, it may be questioned whether the fact that their deposits remained unavailable for such a long period did not amount to a "deprivation" in the sense of the second rule. However, bearing in mind the findings in paragraphs 77 to 81 above that the legislation of the respondent States did not extinguish the applicants' claims or otherwise deprive them of legal validity, as well as those States' acceptance in principle that deposit holders such as the applicants should also be able to dispose of their savings, it cannot be said that the applicants have been formally deprived of their savings. For the same reasons the Court does not find that the subject matter could be regarded as clearly amounting to *de facto* expropriation. Against this background, and in view of the complexity of the legal and factual issues involved in this case, the Court considers that the alleged violation of the right of property cannot be classified as falling into a precise category (see *Beyeler v. Italy* [GC], no. 33202/96, § 106, ECHR 2000-I, and *Zolotas v. Greece (no. 2)*, no. 66610/09, § 47, ECHR 2013). The present case should thus be examined in the light of the general principle laid down in the first rule.

(b) Nature of the alleged violation

100. The main object of Article 1 of Protocol No. 1 is to protect a person against unjustified interference by the State with the peaceful enjoyment of his or her possessions. However, by virtue of Article 1 of the Convention, each Contracting Party "shall secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention". The discharge of this general duty may entail positive obligations inherent in ensuring the effective exercise of the rights guaranteed by the Convention. In the context of Article 1 of Protocol No. 1, those positive obligations may require the State to take the measures necessary to protect the right of property (see *Broniowski*, cited above, § 143, with further references, and *Likvidējamā p/s Selga and Vasiļevska v. Latvia* (dec.), nos. 17126/02 and 24991/02, §§ 94-113, 1 October 2013).

101. However, the boundaries between the State's positive and negative duties under Article 1 of Protocol No. 1 do not lend themselves to precise definition. The applicable principles are nonetheless similar. Whether the case is analysed in terms of a positive duty of the State or in terms of an interference by a public authority which needs to be justified, the criteria to be applied do not differ in substance. In both contexts regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole. It also holds true that the aims

mentioned in that provision may be of some relevance in assessing whether a balance between the demands of the public interest involved and the applicant's fundamental right of property has been struck. In both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (see *Broniowski*, cited above, § 144, with further references).

102. In the present case, the applicants complained of their inability to withdraw their savings from their accounts with the banks in question. Their deposits had become unavailable owing to such factors as the lack of funds in the relevant banks, the imposition by law of a freezing of the accounts and the failure by national authorities to take measures with a view to enabling deposit holders in the applicants' situation to dispose of their savings. This state of affairs may well be examined in terms of an interference with the effective exercise of the right protected by Article 1 of Protocol No. 1 or in terms of a failure to secure the exercise of that right (see *Zolotas* (No. 2), cited above, §§ 40, 47 and 53, where the Court found that the measure complained of constituted an interference and also found that the respondent State had certain positive obligations). Having regard to the particular circumstances of the present case, the Court considers it unnecessary to categorise its examination of the case strictly as being under the head of positive or negative obligations of the respondent States. The Court will determine whether the conduct of the respondent States – regardless of whether that conduct may be characterised as an interference or as a failure to act, or a combination of both – was justifiable in view of the principles of lawfulness, legitimate aim and "fair balance" (see *Broniowski*, cited above, § 146).

(c) Whether the respondent States respected the principle of lawfulness

103. The first and most important requirement of Article 1 of Protocol No. 1 is the requirement of lawfulness. The second sentence of the first paragraph authorises a deprivation of possessions "subject to the conditions provided for by law" and the second paragraph recognises that States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention. The principle of lawfulness also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (ibid., § 147, with further references).

104. There is no explicit dispute between the parties as to whether the principle of lawfulness has been respected in this case. The Court sees no reason to find otherwise. Clearly, the situation at issue, namely, the applicants' inability to withdraw their savings at least since the dissolution of the SFRY, had a legal basis in domestic law (see, notably, paragraphs 54-58 above).

(d) Whether the respondent States pursued a "legitimate aim"

105. Any interference with the enjoyment of a Convention right must pursue a legitimate aim. Similarly, in cases involving a positive duty, there must be a legitimate justification for the State's inaction. The principle of a "fair balance" inherent in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community. Moreover, it should be reiterated that the various rules incorporated in Article 1 of Protocol No. 1 are not distinct, in the sense of being unconnected, and that the second and third rules are concerned only with particular instances of interference with the right to the peaceful enjoyment of property. One of the effects of this is that the existence of a public interest required under the second sentence, or the general interest referred to in the second paragraph, are corollaries of the principle set forth in the first sentence, so that an interference with the exercise of the right to the peaceful enjoyment of possessions within the meaning of the first sentence of Article 1 of Protocol No. 1 must also pursue an aim in the public interest (see *Beyeler*, cited above, § 111).

106. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property. Since the margin of appreciation available to the legislature in implementing social and economic policies is wide, the Court will respect the legislature's judgment as to what is in the public interest, unless that judgment is manifestly without reasonable foundation (see *Broniowski*, cited above, § 149, with further references). The Court has already held that this logic applies necessarily to such fundamental changes as the dissolution of a State followed by a war, phenomena which inevitably involve the enactment of large-scale economic and social legislation (see *Suljagić*, cited above, § 42).

107. Given the wide margin of appreciation, the Court finds that the legitimate aim principle was also respected in the present case. According to the Serbian Government the aim was to protect the liquidity of the State funds in the light of the difficult economic situation and financial collapse the country was going through (see paragraph 91 above). The other respondent Governments did not comment on this issue. However, the Court is prepared to accept that following the dissolution of the SFRY and the subsequent armed conflicts, the respondent States had to take measures to protect their respective banking systems and national economies in general. In view of the overall size of the "old" foreign-currency savings, it is clear that none of the successor States was able to allow the uncontrolled withdrawal of such savings. The Court will thus proceed to examine the key

issue, namely whether a "fair balance" has been struck between the general interest and the applicants' rights under Article 1 of Protocol No. 1.

(e) Whether the respondent States respected the principle of a "fair balance"

(i) General principles

108. An interference with the peaceful enjoyment of possessions and a failure to act must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In other words, in each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by reason of the State's action or inaction the person concerned had to bear a disproportionate and excessive burden. In assessing compliance with that requirement, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see *Broniowski*, cited above, §§ 147-151).

(ii) Application of the general principles to the present case

109. In its decision of 17 October 2011 declaring the application admissible, the Chamber found that the statutory guarantee of the SFRY in respect of the "old" foreign-currency savings in the banks in issue had not been activated until the dissolution of the SFRY and that the relevant liability, therefore, had not shifted from those banks to the SFRY. Furthermore, pursuant to the SFRY civil law and the companies register, all branches of Ljubljanska Banka Ljubljana and Investbanka had been acting on behalf and for the account of the parent banks at the time of the dissolution of the SFRY. Therefore, the Chamber concluded 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 (see paragraph 67 of the Chamber's judgment).

