



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

THIRD SECTION¹

CASE OF KOVAČIĆ AND OTHERS v. SLOVENIA

(Applications nos. 44574/98, 45133/98 and 48316/99)

JUDGMENT
(Striking out)

STRASBOURG

6 November 2006

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
06/11/2008**

This judgment may be subject to editorial revision.

¹ In its composition before 1 November 2004.

In the case of Kovačić and Others v. Slovenia,

The European Court of Human Rights (Third Section¹), sitting as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr B.M. ZUPANČIČ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 16 October 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The cases originated in three applications (nos. 44574/98, 45133/98 and 48316/99) against the Republic of Slovenia lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) as well as with the European Court of Human Rights by three Croatian nationals, Mr Ivo Kovačić, Mr Marjan Mrkonjić and Mrs Dolores Golubović (“the applicants”), on 17 July 1998, 2 June 1997 and 24 December 1998 respectively.

2. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General, and by Messrs Cleary, Gottlieb, Steen and Hamilton, a law firm practising in Paris.

3. The applicants complained under Article 1 of Protocol No. 1 of a violation of their right to the peaceful enjoyment of their “possessions” in that they had not been able to withdraw foreign currency which they had deposited before the dissolution of the SFRY from “the Ljubljana Bank – Zagreb Main Branch”. They claimed that the Ljubljana Bank or Slovenia, as a successor State which had assumed the SFRY’s guarantee obligations for foreign-currency savings on the break-up of Yugoslavia, should repay them the money deposited with accrued interest.

4. Mr Kovačić also complained that he had been discriminated against on the grounds of nationality, contrary to Article 14 of the Convention. He alleged that Slovenian account holders of the Zagreb branch had been allowed to withdraw their savings.

¹ In its composition before 1 November 2004.

5. The applications lodged by Mr Kovačić and Mr Mrkonjić were transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).]

6. The applications were allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

7. The Chamber decided to join the proceedings in the applications (Rule 42 § 1).

8. By a decision of 9 October 2003, following a hearing on admissibility and the merits (Rule 54 § 3), the Court declared the applications admissible.

9. The applicants and the respondent Government each filed further written observations (Rule 59 § 1). The parties replied in writing to each other's observations. In addition, third-party comments were received from the Croatian Government, which had exercised its right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)). The parties replied to those comments.

10. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within former Section III.

11. On 21 February 2005, the President of the Chamber requested further information from the applicants and the respondent and intervening Governments (Rule 59 § 1). The parties replied and filed comments on each other's replies.

12. On 25 July 2005 the respondent Government submitted additional information. The applicants and the intervening Government filed comments.

THE FACTS

13. The applicants are Croatian nationals.

14. Mr Ivo Kovačić was born in 1922 and lived in Zagreb. He died on 17 July 2004, in the course of the proceedings. He was represented by Mr Milivoje Žugić, a member of the Croatian Bar. His widow Mrs Miroslava Kovačić, his daughter Mrs Marina Mušić and his son Mr Zlatko Kovačić have elected to pursue the application before the Court. They continue to be represented by Mr Žugić. For reasons of convenience, Mr Kovačić will continue to be referred to as "the applicant" in this judgment.

15. Mr Marjan Mrkonjić, who was born in 1941 and lives in Zurich, is represented by Mr Milivoje Žugić (see paragraphs 131-137 below).

16. Mrs Dolores Golubović was born in 1922 and lived in Karlovac. She was represented by Mr Zvonko Nogolica, also a member of the Croatian Bar. She died on 15 October 2004. Her nephew, Mr Ivo Steinfl, has elected to pursue her application before the Court and is represented by Mr Nogolica. Mrs Golubović will continue to be referred to as “the applicant” in this judgment.

I. THE CIRCUMSTANCES OF THE CASES

17. Before the dissolution of the Socialist Federal Republic of Yugoslavia (“the SFRY”), the applicants or their relatives all deposited hard foreign currencies in savings accounts with the office of a Slovenian bank – the Ljubljana Bank (*Ljubljanska banka*) – in Zagreb (Croatia). Some of them also held term accounts which matured in the late 1980s or early 1990s.

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

A. Background to the cases

1. *The Socialist Federal Republic of Yugoslavia*

(a) *The Ljubljana Bank and its Zagreb Office*

19. The bank now called the Ljubljana Bank (in Slovene: *Ljubljanska banka*) in the present-day Republic of Slovenia, was founded in 1955 and subsequently underwent several changes of status and name.

20. In 1969 its legal predecessor opened an office in Zagreb in the then Socialist Republic of Croatia. It was re-registered in 1974 and in 1977.

21. From 1978 until 1 January 1990 the Ljubljana Bank Head Office (*Ljubljanska banka – združena banka*), a company existing under the laws of the then Socialist Republic of Slovenia, operated as an “associated bank”. It was made up of the Ljubljana Bank Basic Banks, carrying on business in accordance with the principles of the socialist self-management system. At the time, the Ljubljana Bank was one of the major and most reputable socially-owned commercial banks with offices in other Republics within the SFRY.

22. Over much the same period, from 1977 until 1990, the Ljubljana Bank’s Zagreb office operated as a “basic bank”, being neither a branch nor a subsidiary of the Ljubljana Bank Head Office. The Ljubljana Bank Basic Bank Zagreb (in Croat: *Ljubljanska banka - Osnovna Banka Zagreb*) had separate legal personality under the law of the Socialist Republic of Croatia

and was financially and economically independent. It was, however, integrated into the organisational structure of the Ljubljana Bank.

23. On 19 December 1989 the Ljubljana Bank Head Office was reregistered as a joint stock company with effect from 1 January 1990.

24. On 29 December 1989 the Ljubljana Bank Basic Bank Zagreb was re-registered as the Zagreb Main Branch (*Glavna filijala Zagreb*) with effect from 1 January 1990.

(b) The system of redepositing foreign-currency savings

25. Individuals were allowed to open foreign-currency savings accounts in the SFRY from 1965 onwards. From 25 December 1969 until the dates on which each successor State declared its independence, all foreign-currency deposits were covered by the Federation's ("the SFRY's") statutory guarantee (see section 76 of the Banks and Other Financial Institutions Act, Official Gazette, no. 10/89, paragraph 151 below). Annual interest on savings accounts attained levels of 10% and more.

26. In 1977 a system by which commercial banks re-deposited foreign-currency savings with the National Bank of Yugoslavia ("the NBY") in Belgrade was introduced by the Foreign Exchange Operations and International Credit Relations Act (Official Gazette, no. 15/77). Pursuant to section 51(2) of that Act, the NBY was under an obligation to accept foreign-currency savings deposited with authorised banks and to grant interest-free loans in Yugoslav dinars (YUD) to the bank depositing the foreign currency. Although the SFRY banks were not required by law to transfer the foreign-currency deposits to the NBY, it is generally agreed that, in practice, they had no other option.

27. From 1978 to 1988 further legislation regulating the re-deposit transactions was passed. One of the decisions adopted in 1978 introduced the so-called "pro-forma" or "accounting method" of re-depositing foreign exchange in order to save considerable sums that would otherwise have gone towards fees for neutral transactions. In the following years, only approximately 14% of foreign-currency deposits were actually transferred by the commercial banks to the NBY.

28. From 1985 onwards re-depositing banks were required to pay interest on the previously interest-free loans in YUD granted in exchange for the foreign currency re-deposited with the NBY.

29. On 15 October 1988 the system of re-deposits was brought to an end by amendments to the Foreign Exchange Transactions Act (Official Gazette no. 59/88). The amended section 14(4) provided that "[t]he conditions and procedure applicable to the obligations arising under the guarantee [should] be regulated by a separate federal law". As no such law was enacted, the remedies employed by the SFRY were based on *ad hoc* decrees. Only banks, not individual depositors, were entitled to demand payment of

foreign-currency deposits. A bank had to be insolvent or bankrupt before a payment could be made under the guarantee.

30. In 1991 the foreign-currency claims of commercial banks against the NBY amounted to approximately USD 12 billion and remained frozen.

(c) The monetary crisis and the Marković reforms

31. The problems resulting from the foreign and domestic debt of the SFRY caused a monetary crisis in the 1980s, with the SFRY economy suffering hyperinflation. The banking and monetary systems were on the verge of collapse and the SFRY had to resort to emergency measures. Among other developments, legislation imposing restrictions on the repayment of foreign currency deposits to individuals was introduced (see section 71 of the Foreign Exchange Transactions Act).

32. 1989 was a year of reforms for the SFRY in which many legislative, institutional and structural adjustments were made in preparation for transforming the socialist planned economy into a market-oriented one (the so-called Marković reforms, named after the then Prime Minister).

33. One of the linchpins of the transformation was a fundamental reform of the banking system, carried out in accordance with the Banks and Other Financial Institutions Act (Official Gazette no. 10/89). The banks were to be transformed from associated and basic banks into joint stock companies.

34. In 1988, 1989 and 1990 the SFRY assumed liability for the foreign-currency related losses and payment of the foreign-currency deposits with the NBY by converting the Foreign Exchange-rate differences into public debt. Since in 1991 the servicing of public debt was not regulated, the NBY passed a resolution granting banks special liquidity loans in order to enable withdrawals of foreign-currency deposits. In addition, the amount of foreign-currency that could be withdrawn was further restricted.

35. This general situation lasted until June 1991, when the process of disintegration of the SFRY started. The whole process took place over several months, as the various Republics proclaimed their independence.

(d) The Ljubljana Bank and the Zagreb Main Branch

(i) Background

36. In 1988 the Ljubljana Bank froze all its foreign-currency accounts.

37. On 19 December 1989 the Ljubljana Bank joint stock company (*d.d. - delniška družba*) was established in Ljubljana, in the then Socialist Republic of Slovenia. The change was entered into the Register of Companies on the same day and became effective on 1 January 1990.

38. Article 60 of the Ljubljana Bank's memorandum and articles of association of 19 December 1989 provided that the Ljubljana Bank would take over the rights, assets and obligations of the Ljubljana Bank Head

Office and, *inter alia*, the Basic Bank of Zagreb as a legal successor on the day of its formation or registration on the Register of Companies.

39. On 29 December 1989, the Ljubljana Bank Basic Bank Zagreb was reregistered in the Zagreb Commercial Court of First Instance as the Zagreb Main Branch (*Glavna filijala Zagreb*) with effect from 1 January 1990.

(ii) *Matters in dispute concerning the legal position and banking liabilities of the Zagreb office of the Ljubljana Bank at the material time*

(α) Events as related by the Slovenian Government

40. The Slovenian Government maintained that the dissolution of the SFRY had prevented the full conversion of the Ljubljana Bank Basic Bank Zagreb into the Zagreb Main Branch. Thus, the status, operations, assets and liability for deposits of the Zagreb Main Branch had become a succession issue. During the two-year interim period under the Marković reforms, the so-called main branches which had operated previously as basic banks had had a *sui generis* status fundamentally different from that of a branch as known to Western European legal systems.

