



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF SULJAGIĆ v. BOSNIA AND HERZEGOVINA

(Application no. 27912/02)

JUDGMENT

STRASBOURG

3 November 2009

FINAL

03/02/2010

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 Suljagić v. Bosnia and Herzegovina,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 13 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 27912/02) against Bosnia and Herzegovina lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a citizen of Bosnia and Herzegovina, Mr Mustafa Suljagić (“the applicant”), on 2 July 2002.

2. The applicant alleged that the domestic legislation on “old” foreign-currency savings failed to strike a “fair balance” between the relevant interests in the light of Article 1 of Protocol No. 1 to the Convention.

3. By a decision of 20 June 2006 the Court joined to the merits the question of the applicant's victim status and declared the application admissible.

4. The applicant and the Government each filed further written observations (Rule 59 § 1). In addition, third-party comments were received from two associations, the Association for the Protection of Foreign-Currency Savers in Bosnia and Herzegovina (*Udruženje za zaštitu deviznih štediša u Bosni i Hercegovini*) from the Federation of Bosnia and Herzegovina and the Association for the Return of Foreign-Currency Savings in Bosnia and Herzegovina and Diaspora (*Udruženje građana za povrat stare devizne štednje u Bosni i Hercegovini i dijaspori*) from the Republika Srpska, which had been invited to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The parties replied to each other's observations and the third parties' comments at the hearing (Rule 44 § 5).

5. A hearing took place in public in the Human Rights Building, Strasbourg, on 10 March 2009 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms M. MIJIĆ,	<i>Agent,</i>
Ms Z. IBRAHIMOVIĆ,	<i>Deputy Agent,</i>
Ms B. KUJUNDŽIĆ,	<i>Assistant Agent,</i>
Mr A. DŽOMBIĆ, Minister of Finance of the Republika Srpska,	
Ms D. ALEKSIĆ, Assistant Minister of Finance of the Republika Srpska,	
Mr T. ĆURAK, Assistant Minister of Finance of the Federation of Bosnia and Herzegovina,	
Mr E. KUBAT, Adviser to Minister of Finance of the Federation of Bosnia and Herzegovina,	
Mr M. LUČIĆ, Director for Finance of the Brčko District of Bosnia and Herzegovina,	<i>Advisers;</i>

(b) *for the applicant*

Mr E. SULJAGIĆ,	<i>Counsel,</i>
Mr S. IMAMOVIĆ,	<i>Assistant Counsel.</i>

The Court heard addresses by Mr Suljagić and Ms Mijić.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Relevant background to the present case

6. The present case relates to the issue of “old” foreign-currency deposits (foreign currency deposited before the dissolution of the Socialist Federal Republic of Yugoslavia – “the SFRY”).

7. Until the 1989/90 economic reforms (the so-called Marković reforms, named after the then Prime Minister Ante Marković), the commercial banking system of the SFRY consisted of self-managed basic and associated banks. Basic banks, founded and nominally controlled by socially owned enterprises, carried on day-to-day commercial banking activities. Two or more basic banks could form an associated bank through a self-management agreement, while preserving their legal personality. In the SFRY, there were more than 150 basic banks and nine associated banks (namely Jugobanka Beograd, Beogradska udružena banka Beograd, Vojvođanska banka Novi

Sad, Kosovska banka Priština, Udružena banka Hrvatske Zagreb, Ljubljanska banka Ljubljana, Privredna banka Sarajevo, Stopanska banka Skopje and Investiciona banka Titograd).

8. Hard-pressed for hard currency as it was, the SFRY made it attractive for its expatriate workers and other citizens to deposit their foreign currency with commercial banks based in the SFRY: such deposits earned high interest (the annual interest rate often exceeded 10%) and were guaranteed by the State (see, for example, section 14(3) of the Foreign-Currency Transactions Act 1985¹ and section 76(1) of the Banks and Other Financial Institutions Act 1989²).

9. The Foreign-Currency Transactions Act 1977³ introduced a system for redepositing of foreign currency by commercial banks with the National Bank of Yugoslavia. Although the system was optional, it allowed commercial banks to shift the currency risk to the State and practically all foreign currency was thus redeposited. In addition, the National Bank of Yugoslavia was required to grant national-currency loans (initially, interest-free) to commercial banks to the value of the redeposited foreign currency. It should be underlined, however, that such redepositing was as a rule only a paper transaction, because commercial banks had insufficient liquid funds: it would appear that commercial banks redeposited in total 12.2 billion United States dollars (USD), out of which only USD 1.7 billion (approximately 14%) was actually transferred to the National Bank of Yugoslavia (see *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, §§ 36 and 39, ECHR 2008-...; see also decision AP 164/04 of the Constitutional Court of Bosnia and Herzegovina of 1 April 2006, § 53). In 1988 the system of redeposits was brought to an end (see section 103 of the Foreign-Currency Transactions Act 1985, as amended on 15 October 1988).

10. Problems resulting from the foreign and domestic debt of the SFRY caused a monetary crisis in the 1980s. The national economy was on the verge of collapse and the SFRY resorted to emergency measures, such as statutory restrictions on the repayment of foreign-currency deposits (see section 71 of the Foreign-Currency Transactions Act 1985). As a result, foreign-currency deposits were practically frozen.

11. Within the framework of the Marković reforms, the SFRY abolished the system of basic and associated banks described above. This shift in the

¹ *Zakon o deviznom poslovanju*, published in the Official Gazette of the SFRY no. 66/85, amendments published in the Official Gazette nos. 13/86, 71/86, 2/87, 3/88, 59/88 and 82/90.

² *Zakon o bankama i drugim finansijskim organizacijama*, published in the Official Gazette of the SFRY no. 10/89, amendments published in the Official Gazette nos. 40/89, 87/89, 18/90, 72/90 and 79/90.