110. The parties, in essence, accepted that finding in their pleadings on the merits before the Chamber and continued to do so in their pleadings before the Grand Chamber.

111. The Grand Chamber agrees with and endorses the Chamber's finding.

112. The Court also notes that Ljubljanska Banka Ljubljana and Investbanka have remained liable for the "old" foreign-currency savings in their Bosnian-Herzegovinian branches since the dissolution of the SFRY.

The domestic law and practice set out in paragraphs 44, 45, 49 and 51 above undoubtedly confirm that. Notably, domestic courts in Slovenia and Serbia have continued to consider old Ljubljanska Banka Ljubljana and Investbanka to be liable for "old" foreign-currency savings in their foreign branches.

113. It is true that, according to the companies register for the period 1993-2004, a Bosnian-Herzegovinian bank named Ljubljanska Banka Sarajevo was also liable for the "old" foreign-currency savings in the Sarajevo branch of Ljubljanska Banka Ljubljana. Nevertheless, domestic courts, both in Bosnia and Herzegovina and in Slovenia, held that the impugned war-time entry in the companies register had always been unlawful (see paragraphs 30-35 and 51 above). It was thus deleted from the register. The Court sees no reason to disagree with the domestic courts in this regard. Indeed, the Court has held on many occasions that it is primarily for domestic courts to resolve problems of interpretation of domestic law so that the role of the Court is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I; *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011; and *Vučković and Others v. Serbia* [GC], no. 17153/11, § 80, 25 March 2014).

114. Having found that Ljubljanska Banka Ljubljana and Investbanka were and still are liable for "old" foreign-currency savings in their Bosnian-Herzegovinian branches, it must be examined, as the Chamber did, whether Slovenia and Serbia were responsible for the failure of those banks to repay their debt to the applicants. In this regard, the Court reiterates that a State may be responsible for debts of a State-owned company, even if the company is a separate legal entity, provided that it does not enjoy sufficient institutional and operational independence from the State to absolve the latter from its responsibility under the Convention (see, among many other authorities, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02 *et al.*, §§ 43-46, ECHR 2004-XII; *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, no. 39745/02, §§ 17-19, 3 April 2007; *Yershova v. Russia*, no. 1387/04, §§ 54-63, 8 April 2010; and *Kotov*, cited above, §§ 92-107). The key criteria used in the above-mentioned cases to determine whether the State was indeed responsible for such debts were as follows: the company's legal status (under public or private law); the nature of its activity (a public function or an ordinary commercial business); the context of its operation (such as a monopoly or heavily regulated business); its institutional independence (the extent of State ownership); and its operational independence (the extent of State supervision and control).

115. Additional factors to be taken into consideration are whether the State was directly responsible for the company's financial difficulties, siphoned the corporate funds to the detriment of the company and its

stakeholders, failed to keep an arm's-length relationship with the company or otherwise acted in abuse of the corporate form (see *Anokhin v. Russia* (dec.), no. 25867/02, 31 May 2007, and *Khachatryan v. Armenia*, §§ 51-55, no. 31761/04, 1 December 2009). Lastly, as to the companies under the regime of social ownership, which was widely used in the SFRY and is still used in Serbia, the Court has held that they do not, in general, enjoy "sufficient institutional and operational independence from the State" to absolve the latter from its responsibility under the Convention (see, among many other authorities, *R. Kačapor and Others*, cited above, §§ 96-99, and *Zastava It Turs v. Serbia* (dec.), no. 24922/12, §§ 19-23, 9 April 2013).

116. Whilst the case-law described above has been developed in relation to companies other than financial institutions, the Court considers that it also applies to the banks under consideration in the present case. In this regard, the Court notes that Ljubljanska Banka Ljubljana is State-owned by Slovenia and controlled by a Slovenian Government agency – the Succession Fund (see paragraph 49 above). It is moreover crucial that by virtue of an amendment to the 1991 Constitutional Act, Slovenia transferred most of that bank's assets to a new bank, to the detriment of the bank and its stakeholders (ibid.). The State thus disposed of Ljubljanska Banka Ljubljana's assets as it saw fit (compare *Khachatryan*, cited above, § 51). The Grand Chamber therefore agrees with and endorses the Chamber's finding that there are sufficient grounds to deem Slovenia responsible for Ljubljanska Banka Ljubljana's debt to Ms Ališić and Mr Sadžak. In this connection, the Court also notes the existence of certain evidence in the case indicating that most of the funds of the Sarajevo branch of Ljubljanska Banka Ljubljana ended up in Slovenia (see paragraph 18 above).

117. As to Investbanka, the Court observes that it is likewise State-owned, by Serbia, and is controlled by a Serbian Government agency – the Deposit Insurance Agency (see paragraph 47 above). More importantly, pursuant to the Privatisation Act 2001, that bank was required to write off its considerable claims against State-owned and socially-owned companies to the detriment of the bank and its stakeholders (ibid.). Like Slovenia in respect of Ljubljanska Banka Ljubljana, Serbia thus disposed of Investbanka's assets as it considered it necessary. The Grand Chamber therefore agrees with and endorses the Chamber's finding that there are sufficient grounds to deem Serbia responsible for Investbanka's debt to Mr Šahdanović.

118. The Court would emphasise that these conclusions are limited to the circumstances of the present case and do not imply that no State will ever be able to rehabilitate a failed bank without incurring under Article 1 of Protocol No. 1 direct responsibility for the bank's debt (see *Kotov,* cited above, § 116, and *Anokhin*, cited above) nor, as suggested by Slovenia (see paragraphs 93-94 above), that this provision requires that foreign branches of domestic banks always be included in domestic deposit-guarantee

schemes. The Court considers the present case to be special for the following reasons. First, when the applicants deposited their money, the SFRY still existed and the branches in question were not foreign branches. Moreover, Ljubljanska Banka Ljubljana was State-owned even before its rehabilitation. Indeed, both that bank and Investbanka have always been either State-owned or socially-owned. The present case is thus evidently different from a standard case of rehabilitation of an insolvent private bank. The EFTA Court's judgment on which the Slovenian Government relied is of little relevance in the present case as it concerned the rehabilitation of a failed private bank in the particular legal framework applicable to Iceland. Moreover, the savers in issue, unlike the present applicants, had already been repaid by the Dutch and United Kingdom authorities (see paragraphs 71-73 above).

119. Neither has the Court overlooked the reference to *Molnar Gabor* made by the Serbian Government (see paragraph 91 above). However, in that case, the Court examined the provisions of the Serbian Old Foreign-Currency Savings Acts concerning those who, unlike the present applicants, qualified for the gradual repayment of their savings by the Serbian authorities. The Court held that given the dire reality of the Serbian economy at the material time and the margin of appreciation afforded to the States in respect of matters involving economic policy, the impugned provisions had struck a fair balance between the general interest and the applicant's rights. In contrast, Mr Šahdanović did not qualify for such gradual repayment by the Serbian authorities. Thus, the present case must be distinguished from *Molnar Gabor*.