(β) Events as related by the Croatian Government

41. As far as the status of the Zagreb office was concerned, the Croatian Government argued that at the material time the Zagreb Main Branch had existed as an organisational part of the Ljubljana Bank, that there had been an institutional relationship of dependency, and that the Ljubljana Bank's liability for the Zagreb Main Branch's obligations had encompassed its total assets and been unlimited.

2. Republic of Slovenia

42. On 25 June 1991 the National Assembly of the Republic of Slovenia enacted the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia and the Constitutional Law relating to its application (Official Gazette no. 1/91). Thus Slovenia became independent.

(a) The Constitutional Law

43. By virtue of section 19(3) of the Constitutional Law, the Republic of Slovenia became guarantor of all foreign-currency savings deposited with banks on Slovenian territory at that date.

(b) Developments after independence

44. In October 1991 a new Slovenian currency was introduced, the Slovenian tolar (SIT).

45. On 4 February 1993 the Constitutional-Law guarantee was implemented by the Discharge of Liability for Unpaid Foreign-Currency Deposits Act (Official Gazette no. 7/93). Under section 2 of that Act, liabilities arising out of foreign-currency deposits became part of the Slovenian public debt. Further implementing legislation was passed in 1995.

46. Thus, foreign currency deposited with banks on Slovenian territory became part of the public debt in the form of bonds totalling approximately 1,500,000,000 German marks (DEM) and the account holders, regardless of their nationality or of the location of the head office of their bank, were able to make withdrawals as and when they chose.

47. On 11 March 1993 the Republic of Slovenia Succession-Fund Act (Official Gazette no. 10/93) came into force. Under that Act, a number of Slovenia's claims and obligations vis-à-vis the SFRY, the NBY and other SFRY entities were assigned to the Succession Fund.

48. On 28 June 1994 the Convention and Protocol No. 1 came into force with regard to Slovenia.

(c) The 1994 amendments to the 1991 Constitutional Law

(i) Background

49. According to the Slovenian Government, in 1991 the Ljubljana Bank represented 42.4% of the Slovenian banking market. However, both before and after the dissolution of the SFRY, the Ljubljana Bank accumulated substantial negative capital. For this reason, the Government decided that rehabilitation measures were urgently required to prevent the collapse of the Slovenian financial system and such measures were taken in 1993. In that year, Slovenia became the Ljubljana Bank's sole shareholder.

50. The Ljubljana Bank's financial position was further jeopardised by two kinds of succession risks in the absence of any agreement between the Successor States: firstly, a claim by foreign creditors for USD 4.2 billion under an agreement known as the New Finance Agreement (NFA); and, secondly, the continued exposure to the SFRY's liability for re-deposited foreign exchange outside Slovenian territory.

51. The authorities decided in 1994 to amend the 1991 Constitutional Law in order to protect the public interest, as is reflected in the preamble to the Act (see Relevant Domestic and International Law and Practice).

(ii) The legislation

52. On 27 July 1994 the National Assembly amended the 1991 Constitutional Law (Official Gazette no. 45/94) so as to restructure the Ljubljana Bank by creating a new and separate legal entity (section 22(č)): the New Ljubljana Bank was formed as a joint stock company which took over the former bank's entire assets and liabilities on Slovenian territory. The former bank, the Ljubljana Bank, retained its rights against and

obligations towards the SFRY (section 22(b)) and its former constituent republics: in particular, full obligations in respect of the foreign-currency ordinary and deposit accounts that were not guaranteed under section 19 of the 1991 Constitutional Law, that is to say, those contracted outside Slovenian territory. The rationale behind this decision was that the funds for repayment were to become assets of the Ljubljana Bank as part of the succession arrangements.

53. That law also laid down that the Ljubljana Bank would continue to deal with branches and subsidiaries whose head offices were situated in other republics of the territory of the SFRY and retain the rights to the corresponding portion of the debt owed by the NBY in respect of the foreign-currency savings accounts.

(d) The decision of the Slovenian Constitutional Court

54. On 11 April 1996 the Constitutional Court (*Ustavno sodišče*) dismissed a constitutional initiative (*ustavna pobuda*) brought by a Croatian savings-account holder, Mr Vukasinović, challenging the constitutionality of the 1994 Constitutional Law, holding that it had no jurisdiction to hear it (see the Relevant Domestic and International Law and Practice below).

(e) Developments subsequent to the decision of the Slovenian Constitutional Court

55. On 5 July 1997 an amendment to the Republic of Slovenia Succession-Fund Act (Official Gazette no. 40/97) came into force. It provided for a stay on any proceedings directly or indirectly affecting legal relations with the SFRY pending resolution of the succession arrangements. The proceedings were to be reinstated *ex officio* once the succession arrangements had been resolved. By virtue of section 15(č) of the Act, the statutory provisions were binding on the Slovenian courts.

56. On 29 June 2001 the Agreement on Succession Issues was signed in Vienna by Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia (later Serbia and Montenegro), the Former Yugoslav Republic of Macedonia and Slovenia. It entered into force on 2 June 2004 (see paragraphs 85-88 below).

57. On 23 July 2004 the Slovenian Government informed the Court that new legislation in the form of the Transformation of the Succession Fund of the Republic of Slovenia and the Establishment of the Succession Agency of the Republic of Slovenia Act had been passed which repealed the Republic of Slovenia Succession-Fund Act.

58. On 21 February 2005 the Court requested information from the Slovenian Government regarding implementation of the aforementioned Act (see also paragraphs 11, 91, 191, 197 and 198 below).

59. The Slovenian Government replied that that Act was in the process of being implemented. In any event, further to the ratification of the

Agreement on Succession Issues and in conformity with Article 7 of Annex G to that Agreement and with Article 8 of the Constitution (see Relevant Domestic and International Law and Practice”), the proceedings relating to succession issues had resumed in the Slovenian courts, since ratified and published international treaties took precedence over statutory provisions and, in particular, section 15 (č) of the Republic of Slovenia Succession-Fund Act. They produced a number of decisions by the Slovenian courts ordering the resumption of such proceedings.

60. On 17 March 2005 the Constitutional Court ruled that the Transformation of the Succession Fund of the Republic of Slovenia and the Establishment of the Succession Agency of the Republic of Slovenia Act was unconstitutional since it did not provide for the resumption of the proceedings that had been stayed under the Republic of Slovenia Succession-Fund Act.

61. On 21 March 2006 further legislation – the Republic of Slovenia Succession-Fund and the Republic of Slovenia Senior Representative for Succession Act – was passed. Section 23 of that Act provided that any stay of proceedings in the Slovenian courts relating to foreign currency deposited in a commercial bank or a branch office of a commercial bank in any successor State of the SFRY was to remain in force. Proceedings that had since been resumed were to be stayed again until a solution was found to the question of the guarantees to be provided by the SFRY or the NBY under Article 7 of Annex C of the Agreement on Succession Issues (see paragraph 88 below).

3. Republic of Croatia

62. On 25 June 1991 the Parliament adopted a Declaration on the Sovereignty and Independence of Croatia and enacted a Constitutional Act on the Sovereignty and Independence of Croatia. On 8 October 1991 Croatia became independent.

63. In December 1991 a Croatian currency was introduced, the Croatian dinar, which was replaced in 1994 by the Croatian kuna (HRK).

(a) Adoption of the SFRY’s finance regulations and assumption of the guarantee for savings in Croatia

64. On 26 June 1991 the Act on the Applicability to Croatia of the SFRY’s Finance Regulations was passed. By virtue of that Act, which entered into force on 8 October 1991 (Official Gazette no. 71/91), forty-two federal statutes and five decisions of the Federal Executive Council concerning foreign-currency savings were incorporated into Croatian law.

65. On 23 December 1991 the Government issued a Decree on the Conversion of Nationals’ Foreign-Currency Bank Deposits into the Croatian Public Debt (Official Gazette no. 71/91). Under the Decree, savings that were deposited before 27 April 1991 with banks whose head office was

situated in Croatia (“Croatian banks”) or were transferred by Croatian nationals into Croatian banks from other banks within 30 days became, subject to compliance with Articles 15 and 16 of the Decree, part of the Croatian public debt. Only Croatian citizens were entitled to the conversion of their foreign-currency savings into public debt.

66. The 1991 Decree provided for payment of the foreign-currency deposits in national currency in 20 half-yearly instalments starting on 30 June 1995 and bearing annual interest of 5%. Further legislation was subsequently passed on this subject.

67. According to the Slovenian Government, about two thirds of the account-holders at the Zagreb Main Branch transferred their former savings accounts to Croatian banks, which in turn transferred their claims to Croatia. Thus, approximately DEM 450,000,000 became Croatian public debt. 140,000 Croatian depositors allegedly kept their accounts at the Zagreb Main Branch. The amount of their deposits came to approximately DEM 300,000,000. Of the remaining depositors, 96,000 have less than the equivalent of 30 Euros in foreign-currency savings standing to their credit.

68. In 1991 a Decree was adopted which prohibited the disposal or encumbering of real property on Croatian territory owned by legal entities whose head office was outside Croatia.

(b) Other developments

69. On 24 February 1996 the Croatian Payment Transaction Institute froze the Zagreb Main Branch’s company account. On 14 July 2000 the Croatian authorities closed the Zagreb Main Branch’s giro account.

4. Financial documents and information

70. On 25 October 2002 the Court invited Slovenia and Croatia to submit any documents that might serve as evidence of the existence or absence of an institutional and financial relationship of dependence between the Ljubljana Bank and the Zagreb Main Branch.

71. On 5 December 2002 the Court additionally requested both Governments to provide further information on whether or not the funds on deposit with the Zagreb Main Branch had been effectively transferred to the Ljubljana Bank following the Marković reform, and if so, the amounts transferred in Yugoslav dinars and in hard currencies.

(a) The Ljubljana Bank’s Annual Reports

72. The Slovenian Government submitted the Ljubljana Bank’s Annual Reports for the years 1989, 1990, 1991, 1992 and 1993. They claimed that no annual report for the Zagreb Main Branch existed.

73. In the Ljubljana Bank's 1990 Annual Report, the assets and liabilities of the Zagreb Main Branch were included for the first and only time.

74. On page 23 of the Ljubljana Bank's 1991 Annual Report, it is stated that the balance sheets of the Ljubljana Bank and the Zagreb Main Branch could not be consolidated because of the political situation in Croatia and in Bosnia and Herzegovina. The Ljubljana Bank had little or no control over the activities of its operations in those two countries and had little prospect of being able to transfer any funds to Slovenia in the foreseeable future. The same situation was noted in the 1992 and 1993 Annual Reports.

(b) The Zagreb Main Branch's accounts

75. The Slovenian Government submitted the Ljubljana Bank Basic Bank Zagreb's balance sheet for 1989 and the Zagreb Main Branch's balance sheets for 1990, 1991, 1994 and 2001.

76. In 1991 the amount of foreign-currency redeposited with the NBY came to 13.6 billion Croatian dinars (USD 619 million), whereas foreign-currency deposits with the Zagreb office came to 10.7 billion Croatian dinars (USD 490 million), thereby confirming that 100% of the foreign-currency deposits with the Zagreb office were subsequently redeposited.

