



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

1959 · 50 · 2009

FIRST SECTION

CASE OF MERZHOYEV v. RUSSIA

(Application no. 68444/01)

JUDGMENT

STRASBOURG

8 October 2009

FINAL

08/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Merzhoyev v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 17 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 68444/01) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Isa Israilovich Merzhoyev (“the applicant”), on 3 April 2001.

2. The applicant was represented by Ms S. Alekseyeva, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant complained of his inability to withdraw his savings deposited in the Chechen branch of the Savings Bank of Russia.

4. By a decision of 17 January 2008, the Court declared the application admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1949 and lives in Moscow.

A. Deposit of savings and attempts to recover them

7. On 15 May 1990, 13 March 1991 and 20 February 1992 the applicant, then a resident of Grozny, Chechnya, deposited 31,881.47, 30,000 and 24,500 Soviet roubles on behalf of his son, his daughter and himself respectively in three savings accounts with the Grozny branch of the Chechen Savings Bank, which was an integral part of the USSR Savings Bank.

8. In late 1994 hostilities began in Chechnya and the applicant left for Ingushetia. On 5 January 1995 he was registered as an internally displaced person by the Migration Service of the Sunzhenskiy District of Ingushetia.

9. It appears that at some point the applicant moved and settled in Moscow.

10. In early 1999 the applicant unsuccessfully requested the Savings Bank of Russia, the successor of the USSR Savings Bank, to transfer his indexed deposits to a branch in Moscow.

B. Court proceedings

11. Following the bank's refusal, the applicant brought a court action, seeking to have his deposits restored, indexed and transferred to the Moscow branch of the Savings Bank of Russia.

12. On 13 October 2000 the Gagarinskiy District Court of Moscow found against the applicant. The court confirmed the fact that during the period from 15 May 1990 until 20 February 1992 the applicant had made deposits on behalf of himself and his two children with the Grozny branch of the USSR Savings Bank and came to a conclusion acknowledging "the existence of obligations under the bank deposit agreements between the applicant and the Savings Bank". The court continued:

"According to telegram no. 26-3-2/281a of the Central Bank of Russia dated 22 December 1997, branches of the Chechen Savings Bank were closed by virtue of a decision of the Management Board of the Savings Bank of Russia. These branches were removed from the State Register of Lending Agencies.

...

It is clear from the case file that all the branches of the Savings Bank of Russia in the territory of the Chechen Republic were wound up, and powers of attorney issued to the managers of [these branches] were revoked and annulled.

The aforementioned circumstances are confirmed by decision no. 127 of the Management Board of the Savings Bank of Russia dated 16 December 1996.

At present there is no [legal] mechanism which could enable the transfer of deposits from branches of the Savings Bank of the Chechen Republic to the Moscow branch of the Savings Bank of Russia.

In such circumstances [the applicant's] claim to restore and transfer his indexed deposits from ... the Chechen [Savings] Bank to the Moscow branch of the Savings Bank of Russia should be denied.”

13. On 26 December 2000 the Civil Section of the Moscow City Court upheld the judgment of 13 October 2000 on appeal.

14. Thereafter the applicant applied for supervisory review, but to no avail.

C. Further developments

1. Information submitted prior to the decision on admissibility

15. In their memorial of 1 April 2005 the Government informed the Court that between 21 January and 22 April 2002 the Government of the Chechen Republic within the territory of this republic, and the branches of the Savings Bank of Russia in any other regions of Russia, had made a list of the former depositors of the Chechen Savings Bank who had produced their savings books (*сберегательные книжки*).

16. On 15 April 2003 the Savings Bank of Russia commenced payment of compensation to those included on the list. As provided by governmental decree no. 117 of 19 February 2003, this procedure was applied in respect of savings deposited with the Chechen Savings Bank prior to 20 June 1991.

17. From 1 October 2003 until 31 March 2004 the authorities made an additional list of former depositors of the Chechen Savings Bank. In the Government's submission, “repayment of deposits to those included on the additional list would be made in the near future”.

