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Communication from Serbia concerning the case of ALISIC AND OTHERS v. Serbia (Application No. 60642/08)

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Réunion : 1362e réunion (décembre 2019) (DH)

Référence du point : Plan d'action

Communication de la Serbie concernant l'affaire ALISIC ET AUTRES c. Serbie (requête n° 60642/08)
(anglais uniquement)

Belgrade, 2 October 2019

REVISED ACTION PLAN

ALIŠIĆ AND OTHERS v. SERBIA AND SLOVENIA

Application number 60642/08

Grand Chamber judgment final on 16 July 2014

I CASE DESCRIPTION

1. The case concerns violations of the applicant Mr. Šahdanović's right to peaceful enjoyment of his property on the account of his inability to recover his "old" foreign-currency savings deposited in Bosnian-Herzegovinian branch of a bank with head offices in Serbia (a violation of Article 1 of the Protocol No. 1).

2. "Old" foreign-currency savings are the savings deposited in banks on the territory of the Socialist Federal Republic of Yugoslavia ("SFRY") prior to its dissolution. Following the collapse of the SFRY and its banking system, many depositors lost access to their foreign-currency savings. The new successor States of the SFRY subsequently introduced different repayment schemes aimed at reimbursing depositors for these lost savings. These schemes made repayment subject to different conditions, such as territoriality of deposits or nationality of depositors.

3. Serbia, in particular, offered to repay the "old" foreign-currency savings deposited with the Serbian banks in Serbia or abroad if the depositor had a qualifying nationality. The nationals of other States which emerged from the SFRY were unable to obtain repayment under this scheme. Since Mr. Šahdanović, a national of Bosnia and Herzegovina, did not hold the qualifying nationality for the Serbian repayment scheme, he could not recover his "old" foreign-currency savings deposited in a Belgrade-based bank Investbanka in its branch located in Bosnia and Herzegovina.

4. The European Court observed, in this respect, that the bank in question – Investbanka Belgrade – was state-owned and controlled by the Serbian Government (§ 117, *Ališić*). The Court, therefore, found that there were sufficient grounds to deem Serbia responsible for this debt.

5. The case also concerns the lack of an effective remedy in respect of the applicant's claims (violations of Article 13).

6. Under Article 46 of the Convention, the European Court held that the failure of the Serbian Government to include the applicant Mr. Šahdanović, and all others in his situation, in their respective schemes for the repayment of "old" foreign-currency savings represented a systemic problem (§ 9 of the operative part of the judgment).

7. The Court, therefore, applied the pilot judgment procedure and requested Serbia to make all necessary arrangements, including legislative amendments, within one year (i.e. by 16 July 2015) in order to allow the applicant and all others in his situation 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).

8. At the same time, the Court decided to adjourn for one year its examination of all similar cases against Serbia (§ 12 of the operative part of the judgment).

II INDIVIDUAL MEASURES

9. It is recalled in this respect that the European Court did not award the applicant Mr. Šahdanović just satisfaction in respect of pecuniary damage sustained, notably in the amount of his outstanding "old" foreign-currency savings (§152, *Ališić*). The Government would, however, like to indicate

that the individual measures allowing Mr. Šahdanović to recover his "old" foreign currency savings would be taken within the framework of the repayment scheme to be set up in accordance with the European Court's indications in this case (§146, *Ališić*). It is recalled that the European Court also indicated that "the applicants must comply with the requirements of any verification procedure to be set up by respondent State." (§148, *Ališić*). These measures will, therefore, be capable of redressing the applicant Mr. Šahdanović in respect of pecuniary damage sustained and bringing the violation at hand to an end.

10. Pursuant to the information received from the Serbia's Public Debt Administration in charge of administering the repayment scheme, on 8 November 2017 Mr Šahdanović applied for repayment of his deposits. He therefore applied to the competent authority in Serbia within the prescribed time-frame. The authorities will make decision on his application on 23 December 2019 at the latest that date being set by the applicable laws as the final deadline for decision-making by the Public Debt Administration on applications filed to obtain repayment.

11. The authorities would like to indicate that the European Court has awarded the applicant Mr. Šahdanović just satisfaction in the amount of EUR 4,000 in respect of non-pecuniary damage sustained. This amount has been paid within the deadline set by the European Court. The applicant has therefore been redressed in respect of non-pecuniary damage sustained.