120. Having found that Slovenia is responsible for Ljubljanska Banka Ljubljana's debt to Ms183ić and Mr Sadžak and that Serbia is responsible for Investbanka's debt to Mr Šahdanović, the Court must examine whether there is any good reason for the failure of those States to repay the applicants for so many years. The explanation of the Serbian and Slovenian Governments for the delay is essentially that the international law on State succession required only that succession issues be negotiated in good faith, without imposing any time-limits for the settlement of such issues. They further argued that their insistence on the responsibility of Bosnia and Herzegovina for "old" foreign-currency savings in Bosnian-Herzegovinian branches of Slovenian and Serbian banks during succession negotiations was fully in line with the main principle of international law on State succession – the territoriality principle.

121. The Court disagrees with the proposition of Slovenia and Serbia that the territoriality principle should be applied to the applicants' savings. In accordance with international law on State succession, the "equitable proportion" principle is the governing principle in so far as State debts are concerned. While it is true that the 2001 Resolution on State Succession in Matters of Property and Debts of the Institute of International Law provides

that the territoriality principle applies specifically to local debts, the applicants' savings evidently did not belong to that category of State debts (see paragraph 60 above). The Court disagrees also with the proposition of Slovenia and Serbia that international law requires only that succession issues be negotiated; it also provides that, failing an agreement, State debts must be divided equitably (ibid.).

122. It is further to be observed that the equitable distribution of the debt at issue in the present case would require a global assessment of the property and debts of the former State and the size of the portions so far attributed to each of the successor States. That question is far beyond the scope of the present case and outside the Court's competence (see *Kovačić and Others*, cited above, § 256).

123. However, the succession negotiations did not prevent the successor States from adopting measures at national level aimed at protecting the interests of savers, such as the present applicants. The Croatian Government have repaid a large part of their citizens' "old" foreign-currency savings in the Zagreb branch of Ljubljanska Banka Ljubljana (see paragraph 43 above) and the Macedonian Government have repaid the total amount of "old" foreign-currency savings in the Skopje branch of that bank (see paragraph 52 above). Despite that, the two Governments have never abandoned their position that Slovenia should eventually be held liable and have continued to claim compensation for the amounts paid at the inter-State level (notably, in the context of succession negotiations). At the same time, the Slovenian Government have repaid the total amount of "old" foreign-currency savings in domestic branches of Investbanka and other foreign banks (see paragraph 48 above) and the Serbian Government have agreed to repay the "old" foreign-currency savings in foreign branches of Serbian banks (such as the Tuzla branch of Investbanka) of those who had the citizenship of any State other than the successor States of the SFRY (see paragraph 45 above). This shows that solutions have been found as regards some categories of "old" foreign-currency savers in the impugned branches, but not with regard to the present applicants.

124. Whereas some delays may be justified in exceptional circumstances (see *Merzhoyev*, cited above, § 56, and, *mutatis mutandis*, *Immobiliare Saffi*, cited above, § 69), the Court finds that the present applicants have been made to wait too long. It is therefore not satisfied that the authorities of Slovenia and Serbia, notwithstanding their wide margin of appreciation in this area, as mentioned in paragraph 106 above, struck a fair balance between the general interest of the community and the property rights of the applicants, who were made to bear a disproportionate burden.

125. For all the reasons set out above, the Court concludes that there has been a violation of Article 1 of Protocol No. 1 by Slovenia in respect of Ms Ališić and Mr Sadžak, that there has been a violation of that Article by

Serbia in respect of Mr Šahdanović, and that there has been no violation of that Article by any of the other respondent States.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

126. Article 13 of the Convention 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."

A. The Chamber's conclusions

127. Having analysed a number of remedies, the Chamber concluded that the applicants had no effective remedy at their disposal for their substantive complaints. It therefore dismissed the Governments' objections in respect of the applicants' failure to exhaust domestic remedies. Furthermore, as it held Slovenia liable for "old" foreign-currency savings in the Sarajevo branch of Ljubljanska Banka Ljubljana and Serbia for "old" foreign-currency savings in the Tuzla branch of Investbanka, the Chamber found that there had been a breach of Article 13 by Slovenia in respect of Ms Ališić and Mr Sadžak, a breach of that Article by Serbia in respect of Mr Šahdanović, and no breach of that Article by any of the other respondent States (see paragraphs 83-90 of the Chamber's judgment).

B. The parties' submissions

1. The applicants

128. The applicants maintained that they did not have at their disposal an effective remedy for their substantive complaints, without going into any details.

2. The respondent Governments

129. Only the Slovenian Government submitted that the applicants had effective domestic remedies at their disposal, notably an action against the old Ljubljanska Banka in the Slovenian courts. The applicants could also have brought an action against the old Ljubljanska Banka in the Croatian courts, where more than 500 clients of the old Ljubljanska Banka's Zagreb branch had obtained judgments against the old Ljubljanska Banka and sixty-three of them had been paid their "old" foreign-currency savings from a forced sale of that bank's assets located in Croatia (see paragraph 43 above).

130. The other respondent Governments conceded that there were no effective remedies at the applicants' disposal. The Bosnian-Herzegovinian Government added that even if the applicants were to obtain judgments

ordering the old Ljubljanska Banka to pay them their "old" foreign-currency savings, any such ruling would most likely not be enforced, since the 1994 legislation had left that bank with insufficient assets (see paragraph 49 above). The Croatian Government maintained that an action against the old Ljubljanska Banka in the Croatian courts would be equally ineffective as that bank had no more assets in Croatia (see paragraph 43 above).

C. The Grand Chamber's assessment

131. The Court has held on many occasions that Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. Although the scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint, the remedy required by Article 13 must be effective in practice as well as in law. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Furthermore, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

132. As regards a civil action against the old Ljubljanska Banka in the Slovenian courts, the Court notes that the Ljubljana District Court has rendered numerous decisions ordering the old Ljubljanska Banka to pay "old" foreign-currency savings in its Sarajevo branch, together with interest (see paragraph 51 above). However, the Slovenian Government have failed to demonstrate that at least one such judgment has been enforced. There is therefore no evidence to date that this remedy was capable of providing the applicants with appropriate and sufficient redress.

133. As regards a civil action against that bank in the Croatian courts, it is noted from the documents at the Court's disposal that the old Ljubljanska Banka no longer has any assets in Croatia. Such a remedy thus offered the applicants no reasonable prospects of success.

134. The Court has taken note of the Slovenian Government's argument that there was no obligation to provide a domestic remedy in the present case, in so far as Article 13 did not require a remedy whereby the laws of a Contracting State could be challenged before a national authority as being themselves contrary to the Convention. While that interpretation of Article 13 is correct (see *Roche v. the United Kingdom* [GC], no. 32555/96, § 137,

ECHR 2005-X; *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 60, ECHR 2009; and *Paksas v. Lithuania* [GC], no. 34932/04, § 114, ECHR 2011), the present applicants did not in fact complain about domestic legislation of the respondent States or indeed about any single decision or measure. They complained about the respondent States' failure to ensure the repayment of their savings in one way or another. An effective domestic remedy should therefore have been provided.