2. Information submitted after the decision on admissibility

18. In their additional memorial of 31 March 2008 the Government informed the Court, in reply to its specific request to that end, that if the applicant's deposits had been paid to him on 13 October 2000, the date on which the Gagarinskiy District Court of Moscow had confirmed “the existence of obligations under the bank deposit agreements between the

applicant and the Savings Bank”, he would have received the following amounts.

19. In respect of the deposit made on 15 May 1990, the applicant would have received 2,521.60 Russian roubles (RUB, approximately 60 euros (EUR)), comprising the sum of the original deposit and 40 per cent compensation totalling RUB 32.08, plus accrued interest of RUB 2,489.52.

20. As regards the deposit made on 13 March 1991, the applicant would have received a total of RUB 557.58 (approximately EUR 13), comprising the sum of the initial deposit of RUB 30 plus accrued interest of RUB 527.58.

21. In respect of the deposit made on 20 February 1992 the amount payable to the applicant would have been RUB 56.66 (approximately EUR 1.30), of which RUB 24.50 was the amount of the deposit and RUB 32.16 the accrued interest.

22. The Government further submitted a letter dated 21 March 2005 which the Savings Bank had addressed to the applicant, informing him that it was ready to pay all his deposits, along with the accrued interest, as well as preliminary compensation in respect of the deposit made on 15 May 1991, in accordance with governmental decree no. 343 of 9 July 2004 (see paragraph 27 below).

23. The Government also submitted a letter of 25 March 2003 addressed by the Savings Bank to the then Representative of the Russian Federation at the European Court of Human Rights. The letter stated that on 21 March 2005 a representative of the bank had had a telephone conversation with the applicant and had invited him to go to the bank to settle the question of the payment of his deposits; however, the applicant had refused to accept the amounts due to him, deeming them insufficient, and had stated that he had been prepared to resolve the issue only on condition that he would be paid compensation equal to 19,282 United States dollars (USD).

II. RELEVANT DOMESTIC LAW

24. In August 1996 the President of the Management Board of the Savings Bank of Russia (*Председатель правления Сберегательного Банка России*) ordered that all operations in respect of deposits with the Chechen Savings Bank be suspended until further notice.

25. By virtue of decision no. 127 of the Management Board of the Savings Bank of Russia dated 16 December 1996, the branches of the Savings Bank of Russia in the territory of the Chechen Republic were wound up and removed from the State Register of Lending Agencies. Powers of attorney issued to the managers of those branches were revoked and annulled.

26. By section 12 of decree no. 117 on payment to certain categories of citizens of the Russian Federation in 2003 of preliminary compensation

(compensation) in respect of deposits with the Savings Bank of the Russian Federation and certain insurance organisations, dated 19 February 2003, the Government of Russia entitled the former depositors of the Chechen Savings Bank to compensation for deposits they had made prior to 20 June 1991. In particular, individuals who lived outside the territory of the Chechen Republic could obtain compensation in those branches of the Savings Bank which had put them on the list of former depositors of the Chechen Savings Bank.

27. Section 15 of governmental decree no. 343 on payment to certain categories of citizens of the Russian Federation in 2004 of preliminary compensation (compensation) in respect of deposits with the Savings Bank of the Russian Federation and certain insurance organisations, dated 9 July 2004, reproduces the provisions of section 12 of decree no. 117 of 19 February 2003 concerning compensation for deposits made prior to 20 June 1991 in the territory of the Chechen Republic. It contains no provisions relating to deposits made after 20 June 1991.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Non-exhaustion of domestic remedies

28. In their additional memorial on the merits of the case, the Government contended that the applicant had not lodged any claim with the national courts concerning payment of his deposits, their index-linking in line with inflation or the incorrect calculation of interest, and that therefore he had failed to exhaust the available domestic remedies. In the Government's submission, they had not raised this objection earlier because this part of the application had not been communicated to them.

