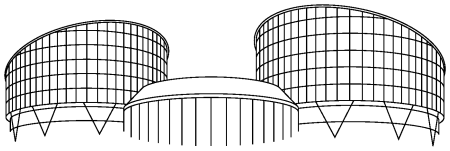

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 3461/08
Vehbija HODŽIĆ
against Slovenia

The European Court of Human Rights (Fourth Section), sitting on 4 April 2017 as a Chamber composed of:

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer,
Marko Bošnjak, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 11 December 2007,

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 Vehbija Hodžić, is a Bosnian-Herzegovinian national, who was born in 1955 and lives 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. In 1986 the applicant deposited foreign currency in Ljubljanska Banka Sarajevo, which in 1990 became a branch of Ljubljanska Banka Ljubljana (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). According to the material in the Court's possession, on 28 January 1992 the balance in the applicant's accounts was 1,342 Deutschmarks (DEM) and 4,106 United States dollars (USD). It would appear that he has not made any withdrawals since that date and that his savings were not transferred to a privatisation account.

B. Relevant domestic law

4. For the relevant domestic law see *Ališić and Others*, cited above, §§ 53-58. Furthermore, 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") entered into force on 4 July 2015 and reads as follows:

I. GENERAL PROVISIONS

Section 1 – Purpose and scope of the Act

"(1) This Act determines the method of executing the judgment of the European Court of Human Rights in the case of *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia*, no. 60642/08 of 16 July 2014 and the extent to which it imposes an obligation on the Republic of Slovenia to make all necessary arrangements to recover unpaid old foreign-currency savings. The measures under this Act shall not apply to those old foreign-currency savings or their parts that have been paid in any manner or transferred to other legal entities or for special purposes in accordance with the regulations of the successor States of the former Socialist Federal Republic of Yugoslavia (hereinafter: SFRY) or on any other basis.

(2) This Act determines the manner of defining the amount of payment, the beneficiaries, the verification procedure, the competent decision-making authority, the method of payment, the deadline for payment, and the records of payments."

Section 2 – Definition of unpaid old foreign-currency savings

"(1) Unpaid old foreign-currency savings under this Act are the savings of natural persons held in foreign-currency accounts at Ljubljanska Banka d.d. Ljubljana, Glavna filijala Sarajevo (hereinafter: Sarajevo Main Branch), and Ljubljanska Banka d.d. Ljubljana, Glavna filijala Zagreb (hereinafter: Zagreb Main Branch) as of 31 December 1991, including contractual interest accrued up to the aforementioned date (hereinafter: balance as of 31 December 1991), reduced by the payments of individual branches, Ljubljanska Banka d.d. Ljubljana (hereinafter: the Bank) or any

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.

other party after this date, by unpaid debts of savers towards branches or the Bank, and by paid or settled amounts after 31 December 1991 on any basis.

(2) 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, *inter alia*, old foreign-currency savings which the savers of Zagreb Main Branch transferred to another legal entity in accordance with the regulations of the Republic of Croatia on the transfer and assumption of a guarantee for old foreign-currency savings, and 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."

Section 3 – Interest

"(1) For the purpose of the assumption of responsibility, interest on unpaid old foreign-currency savings under section 2 of this Act shall be calculated as follows:

- for the period from 1 January 1992 to 31 December 1992 at an annual interest rate of 6%,

- for the period from 1 January 1993 to 31 December 2015 at an annual interest rate of 1.79 %,

- for the period from 1 January 2016 until payment, in accordance with the interest rate for overnight deposits for households published in the Monthly Bulletin of the Bank of Slovenia.

(2) Interest under subsection (1) above shall be calculated using the linear method with the simple-interest formula."

Section 4 – Currency conversion

"(1) Unpaid old foreign-currency savings in the currencies of countries which are part of the Eurozone shall be calculated in euros, in accordance with the exchange rates between the euro and those currencies on the day of the exchange (1 January 1999).

