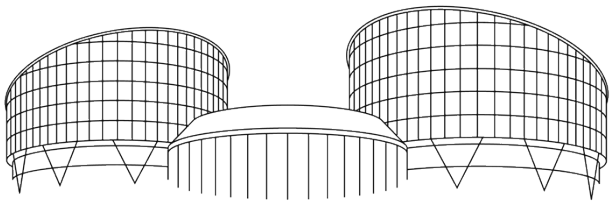

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

12 March 2010

FOURTH SECTION

Application no. 60642/08
by Emina ALIŠIĆ and Others
against Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia", Serbia and Slovenia
lodged on 30 July 2005

STATEMENT OF FACTS

THE FACTS

1. The applicants, Ms Emina Ališić, Mr Aziz Sadžak and Mr Sakib Šahdanović, citizens of Bosnia and Herzegovina, were born in 1976, 1949 and 1952, respectively, and live in Germany. They are represented before the Court by Mr B. Mujčin, a lawyer practising in Germany.

A. The circumstances of the case

1. Relevant background to the present case

2. The present case relates to the issue of "old" foreign-currency savings (foreign currency deposited before the dissolution of the Socialist Federal Republic of Yugoslavia – "the SFRY").

(a) Relevant information on the banking system of the SFRY

3. 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 separate 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).

4. 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 1985[1] and section 76(1) of the Banks and Other Financial Institutions Act 1989[2]).

5. The Foreign-Currency Transactions Act 1977[3] 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 emphasised, 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 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).

6. 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 in local commercial banks to pay foreign debts and finance imports. At the end of the 1980s, statutory restrictions on the repayment of foreign-currency deposits were therefore imposed (see section 71 of the Foreign-Currency Transactions Act 1985).

7. Within the framework of the Marković reforms, the SFRY abolished the system of basic and associated banks described above. This shift in the banking regulations allowed some basic banks to opt for an independent status, while other basic banks became branches (without separate legal personality) of the associated banks to which they had beforehand belonged.

---

[1] *Zakon o deviznom poslovanju*, published in Official Gazette of the SFRY no. 66/85, amendments published in 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 Official Gazette of the SFRY no. 10/89, amendments published in Official Gazette nos. 40/89, 87/89, 18/90, 72/90 and 79/90.

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

8. 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 a commercial bank (see sections 1035 and 1045 of the Civil Obligations Act 1978[4]) or, in the event of the 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 1989[5]; and the relevant secondary legislation[6]).

9. In 1991/92 the SFRY dissolved. 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.

(b) Relevant information on the Ljubljanska banka, the Investbanka and their branches in Bosnia and Herzegovina

(i) Ljubljanska banka

10. Until the Marković reforms, the Ljubljanska banka Sarajevo (a basic bank) had its own legal personality, although it belonged to the Ljubljanska banka group (an associated bank). However, on 1 January 1990 the Ljubljanska banka Sarajevo became a branch (without legal personality) of the Ljubljanska banka Ljubljana. As a result, the latter took over the former's rights, assets and liabilities.

11. Following the dissolution of the SFRY, the Slovenian authorities first nationalised and then, in 1994, restructured the Ljubljanska banka by creating a new and separate legal entity, the Nova Ljubljanska banka, which took over all of the old Ljubljanska banka's assets and liabilities on Slovenian territory. The old Ljubljanska banka, among other things, maintained its links with its branches in other successor States and retained full liability for "old" foreign-currency savings in those branches (see *Kovačić and Others*, cited above, § 171). At the same time, any proceedings concerning such savings were stayed by virtue of law pending the outcome of the succession negotiations (ibid., §§ 67-73). It would appear that the old Ljubljanska banka is still State-owned and administered by the Bank Rehabilitation Agency (ibid., §§ 65 and 171).

12. A homonymous bank was created in Bosnia and Herzegovina on 2 July 1993. That bank is apparently not a legal successor of the Ljubljanska

---

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

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

[6] *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 Official Gazette of the SFRY no. 27/90.

banka Sarajevo mentioned above (see decision AP 164/04 of the Constitutional Court of Bosnia and Herzegovina of 1 April 2006, § 56).

(ii) Investbanka

13. Until the Marković reforms, the Investbanka (a basic bank) had its own legal personality, although it belonged to the Beogradska udružena banka group (an associated bank). On 1 January 1990 the Investbanka became an independent bank with corporate headquarters in Serbia and a number of branches (without legal personality) in Bosnia and Herzegovina.