III GENERAL MEASURES

12. In response to the European Court's judgment, the Ministry of Finance prepared a draft law aimed at introducing a repayment scheme for the "old" foreign-currency savings in line with the European Court's indications. Its provisions reflected the European Court's indications to ensure that eligible depositors are able to recover their "old" foreign-currency savings

under the same conditions as Serbian citizens who had such savings in the domestic branches of Serbian banks (§ 146, *Ališić*).

A. Legislative measures

13. In response to the Court's indications, the Serbian authorities ensured that the piece of legislation was adopted to introduce the repayment scheme. This legislation was subsequently amended to make it possible for the depositors, in particular those from Bosnia and Herzegovina, to benefit from repayment.

(i) Ališić Implementation Act

14. On 28 December 2016, the Serbian Parliament adopted the above-mentioned draft law ("*Ališić Implementation Act")*, which entered into force on 30 December 2016. Pursuant to this law, Serbia has undertaken to pay all unpaid "old" foreign-currency savings of citizens of the SFRY successor States other than Serbia deposited in Serbian banks, as well as such savings of Serbian citizens in foreign branches of Serbian banks, together with contractual interest accrued up until 31 December 1997.

15. Interest for the period from 1 January 1998 until 31 May 2016 is to be paid at an annual rate of 2% and for the subsequent period at an annual rate of 0.5% (sections 1 and 4 of the Ališić Implementation Act). Interest is to be calculated on the basis of the simple-interest formula. In order that the actual amount due may be assessed, all those concerned must lodge a request for verification by 23 February 2018 (see section 11(1) of the Act).

16. The law expressly indicated that up to EUR 310 million shall be appropriate in the budget to service the outstanding liabilities on this ground.

17. The amount determined in the verification proceedings will then be reimbursed in the form of Government bonds, which are to be paid off by 28 February 2023 in ten biannual instalments (on 28 February and 31 August every year from 31 August 2018 to 28 February 2023). As Government bonds are redeemable before their maturity, once issued they may be traded on the stock exchange.

18. Pursuant to the law, the verification decisions on repayment applications shall be made by the Ministry of Finance Public Debt Administration upon proposal of an *ad hoc* committee to be set up by the Government. The decision shall be made in administrative procedure.

19. All verification decisions are subject to judicial review in accordance with section 16 of the Ališić Implementation Act. Under section 13 of the Act, 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, dec., 41698/06, 21 July 2017).*

20. The European Court assessed the above law from the perspective of the criteria set out in the pilot judgment. The Court noted that the repayment conditions are essentially the same as those applied to Serbian nationals in the initial repayment scheme. Taking into consideration the respondent State's wide margin of appreciation, the Court found that the Ališić Implementation Act, in principle, fulfils the first criterion of "same [repayment] conditions" (§10, *Muratović)*.

21. As to the second and third criteria set out in the pilot judgment (lack of original contracts or bankbooks and judicial review) the Court noted 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 and that all verification decisions are subject to judicial review.

Consequently, the Court held that the Ališić Implementation Act, therefore, fulfils also those two criteria (§11, *Muratović)*.

22. In view of the above, the Court held that the Ališić Implementation Act met the criteria set out in the pilot judgment (§17, *Muratović)*.

(ii) Amendments

23. The Serbian Government was mindful of the Court's indications that the repayment schema should not apply to those who have already been paid their entire "old" foreign-currency savings, such as those who were able to withdraw their savings on humanitarian grounds or used them in the privatisation process in the Federation of Bosnia and Herzegovina. The Court unambiguously indicated that Serbia may exclude such persons from its repayment scheme. However, where only a part of a person's "old" foreign-currency savings has thus been repaid, Serbia is now to be responsible for the rest (§147, *Ališić*).

24. The Serbian Government would also like to remind that the Court held that "to allow the Serbian … authorities to verify the balance in their accounts the [depositors] must comply with the requirements of any verification procedure to be set up" (§148, *Ališić*).

25. Having in mind the above mentioned, it was indispensable for the efficient functioning of the scheme to obtain reliable data from on the savings already used in the privatisation process in particular in Bosnia and Herzegovina, from where the bulk of the depositors originate.

26. The authorities note that the encountered obstacles in obtaining documents from Bosnia and Herzegovina and Croatia attesting the extent of the savings used in the privatisation (see below). For this reason, it was impossible for the depositors from these countries to provide the required documentation in good time as set out in the Ališić Implementation Act.