³ *Zakon o deviznom poslovanju i kreditnim odnosima*, published in the Official Gazette of the SFRY no. 15/77, amendments published in the Official Gazette nos. 61/82, 77/82, 34/83, 70/83 and 71/84.

banking regulations allowed some basic banks to opt for an independent status, while other basic banks became branches (without legal personality) of the associated banks to which they had beforehand belonged.

12. Some important features of the banking system remained, however, unaffected by the reforms. First of all, commercial banks remained under the regime of “social ownership” – a concept which, while it does exist in other countries, was particularly highly developed in the SFRY. Secondly, both commercial banks and the State had financial obligations arising from foreign-currency savings: depositors were entitled to collect their deposits at any time, together with accumulated interest, from commercial banks (see sections 1035 and 1045 of the Civil Obligations Act 1978¹) or, in the event of a commercial bank's “manifest insolvency” or bankruptcy, from the State (see sections 1004(2) and 1007(2) of the Civil Obligations Act 1978, section 18 of the Banks and Other Financial Institutions Insolvency Act 1989² and a decision of the SFRY Government of 23 May 1990³).

13. In 1991/92 the SFRY ceased to exist. It was replaced by five successor States: Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia (succeeded in 2006 by Serbia), “the former Yugoslav Republic of Macedonia” and Slovenia.

14. A brutal war started in Bosnia and Herzegovina shortly after its declaration of independence. During the war, Bosnia and Herzegovina took over the statutory guarantee for “old” foreign-currency savings from the SFRY (pursuant to section 6 of the SFRY Legislation Application Act 1992⁴). Furthermore, the concept of “social ownership” was abandoned (see the Social Ownership Transformation Act 1993⁵ and the Social Ownership Transformation Act 1994⁶). As a result, all commercial banks based in Bosnia and Herzegovina were effectively nationalised. While the use of “old” foreign-currency savings was allowed in some exceptional situations during the war, it would appear that this possibility remained only

¹ *Zakon o obligacionim odnosima*, published in the Official Gazette of the SFRY no. 29/78, amendments published in the Official Gazette nos. 39/85, 45/89 and 57/89.

² *Zakon o sanaciji, stečaju i likvidnosti banaka i drugih finansijskih organizacija*, published in the Official Gazette of the SFRY no. 84/89, amendments published in the Official Gazette no. 63/90.

³ *Odluka o načinu izvršavanja obaveza Federacije po osnovu jemstva za devize na deviznim računima i deviznim štednim ulozima građana, građanskih pravnih lica i stranih fizičkih lica*, published in the Official Gazette of the SFRY no. 27/90.

⁴ *Uredba sa zakonskom snagom o preuzimanju i primjenjivanju saveznih zakona koji se u Bosni i Hercegovini primjenjuju kao republički zakoni*, published in the Official Gazette of the Republic of Bosnia and Herzegovina no. 2/92 of 11 April 1992.

⁵ *Zakon o prenosu sredstava društvene u državnu svojinu*, published in the Official Gazette of the Republika Srpska no. 4/93 of 28 April 1993, amendments published in the Official Gazette nos. 29/94 of 28 November 1994, 31/94 of 27 December 1994, 9/95 of 19 June 1995, 19/95 of 2 October 1995, 8/96 of 10 April 1996 and 20/98 of 15 June 1998.

⁶ *Zakon o pretvorbi društvene svojine*, published in the Official Gazette of the Republic of Bosnia and Herzegovina no. 33/94 of 25 November 1994.

theoretical (see a decision of the Presidency of the Republic of Bosnia and Herzegovina of 18 February 1993¹ and a decision of the National Bank of the Republika Srpska of 17 June 1993²).

15. On 14 December 1995 the General Framework Agreement for Peace in Bosnia and Herzegovina (“the Dayton Peace Agreement”) entered into force. It confirmed the continuation of the legal existence of Bosnia and Herzegovina as a State, while modifying its internal structure (Article 1 § 1 of Annex 4 to the Dayton Peace Agreement, named the “Constitution of Bosnia and Herzegovina”). In accordance with Article 1 § 3 of Annex 4, Bosnia and Herzegovina consists of two Entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. The Dayton Peace Agreement failed to resolve the Inter-Entity Boundary Line in the Brčko area, but the parties agreed to a binding arbitration in this regard under UNCITRAL rules (Article V of Annex 2 to the Dayton Peace Agreement). Meanwhile, the rural parts of the pre-war Brčko municipality remained under the control of the Federation of Bosnia and Herzegovina and the town of Brčko under the control of the Republika Srpska. An arbitral tribunal issued its final award on 5 March 1999. It suspended the legal authority of the Entities within the whole territory of the pre-war Brčko municipality and transferred all of the Entity powers to the newly-created Brčko District under the exclusive sovereignty of Bosnia and Herzegovina and international supervision. The Brčko District was formally inaugurated on 8 March 2000. Nevertheless, Entity legislation continued to apply in the District until modified by the Supervisor of Brčko or the District Assembly. All Entity legislation ceased to have legal effect in the District on 4 August 2006.

16. On 28 November 1997 the Federation of Bosnia and Herzegovina assumed full liability for “old” foreign-currency savings in locally based commercial banks in order to prepare them for privatisation (in accordance with section 3(1) of the Claims Settlement Act 1997³ and the Non-Residents' Claims Settlement Decree 1999⁴). While withdrawal remained

¹ *Odluka o uslovima i načinu isplata dinara po osnovu definitivne prodaje devizne štednje domaćih fizičkih lica i korišćenju deviza sa deviznih računa i deviznih štednih uloga domaćih fizičkih lica za potrebe liječenja i plaćanja školarine u inostranstvu*, published in the Official Gazette of the Republic of Bosnia and Herzegovina no. 4/93 of 6 March 1993.

² *Odluka o uslovima i načinu davanja kratkoročnih kredita bankama na osnovu definitivne prodaje deponovane devizne štednje građana i efektivno prodatih deviza od strane građana*, published in the Official Gazette of the Republika Srpska no. 10/93 of 15 July 1993, amendments published in the Official Gazette no. 2/94 of 21 February 1994.

