



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

GRAND CHAMBER

CASE OF KOVAČIĆ AND OTHERS v. SLOVENIA

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

JUDGMENT

STRASBOURG

3 October 2008

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

the case of Kovačić and Others v. Slovenia,

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

Jean-Paul Costa, *President*,
Nicolas Bratza,
Peer Lorenzen,
Françoise Tulkens,
Georg Ress,
Giovanni Bonello,
Karel Jungwiert,
Boštjan M. Zupančič,
Rait Maruste,
Snejana Botoucharova,
Antonella Mularoni,
Stanislav Pavlovski,
Lech Garlicki,
Khanlar Hajiyev,
Sverre Erik Jebens,
Dragoljub Popović,
Mark Villiger, *judges*,

and Erik Friberg, *Registrar*,

Having deliberated in private on 14 November 2007 and on 3 September 2008,

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

PROCEDURE

1. The cases originated in three applications 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”) (applications nos. 44574/98 and 45133/98) and under Article 34 with the European Court of Human Rights (application no. 48316/99) 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 applicants were represented as follows: Mr Kovačić and Mr Mrkonjić by Mr M. Žugić and Mrs Golubović by Mr Z. Nogolica. Mr Žugić and Mr Nogolica are both members of the Croatian Bar.

3. On 17 July 2004 the applicant Mr Kovačić died. Mr Kovačić's next of kin, his widow Mrs Miroslava Kovačić, his daughter Mrs Marina Mušić and

his son Mr Zlatko Kovačić, have elected to pursue his application before the Court. They continue to be represented by Mr Žugić.

On 15 October 2004 the applicant Mrs Golubović died. Her nephew, Mr Ivo Steinfl, has elected to pursue her application before the Court. He continues to be represented by Mr Nogolica.

For reasons of convenience, the present judgment will continue to refer to Mr Kovačić and to Mrs Golubović as applicants where appropriate.

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

5. 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 legislation enacted by the respondent State had prevented them from withdrawing foreign currency which they had deposited with the Zagreb office of a Slovenian bank, the Ljubljana Bank.

6. Mr Kovačić also complained that he had been discriminated against on the ground 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.

7. The applications lodged with the Commission 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).

8. They 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, paragraph 1.

9. On 13 March 2001 the Chamber decided to join the proceedings in the applications (Rule 42, paragraph 1) and to give notice of them to the respondent Government (Rule 54 § 3 (b)).

10. The applicants and the respondent Government each filed written observations (Rule 54 § 2 (b)). 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 applicants and the respondent Government replied to those comments.

11. By a decision of 1 April 2004, following a hearing on the admissibility and merits (Rule 54 § 3) held on 9 October 2003, the applications were declared admissible by a Chamber of the then Third Section.

12. The applicants, the respondent and the intervening Government each filed further written submissions (Rule 59 § 1). The parties replied in writing to each other's submissions.

13. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber as previously constituted.

14. 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 in response to each other's replies.

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

16. On 6 November 2006 a Chamber of the former Third Section composed of the following judges: Georg Ress, *President*, Ireneu Cabral Barreto, Lucius Caflisch, Boštjan M. Zupančič, John Hedigan, Margarita Tsatsa-Nikolovska and Kristaq Traja, *judges*, and also of Vincent Berger, *Section Registrar*, delivered a judgment striking the applications out of the list of cases under Article 37 § 1 (b) and (c) of the Convention.

17. On 5 February 2007 Mr Kovačić's legal successors and Mr Mrkonjić requested the referral of their cases to the Grand Chamber in accordance with Article 43 of the Convention. On 23 May 2007 a panel of the Grand Chamber granted their requests. On 22 February 2007 Mrs Golubović's heir also requested the referral of her case to the Grand Chamber. The Court's decision on this request is set out in paragraph 200 below.

18. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court.

19. The Slovenian Government, Mr Kovačić's successors and Mr Mrkonjić, but not Mrs Golubović's heir, each filed written observations on the admissibility and merits. In addition, third-party submissions were received from the intervening Government.

20. A hearing before the Grand Chamber took place in public in the Human Rights Building, Strasbourg, on 14 November 2007 (Rule 59 § 3).

There appeared before the Court:

(a) *for the respondent Government*

Mr L. Bembič, Attorney General of the Republic of Slovenia,	<i>Agent</i> ,
Ms C. Annacker, <i>Rechtsanwältin</i> , member of the Vienna Bar,	
Mr G. Bertrou, <i>avocat</i> , member of the Paris Bar,	
Ms M. Ménard, <i>avocat</i> , member of the Paris Bar,	<i>Counsel</i> ,
Ms A. Kert, Director of the Succession Fund	
of the Republic of Slovenia,	
Mr A. Rant, Vice Governor of the Bank of Slovenia,	
Mr B. Ožura, President of the Ljubljana Bank	
(<i>Ljubljanska Banka d.d.</i>),	<i>Advisers</i> ;

(b) *for Mr Kovačić's heirs and Mr Mrkonjić*

Mr M. Žugić,
Mrs D. Kuecking,

*Counsel,
Adviser;*

(c) *for Mrs Golubović's heir*

Mr Z. Nogolica,

Counsel;

(d) *for the Croatian Government*

Ms Š. Stažnik, Assistant to the Minister of Justice,
Mr D. Maričić, Head of the Department for
Representation before the ECHR,
Ms V. Jelić, Croatian National Bank,

*Agent,

Advisers.*

21. The Court heard addresses by Mr Žugić, Mr Nogolica, Ms Annacker and by Ms Stažnik.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

22. The applicants are Croatian nationals.

23. Mr Ivo Kovačić was born in 1922 and lived in Zagreb. He died on 17 July 2004, in the course of the proceedings. His relatives have elected to pursue the application before the Court (see paragraph 3 above).

24. Mr Marjan Mrkonjić was born in 1941 and lives in Zurich (see paragraph 2 above).

25. Mrs Dolores Golubović was born in 1922 and lived in Karlovac. She died on 15 October 2004. Her nephew has elected to pursue her application before the Court (see paragraph 3 above).

A. The circumstances of the individual cases

26. 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 (in Slovenian: *Ljubljanska banka*) – in Zagreb (Croatia). Some of them also held term accounts which matured in the late 1980s or early 1990s. At the time the Ljubljana Bank was one of the major commercial banks of the SFRY with offices in other Republics.

B. Background to the cases

1. *The Socialist Federal Republic of Yugoslavia*

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

27. The bank now called the Ljubljana Bank was founded in 1955 and subsequently underwent several changes of status and name.

28. 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.

29. 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 Ljubljana Bank Basic Banks and carried on business in accordance with the principles of the socialist self-management system then in operation.

30. 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.

31. The Ljubljana Bank - Basic Bank Zagreb (in Croatian: *Ljubljanska banka - Osnovna Banka Zagreb*) had separate legal personality under the law of the then Socialist Republic of Croatia and was financially and economically independent. It was, however, integrated into the organisational structure of the Ljubljana Bank.

32. On 19 December 1989 the Ljubljana Bank Head Office was re-registered as a joint stock company (*delniška družba*, “d.d.”) with effect from 1 January 1990.

33. 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*

34. Individuals were allowed to open foreign-currency savings accounts in the SFRY from 1965 onwards. Annual interest on savings accounts was comparatively high, reaching levels of 10% and more. 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 of the SFRY, no. 10/89, paragraph 166 below).

35. In 1977 a system by which commercial banks redeposited 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 of the SFRY,

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. The dinar loans were credited to local companies in the Republic where the banks were located. 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. This system freed commercial banks from the risk of loss due to exchange rate differences.

36. From 1978 to 1988 further legislation regulating the redeposit transactions was passed. One of the decisions adopted in 1978 introduced the so-called “pro-forma” or “accounting” method of redepositing 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.