29. The Court reiterates that at the judgment stage it will not take cognisance of pleas of non-exhaustion unless the respondent State has already raised them in its written or oral observations on the admissibility of the application (see, among other authorities, *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII, and *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). In the present case, it was open to the Government to raise their objection regarding non-exhaustion of domestic remedies in respect of any part of the application which they considered relevant. However, in their observations on the admissibility of the present application they failed to do so. Moreover, the Court cannot discern any

exceptional circumstances that could have dispensed the Government from the obligation to raise their preliminary objection before the adoption of the Chamber's admissibility decision of 17 January 2008 (see *Prokopovich v. Russia*, no. 58255/00, § 29, 18 November 2004).

30. Consequently, the Government are stopped at this stage of the proceedings from raising the preliminary objection of failure to use the domestic remedy. It follows that the Government's preliminary objection must be dismissed.

B. Jurisdiction *ratione temporis* and *ratione personae*

31. In their additional memorial on the merits of the case, the Government argued that in so far as the present application concerned the events that had taken place prior to the ratification of the Convention by Russia, it was outside the Court's temporal jurisdiction.

32. In their memorial on the admissibility and merits of the case and in their additional memorial on the merits of the case, the Government further argued that the State was not responsible for the Savings Bank of Russia, which was now a joint stock commercial bank (*акционерный коммерческий банк*), and, in particular, for its obligations in respect of deposits. According to them, the Savings Bank effected the payment of deposits from its own funds, and the State did not interfere or finance the bank's activities. On the other hand, the Government stated that in the 1990s, during the period of galloping inflation, the State had assumed obligations to restore and pay compensation in respect of all deposits made in the Savings Bank prior to 20 June 1991, and subsequently payment of such deposits and compensation had been carried out from the funds allocated each year for that purpose in the federal budget, and that that payment had not been related to the events in the Chechen Republic and, in particular, the suspension of the activity of the Chechen Savings bank. In the Government's submission, it was an act of good will that the State assumed obligations concerning payment of that compensation, and therefore it was free to determine the amount of compensation to be paid, who should receive it, and the time-limits for its payment.

33. The Government also insisted that the State was not responsible for the absence of a mechanism for transferring funds from the former Chechen Savings Bank to any other branch of the Savings Bank of Russia. According to them, deposits could only be transferred by the bank, without any interference by the State. They also submitted that the domestic legislation imposed no obligation on the State or the Savings Bank of Russia to develop any specific mechanism for transferring the deposits.

34. The applicant disagreed with the Government and maintained his complaint. In so far as the State's responsibility was concerned, he argued that between 1990 and 1992 he had deposited his savings in the then State-

owned Savings Bank of the USSR, that the Savings Bank of Russia was its legal successor, and that the State was therefore responsible for the bank and for the absence of a mechanism for transferring funds from the former Chechen Bank to any other branch of the Savings Bank of Russia. In support of his argument the applicant referred to the fact that the reimbursement of the deposits made in the Savings Bank was governed by legal instruments adopted by the Russian Government.

35. The Court reiterates that it may address questions of its jurisdiction at every stage of the proceedings to satisfy itself that it has jurisdiction in any case brought before it (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III). The Court further notes that, in its decision of 17 January 2008, it decided to join to the merits of the case the questions of its competence *ratione temporis* and *ratione personae*. Having regard to the circumstances of the case and the parties' arguments, the Court considers it appropriate to address these questions in its examination of the substance of the applicant's complaint under Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

36. The applicant complained under Article 1 of Protocol No. 1 to the Convention that he had been unable to have his deposits in the Savings Bank of Russia repaid for a long time and that his savings had suffered a significant depreciation because of inflation. The respective Article reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Submissions by the parties

1. The applicant

37. The applicant insisted that his property right secured by Article 1 of Protocol No. 1 had been violated. He argued that between 1995 and 2004, when the Government adopted decree no. 343 (see paragraph 27 above), he had been denied any access to his deposits.