14. On 3 January 2002 the Serbian authorities made a bankruptcy order against the Investbanka and then sold its branches abroad. As a result, all enforcement proceedings against the bank were stayed by virtue of law and the statutory guarantee of the State was activated (see section 99 of the Insolvency Act 1989[7] and section 18 of the Banks and Other Financial Institutions Insolvency Act 1989). The bankruptcy proceedings are still pending.

2. The present case

15. The facts of the case, as submitted by the applicants, may be summarised as follows.

16. Ms Ališić and Mr Sadžak deposited foreign currency in the Ljubljanska banka Sarajevo and Mr Šahdanović in the Tuzla branch of the Investbanka. On 31 December 1991 the balance in Ms Ališić's account was 4,715.56 German marks (DEM) and in Mr Sadžak's accounts DEM 129,874.30. On 17 April 1992 the balance in Mr Šahdanović's account was DEM 51,280.48.

B. General international law concerning State succession

17. The matter of State succession is regulated by customary rules, to some extent codified in the following treaties: the 1978 Vienna Convention on Succession of States in respect of Treaties and the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts ("the 1983 Vienna Convention"). The latter is not yet in force.

The fundamental rule is that States must together settle all aspects of succession by agreement (see Opinion No. 9 of the Arbitration Commission of the International Conference on the Former Yugoslavia[8]). If one of the States concerned refused to cooperate, it would be in breach of that fundamental obligation and would be liable internationally, with all the legal consequences this entails, notably the possibility for States sustaining loss to take non-forcible counter-measures, in accordance with international law (see Opinion No. 12 of the Arbitration Commission). While it is not

---

[7] *Zakon o prinudnom poravnanju, stečaju i likvidaciji*, published in Official Gazette of the SFRY no. 84/89.

[8] The Arbitration Commission of the International Conference on the Former Yugoslavia (also known as Badinter Commission) was set up by the European Community and its Member States on 27 August 1991. Between late 1991 and the middle of 1993, it handed down fifteen opinions pertaining to legal issues arising from the dissolution of the SFRY (see International Law Reports 92 (1993), pp. 162-208, and 96 (1994), pp. 719-37).

required that each category of property and debts of a predecessor State be divided in equitable proportions, an overall outcome must be an equitable division (see Article 41 of the 1983 Vienna Convention and Opinion No. 13 of the Arbitration Commission).

As regards private rights (such as claims of private persons against other private persons or States), they do not cease on a change of sovereignty (see the Advisory Opinion of the Permanent Court of International Justice in the *German Settlers in Poland* case, Series B, No. 6, 10 September 1923, p.36, and Article 6 of the 1983 Vienna Convention).

C. Agreement on Succession Issues

18. The Agreement on Succession Issues was the culmination of nearly ten years of intermittent negotiations under the auspices of the International Conference on the former Yugoslavia and the High Representative (appointed pursuant to Annex 10 to the General Framework Agreement for Peace in Bosnia and Herzegovina). It entered into force between Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia (succeeded in 2006 by Serbia), "the former Yugoslav Republic of Macedonia" and Slovenia on 2 June 2004. The relevant provisions read as follows:

Article 2 § 3 of Annex C

"Other financial liabilities [of the SFRY] include:

(a) guarantees by the SFRY or its National Bank of Yugoslavia of hard currency savings deposited in a commercial bank and any of its branches in any successor State before the date on which it proclaimed independence; and

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

Article 3 § 1 of Annex C

"A major portion of the assets and liabilities of the SFRY have already in practice been distributed on the basis of agreements between the successor States or agreements between them individually and the institutions concerned, namely:

...

(g) guarantees by the SFRY of savings deposited before certain dates with the Post Office Savings Bank and its branches

...;

Article 7 of Annex C

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

D. Other relevant international documents

19. On 26 August 2001 the Institute of International Law adopted some guiding principles relating to the succession of States in respect of property and debts. The relevant principles are:

Article 6: Role of Agreements between States Concerned

"1. In the event of succession, the States concerned should, in good faith, settle by agreement amongst themselves the apportionment of State property and debts bearing in mind the criteria for apportionment enunciated in this Resolution.

2. States concerned should act likewise towards private creditors with respect to the allocation of debts. Further, private creditors should cooperate with the States concerned in respect of the apportionment of State property held by them."

Article 8: Result of Apportionment

"1. The result of the apportionment of property and debts must be equitable.

