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CASES BEFORE THE ECHR INVOLVING ISSUES OF PUBLIC INTERNATIONAL LAW

Document submitted by the delegation of Slovenia

Kovačić and Others v. Slovenia
(nos. 44574/98, 45133/98 and 48316/99, Chamber Judgment of 6 *November 2006, the case was referred to the Grand Chamber)*

Legal issues: protection of human rights, state succession, foreign-currency deposits.

Facts: In 1998 and 1999, Croatian savers Mr Ivo Kovačić, Mr Marjan Mrkonjić and Ms Dolores Golubović lodged applications against the Republic of Slovenia with the European Commission of Human Rights and the European Court of Human Rights in Strasbourg; in 2001, the Court decided to join the proceedings in the applications under the *Case of Kovačić and others v. Slovenia*. The Republic of Croatia is intervening as third party.

The applicants deposited foreign-currency with *Ljubljanska banka, Osnovna banka Zagreb* (Ljubljanska banka Zagreb Basic bank – "LB OB Zagreb") before the dissolution of the SFRY. Their foreign-currency deposits were guaranteed by the SFRY and "re-deposited" with the former National Bank of Yugoslavia (the former NBY) under the applicable domestic laws of the SFRY. Following the dissolution of the SFRY, the former Yugoslav banks, including *Ljubljanska banka, Glavna podružnica Zagreb* (Ljubljanska banka Zagreb Main Branch – "LB GP Zagreb"), were unable to recover from the former NBY their foreign-currency deposits needed to service their liabilities to foreign-currency depositors. It is important to note that in the former SFRY, the Federation guaranteed foreign-currency deposits. Despite this fact, the Republic of Slovenia assumed liability for all foreign-currency deposits on Slovenian territory, including those made by non-Slovenian citizens; on the basis of the neutral territorial principle, the Republic of Slovenia did not, however, assume liability for the applicants' deposits with LB GP Zagreb.

Issue of human rights: The applicants complained under Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of a violation of their right to the peaceful enjoyment of their possessions alleging that they had not been able to withdraw foreign-currency deposits made prior to the dissolution of the SFRY from LB GP Zagreb. They claimed that *Ljubljanska banka d.d.* ("LB d.d.") or the Republic of Slovenia should repay them their deposits with accrued interest on the grounds that the Republic of Slovenia as a successor State to the SFRY had assumed the SFRY's statutory guarantee for their deposits. Mr Kovačić also complained that he had been discriminated against on the grounds of nationality, contrary to Article 14 of the said Convention. He alleged that Slovenian depositors of LB GP Zagreb had been allowed to withdraw their deposits.

Issue of state succession: Under customary international law, a successor State is not automatically liable for its predecessor's financial obligations. The primary rule with regard to the allocation of assets and liabilities in succession situations is that successor States should settle any such issues by agreement. In Opinion No. 9, the Arbitration Commission on Yugoslavia thus stated that the successor States to the SFRY must together settle all aspects of the succession by agreement, and reinforced this approach in Opinion No. 14, declaring that the first principle applicable to state succession is that the successor States should consult with each other and agree a settlement of all questions relating to succession. On 29 June 2001, the successor States to the SFRY signed the Agreement on Succession Issues ("Vienna Agreement") which entered into force on 2 June 2004, following Croatia's ratification. Annex C to the Vienna Agreement stipulates that the successor States shall negotiate the distribution of the former SFRY's and the former NBY's guarantees for foreign-currency deposits with commercial banks or their branches under the auspices of the Bank for International Settlements.

Chamber Judgement of 6/11/2006: The Judgement sets forth the factual and legal aspects of the cases, including Slovenia's, Croatia's and the former SFRY's relevant laws and regulations, and summarises the positions of the parties to the dispute. Although the Court has not resolved any of the substantive law issues, the procedural decision contains some important points.

The Court decided to strike the applications out of its list of cases pursuant to Article 37(1)(b) and (c) of the Convention. Two of the applicants received payment in full of their foreign-currency deposits plus interest and costs. After they decided to pursue their claims against LB GP Zagreb in the Croatian courts, they successfully executed on LB GP Zagreb's Croatian assets. As for the third applicant, who did not institute any proceedings against LB GP Zagreb, the Court determined that in cases in which liability for a former State's debt is disputed by the successor States, the applicant can reasonably be expected to seek redress in for a where other applicants have been successful. The Court decided to strike the application out of its list of cases on the grounds that the third applicant would likely have been successful if she had taken action in Croatia and, in any event, it is still open to her to do so.

The Court did not establish any violations by the Republic of Slovenia of human rights (property rights and prohibition of discrimination on the basis of nationality) of the Convention and its Protocols.

The judgment does not specifically analyze the issue of the guarantee; however, the Court's judgement and the reasons behind it show that foreign-currency savers should mainly be reimbursed from the assets of LB GP Zagreb in Croatia.

Grand Chamber Judgement: A public hearing was held on 14 November 2007.

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