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

FOURTH SECTION

DECISION

Application no. 33805/17
Stojan ZELJKOVIĆ
against Slovenia

The European Court of Human Rights (Fourth Section), sitting on 5 September 2017 as a Committee composed of:

Vincent A. De Gaetano, *President,*
Georges Ravarani,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 17 April 2017,

Having regard to the decision to apply the pilot-judgment procedure and to adjourn its consideration of applications deriving from the same systemic problem identified in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* ([GC], no. 60642/08, § 150 and point 12 of the operative part, ECHR 2014),

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Stojan Zeljković, is a Bosnian-Herzegovinian national, who was born in 1943 and lives in Sarajevo. He was represented before the Court by Mr M. Spaho, a lawyer practising in Sarajevo.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. On 31 December 1991 the applicant had less than 2,000 Deutschmarks (DEM) in his account at the Sarajevo branch of Ljubljanska Banka (for the relevant background see *Ališić and Others v. Bosnia and*

Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia [GC], no. 60642/08, §§ 12-52, ECHR 2014). It would appear that he has not made any withdrawals since that date. In 1998 his savings were transferred to a privatisation account administered by the relevant authorities in Bosnia and Herzegovina (ibid., §§ 26 and 32).

4. On 11 January 2017 the Succession Fund of Slovenia rejected his request for verification pursuant to section 2(2) of the Act on the Implementation of the judgment of the European Court of Human Rights in the case no. 60642/08[1] (hereinafter also referred to as "the Ališić Implementation Act" – see paragraph 8 below).

5. On 4 February 2017 the applicant instituted proceedings before the Administrative Court of Slovenia. At the date of the latest information available to the Court (6 July 2017), the proceedings were still pending.

6. Shortly thereafter, an association of savers, of which the applicant is a member, lodged a petition for an abstract review of the constitutionality of the Ališić Implementation Act on behalf of the applicant and others in his position. It argued, *inter alia*, that section 2(2) of the Ališić Implementation Act was not in line with the Convention as interpreted by the European Court of Human Rights in the *Ališić and Others* judgment cited above. Although it would appear that the applicant did not give a specific mandate to the association to pursue those proceedings, the association referred to the applicant's case in its petition to the Constitutional Court and the applicant referred to that petition in his application before this Court. Moreover, the purpose of the association, according to its constitutional documents, is precisely the protection of the rights of the "old" foreign-currency savers before the relevant authorities in Bosnia and Herzegovina and abroad.

7. At the date of the latest information available to the Court (6 July 2017), the case was pending before the Constitutional Court of Slovenia.

B. Relevant domestic law

8. The Ališić Implementation Act is quoted in *Hodžić v. Slovenia* (dec.), no. 3461/08, § 4, 4 April 2017. Notably, its section 2(2), in the relevant part, reads as follows:

> "The unpaid old foreign-currency savings defined in subsection (1) above are not old foreign-currency savings or their parts which were transferred, on the basis of regulations applicable in countries where both branches mentioned in subsection (1) above were operating, to another legal entity or to special accounts for the purpose of special use. These savings include ... old foreign-currency savings which the savers of Sarajevo Main Branch transferred to special accounts for the purpose of the privatisation process in accordance with the regulations of Bosnia and Herzegovina."

1. *Zakon o načinu izvršitve sodbe evropskega sodišča za človekove pravice v zadevi številka 60642/08*, Official Gazette of the Republic of Slovenia, no. 48/2015.

9. Furthermore, the relevant parts of the Constitutional Court Act[1] provide:

I. GENERAL PROVISIONS

Section 1

"(1) The Constitutional Court is the highest body of the judicial power for the protection of constitutionality, legality, and human rights and fundamental freedoms.

(2) In relation to other state authorities, the Constitutional Court is an autonomous and independent state authority.

(3) The decisions of the Constitutional Court are binding."