³ *Zakon o utvrđivanju i realizaciji potraživanja građana u postupku privatizacije*, published in the Official Gazette of the Federation of Bosnia and Herzegovina no. 27/97 of 28 November 1997, amendments published in the Official Gazette nos. 8/99 of 5 March 1999, 45/00 of 25 October 2000, 54/00 of 26 December 2000, 32/01 of 24 July 2001, 27/02 of 28 June 2002, 57/03 of 21 November 2003, 44/04 of 21 August 2004 and 79/07 of 7 November 2007.

⁴ *Uredba o ostvarivanju potraživanja lica koja su imala deviznu štednju u bankama na teritoriju Federacije Bosne i Hercegovine, a nisu imala prebivalište na teritoriju*

impossible, residents of that Entity were given the possibility of using their “old” foreign-currency savings to purchase the State-owned flats in which they lived (where this was indeed the case) and certain State-owned companies (see section 18 of the Claims Settlement Act 1997, as amended on 21 August 2004 and on 7 November 2007).

17. Similarly, the Republika Srpska assumed full liability for “old” foreign-currency savings in commercial banks based there (see section 20 of the Opening Balance Sheets (Banks) Act 1998, as amended on 8 January 2002¹). However, unlike in the Federation of Bosnia and Herzegovina, where the liability shifted simultaneously with respect to all commercial banks, in the Republika Srpska the liability shifted for each commercial bank upon its privatisation. The relevant dates for the two main commercial banks with “old” foreign-currency deposits, the Banjalučka banka and the Kristal banka, were 18 January and 17 April 2002 respectively. The privatisation process was completed in the Republika Srpska in respect of commercial banks on 31 December 2002. Residents of that Entity were also given the possibility of using their “old” foreign-currency savings to purchase the State-owned flats in which they lived and certain State-owned companies (see section 19 of the Privatisation of Companies Act 1998²).

18. In the course of 2002 all commercial banks in the Brčko District were privatised by the Entities through an agreement with the District and with the approval of the Supervisor of Brčko.

19. Legislation providing for the use of “old” foreign-currency savings in the privatisation process had limited appeal and, moreover, led to abuses: an unofficial market emerged on which such savings were sometimes sold for no more than 3% of their nominal value. In 2004, in an attempt to remedy the situation, the Entities and the District agreed to recompense “old” foreign-currency savers in cash and government bonds and set up repayment schemes to this effect. However, pursuant to decision U 14/05 of the Constitutional Court of Bosnia and Herzegovina of 2 December 2005, the three repayment schemes were replaced by one for the entire territory of Bosnia and Herzegovina (see “Relevant domestic law and practice” below).

Federacije Bosne i Hercegovine, published in the Official Gazette of the Federation of Bosnia and Herzegovina no. 44/99 of 30 October 1999.

¹ *Zakon o početnom bilansu stanja u postupku privatizacije državnog kapitala u bankama*, published in the Official Gazette of the Republika Srpska no. 24/98 of 15 July 1998, amendments published in the Official Gazette no. 70/01 of 31 December 2001.

² *Zakon o privatizaciji državnog kapitala u preduzećima*, published in the Official Gazette of the Republika Srpska no. 24/98 of 15 July 1998, amendments published in the Official Gazette nos. 62/02 of 7 October 2002, 38/03 of 30 May 2003 and 65/03 of 11 August 2003.

B. The present case

20. The applicant was born in 1935 and lives in the vicinity of Srebrenik, in Bosnia and Herzegovina.

21. He worked across Europe as a mailman, construction worker and handyman in the 1970s and 1980s and deposited foreign currency earned abroad with a basic bank based in Tuzla, a member of the Privredna banka Sarajevo. During the Marković reforms the bank became a separate entity, named Tuzlanska banka. In 1994 it was nationalised (see paragraph 14 above) and in 1998 it was sold to a commercial bank based in Slovenia (Nova Ljubljanska banka).

22. After several failed attempts to withdraw his funds, the applicant complained to the Human Rights Chamber (a human-rights body set up under Annex 6 to the Dayton Peace Agreement). By a decision of 6 April 2005 (decision CH/98/375 *et al.*), the Human Rights Commission, the legal successor of the Human Rights Chamber, found the contemporary legislation to be contrary to Article 6 of the Convention (on account of the lack of procedural guarantees) and Article 1 of Protocol No. 1 to the Convention (on account of the lack of a fair balance between the relevant interests). Besides some general measures, it awarded the applicant 500 convertible marks (BAM)¹ in respect of non-pecuniary damage and legal costs.

23. On 29 December 2006 the competent verification agency assessed the amount of the applicant's "old" foreign-currency savings at BAM 269,275.21 (see paragraph 27 below).

24. On 11 June 2007 the applicant received BAM 1,000 (see paragraph 29 below). On 14 May 2009 he received the first instalments of the principal debt and of interest on the bonds, both due on 27 September 2008, in the total amount of BAM 4,237.44 (see paragraph 31 below).

25. It would appear that the government bonds due on 31 March 2008 have not yet been issued (see paragraph 30 below) and that the second instalment of interest on the bonds, due on 27 March 2009, has not yet been paid (see paragraph 31 below).

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. For the relevant law and practice, see the admissibility decision in *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, ECHR 2005-XII; *Suljagić v. Bosnia and Herzegovina* (dec.), no. 27912/02, 20 June 2006; and the judgment in *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, ECHR 2006-XII.

¹ The convertible mark (BAM) uses the same fixed exchange rate to the euro (EUR) that the German mark (DEM) has (EUR 1 = BAM 1.95583).