37. From 1985 onwards redepositing banks were required to pay interest on the previously interest-free loans in YUD granted in exchange for the foreign currency redeposited with the NBY.

38. On 15 October 1988 the system of redeposits was brought to an end by amendments to the Foreign Exchange Transactions Act (Official Gazette of the SFRY no. 59/88, see paragraph 165 below). 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 any payment could be made under the guarantee.

39. In 1991 the foreign-currency claims of commercial banks against the NBY amounted to approximately 12,000,000,000 US dollars (USD) and remained frozen.

(c) The monetary crisis and the Marković reforms

40. 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 resorted 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, paragraph 165 below).

41. 1989 was a year of reforms for the SFRY in which many legislative, institutional and structural adjustments were made to prepare the transition from the socialist planned economy into a market-oriented one (the so-

called Marković reforms, named after the then Prime Minister Mr Ante Marković). According to the respondent Government, these reforms, which also included rehabilitation measures, should have been implemented in full within two years but the dissolution of the SFRY prevented this.

42. The reform of the banking system under the Banks and Other Financial Institutions Act (Official Gazette of the SFRY no. 10/89) provided for the conversion of associated and basic banks into joint stock companies.

43. 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.

44. 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 four of the six Republics proclaimed their independence.

(d) The Ljubljana Bank and the Zagreb Main Branch

(i) Background

45. In 1988 the Ljubljana Bank's foreign-currency accounts were frozen.

46. On 19 December 1989 the Ljubljana Bank joint stock company was established in Ljubljana, in the then Socialist Republic of Slovenia. The change was entered in the Register of Companies the same day and became effective on 1 January 1990.

47. 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, among others, the Basic Bank of Zagreb as a legal successor on the day of its formation or registration in the Register of Companies.

48. On 29 December 1989 the Ljubljana Bank Basic Bank Zagreb was reregistered in the Zagreb Commercial Court (*Trgovački sud*) 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 respondent Government

49. The respondent 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 State succession issue.

50. During the two-year interim period of 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. In particular, such main branches could be rehabilitated under section 25 of the Rehabilitation, Liquidation and Solvency of Banks and Other Financial Institutions Act (see paragraph 168 below). In 1990 the rehabilitation of the Zagreb Main Branch was initiated but the dissolution of the SFRY prevented its completion.

(β) Events as related by the intervening Government

51. As far as the status of the Zagreb office was concerned, the intervening Government stated that at the material time the Zagreb Main Branch had existed as an integral part of the Ljubljana Bank, that there had been an institutional relationship of dependency, and that the Ljubljana Bank was liable with all its assets and with no restrictions for the Zagreb Main Branch's obligations. This state of affairs arose from the decision on the organisational structure of the Ljubljana Bank joint stock company adopted by its assembly on 19 December 1989, as confirmed by the extract from the Register of Companies of the Ljubljana Basic Court of 29 December 1989. Moreover, even before that decision, when the Zagreb office had functioned as a “basic bank” with its own legal status, it had not enjoyed financial independence in foreign-currency operations.

2. *Republic of Slovenia*

52. 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 the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (Official Gazette of the RS no. 1/91).

(a) **The Constitutional Law relating to the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia**

53. 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 (see paragraph 170 below).

(b) **Developments after independence**

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

55. In October 1991 a Bank Rehabilitation Agency was established with the principal task of conducting a rehabilitation programme.

56. On 4 February 1993 the constitutional-law guarantee was implemented by the Discharge of Liability for Unpaid Foreign-Currency Deposits Act (Official Gazette of the RS no. 7/93, see paragraph 172 below). 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.

57. 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 were able to make withdrawals, regardless of the location of the head office of their bank or of their nationality.

58. On 11 March 1993 the Republic of Slovenia Succession-Fund Act (Official Gazette of the RS no. 10/93, see paragraph 173 below) came into force. Under that Act, a number of claims and obligations of the Republic of Slovenia and its official bodies vis-à-vis the SFRY and its subordinate bodies, including the NBY, were assigned to the Succession Fund.

59. On 28 June 1994 the Convention and Protocol No. 1 came into force in respect of Slovenia.

(c) The 1994 amendments to the 1991 Constitutional Law

(i) Background

60. 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, the Republic of Slovenia became the Ljubljana Bank's sole shareholder.

61. 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 4,200,000,000 under an agreement known as the New Finance Agreement (NFA); and, secondly, the continued exposure to the SFRY's liability for redeposited foreign exchange outside Slovenian territory.

62. The authorities decided in 1994, as part of the rehabilitation measures, to amend the 1991 Constitutional Law in order to protect the public interest, as is reflected in the preamble to the 1994 Act (see paragraph 171 below).

(ii) *The legislation*

63. On 27 July 1994 the National Assembly amended the 1991 Constitutional Law (Official Gazette of the RS no. 45/94, see paragraph 171 below) so as to restructure the Ljubljana Bank by creating a new and separate legal entity (section 22(č)), the New Ljubljana Bank. It was formed as a joint stock company which took over all of the former bank's 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 (see paragraph 170 below).

64. 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.

65. The Bank Rehabilitation Agency remained the owner of the Ljubljana Bank.

(d) The decision of the Slovenian Constitutional Court

66. 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 paragraphs 176 and 177 below).

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

67. On 5 July 1997 an amendment to the Republic of Slovenia Succession-Fund Act (Official Gazette of the RS no. 40/97, see paragraph 174 below) came into force. It provided for a stay of any proceedings directly or indirectly affecting legal relations with the SFRY involving the so-called “succession-related claims”, 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.

68. 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 186 and 187 below).

69. On 15 July 2004 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 passed, which repealed the Republic of Slovenia Succession-Fund Act.

70. On 21 February 2005 the Court requested information from the respondent Government regarding implementation of the aforementioned Act (see paragraphs 14 above and 105 below).

71. The respondent Government replied that that Act was in the process of being implemented. They added that, 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 paragraphs 186 and 169 below), 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.

72. 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 until the establishment of the Succession Agency.

73. On 21 March 2006 further legislation – the Republic of Slovenia Succession-Fund and the Republic of Slovenia Senior Representative for Succession Act (Official Gazette of the RS no. 29/06, see paragraph 175 below) – 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 186 below).

3. Republic of Croatia

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

75. 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

76. 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 of the Republic of Croatia no. 71/91, see paragraph 182 below), forty-two federal statutes and five decisions of the Federal Executive Council concerning foreign-currency savings were incorporated into Croatian law.

77. On 23 December 1991 the Government issued the Decree on the Conversion of Nationals' Foreign-Currency Bank Deposits into the Croatian Public Debt (Official Gazette of the RC no. 71/91, see paragraph 183 below). Under the Decree, savings that had been deposited before 27 April 1991 with banks whose head office was situated in Croatia ("Croatian banks") or that were transferred by Croatian nationals into Croatian banks from other banks within 30 days from the entry into force of the Decree 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. None of the applicants made use of this possibility.

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

79. According to the respondent Government's submissions before the Chamber, 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 at that time. Of the remaining depositors, 96,000 had less than the equivalent of 30 euros (EUR) in foreign-currency savings standing to their credit.

80. 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

81. 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

82. 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.

83. 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 reforms, and if so, the amounts transferred in Yugoslav dinars and in hard currencies.

(a) The Ljubljana Bank's Annual Reports

84. The Slovenian Government submitted the Ljubljana Bank's Annual Reports for the years 1989, 1990, 1991, 1992 and 1993. They stated that no annual reports for the Zagreb Main Branch existed, only balance sheets (see paragraphs 88 and 89 below).

85. 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.

86. 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.

87. The respondent Government submitted before the Grand Chamber that following the implementation of the 1994 Constitutional Law, approximately USD 612,000,000 remained with the Ljubljana Bank.