II. REVIEW OF THE CONSTITUTIONALITY AND LEGALITY OF REGULATIONS AND GENERAL ACTS ISSUED FOR THE EXERCISE OF PUBLIC AUTHORITY

Section 22

"(1) The procedure for the review of the constitutionality and legality of regulations and general acts issued for the exercise of public authority is initiated by the submission of the written request of an applicant or by a Constitutional Court order on the acceptance of a petition to initiate a review procedure.

(2) The review of the constitutionality and legality of regulations and general acts issued for the exercise of public authority also extends to a review of the conformity of laws and other regulations with ratified treaties and with the general principles of international law."

Section 23

"(1) When in the process of deciding a court deems a law or part thereof which it should apply to be unconstitutional, it stays the proceedings and by a request initiates proceedings for the review of its constitutionality.

(2) If the Supreme Court deems a law or part thereof which it should apply to be unconstitutional, it stays proceedings in all cases in which it should apply such law or part thereof in deciding on legal remedies and by a request initiates proceedings for the review of its constitutionality.

(3) If by a request the Supreme Court initiates proceedings for the review of the constitutionality of a law or part thereof, a court which should apply such law or part thereof in deciding may stay proceedings until the final decision of the Constitutional Court without having to initiate proceedings for the review of the constitutionality of such law or part thereof by a separate request."

Section 24(1) and (2)

"(1) Anyone who demonstrates legal interest may lodge a petition that the procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority be initiated.

---

[1] *Zakon o Ustavnem sodišču*, Official Gazette of the Republic of Slovenia, nos. 64/07 and 109/12; the English translation of the Act is available on the Constitutional Court's website.

(2) Legal interest is deemed to be demonstrated if a regulation or general act issued for the exercise of public authority whose review has been requested by the petitioner directly interferes with his rights, legal interests, or legal position."

Section 26

"(1) A petition is first examined by the Constitutional Court judge determined by the work schedule, who collects information and obtains clarifications necessary for the Constitutional Court to decide whether to initiate a procedure.

(2) The Constitutional Court dismisses a petition if it is manifestly unfounded or if it cannot be expected that an important legal question will be resolved.

(3) The Constitutional Court decides by an order on the acceptance or dismissal of a petition by a majority vote of judges present. The order to dismiss a petition must include a statement of reasons.

(4) If the Constitutional Court accepts a petition, it may immediately proceed to decide on the merits of the case if the state of the facts has been clarified and if during the examination of the petition the opposing party was given the opportunity to make statements."

Section 43

"The Constitutional Court may in whole or in part abrogate a law which is not in conformity with the Constitution. Such abrogation takes effect the day following the publication of the decision on the abrogation, or upon the expiry of a period of time determined by the Constitutional Court."

III. CONSTITUTIONAL COMPLAINT

Article 50(1)

"(1) Due to a violation of human rights or fundamental freedoms, a constitutional complaint may, under the conditions determined by this Act, be lodged against individual acts by which state authorities, local community authorities, or bearers of public authority decided the rights, obligations, or legal entitlements of individuals or legal entities."

Article 51

"(1) A constitutional complaint may be lodged only after all legal remedies have been exhausted.

(2) Before all extraordinary legal remedies have been exhausted, the Constitutional Court may exceptionally decide on a constitutional complaint if the alleged violation is manifestly obvious and if irreparable consequences for the complainant would result from the implementation of the individual act."

Article 59(2)

"(2) If the Constitutional Court deems that the challenged individual act is based on a potentially unconstitutional or unlawful regulation or general act issued for the exercise of public authority, it initiates proceedings for the review of the constitutionality or legality of such regulation or general act issued for the exercise of public authority and decides by applying the provisions of Chapter IV of this Act."

COMPLAINT

10. Relying on Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention, the applicant complained that he had been unable to withdraw his "old" foreign-currency savings.

THE LAW

11. According to the applicant, the impossibility to withdraw his "old" foreign-currency savings deposited with the Sarajevo branch of Ljubljanska Banka amounted to a violation of Article 1 of Protocol No. 1 to the Convention, taken alone or read in conjunction with Article 14 of the Convention.