77. The amount of foreign-currency deposited by the Zagreb office with the NBY exceeded its liabilities towards foreign-currency depositors. This was due to the fact that some foreign-currency deposits had been paid out in YUD or from the current inflow of foreign currency. No transfer of foreign-currency deposit funds from Zagreb to Ljubljana had ever occurred.

78. According to the Slovenian Government's submissions of 1 October 2004, the books and records of the Zagreb Main Branch as at 31 December 2003 showed that its assets, including real estate, amounted to EUR 370 million and its liabilities to EUR 168 million.

79. The Croatian Government stated that further to the Marković reforms, the National Bank of Slovenia became the regulatory authority for the Ljubljana Bank and that the Zagreb Main Branch's claims to foreign-currency deposits redeposited with the NBY were transferred on that date to the National Bank of Slovenia and the funds on deposit at the National Bank of Croatia transferred from Zagreb to new accounts in Ljubljana.

80. However, the Croatian Government stressed that the correct answer to the question concerning the actual foreign-currency movements could be given only after comprehensive and independent financial examination by an expert of the Ljubljana Bank's activities.

5. The succession negotiations between the successor States of the SFRY

81. After the dissolution of SFRY, the successor States were unable to negotiate a succession treaty owing to the ongoing violence in the region

and the claims made by the then Federal Republic of Yugoslavia to be the sole successor to the SFRY.

82. The succession talks were first conducted within the framework of the International Conference on Former Yugoslavia.

83. As no tangible results were achieved through the International Conference on Former Yugoslavia, the succession issues were included in the functions of the High Representative in Bosnia and Herzegovina, who was appointed pursuant to the General Framework Agreement for Peace in Bosnia and Herzegovina signed on 14 December 1995.

84. In March 1996 Sir Arthur Watts was appointed Special Negotiator to assist the Successor States in reaching an agreement. Numerous rounds of negotiations were held.

85. On 29 June 2001 the Agreement on Succession Issues was signed by Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia and Slovenia. Article 4 of the Agreement established a Standing Joint Committee to monitor the effective implementation of the agreement and to discuss issues arising in the course of its implementation.

86. The agreement stipulated, *inter alia*, that the SFRY's foreign financial assets should be distributed to the successor States in the following proportions: Bosnia and Herzegovina 15.5%, Croatia 23%, the Federal Republic of Yugoslavia (now Serbia and Montenegro) 38%, the Former Yugoslav Republic of Macedonia 7.5% and Slovenia 16%.

87. By virtue of Article 2 § 3(a) of Annex C to the agreement, the SFRY's financial liabilities included "guarantees by the SFRY or its NBY of hard currency savings deposited in a commercial bank and any of its branches in any successor State before the date on which it proclaimed independence".

88. Article 7 of Annex C provided: "[g]uarantees by the SFRY or its NBY ... 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 ['the BIS']".

89. In 2001 and in 2002, negotiations regarding hard-currency savings did take place under the auspices of the BIS, but no solution was found.

90. All successor States have ratified the Agreement, Croatia being the last country to do so on 3 March 2004. It entered into force on 2 June 2004.

91. On 21 February 2005 the Court requested both the Slovenian and Croatian Governments to inform it of any developments concerning the negotiations referred to in Article 7 of Annex C. In addition, the Slovenian Government were invited to inform the Court whether or not the Standing Joint Committee had met or been convened (see paragraphs 11 and 58 above and 191, 197 and 198 below).

92. The Croatian Government in their reply dated 30 March 2005 stated that no discussion had taken place regarding the guarantee for hard currency savings which would be relevant to the applicants' situation.

93. The Slovenian Government in their reply dated 31 March 2005 stated that the first formal meeting of the Standing Joint Committee had not been convened by the Former Yugoslav Republic of Macedonia within two months of the entry into force of the Agreement as it should have been. They had repeatedly urged the convening of the meeting so that the issue of the frozen bank accounts could be discussed.

6. Bilateral negotiations between Slovenia and Croatia

94. The unpaid foreign-currency savings deposited with the Zagreb Main Branch have also been the subject of frequent bilateral negotiations between Slovenia and Croatia, but no solution has been found.

95. The Croatian Government informed the Court that although negotiations on arbitration by the International Monetary Fund ("the IMF") were held in 1998, no arbitration agreement was reached. According to the respondent Government, on 3 March 1999 both Prime Ministers had agreed that a list of succession issues should be submitted to the IMF for consultative arbitration. Slovenia had sent such a request in June 1999.

96. A bilateral Agreement on the Regulation of Property Rights between Slovenia and Croatia entered into force on 23 February 2000. Article 1 of this Treaty provides that relations between Slovenia and Croatia concerning the Zagreb Main Branch shall be governed by agreements to be concluded between the two States.

B. The facts of the individual cases

1. Application no. 44574/98, Mr Ivo Kovačić

(a) Deposit of savings and proceedings in Croatia

97. Mr Kovačić, who was retired, held a foreign-currency savings account with the Zagreb Main Branch. He was a client of the Zagreb office for over 30 years.

98. On 24 October 1984 the applicant and his wife signed a three-year automatically renewable term-deposit agreement for DEM 66,771.12 earning 12.5% interest a year. The agreement stipulated, *inter alia*, that the SFRY would guarantee their savings. The last withdrawal from the account was made in August 1990.

99. On 10 September 1990 Mr Kovačić attempted to withdraw DEM 40,000 from his account. As the term had not yet expired, the bank manager turned down his request and suggested he should return after

24 October 1990, the date of maturity. On 25 October 1990 the bank manager offered monthly payments of DEM 4,000. However, no payments were made.

100. Mr Kovačić and his wife made repeated attempts to secure payment. They were informed by the bank on 17 April 1991 that it was unable to make any payments, as its relations with the NBY had not been determined and the Yugoslav Foreign Exchange market was not functioning.

101. According to a bank statement of 14 October 1993, the amount standing to the credit of the account was then DEM 49,794.30.

102. Following the bank's refusal, the applicant brought a civil action against "the Ljubljana Bank, Zagreb Main Branch" in the Zagreb Court of First Instance (*Općinski sud*) claiming payment of his savings with interest. On 2 December 1997 the court found, *inter alia*, that Mr Kovačić had inherited the foreign-currency savings account in question from his wife, who had died in the meantime. It ordered "the Ljubljana Bank, Zagreb Main Branch" to pay the applicant within fifteen days the savings plus default interest; according to the applicant, the sum came to a total of DEM 61,000.

103. The court also held that, as the bank's head office was not on Croatian territory, the provisions of the Decree on the Conversion of Nationals' Foreign-Currency Bank Deposits into Croatian Public Debt could not apply, as Mr Kovačić had not transferred his deposits to a Croatian bank. On 22 April 1998 the ruling became final and enforceable.

104. Mr Kovačić then made an application for execution of that decision to the Zagreb Court of First Instance, which issued a warrant of execution in the applicant's favour on 1 October 1998. The Zagreb Court of First Instance later stayed the execution proceedings.

105. In 1998 Mr Kovačić attempted to withdraw his funds, firstly, from the Zagreb Main Branch and, subsequently, from the Ljubljana Bank Head Office in Ljubljana. On 6 July and on 14 September 1998 he was informed by bank officials that the bank had no funds and the account was frozen.

(b) Proceedings in Slovenia

106. On 7 December 1998 Mr Kovačić made an application to the Ljubljana District Court (*Okrožno sodišče*) seeking a declaration regarding the extent to which the Croatian judgment of 2 December 1997 was enforceable. On 21 June 1999 the District Court authorised him to enforce the Croatian judgment. However, Mr Kovačić has not sought to enforce the judgment of 2 December 1997 in the Slovenian courts.

(c) Subsequent proceedings in Croatia

107. On 24 December 2001 Mr Kovačić sought the registration of a charge over land in Osijek (Croatia) belonging to the Zagreb Main Branch.

108. On 5 March 2003 the Osijek Court of First Instance granted his application. On appeal, on 5 June 2003 the Osijek Court of Appeal (*Županijski sud*) upheld that judgment. It also held that with the entry into force of the Agreement on the Regulation of Property Rights between Slovenia and Croatia (see paragraphs 96 above and 170 and 171 below) and a subsequent decision which was adopted on 27 April 2002, the ban on disposing of the real property belonging to the Ljubljana Bank was lifted.

109. In 2003 42 individuals, including Mr Kovačić and Mr Mrkonjić, lodged requests for the seizure and sale of real estate owned by the Ljubljana Bank.

110. On 17 July 2003 Mr Kovačić obtained a warrant of execution for the amount of DEM 49,794.30 (EUR 25,459.42) plus the interest in arrears from 1 January 1992 until payment and the costs of the proceedings for obtaining the charging order in the amount of HRK 2,967.42 (EUR 406.49) and the costs of the subsequent enforcement proceedings.

111. On 30 March 2004 the Zagreb Main Branch's assets were liquidated for HRK 3,903,000 (EUR 534,657.53) in the enforcement proceedings started by a Croatian savings-account holder, Mr B. Various sets of proceedings were joined to those proceedings. A ruling was handed down on 9 April 2004.

112. On 24 May 2004 the proceeds of sale were deposited with the Osijek Court of First Instance. On 15 July 2004 a hearing on the division of the proceeds of sale was held at the Osijek Court of First Instance.

113. On 20 July 2004 the Osijek Court of First Instance rendered a decision dividing up the proceeds of sale. Mr Kovačić was awarded HRK 291,306.60 (EUR 39,905) (for the main debt and the costs) and Mr Mrkonjić HRK 180,515.72 (EUR 24,728) (for the main debt and costs), both payable into Mr Žugić's account. They were both also awarded costs for the enforcement proceedings. A number of the judgment creditors, including the two applicants, lodged an appeal against that decision in respect of the court fees (see paragraph 139 below).

114. On 21 October 2004 the Osijek Court of Appeal quashed the decision and remitted the case.

115. On 28 February 2005 a hearing was held. On 8 April 2005 the Osijek Court of First Instance gave a new decision concerning the division of the proceeds of sale.

116. The relevant parts of that decision read:

“The Osijek Court of First Instance ... decided:

I. It is established that the real property recorded in the Osijek cadastral municipality land registry was sold ... for the amount of HRK 3,903,000 [EUR 534,657.53].

II. The costs of the enforcement proceedings shall be paid out of the amount obtained by the sale as follows:

...

18. Ivo Kovačić (I-Ovr-186/02 and I-Ovr-128/02), represented by the attorney Milivoje Žugić from Zagreb, the amount of HRK 15,742.62 [EUR 2,156.50] payable to the attorney Milivoje Žugić's giro account ... with the Economic Bank (*Privredna banka d.d. Zagreb*).

...

In the aggregate, the compensation for the costs of the enforcement proceedings totals HRK 404,193.80. [EUR 55,369]. To this amount should be added ... the amount of HRK 23,180 [EUR 3,175] to the judgment creditors represented by the attorney Milivoje Žugić [for the appellate proceedings] ...