The Government therefore amended the law initially in 2017 with a view to extending the timeframes concerned.

27. Having this in mind and in an effort to implement the Court's indications in good faith and make it possible to the depositors to benefit from the repayment scheme to the greatest extent possible in the face of the continued lack of clarity from certain successor States, the Serbian Government tabled further draft amendments to the law in 2019.

28. To this end, on 22 July 2019, Parliament adopted amendments to the above law. Pursuant to the amendments two key modifications to the repayment schema were introduced:

(a) first, the number of repayment instalment has been shortened as the Government was willing to honour its obligations as soon as possible: instead of the initially envisaged repayment in ten semi-annual instalments, pursuant to the amendments repayment will be made in *eight* instalments starting as from *28 February 2020* instead of 31 August 2019 as initially envisaged;

(b) second, the decision-making period was extended from 23 June 2019 to *23 December 2019*; this extension made it possible to the depositors mainly from Bosnia and Herzegovina to obtain the required documentation proving the amounts used in the privatisation process;

(c) third, in view of the above, the repayment will start on 28 February 2020 (the first instalment) and will end on 31 August 2023 (earlier than initially envisaged on 28 February 2024, since repayment will be in eight instalments instead of ten).

B. Regulatory measures

29. Following to the adoption of the implementation law, on 3 February 2017 the Government adopted the Regulation governing the procedure for establishment of the right to payment of foreign-currency savings. The Regulation prescribed, *inter alia*, an application form for claims and the procedure to be followed when registering claims and processing the documentation to be attached to the application. This Regulation was published in the Official Gazette of the Republic of Serbia.

30. The above Regulation was further revised and amended in 30 August 2019 in accordance with the adopted amendments to the Ališić Implementation Act, mainly to reflect amended time-frame for decision-making and repayment.

C. Administrative arrangements

31. The Government also put in place administrative arrangements to ensure efficient functioning of the repayment scheme. These are set out below.

(i) Public call

32. On 23 February 2017 the Ministry of Finance, in charge of administering the law, issued a public call inviting depositors to file their applications with the Serbia's Public Debt Administration. This public call was published in a major daily in each of the former Yugoslav Republics, as well as on the official webpage of the Ministry of Finances (see their list here). Given that bulk of the depositors was expected from Bosnia and Herzegovina, the public call was also published in the Avaz, major daily in the Federation of Bosnia and Herzegovina and Glas Srpske, the major daily in the Republic of Srpska.

33. The following day, on 24 February 2017, this public call was also published in the Official Gazette of the Republic of Serbia. This public call includes,

inter alia, all necessary information concerning the method of registration, the documentation to be attached to the application etc.

34. The public call also set out the filing period provided in the law expiring on 23 February 2019. The authorities therefore ensured the targeted awareness raising and key information, including on filing period, to be available in the successor States to reach out to the depositors concerned.

(ii) Ad hoc committee

35. On 30 July 2018, by its decision 05 no. 02-7244/2018 the Government established an *ad hoc* committee including eleven members (3 from the Ministry of Finance, 4 the Public Debt Administration, 2 from the National Bank of Serbia and one each from Deposit Insurance Agency and the State Attorney's Office). The *ad hoc* committee is envisaged in the implementation law and is set to make proposal decisions to the Public Debt Administration at first instance in individual cases in the administrative procedure. The Government therefore set up an operational and practical structure with required expertise for dealing efficiently with the repayment applications.

36. If not satisfied with decisions of the Public Debt Administration, applicants will have a possibility to appeal such decisions within 30 days prior resorting to the judicial remedy. In its inadmissibility decision in *Muratović,* the European Court found such arrangement compliant with the pilot judgment.

37. The Government also created favourable conditions for efficient decision making in verification procedure. To this end, in early 2017 staff was hired to support the operation of the *ad hoc* committee.

38. The *ad hoc* committee informed the Government regularly on the progress made in the verification procedure. On 25 April 2019, the Government approved the *ad hoc* commission operation report for the period from August 2018, when it was set up, until 31 March 2019.

39. Until September 2019, the *ad hoc* committee has held 57 meetings to review the applications filed and the attached documentation. Only during six months from April to September 2019, the *ad hoc* commission held 26 meetings. This fact demonstrates the intensified efforts of the Serbian Government to ensure efficient and rapid verification procedure.