(b) The Zagreb Main Branch's accounts

(i) The fact as submitted by the respondent Government

88. The respondent 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.

89. In 1991 the amount of foreign-currency redeposited by the Zagreb office with the NBY came to 13,600,000,000 Croatian dinars (USD 619,000,000), whereas foreign-currency deposits with the Zagreb office came to 10,700,000,000 Croatian dinars (USD 490,000,000), which according to the respondent Government confirmed that 100% of the foreign-currency deposits with the Zagreb office were subsequently redeposited.

90. 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 Yugoslav dinars or from the current inflow of foreign currency. No transfer of foreign-currency deposit funds from Croatia to Slovenia had ever occurred.

91. Before the Grand Chamber, the respondent Government submitted that the current assets of the Zagreb Main Branch amounted to approximately EUR 525,000,000, including immovable and movable property, and far exceeded the sum of all foreign-currency deposits with the Zagreb Main Branch, estimated at EUR 172,000,000.

(ii) The facts as submitted by the intervening Government

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

93. However, the intervening 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.

94. Before the Grand Chamber the intervening Government stated that they were not aware of any real estate in Croatia owned by the Ljubljana Bank which would allow a large number of savers to settle their claims.

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

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

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

97. As no tangible results were achieved, the succession issues were included in the tasks of the High Representative in Bosnia and Herzegovina, who was appointed pursuant to the General Framework Agreement for Peace in Bosnia and Herzegovina.

98. 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.

99. On 29 June 2001 the Agreement on Succession Issues ("the Agreement") was signed in Vienna by Bosnia and Herzegovina, Croatia, the then 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 (see paragraph 186 below).

100. 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 38%, the Former Yugoslav Republic of Macedonia 7.5% and Slovenia 16%.

101. By virtue of Article 2 § 3(a) of Annex C to the Agreement, the SFRY's financial liabilities to be distributed among the successor States 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”.

102. 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’]”.

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

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

105. On 21 February 2005 the Court requested both the respondent and the intervening Governments to inform it of any developments concerning the negotiations referred to in Article 7 of Annex C. In addition, the respondent Government were invited to inform the Court whether or not the Standing Joint Committee had met or been convened (see paragraphs 14 and 70 above).

106. The respondent Government, in their reply dated 31 March 2005, stated that the first formal meeting of the Standing Joint Committee had not been convened 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.

107. The intervening 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.

108. In their submissions to the Grand Chamber, the respondent Government stated that meetings of the Standing Joint Committee had taken place on 6 June 2005 and 18 June 2007. They had requested that the distribution of the SFRY assets be put on the agenda but Croatia had opposed that request. The next meeting was to be held in Belgrade later that year and they would be renewing their request. They had also informed the BIS of their willingness to resume the negotiations in any event.

109. In their submissions to the Grand Chamber, the intervening Government stated that the guarantees covered by Article 7 of Annex C related only to banks that were declared bankrupt, which was not the case of the Ljubljana Bank (see paragraph 38 above). Therefore, the foreign savings of the Zagreb Main Branch could not be the subject of further negotiations under the Agreement. Nevertheless, in the context of the State succession negotiations, Slovenia had included claims based on the Zagreb Main Branch savings in the NBY. On this basis, its share of the assets for distribution was 20% higher.

6. Bilateral negotiations between Slovenia and Croatia

110. 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 final agreement has been achieved.

111. A bilateral Agreement on the Regulation of Property Rights between Slovenia and Croatia entered into force on 23 February 2000. The first article of that agreement provides that relations between Slovenia and Croatia concerning the Zagreb Main Branch shall be governed by agreements to be concluded between the two States (see paragraph 184 below).

C. The facts of the individual cases

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

(a) Deposit of savings and proceedings in Croatia

112. Mr Kovačić's wife held a foreign-currency savings account with the Zagreb Main Branch. Mr Kovačić himself was also a client of the Zagreb office for over 30 years.

113. 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.

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

115. Mr Kovačić and his wife made repeated attempts to obtain 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.

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

117. Following the bank's refusal, the applicant brought a civil action against "the Ljubljana Bank, Zagreb Main Branch" in the Zagreb Municipal Court (*Općinski sud*) claiming payment of the 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.

118. 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.

119. Mr Kovačić then made an application for execution of that decision to the Zagreb Municipal Court, which issued a warrant of execution in his favour on 1 October 1998. The court later stayed the execution proceedings.

120. In 1998 Mr Kovačić attempted to withdraw his funds, firstly from the Zagreb Main Branch and subsequently from the Ljubljana Bank 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

121. 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 through the Slovenian courts.

(c) Subsequent proceedings in Croatia

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

123. On 5 March 2003 the Osijek Municipal Court granted his application. On appeal, on 5 June 2003 the Osijek County Court (*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 paragraph 184 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 had been lifted.

124. In 2003 forty-two individuals, including Mr Kovačić and Mr Mrkonjić, lodged requests for the seizure and sale of real estate owned by the Ljubljana Bank (see paragraph 152 below).

125. On 17 July 2003 Mr Kovačić obtained a warrant of execution for the amount of DEM 49,794.30 (EUR 25,459.42) plus interest in arrears from 1 January 1992 until the date of 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.

126. 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. Several other account holders joined those proceedings. A ruling was handed down on 9 April 2004.

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

128. On 20 July 2004 the Osijek Municipal Court 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. Both were also awarded the costs of 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 153 below).

129. On 21 October 2004 the Osijek County Court quashed the decision and remitted the case.

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

131. The relevant parts of that decision read:

“The Osijek Municipal Court ... 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 into the attorney Milivoje Žugić's giro account ... with the Economic Bank (*Privredna banka d.d. Zagreb*).

...

In the aggregate, compensation for the costs of the enforcement proceedings totals HRK 404,193.80 [EUR 55,369]. To this amount shall 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 out of the proceeds of sale:

...

18. Ivo Kovačić from Zagreb – the claim referred to in 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 into 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].”

132. Mr Kovačić and Mr Mrkonjić appealed against that decision, again on the ground that they were entitled to a higher award of costs. On 7 July 2005 the Osijek County Court dismissed the appeal. The decision of 8 April 2005 thus became final.

133. On 20 July 2005 Mr Kovačić received payment of his foreign-currency deposits in full, together with the costs awarded.

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

(a) Deposit of savings and proceedings in Croatia

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

135. 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.

136. 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.

137. 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 Municipal Court 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.

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

139. 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 the remainder of his savings

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

141. 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, which included the "old savings accounts".

142. 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.

143. 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.

144. 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 Municipal Court, but the Osijek County Court overturned that judgment on 25 April 2002. However, on 27 February 2003, the Supreme Court reinstated the first-instance judgment.

145. 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"

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

147. 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.

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

149. 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.

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

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

(d) Enforcement proceedings in Croatia

152. In 2003 forty-two 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 Municipal Court. In the course of those proceedings, the Zagreb Main Branch's assets were liquidated on 30 March 2004 (see paragraph 124 above).

153. On 20 July 2004 the Osijek Municipal Court gave a decision dividing up the proceeds of the 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 128 above).

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

155. On 8 April 2005 the Osijek Municipal Court 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 County Court dismissed the appeal. The decision of 8 April 2005 thus became final.

156. The relevant parts of that decision read:

“The Osijek Municipal Court ... 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 into 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].

...”

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

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

(a) The applicant's savings

158. Mrs Golubović, who was retired when she lodged her application with the Court, held a foreign-currency savings account at the Zagreb Main Branch as the heir of the original account-holder, the late 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.

159. 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.

160. 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

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

162. 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.