38. The applicant did not dispute the Government's argument that he was now entitled to have all his deposits repaid, but argued that by virtue of decree no. 343 the amount of his savings, with compensation, would only be equal to RUB 1,054, corresponding to USD 37.40, whereas between 1990 and 1992 he had deposited an amount corresponding at that time to USD 14,832. In the applicant's submission, taking into account an interest rate of 3-4% per annum, he should have received a total sum of RUB 558,129.99 (approximately EUR 13,000) if his deposits had been paid to him in October 2000, when the Gagarinskiy District Court of Moscow had delivered its judgment. He further submitted that at present the total sum of his deposits should be equal to RUB 1,112,836.81 (approximately EUR 25,400).

2. The Government

39. The Government submitted that the activities of the Chechen Savings Bank had been suspended in August 1996 in view of the difficult political, economic and social situation in Chechnya, and that it had been impossible to resume the activity of the bank, as it had sustained significant pecuniary damage and had lost a considerable number of its primary documents and official seals, which could have enabled the falsification of claims concerning the reimbursement of deposits made with it. In such circumstances, in December 1996 the Management Board of the Savings Bank of Russia had taken a decision to wind up the Chechen Savings Bank. The Government thus argued, referring to these facts, that the Savings Bank of Russia had had no real opportunity to restore the applicant's savings deposited in the Chechen Savings Bank and transfer them to the Moscow branch of the Savings Bank of Russia and that it had had no intention of depriving the applicant of his possessions.

40. The Government further claimed that the Russian authorities, along with the Savings Bank of Russia, took steps aiming at identifying depositors of the Chechen Savings Bank with a view to repaying their deposits. In particular, in 2001-2002 the authorities had made a list of former depositors of the Chechen Savings Bank who had produced their savings books, and the applicant had been free to register himself on that list. The Government also submitted that it was now open to the applicant to receive his deposits and the accrued interest in any branch of the Savings Bank of Russia, on condition that he made an application and submitted his savings books. They also stated that under governmental decree no. 343 of 9 July 2004 the applicant could be entitled to compensation for inflation losses in respect of his deposits made prior to 20 June 1991. The Government did not reply to the Court's question whether the applicant was entitled to any compensation in respect of his deposit made on 20 February 1992.

41. The Government thus argued that the interference with the applicant's right to withdraw his savings had been of a temporary nature and

in the public interest, given the difficult situation in the Chechen Republic in the middle of the 1990s and the possibility of falsification of claims concerning the reimbursement of deposits made with the Chechen Savings Bank.

42. As regards the applicant's argument that his deposits had significantly depreciated in value, the Government relied on the Court's established case-law, stating that the Convention did not guarantee the right to acquire possessions, or the right to have the purchasing power of the national currency maintained by the State.

B. The Court's assessment

43. The Court observes that some of the events referred to by the applicant took place before 5 May 1998, the date of the ratification of the Convention by Russia, and considers it appropriate to distinguish two periods for the purpose of examining the present case.

1. Events before 5 May 1998

44. The Court observes at the outset that in 1996 the management bodies of the Savings Bank of Russia decided to ban for an indefinite period any operations in respect of deposits made with the Chechen Savings Bank, and then to wind it up. Those decisions, which both pre-dated the ratification of the Convention by Russia, served as the basis for the Savings Bank's repeated refusal to return the applicant's deposits and constituted therefore an interference with the applicant's property rights. The Court further considers that such interference amounted to a *de facto* deprivation of the applicant's possessions since the right of the depositors of the Chechen Savings Bank, including the applicant, to dispose of their funds was *de facto* extinguished by virtue of the aforementioned two decisions (see *Cherkashin v. Russia* (partial decision), no. 7412/02, 30 March 2006, and *Pupkov v. Russia* (dec.), no. 42453/02, 17 January 2008).