27. Furthermore, the Old Foreign-Currency Savings Act 2006¹ entered into force on 15 April 2006 (“the 2006 Act”). Bosnia and Herzegovina undertook to recompense original deposits in locally based banks and interest accrued by 31 December 1991 at the original rate, less any funds already used (see paragraphs 14 and 16-17 above). Interest accrued from 1 January 1992 until 15 April 2006 is to be cancelled and calculated afresh at an annual rate of 0.5%. The assessment of the amounts due to each claimant is to be carried out under an administrative procedure by verification agencies. The deadline for submitting an application to this effect has been extended on several occasions.

28. The Constitutional Court of Bosnia and Herzegovina has examined the constitutionality of the provision concerning the reduction of the interest rate to 0.5% for the period from 1 January 1992 until 15 April 2006 and considered it to be justified given the overall circumstances, notably the need to reconstruct the national economy following a devastating war (see decision U 13/06 of 28 March 2008, § 28).

29. All claimants that have obtained verification certificates (see the penultimate sentence of paragraph 27 above) are entitled to a cash payment of up to BAM 1,000 in the Federation of Bosnia and Herzegovina and the Brčko District and up to BAM 2,000 in the Republika Srpska. Any remaining amount will then be reimbursed in government bonds.

30. In accordance with the 2006 Act, government bonds were to be issued by 31 March 2008. They should be amortised by 31 December 2016 at the latest and earn interest at an annual rate of 2.5%. While it had initially been planned to issue State bonds through the Central Bank, on 12 January 2008 the Republika Srpska passed its own Old Foreign-Currency Savings Act 2008 (“the RS Act”)², cutting the amortisation period for government bonds down to five years, and issued its own Entity bonds on 28 February 2008. On 4 October 2008 the Constitutional Court of Bosnia and Herzegovina declared the RS Act constitutional (decision U 3/08 of 4 October 2008). It decided that the constituent units (the Entities and the District) had jurisdiction to regulate the matter of “old” foreign-currency savings, provided that they remained within the framework of the 2006 Act. Following this decision, the Central Bank refused to issue government bonds only for some constituent units. As a result, the Federation of Bosnia and Herzegovina and the Brčko District had to issue their own bonds. While

¹ *Zakon o izmirenju obaveza po osnovu računa stare devizne štednje*, published in the Official Gazette of Bosnia and Herzegovina no. 28/06 of 14 April 2006, amendments published in the Official Gazette nos. 76/06 of 25 September 2006 and 72/07 of 26 September 2007.

² *Zakon o uslovima i načinu izmirenja obaveza po osnovu računa stare devizne štednje emisijom obveznica u Republici Srpskoj*, published in the Official Gazette of the Republika Srpska no. 1/08 of 4 January 2008.

the Brčko District did so on 30 June 2009, it would appear that bonds have not yet been issued in the Federation of Bosnia and Herzegovina.

31. Meanwhile, amortisation plans were adopted on 21 February 2008 for the Republika Srpska¹ and on 9 April 2008 for the Federation of Bosnia and Herzegovina and the Brčko District.² On 24 June 2009 a new amortisation plan was adopted for the Brčko District which is along the lines of that of 9 April 2008.³

In the Republika Srpska, bonds are to be amortised by 28 February 2013 in ten instalments (on 28 February and 28 August every year from 28 August 2008 to 28 February 2013) together with interest on the bonds (at an annual rate of 2.5%). The first three instalments were paid, as planned, on 28 August 2008, 28 February and 28 August 2009. In the event of late payment, default interest is to be paid at the statutory rate.

In the Federation of Bosnia and Herzegovina, bonds are to be amortised by 27 March 2015 in eight instalments as follows: 7.5% of the entire debt is to be paid on 27 September 2008, 9% on 27 September 2009, 11% on 27 September 2010, 12% on 27 September 2011, 13% on 27 September 2012, 15% on 27 September 2013, 15.5% on 27 September 2014 and 17% on 27 March 2015. Interest on the bonds (at an annual rate of 2.5%) is to be paid on 27 March and 27 September every year from 27 September 2008 to 27 March 2015. The first instalments of the principal debt and of interest on the bonds (both due on 27 September 2008) were paid on 14 May 2009. It would appear that the instalments due on 27 March and 27 September 2009 have not yet been paid.

Lastly, under the old amortisation plan, the Brčko District paid the first instalments of the principal debt and of interest on the bonds (both due on 27 September 2008) on 24 December 2008 and the second instalment of interest on the bonds (due on 27 March 2009) on 11 June 2009. Pursuant to the new plan, bonds are now to be amortised by 31 March 2015 in seven instalments as follows: 9.5% of the entire debt is to be paid on 30 September 2009, 11.5% on 30 September 2010, 12.5% on 30 September 2011, 14% on 30 September 2012, 16.5% on 30 September 2013, 17.5% on 30 September 2014 and 18.5% on 31 March 2015. Interest on the bonds (at an annual rate of 2.5%) is to be paid on 31 March and 30 September every year from 30 September 2009 to 31 March 2015. The instalment due on

¹ *Odluka o emisiji obveznica Republike Srpske za izmirenje obaveza po osnovu verifikovanih računa stare devizne štednje*, published in the Official Gazette of the Republika Srpska no. 20/08 of 5 March 2008.

² *Odluka o rasporedu po godinama dospijeća obveznica Bosne i Hercegovine koje se izdaju radi izmirenja obaveza po osnovu računa stare devizne štednje za Federaciju Bosne i Hercegovine i Brčko Distrikt Bosne i Hercegovine*, published in the Official Gazette of Bosnia and Herzegovina no. 29/08 of 8 April 2008.

³ *Odluka o emisiji obveznica Brčko Distrikta za izmirenje obaveza po osnovu verifikovanih računa stare devizne štednje*, published in the Official Gazette of the Brčko District no. 19/09.

30 September 2009 has been paid in time. In case of the late payment of any forthcoming instalment, default interest is to be paid at the statutory rate.

32. Since government bonds are redeemable before their maturity, once issued, they may be traded on the Stock Exchange. In the Republika Srpska, their current trade price on the Stock Exchange is around 90% of their nominal value. Given that government bonds have been issued in the Brčko District only recently, their trade price on the Stock Exchange has not yet consolidated. As mentioned above, it would appear that bonds have not yet been issued in the Federation of Bosnia and Herzegovina.