(2) Unpaid old foreign-currency savings in the currencies of countries which are not part of the Eurozone shall be calculated in euros, in accordance with the reference exchange rates of the European Central Bank published by the Bank of Slovenia on the day this Act enters into force."

Section 5 – Assumption of responsibility

"(1) The Republic of Slovenia shall assume responsibility for the liability of the Bank towards the beneficiaries for unpaid old foreign-currency savings and interest to the extent and the amount as determined by this Act.

(2) The assumption of responsibility under this Act shall include liabilities to beneficiaries for unpaid old foreign-currency savings which have not yet been recovered or transferred in accordance with the regulations of the successor States of the former SFRY or on any other basis.

(3) The basis for the assumption of responsibility under subsection (1) above shall be a final decision issued in the verification procedure pursuant to this Act.

(4) Liabilities under this Act shall be recorded in the budget of the Republic of Slovenia, Statement of Financial Receivables and Financial Investments under account number 4409."

Section 6 – Beneficiary

"(1) A beneficiary under this Act shall be a natural person who has unpaid old foreign-currency savings as defined under section 2 of this Act.

(2) Notwithstanding the provision in subsection (1) above, the beneficiary shall also be a civil legal person who, under the SFRY's regulations on foreign-currency transactions, was a holder of unpaid old foreign-currency savings referred to in section 2 of this Act.

(3) A natural person who obtained her/his claim for unpaid old foreign-currency savings from a beneficiary as defined in the preceding subsections on the basis of a valid legal transaction shall be eligible to pursue a request for verification under this Act only if her/his acquisition of the claim was recorded at the Sarajevo Main Branch or the Zagreb Main Branch before 1 December 2015."

II. VERIFICATION PROCEDURE

Section 7 – General

"(1) A request for verification of unpaid old foreign-currency savings shall be pursued in accordance with the verification procedure as determined by this Act.

(2) The Succession Fund of the Republic of Slovenia, a public fund (hereinafter: the Fund), shall be authorised to decide on the liability for individual unpaid old foreign-currency savings in accordance with the verification procedure.

(3) In the verification procedure the beneficiaries, the existence and the amount of individual unpaid old foreign-currency savings shall be determined, and interest under section 3 of this Act shall be calculated.

(4) In the verification procedure the legislation governing general administrative procedures shall be applied, unless stipulated otherwise by this Act.

(5) Applications, objections and decisions in the verification procedure shall not be subject to any fees.

(6) Notwithstanding the provisions of the law governing the general administrative procedure concerning the processing of applications which are not submitted in the official language, the Fund may process such applications provided that they are comprehensible."

Section 8 – Public call

"(1) The Ministry responsible for finance shall issue a public call for the submission of requests for verification of unpaid old foreign-currency savings in the Official Gazette of the Republic of Slovenia and in at least two daily newspapers which are published throughout the territory of Bosnia and Herzegovina and the Republic of Croatia, and on its website.

(2) The call under subsection (1) above shall contain the conditions for the submission of requests for verification (beneficiaries, manner, deadline and content of the request for verification)."

Section 9 – Provision of data

"(1) The Bank shall cooperate with the Fund in all phases of the enforcement of this Act.

(2) Irrespective of the provisions of other regulations, the Bank shall make available to the Fund its databases and documentation relating to unpaid old foreign-currency savings, and the Fund shall provide the Bank with data and documentation on all payments under this Act.

(3) The Fund and the Bank may process data and documentation obtained on the basis of subsections (1) and (2) above for the needs of decision-making in verification procedures under this Act or for the settlement of relations with regard to the old foreign-currency savings. The Fund and the Bank shall ensure the protection of data and documentation obtained in such manner in accordance with the regulations governing personal data protection, which they shall arrange by means of special legislation.

(4) Data referring to the unpaid old foreign-currency savings of Sarajevo Main Branch shall be obtained in a form and manner as determined in the memorandum governing cooperation between the Government of the Republic of Slovenia and the Council of Ministers of Bosnia and Herzegovina for the execution of the judgment of the European Court of Human Rights in case no. 60642/08 of 16 July 2014."