(iii) IT support

40. With a view to ensuring efficient verification procedure, in May and June 2019 dedicated software was put in place. It has a number of useful functionalities, such as automatic calculation of the amounts payable in instalments and its integration into the draft decision.

(iv) Contacts with the authorities of other successor States

41. Considering the need to clearly establish the authorities in charge of documenting the amounts used in privatisation process in other successor States, the Serbian Government in parallel sought contacts with their counterparts in other successor States to clarify this point.

42. To this end, as of June 2017, the following successor States notified the Serbian Government on their designated bodies in charge of confirming whether any portion of the deposits were used in the privatisation process or otherwise:
    - Montenegro – Montenegrin Commercial Bank JSC Podgorica;
    - North Macedonia – Central Security Depository JSC Skopje;
    - Slovenia – Slovenian Ministry of Finance.

43. The authorities of Croatia and Bosnia and Herzegovina have not however responded to the letters transmitted repeatedly through diplomatic channels in 2015, 2016 and 2017 requesting them to designate the relevant body to facilitate finding the facts concerning the possible portion of deposits used in privatisation process for which Serbia is not responsible according to the Court.

44. Most recently, the Ministry of Financed addressed the letter to their Croatian counterparts on 27 March 2018 urging the designation of their competent authority to provide information on the use of deposits in the privation procedure. Following to this letter, the authorities of both member States met to exchange on the issue in detail. As a result, as late as on 20 December 2018, Croatia notified the Serbian authorities on their body designate. The list is available here. As of that date, the depositors from Croatia were able to obtain all the necessary documents and furnish the required set of documents with their applications.

45. Bosnia and Herzegovina however failed to respond to the requests made by Serbia. In the meantime, in October 2017 the Federation of Bosnia and Herzegovina prescribed a form of the certificate to confirm in each and every case that none of the deposits were used in the privatisation process on the territory of the Federation of Bosnia and Herzegovina.

46. A number of depositors from Bosnia and Herzegovina filed their applications in good time providing the above certificates issued by Bosnia and Herzegovina indicating that no savings were used in the privatisation process, while the depositors themselves indicated in their affidavits the amounts used in this procedure. In a number of cases it was also established by the way of reviewing of bankbooks that many deposits were transferred to other legal entities in Bosnia and Herzegovina (most frequently to the Tuzla Deposit Bank and Sarajevo Commercial Bank) and subsequently to the privatisation accounts. Such situation created an

obstacle for efficient fact finding on the balance payable and decision making on the applications in a large number of cases.

47. The Serbian Public Debt Administration, the Ministry of Finance, raised the issue in their letters dated 29 March 2018 and 10 December 2018 with their counterparts in Bosnia and Herzegovina. No response however has been received.

48. The Serbian Ministry of Finance repeatedly requested the necessary information in their letter dated 5 February 2019. This letter followed the meeting between the authorities of Serbia and Bosnia and Herzegovina held in January 2019 to discuss the outstanding issues. In the meantime, during their bilateral mission to Belgrade, the Director of the Serbian Public Debt Administration drew the attention of the Head of the Department for the Execution on the challenges faced in obtaining response from Bosnia and Herzegovina and their detrimental effect to the efficient administration of the repayment procedure, and requested good offices of the Department in this regard.

49. In the meantime, on 18 March 2019 the authorities of Bosnia and Herzegovina informed their Serbian counterparts that there was no possibility for them to provide data contained in the privatisation accounts held in Bosnia and Herzegovina.

50. As it follows from the information available in the public domain, however, the authorities of Bosnia and Herzegovina transmitted such data on privatisation accounts in electronic form to Slovenian authorities, who also required them to be able to accurately and rapidly establish the payable balance (DH-DD(2016)1301, page 4, bottom, point 2, where the local Association for Protection of Hard-Currency Savings Depositors in Bosnia and Herzegovina communicated to the Committee of Minister under Rule 9 that in July 2015 the Minister of Finance of Bosnia and Herzegovina delivered the data on privatisation accounts of depositors of Ljubljanska

Banka Main Branch in Sarajevo to the Slovenian Ministry of Finance in electronic form).

51. It is not therefore clear how it was possible to provide these data to Slovenian authorities to certify that depositors of Ljubljanska Bank used certain portion of their savings in the privatisation process, while in case of Serbian banks for certificates are issued confirming that no use has been made of deposits in the privatisation accounts in each and every case.