III. The following claims shall be settled from the proceeds of sale:

...

18. Ivo Kovačić from Zagreb – the claim referred to in the writs of execution nos. I-Ovr-186/02 and I-Ovr128/02 for the part relating to court fees in the amount of HRK 2,967.42 [EUR 406] payable to the attorney Milivoje Žugić from Zagreb's giro account ... with the Economic Bank, and the main claim in the amount of HRK 288,339.18 [EUR 39,498.50], which together total HRK 291,306.60 [EUR 39,905]."

117. The applicants appealed against that decision, again on the ground that they were entitled to a higher award of costs. On 7 July 2005 the Osijek Court of Appeal dismissed the appeal. The decision of 8 April 2005 thus became final.

118. On 20 July 2005 Mr Kovačić and Mr Mrkonjić received payment of their foreign-currency deposits in full, including the costs awarded.

2. Application no. 45133/98, Mr Marjan Mrkonjić

(a) Deposit of savings and proceedings in Croatia

119. Mr Mrkonjić holds a foreign-currency savings account at the Zagreb Main Branch.

120. On 18 July 1984 he made a payment into the account. On 18 July 1987 he signed an automatically renewable three-year term agreement for a deposit of 26,754.26 Swiss francs (CHF) earning 12.5% interest a year.

121. On 2 May 1993 he closed the account by notice in writing but was unable to withdraw the remaining balance. According to a bank statement of 30 July 1993, the amount of his savings plus accrued interest at that time came to CHF 31,265.92.

122. On 30 July 1993 Mr Mrkonjić brought a civil action in the Croatian courts to recover his savings plus interest. On 23 August 1994 the Zagreb Court of First Instance ordered "the Ljubljana Bank, Zagreb Main Branch" to pay him the money due, namely CHF 31,265.92, plus default interest.

The Zagreb Main Branch subsequently appealed. Its appeal was dismissed on 12 September 1995 by a court of appeal.

123. According to Mr Mrkonjić, on 28 December 1995 he withdrew part of his savings (CHF 7,850.07) from his account.

124. On 23 July 1997 the Zagreb Main Branch paid Mr Mrkonjić part of the principal together with court fees.

(b) Attempts by the applicant to withdraw his savings

125. In 1998 Mr Mrkonjić wrote several letters to the Ljubljana Bank in Slovenia asking to be allowed to withdraw his money.

126. On 10 November 1998 a bank official informed him that his money had been deposited with the NBY and that immediately after Slovenian and Croatian independence, the bank's access to the deposits in Belgrade had been suspended. Slovenia and Croatia were attempting to find a solution to outstanding issues, among which were the "old savings accounts".

127. On 9 December 1998 Mr Mrkonjić was informed by the bank official that Slovenia and Croatia had agreed that the problem of the "old savings accounts" would be resolved by international arbitration. He was given the same information on 18 January 1999 and 3 January 2000.

128. In 2000 and 2001 Mr Mrkonjić again made several requests to the Ljubljana Bank and the Zagreb Main Branch for the withdrawal of his money. By letters of 4 April 2000, 20 and 22 February, 26 June and 16 July 2001, bank officials informed him that no solution had been found.

129. On 12 February 2001 Mr Mrkonjić requested the registration of a charge over land belonging to the Zagreb Main Branch in Osijek to secure the payment of his outstanding debt amounting to CHF 26,845.61 with interest. His request was granted on 12 March 2002 by the Osijek Court of First Instance, but the Osijek Court of Appeal overturned that judgment on 25 April 2002. However, on 27 February 2003, the Supreme Court reinstated the first-instance judgment.

130. Finally, a bank statement dated 14 April 2004 indicates that the amount standing to Mr Mrkonjić's credit on the savings account on that date amounted, with accrued interest, to CHF 28,562.14.

(c) The "Agreement for the Assignment of a Claim"

131. On 29 April 2004 Mr Mrkonjić informed the Court that two days earlier he had withdrawn Mr Žugić's authority to represent him.

132. In addition, he sent a copy of an "Agreement for the Assignment of a Claim" under which he had assigned to Mr Žugić his outstanding claim against the Zagreb Main Branch, namely CHF 28,562.14, with interest and the costs of the proceedings. In return, Mr Žugić had undertaken to pay 70% cent of that amount to the applicant by a certain date. Mr Mrkonjić's reason for withdrawing Mr Žugić's authority and cancelling this agreement was that the latter had failed to pay him the money due by the agreed date.

133. On 20 August 2004 the Court requested Mr Žugić's comments on the information received from Mr Mrkonjić.

134. On 8 September 2004 Mr Žugić replied that that he believed that he still had instructions to represent Mr Mrkonjić since the latter had not withdrawn his authority to act. He added that the agreement had not become effective since it had been rescinded by mutual consent.

135. On 10 November 2004 the Economic Bank informed Mr Mrkonjić that it was unable to deny Mr Žugić access to the funds paid into his account, since Mr Mrkonjić had previously given him authority.

136. On 6 December 2004 Mr Mrkonjić appointed Mr Nogolica as his representative in the proceedings before the Court.

137. On 18 March 2005 Mr Mrkonjić informed the Court that he had reinstated Mr Žugić as his representative.

(d) Enforcement proceedings in Croatia

138. In 2003 42 individuals, including Mr Mrkonjić, lodged requests for the seizure and sale of real estate owned by the Ljubljana Bank. Mr Mrkonjić's execution request was joined to the enforcement proceedings already pending in the Osijek Court of First Instance. In the course of those proceedings, the Zagreb Main Branch's assets were liquidated on 30 March 2004 (see paragraph 111 above).

139. On 20 July 2004 the Osijek Court of First Instance rendered a decision dividing up the proceeds of sale. Mr Mrkonjić was awarded HRK 180,515.72 (EUR 24,728) for the main debt and the costs to be paid into Mr Žugić's account. He was also awarded costs for the enforcement proceedings, but lodged an appeal against that decision in respect of the court fees (see paragraph 113 above).

140. On 4 November 2004 the Ljubljana Bank representative informed Mr Mrkonjić that the monies had been deposited with the Osijek Court of First Instance but that the execution proceedings were still pending.

141. On 8 April 2005 the Osijek Court of First Instance issued a new decision on the division of the proceeds of sale. Mr Mrkonjić, represented by Mr Žugić, lodged an appeal against that decision on the ground that he was entitled to a higher award of costs. On 7 July 2005 the Osijek Court of Appeal dismissed the appeal. The decision of 8 April 2005 thus became final.

142. The relevant parts of that decision read:

“The Osijek Court of First Instance ... decided: ...

II. The costs of the enforcement proceedings shall be paid out of the amount obtained by the sale as follows:

...

9. Marjan Mrkonjić (I-Ovr-125/01), represented by the attorney Milivoje Žugić from Zagreb, the amount of HRK 25,374.22 [EUR 3,476] payable to the attorney Milivoje Žugić's giro account ... with the Economic Bank (*Privredna banka d.d. Zagreb*); the remainder of the judgment creditor's claim is disallowed.

...

III. The following claims shall be settled from the proceeds of sale:

...

9. Marjan Mrkonjić from Basel – the claim referred to in writ of execution no. I-Ovr-125/01 for the part relating to court fees in the amount of HRK 10,132.66 [EUR 1,388], payable to the attorney Milivoje Žugić from Zagreb's giro account ... with the Economic Bank, and the main debt in the amount of HRK 170,383.06 [EUR 23,340], which together total HRK 180,515.72 [EUR 24,728].

..."

143. On 20 July 2005 Mr Mrkonjić received payment in full of his foreign-currency deposits, including the costs awarded.

3. Application no. 48316/99, Mrs Dolores Golubović

(a) The applicant's savings

144. Mrs Golubović, who was retired, held a foreign-currency savings account at the Zagreb Main Branch as the heir of the original account-holder, Mr Ostoje Mejić, by virtue of a decision of the Karlovac Court of First Instance of 20 February 1998. That decision is final and enforceable.

145. On 6 October 1994 the amounts in Mr Mejić's first savings book were recorded as: DEM 31,065.59, CHF 4,468.50 and 2,897.60 Austrian schillings (ATS). The amounts recorded in Mr Mejić's second savings book at 31 December 1993 were: DEM 5,307.54, USD 13,074.44, CHF 904.94, ATS 6,480.51 and 167,146 Italian lire (ITL). According to the applicant, those sums had been paid in between 1986 and 1990.

146. On 29 May 2001 the Zagreb Main Branch issued a savings book in the applicant's name, further to the Karlovac Court of First Instance's decision of 20 February 1998. The deposits, including accrued interest, then came to DEM 39,085.45, USD 14,092.89, CHF 5,627.59, ATS 10,077.41 and ITL 193,495.

(b) Other information submitted by the applicant

147. Mrs Golubović maintained that the Ljubljana Bank had advised the Croatian savings-account holders in 1992 to limit their withdrawals to DEM 500.

148. On 3 November 1998 a bank official at the Zagreb Main Branch informed her that all hard-currency accounts had been frozen and that no

payments could be made. He confirmed that the Croatian courts had jurisdiction to hear claims but said that judgments were not being enforced owing to the Croatian branch's financial difficulties. The Slovenian and Croatian Governments were seeking a solution to the problem.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. Legislation of the Socialist Federal Republic of Yugoslavia (SFRY)

1. *Foreign Exchange Operations and International Credit Relations Act* (Zakon o deviznom poslovanju i kreditnim odnosima – *Official Gazette of the SFRY*, no. 15/77)

149. Section 51 (2) reads:

“The National Bank of Yugoslavia shall be bound, at the request of an authorised bank, to accept citizens’ Foreign Exchange deposits held in accounts at such authorised bank, and at the same time to grant the authorised bank an interest-free credit in the amount of the dinar counter value of the foreign exchange deposited.”

2. *Foreign Exchange Transactions Act* (Zakon o deviznom poslovanju – *Official Gazette of the SFRY*, nos. 66/85, 59/88 and 82/90)

150. The relevant provisions read:

Section 14, as amended

“(1) Domestic natural persons may keep foreign currency in a foreign-currency ordinary or deposit account at an authorised bank and use it for making payments abroad, in accordance with the provisions of this Act.

...

(3) Foreign currency in foreign-currency ordinary or deposit accounts shall be guaranteed by the Federation.

(4) The conditions and procedure applicable to the obligations arising under the guarantee shall be regulated by a separate federal law.”

Section 71

“(1) Nationals may sell convertible currencies to an authorised bank or other authorised exchange office or deposit such currencies in a foreign-currency ordinary or deposit account at an authorised bank.

(2) Foreign currency kept in foreign-currency ordinary or deposit accounts may be used by nationals to pay for imported goods or services for their own and close relatives' needs, in accordance with the Foreign Trade Act.

...

(4) Foreign currency referred to in subsection 2 of this section may be used by nationals for the purchase of convertible bonds, to make testamentary gifts for scientific or humanitarian purposes in Yugoslavia or to pay for life insurance with an insurance company in Yugoslavia.