Section 10 – Request for verification

"(1) The verification procedure shall be initiated at the request of a beneficiary.

(2) The request shall include the following:

- data of the beneficiary, i.e. name, date and place of birth, permanent address of the beneficiary or title and registered office, and identification number of the beneficiary, which is determined by the acts of her/his State of nationality or registered office for the needs of legal transactions or identification by official authorities;

- name and permanent address of a beneficiary's legal or statutory representative, if any;

- data on the unpaid old foreign-currency savings;

- in the event that the claim was obtained through inheritance, indication of a legal predecessor and the basis for inheritance;

- address for service if different from the permanent address of the beneficiary;

- beneficiary's signature.

(3) The request shall be supplemented with:

- documents on the unpaid old foreign-currency savings (original or a copy of a foreign-currency savings book or a savings contract or other documents proving the existence and amount of the claim);

- copy of a beneficiary's personal document;

- authorisation or other individual instrument providing the basis for representation if a beneficiary submits a request through a legal or statutory representative;

- legal instrument providing the basis for legal succession;

- evidence on the holder and number of the transaction or personal account to which the funds from the unpaid old foreign-currency savings shall be transferred;

- written statement of the beneficiary assuming material and criminal responsibility and declaring that the unpaid old foreign-currency savings were not transferred to another person.

(4) If a beneficiary is represented by an authorised person who is not an attorney, the authorisation must be duly certified.

(5) The detailed content and form of the request for verification shall be determined by the Minister responsible for finance."

Section 11 – Lodging a request for verification

"(1) A request for verification may be lodged from 1 December 2015 to 31 December 2017.

(2) A request for verification shall be lodged in written form in person at the Fund or sent to it by post. The request for verification may not be lodged in electronic form.

(3) If the beneficiary lodges the request for verification in person, the Fund shall verify her/his identity and her/his signature on the request, and confirm that the identity corresponds to the copies of attached documents.

(4) If the request for verification is lodged by post or by another person directly at the Fund, the beneficiary's signature must be duly certified."

Section 12 – Deciding on the request for verification

"(1) The Fund shall decide on the request for verification on the basis of the data under section 9 of this Act, and data and documentary evidence submitted by the beneficiary. If those data and documentary evidence do not suffice to make a decision, the Fund may ask the beneficiary to submit additional documentary evidence within the determined time-limit. The Fund may establish the facts also with other forms of evidence, excluding witnesses and visits.

(2) If the beneficiary fails to submit additional documentary evidence before the deadline mentioned in subsection (1) above, the Fund shall decide on the basis of the data and evidence mentioned in that subsection."

Section 13 – Indicative calculation

"(1) If the Fund finds that the request for verification is substantiated, it shall prepare an indicative calculation of the unpaid old foreign-currency savings, containing:

1. data on the beneficiary and legal or statutory representative of the beneficiary, if any;

2. data on the unpaid old foreign-currency savings;

3. the established amount of the unpaid old foreign-currency savings and interest under this Act;

4. the date of payment and the data regarding the transaction or personal account for the payment of the amount under the indicative calculation;

5. legal instructions containing the information mentioned in subparagraphs 3 and 4 of this section.

(2) The indicative calculation shall be served on the beneficiary; if the beneficiary has a legal or statutory representative, the indicative calculation shall be served on the legal or statutory representative.

(3) If the beneficiary considers that the data in the indicative calculation are inaccurate or incomplete or does not agree with the indicative calculation, she/he can file an objection to the indicative calculation within 30 days of the date on which the indicative calculation is served.

(4) If the beneficiary does not file an objection to the indicative calculation before the deadline determined in subsection (3) above, the following shall apply upon the expiry of the deadline for filing an objection:

- the indicative calculation shall become the final decision regarding the request for verification,

- the beneficiary shall be deemed to have waived her/his right to a judicial review and to any further claim in connection with the unpaid old foreign-currency savings subject to the indicative calculation against anyone, except for a claim for the payment under the indicative calculation."