135. As regards Investbanka, the Court notes that Serbia did not contest that Mr Šahdanović did not have an effective remedy at his disposal.

136. The Grand Chamber therefore concludes, as did the Chamber, that there has been a breach of Article 13 by Slovenia in respect of Ms127 Ališić and Mr Sadžak and by Serbia in respect of Mr Šahdanović. It further concludes that there has been no breach of Article 13 by any of the other respondent States.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

137. Article 14 of the Convention reads as follows:

> "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."

138. Although the applicants relied on this Article, they did not develop the argument in their submissions to the Grand Chamber. The Governments' submissions in this regard are equally limited. The Grand Chamber, for that reason, agrees with the Chamber that there is no need to examine the matter under Article 14 as regards Serbia and Slovenia and that there has been no violation of that Article as regards the other respondent States.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

139. The relevant part of Article 46 of the Convention reads as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ..."

A. The Chamber's conclusions

140. The Chamber applied the pilot-judgment procedure in the present case and indicated certain general measures (see paragraphs 98-101 of the Chamber's judgment).

B. The parties' submissions

141. Only the Serbian and Slovenian Governments objected to the use of the pilot-judgment procedure in the present case, in particular because they would not be able to verify the balance in the "old" foreign-currency accounts at the branches of Ljubljanska Banka Ljubljana and Investbanka situated in other respondent States without the help of those States. The Governments of Bosnia and Herzegovina and Croatia maintained that the Serbian and Slovenian Governments had all the requisite information at their disposal.

C. The Grand Chamber's assessment

1. General principles

142. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent States a legal obligation to apply, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the applicants' rights which the Court found to be violated. Such measures must also be taken as regards other persons in the applicants' position, notably by solving the problems that have led to the Court's findings (see *Lukenda v. Slovenia*, no. 23032/02, § 94, ECHR 2005-X). This obligation has been emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (ResDH(97)336, IntResDH(99)434, IntResDH(2001)65 and ResDH(2006)1).

143. In order to facilitate effective implementation of its judgments, the Court may adopt a pilot-judgment procedure allowing it to clearly identify structural problems underlying the breaches and to indicate measures to be applied by the respondent States to remedy them (see Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem of 12 May 2004; Rule 61 of the Rules of Court; and *Broniowski*, cited above, §§ 189-94). The aim of that procedure is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention rights in question in the national legal order (see *Wolkenberg and Others v. Poland* (dec.), no. 50003/99, § 34, ECHR 2007-XIV). While the respondent State's action should primarily be aimed at resolving such a dysfunction and at introducing, if

necessary, effective remedies for the violations in issue, it may also include *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements. The Court may decide to adjourn the examination of similar cases, thus giving the respondent States a chance to settle them in such various ways (see, for example, *Burdov v. Russia (no. 2)*, no. 33509/04, § 127, ECHR 2009). If, however, the respondent State fails to adopt such measures following a pilot judgment and continues to violate the Convention, the Court will have no choice but to resume the examination of all similar applications pending before it and to take them to judgment in order to ensure effective observance of the Convention (*E.G. v. Poland* (dec.), no. 50425/99, § 28, ECHR 2008, and *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 136, ECHR 2014).

2. *Application of the general principles to the present case*

144. The violations which the Court has found in this case affect many people. There are more than 1,850 similar applications, introduced on behalf of more than 8,000 applicants, pending before the Court. They concern "old" foreign-currency savings in Ljubljanska Banka Ljubljana's Sarajevo and Zagreb branches and such savings in branches of several Serbian banks located in or outside Serbia (see paragraph 46 above). In addition, there are many thousands of potential applicants. Therefore, the Grand Chamber agrees with the Chamber that it is appropriate to apply the pilot-judgment procedure in the present case, notwithstanding the objections of the Serbian and Slovenian Governments in this regard.

145. In view of the systemic situation which it has identified, the Court considers that general measures at national level are undoubtedly called for in the execution of the present judgment.

146. Notably, Slovenia must make all necessary arrangements, including legislative amendments, within one year and under the supervision of the Committee of Ministers, so as to allow Ms Ališić, Mr Sadžak and all others in their position to recover their "old" foreign-currency savings under the same conditions as those who had such savings in the domestic branches of Slovenian banks (those conditions have been set out in paragraph 48 above). Within the same time-limit and under the supervision of the Committee of Ministers, Serbia must make all necessary arrangements, including legislative amendments, in order to allow Mr Šahdanović and all others in his position to recover their "old" foreign-currency savings under the same conditions as Serbian citizens who had such savings in the domestic branches of Serbian banks (those conditions have been set out in paragraph 45 above).

147. It must be underlined that the above measures do not apply to those who, while in the same position as the present applicants, have already been paid their entire "old" foreign-currency savings, such as those who were

able to withdraw their savings on humanitarian grounds (see paragraphs 25 and 44 above), or used them in the privatisation process in the FBH (see paragraph 32 above), or were paid their savings in the Zagreb and Skopje branches of Ljubljanska Banka Ljubljana by the Croatian and Macedonian Governments (see paragraphs 43 and 52 above). Serbia and Slovenia may exclude such persons from their repayment schemes. However, where only a part of a person's "old" foreign-currency savings has thus been repaid, Serbia and Slovenia are now responsible for the rest (Serbia for "old" foreign-currency savings in all branches of Serbian banks and Slovenia for such savings in all branches of Slovenian banks, regardless of the citizenship of the depositor concerned and of the branch's location).

148. To allow the Serbian and Slovenian authorities to verify the balance in their accounts, the applicants and all others in their position must comply with the requirements of any verification procedure to be set up by those States. That being said, no claim should be rejected only because of a lack of original contracts or bankbooks (given the lapse of time and the wars that affected so many people in different ways), provided that the persons concerned are able to prove their claims by other means. Furthermore, any and all verification decisions must be subject to judicial review.

149. While there is no doubt that inability to freely dispose of their "old" foreign-currency savings for more than twenty years have caused some distress and frustration to all persons affected, the Court does not find it necessary, at present, to indicate as a general measure that they should all be provided with adequate redress for that damage by Serbia and Slovenia. If, however, either of those States fails to apply the measures indicated in paragraph 146 above and thus continues to violate the Convention, the Court may reconsider the issue of redress in an appropriate future case concerning this matter against the State in question (see *Suljagić*, cited above, § 64).

150. Lastly, the Court adjourns its examination of similar cases against Serbia and Slovenia for one year (see *Suljagić*, cited above, § 65). This decision is 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

151. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

152. The applicants claimed payment of their "old" foreign-currency savings with interest in respect of pecuniary damage. The Court has already made provision in this regard in paragraph 146 above.