(5) The National Bank of Yugoslavia shall regulate the operation of the foreign-currency ordinary or deposit accounts of Yugoslav nationals and corporations and foreign nationals and corporations."

3. *Banks and Other Financial Institutions Act (Zakon o bankama i drugim finansijskim organizacijama – Official Gazette of the SFRY nos. 10/89, 40/89, 87/89, 18/90 and 72/90)*

151. Section 76 reads:

"The National Bank of Yugoslavia, in accordance with federal law, shall guarantee dinar-savings deposits on citizens' current accounts in the Post Office Savings Bank and other banks, and the Federation shall guarantee foreign-currency savings deposits and funds in foreign-currency accounts of domestic and foreign natural persons..."

B. Legislation and case-law of the Republic of Slovenia

1. *The Constitution (Ustava Republike Slovenije, Official Gazette no. 33/91)*

152. The relevant provisions read:

Article 8

"Statutes and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly."

Article 22

"Everyone shall be guaranteed equal protection of rights in any proceedings before a court and before any State or local authority or bearer of public authority which determines his or her rights, duties or legal interests."

Article 33

"The right to own and inherit private property shall be guaranteed."

Article 153, § 2

“Statutes must conform to generally accepted principles of international law and international treaties currently in force and ratified by the National Assembly and regulations and other general provisions must also conform to other ratified international treaties.”

Article 160

“The Constitutional Court shall have jurisdiction to decide the following matters:

(i) the conformity of statutes with the Constitution;

(ii) the conformity of statutes and other provisions with ratified international agreements and general principles of international law;

...

(vi) constitutional appeals alleging a violation of human rights and fundamental freedoms by specific acts;

...

Unless otherwise provided for by law, the Constitutional Court shall hear a constitutional appeal only if legal remedies have been exhausted. The Constitutional Court shall decide whether a constitutional appeal is admissible for adjudication on the basis of statutory criteria and procedures.”

2. The Constitutional Court Act (Zakon o ustavnem sodišču, Official Gazette no.15/94)

153. Section 21 § 1 of the Constitutional Court Act provides that the Constitutional Court has jurisdiction, among other matters, to decide on the conformity of statutes with the Constitution, ratified international agreements and customary international law.

154. Individuals have direct access to the Constitutional Court. In particular, they may initiate proceedings for review of the constitutionality and legality of legislative measures and other general acts. Section 24 confers on individuals who have a legal interest in doing so the right to lodge a constitutional initiative (*ustavna pobuda*).

155. The Constitutional Court also has jurisdiction to determine complaints of breaches of human rights and fundamental freedoms in individual cases. Under section 50, any person may lodge a constitutional appeal (*ustavna pritožba*) if he believes that an individual act of a State, local or statutory authority has violated his or her human rights or fundamental freedoms.

3. *1991 Constitutional Law relating to the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (Ustavni zakon za izvedbo Temeljne ustavne listine o samostojnosti in neodvisnosti RS – Official Gazette no. 1/91)*

156. Section 19 § 3 reads:

“The Republic of Slovenia shall assume the obligations borne by the SFRY until the entry into force of this law to guarantee foreign-currency deposits in ordinary or deposit foreign-currency accounts in banks on the territory of the Republic of Slovenia in accordance with the statement of current liabilities.”

4. *1994 Constitutional Law amending the Constitutional Law relating to the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (Ustavni zakon o dopolnitvah Ustavnega zakona za izvedbo Temeljne ustavne listine o samostojnosti in neodvisnosti RS – Official Gazette no. 45/94)*

157. The relevant provisions read:

Preamble

“Considering the reluctance of certain other States that have emerged on the territory of the former Socialist Federal Republic of Yugoslavia (hereinafter referred to as the ‘former SFRY’) and the banks based in those States;

Whereas practical and legal considerations arising from the war on part of the territory of the former SFRY, international sanctions imposed on the so-called FRY (Serbia and Montenegro) and the breakdown, as a result of efforts to finance the war of aggression on a part of the territory of the former SFRY, of the financial and economic systems in some States that have emerged on the territory of the former SFRY mean that it is currently impossible for the agreement on legal succession and on the assumption of the obligations and claims of the former SFRY and the legal entities on its territory to be put into effect and seriously jeopardize its immediate future;

And whereas the enforcement of the claims of foreign creditors and entities of the so-called FRY (Serbia and Montenegro) who have become creditors following the purchase of such claims in accordance with the New Financing Agreement (hereinafter referred to as the ‘NFA’), which makes banks based in the Republic of Slovenia jointly and severally liable for the repayment of the full debt, would seriously jeopardize the financial and economic system of the Republic of Slovenia;

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 in which the direct beneficiary may not be established...”

Section 22(b)

“The Ljubljana Bank d.d., Ljubljana and the Maribor Credit Bank, d.d. Maribor shall transfer their respective businesses and assets to the new banks created hereunder.

Notwithstanding the provisions of the preceding paragraph, the Ljubljana Bank d.d., Ljubljana and the Maribor Credit Bank, d.d. Maribor shall retain:

...

(iii) full liability for foreign-currency ordinary and savings accounts not guaranteed by the Republic of Slovenia under section 19 hereof;

(iv) liabilities to the National Bank of Yugoslavia and foreign creditors that were guaranteed by the SFRY and the resources for which have been used by the ultimate beneficiaries from other republics within former Yugoslavia;

(v) the claims related thereto.

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

Section 22(c)

“The competent court shall of its own motion record:

(i) the Bank and Savings-Bank Rehabilitation Agency of the Republic of Slovenia as the owner and administrator of the Ljubljana Bank d.d., Ljubljana, Trg republike 3, and the Maribor Credit Bank d.d., Ljubljana, Trg republike 3;

(ii) the commercial activity as being the administration of the remaining assets.”

Section 22(č)

“Two banks shall be formed on the date this law enters into force:

Their trade names shall be:

(i) the New Ljubljana Bank d.d., Ljubljana, Trg republike 2; and

...

The managers of the new banks shall draw up a final statement of the assets and liabilities of the banks referred to in section 22(b) of this constitutional law as of the date on which it enters into force. The statement shall include liabilities to the National Bank of Yugoslavia and foreign creditors arising out of dealings with persons from the former SFRY, and the corresponding assets.

... ”

Section 22(f)

“The Republic of Slovenia and the new banks shall not recognise debt due to foreign creditors to whom United Nations sanctions apply in accordance with UN Security Council Resolutions Nos. 757/1992 and 820/1993 [i.e. those in the Federal Republic of Yugoslavia (Serbia and Montenegro) and certain areas in Bosnia and Herzegovina and Croatia].

Even if the UN sanctions referred to in the preceding paragraph are lifted, until a full or partial agreement on the legal succession to the former SFRY has been signed and ratified, or an arrangement made with foreign creditors, no claims or legal or other proceedings brought with a view to seizing bank property shall have any legal effect or be recognized by the courts of the Republic of Slovenia.”

5. *Discharge of Liability for Unpaid Foreign-Currency Deposits Act* (Zakon o poravnavanju obveznosti iz neplačanih deviznih vlog – *Official Gazette no. 7/93*)

158. The relevant provisions read:

Section 1

“This Act governs the procedure for discharging liabilities arising out of unpaid foreign-currency deposits with banks on the territory of the Republic of Slovenia which the banks have deposited with the National Bank of Yugoslavia.”

Section 2

“The banks’ liabilities arising out of foreign-currency deposits ... shall become debt of the Republic of Slovenia.

... ”

Section 3

“The banks’ claims against the National Bank of Yugoslavia concerning the amount of unpaid foreign-currency deposits shall be transferred to the Republic of Slovenia.”

6. *Republic of Slovenia Succession-Fund Act (Zakon o skladu RS za sukcesijo – Official Gazette no. 10/93)*

159. The relevant provisions read:

Section 1

“In order to realise the claims and discharge the liabilities of the Republic of Slovenia and natural and juristic persons on the territory of the Republic of Slovenia as part of the process of division of the rights, assets and liabilities of the SFRY, the Republic of Slovenia Succession Fund to Establish Rights and Obligations in the Succession Process (hereafter ‘the Fund’) is hereby created.”

Section 15

“Natural and juristic persons who at the date this Act enters into force have unpaid claims against or liabilities to subjects of the former Federation may enter into an agreement with the Fund transferring their unpaid claims and liabilities to the Fund, or alternatively give the Fund authority to recover claims and to discharge liabilities in their name and on their behalf.”

7. *Republic of Slovenia Succession-Fund (Amendment) Act (Zakon o skladu RS za sukcesijo – Official Gazette no. 40/97)*

160. The relevant provisions read:

Section 15(č)

“If court proceedings or execution proceedings are pending against persons based or domiciled [on the territory] of the Republic of Slovenia and the claimant or the creditor is based or domiciled [on the territory] of the Republic of Slovenia, a former SFRY republic or a third country and the claim arises out of a legal transaction or enforceable judicial decision, the court shall stay the court proceedings or execution proceedings of its own motion.

Court proceedings commenced after this Act comes into force shall be stayed from the date of service of the claim on the defendant.

Execution commenced after this Act comes into force shall be stayed before a decision has been taken on the application for enforcement, with effect from the date of reception by the court of the notice referred to in section 15(g) of this Act.”

Section 15(d)

“The court shall also make an order ... in cases in which natural or juristic persons have not acted, or were not entitled to act, in accordance with section 15, and the claim relates, directly or indirectly, to legal relations with entities of the former Federation or to status liability of entities of the former SFRY.”

Section 15(e)

“Proceedings that have been stayed under section 15(č) of this Act shall be reinstated by the court of its own motion once [a new] Act ... has come into force.”

Section 15 (g)

“For the purpose of establishing whether the circumstances referred to in sections 15(č), 15(d) ... apply, the court shall obtain of its own motion the opinion of the Fund beforehand and base its decision on that opinion.

...”

8. *The Republic of Slovenia Succession Fund and the Republic of Slovenia Senior Representative for Succession Act (Zakon o Skladu Republike Slovenije za nasledstvo in visokem predstavniku Republike Slovenije za nasledstvo – Official Gazette no. 29/06)*

161. Section 23 reads:

“(1) Stays of proceedings in the courts in the Republic of Slovenia concerning hard currency deposited in a commercial bank or any of its branches in any successor State of the former SFRY that have been issued pursuant to the Republic of Slovenia Succession-Fund Act ... shall remain in force. Any 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 be stayed or suspended until a solution has been found to the question of the assumption of the guarantee of the SFRY or the NBY for such deposits pursuant to Article 7 of Annex C to the Agreement on Succession Issues and shall, upon the fulfilment of that condition, resume automatically ...”

9. *Case-law of the Slovenian Constitutional Court*

162. After finding that he was unable to withdraw his savings from “the Ljubljana Bank – Zagreb Main Branch”, a Croatian savings-account holder, Mr Vukasinović, brought proceedings in the Constitutional Court challenging the constitutionality of section 22(b) and (f) of the 1994 Constitutional Law amending the 1991 Constitutional Law.