THE LAW

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

33. The present case is fundamentally about the compliance of the domestic legislation on “old” foreign-currency savings with the conditions laid down by Article 1 of Protocol No. 1, which is worded 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. Applicability of Article 1 of Protocol No. 1

34. The concept of “possessions” has an autonomous meaning which is not limited to the ownership of material goods. In the same way as material goods, certain other rights and interests constituting assets can also be regarded as “possessions” for the purposes of Article 1 of Protocol No. 1 (see, among many authorities, *Broniowski v. Poland* [GC], no. 31443/96, § 129, ECHR 2004-V). Claims, provided that they have a sufficient basis in domestic law, qualify as an “asset” and can thus be regarded as “possessions” within the meaning of this provision (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-IX).

35. The applicant in the present case, upon depositing foreign currency with a commercial bank, acquired an entitlement to collect at any time his deposit, together with accumulated interest, from the commercial bank or, in

the event of its “manifest insolvency” or bankruptcy, from the State (see paragraph 12 above). While it is true that towards the end of its existence, the SFRY and its commercial banking sector had difficulties in honouring their financial obligations (see paragraph 10 above), the entitlement subsisted.

36. Despite varying approaches to this issue following the dissolution of the SFRY and the shifting of responsibilities from one level of government to another (see paragraphs 14, 16-17, 19 and 27-32 above), there has never been any doubt that Bosnia and Herzegovina and/or its constituent units had a legal duty to repay “old” foreign-currency savings in locally based commercial banks. In such circumstances, the Court concludes that the applicant had, and still has, a claim amounting to a “possession” within the meaning of Article 1 of Protocol No. 1. The guarantees of that provision therefore apply to the present case.

B. Compliance with Article 1 of Protocol No. 1

1. Applicable rule of Article 1 of Protocol No. 1

37. As the Court has stated on a number of occasions, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting Parties are entitled, among other things, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I).

38. For many years, the applicant in the present case has been unable to freely dispose of his “old” foreign-currency savings. At the time of the introduction of his application (2 July 2002) and, more importantly, the date of the ratification of Protocol No. 1 by Bosnia and Herzegovina (12 July 2002), he could use those funds only to purchase certain State-owned companies (see paragraph 16 above). As he was the owner of the house in which he lived, the possibility of buying a State-owned flat was not open to the applicant. The 2004 legislation then followed (see paragraph 19 above) and finally the current legislation (see paragraphs 27-32 above), each limiting the use of “old” foreign-currency savings. This has not been contested before the Court.

In such circumstances, the present case falls to be examined under the third rule of Article 1 of Protocol No. 1 (see also *Trajkovski v. "the former Yugoslav Republic of Macedonia"* (dec.), no. 53320/99, ECHR 2002-IV).

2. General principles

39. The general principles were recently restated in *Broniowski*, cited above, §§ 147-51 (references omitted).

(a) Principle of lawfulness

40. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention.

The principle of lawfulness also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application.

(b) Principle of a legitimate aim in the public/general interest

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

42. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right

of property, including deprivation or control of property. Accordingly, the national authorities enjoy a wide margin of appreciation in this field.

Furthermore, the notion of “public interest” is necessarily extensive. In particular, the decision to enact laws expropriating or controlling property or affording publicly funded compensation for expropriated property will commonly involve consideration of political, economic and social issues. The Court has declared that, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, it will respect the legislature's judgment as to what is “in the public interest” unless that judgment is manifestly without reasonable foundation. This logic applies to such fundamental changes of a country's system as the transition from a totalitarian regime to a democratic form of government, the reform of the State's political, legal and economic structure and indeed the dissolution of the State followed by a brutal war, phenomena which inevitably involve the enactment of large-scale economic and social legislation.

(c) Principle of a “fair balance”

43. Both an interference with the peaceful enjoyment of possessions and an abstention from action must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures depriving a person of his or her possessions. In each case involving the alleged violation of that Article the Court must, therefore, ascertain whether by reason of the State's action or inaction the person concerned had to bear a disproportionate and excessive burden.

44. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are “practical and effective”. It must look behind appearances and investigate the realities of the situation complained of. That assessment may involve not only the relevant compensation terms – if the situation is akin to the taking of property – but also the conduct of the parties, including the means employed by the State and their implementation. In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner.

3. Application of the above principles to the present case

(a) The applicant's submissions

45. While recognising improvements in the current legislation, the applicant maintained that it was still incompatible with Article 1 of Protocol No. 1. First of all, according to his understanding of the current legislation, he would receive no payment in cash other than the initial payment of BAM 1,000. He would receive government bonds only at the end of the amortisation period (in 2015), which he would then have to sell on an unofficial market, most likely for a fraction of their nominal value. The applicant considered this to be unacceptable given notably his age and poor health. Secondly, he complained about the interest rate for the period from 1 January 1992 until 15 April 2006 (0.5%). Lastly, the applicant maintained that the current legislation lacked guarantees that the necessary funds would indeed be allocated on time.

(b) The Government's submissions

46. The Government acknowledged that the domestic authorities had assumed full liability for “old” foreign-currency savings in locally based commercial banks. According to preliminary data, the associated public debt exceeded 1 billion euros (EUR). In view of various other financial obligations of different levels of government and the overall circumstances, including the dissolution of the SFRY in 1991/92 and the subsequent war, the Government maintained that the current legislation was the best solution feasible. In support of their argument, they underlined that the legislation had been prepared with the assistance of the International Monetary Fund. As regards the interest rate for the period from 1 January 1992 until 15 April 2006, which the applicant particularly criticised, the Government claimed that it corresponded to the average interest rate applicable to overnight foreign-currency deposits for the same period. Lastly, they dismissed the applicant's concerns as regards the ability of the domestic authorities to implement the current legislation. Despite initial delays in the Federation of Bosnia and Herzegovina and the Brčko District, the Government emphasised that measures had been taken, including loans from commercial banks, to ensure timely payment of the forthcoming instalments.