153. Each of the applicants further claimed 4,000 euros (EUR) in respect of non-pecuniary damage.

154. The Governments did not provide any comments in this regard in their pleadings before the Grand Chamber.

155. The Grand Chamber, like the Chamber, accepts that the applicants' inability to freely dispose of their "old" foreign-currency savings for more than twenty years must have caused them some distress and frustration. Their distress and frustration have inevitably been exacerbated by their taking upon themselves the trouble and burden of acting – at least to some extent – on behalf of all others in their position (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 248, ECHR 2006-VIII). Therefore, making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the amounts claimed (that is, EUR 4,000 each to Ms Ališić and Mr Sadžak, to be paid by Slovenia, and EUR 4,000 to Mr Šahdanović, to be paid by Serbia).

B. Costs and expenses

156. The applicants also claimed EUR 27,351 for the costs and expenses incurred before the Court.

157. All of the Governments maintained that the claim was excessive and unsubstantiated.

158. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been met. Since no such documents have been submitted in the present case, the Court rejects this claim.

C. Default interest

159. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Dismisses*, unanimously, the Governments' preliminary objections;

2. *Holds*, unanimously, that there has been a violation of Article 1 of Protocol No. 1 to the Convention by Serbia in respect of Mr Šahdanović;

3. *Holds*, unanimously, that there has been a violation of Article 1 of Protocol No. 1 to the Convention by Slovenia in respect of Ms Ališić and Mr Sadžak;

4. *Holds*, by fifteen votes to two, that there has been no violation of Article 1 of Protocol No. 1 to the Convention by the other respondent States;

5. *Holds*, unanimously, that there has been a violation of Article 13 of the Convention by Serbia in respect of Mr Šahdanović;

6. *Holds*, unanimously, that there has been a violation of Article 13 of the Convention by Slovenia in respect of Ms Ališić and Mr Sadžak;

7. *Holds*, by fifteen votes to two, that there has been no violation of Article 13 of the Convention by the other respondent States;

8. *Holds*, unanimously, that there is no need to examine the complaint under Article 14 of the Convention taken together with Article 13 of the Convention and Article 1 of Protocol No. 1 with regard to Serbia and Slovenia and that there has been no violation of Article 14 of the Convention taken together with Article 13 of the Convention and Article 1 of Protocol No. 1 with regard to the other respondent States;

9. *Holds*, unanimously, that the failure of the Serbian and Slovenian Governments to include the present applicants and all others in their position in their respective schemes for the repayment of "old" foreign-currency savings represents a systemic problem;

10. *Holds*, by sixteen votes to one, that Serbia must 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 and all others in his position to recover their "old" foreign-currency savings under the same conditions as Serbian citizens who had such savings in domestic branches of Serbian banks;

11. *Holds*, by sixteen votes to one, that Slovenia must make all necessary arrangements, including legislative amendments, within one year and under the supervision of the Committee of Ministers, in order to allow Ms Ališić, Mr Sadžak and all others in their position to recover their "old" foreign-currency savings under the same conditions as those who had such savings in domestic branches of Slovenian banks;

12. *Decides*, unanimously, to adjourn, for one year, examination of all similar cases against Serbia and Slovenia, 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;

13. *Holds*, by sixteen votes to one,
(a) that Serbia is to pay Mr Šahdanović within three months EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
(b) that Slovenia is to pay Ms Ališić and Mr Sadžak within three months EUR 4,000 (four thousand euros) each in respect of non-pecuniary damage, plus any tax that may be chargeable;
(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

14. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 16 July 2014.

Michael O'Boyle	Dean Spielmann
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:
(a) concurring opinion of Judge Ziemele;
(b) partly concurring opinion of Judge Popović;
(c) partly dissenting opinion of Judge Nußberger, joined by Judge Popović.

D.S.
M.O'B.

CONCURRING OPINION OF JUDGE ZIEMELE

1. I voted with the majority in this case. I note that this judgment will become one of the leading cases dealing with the specific context of State succession and the application of the European Convention on Human Rights in a particularly sensitive area: that of the sharing of responsibility for debts. The Court had to ascertain the relevant principles of the law on State succession that might influence the interpretation of Article 1 of Protocol No. 1 in this case. The "Relevant International Law and Practice" part of the judgment is therefore of particular significance.

2. It is important to point out that despite a very broad approach towards sources of international law enunciated in *Demir and Baykara v. Turkey* ([GC], no. 34503/97, §§ 85-86, ECHR 2008) there are certain limits within which the Court has to operate, and that therefore a more in-depth presentation and analysis of the applicable principles of the law on State succession was not provided by the Court in an area where, ultimately, there are still many questions and a wide variety of State practice (see *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, § 256, 3 October 2008). The Court thus takes the essential points from the relevant area of international law while focusing, of course, on its own case-law and principles.

3. It is also true that the main argument raised by Slovenia and Serbia concerned their emphasis on the principle of territoriality for the purposes of State responsibility in situations of State succession. The Court answers this submission by pointing out that this is certainly not the only principle applicable to the problem of debts following the dissolution of the State (see paragraph 121). The Court largely resolves the issue by reiterating and emphasising the principles concerning the obligation to negotiate in State succession situations (ibid., Concurring Opinion of Judge Ress, point 4) and the principle of equitable proportion in dividing up the debts of the predecessor State. Given the limited scope of the present case, the Court does not (see paragraph 123) enter full speed into the question of equitable apportionment of debts as such and certainly does not reflect on the unjust enrichment principle, which in my view might also be relevant to the facts of the case (see Articles 37, 40 and 41 of the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts, Badinter Arbitration Commission Opinion No. 1, and Article 8 of the 2001 Resolution of the Institute of International Law). However even without *expressis verbis* reference to these principles, one could argue that the solution is in line with their essence and with their application in international practice.

4. As regards the main point in the case, the role of the principle of territoriality in situations of State succession, the Court strengthens the position taken by the Institute of International Law in its 2001 Resolution in

finding that the principle of territoriality is only one relevant element out of many which need to be taken into account in determining the respective responsibilities of the States concerned. The nature of the rights claimed is important. The Court traces the responsibility for the banks where the applicants' foreign currency accounts are frozen to Serbia and Slovenia (see paragraphs 116-117). One can compare this approach with that taken by the Court in the case of *Likvidējamā p/s Selga and Vasiļevska v. Latvia* ((dec), nos. 17126/02 and 24991/02, 1 October 2013), which concerned frozen foreign currency accounts in a bank in the Russian Federation. It is true that the international legal position of Latvia is different from that of the respondent States in the present case, since Latvia is not a successor State in the context of the demise of the USSR. However, the Russian Federation is a predecessor State and, also in such a scenario, the principle of territoriality, as claimed by the applicants in the Latvian case, could not be applied.