163. On 11 April 1996 the Constitutional Court dismissed the proceedings, holding that it had no jurisdiction, as the impugned statute was constitutional in nature and thus fell outside the court’s jurisdiction. It added that one of the features of communal life in the SFRY was foreign-currency deposits, which were guaranteed by the NBY. The issue before it therefore concerned the transition towards a new constitutional order in Slovenia that was also one of the areas of discussion over the succession to the SFRY.

164. On 31 August 1999, a Croatian saver, Mr Perković, lodged a constitutional initiative challenging the constitutionality of section 15(č) and

(d) of the amended Republic of Slovenia Succession Fund Act. On 8 March 2001 it ruled that Mr Perković had standing and declared his initiative admissible.

165. In March 2000 another Croatian saver, Mrs Gaković, lodged a constitutional appeal against a decision by the Ljubljana Regional Court (*Okrajno sodišče*) to stay the proceedings pursuant to section 15(č), paragraph 3 of the amended Republic of Slovenia Succession Fund Act and a decision of the Ljubljana Higher Court upholding the stay. On 30 May 2000 the Constitutional Court ruled that Mrs Gaković had standing and declared her constitutional appeal admissible.

166. On 20 February 2003 the Constitutional Court set aside the stay and remitted the proceedings to the Regional Court. It held that Mrs Gaković's right to a fair trial had been violated, as the stay had been ordered solely on the basis of an opinion issued by the Republic of Slovenia Succession Fund, without her being afforded an opportunity to comment on it.

167. On 17 March 2005 the Constitutional Court ruled that the Transformation of the Succession Fund of the Republic of Slovenia and the Establishment of the Succession Agency of the Republic of Slovenia Act was unconstitutional since it did not provide for the resumption of proceedings that had been stayed pursuant to Section 15(č) of the Republic of Slovenia Succession-Fund Act.

C. Legislation of the Republic of Croatia

1. Act on the Applicability to Croatia of the SFRY's Finance Regulations (Zakon o preuzimanju saveznih zakona iz oblasti financija koji se u Republici Hrvatskoj primjenjuju kao republički zakoni - Official Gazette no.71/91)

168. Section 1 reads:

“The following federal acts shall be adopted and applied as acts of the Republic:

...

(3) the Banks and Other Financial Institutions Act (Official Gazette of the SFRY, nos. 10/89, 40/89, 87/89, 18/90 and 72/90);

...

(13) the Foreign Exchange Transactions Act (Official Gazette of the SFRY, nos. 66/85, 71/86, 3/88, 59/88 and 82/90).”

2. *Decree on the Conversion of Nationals' Foreign-Currency Bank Deposits into Croatian Public Debt* (Uredba o pretvaranju deviznih depozita građana kod banaka u javni dug Republike Hrvatske – *Official Gazette no. 71/91*)

169. The relevant provisions read:

Article 1

“This decree shall govern the procedural arrangements and conditions for the conversion of nationals’ foreign-currency deposits at banks established on the territory of the Republic of Croatia into public debt of the Republic of Croatia on 27 April 1991 and for access to such deposits.

For the purposes of this Decree ‘nationals’ foreign-currency deposits’ shall include:

(i) foreign-currency deposits of banks whose head office is situated on the territory of the Republic of Croatia that have been deposited with the National Bank of Yugoslavia as nationals’ foreign-currency savings; and

(ii) nationals’ deposits in foreign-currency accounts or savings accounts with banks in Croatia that have been transferred by a national from a bank that is not based on the territory of the Republic of Croatia, in accordance with Articles 15 and 16 of this Decree.”

Article 2

“Foreign-currency deposits at banks in Croatia deposited with the National Bank of Yugoslavia as citizens’ foreign-currency savings and foreign-currency deposits transferred to banks in Croatia under the provisions of Articles 15 and 16 of this Decree together with accrued interest for the year 1991 calculated according to the structure of the currency deposited shall be converted into public debt of the Republic of Croatia.”

Article 4

“The Republic of Croatia shall issue bonds to banks in Croatia in accordance with the provisions of this Decree for the public debt referred to in Article 2 above.”

Article 6

“The bonds referred to in Article 4 of this Decree shall be amortised in 20 half-yearly instalments, the first of which shall be due on 30 June 1995.

The bonds shall be negotiable, payable to bearer in DEM, and paid in domestic currency at the exchange rate applicable on the date of payment.

They shall be made out in values of 100, 500 or 1,000 DEM.

Annual interest rates on bonds shall be 5%, to be calculated and paid on 30 June and 31 December every year in domestic currency at the exchange rate applicable on the payment date; interest will start to run on 1 January 1992.”

Article 15

“Citizens who on 27 April 1991 had foreign-currency savings, that is, foreign-currency funds in a foreign-currency account with a bank based outside the territory of the Republic of Croatia but which carried on business in the territory of the Republic of Croatia may, within 30 days from the date this Decree enters into force, transfer the deposits to a bank in Croatia.

...”

Article 16

“Banks in Croatia shall be obliged to accept transfers of foreign-currency deposits made in accordance with Article 15 above and shall inform the bank concerned outside the territory of the Republic of Croatia that the transfers have been made.

...”

D. International law

1. Agreement on the Regulation of Property Rights between the Republic of Slovenia and the Republic of Croatia (Pogodba med Republiko Slovenijo in Republiko Hrvaško o ureditvi premoženjskopравnih razmerij, Official Gazette of Slovenia no. 31/99; Ugovor između Republike Hrvatske i Republike Slovenije o uređenju imovinskopravnih odnosa, Official Gazette of Croatia – International agreements no. 15/99)

170. The relevant provisions read:

Article 1

“This Agreement shall deal with the resolution of property relations established before and after the State Contracting Parties gained independence.

...

The resolution of relations relating to the Krško Nuclear Power Plants and the Ljubljana Bank, Zagreb Main Branch shall not be the subject of this Agreement, but shall be regulated by separate agreement.”

171. The Agreement entered into force on 23 February 2000.

2. Agreement on Succession Issues signed in Vienna on 29 June 2001

172. The relevant provisions read:

Article 4

“(1) A Standing Joint Committee of senior representatives of each successor State, who may be assisted by experts, is hereby established.

(2) This Committee shall have as its principal task the monitoring of the effective implementation of this Agreement and serving as a forum in which issues arising in the course of its implementation may be discussed. The Committee may as necessary make appropriate recommendations to the Governments of the successor States.

(3) The first formal meeting of the Standing Joint Committee shall be convened, at the initiative of the Government of the Republic of Macedonia, within two months of the entry into force of this Agreement. The Committee may meet informally, and on a provisional basis, at any times convenient to the successor States after the signature of this Agreement.

(4) The Committee shall establish its own rules of procedure.”

Annex C, Article 2

“...

(3) Other financial liabilities 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; and

(b) guarantees by the SFRY of savings deposited before certain dates with the Post Office Savings Bank at its branches in any of the Republics of the SFRY.”

Annex C, Article 7

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

Annex G, Article 7

“All natural and legal persons from each successor State shall, on the basis of reciprocity, have the same right of access to the courts, administrative tribunals and agencies, of that State and of the other successor States for the purpose of realising the protection of their rights.”

173. The agreement entered into force on 2 June 2004.

E. Resolution 1410 (2004) of the Parliamentary Assembly of the Council of Europe (text adopted by the Standing Committee acting on behalf of the Assembly on 23 November 2004 (see Doc. 10135, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens))

174. The relevant provisions read:

“Repayment of the deposits of foreign exchange made in the offices of the Ljubljanska Banka not on the territory of Slovenia, 1977-1991

1. The Parliamentary Assembly is seized of the question of the non-repayment by the Ljubljanska Banka (LB) in Ljubljana, Slovenia, of the foreign exchange deposited with the branches of the LB in Zagreb, Sarajevo and Skopje over a period of more than ten years, between 1977 and 1991, before the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY).

2. The depositors from Bosnia and Herzegovina, Croatia and “the former Yugoslav Republic of Macedonia”, as successor states of Yugoslavia, claim that Slovenia is liable to repay these deposits because the head-office of LB is and was located in Slovenia. The smaller and larger claims by some hundreds of thousands of depositors total several hundred millions German Marks, including a very high percentage of accumulated interest.

3. The Assembly is of the opinion that it is not fair to keep the depositors waiting until the legal, economic and political questions have been solved between the successor states which have guaranteed these deposits.

4. The Assembly welcomes the fact that certain groups of savers have received at least partial compensation from their Governments: those who deposited their savings in LB offices in Slovenia or in “the former Yugoslav Republic of Macedonia” and those who accepted the Croatian Government’s limited offer to transform the savings into Croatian national debt. It considers that similar solutions should be offered to all those whose savings were lost in the collapse of the banking system in the SFRY.

5. The Assembly does not consider it to be its task to take sides in the legal dispute between Slovenia and some of the savers who deposited their savings in Ljubljanska Banka offices located in other former Yugoslav republics, a dispute which has been brought before the European Court of Human Rights by a group of depositors in Croatia.

6. The Assembly therefore considers that it is primarily for the Court, and not the Assembly, to decide on the application to the cases in point of the principle of protection against expropriation guaranteed by the European Convention on Human Rights, if the Court regards such claims to be admissible.

7. However, notwithstanding the decision of the Court to declare two individual applications from Croatian depositors admissible, the Assembly considers that the matter of compensation for so many thousands of individuals would best be solved

politically, between the successor states, instead of an already overburdened Court. The Assembly therefore:

(i.) appeals to the successor countries of the SFRY to address without further delay the plight of the depositors of hard-currency savings in former Yugoslav banks, many of whom lost access to their modest life savings in the collapse of the banking system of the SFRY;

(ii.) proposes to the four countries concerned to set up a collective fund under the auspices of the Council of Europe in order to compensate the depositors for the capital of their original foreign currency savings, possibly with some compensation for inflation, in order to help the savers, who have been deprived of access to their life savings for more than ten years. The fund should be financed by all four governments concerned, in principle proportionately to foreign exchange deposits made on the territory of each of the countries. In negotiating the precise burden-sharing arrangement between the successor countries of the SFRY, due account should be taken of the following factors, to the extent that they can be properly established:

(a.) actual hard currency transfers made to the Ljubljana office of Ljubljanska Banka of savings deposited in offices located in other republics and use of such funds for the economic development of Slovenia;

(b.) the possibility offered, or not, to Ljubljanska Banka to pursue its banking activities in the other republics after the breakdown of the SFRY, thus making it possible for the LB to recover debts owed by clients for credits given;

(c.) the fact that compensation has already been given to depositors by some states and that the claims of these depositors have been taken over by those states;

(iii.) invites the European Union to examine the possibility of making a contribution to the collective fund;

(iv.) instructs its Committee on Economic Affairs and Development to study the modalities of setting up the above-mentioned collective fund.”