Section 14 – Decision on the objection

"(1) The Fund shall verify whether the objection has been filed within the time-limit and if it was filed by an entitled person. Any objection not filed within the time-limit or by an entitled person shall be rejected.

(2) If the Fund does not reject the objection, it shall examine the beneficiary's statements in the objection. If it concludes that the procedure carried out was incomplete, the procedure shall be supplemented.

(3) Based on the objection, the Fund shall issue a decision on the merits of the request for verification. The operative part of the decision shall contain the data mentioned in subparagraphs 1 to 4 of section 13(1). The decision shall include the reasons justifying the decision in line with the established facts, and state the position with regard to the arguments and evidence submitted by the beneficiary in the objection."

Section 15 –Time-limits for decisions and legal remedies

"(1) The Fund shall decide on the beneficiary's request within three months of receipt of the complete request for verification.

(2) The Fund shall decide on an objection to an indicative calculation within two months of receipt of the objection.

(3) The Fund's decisions are not amenable to appeal; however a judicial review of the administrative act is allowed.

(4) In a judicial review of the administrative act mentioned in subsection (3) above, the Fund shall be represented by the State Attorney's Office of the Republic of Slovenia."

III. PAYMENT

Section 16

"(1) The amount determined in the decision shall be paid to the beneficiary by the Fund 30 days after the decision becomes final.

(2) The funds for payment shall be allocated in the budget of the Republic of Slovenia.

(3) The payment to beneficiaries shall be executed by the Fund in the name of, and for the account of, the Republic of Slovenia."

Section 17 – Method of payment

"(1) Payment shall be made to the transaction or personal account of:

- the beneficiary or her/his statutory representative held with the provider of payment services;

- the person authorised by the beneficiary to accept payment under this Act if the special authorisation for the acceptance of the payment with the duly certified signature of the beneficiary is submitted, which shall also apply if the authorised person for the acceptance of the payment is an attorney.

(2) The Fund shall execute the payment based on data received with the request for verification. The person lodging the request shall notify the Fund in written form of any potential changes of data within the time-limit set for filing an objection to the indicative calculation, or if an objection to the indicative calculation has been made, before a decision on the request for verification is issued.

(3) Upon the execution of the payment to the transaction or personal account of the beneficiary, the Fund shall pay the fees charged by the payer's provider of payment services; the beneficiary shall pay the fees charged by the recipient's provider of payment services."

IV. RECORDS

Section 18 – Records of decisions and payment of unpaid old foreign-currency savings

"(1) To ensure that data on requests and on payments of unpaid old foreign-currency savings are kept, the Fund shall administer records processing the following personal and other data connected to beneficiaries and old foreign-currency savings:

1. name;
2. identification number (PIN or other),
3. date of birth (day, month, year);
4. place of birth (country, place);
5. permanent residence of the beneficiary;
6. date on which request for verification was lodged;
7. the number, date of issue of the decision or order, type of decision, date of service;
8. data on the completeness and finality of the decision from the previous item;
9. the amount of the payment of unpaid old foreign-currency savings;
10. the date and method of payment of the unpaid old foreign-currency savings;
11. data from databases and documents acquired by the Fund under section 9 of this Act.

(2) Data shall be kept in the records for ten years from the payment of the foreign-currency savings; after this period, they shall be archived."

V. SPECIAL PROVISIONS

Section 19 – Tax treatment of payments

"(1) The interest paid to a natural person under section 3(1) of this Act shall not be subject to income tax, unless the interest is paid to a natural person who obtained the claim for unpaid old foreign-currency savings from the beneficiary on the basis of a valid legal transaction and within the scope of performing an activity.

(2) Under the legislation regulating personal income tax or corporate income tax, a withholding tax shall not be charged, withheld and paid on the interest under section 3(1) of this Act paid to a civil legal person identified under this Act or to a natural person acquiring the claim for unpaid old foreign-currency savings from the beneficiary on the basis of a valid legal transaction and within the scope of performing an activity."