45. The Court reiterates in this connection that the deprivation of property is an instantaneous act and does not produce a continuing situation of "deprivation" of these rights (see *Blečić*, cited above, § 86). It therefore finds that it has no jurisdiction *ratione temporis* to examine the applicant's complaint in so far as it relates to the events that took place prior to 5 May 1998 (see *Cherkashin* and *Pupkov*, both cited above).

2. Events after 5 May 1998

46. Having regard to its above finding that the applicant had been deprived of his property prior to the ratification of the Convention by Russia and that this had been an instantaneous act not creating any continuing situation, the Court has to ascertain whether, in the period subsequent to the

entry into force of the Convention in respect of Russia, Article 1 of Protocol No. 1 was applicable in the circumstances of the present case and, if so, whether it was complied with.

(a) Applicability of Article 1 of Protocol No. 1

47. The Court reiterates that, according to its established case-law, “possessions” within the meaning of Article 1 of Protocol No. 1 can be either “existing possessions” or assets, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate expectation” of obtaining effective enjoyment of a property right. By contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a “possession” within the meaning of Article 1 of Protocol No. 1 (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX, and the authorities cited therein).

48. In the present case, the Court has established above that the applicant's rights to his deposits were extinguished by relevant decisions taken in 1996. It is therefore clear that on the date of the entry into force of the Convention in respect of Russia, the applicant had at best a mere hope of recovering his savings rather than any substantive interest protected by Article 1 of Protocol No. 1 (see *Cherkashin and Pupkov*, both cited above). However, in 2000 the domestic courts at two levels of jurisdiction established “the existence of obligations” under the bank deposit agreements between the applicant and the Savings Bank (see paragraphs 12 and 13 above). The Court therefore considers that the applicant's claim was sufficiently established to constitute an asset within the meaning of Article 1 of Protocol No. 1 to the Convention (see, by contrast, *Cherkashin and Pupkov*, both cited above).

49. The Court further observes that in their decisions the domestic courts did not specify the amount which the applicant could have obtained, and therefore the scope of his newly acquired property remained unclear. In that respect, the parties presented conflicting arguments. The Government indicated that if the applicant's three deposits had been paid to him on the date on which the first-instance court adopted its judgment, the applicant would have received RUB 2,521.60, RUB 557.58 and RUB 56.66 respectively (see paragraphs 18-21 above). The applicant disagreed, stating that in 1990-1992 when he had deposited his savings, their total value amounted to the equivalent of USD 14,832, and that therefore on the date of the adoption of the first-instance judgment he should have received a total sum of RUB 558,129.99, taking into account an interest rate of 3-4% per annum.

50. The Court does not find the applicant's arguments convincing. It has already noted above that in 1996 the applicant was *de facto* deprived of his deposits and that he had no more than a mere hope for their recovery until 2000, when a new entitlement to his deposits was created by virtue of the

domestic courts' decisions. In such circumstances, it is reasonable to assume that the amount which the applicant could reasonably have expected to receive should be calculated on the basis of the realities of 2000 rather than those of 1990-1992, and should therefore be comparable with an amount that any other depositor of the Savings Bank of Russia could have received in 2000. In this latter respect the Court notes the Government's argument that payments to former depositors of the USSR Savings Bank were being made from the federal budget in the amount defined by the State (see paragraph 32 above). It therefore accepts that the amounts the applicant could legitimately have expected to receive in 2000 were equal to those indicated by the Government in paragraphs 19-21. As to the applicant's complaint about the loss in value of his deposits, the Court reiterates that Article 1 of Protocol No. 1 does not oblige a State to maintain the purchasing power of sums deposited with financial institutions (see *Appolonov v. Russia* (dec.), no. 67578/01, 29 August 2002).

51. Having regard to the foregoing, the Court concludes that starting from 26 December 2000, when the judgment of the Gagarinskiy District Court of Moscow of 13 October 2000 was upheld on appeal and became final, the applicant had a legitimate expectation of securing the reimbursement of his deposits in the amount of RUB 2,521.60, RUB 557.58 and RUB 56.66 respectively.