(c) The third parties' submissions

47. The third parties, in their written submissions to the Court, accused all levels of government of incompetence and corruption. They criticised above all the 1997 legislation of the Federation of Bosnia and Herzegovina and the equivalent legislation in the Republika Srpska. Allegedly, the conditions had been such that “old” foreign-currency savers had no other

option but to accept privatisation certificates in lieu of their savings and sell them on an unofficial market for a fraction of their nominal value. The scheme, it was said, had allowed some notorious tycoons and war profiteers with ties with the Government to obtain valuable assets for hardly anything.

48. The association from the Federation of Bosnia and Herzegovina added that abuses also continued under the current legislation, but failed to substantiate this contention.

(d) The Court's assessment

49. Before embarking upon these issues, it should be underlined that the present case has a long history. The applicant lodged his complaints on 2 July 2002, before Bosnia and Herzegovina had even ratified Protocol No. 1, and repeatedly reaffirmed them thereafter. Although the contested situation has evolved, the Court will limit its analysis to the current legislation. The Court further wishes to underline that it considers it irrelevant that the applicant's complaints were lodged before the ratification of Protocol No. 1, because of the continuing nature of the impugned situation and the fact that the initial complaints have been reaffirmed on numerous occasions after ratification (see *Čeh v. Serbia*, no. 9906/04, §§ 36-39, 1 July 2008).

50. Turning to the general principles set out above, there is no doubt that the first two were respected in the present case (see, by analogy, *Trajkovski*, cited above). The Court will therefore proceed to examine the core question, namely whether the contested measures struck a “fair balance” between the relevant interests in the light of Article 1 of Protocol No. 1.

51. To begin with, it is a well-known fact that the global economic crisis of the 1970s hit the SFRY particularly hard. The SFRY turned to international capital markets and soon became one of the most indebted countries in the world. When the international community backed away from the loose lending practices of the 1970s, the SFRY resorted to foreign-currency savings of its citizens to pay foreign debts and finance imports. The Parliamentary Assembly of the Council of Europe has established that, as a result, a major part of the original deposits ceased to exist before the dissolution of the SFRY (see its Resolution 1410 (2004) adopted on 23 November 2004 – reproduced in *Kovačić and Others*, cited above, § 188 – as well as the explanatory memorandum by Mr Erik Jurgens). While it is true that “old” foreign-currency claims as such survived the dissolution of the SFRY and that Bosnia and Herzegovina assumed full liability for such claims in locally based banks, the fact that the original deposits had been spent, in all probability, by the former regime explains why Bosnia and Herzegovina has not been able to allow the uncontrolled withdrawal of these deposits.

52. The applicant maintained that he was entitled under the current legislation to no more than BAM 1,000 in cash until 27 March 2015. The

Court observes, however, that the applicant is entitled to receive his entire “old” foreign-currency savings by 27 March 2015 in eight instalments and has already thus received BAM 5,237.44. Given the catastrophic effects of the 1992-95 war and the ongoing reforms of the State's political, legal and economic structure, the Court accepts that this solution remained within the respondent State's margin of appreciation.

53. The applicant also expressed concerns that he would not be able to sell government bonds for anything near their nominal value. While understandable in view of past abuses (see paragraphs 19 and 47 above), such concerns are unsubstantiated. Unlike privatisation certificates under the former legislation, government bonds under the current legislation may be traded on the Stock Exchange, which, together with the interest on the bonds (at an annual rate of 2.5%) and the relatively short amortisation period, should ensure a significantly higher price. Indeed, such bonds are at present sold in the Republika Srpska for around 90% of their nominal value. There is no reason why such bonds should be traded for anything less in the Brčko District or, once issued, in the Federation of Bosnia and Herzegovina. Anyhow, the applicant is not required to sell government bonds in order to obtain his “old” foreign-currency savings. He could instead opt for cash payments in eight instalments. As opposed to privatisation certificates under the former legislation, government bonds under the current legislation are not designed to replace cash payments. On the contrary, their function is to make early cash payments possible for those who are unable or unwilling to wait until the end of the amortisation period (27 March 2015 in the applicant's case).

54. As regards the interest rate for the period from 1 January 1992 until 15 April 2006, which the applicant and the third parties considered to be too low, the Government submitted that it corresponded to the average interest rate applicable to overnight foreign-currency deposits. However, according to an official report submitted by the Government, at the request of the Court, in another case (*Kudić v. Bosnia and Herzegovina*, no. 28971/05, 9 December 2008), the relevant interest rate appears to be much higher – 2.33% on average (4.06% in 1992, 2.82% in 1993, 2.43% in 1994, 2.70% in 1995, 2.49% in 1996, 3.16% in 1997, 3.01% in 1998, 2.78% in 1999, 2.4% in 2000, 2.2% in 2001, 1.64% in 2002, 1.22% in 2003, 0.9% in 2004, 0.82% in 2005).

The Court has also taken note of the fact that the neighbouring countries, in which similar repayment schemes were set up, agreed to pay considerably higher interest rates: 5% in Croatia and 2% in Montenegro and Serbia.

Nevertheless, given the respondent State's wide margin of appreciation (see paragraph 42 above) and, in particular, the need to reconstruct the national economy following a devastating war, the Court does not consider this factor sufficient in itself to render the current legislation contrary to

Article 1 of Protocol No. 1. It agrees in this regard with the Constitutional Court of Bosnia and Herzegovina (see paragraph 28 above).