VI. TRANSITIONAL AND FINAL PROVISIONS

Section 20 – Pending proceedings

"(1) Court proceedings conducted for the purpose of payment of old foreign-currency savings, which were initiated prior to the entry into force of this Act and have not yet been decided upon, shall be suspended from the date this Act enters into force. Proceedings initiated after the entry into force of this Act shall be suspended on the date the action is served on the opposite party.

(2) In the court proceedings mentioned in subsection (1) above, a beneficiary who does not file an objection to the indicative calculation may within 60 days of receipt of payment withdraw the action or other legal act without the consent of the opposing party. If the action is withdrawn in accordance with this provision, the beneficiary shall not be obliged to reimburse the costs of the opposite party. The relevant legal instruction shall be included in the decision suspending the proceedings.

(3) If the beneficiary fails to propose a continuation of the suspended proceedings on the basis of subsection (1) above within 60 days of the final decision on the request for verification, and in the event that she/he fails to submit a request for verification within 60 days of the expiry of the deadline referred to in section 11(1) of this Act, it shall be deemed that the beneficiary has withdrawn the action or other legal remedy. The relevant legal instruction shall be included in the decision suspending the proceedings."

Section 21 – Postponement of decision until the acquisition of data

"(1) A decision on a request for verification of unpaid old foreign-currency savings held at the Sarajevo Main Branch shall be postponed until the acquisition of data under section 9(4) of this Act.

(2) The date of the acquisition of data under section 9(4) of this Act shall be published by the Minister responsible for finance in the Official Gazette of the Republic of Slovenia; the Fund shall publish it on its website.

(3) Notwithstanding the provisions of subsection (1) above, the Fund may decide on the requests for verification of beneficiaries whose claims for unpaid old foreign-currency savings were acknowledged by a final court judgment issued by the Republic

of Slovenia's court of general jurisdiction or a final judgment issued by an international court with jurisdiction in the Republic of Slovenia."

Section 22 – Deadline for the publication of the regulation and public call

"The Minister responsible for finance shall publish the regulation mentioned in section 10(5) of this Act. The Ministry responsible for finance shall publish the public call as provided for in section 8 of this Act on 2 November 2015 at the latest."

Section 23 – Enforcement of obligations assumed under this Act

"The obligations to be fulfilled on the basis of the assumption of responsibility under this Act shall be enforced by the Republic of Slovenia under Article 7 of Annex C of the Agreement on Succession Issues (Official Gazette of the Republic of Slovenia, International Agreements, no. 20/02; hereinafter: Agreement), signed in Vienna on 29 June 2001 between Bosnia and Herzegovina, the Republic of Croatia, the Republic of Macedonia, the Republic of Slovenia and the Federal Republic of Yugoslavia as successor States of the former Socialist Federal Republic of Yugoslavia, for the purpose of achieving a just distribution of guarantees of the SFRY or NBY for old foreign-currency savings under item (a) of the third paragraph of Article 2 of Annex C of the Agreement."

Section 24 – Relationship between the Republic of Slovenia and the Bank

"The Republic of Slovenia and the Bank may settle their mutual relations regarding the assumption of responsibility under this Act by means of a contract."

Section 25 – Entry into force of the Act

"This Act shall enter into force on the day following its publication in the Official Gazette of the Republic of Slovenia."

5. A public call for the submission of requests for verification was issued in the Official Gazette of the Republic of Slovenia (no. 81/2015) on 30 October 2015 and in nine daily newspapers from Bosnia and Herzegovina, Croatia, Germany and Sweden on 2 November 2015, as provided for in sections 8 and 22 of the Ališić Implementation Act. The form, together with instructions for filling it in and answers to frequently asked questions about the verification procedure, were put on the website of the Succession Fund of the Republic of Slovenia, in Bosnian, Croatian, English and Slovene. Whereas the processing of verification requests from the Zagreb branch began immediately, the processing of those from the Sarajevo branch of Ljubljanska Banka Ljubljana did not begin until October 2016, in accordance with section 21(1) of the Ališić Implementation Act. According to the information available on the website of the Department for the Execution of Judgments of the European Court of Human Rights, by 31 January 2017 more than 29,000 verification requests had been lodged and more than 16,000 positive decisions had been issued, amounting to approximately 170 million euros (EUR). Of those, some 3,800 with a total value of approximately EUR 40 million were from the Sarajevo branch (see document no. DH-DD(2017)243 of 1 March 2017).

