

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1310th meeting (March 2018) (DH)

Communication from a NGO (Association for the Protection of Hard Currency Depositors in Bosnia and Herzegovina) in the case of Ališić and Others v. Serbia and Slovenia (in respect of Serbia) (Application No. 60642/08) and reply from Serbia (26/02/2018)

Information made available under Rules 9.2 and 9.5 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

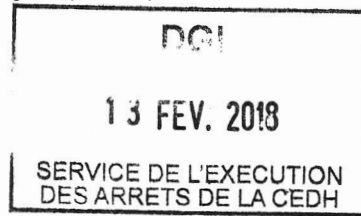
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Réunion : 1310^e réunion (mars 2018) (DH)

Communication d'une ONG (Association for the Protection of Hard Currency Depositors in Bosnia and Herzegovina) dans l'affaire Ališić et autres c. Serbie et Slovénie (concernant la Serbie) (Requête n° 60642/08) et réponse de la Serbie (26/02/2018) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.5 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



**ASSOCIATION FOR PROTECTION OF
HARD CURRENCY SAVINGS DEPOSITORS
IN BOSNIA AND HERZEGOVINA**
71000 Sarajevo. Ćemaluša 6

**COUNCIL OF EUROPE
COMMITTEE OF MINISTERS
Department for the Execution of the Judgment
Ms. Genevieve Mayer
Head of Department for Execution of Judgments**

Sarajevo, February 08, 2018

The Judgment of the European Court of Human Rights in case No. 60642/08 Ališić v. Serbia

Dear Mrs. Mayer,

The Parliament of the Republic of Serbia has adopted the LAW ON AMENDMENTS TO THE LAW ON THE SETTLEMENT OF THE PUBLIC DEBT OF THE REPUBLIC OF SERBIA ARISING FROM UNPAID FOREIGN EXCHANGE SAVINGS OF CITIZENS DEPOSITED WITH BANKS HAVING THEIR HEAD OFFICE IN THE TERRITORY OF THE REPUBLIC OF SERBIA AND THEIR BRANCHES IN THE TERRITORIES OF FORMER SFRY REPUBLICS (Official Journal of the RS No. 113/17 of December 17, 2017).

The amendments to the aforesaid Law include the extension of the claim filing deadline to February 23, 2019 and the bond collection deadline prolongation by one year, i.e. from August 31, 2019 to February 29, 2024.

The Republic of Serbia has pointed out that the reason for prolongation of the aforesaid deadlines is a small number of savers who filed their refund claims.

Let us note that during the war a great number of savers from Bosnia and Herzegovina were dispossessed of their foreign savings booklets which need to be attached to the claim application. According to the Serbian Law, the savers who do not have their original booklets have to prove the ownership of their foreign currency account before the courts in Serbia. To do that, they would need any proof of their foreign currency account and the account holder. Those proofs cannot be obtained in Bosnia and Herzegovina. The documents of the Invest JIK Bank, Tuzla Branch, were stolen and brought to Serbia, and the documentation of the Invest Bank in Sarajevo was mostly burnt down in the war.

The banks in Serbia refuse to issue any certificates of savings. They claim the aforesaid law prevents them from doing so. Since a great number of Investbanka and JIK Banka' savers who deposited their funds in the Republic of Srpska-based branches was either killed, expelled or passed away, their heirs cannot prove the existence of those foreign currency accounts in the inheritance proceedings. This is a serious problem. We call upon your Office to intervene with the Republic of Serbia to enable the interested parties have access to the banking data required.

Yours sincerely,

Amila Omersoftić

Chairwoman of the Association's Steering Board



Response of the Government of Serbia
to the communication made by the Association for Protectors of Hard
Currency Depositors in Bosnia and Herzegovina

in respect of the case

Ališić and Others v. Serbia and Slovenia

application number 60642/08

Grand Chamber judgment of 16 July 2014

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1. In response to the communication dated 14 February 2018 received from the Association for Protectors of Hard Currency Depositors in Bosnia and Herzegovina ("the NGO"), the Government of Serbia has the honour to submit the following clarifications.
 2. In the case *Ališić*, the European Court applied the pilot judgment procedure and requested Serbia to make all necessary arrangements to allow the depositors concerned to recover their "old" foreign-currency savings under the same conditions, respectively, as Serbian citizens who had such savings in domestic branches of Serbian banks (§ 10 of the operative part of the judgment).
 3. In response to the Court's judgment, on 28 December 2016, Parliament adopted a law introducing the repayment scheme.
 4. On 30 March 2017, in the *Muratović* decision (appl.no. 41698/06, inadmissibility decision of 21 March 2017) the Court found that the Serbian law fulfils criteria set out in the *Ališić* pilot judgment (*Muratović*, §§ 10 and 11). The Court thus decided that the depositors concerned must use the remedy introduced by that the law, namely, a request for verification (*Muratović*, § 17).
 5. That being said, the Government would like to respond to the specific concerns raised in the communication, namely the alleged inability of depositors to obtain certificates of savings from the banks in Serbia.
 6. At the outset, the Government would like to indicate that the Court clearly spelled out that, the depositors concerned must comply with the requirements of any verification procedure to be set up, namely a request for verification (*Ališić*, §148, *Muratović*, § 17).
 7. It is furthermore reiterated that pursuant to the Court's indications, under the repayment scheme set up in Serbia, no claim should be rejected simply because

of a lack of original contracts or bankbooks (given the lapse of time and the wars that affected so many people in different ways), provided that the depositors concerned are able to prove their claims by other means (*Ališić*, §148; in the same vein, see the reply of the Government of Serbia to the same NGO, DH-DD(2017)176, §24 as well as DH-DD (2017)213, §31). The Court confirmed this assertion by indicating that "those who no longer have original contracts or bankbooks may pursue civil proceedings in order to prove the existence and the amount of their claims..." (*Muratović*, § 11). It therefore concluded that the Serbian law fulfils the criteria that no claim should be rejected simply because of the lack of original contracts or bankbooks (*idem*).

8. Lastly, the indication that "the banks Serbia refuse to issue any certificates of savings" is misleading. In particular, the banks concerned ceased to exist as they are or were subject to bankruptcy proceedings. Their assets and documentation has been taken over by a special authority – the Deposit Insurance Agency (www.aod.rs). The banks concerned therefore halted their operations and cannot *ipso facto* issue any certificates or carry out any transaction, operations or business.
9. Within this context, it is recalled that the verification procedure is governed by the rules of administrative procedure and is carried out before the state bodies. That being said, it is highlighted that pursuant to the Serbian law, notably provisions of Articles 29 and 30 of the General Administrative Procedure Code, state authorities, including the Deposit Insurance Agency, have an obligation to issue a certificate on facts made available to them.
10. In view of the above, the Government shares the Court's view (*Muratović*, § 11) that the verification procedure set out in the law fulfils the criteria set out in the *Ališić* pilot judgment.

Nataša Plavšić

Government Agent