These provisions read as follows:

Article 1 of Protocol No. 1

"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."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

12. The applicant submitted that section 2(2) of the Ališić Implementation Act (see paragraph 8 above), excluding all savings which had been transferred to privatisation accounts administered by the relevant authorities in Bosnia and Herzegovina from the repayment scheme, was not in line with the Convention as interpreted by the Court in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* ([GC], no. 60642/08, ECHR 2014).

13. According to the Court's settled case-law, it is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This Court is concerned with supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental

rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged breach. The rule is therefore an indispensable part of the functioning of this system of protection (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69, 25 March 2014).

14. States do not have to answer before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see *Vučković and Others*, cited above, § 70, and *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, § 115, ECHR 2016). The Court cannot emphasise enough that it is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see *Demopoulos and Others v. Turkey* [GC] (dec.), nos. 46113/99 and 7 others, § 69, ECHR 2010).

15. Nevertheless, the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198; *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV; and *Dalia v. France*, 19 February 1998, § 38, *Reports* 1998-I). In addition, in accordance with the "generally recognised principles of international law", there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his or her disposal (see *Selmouni v. France* [GC], no. 25803/94, § 75, ECHR 1999‑V). However, the Court points out that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Akdivar and Others*, cited above, § 71; *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX; and *Grzinčič v. Slovenia*, no. 26867/02, § 84, 3 May 2007).

16. The Court finally recalls that in the case of *Hodžić v. Slovenia* ((dec.), no. 3461/08, 4 April 2017), it reached the conclusion that the Ališić Implementation Act met the criteria set out in the pilot judgment. Consequently, the Court requested all those who had "old" foreign-currency savings at the Sarajevo branch of Ljubljanska Banka to use the remedy introduced by that Act, namely, a request for verification (ibid, § 20).

17. Turning to the present case, the Court notes that the applicant did introduce a request for verification. However, the latter was rejected by the Succession Fund of Slovenia on the basis of section 2(2) of the Ališić Implementation Act (see paragraph 4 above). The applicant challenged this decision before the Administrative Court; on 6 July 2017 the proceedings were still pending (see paragraph 5 above).

18. The Court further observes that an association of savers lodged a petition for an abstract review of the constitutionality of the Ališić Implementation Act on behalf of the applicant and others in his position (see paragraph 6 above). In the petition, it maintained, like the applicant in the present case, that section 2(2) of the Ališić Implementation Act was not in line with the Convention as interpreted by the Court in *Ališić and Others*, cited above. On 6 July 2017 (the date of the latest information available to the Court) the case was pending before the Constitutional Court (see paragraph 7 above), which is competent to deal with that issue (see section 22(2) of the Constitutional Court Act, cited in paragraph 9 above). If, in the end, the Constitutional Court decides that the association in question lacks a legal interest, as defined in section 24(2) of the Constitutional Court Act, to pursue the proceedings, the applicant may, after exhausting other legal remedies at the national level, lodge a petition for an abstract review of the constitutionality of section 2(2) of the Ališić Implementation Act himself at the same time as a constitutional complaint (see section 59(2) of the Constitutional Court Act). In this connection, the Court reiterates that as far as applications lodged against Slovenia are concerned, applicants are, according to its case-law, in principle required to exhaust remedies before the domestic courts, and ultimately to lodge a constitutional complaint (see *Kurić and Others v. Slovenia* [GC], no. 26828/06, §§ 296-297, ECHR 2012, and *Bradeško and Rutar Marketing d.o.o. v. Slovenia* (dec.), no. 6781/09, § 32, 7 May 2013).

19. The application must, accordingly, be rejected under Article 35 §§ 1 and 4 of the Convention as premature.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 September 2017.

Andrea Tamietti
Deputy Registrar

Vincent A. De Gaetano
President