COMPLAINT

6. Relying on Articles 6, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant essentially complained that he had been unable to withdraw his "old" foreign-currency savings.

THE LAW

7. The applicant complained that it had been impossible for him to withdraw the money he had deposited in foreign-currency on his accounts at the Sarajevo branch of Ljubljanska Banka Ljubljana.

He invoked Articles 6, 13 and 14 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention.

In so far as relevant, those provisions read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

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."

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."

8. The Court should first determine whether, as required by Article 35 § 1 of the Convention, the applicant has exhausted the domestic remedies which were available to him, in the light, *inter alia*, of the principles stated in its pilot judgment and of the entry into force of the Ališić Implementation Act.

A. The pilot judgment

9. The Court recalls that on 16 July 2014 the Grand Chamber adopted a pilot judgment regarding "old" foreign-currency savings in, *inter alia*, the Sarajevo branch of Ljubljanska Banka Ljubljana (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, ECHR 2014). It found, in respect of Slovenia, a breach of Article 13 of the Convention and Article 1 of Protocol No. 1 and held that Slovenia should make all necessary arrangements, including legislative amendments, in order to allow persons in a position similar to two of the applicants in that case to recover their "old" foreign-currency savings under the same conditions as those who had such savings in domestic branches of Slovenian banks (ibid., points 3, 6 and 11 of the operative part). It further indicated that no claim should be rejected only because of a lack of original contracts or bankbooks and that any and all verification decisions must be subject to judicial review. Lastly, the Court held that all those concerned must comply with the requirements of any verification procedure, as long as it met the above criteria (ibid., § 148).

10. In the present case, the Court will, accordingly, first examine whether the Ališić Implementation Act fulfils the above criteria and, if so, whether the applicant has used the remedy introduced by that Act (namely, a request for verification).

B. The Ališić Implementation Act

1. First criterion ("the same conditions")

11. As to the question whether under the Ališić Implementation Act the applicant and persons in a position similar to his will be able to recover their "old" foreign-currency savings under the same conditions as those who had such savings in domestic branches of Slovenian banks, the Court observes that Slovenia has undertaken to pay all unpaid "old" foreign-currency savings held in the Sarajevo and Zagreb branches of Ljubljanska Banka Ljubljana, as well as contractual interest accrued up until 31 December 1991. Interest for the year 1992 is to be paid at an annual rate of 6%, for the years 1993 to 2015 at an annual rate of 1.79%, and for the period from 1 January 2016 until the actual payment, at the market rate for overnight deposits (see sections 2 and 3 of the Ališić Implementation Act – paragraph 4 above). Interest is to be calculated on the basis of the simple-interest formula for the period from 1992 onwards.

12. The conditions that were applied to "old" foreign-currency savings in the domestic branches of Ljubljanska Banka Ljubljana have been set out in the pilot judgment (see *Ališić and Others,* cited above, § 48). As to the period until 31 December 1992, the Court notes that the interest rates provided for by the Ališić Implementation Act clearly correspond to those

applied to domestic savers. As regards the period thereafter, the interest rate for domestic savers depended on whether a saver had opted for government bonds or cash. The first option is irrelevant for those who are not citizens and residents of Slovenia, like most of the savers at the Sarajevo and Zagreb branches. The comparable group are, accordingly, those savers at the domestic branches of Ljubljanska Banka Ljubljana who opted for cash. That category was paid in ten biannual instalments between 1 January 1993 and 1 January 1998, and got interest for that period at the market rate for fixed-term deposits plus 0.25% (calculated on the basis of the compound-interest formula).