(c) Proceedings in Croatia

163. According to the respondent Government, Mrs Golubović's heir, Mr Steinfl, brought an action on 6 February 2007 against “the Ljubljana

Bank, Zagreb Main Branch”, requesting payment of the outstanding deposits and interest as of 28 October 2005. As far as the Court is aware, the proceedings are currently pending before the Zagreb Municipal Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legislation of the former 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)*

164. 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)*

165. 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)*

166. 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...”

(4) *Rehabilitation, Liquidation and Solvency of Banks and Other Financial Institutions Act 1989 (Zakon o sanaciji, stečaju i likvidnosti banaka i drugih finansijskih organizacija – Official Gazette of the SFRY nos. 84/89 and 63/90)*

167. Section 18 reads:

“The legal consequences of the commencement of insolvency proceedings shall take effect from the date the initial bankruptcy order is made and are as follows:

(1) The National Bank of Yugoslavia's and the Federal Republic's guarantees of deposits on citizens' current and foreign-exchange accounts become enforceable...”

168. Section 25 reads:

“A decision to initiate rehabilitation proceedings for a bank that has become part of another bank through the harmonisation of its organisational, operational and self-managerial acts with the provisions of the Banks and Other Financial Institutions Act ... may also be adopted in 1990.”

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

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

169. 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, paragraph 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. *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 of the RS no. 1/91)*

170. Section 19 paragraph 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.”

3. *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 of the RS no. 45/94)*

171. 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) its 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 at 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 then Federal Republic of Yugoslavia 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.”

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

172. 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.”

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

173. 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.”

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

174. 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 *ex officio* ... in cases in which natural persons or legal entities 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.

...”

7. 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 of the RS no. 29/06)

175. 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 ...”

8. Case-law of the Slovenian Constitutional Court

176. 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.

177. On 11 April 1996 the Constitutional Court dismissed the proceedings, holding that 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 relating to State succession to the SFRY.

178. 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 the Constitutional Court ruled that Mr Perković had standing and declared his initiative admissible.

179. 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.

180. 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.

181. 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 of the RC no. 71/91)

182. 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 of the RC no. 71/91)

183. 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 RS no. 31/99; Ugovor između Republike Hrvatske i Republike Slovenije o uređenju imovinskopravnih odnosa, Official Gazette of RC – International agreements no. 15/99)

184. 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.”

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

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

186. 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.”

187. 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)

188. The Resolution reads as follows:

“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 million 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. PRELIMINARY QUESTIONS

A. *Locus standi*

Mr Kovačić's and Mrs Golubović's successors

189. The Court observes that the applicants Mr Ivo Kovačić and Mrs Dolores Golubović died in the course of the proceedings, on 17 July and 15 October 2004 respectively.

190. Relatives of both late applicants declared in the course of the proceedings before the Court that they wished to pursue their applications (see paragraph 3 above). They have also been confirmed as their lawful heirs under national law.

191. In its judgment, the Chamber held that Mr Kovačić's and Mrs Golubović's heirs had standing in the present case to continue the proceedings in their stead (see *Deweer v. Belgium*, 27 February 1980, §§ 37-38, Series A no. 35; *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII; and *Sobelin and Others v. Russia*, nos. 30672/03 et al., §§ 43-45, 3 May 2007).

192. The Chamber's finding has not been challenged on that point and is endorsed by the Grand Chamber.

B. The scope of the case

193. The Court notes that it was not until 13 September 2007, in their submissions to the Grand Chamber, that Mr Kovačić and Mr Mrkonjić raised for the first time their complaint under Article 6 of the Convention alleging that their right of access to a court had been breached since the constitutional nature of the 1994 Constitutional Law ruled out any consideration of its provisions by the Slovenian Constitutional Court. It further notes that at the hearing before the Grand Chamber, the representative of Mrs Golubović also raised a complaint under Article 13 of the Convention.

194. The Court reiterates that the “case” referred to the Grand Chamber concerns the application as earlier declared to be admissible (see *K. and T. v. Finland* [GC], no. 25702/94, §§ 140-141, ECHR 2001-VII, and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 109, 13 November 2007).

195. The Court observes that in its decision of 1 April 2004 the Chamber declared admissible the applicants' complaints under Article 1 of Protocol No. 1 and Mr Kovačić's complaint under Article 14 of the Convention. Consequently, the complaints made under Articles 6 and 13 of the Convention fall outside the scope of the case before the Grand Chamber.

C. Compliance with the six-month rule

196. The applications were declared admissible on 1 April 2004, the question of compliance with the six-month rule having been joined to the merits. In view of its conclusion below, the Court considers that it can leave open that question (see paragraphs 264 to 269 below).

D. Whether Mrs Golubović's heir is a party to the proceedings before the Grand Chamber

197. A particular question arises as regards the position of Mrs Golubović's heir in the Grand Chamber proceedings. Mr Kovačić's successors in title and Mr Mrkonjić filed a joint request for the referral of their cases to the Grand Chamber, which was received by the Court on 5 February 2007, that is to say within the period of three months from the date of delivery of the Chamber's judgment on 6 November 2006. In contrast, although postmarked 5 February 2007 – within the above-mentioned period – the separate request filed by Mrs Golubović's heir was received by the Court out of time, on 22 February 2007. The question that arises therefore is whether or not Mrs Golubović's heir is still a party to the proceedings before the Grand Chamber.

198. The relevant part of Article 43 of the Convention provides:

“1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

...”

199. According to the Court's settled case-law, the “case” referred to the Grand Chamber necessarily embraces all aspects of the application previously examined by the Chamber in its judgment, there being no basis for a merely partial referral of the case (see *K. and T. v. Finland* [GC], cited above, §§ 140-41, and *Perna v. Italy* [GC], no. 48898/99, §§ 23-24, ECHR 2003-V). The “case” referred to the Grand Chamber is the application as it has been declared admissible (see *Azinas v. Cyprus* [GC], no. 56679/00, paragraph 32, ECHR 2004-III), with the parties to the proceedings before the Chamber concerned, including their status on the date on which the application was declared admissible. In the *Cumpănă and Mazăre v. Romania* case ([GC] (no. 33348/96, §§ 66 and 68, ECHR 2004-XI), the Court accepted a joint request for referral to the Grand Chamber signed by only one of the applicants who was subsequently expressly joined by the other applicant.

200. The Court holds that the scope of the case now before the Grand Chamber is not limited to the applications lodged by Mr Kovačić and Mr Mrkonjić, but also includes that of Mrs Golubović, despite the late arrival of her heir's request for the referral of the case to the Grand Chamber.

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

201. The applicants complained of a violation of Article 1 of Protocol No. 1 in that they were prevented by Slovenian law from withdrawing foreign currency which they had deposited with “the Ljubljana Bank – Zagreb Main Branch” before the dissolution of the SFRY.

Article 1 of Protocol No. 1 provides:

“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.”

202. Mr Kovačić also maintained that he had been a 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 Chamber judgment

203. In its judgment of 6 November 2006, the Chamber observed that after the decision on admissibility new factual information had been brought to its attention from which it was apparent that Mr Kovačić and Mr Mrkonjić had received payment of their foreign-currency deposits in full. Accordingly, the Chamber held that the matter had been resolved in respect of those applicants (Article 37 § 1 (b)).

204. As to the third applicant, Mrs Golubović, it held that in cases in which liability for a former State's debt was disputed by the successor States, a claimant could reasonably be expected to seek redress in fora where other claimants had been successful. For reasons which remained unexplained, Mrs Golubović had taken no action in Croatia although she would likely have been successful had she done so. In any event, it was still open to her to bring proceedings in Croatia. That being so, the Chamber held that it was no longer justified to continue the examination of her application (Article 37 § 1 (c)).