5. As already stated, I was in full agreement with the majority on the merits of the case. At the same time, I retain serious doubts as to the *dicta* in relation to the execution part of the judgment, even though I voted with the majority in the end (see operative paragraphs 10 and 11). The Court has begun from time to time to set deadlines within which States have to execute a judgment under the supervision of the Committee of Ministers. Practice shows that the Court has repeatedly had to come back to its original decision regarding deadlines. This is to my mind inevitable since judgments of the Court typically involve questions of principle and require legislative reforms, and such political processes are complicated (see, for example, *L. v. Lithuania*, no. 27527/03, ECHR 2007-IV), even more so in the context of State succession. There is no question that it is in the general interest in Europe that judgments of the European Court of Human Rights be implemented swiftly and that the broader consequences be assumed where possible. As far as the Court's share in the common responsibility is concerned, it has done its utmost, even indicating possible solutions to the problem under Article 46 where applicable. It is high time that the States attend to their "homework" in complying with the Court's case-law, since this also directly affects the efficiency of the Court. It is in this context that the Court has decided on occasion, including in the present case, to indicate deadlines of compliance to the respondent States. This is a somewhat desperate measure. It is a great pity that the Court has been placed in a situation where it has to resort to such measures. It is also a risk for the Court, since it may be asked to take another look at its decision and that raises serious questions in terms of the principles of legal certainty and finality of judgment. I would much prefer the States parties to the Convention and the Committee of Ministers to tighten up their approach as regards the execution of judgments, rather than the Court having to take such a risk.

PARTLY CONCURRING OPINION OF JUDGE POPOVIĆ

I voted with the majority for finding a violation in respect of Slovenia and Serbia in this case, but I think that paragraphs 109-125 of the judgment need to be clarified. The present judgment may by no means allow the Court in future to deal with applications of the same nature, if lodged against Bosnia and Herzegovina, Croatia and/or Macedonia, in a single-judge formation. Such applications cannot be automatically declared inadmissible. On the contrary, they must be dealt with by a Chamber, first as to the question of admissibility and later on, should they be declared admissible, on the merits as well.

PARTLY DISSENTING OPINION OF JUDGE NUβBERGER, JOINED BY JUDGE POPOVIĆ

A. Historical dimension and financial implications of case

There can be no doubt that the applicants' rights under Article 1 of Protocol No. 1 and Article 13 of the Convention have been violated. What the Grand Chamber was confronted with in this very complex and difficult case was, however, not only to decide if there had been human rights violations or not, but to whom to attribute those violations, which had lasted for more than twenty years, were embedded in the context of the dissolution of the SFRY and which thus took on a historical dimension.

At the same time the Grand Chamber had to decide on the amount of money to be paid not only to the applicants, but also to all those in the same situation as the applicants. It thus had to take a decision with enormous financial implications.

To my regret I cannot subscribe to the solution adopted by the majority.

B. Attribution of exclusive responsibility for violation of applicants' property rights to Slovenia and Serbia respectively

The responsibility for compensating for the loss of "old" foreign currency savings can be regarded either as a question of civil law (this is the position of Bosnia and Herzegovina, Croatia and "the former Yugoslav Republic of Macedonia", see paragraphs 85, 87 and 96) or as a State succession issue to be resolved on the basis of international law (this is the position of Serbia and Slovenia, see paragraphs 89 and 92). The majority of the Grand Chamber have opted for a civil-law approach[44] and have decided that it is Slovenia alone which is responsible for the violation of the rights of Ms Ališić and Mr Sadžak and Serbia alone which is responsible for the violation of Mr Šahanović's rights. Thus the States where, in "Yugoslav times", the associated banks within the socialist model of self-management

[44] The civil-law approach is basically justified with reference to the jurisprudence of the Slovenian and Serbian courts themselves (see paragraphs 44, 45, 49, 51, 112), which is said to "undoubtedly confirm" the liability of Ljubljanska Banka Ljubljana and Investbanka. At least concerning the jurisprudence of the Slovenian courts this is, however, not exact. The Slovenian courts found the old (not the new!) Ljubljanska Banka Ljubljana liable for the payment of "old" foreign-currency deposits. The old Ljubljanska Banka Ljubljana (paragraph 49) as well as Investbanka (paragraph 47) are, however, in a state of "rehabilitation" or bankruptcy, so the direct civil-law claims are directed against insolvent banks.

happened to have their head offices are now required to pay back all the debts incurred in a system created by another State before the entry into force of the Convention.

In my view this solution is unsatisfactory and inadequate, as it is based on an over-simplification of the complex historical developments and leaves out some important aspects. While it might be tempting to find a clear-cut and "easy" solution, a more differentiated approach should have been adopted.

1. Responsibility of the SFRY in setting up the system

It is uncontroversial that it was neither Slovenia nor Serbia alone which set up the whole banking system with its re-depositing schemes, but it was the SFRY which was in dire need of foreign currency (paragraph 14). It is also uncontroversial that the system set up had no sound financial basis (paragraphs 14 and 17). It had to be regarded as risk investment, attracting savers' money by much higher interest rates than those offered on the market, often exceeding 10% (paragraph 14). There was clearly no economic foundation for the expectation of the high gains thus promised.

This has already been clearly spelt out by the Court (see *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, § 51, 3 November 2009):

> "To begin with, it is a well-known fact that the global economic crisis of the 1970s hit the SFRY particularly hard. The SFRY turned to international capital markets and soon became one of the most indebted countries in the world. When the international community backed away from the loose lending practices of the 1970s, the SFRY resorted to foreign-currency savings of its citizens to pay foreign debts and finance imports."

2. Breakdown of the system in "Yugoslav times"

The breakdown of the system had already happened in "Yugoslav times" (stoppage of the re-depositing system in 1988 (see paragraph 20); abolition of the system of basic and associated banks in 1989/1990 (see paragraph 21); massive withdrawal of foreign currency (see paragraph 22)). It was the SFRY which first resorted to emergency measures restricting to a large extent the withdrawals of foreign-currency deposits (see paragraphs 22 and 52). Such measures would not have been necessary if the savers' money had not already been lost at that time. That all happened in a State which does not exist any more at the present time.

This has already been explicitly outlined in the Court's case-law (see *Suljagić*, cited above, §10; compare also *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, § 40, 3 October 2008, and *Molnar Gabor v. Serbia*, no. 22762/05, § 6, 8 December 2009):

> "Problems resulting from the foreign and domestic debt of the SFRY caused a monetary crisis in the 1980s. The national economy was on the verge of collapse and the SFRY resorted to emergency measures, such as statutory restrictions on the

repayment of foreign-currency deposits (see section 71 of the Foreign-Currency Transactions Act 1985). As a result, foreign-currency deposits were practically frozen."

Even though the State guarantee under the civil law had not been activated before the dissolution of the SFRY (see paragraph 15), the consequences of the dysfunctioning of the system set up by the SFRY are to be regarded as the shared responsibility of the successor States.

The international law dimension of the case must not therefore be ignored.