(b) Compliance with Article 1 of Protocol No. 1

52. The Court observes that whilst acknowledging the applicant's entitlement to the deposits, the domestic courts refused to grant any of his claims with reference to the absence of a legal mechanism which would have enabled the transfer of the applicant's deposits from the former Chechen Savings Bank (see paragraph 12 above). Such reasoning clearly demonstrated the need for relevant legal instruments to be adopted on the issue in question. In other words, the problem of the deposits in the former Chechen Savings Bank required intervention by the State in the absence of which it was impossible for the applicant to benefit from that entitlement in any respect.

53. In this connection, turning to the Government's preliminary objection *ratione personae* (see paragraphs 32 and 33 above), the Court notes that, in the present case, it is not called upon to decide whether the State is to be held liable for the debts of the Savings Bank of Russia, which is now a publicly owned private commercial bank; what is in issue is the State's alleged failure to take adequate steps to secure the applicant's property rights to his deposits. The Court therefore rejects this objection.

54. The Court further observes that on 19 February 2003 the Russian Government adopted their decree which for the first time addressed, among other things, the matter of payments to depositors of the former Chechen Savings Bank. The Court considers that it was on that date rather than on

9 July 2004, as alleged by the applicant, that he was given free access to his deposits. Accordingly, the period during which the applicant was unable to enjoy his property rights in respect of his savings lasted from 26 December 2000, when the first-instance judgement conferring on the applicant an entitlement to his deposits became final, until 19 February 2003, when the Russian Government authorised payments to depositors of the former Chechen Savings Bank.

55. The Court further has to ascertain whether the conduct of the Russian authorities in the present case was justified under Article 1 of Protocol No. 1 of the Convention. In this connection, it notes the Government's arguments concerning the difficult political, economic and social situation in the Chechen Republic and the loss by the Savings Bank of a considerable number of its primary documents and official seals following the outbreak of the hostilities in the region, which could have entailed falsification of claims for reimbursement of deposits made in the Chechen Republic. The Court is prepared to accept that the circumstances referred to by the Government may have warranted imposing a limitation on access by the depositors of the former Chechen Savings Bank to their accounts, and that the conduct of the Russian authorities respected the principle of lawfulness and was in the public interest. It remains to be decided whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the applicant's rights secured by Article 1 of Protocol No. 1, or, in other words, whether, taken overall, the applicant can be said to have suffered an "individual and excessive burden" (see *James and Others v. the United Kingdom*, 21 February 1986, § 50, Series A no. 98).

56. The Court observes first of all that the applicant's inability to make use of his deposits was of a temporary nature, having lasted a little more than two years (see paragraph 54 above), and that at present he can freely access his savings, a fact which is not in dispute between the parties. Furthermore, although temporarily inaccessible for the applicant, his deposits yielded interest, which by now exceeds the sums of the initial deposits (see paragraphs 19-21 above). The Court also does not overlook the fact that, as pointed out by the Government, the applicant is entitled, like any other depositor of the Savings Bank of Russia, to compensation in connection with inflation losses in respect of his savings deposited before 20 June 1991. In such circumstances, the Court is unable to conclude that the applicant was required to suffer an "individual and excessive burden".

57. Overall, having regard to the difficulties encountered by the Russian Government in connection with the hostilities in the Chechen Republic, on the one hand, and to the relevant factors in the situation with the applicant's deposits, on the other hand, the Court finds that a fair balance was struck between the general interest of the community and the applicant's property interests.

58. Accordingly, there has been no violation of Article 1 of Protocol No. 1 in the instant case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections concerning the exhaustion of domestic remedies and the Court's competence *ratione personae*;
2. *Accepts* the Government's preliminary objection concerning the Court's competence *ratione temporis* in so far as the events prior to 5 May 1998 are concerned and *holds* that it is unable to consider the merits of that part of the case;
3. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention in so far as the events after 5 May 1998 are concerned.

Done in English, and notified in writing on 8 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President