13. The Court has held on a number of occasions that, in accordance with the principle of subsidiarity, a wider margin of appreciation should be left to the domestic authorities in respect of the implementation of a pilot judgment (see *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 141, ECHR 2014, *Anastasov and Others v. Slovenia* (dec.), no. 65020/13, § 71, 18 October 2016, and the authorities cited therein; see also *Ališić and Others*, cited above, §§ 106-107). Therefore, although on the basis of the Ališić Implementation Act savers at the Sarajevo and Zagreb branches will possibly receive slightly lower interest in respect of the period from 1 January 1993 onwards (see paragraph 11 above) than domestic savers (see paragraph 12 above), the Court finds that the Ališić Implementation Act, in principle, fulfils the first criterion.

2. Second and third criteria (lack of original contracts or bankbooks and judicial review)

14. In this regard, it suffices to note that those who no longer have original contracts or bankbooks may prove the existence and the amount of their claims by other means and that all verification decisions are subject to judicial review (see sections 10(3) and 15(3) of the Ališić Implementation Act – paragraph 4 above). The Ališić Implementation Act, therefore, fulfils also those two criteria.

15. The Court emphasises in this respect that the object of the present decision is to assess the potential compatibility of the domestic repayment scheme with the principles stated in the pilot judgment and with the general principles on accessibility and effectiveness of domestic remedies, and not address the question whether, in view of the outcome of verification proceedings, the applicant has lost his or her victim status. This second type of assessment can be made, in every individual case, only after the relevant national remedy has been tried (see, *mutatis mutandis*, *Bizjak v. Slovenia* (dec.), no. 25516/12, § 43, 8 July 2014, and *Anastasov and Others*, decision cited above, § 72).

C. Exhaustion of domestic remedies

1. General principles

16. 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 *et al*., § 69, 25 March 2014).

17. 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 *et al*., § 69, ECHR 2010).

18. 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).

19. An assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. However, as the Court has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Demopoulos and Others*, decision cited above, § 87, with further references therein). Among such exceptions are situations where, following a pilot judgment on the merits in which the Court found a systemic violation of the Convention, the respondent State has made available a specific remedy to redress at the domestic level grievances of persons in a similar situation (see *Łatak v. Poland*, no. 52070/08, § 79, 12 October 2010, and *Stella and Others v. Italy* (dec.), no. 49169/09, § 41, 16 September 2014).

2. Application of those principles to the present case

20. The Court has found above that the Ališić Implementation Act meets the criteria set out in the pilot judgment (see paragraphs 13 and 14 above). Consequently, as the Court finds it justified to apply the exception to the principle on exhaustion of domestic remedies (see paragraph 19 above), the present applicant and all others in his position must use the remedy introduced by that Act, namely, a request for verification (see *Ališić and Others*, cited above, § 148). However, following a request for an update from the Registry of the Court, in a letter of 4 October 2016 the applicant indicated that he had not used that remedy, without providing any reasons.

21. The Court emphasises that under section 11(1) of the Ališić Implementation Act (see paragraph 4 above), the applicant has until 31 December 2017 to lodge a request for verification. Should he do so and ultimately be unsuccessful, it would be open to him to lodge a fresh application with the Court within a period of six months after the exhaustion of all effective domestic remedies (including, notably, an application for judicial review pursuant to section 15(3) of the Ališić Implementation Act).

22. The Court also points out that it is ready to change its approach as to the potential effectiveness of the remedy in question, should the practice of the domestic authorities show, in the long run, that savers are being refused on formalistic grounds, that verification proceedings are excessively long or that domestic case-law is not in compliance with the requirements of the Convention (see, for example and *mutatis mutandis*, *Bizjak*, decision cited above, § 44, and *Uzun v. Turkey* (dec.), no. 10755/13, § 41, 30 April 2013). Any such future review will involve determining whether the national authorities have applied the Ališić Implementation Act in a manner that is in conformity with the pilot judgment and the Convention standards in general.

23. In view of the fact that the applicant has not yet submitted a request for verification, the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies (see *Muratović v. Serbia* (dec.), no. 41698/06, 21 March 2017).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 27 April 2017.

Marialena Tsirli
Registrar

Ganna Yudkivska
President