3. *Scope of the Court's jurisdiction* ratione temporis

Most of the measures adopted by the successor States as a follow-up to the breakdown of the system introducing a special regime for "old" foreign-currency savings were adopted in the early 1990s (see paragraphs 23 et seq.) and thus before the entry into force of the Convention in the respective States (Slovenia 28/6/1994, the former Yugoslav Republic of Macedonia 10/4/1997, Croatia 5/11/1997, Bosnia and Herzegovina 12/7/2002, Serbia 3/3/2004). Basically, the foreign-currency accounts remained "frozen" in all the successor States, but withdrawals were allowed under specific conditions, especially on humanitarian grounds (e.g. Bosnia and Herzegovina, see paragraph 25, and Serbia, see paragraph 44; the material at the disposal of the Court does not contain any information on the emergency measures taken by Croatia and the former Yugoslav Republic of Macedonia in the early 1990s, see paragraphs 42 and 52). Slovenia assumed the former SFRY guarantee already in 1991 and agreed to repay original deposits and interest accrued in 1993, but only in so far as savings in domestic branches of the banks were concerned (but covering both Slovenian banks and domestic branches of foreign banks (see paragraph 48)). The guarantees undertaken by Bosnia and Herzegovina were restricted to domestic banks (see paragraph 24).

It is evident that all these measures adopted immediately after the breakdown of the SFRY were emergency measures aimed at securing trust in the new State structures and at avoiding major discontent and protests in turbulent times. With the passing of time, supplementary measures were taken. They were all tailor-made for the concrete needs of the respective successor State, with the consequence of including some and excluding others (e.g. Bosnia and Herzegovina: guarantees and later on payments only for savings in domestic banks (see paragraphs 24 and 27); Serbia: exclusion of citizens from other former SFRY States in the repayment schemes (see paragraph 45)). The former Yugoslav Republic of Macedonia, on the contrary, repaid all the old foreign currency debts (see paragraph 52); for Croatia this seems to be controversial (see paragraph 42 and also *Kovačić and Others*, cited above, § 183).

The Court has no jurisdiction *ratione temporis* to analyse how far the measures adopted before the entry into force of the Convention constituted interferences with the applicants' rights under Article 1 of Protocol No. 1 or how far they were discriminatory and violated that Article taken together with Article 14. The *status quo* at the time when the Convention entered into force in the respective States was that the applicants had been banned from having access to their own money already for several years. In my view, the States' duties under the Convention therefore have to be analysed as positive obligations and not as interferences. The money had *de facto* already been taken away. It could not be taken away a second time, but the losses had to be compensated for.

4. Breach of positive obligations

In the context of State succession, the positive obligations of the respondent States on the basis of Article 1 of Protocol No. 1 were twofold. On a vertical level they had a duty to make up for the losses the applicants had incurred and to provide immediate relief. On a horizontal level they had to negotiate among themselves to achieve an adequate distribution of the debts accumulated within a system that they had all been involved in setting up. While the first duty resulted directly from Article 1 of Protocol No. 1, it was intertwined with the second duty, resulting from general international law and the Agreement on Succession Issues. The Court has repeated many times that the rights guaranteed under the Convention are not theoretical and illusory, but practical and effective. The right to obtain a compensation payment is only effective if it is clear against whom it has to be directed. Therefore all the respondent States had a positive obligation to negotiate over the issue of the "old" foreign currency deposits.

In my view, Croatia breached this duty by refusing to continue the negotiations in 2002 (see paragraph 63), whereas all the other States were willing to take them up again.

Concerning the positive obligation to make up for the losses sustained by the applicants, I agree with the majority that Slovenia and Serbia have not fulfilled their positive obligations under Article 1 of Protocol No. 1. By restructuring the old Ljubljanska Banka Ljubljana and transferring most of its assets to Nova Ljubljanska Banka Slovenia in 1994, that is, at a time when the Convention had already entered into force, Slovenia rendered the repayments *de facto* impossible without adopting any compensatory measures (see paragraph 49). The same is true for Serbia, which did not prevent the bankruptcy of Investbanka (see paragraph 47).

I do not, however, agree with the majority that Bosnia and Herzegovina is not responsible at all in this respect. They deliberately excluded State guarantees for and repayment of "old" foreign currency deposits in foreign branches of domestic banks (see paragraphs 24 et seq.) and thus allowed the human rights violations to continue. The example of "the former Yugoslav

Republic of Macedonia" (see paragraph 52) as well as the solution found with respect to the Post Office Savings Bank, where States had taken over the guarantees as regards the branches in their respective territory (see paragraph 64), show that there was no consensus in favour of excluding the responsibility of the State where the deposits had been made. A categorical refusal to pay is all the more unjustified as it is undisputed that, within the re-depositing system, part of the money had been transferred back to Bosnia and Herzegovina.

Thus, the majority of the Grand Chamber have failed to scrutinise the positive obligations of all the respondent States against whom the applicants' complaint was directed.

C. Compensation scheme

1. Compensation on the basis of schemes developed before the entry into force of the Convention

The majority of the Grand Chamber have decided that "Slovenia must make all necessary arrangements ... so as to allow Ms Ališić, Mr Sadžak and all others in their position to recover their 'old' foreign-currency savings under the same conditions as those who had such savings in the domestic branches of Slovenian banks", that is to say, repay the original deposits with interest (see paragraphs 146 and 48).[45] Serbia has to repay the "old" foreign-currency savings "under the same conditions as Serbian citizens who had such savings in the domestic branches of Serbian banks", that is, partly in cash and partly in government bonds (see paragraphs 146 and 45).

Such a solution could be justified if the Court had found a violation of Article 1 of Protocol No. 1 taken together with Article 14, as it would offer adequate compensation for discriminatory treatment. It could also be justified on the basis of unjust enrichment if it could be proven that Slovenia and Serbia are still in the possession of the money deposited by the applicants and that they earned interest on it in the period between 1990 and 2014.

But neither of those conditions are satisfied in the present case.

The Court has explicitly refrained from finding a violation of Article 1 of Protocol No. 1 taken together with Article 14 in the present case.

Concerning "unjust enrichment" the following aspects have to be taken into account.

First, as it is undisputed that not all money "ended up" in Slovenia and Serbia (see paragraph 116), it is inadequate to request full repayment of the

[45] There might be problems in executing the present judgment. As the law to which the Grand Chamber refers was adopted in 1993 and regulated the interest rates up to that time only, it seems to be unclear what scheme applies to interest accruing after 1993.

"old" foreign deposits by Slovenia and Serbia alone. In socialist times the associated banks in Slovenia and Serbia had transferred back some of the funds they had received to meet the liquidity needs of the basic banks (see paragraphs 18 and 19). As dinar loans (initially interest-free) were granted by the NBY to domestic companies on the basis of the re-deposited foreign currency and thus benefitted the local economy, the rule of international law concerning local debts (Article 29 of the 2001 Resolution on State Succession in Matters of Property and Debts of the Institute of International Law, see paragraph 60) is not "evidently" inapplicable, as deemed by the majority of the Grand Chamber (see paragraph 121). Second, the fact that re-depositing payments were made to the National Bank of Yugoslavia in Belgrade is not contested. Third, as emergency measures were deemed necessary and adopted by the SFRY (see paragraph 22) it is highly likely that most of the money was already lost in "Yugoslav times".