THE LAW

I. AS TO THE *LOCUS STANDI* OF MRS MIROSLAVA KOVAČIĆ, MRS MARINA MUŠIĆ AND MR ZLATKO KOVAČIĆ

175. The Court must first address the question whether Mrs Miroslava Kovačić, Mrs Marina Mušić and Mr Zlatko Kovačić’s have standing to pursue the application originally introduced by the applicant Mr Ivo Kovačić, who died on 17 July 2004.

176. The late applicant’s next of kin, Mrs Miroslava Kovačić, Mrs Marina Mušić and Mr Zlatko Kovačić, declared in July 2004 that they

wished to pursue their late husband's and father's application before the Court. They subsequently relied on a grant of probate issued by a notary public on 29 September 2004 under authority delegated by the Zagreb Court of First Instance, by virtue of which they inherited the late applicant's claims against the Zagreb Main Branch. They therefore considered that they had a legitimate interest in pursuing the application before the Court.

177. In various cases in which an applicant has died in the course of the proceedings the Court has taken into account the statements of the applicant's heirs or of close members of his family who have expressed the wish to pursue the proceedings before the Court (see, for example, *Deweert v. Belgium*, judgment of 27 February 1980, Series A no. 35, pp. 19-20, §§ 37-38, *Vocaturo v. Italy*, judgment of 24 May 1991, Series A no. 206-C, p. 29, § 2, and *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII).

178. Regard being had to the fact that Mrs Miroslava Kovačić, Mrs Marina Mušić and Mr Zlatko Kovačić have been confirmed as the applicant's lawful heirs under national law, the Court must accordingly continue to examine the application at their request. However, Mr Kovačić will continue to be referred to as the applicant for the purposes of the examination of the case.

II. AS TO THE *LOCUS STANDI* OF MR IVO STEINFL

179. Secondly, the Court must address the question of Mr Ivo Steinfl's standing to pursue the application originally introduced by the applicant Mrs Dolores Golubović who died in the course of the proceedings on 15 October 2004.

180. Mr Steinfl has elected in December 2004 to pursue his late aunt's application before the Court. He relies on a grant of probate issued by a notary public delegated by the Karlovac Court of First Instance on 24 November 2004, by which he was declared her sole heir under Mrs Golubović's last will dated 27 June 1999. The Court therefore holds that the deceased applicant's nephew has standing in the present case to continue the proceedings in her stead. In line with its practice, the Court will continue to refer to Mrs Golubović as the applicant.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

181. The applicants complained of a violation of Article 1 of Protocol No. 1, which reads:

“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.”

182. One of the applicants, Mr Kovačić, also maintained that he had been the victim of discrimination in relation to the enjoyment of his property rights, contrary to Article 14 of the Convention, which 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. ”

A. The parties’ and third party’s submissions

(a) The applicants

183. On 20 August 2004, in view of the agreement whereby Mr Mrkonjić had assigned his outstanding claim against the Zagreb Main Branch to his representative Mr Žugić in return for the immediate payment of a portion of the claim (see paragraph 132 above), the Court asked Mr Žugić, who was representing also Mr Kovačić, whether he had concluded with the latter a similar agreement. On 8 September 2004 Mr Žugić replied that no such agreement had been signed with the Kovačić family.

184. On 21 February 2005, following Mr Kovačić’s death, the Court requested his widow Mrs Kovačić (see paragraphs 11, 14, 58, 91 above and 185 and 212 below) to inform it of the position in the enforcement proceedings and whether she considered the agreement that had been concluded between Mr Mrkonjić and Mr Žugić to be of any relevance to her own situation. On 21 March 2005 Mrs Kovačić replied that she was not acquainted with Mr Mrkonjić’s case, but that in her view it was not relevant to her own position.

185. On 21 February 2005 the Court requested also Mrs Golubović whether she had taken any steps with a view to realising her claims in Croatia. It also enquired whether the agreement concluded between Mr Mrkonjić and Mr Žugić was of any relevance to her own situation (see paragraphs 11, 14, 58, 91, 184 below and 212 above).

186. On 24 March 2005, the applicant’s representative informed the Court that neither Mrs Golubović nor her legal successor had brought proceedings in the Slovenian or Croatian courts against either the Ljubljana Bank Head Office or the Zagreb Main Branch. He added that the

arrangement between Mr Mrkonjić and Mr Žugić was not relevant to Mrs Golubović's situation.

187. Moreover, on 19 September 2005, in reply to the Court's request of 30 August 2005, Mr Žugić confirmed on behalf of Mr Kovačić and Mr Mrkonjić that they had received full payment of their savings (see paragraphs 118 and 143 above). The applicants stressed that this had occurred as a result of the enforcement proceedings. It could not be claimed that either the Ljubljana Bank or the New Ljubljana Bank had voluntarily executed the judgments in their favour. They had been executed over property of the "old" Ljubljana Bank which happened to be located on Croatian territory.

188. Moreover, not all of the claims of the successors of Mr Kovačić and Mr Mrkonjić had been satisfied. In fact, the just satisfaction claims in respect of the non-pecuniary damage for the suffering sustained by the two applicants because of the violation of their right to property remained open.

189. They added that the Court should not take into account the facts relied on by the respondent Government which had occurred after 9 October 2003, the day on which the hearing before the Court had been held.

190. In any event, the fact that the information concerning the payment had been made available to the respondent Government and eventually to the New Ljubljana Bank confirmed that the latter had been established in order to allow the obligations towards the Croatian savers to be evaded in a discriminatory way. In fact, it proved that the Ljubljana Bank and the New Ljubljana Bank was the same legal person, operating under a new name.

191. Finally, Section 433 of the Slovenian Code of Obligations 2001 would make the New Ljubljana Bank, as the legal successor to the Ljubljana Bank, liable for its debts, including those of the Zagreb Main Branch, once the 1994 Constitutional Law was repealed. The problem of the "old savings" could not be solved as long as that Law had not been rescinded.

(b) The respondent Government

192. As in their previous submissions, in their additional submissions of 23 July 2004 the respondent Government argued that through the 1991 Constitutional Law and its implementing legislation, Slovenia had taken responsibility for an equitable proportion of the former SFRY's guarantee for foreign-currency deposits, regardless of the nationality of the depositor or the location of the headquarters of the bank with which the deposit had been made.

193. Moreover, through loans awarded on the basis of foreign-currency deposits with the Zagreb Main Branch, investments had been made on Croatian territory before the dissolution of the SFRY which continued to benefit Croatia. In addition, after the dissolution of the SFRY, the Zagreb Main Branch had not been able to generate the assets needed to service its

debt to foreign-currency depositors, precisely because of a series of actions taken by the Croatian Government in the exercise of their jurisdiction over banks and property located on Croatian territory.

194. The resolution 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”, which was then in its drafting stage but was adopted on 23 November 2004, and the Explanatory Memorandum prepared by the Rapporteur Mr Jurgens confirmed that the territorial principle should govern the distribution of the SFRY guarantee. By applying the territorial principle, Slovenia had therefore fulfilled any obligation it might have had under the applicable customary international law of State succession. Slovenia was prepared to accept the establishment of a common fund with contributions of all successor States to service the unpaid foreign-currency debt of depositors.

195. Furthermore, under the laws of the former SFRY, the Ljubljana Bank Head Office had not at any relevant time been liable for the debts of the Ljubljana Bank Basic Bank Zagreb. Since the conversion under the Marković reforms in 1989/90 from the Ljubljana Bank Basic Bank Zagreb into the Zagreb Main Branch was never completed due to the dissolution of the former SFRY, the latter had never become dependent on the Ljubljana Bank.

196. The Explanatory Memorandum confirmed that the Marković reforms could not be completed, that the Ljubljana Bank had never been liable for debts contracted by the Ljubljana Bank Basic Bank Zagreb and that in any event liabilities under the SFRY banking system could not be converted into civil liabilities under the new systems. The respondent Government added that even if a case could be made that the branches had formally become dependent on the head office, it was still not clear what that dependence would extend to pre-existing assets and liabilities of the regional offices.

197. It followed that the applicants had failed to establish in the first place that they had a claim against the Ljubljana Bank which could have been affected by the 1994 Constitutional Law. Since the 1994 restructuring did not extend to bank offices outside Slovenian territory, assets and liabilities of the Zagreb Main Branch were not affected and the applicants’ claims that Slovenia had interfered with their right to peaceful enjoyment of their “possessions” were unfounded.

198. Relying on their submissions at the hearing, the Slovenian Government further maintained that the applicants could and should have pursued their claims against the Zagreb Main Branch. They stressed that within the framework of the enforcement proceedings pending in the Osijek First Instance Court, the Zagreb Main Branch’s real estate had been liquidated and the proceeds of sale deposited with the court. The two applicants Mr Kovačić and Mr Mrkonjić, who had initiated enforcement

proceedings in the Osijek First Instance Court, would shortly be receiving satisfaction of their claims through the division of the proceeds of sale.

199. In any event, if the Court found that Slovenia had restricted the applicants' access to their deposits, such a restriction was proportionate to the legitimate aim pursued, namely the prevention of a systemic crisis, in the light of the fact that the applicants could have obtained payment of their deposits in the near future.

200. This was confirmed by the Slovenian Government's extensive reply of 1 October 2004 to the applicants' and the Croatian Government's submissions. In addition, the applicants' claims did not constitute "possessions" within the meaning of Article 1 of Protocol No.1; nor could it be claimed that the applicants had any legitimate expectation that the Zagreb Main Branch would not be in position to service their foreign-currency deposits.

201. In any event, the Croatian allegations that the 1994 Constitutional Law had *de facto* expropriated the applicants' foreign-currency deposits since it made them irrecoverable, should be rejected for non-compliance with the six-month time-limit. The respondent Government also stressed that the Zagreb Main Branch's net assets were substantial, amounting to EUR 370 million book values in 2003, and certainly exceeded the applicants' claims.

202. They further stated that Slovenia had not violated Article 14 read in conjunction with Article 1 of Protocol No. 1. Any differential treatment of foreign and domestic deposits that might have existed was not based on nationality or any other ground mentioned in Article 14. Even if the 1994 restructuring measures involved differential treatment of deposits on Slovenian territory and deposits on Croatian territory, which they did not, any such differences were based on the objective criterion of the location of the foreign-currency deposits, namely in Croatia.

203. Finally, on 25 July 2005 the Slovenian Government informed the Court that Mr Kovačić and Mr Mrkonjić had received payment of their foreign-currency deposits in full.

(c) The Croatian Government

204. In their additional submissions of 23 July 2004, the Croatian Government first referred to their previous submissions. The legislative measures taken in 1994 by the Slovenian authorities constituted an interference with the applicants' rights to the peaceful enjoyment of their "possessions", guaranteed by Article 1 of Protocol No. 1. Since the applicants' valid claims against the Ljubljana Bank, based on the savings contracts, were concrete and specified, they constituted "possessions" or at least a "legitimate expectation" of their realisation. The Croatian Government argued that the cases concerned *de facto* expropriation of the applicants' "possessions" and submitted that the rule contained in the first

paragraph of Article 1 of Protocol No. 1, which forbids deprivation of “possessions” except under specific conditions, should be applied.