205. The applications were accordingly struck out of the list.

B. Arguments before the Court

(a) The applicants

206. Before the Chamber, in reply to an inquiry by the Court, the representative of Mr Kovačić's heirs and of Mr Mrkonjić confirmed on 19 September 2005 the information provided by the respondent Government that the two applicants had received full payment of their savings on 20 July 2005. He contended 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 complied with the judgments in the applicants' favour. The latter had been executed against property of the Ljubljana Bank located on Croatian territory.

207. He further maintained that the facts relied on by the respondent Government which had occurred after 9 October 2003, the day of the hearing before the Chamber, should not be taken into account by the Court.

208. In any event, the fact that the respondent Government and, through them, the New Ljubljana Bank were aware of the execution proceedings against the property of the Ljubljana Bank and the repayment of deposits in Croatia confirmed that the New Ljubljana Bank had been established by the 1994 Constitutional Law in order to allow the obligations towards Croatian savers to be evaded in a discriminatory way. In fact, it proved that the New Ljubljana Bank and the Ljubljana Bank were the same legal person, operating under a new name.

209. In their submissions to the Grand Chamber, Mr Kovačić's successors and Mr Mrkonjić invited the Court to reconsider the case in all its aspects. Relying on the *Broniowski v. Poland* judgment (no. 31443/96 [GC], §§ 189-190, ECHR 2004-V), they argued that the case concerned a mass violation of human rights since at least 130,000 savers and their families were affected in Croatia alone. They contended that the violations of Article 1 of Protocol No. 1 and of Article 14 of the Convention had occurred in 1994, when Slovenia had enacted the 1994 amendments to the 1991 Constitutional Law, causing a continuing situation that had already lasted for over thirteen years. The time-limit of six months provided for in Article 35 of the Convention had therefore been complied with.

210. They argued in particular that the decision on admissibility conferred on them the status of "victim" and that the recovery of their savings, achieved only much later by dint of many years of enforcement proceedings, did not alter the fact that they had been and still were continuing victims of the respondent State's conduct. Moreover, the latter had never acknowledged a violation of their Convention rights.

211. They stated that the measures taken by the respondent State in 1994 had in fact nationalised the Ljubljana Bank's property and left the applicants bereft of their savings; the Ljubljana Bank had retained the liabilities, and

the New Ljubljana Bank had obtained the assets. This constituted *de facto* expropriation of their savings under Article 1 of Protocol No. 1.

212. They further argued that their claims were not a succession issue under Annex C of the Agreement on Succession Issues as their savings had not been included in the respondent Government's public debt. Nor had the guarantee of the SFRY been activated for those savings since the bank had never been declared bankrupt. They maintained that the SFRY redepositing system was irrelevant to the question of liability for the savings since the private claims of the savers had not been transferred to the State.

213. In the view of Mr Kovačić's successors and Mr Mrkonjić, the Ljubljana Bank was liable for the debts of its Zagreb branch simply because the law so stated. On 19 December 1989 the Ljubljana Bank had determined the legal identity of its Zagreb office as a main branch, with no assets and hence no liabilities, of its own. This was confirmed by a leaflet that had been distributed in Croatia by the Zagreb Main Branch at the material time.

214. Mr Kovačić's successors and Mr Mrkonjić stated that the 1994 Constitutional Law, contrary to what they termed "the principle of legal civilisation", ruled out any possibility of the New Ljubljana Bank's being a co-debtor with the Old Ljubljana Bank to the extent of the assets transferred. Since Article 433 of the Slovenian Code of Obligations 2001 provided for the exact opposite, the impugned 1994 Constitutional Law ran counter to the relevant legal principles in the respondent State.

215. Mrs Golubović's heir, her nephew Mr Steinfl, stated before the Grand Chamber that Slovenia had deprived the applicants of both their deposits and judicial protection. Moreover, Slovenia had used its financial supremacy over them in a continuous violation of human rights of non-Slovenian depositors.

216. Mr Steinfl maintained that the Chamber's judgment striking Mrs Golubović's application out of its list of cases under Article 37 § 1 (c) of the Convention for her failure to take any action in Croatia was misconceived.

217. In its judgment, the Chamber had held that Mrs Golubović "would likely have been successful" had she brought an action in Croatia. However, Mr Steinfl said that the reasons for which she had taken no action in either Slovenia or Croatia were that she could not bring proceedings in Slovenia, Croatian court judgments were not recognised in Slovenia in Ljubljana Bank matters, thousands of depositors had initiated legal inquiries and proceedings in Croatian courts years before she had inherited the savings, Croatian courts had not succeeded in providing effective protection for any depositors, and in any event she had not had money to pay for lawyers or for costly legal proceedings and property investigations in countries where the Ljubljana Bank operated.

218. As far as the exhaustion of domestic remedies was concerned, Mr Steinfl argued, referring to the *Akdivar and Others v. Turkey* judgment

(16 September 1996, *Reports* 1996-IV), that the Court should take realistic account not only of the existence of formal remedies but also of the general and political context in which they operated and the applicant's personal circumstances.

219. Even at the age of 76, and despite ill-health, Mrs Golubović had been aware of the political and judicial situation in the region. However, it had been impossible for her to know that the judicial situation would continue up to 2005 when assets were recovered from the Ljubljana Bank for the first and only time in the amount of USD 550,000. Given the total estimated value of USD 170,000,000 of all the savings, the probability of enforcement against the property of the Ljubljana Bank was 0.32%, in other words, remote. Moreover, the Ljubljana Bank had intentionally sold off real estate in Croatia. After that, what little property had been left in the Zagreb Main Branch's possession was encumbered as a result of orders made in judicial proceedings that had been instituted by savers several years earlier.

220. Mr Steinfl stated that the respondent State had violated Article 1 of Protocol No. 1, taken alone and together with Article 14 of the Convention.

221. In reply to an inquiry by the Court at the hearing, Mr Steinfl's representative confirmed that after the delivery of the Chamber judgment Mr Steinfl had instituted proceedings in Croatia to recover his late aunt's savings. He also added that Mrs Golubović had not converted her savings into Croatian public debt since she had inherited them only in 1998.

(b) The respondent Government

222. In their submissions before the Chamber, the respondent Government stated that in the SFRY banking system, which was organised on a territorial basis, the Ljubljana Bank Head Office had not at any relevant time been liable for the debts of the Ljubljana Bank Basic Bank Zagreb. The position was, in fact, the other way around – the Ljubljana Bank Basic Bank Zagreb and other “basic banks” were liable for the Ljubljana Bank Head Office. Subsequently, since the conversion under the Marković reforms in 1989/90 from the Ljubljana Bank Basic Bank Zagreb into the Zagreb Main Branch had never been completed owing to the dissolution of the SFRY, the Zagreb Main Branch had never become dependent on the Ljubljana Bank and liability for its deposits had never been transferred to the Ljubljana Bank.

223. The respondent Government argued that by virtue of section 19(3) of the 1991 Constitutional Law and its implementing legislation (see paragraphs 53, 56, 170 and 172 above), Slovenia had taken responsibility for an equitable proportion of the SFRY's guarantee for foreign-currency deposits according to the principle of territoriality, regardless of the nationality of the depositor or the location of the headquarters of the bank with which the deposit had been made.

224. 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 intervening Government in the exercise of their jurisdiction over banks and property located on Croatian territory.

225. The respondent Government maintained that the 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”, 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. The Memorandum also stated that liabilities under the SFRY banking system could not be converted into civil liabilities under the new systems. In addition, according to the respondent Government, Slovenia, unlike Croatia, was prepared to accept the establishment of a common fund with contributions from all successor States to service the unpaid foreign-currency debt of depositors, as recommended by the Parliamentary Assembly.