2. If the apportionment of property and debts does not produce an equitable result and cannot be otherwise corrected, the predecessor State and the successor State or successor States shall settle this matter by equitable compensation.

3. Unjust enrichment shall be avoided.

4. The apportionment of property and debts shall preserve the capacity of States concerned to survive as viable entities."

Article 9: Correlation Between the Proportion of Property and of Debts in the Repartition Operations and Equity

"1. In all cases of succession involving the passing of debts and property, a correlation should be ensured between the proportion of such property, rights and interests on the one hand, and State debts on the other. They shall pass together.

2. For the various categories of State succession, equity dictates that there be no difference of substance between the result of the apportionment of property and the result of the apportionment of debts."

Article 12: Notion of State Property

"1. In principle, the term 'State property of the predecessor State' means all property, rights and interests which belong to the predecessor State at the date of the State succession pursuant to its domestic law and in conformity with international law.

2. The term 'State property' equally covers property of public institutions but does not include property of private legal persons, even if they have been created with public funds."

Article 22: State Debts

"The term 'State debt' covers:

a. any financial obligation of a predecessor State towards another State, an international organization or any other subject of international law, arising in conformity with international law;

b. any financial obligation of a predecessor State towards any natural or legal person under domestic law."

Article 24: Effect of State Succession on Private Creditors and Debtors

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

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

..."

Article 25: Acquired Rights

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

E. Relevant domestic law

1. Socialist Federal Republic of Yugoslavia

20. For the relevant law see *Kovačić and Others*, cited above, §§ 164-68.

2. Bosnia and Herzegovina

21. Bosnia and Herzegovina agreed to recompense "old" foreign-currency savings in locally-based banks, regardless of the citizenship of the depositor concerned. Local branches of foreign-based banks, such as the Ljubljanska banka and the Investbanka, were expressly excluded (see section 2 of the Old Foreign-Currency Savings Act 2006[9]).

3. Republic of Croatia

22. Croatia agreed to recompense "old" foreign-currency savings of its citizens in locally-based banks. Furthermore, Croatian citizens have been entitled to transfer their "old" foreign-currency savings from local branches of foreign-based banks, such as the Ljubljanska banka, to locally-based banks (see section 14 of the Old Foreign-Currency Savings Act 1993[10] and the relevant secondary legislation[11]).

4. Republic of Serbia

23. Serbia agreed to recompense "old" foreign-currency savings in local branches of locally-based banks, unless they belonged to citizens of Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia" or Slovenia (see section 21 of the Old Foreign-Currency Savings Act 2002[12]).

---

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

[10] *Zakon o pretvaranju deviznih depozita građana u javni dug Republike Hrvatske*, published in Official Gazette of the Republic of Croatia no. 106/93 of 25 November 1993.

[11] *Pravilnik o utvrđivanju uvjeta i načina pod kojima građani mogu prenijeti svoju deviznu štednju s organizacijske jedinice banke čije je sjedište izvan Republike Hrvatske na banke u Republici Hrvatskoj*, published in Official Gazette of the Republic of Croatia no. 19/94 of 11 March 1994.

[12] *Zakon o regulisanju javnog duga Savezne Republike Jugoslavije po osnovu devizne štednje građana*, published in Official Gazette of the Federal Republic of Yugoslavia no. 36/02 of 3 July 2002.

As regards branches of locally-based banks in other successor States, any such claims remained frozen pending the succession negotiations.

5. Republic of Slovenia

24. Slovenia agreed to recompense "old" foreign-currency savings in locally-based banks and local branches of foreign-based banks, regardless of the citizenship of the depositor concerned (see section 1 of the Old Foreign-Currency Savings Act 1993[13]). As regards branches of the Ljubljanska banka in other successor States, any such claims remained frozen pending the succession negotiations (see paragraph 11 above).

6. "The former Yugoslav Republic of Macedonia"

25. This successor State agreed to recompense "old" foreign-currency savings in locally-based banks and local branches of foreign-based banks, regardless of the citizenship of the depositor concerned (see section 2 of the Old Foreign-Currency Savings Act 2000[14]).

COMPLAINTS

26. While relying on various Articles of the Convention (Articles 6, 13, 14 and 17 and Article 1 of Protocol No. 1), the applicants complain of their continued inability to recover "old" foreign-currency savings deposited with the Ljubljanska banka Sarajevo and the Tuzla branch of the Investbanka.