205. Prior to the enactment of the 1994 Constitutional Law, the applicants’ foreign-currency deposits in the Ljubljana Bank were not a part of the Slovenian public debt since they had not been deposited on Slovenian territory. They remained therefore the bank’s active debt to the applicants. The bank was not insolvent and remained in business. By the 1994 Constitutional Law, the Slovenian State had nationalised all the assets of the Ljubljana Bank and, although it had not rejected the applicants’ claims, it had effectively made them unenforceable. This constituted *de facto* expropriation.

206. Since the 1994 legislation did not only serve to protect the Slovenian financial and economic system from speculative claims under the NFA but also to protect a State-controlled bank from all claims from foreign creditors, especially individual savers, such an aim could not be considered to be legitimate. In any event, the measures were not proportionate since an excessive burden had been placed on the applicants who wanted nothing more than a secure bank in which to deposit their life savings. On the contrary, the Ljubljana Bank had been aware of the business risk in the political environment in which it was operating. In 1994, the Slovenian State had shifted the business risk entirely to the savers. In addition, the measures were not limited in time.

207. The entry into force of the Agreement on Succession Issues had not changed anything for the applicants. Their savings had remained irretrievable and they had acquired no enforceable rights under it. The private legal relationship between the bank and its savers was not the subject of succession. In principle, only Annex G could be applied to that relationship.

208. As to the alleged violation of Article 14 read in conjunction with Article 1 of Protocol No. 1, it was not disputed between the parties that there had been a difference in treatment between savers with the main branches of the Ljubljana Bank and savers with the Ljubljana Bank, both in the assumption of the Ljubljana Bank’s debt and its restructuring.

209. The fact that the money had been physically deposited in a certain territory made no difference given that free movement of capital had existed between that territory and the territory where the head office of the financial institution was located. In the SFRY, that possibility existed among its former component republics. As to the restructuring of the Ljubljana Bank in 1994, it was obvious that it had been undertaken with a view to depriving foreign savers of their claims.

210. In their response of 1 October 2004 to the Slovenian Government’s submissions, the Croatian Government stated that the Draft Resolution of the Parliamentary Assembly of the Council of Europe on the “Repayment of the deposits of foreign exchange made in the offices of the Ljubljana bank

not on the territory of Slovenia” could not be used as evidence in the present proceedings since it had not been adopted at the material time (see paragraph 194 above). Moreover, the Parliamentary Assembly had not considered it to be its task to take sides in the legal dispute between Slovenia and the savers. The opinions expressed by the Rapporteur Mr Jurgens could only serve as a basis for adopting the Resolution which might contribute to a political solution to the problem.

211. As to the documents that had been submitted relating to the enforcement proceedings pending in the Croatian courts, they were relevant only to the question of the admissibility of the applications, in particular of the exhaustion of domestic remedies, on which the Court had already given a decision. They had no bearing on the merits.

212. On 21 February 2005 the Court asked the Croatian Government whether they could confirm the accuracy of the information provided by the Slovenian Government and Mr Mrkonjić regarding the position in the enforcement proceedings that had been issued by Mr Kovačić and Mr Mrkonjić (see paragraphs 11, 14, 58, 91, 184 and 185 above).

213. In their reply of 30 March 2005, the Croatian Government stated that the information provided by the Slovenian Government was partially accurate. The proceedings were still pending and had not yet ended. They further argued that the execution proceedings could only be viewed in the context of the victim status of two of the three applicants. However, relying on *Eckle v. Germany* (judgment of 15 July 1982, Series A no. 51, p. 32, §§ 69 et seq.), *Jensen v. Denmark* ((dec.), no. 48470/99, ECHR 2001-X) and *Kljajić v. Croatia* (no. 22681/02, § 23, 17 March 2005), they stressed that “an applicant’s status as a victim may depend on compensation being awarded at domestic level on the basis of the facts about which he or she complains before the Court and on whether the domestic authorities have acknowledged, either expressly or in substance, the breach of the Convention”.

214. The enforcement proceedings could not be considered to be such a remedy as, firstly, the proceedings had not taken place in the respondent State, secondly, no compensation would be awarded to the applicants in relation to the alleged violation and, thirdly, the authorities of the respondent State would neither expressly nor in substance acknowledge the breach of the Convention in relation to the applicants. Furthermore, even assuming that the applicants recovered their pecuniary claims in their entirety, this could not compensate for the many years of uncertainty to which they had been exposed regarding their savings.

215. In any event, the importance of these cases went beyond the individual applications, since a large number of similar applications were pending before the Court and the Osijek execution proceedings were an exception from which only a very small number of savers could benefit.

216. Finally, on 5 October 2005, further to the Court's request of 30 August 2005, the Croatian Government confirmed that the information supplied by the Slovenian Government on 25 July 2005, to the effect that Mr Kovačić and Mr Mrkonjić had received full payment of their foreign-currency deposits, was correct.

B. The Court's assessment

217. After the applications were declared admissible on 9 October 2003, with the exception of the question of compliance with the six-month rule which was joined to the merits, new factual information has been brought to the attention of the Court.

218. Firstly, on 29 April 2004 Mr Mrkonjić informed the Court that he had assigned to his representative Mr Žugić his outstanding claim against the Zagreb Main Branch, namely CHF 28,562.14, with interest and the costs of the proceedings. In return, Mr Žugić had undertaken to pay 70% of that amount to the applicant by a certain date. On that date Mr Mrkonjić informed the Court that he had withdrawn Mr Žugić's authority and cancelled the agreement since the latter had failed to pay him the money due by the agreed date.

219. Secondly, on 25 July 2005 the Slovenian Government informed the Court that, further to the Osijek Court of Appeal's decision of 7 July 2005, Mr Kovačić and Mr Mrkonjić had on 20 July 2005 received payment of their foreign-currency deposits in full. Upon the Court's request – in other words, not of their own motion – the two applicants and the Croatian Government confirmed on 19 September and 5 October 2005, respectively, that that information was correct.

220. The Court observes that it may "at any stage of the proceedings" either reject an application it considers inadmissible or strike it out of its list of cases. New factual information, even at the merits stage, has led the Court to reconsider a decision to declare an application admissible and subsequently to declare it inadmissible under Article 35 § 4 of the Convention (see, for example, *Medeanu v. Romania* (dec.), no. 29958/96, 8 April 2003, *İlhan v. Turkey* [GC], no. 22277/93, § 52, ECHR 2000-VII, and *Azinas v. Cyprus* [GC], no. 56679/00, § 37-43, ECHR 2004-III).

221. Similarly, at an advanced stage of the proceedings, the Court may consider whether there exists a situation conducive to the application of Article 37. In order to conclude that the matter has been resolved within the meaning of Article 37 § 1 (b) and that there is therefore no longer any objective justification for the applicant to pursue his application, the Court must examine, firstly, whether the circumstances complained of directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also

been redressed (see *Pisano v. Italy* [GC] (striking out), no. 36732/97, § 42, 24 October 2002).

222. The Court finds it necessary to ascertain in each of the present cases whether the new facts brought to its attention may lead it to conclude that the matter has now been resolved and, if not, whether the continued examination of the applications is still justified.

Article 37 § 1 of the Convention provides as follows:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

- (a) the applicant does not intend to pursue his application; or
- (b) the matter has been resolved; or
- (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.”

223. Uncertainty remains as regards the agreement whereby Mr Mrkonjić assigned his outstanding claim against the Zagreb Main Branch to his representative Mr Žugić. Mr Mrkonjić plainly considered himself bound by that agreement whereas according to Mr Žugić it never entered into force. If it was found that Mr Mrkonjić had validly assigned his claim for consideration, the question would arise whether he could still be considered a “victim” within the meaning of Article 34 of the Convention. Be that as it may, the Court takes the view that there is no need for it to decide that issue in the present case for the following reasons.

224. It is clear that Mr Kovačić and Mr Mrkonjić have now received payment in full of their foreign currency deposits (see paragraphs 118, 143 and 219 above); as regards them, the matter has therefore been resolved (Article 37 § 1 (b)).

225. Moreover, when invited to make submissions on the matter of just satisfaction on 7 April 2004, neither Mr Kovačić nor Mr Mrkonjić specified their claims within the time allowed.

226. The Court therefore finds that both these applicants failed to make their claims for just satisfaction within the time-limit. Consequently, it makes no award under this head.

227. As to the third applicant, Mrs Golubović, the Court considers that in cases in which liability for a former State’s debt is disputed by the successor States, a claimant can reasonably be expected to seek redress in fora where other claimants have been successful. For reasons which remain

unexplained, Mrs Golubović took no action in Croatia although she would likely have been successful had she done so. In any event, it would still be open to her to bring proceedings in Croatia. As to the matter of just satisfaction, Mrs Golubović did not specify her claims within the prescribed time-limit.

228. In view of these circumstances and of its conclusion concerning the applicants Mr Kovačić and Mr Mrkonjić, the Court considers that it is no longer justified to continue the examination of her application (Article 37 § 1 (c)).

229. Furthermore, the Court is satisfied that respect for human rights as defined in the Convention and its Protocols does not require it at present to continue the examination of the applications (Article 37 § 1 *in fine*).

230. Consequently, the cases should be struck out of the list.

IV. APPLICATION OF RULE 43 § 4 OF THE RULES OF COURT

231. Rule 43 § 4 of the Rules of Court provides:

“When an application has been struck out, the costs shall be at the discretion of the Court. ...”

232. The Court reiterates that an award can be made to an applicant in respect of costs and expenses only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V). Moreover, the applicant is required to submit itemised particulars of all claims made, together with the relevant supporting documents or vouchers, failing which his claim may be rejected in whole or in part (Rule 60 § 2) (see *Pisano*, cited above, §§ 53 and 54).

233. Those principles should also be observed in the application of Rule 43 § 3, which leaves the costs at the discretion by the Court when it decides to strike an application out of its list, either by a judgment or by a decision (see *Ertürk v. Turkey* (dec.), no. 49683/99, 4 May 2006).

234. The Court notes that, despite having been invited to do so, the applicants made no submissions after the decision on admissibility as to the costs and expenses they had incurred before the domestic authorities or the Court. The Court further notes that it has granted them legal aid for the proceedings up to and including the hearing on 9 October 2003. In addition, Mr Kovačić and Mr Mrkonjić were awarded costs and expenses in the subsequent domestic enforcement proceedings (see paragraphs 116 and 142 above).

235. In these circumstances, the Court is satisfied that the applicants have been sufficiently reimbursed both in the proceedings before the Court as well as under domestic law and sees no reason to examine this point

further (see *Ohlen v. Denmark* (striking out), no. 63214/00, § 38, 24 February 2005).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the heirs to the applicants Mr Kovačić and Mrs Golubović have standing to continue the present proceedings in their stead;
2. *Decides* to strike the applications out of its list of cases.

Done in English, and notified in writing on 6 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President