52. On 24 April 2019, the delegations of Bosnia and Herzegovina and Republic of Serbia met in Sarajevo under the good offices of the Department for the Execution. The outstanding issues were discussed at length. The Government expresses its gratitude to the Department for the Execution for providing this avenue for the exchange and highly appreciates the facilitation of the execution of this important judgment.

53. At the outset of the meeting, it was agreed that conclusions setting out how to move forward will be signed at the later stage in Strasbourg. On 26 July 2019 the Department for the Execution shared the draft conclusions of the meeting proposing the solutions for the challenges faced and invited both authorities to sign them. The authorities of Serbia have indicated their willingness to do so.

(v) Filing statistics and emerging issues

54. It is recalled that the filing period for claiming repayment of “old” foreign-currency savings expired on 23 February 2019.

55. As of that date, the Public Debt Administration received the following applications (data as of 30 September 2019):

Country	Applications filed	Savings claimed (EUR) preliminary data	%

Bosnia and Herzegovina (Federal)	5 617	60 021 514	59.61%
Serbia	2 003	19 622 037	19.49%
Croatia	838	8 927 416	8.87%
Montenegro	153	1 220 766	1.21%
North Macedonia	196	2 997 790	2.98%
Slovenia	51	430 043	0.43%
Others	466	7 468 174	7.42%
Total:	9 324 9 400*	100 687 740	100%

56. The *ad hoc* committee has established that the bulk of the application filed had been missing relevant documentation, in particular as regards depositors originating from Bosnia and Herzegovina as explained above. As of 26 June 2019, out of 9 323 applications filed, only 4 580 were received with a full set of required documents.

57. The applications claims filed in for total 13 019 individual foreign currency accounts. The execution of the present judgment relates to deposits held in 4 Serbian banks that had branches in the successor States (JIK, Beobanka, Investbanka and Jugobanka - all banks are bankrupt). We need to mention that all applications filed are related to a total of 35 banks, taking into account both the Serbian banks with which foreign currency savings were deposited and the banks that took over the servicing of foreign currency savings instead of the bankrupt banks.

58. It is however noted that the Serbian banks concerned have been in bankruptcy procedure or were succeeded by other banks. Within this context, it was established that 90% of the “old” foreign currency savings were held in the banks placed in the bankruptcy procedure.

59. The Public Debt Administration requested in the verification procedure the information on the balances of the accounts held in these banks. As of end June 2019, the banks in bankruptcy or their successors provided the

requested information for 6 000 individual accounts. It is noted that the responses are provided with certain delay because of the technical problems with reading the technically obsolete databases and manual collection and copying of the data from microfiches or from the archives.

60. To this end, the Government of Serbia recalls the European Court's indications that the depositors must comply with the requirement of any verification procedure and that no claim should be rejected simply because of a lack of original contracts or bankbooks, *provided that the persons concerned are able to prove their claims by other means (§148, Ališić).*

61. Therefore, the Public Debt Administration addressed 7 780 requests to applicants to furnish additional documentation; in response, in 5 334 cases such documentation was provided by the applicants. In the bulk of the cases where additional documentation was required, the authorities asked the applicants to provide information on the use of their deposits in the privatisation process, in particular to provide information on the status of their privatisation accounts in the Federation of Bosnia and Herzegovina.

62. Certain applications received did not concern the deposits regulated by the implementation law (i.e. the deposits were not held in the branch offices of the Serbian banks outside Serbia). In total, 137 such applications have received, whereof 124 have already been dismissed.

IV JUST SATISFACTION

63. The just satisfaction awarded to the applicant Mr. Šahdanović in respect of non-pecuniary damage has been disbursed within the deadline set by the European Court.

V CONCLUSIONS

64. The Government of Serbia shares the European Court's finding that the law and repayment scheme introduced complies with the European Court's indications. The Government therefore considers that the law introducing the repayment scheme will be capable of preventing similar violations. In line with its primary obligation to secure everyone within Serbian jurisdiction his/her Convention rights, the Government holds the view that the envisaged repayment scheme will ensure full and effective execution of the European Court's judgment and will resolve a broader spectrum of potential violations in this respect.

65. In this respect, the Government would like to highlight that they have been taking all necessary measures to ensure the proper functioning of the repayment scheme in line with the Convention standards, and under the same conditions as Serbian citizens who had such savings in domestic branches of Serbian banks.

66. The Government will keep the Committee of Ministers informed on its experience in the implementation of the repayment scheme.