---

[13] *Zakon o poravnavanju obveznosti iz neizplačanih deviznih vlog*, published in Official Gazette of the Republic of Slovenia no. 7/93 of 4 February 1993.

[14] *Закон за начинот и постапката на исплатување на депонираните девизни влогови на граѓаните по кои гарант е Република Македонија*, published in"Official Gazette of the Republic of Macedonia" no. 32/00 of 21 April 2000, amendments published in Official Gazette nos. 108/00 of 20 December 2000, 4/02 of 25 January 2002 and 42/03 of 30 June 2003.

QUESTIONS TO THE PARTIES

1. Is the application compatible with the provisions of the Convention, *ratione temporis*, *ratione personae*, *ratione materiae* and *ratione loci* (see *X, Y and Z v. Germany*, no. 7694/76, Commission decision of 14 October 1977, DR 12, p. 131; *S.C. v. France*, no. 20944/92, Commission decision of 20 February 1995, DR 80, p. 78; *Abraini Leschi and Others v. France*, no. 37505/97, Commission decision of 22 April 1998, DR 93, p. 120; *De Dreux-Breze v. France* (dec.), no. 57969/00, 15 May 2001; *Trajkovski v. "the former Yugoslav Republic of Macedonia"* (dec.), no. 53320/99, ECHR 2002-IV; *Kovačić and Others v. Slovenia* (dec.), nos. 44574/98, 45133/98 and 48316/99, 9 October 2003; *Broniowski v. Poland* [GC], no. 31443/96, §§ 132-33, ECHR 2004-V; *Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, §§ 77 and 112-13, ECHR 2005-V; *Bata v. the Czech Republic* (dec.), no. 43775/05, 24 June 2008; *Sokołowski v. Poland* (dec.), no. 39590/04, 7 July 2009; *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, 3 November 2009; and *Molnar Gabor v. Serbia*, no. 22762/05, 8 December 2009)?

2. If so, has there been a breach of Article 1 of Protocol No. 1 to the Convention arising from the applicants' continued inability to recover their "old" foreign-currency savings deposited with the Ljubljanska banka Sarajevo and the Tuzla branch of the Investbanka, a breach of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 and/or a breach of Article 14 of the Convention in conjunction with either Article 13 or Article 1 of Protocol No. 1?

3. What is the current balance in the applicants' "old" foreign-currency accounts?

4. What is the current status of the "old" Ljubljanska banka, the Ljubljanska banka Sarajevo, the Investbanka and the Tuzla branch of the Investbanka? Are they still under the regime of "social ownership"? If not, who is their registered owner? In this connection, the respondent Governments are requested to provide the relevant extracts from the companies register indicating the current situation as well as any and all changes since 1 January 1991. The respondent Governments are also requested to provide an inventory of land and buildings belonging to the Ljubljanska banka Sarajevo and the Tuzla branch of the Investbanka.

5. As regards the Ljubljanska banka Sarajevo created during the 1992-95 war in Bosnia and Herzegovina, which is apparently not a legal successor of the pre-war Ljubljanska banka Sarajevo, the Government of Bosnia and Herzegovina are requested to provide the relevant extracts from the companies register and an inventory of land and buildings belonging to that bank.

6. Was the SFRY's statutory guarantee activated before the dissolution of the SFRY with regard to foreign-currency savings in the "old" Ljubljanska banka, the Ljubljanska banka Sarajevo, the Investbanka and/or the Tuzla branch of the Investbanka? If not, was such a guarantee activated in any of the successor States at any moment after the dissolution of the SFRY?

7. It transpires from Article 3 § 1 (g) of Annex C to the Agreement on Succession Issues that the financial liabilities arising from the SFRY's statutory guarantee of savings deposited with the Post Office Savings Bank and its branches have been distributed. How exactly has this been done?

8. In accordance with Article 7 of Annex C to the Agreement on Succession Issues, the respondent States were to negotiate under the auspices of the Bank for International Settlement without delay the distribution of the financial liabilities arising from the SFRY's statutory guarantee of foreign-currency savings deposited with commercial banks and their branches. Have any such negotiations started and, if so, what are their current status and scope (that is, to which banks do they relate)?

9. How much foreign currency was actually transferred from the "old" Ljubljanska banka, the Ljubljanska banka Sarajevo, the Investbanka and the Tuzla branch of the Investbanka to the National Bank of Yugoslavia and what happened to foreign currency which had not been so transferred?