55. Whereas the Court finds the current legislation as such compatible with Article 1 of Protocol No. 1, it agrees with the applicant that its state of implementation is unsatisfactory. While in the Republika Srpska no delays were alleged, the same is not true for the Federation of Bosnia and Herzegovina and the Brčko District. In the Brčko District, government bonds, although due on 31 March 2008, were issued only on 30 June 2009. In the Federation of Bosnia and Herzegovina, it appears that bonds, likewise due on 31 March 2008, have not yet been issued. As a result, the applicant is still unable to sell them on the Stock Exchange and thus obtain early cash payments (see paragraph 53 above). Moreover, the instalments due under the current legislation on 27 September 2008 were paid almost three months later (on 24 December 2008) in the Brčko District and almost eight months later (on 14 May 2009) in the Federation of Bosnia and Herzegovina. Similarly, the instalment due on 27 March 2009 was paid almost three months later (on 11 June 2009) in the Brčko District and has not yet been paid in the Federation of Bosnia and Herzegovina.

56. The Court is aware that “old” foreign-currency savings, inherited from the SFRY, constitute a considerable burden on all successor States. Nonetheless, having undertaken to repay “old” foreign-currency savings in locally based banks and having set up a repayment scheme in this regard, the respondent State must stand by its promises. The rule of law underlying the Convention and the principle of lawfulness in Article 1 of Protocol No. 1 require the Contracting Parties to respect and apply, in a foreseeable and consistent manner, the laws they have enacted (see *Broniowski*, cited above, § 184).

57. In view of the deficient implementation of the domestic legislation on “old” foreign-currency savings, the Court concludes that the applicant may still claim to be a victim for the purposes of Article 34 of the Convention. Accordingly, the Government's preliminary objection is dismissed. For the same reason, there has been a violation of Article 1 of Protocol No. 1 to the Convention in the present case.

II. APPLICATION OF ARTICLE 46 OF THE CONVENTION

58. Article 46 of the Convention reads as follows:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

A. The parties' submissions

59. The Government, as opposed to the applicant, objected to the application of the pilot-judgment procedure in the present case and repeated that the contested legislation complied with the conditions laid down by Article 1 of Protocol No. 1.

B. The Court's assessment

1. General principles

60. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 120, ECHR 2002-VI; *Lukenda v. Slovenia*, no. 23032/02, § 94, ECHR 2005-X; and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008-...). This obligation has been consistently emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (see, for example, ResDH(97)336, IntResDH(99)434, IntResDH(2001)65 and ResDH(2006)1).

61. In order to facilitate effective implementation of its judgments along these lines, the Court may adopt a pilot-judgment procedure allowing it to clearly identify in a judgment the existence of structural problems underlying the violations and to indicate specific measures or actions to be taken by the respondent state to remedy them (see *Broniowski*, cited above, §§ 189-94, and *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 231-39, ECHR 2006-VIII). This adjudicative approach is, however, pursued with due respect for the Convention institutions' respective functions: it falls to the Committee of Ministers to evaluate the implementation of individual and general measures under Article 46 § 2 of the Convention (see, by analogy, *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, § 42, ECHR 2005-IX, and *Hutten-Czapska v. Poland* (friendly settlement) [GC], no. 35014/97, § 42, ECHR 2008-...).

62. Another important aim of the pilot-judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at domestic level, thus implementing the principle of subsidiarity which underpins the Convention system. Indeed, the Court's task as defined by Article 19, that is, to “ensure the observance

of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto”, is not necessarily best achieved by repeating the same findings in large series of cases (see, by analogy, *E.G. v. Poland* (dec.), no. 50425/99, § 27, ECHR 2008-...). The object of the pilot-judgment procedure is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention rights in question in the national legal order (see *Volkenberg and Others v. Poland* (dec.), no. 50003/99, § 34, ECHR 2007-XIV). While the respondent State's action should primarily aim at the resolution of such a dysfunction and at the introduction, where appropriate, of effective domestic remedies in respect of the violations in question, it may also include *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements. The Court may decide to adjourn the examination of all similar cases, thus giving the respondent State an opportunity to settle them in such various ways (see, by analogy, *Broniowski*, cited above, § 198, and *Xenides-Arestis v. Turkey*, no. 46347/99, § 50, 22 December 2005). If, however, the respondent State fails to adopt such measures following a pilot judgment and continues to violate the Convention, the Court will have no choice but to resume the examination of all similar applications pending before it and to take them to judgment so as to ensure effective observance of Convention (see, by analogy, *E.G. v. Poland*, cited above, § 28).

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

63. The violation which the Court has found in the present case affects many people. According to the International Monetary Fund, more than a quarter of the population of Bosnia and Herzegovina had “old” foreign-currency savings (see *Bosnia and Herzegovina: Selected Economic Issues*, IMF Country Report No. 04/54, March 2004, p. 26). Moreover, there are already more than 1,350 similar applications, submitted on behalf of more than 13,500 applicants, pending before the Court. This represents a serious threat to the future effectiveness of the Convention machinery. The Court therefore considers it appropriate to apply the pilot-judgment procedure in the present case, notwithstanding the Government's objection in this regard.

64. Although it is in principle not for the Court to determine what remedial measures may be appropriate to satisfy the respondent State's obligations under Article 46 of the Convention, in view of the systemic situation which it has identified, the Court would observe that general measures at national level are undoubtedly called for in execution of the present judgment. Notably, the Court considers that government bonds must be issued and any outstanding instalments must be paid in the Federation of Bosnia and Herzegovina within six months from the date on which the present judgment becomes final. Within the same time-limit, the Federation of Bosnia and Herzegovina must also undertake, as the Republika Srpska

and the Brčko District did (see paragraph 31 above), to pay default interest at the statutory rate in the event of late payment of any forthcoming instalment. As regards the past delays, the Court does not find it necessary, at present, to order that adequate redress be awarded to all persons affected. If, however, the respondent State fails to adopt the general measures indicated above and continues to violate the Convention, the Court may reconsider the issue of redress in an appropriate future case.