226. The applicants had moreover failed to establish that they had a case against the Ljubljana Bank: their claims did not constitute “possessions” within the meaning of Article 1 of Protocol No.1, nor could it be argued that the applicants had any legitimate expectation. If the Court were nevertheless to find that Slovenia had restricted the applicants' access to their deposits by the 1994 Constitutional Law, such a restriction was proportionate to the legitimate aim pursued, namely the prevention of a systemic crisis.

227. In any event, the allegations of the applicants and of the intervening Government 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.

228. Nor had Slovenia 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 on any other ground enumerated in Article 14.

229. In their submissions to the Grand Chamber, the respondent Government maintained that the applicants, being Croatian nationals, could have transferred their foreign-currency deposits to a Croatian bank and thus converted them into Croatian public debt but had chosen not to do so. It had also been open to them to pursue their claims against the Zagreb Main Branch in the Croatian courts. In fact, the claims of Mr Kovačić and Mr Mrkonjić had been satisfied by the forced sale of immovable property located in Croatia. Mrs Golubović had not instituted any proceedings in

Croatia or Slovenia; only after the delivery of the Chamber judgment had her heir brought an action against the Zagreb Main Branch seeking payment of the outstanding deposits and interest as of 28 October 2005. In the respondent Government's submission, the Zagreb Main Branch's immovable and movable assets remaining in Croatia were more than sufficient to satisfy her claims also (see paragraph 91 above).

230. The respondent Government stated that the key question before the Court was whether Slovenia should be required to use its public debt to repay deposits made in Croatia. There was no legal basis for such a liability, whether under Slovenian law (see paragraphs 53 and 170 above), or under the customary international law rules of State succession, or under the Agreement on Succession Issues.

231. They further maintained that it was well-established under public international law that there was no automatic universal succession to the financial obligations of a dissolved State. The SFRY guarantee did not create an enforceable obligation on any successor State. The primary rule with regard to the allocation of assets and debts in succession situations was that the successor States should settle any issues by agreement. The area of State succession to public debt was of particular uncertainty; there was clearly no evidence of a customary international legal norm imposing on successor States joint and several liability for the predecessor's financial obligations.

232. Liability for repayment of foreign-currency deposits was the largest category of the SFRY's domestic debt; the NBY was *de facto* bankrupt. Not surprisingly, the allocation of this debt among the successor States was one of the principal unresolved succession issues. Slovenia was prepared to assume an equitable proportion of the SFRY's guarantee for foreign-currency deposits. In the absence of a succession treaty, Slovenia, like the other successor States, had no choice but to determine this portion unilaterally.

233. As to the applicants' and the intervening Government's allegations that the SFRY guarantee was only activated when a bank went bankrupt, the respondent Government argued that the relevant SFRY legislation stated that the guarantee was activated if a bank was bankrupt or insolvent. As expressly confirmed by the National Bank of Croatia, the Zagreb Main Branch was insolvent.

234. It was now clear that under Articles 2 § 3 (a) and 7 of Annex C to the Agreement on Succession Issues that had entered into force in 2004 the liabilities for foreign-currency deposits should have been negotiated under the auspices of the BIS, which Croatia had refused to do. In fact, Croatia had continuously attempted to transfer the entire burden of servicing foreign-currency deposits with the Zagreb Main Branch to Slovenian entities and ultimately to Slovenia itself by seeking to impose such liability

unilaterally and outside the context of the succession process. Croatia had also refused at all times to resolve the issue at the inter-State level.

235. For those reasons and in the light of the specific circumstances of the applicants, the respondent Government invited the Court to strike the applications out of its list under Article 37 of the Convention. They maintained that the Court was not called upon to give a decision on an abstract problem relating to the compatibility of the Slovenian banking rehabilitation measures and the suspension of civil proceedings with the Convention.

236. In the alternative, the applications should be declared inadmissible. The respondent Government raised an objection *ratione personae* with the provisions of the Convention since the acts and omissions of a legal person under private law generally did not engage the State's responsibility under the Convention; the Ljubljana Bank was a joint stock company not discharging any governmental function. For this reason, the applicants were not "victims" of the alleged violations.

237. In addition, relying on the *Banković and Others v. Belgium and 16 Other Contracting States* case ((dec.) [GC] no. 52207/99, ECHR 2001-XII), the respondent Government raised an objection *ratione loci* with the provisions of the Convention since it was uncontested that the applicants' deposits were made on Croatian territory which was not "within the jurisdiction" of the respondent State.

238. Moreover, the respondent Government argued that the applicants' claims were manifestly ill-founded because the applicants could not claim to have been directly affected either by the Slovenian rehabilitation measures or by the 1997 and 2006 Succession Fund Acts. As already stated, Slovenia was not liable for the applicants' deposits. In any event, the applicants had failed to comply with the six-month time-limit laid down in Article 35 of the Convention since a law by which a person is deprived of his property did not result in a continuing situation.

239. As to the applicants' allegations that there had been a breach of Article 1 of Protocol No. 1, the respondent Government restated their arguments before the Chamber that the applicants had no claims against the Ljubljana Bank. There had been no interference with their rights since the 1994 rehabilitation measures had had no effect on their claims and could not be assimilated to either a deprivation of "possessions" or to a control of the use of their deposits. Moreover, the applicants retained title to their foreign-currency deposits and regular interest accrued to these.

240. In any event, the aim of the rehabilitation measures provided by the 1994 Constitutional Law was to prevent a serious threat to the Slovenian economic and financial systems, which was in the "public and general interest". The rehabilitation measures must be assessed in the context of the exceptional circumstances following the collapse of the SFRY. The collapse in the beginning of the 1990s of one of the major Slovenian banks, the

Ljubljana Bank, threatened by the NFA, would have provoked a systemic crisis and thus seriously threatened the Slovenian financial system and national economy (see paragraph 226 above). It had been necessary for Slovenia to resort to rehabilitation measures to avoid the collapse of its major banks. The existence of such a risk of a systemic crisis following the collapse of a large bank was recognised by the Basel Committee on Banking Supervision as well as by the European Commission. It was settled case-law that States enjoyed a wide margin of appreciation in enacting legislation to implement economic and social policies in the context of system changes. Moreover, the 1994 rehabilitation measures had not prevented the applicants from converting their savings into Croatian public debt or pursuing their claims. Finally, the fact that an owner had taken deliberate risks that made his property liable to interference and had failed to take appropriate steps to protect his property were material factors in assessing the proportionality of the alleged interference with his property rights.

241. Likewise, the 1997 and 2006 Succession Fund Acts did not contravene Article 1 of Protocol No. 1 since they did not deprive the applicants of their deposits; nor could the temporary suspension of the enforcement of their claims be assimilated to a deprivation of their deposits. A reasonable relationship of proportionality existed between the temporary suspension of the enforcement of claims resulting from old foreign-currency deposits and the legitimate aims pursued by this measure; the suspension was deemed necessary for a consistent and coherent inter-State settlement of succession issues. It could therefore not be said that a fair balance had not been struck.

242. Finally, the respondent Government contended that Article 14 of the Convention did not apply because the applicants did not derive any property rights from the SFRY guarantee. In any event, the scope of Slovenia's guarantee was defined pursuant to the principle of territoriality which was fully justified. It also conformed to the *acquis communautaire* and corresponded to deposit protection schemes in force in several member States of the Council of Europe. Furthermore, owners of foreign-currency deposited in Slovenia and owners of funds deposited outside Slovenia were not in a similar situation. In addition, the temporary suspension of the enforcement of claims resulting from old foreign-currency deposits affected all such creditors regardless of nationality.

(c) The intervening Government

243. In their submissions before the Chamber, the Government of the Republic of Croatia maintained that 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' claims against the Ljubljana Bank, based on the savings contracts, were valid, concrete and

specified, they constituted “possessions” or at least gave rise to a “legitimate expectation” of their realisation. The cases concerned *de facto* expropriation of the applicants' “possessions”. The intervening Government submitted that the rule contained in the second sentence of the first paragraph of Article 1 of Protocol No. 1 should be applied.