The Court has thus stated in *Suljagić* (cited above, § 51), referring to Resolution 1410 (2004) of the Parliamentary Assembly on the "Repayment of the deposits of foreign exchange made in the offices of the Ljubljana bank not on the territory of Slovenia, 1977-1991" of 23 November 2004, and the Explanatory Memorandum prepared by the Rapporteur Mr Jurgens:

> "The Parliamentary Assembly of the Council of Europe has established that, as a result, a major part of the original deposits ceased to exist before the dissolution of the SFRY ...."

2. *Compensation in cases concerning changes in the political system*

Furthermore, the approach taken by the Grand Chamber is not compatible with its jurisprudence in similar cases. Generally, the Court is very reluctant to condemn States for property violations committed before the entry into force of the Convention (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 53-61, ECHR 2004-IX; *Von Maltzan and Others v. Germany* ((dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, §§ 110-114, ECHR 2005-V; and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 99-117, ECHR 2005-VI). Exceptions are made in the case of continuing violations (see *Loizidou v. Turkey* (merits), 18 December 1996, §§ 63-64, *Reports of Judgments and Decisions* 1996-VI) and in the case of legitimate expectations concerning proprietary interests (see *Broniowski v. Poland* (dec.) [GC], no. 31443/96, §§ 97-102, ECHR 2002-X). However, whenever violations of Article 1 of Protocol No. 1 have related to events that took place before the entry into force of the Convention, on a mass scale, the Court has accepted models offering less than full compensation (see *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, §§ 31 and 43, ECHR 2005-IX; *Hutten-Czapska v. Poland* (friendly settlement) [GC], no. 35014/97, § 27, 28 April 2008; and *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, §§ 115 and 118-131, 25 October 2012).

Thus the Court stated in the case of *Vistiņš and Perepjolkins* (ibid., § 113):

> "This principle applies all the more forcefully when laws are enacted in the context of a change of political and economic regime, especially during the initial transition period, which is necessarily marked by upheavals and uncertainties; in such cases the State has a particularly wide margin of appreciation (see, among other authorities, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX; *Jahn and Others,* cited above, § 116 (a); and *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, § 42, 3 November 2009). Thus, for example, the Court has held that less than full compensation may also be necessary *a fortiori* where property is taken for the purposes of 'such fundamental changes of a country's constitutional system as the transition from a monarchy to a republic' (*see Former King of Greece and Others* (merits), cited above, § 87). The Court reaffirmed that principle in *Broniowski* (cited above, § 182), in the context of a property restitution and compensation policy, specifying that a scheme to regulate property, being 'wide-reaching but controversial ... with significant economic impact for the country as a whole', could involve decisions restricting compensation for the taking or restitution of property to a level below its market value. The Court has also reiterated these principles regarding the enactment of laws in 'the exceptional context of German reunification' (see *Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, §§ 77 and 111-112, ECHR 2005-V, and *Jahn and Others*, cited above)."

It is true that these cases concerned expropriation of real property. But there is no convincing reason to treat the loss of risk investments substantially better than the loss of real property and to expect not only the amount lost to be repaid in full, but even the lost interest to be compensated for.

It is worth mentioning that the Court has accepted considerable deductions in the amounts repaid in cases concerning compensation for "old" foreign currency deposits lost and has granted the respondent States a wide margin of appreciation (see *Trajkovski v. the former Yugoslav Republic of Macedonia* (dec.), no. 53320/99, 7 March 2002; *Suljagić*, cited above, §§ 27-30 and 52-54; and *Molnar Gabor v. Serbia*, no. 22762/05, §§ 21, 23-25 and 50, 8 December 2009).

Concerning more specifically the interest rates fixed in the original schemes set up in the 1980s, it can be argued that there was no longer a legitimate expectation at the time when the Convention entered into force in Slovenia in 1994 and in Serbia in 2004. On the other hand, in determining adequate compensation it is necessary to take into account the adaptation to inflation of the savings originally deposited in Deutschmarks (see *Vistiņš and Perepjolkins v. Latvia* (just satisfaction) [GC], no. 71243/01, §§ 38-44, ECHR 2014).

3. *Subsidiarity and margin of appreciation*

In setting up pilot procedures the Court has, up to now, always left a wide margin of appreciation to member States in finding adequate solutions to systemic problems. In the first two cases (*Broniowski* and *Hutten-*

Czapska, both cited above), the Grand Chamber endorsed the friendly settlement reached by the parties in respect of both general and individual measures and has thus accepted models offering less than full compensation in respect of other adversely affected persons. In its recent judgment in *Kurić and Others v. Slovenia* ((just satisfaction) [GC], no. 26828/06, ECHR 2014), where the parties had failed to reach a friendly settlement, the Court had due regard to the fact that the Slovenian Government had set up an *ad hoc* domestic compensation scheme after the expiry of the time limits indicated in the principal judgment in order to secure proper redress to the "erased" at national level (ibid. §§ 138-140). The Grand Chamber observed in that connection that according to the principle of subsidiarity and the margin of appreciation which went with it, the amounts of compensation awarded at national level to other adversely affected persons in the context of general measures under Article 46 of the Convention were at the discretion of the respondent State, provided that they were compatible with the Court's judgment ordering those measures (ibid. § 141, and see, *mutatis mutandis*, *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 88, ECHR 2009).

4. Necessity of cooperation in finding adequate solutions

As explained above, the context of State succession must not be ignored in determining who is responsible for the human rights violations in the present case. This is also true for the setting up of the compensation mechanism. It is of utmost importance that all the successor States cooperate in establishing the scheme and in verifying the existence of the relevant claims. The Court has already been confronted with regrettable abuses in this context. Thus, for example, two applicants in the case of *Kovačić and Others* (cited above, § 260), failed to inform the Court that, further to the Osijek Municipal Court's decision of 7 July 2005 they had received payment of their foreign-currency deposits in full.

In the case of *Suljagić* (cited above, § 19) the Court stated:

> "Legislation providing for the use of 'old' foreign-currency savings in the privatisation process had limited appeal and, moreover, led to abuses: an unofficial market emerged on which such savings were sometimes sold for no more than 3% of their nominal value."

In my view, the important aspect of cooperation between the respondent States in verifying the claims has not been sufficiently dealt with in the judgment of the Grand Chamber.

D. Alternative solution to the case

To sum up, in my view, Slovenia, Bosnia and Herzegovina and Croatia are responsible for the violation of the rights of Ms Ališić and Mr Sadžak under Article 1 of Protocol No. 1 and Article 13, and Serbia, Bosnia and Herzegovina and Croatia are responsible for the violation of Mr Šahdanović's rights under Article 1 of Protocol No. 1 and Article 13. Whereas Croatia is responsible only for the long duration of the violation and should pay part of the award in respect of non-pecuniary damage, the main responsibility lies with Slovenia and Serbia, respectively, which should pay the major part of the award in respect of pecuniary damage, while Bosnia and Herzegovina is responsible for only a small part of the damage under both heads.

On the basis of their shared responsibility for the system created in the SFRY, all the respondent States should cooperate in devising an adequate compensation mechanism.

On that basis, it should be possible to compensate those unlawfully deprived of their assets in an adequate manner and secure the execution of the judgment within a short period of time.