65. Turning to the many similar applications pending before the Court:

(i) The Court decides to adjourn adversarial proceedings for six months from the date on which the present judgment becomes final in any cases pertaining to “old” foreign-currency savings in the Federation of Bosnia and Herzegovina and the Brčko District in which the applicants have obtained verification certificates (see, by analogy, *Burdov v. Russia (no. 2)*, no. 33509/04, § 146, 15 January 2009). This decision is without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list in accordance with the Convention.

(ii) The Court may declare inadmissible in accordance with the Convention any cases pertaining to “old” foreign-currency savings in which the applicants have not obtained verification certificates, because it has found a violation of Article 1 of Protocol No. 1 only with respect to delays in the implementation of the current legislation (see paragraph 55 above) and those who have not obtained a verification certificate cannot be considered to be affected by those delays (see paragraph 29 above). That being said, the respondent State must ensure that the relevant deadlines are extended for at least six months from the date on which the present judgment becomes final to enable everyone to obtain a verification certificate.

(iii) Lastly, the Court may declare inadmissible any cases pertaining to “old” foreign-currency savings in the Republika Srpska, even if the applicants have obtained verification certificates, because no delays in the implementation of the current legislation occurred in that Entity.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. Article 41 of the Convention provides:

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

A. Damage

67. Under the head of pecuniary damage, the applicant repeated his complaints concerning the content of the current legislation: he requested immediate payment of the total amount of his “old” foreign-currency savings and a higher interest rate. The Government disagreed. The Court observes that it has rejected these complaints (see paragraphs 51-54 above). It therefore also dismisses the applicant's claim for pecuniary damage.

68. The applicant further claimed BAM 20,000 in respect of non-pecuniary damage. The Government maintained that the claim was unjustified. The Court, however, considers it clear that the applicant sustained some non-pecuniary loss arising from the breach of the Convention found in this case. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 5,000 under this head plus any tax that may be chargeable.

B. Costs and expenses

69. The applicant has already received under the Court's legal-aid scheme EUR 850 for the written part of the proceedings, EUR 1,350 plus travelling costs in connection with appearance at the hearing and EUR 300 for translation costs. On 20 March 2009 he sought reimbursement of additional translation costs in the amount of EUR 729. The Government described this claim as belated.

70. While it is true that the applicant should have submitted his claim by 1 February 2009 (as requested in a letter of 15 December 2008 from the Court) or, at the latest, at the hearing on 10 March 2009, the Court considers that the applicant's additional translation costs should be met in full.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the applicant may still claim to be a victim for the purposes of Article 34 of the Convention and dismisses the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that the above violation represents a systemic problem;
4. *Holds* that the respondent State must ensure, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
 - (a) that government bonds are issued in the Federation of Bosnia and Herzegovina;
 - (b) that any outstanding instalments are paid in the Federation of Bosnia and Herzegovina;
 - (c) that the Federation of Bosnia and Herzegovina undertakes to pay default interest at the statutory rate in the event of late payment of any forthcoming instalment;
5. *Decides* to adjourn, for six months from the date on which the present judgment becomes final, the proceedings in all cases concerning “old” foreign-currency savings in the Federation of Bosnia and Herzegovina and the Brčko District in which the applicants have obtained verification certificates, without prejudice to the Court's power at any moment to declare inadmissible any such case or to strike it out of its list in accordance with the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 729 (seven hundred and twenty nine euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into convertible marks at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President

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

N.B.
F.A.

CONCURRING OPINION OF JUDGE MIJOVIĆ

Although I have voted with the majority in the Chamber on all the operative provisions of the judgment, my reasoning with respect to a violation of Article 1 of Protocol No. 1 to the Convention differs to a certain extent from the views expressed in the judgment.

According to the present judgment, Article 1 of Protocol No. 1 has been violated because of the deficient implementation of the domestic legislation on “old” foreign-currency savings, whilst in my personal opinion, a violation should be based on the solutions and measures contained in the legislation in question. The Chamber found that the current legislation as such was compatible with Article 1 of Protocol No. 1 but that it was its state of implementation that was unsatisfactory (namely, because government bonds in the Federation of Bosnia and Herzegovina had not yet been issued and certain instalments had not yet been paid).

It is my view, however, that the current legislation - perhaps it is better to say the contested measures - does not in itself strike a “fair balance” between the demands of the general interest of the community and the requirement of the protection of the individual's rights.

The problem of “old” foreign-currency savings has a very long history and, as pointed out in the judgment, dates back to the 1980s. It survived the dissolution of the SFRY, and Bosnia and Herzegovina assumed full liability for this sort of claim. Preliminary data show that the associated public debt exceeds 1 billion euros. Given the overall circumstances, and above all the need to reconstruct the national economy, it is reasonable to accept that the owners of so-called “frozen” bank accounts cannot be paid their money without a carefully designed repayment scheme. That is a part of the judgment's reasoning I do support.

Where I disagree with the Chamber, however, is with regard to the legislative provision concerning the reduction of the interest rate to 0.5% for the period from 1 January 1992 to 15 April 2006, a measure that I consider neither justified nor proportional. In accordance with an official report submitted by the Government (see the judgment, paragraph 54) it is obvious that the relevant interest rate appears to be much higher - 2.33% on average). Compared to the interest rate in the neighbouring countries¹, which have more or less experienced similarly catastrophic effects of the armed conflict and the ongoing reforms and have set up similar “old” foreign-currency savings repayment schemes, this interest rate of 0.5% is the lowest. The Chamber was of the opinion that this issue fell “within the State's margin of appreciation”, whilst in my opinion this interest rate provision would be more than sufficient in itself to render the current legislation contrary to Article 1 of Protocol No. 1.

¹ 5% in Croatia and 2% in Serbia and Montenegro

On the other hand, if the Chamber had opted for this line of reasoning, either the State or the Entities and the Brčko District would have had to pass new legislation which might subsequently have proven more time-consuming, economically challenging and questionable, and very discouraging for almost one quarter of the Bosnia and Herzegovina population - people who are not merely tired of waiting but are already at an advanced age and in despair. That is why I decided to vote with the majority.