244. The intervening Government argued that 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 therefore remained the bank's active debt to the applicants. The bank was not insolvent and continued in business. Slovenia's 1994 Constitutional Law 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. Since the 1994 legislation did not only serve to protect the Slovenian financial and economic systems from speculative claims under the NFA but also to protect a State-controlled bank against all claims from foreign creditors, especially individual savers, such an aim could not be considered legitimate. In any event, the measures were disproportionate since an excessive burden had been placed on the applicants individually.

245. 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 in Slovenia, both in terms of the assumption of the bank's debt and of the restructuring.

246. 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 any succession arrangement.

247. In their response to the respondent Government's submissions before the Chamber concerning 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”, they stated that 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.

248. In response to the Court's inquiry whether the intervening Government could confirm the accuracy of the information that enforcement proceedings had been issued by Mr Kovačić and Mr Mrkonjić, they stated that the information provided by the respondent Government

was partially accurate. Proceedings were pending at that time. 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* (15 July 1982, Series A no. 51), *Jensen v. Denmark* ((dec.), no. 48470/99, ECHR 2001-X) and *Kljajić v. Croatia* (no. 22681/02, 17 March 2005), they maintained that the applicants were still victims of the alleged violations since, firstly, the enforcement proceedings had not taken place in the respondent State; secondly, no compensation would be awarded to the applicants in relation to the alleged violations; 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. Subsequently, on 19 September 2005, in reply to the Court's inquiry, the intervening Government confirmed the information provided by the respondent Government that the two applicants had received full payment of their savings on 20 July 2005.

249. In their submissions to the Grand Chamber, the intervening Government stated that the question that had arisen subsequent to the decision on admissibility concerned solely the fact that two of the three applicants had succeeded in settling their claims in enforcement proceedings in Croatia. This had been taken into consideration by the Chamber in its judgment. However, the fact that they had succeeded in their enforcement proceedings in Croatia did not affect their status as victims of a violation of the Convention.

250. Relying on the *Broniowski v. Poland* judgment, cited above, the intervening Government contended that the instant case was clearly a matter of great importance going beyond the situation of the three applicants. It concerned not only Croatian savers but also other non-Slovenian savers from the former SFRY. Moreover, many other cases of the same nature pending before the Court against Slovenia had been adjourned.

251. Against this background the intervening Government confirmed that legal remedies in Croatia against the Zagreb Main Branch were and remained available to the Croatian savers. However, the intervening Government was unaware of any real estate in Croatia owned by the Ljubljana Bank that would enable a large number of savers to settle their claims in the same manner as the two applicants (see paragraph 94 above). The key issue was whether or not savers had a possibility of settling their claims in Slovenia and not in Croatia.

252. The intervening Government further submitted that the applicants' foreign-currency claims could not be part of the succession for the simple reason that the SFRY guarantee for those savings had never been activated, the bank never having been declared insolvent or bankrupt. They were therefore not a part of the negotiations within the framework of Annex C of the Agreement on Succession Issues.

253. The intervening Government reiterated that the applicants' claims amounted to "possessions", or at least to a "legitimate expectation", protected by Article 1 of Protocol No. 1. Moreover, the respondent Government's allegations that the 1994 rehabilitation measures were necessary because the Ljubljana Bank had accumulated significant negative capital before the break-up of the SFRY and needed rehabilitation were at variance with advertising flyers which it had distributed in Croatia at the end of 1990.

254. Finally, the territorial principle relied on by the respondent Government was actually veiled discrimination on the basis of nationality contrary to Article 14 of the Convention since only non-Slovenian savers invested their money outside Slovenia. They were not covered by its public debt and so had borne the brunt.

C. The Court's assessment

1. Introductory remark

255. The applicants, the respondent Government and the intervening Government have in effect requested the Court to go into a number of issues pertaining to the circumstances of the break-up of the SFRY, its banking system and those of the successor States and the redistribution of liability for old foreign-currency savings among the successor States of the SFRY.

256. The Court observes at the outset that it has received applications against all of the SFRY successor States Parties to the Convention from applicants who have been affected by these matters. Several thousand such applications are currently pending. Even though such issues fall within the Court's jurisdiction as defined in Article 32 of the Convention, the Court can only subscribe to the view of the Parliamentary Assembly in Resolution 1410 (2004) that the matter of compensation for so many thousands of individuals must be solved by agreement between the successor States. In this respect, the Court notes that several rounds of negotiations have already been held between the successor States, at different levels, with a view to reaching an agreement on the solution of the issues which remain unsettled (see paragraphs 95 to 111 above). The Court calls on the States concerned to proceed with these negotiations as a matter of urgency, with a view to reaching an early resolution of the problem.

2. The Court's decision

257. After the applications were declared admissible, new factual information was brought to the Court's attention. The Court will therefore ascertain in each of the present cases whether these new facts may lead it to conclude that the matter has been resolved or that, for any other reason, it is

no longer justified to continue its examination under Article 37 § 1 (c) (see *Association SOS Attentats and Béatrix de Boëry v. France* [GC] (striking out), no. 76642/01, § 37, 4 October 2006).

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

...

(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. ...”

258. 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, plus interest and the costs of the proceedings. In return, Mr Žugić had undertaken to pay 70% of that amount to Mr Mrkonjić by a certain date. Mr Mrkonjić later 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 (see paragraphs 146 and 147 above).

259. Uncertainty remains over the above agreement. Mr Mrkonjić plainly considered himself bound by it whereas according to Mr Žugić it had never become effective. If it were 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 for the reasons set out below (see paragraph 264).

260. Secondly, on 25 July 2005 the respondent Government informed the Court that, further to the Osijek County Court's decision of 7 July 2005, Mr Kovačić and Mr Mrkonjić had received payment of their foreign-currency deposits in full on 20 July 2005. In response to the Court's enquiry the two applicants and the intervening Government confirmed on 19 September and 5 October 2005, respectively, that that information was correct (see paragraphs 206 and 248 above).

261. Thirdly, in their submissions to the Grand Chamber of 14 September 2007, the respondent Government stated that Mrs Golubović's heir, Mr Steinfl, had brought an action on 6 February 2007 against “the Ljubljana Bank, Zagreb Main Branch” for payment of the outstanding deposits and interest as at 28 October 2005. Mr Steinfl's representative confirmed this information following an enquiry by the Court at the hearing on 14 November 2007 (see paragraphs 163 and 221 above).

262. The Court observes that it may “at any stage of the proceedings” reject an application which it considers inadmissible (Article 35 § 4 of the Convention). 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).

263. Similarly, even 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).

264. Mr Kovačić's successors and Mr Mrkonjić have presented no new arguments capable of calling into question the Chamber's findings. It is clear that they have received the full amount of their foreign-currency deposits plus accrued interest (see paragraphs 133 and 157 above). As regards them, the matter has therefore been resolved (Article 37 § 1 (b)).

265. As to the third applicant, Mrs Golubović, the Court notes the special circumstances of her case, which are the consequence of the break-up of the SFRY and its banking system and, ultimately, the redistribution of liability for old foreign-currency savings among the successor States of the SFRY. In such a context, a claimant can reasonably be expected to seek redress in fora where other claimants have been successful located in one of the successor States.

266. The Court notes in this respect that Mrs Golubović's heir has recently brought proceedings in Croatia with a view to recovering his late aunt's foreign-currency savings with interest. These proceedings are now pending before the Zagreb Municipal Court.

267. The Court does not find it justified to continue with the examination of a case where proceedings are simultaneously pending in a court of a Contracting Party to recover foreign-currency deposits which are the very subject-matter of the application (Article 37 § 1 (c)).

268. 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 any of the applications (Article 37 § 1 *in fine*).

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

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

270. 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. ...”

271. Rule 60 of the Rules of Court provides, in relevant part:

“... ”

2. The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits unless the President of the Chamber directs otherwise.

3. If the applicant fails to comply with the requirements set out in the preceding paragraphs the Chamber may reject the claims in whole or in part.

“... ”

272. The Court notes that in the initial stage of the proceedings all three applicants claimed damages, under Article 41 of the Convention, in the amount of the savings deposits plus accrued interest. Later, on 25 September 2003, in the course of the proceedings before the Chamber, Mr Kovačić and Mr Mrkonjić sought the reimbursement of their costs and expenses, together with their other claims for just satisfaction. On 20 September 2003 Mrs Golubović submitted a claim for just satisfaction, without specifying any claim in respect of costs.

273. When, on 7 April 2004, after its decision on admissibility, the Chamber invited the applicants in the usual manner to make submissions under Rule 60 of the Rules of Court on the matter of just satisfaction, none of them submitted any claim within the prescribed time-limit.

274. In the proceedings before the Grand Chamber, Mr Kovačić's successors and Mr Mrkonjić repeated their claims, including for costs in the amount of EUR 1,276.66, as submitted on 25 September 2003. Neither the late Mrs Golubović nor her heir ever submitted any claim for the reimbursement of costs, either before the Chamber or the Grand Chamber.

275. The Court points out that, unlike Article 41 of the Convention, which comes into play only if the Court has previously found “that there has been a violation of the Convention or the Protocols thereto”, Rule 43 § 4 allows it to make an award solely for costs and expenses in the event that an application has been struck out of the list of cases (see *Sisojeva and Others v. Latvia* judgment [GC], no. 60654/00, § 132, ECHR 2007-...).

276. The Court reiterates that the general principles governing the reimbursement of costs under Rule 43 § 4 are essentially the same as under Article 41 of the Convention (see, as a recent authority, *El Majjaoui and Stichting Toubas Moskee v. the Netherlands* (striking out) [GC],

no. 25525/03, § 39, 20 December 2007). In other words, in order to be reimbursed, the costs must relate to the alleged violation or violations, have been actually and necessarily incurred and be reasonable as to quantum. Furthermore, under Rule 60 § 2, itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see, among other authorities, *ibid.*, § 133; *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V; and *Shevanova v. Latvia*, no. 58822/00, § 55, 15 June 2006).

277. The Court notes that Mr Kovačić and Mr Mrkonjić were granted legal aid for the proceedings, including the hearings before the Chamber on 9 October 2003 and the Grand Chamber on 14 November 2007 amounting to a total of EUR 2,465.63. Mrs Golubović was also in receipt of legal aid in the amount of EUR 2,606.88. The Court sees no reason to grant any further reimbursement of costs for the proceedings before it.

278. In addition, Mr Kovačić and Mr Mrkonjić were awarded costs and expenses in the domestic enforcement proceedings (see paragraphs 133 and 157 above). Finally, the proceedings initiated by Mrs Golubović's heir in 2007 with a view to recovering the foreign-currency deposits plus accrued interest, and in which he also claimed reimbursement of costs, are still pending in Croatia.

279. In theses circumstances, the Court finds no reason to make any specific award in respect of reimbursement of costs.

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 in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 3 October 2008.

Erik Friberg
Registrar

Jean-Paul Costa
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Ress is annexed to this judgment.

J.-P.C.
E.F.

CONCURRING OPINION OF JUDGE RESS

1. The result of the judgment of the Grand Chamber in this case is in full harmony with the judgment of the Chamber (over which I presided, which is the reason why I am still a judge in this case in the Grand Chamber). Nevertheless I would like to make some remarks additional to the reasoning in this case to make the underlying problems better understandable.

2. The successor States to the Socialist Federative Republic of Yugoslavia have adopted different legislative rules as regards the criteria which must be fulfilled if an account holder at the Ljubljana Bank claims an entitlement from one of the former subsidiaries of this bank in one of the republics. These different rules are the very reason for this case because Slovenia permitted claims from all those living on its territory while Croatia accepted such claims only from those who held Croatian nationality. Under the normal rules of state succession, territoriality is the first criterion to divide claims and to justify any entitlement, not so nationality (see Yearbook of the Institute of International Law, Vol. 69, Session of Vancouver, 2001, pp. 712-742, Resolution on 'State Succession in Matters of Property and Debts', in particular Article 11). Therefore, there are good reasons to conclude that the Slovenian legislation is more in harmony with these normal succession rules than the Croatian legislation. Debts that cannot be apportioned in accordance with the territoriality principle should be apportioned equitably, bearing in mind the result of the apportionment of other property or debts on the basis of the territoriality principle.

3. However, these principles are only applicable in genuine cases of state succession, in other words, where there are claims against these successor States and not only against private persons or corporations. If the present case were not a state succession case then the Ljubljana Bank (*Ljubljanska Banka*) as a private corporation would be liable for all the debts regardless of the emergence of new republics and the resulting division of territory. But, since there was a legal relation between the "private" banks in the federal territories in the Socialist Federative Republic of Yugoslavia with the National Bank of Yugoslavia to which at least part of the foreign currency had to be transferred, there was an implicit federal guarantee of these local debts regardless of whether in a socialist system one could really speak of a "private" bank in the full market-system oriented sense of the word. Therefore, in my view, this was a clear succession case with the underlying responsibility for all these debts falling on the Socialist Federative Republic of Yugoslavia. It follows that for the division and apportionment of these debts, the principles of state succession had to be applied.

4. Apart from these principles, successor states have the predominant obligation to regulate among themselves by agreement the outstanding questions of division and apportionment, questions which have already been

solved in the Agreement on Succession Issues (in force since 2 June 2004). In this treaty the successor states to the Socialist Federative Republic of Yugoslavia agreed finally that the question of the distribution of bank accounts and claims against banks had in all respects to be settled among them by agreement. There is not only a duty to negotiate (*pactum de negotiando*) but also a *pactum de contrahendo*. Since this question between Croatia and Slovenia is still pending, it is important to determine whether it is only an international-law question to be decided by a compromise or by bringing it before the international Court of Justice, or whether it is also a question which the European Court of Human Rights should address. The Court has examined this question in paragraphs 255 and 256 of its judgments. In my view, the contracting states concerned are under a clear duty to solve this question urgently by way of agreement and if necessary by interstate settlement procedures.

Given the fact that this case has been struck out there is no basis for a pilot-judgment procedure. But in future cases the Court could envisage suspending all pending applications on these issues until the States concerned have found an agreement binding on them not only as Successor States but also as States Parties to the Convention. In the so-called pilot judgments (*Broniowski v. Poland* [GC], no. 31443/96, ECHR 2004-V; *Xenides-Arestis v. Turkey*, no. 46347/99, 22 December 2005; and *Hutten-Czapska v. Poland* [GC], no. 35014/97, ECHR 2006-...) the Court ordered the respondent States to find a settlement with the individual claimant and also to adopt a general procedure (with a claims commission) to solve the problem for all pending similar cases. Here, the problem cannot be solved unilaterally but only by agreement between the successor States. The obligation to find a general solution is nevertheless of the same character. It is an obligation under international law which is, moreover, reinforced by the fact that the successor States that are parties to the Agreement on Succession Issues are also contracting Parties to the European Convention on Human Rights and have to ensure the protection of property rights. This legal situation makes it clear that this case has features of an interstate procedure rather than of an individual claim, which is, however, the way in which it must be seen in terms of Convention procedure. The suspension of all the pending cases should continue until a final solution has been found, at least until the end of 2009.