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

FIRST SECTION

DECISION

Application no. 29003/07
LJUBLJANSKA BANKA D.D.
against Croatia

The European Court of Human Rights (First Section), sitting on 12 May 2015 as a Chamber composed of:

Isabelle Berro, *President*,
Mirjana Lazarova Trajkovska,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 21 June 2007,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ljubljanska banka d.d., Ljubljana (hereafter "the applicant bank" or "the Ljubljana Bank") is a joint stock company incorporated under Slovenian law. Its registered office is in Ljubljana.

A. The circumstances of the case

1. Background to the case

2. Before the economic reforms that were carried out in the Socialist Federal Republic of Yugoslavia (hereafter "the SFRY") in 1989-90, its commercial banking system consisted of "basic" and "associated" banks. Basic banks had separate legal personality, but were integrated into the organisational structure of one of the nine associated banks. As a rule, basic banks were founded and controlled by socially-owned companies based in

the same territorial unit (that is, in one of the Republics – Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia – or Autonomous Provinces – Kosovo and Vojvodina). Socially-owned companies were the flagship of the Yugoslav model of self-management: neither private nor State-owned, they were a collective property controlled by their employees, based on a communist vision of industrial relations. At least two basic banks could form an associated bank (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 12, 16 July 2014).

3. The Ljubljana Bank (in Slovenian and Croatian: *Ljubljanska banka*) was founded in 1955 under the laws of the then Socialist Republic of Slovenia. In 1969 it opened an office in Zagreb in the then Socialist Republic of Croatia. From 1978 until 1 January 1990 the Ljubljana Bank Ljubljana (hereafter "the Ljubljana Bank Head Office") operated as an "associated bank" (in Slovenian: *Ljubljanska banka – združena banka*) and was composed of Ljubljana Basic Bank Sarajevo, Ljubljana Basic Bank Zagreb, Ljubljana Basic Bank Skopje and a number of other basic banks. In the same period the Ljubljana Bank's Zagreb office operated as a "basic bank", that is, as the Ljubljana Basic Bank Zagreb (in Croatian: *Ljubljanska banka – Osnovna banka Zagreb*) and had separate legal personality under the law of the then Socialist Republic of Croatia. It was, however, integrated into the organisational structure of the Ljubljana Bank (see *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, §§ 27-31, 3 October 2008, and *Ališić and Others*, loc. cit.)

4. Within the framework of the 1989-90 reforms, the SFRY abolished the system of basic and associated banks described above. This shift in the banking regulations allowed some basic banks to opt for an independent status, while others became branches (without legal personality) of the former associated banks to which they had belonged (see *Ališić and Others*, cited above, § 21).

5. On 19 December 1989 the Ljubljana Bank Head Office was re-registered as a joint stock company (in Slovenian: *delniška družba, "d.d."*) in the then Socialist Republic of Slovenia. The change was entered in the register of commercial companies the same day and became effective on 1 January 1990 (see *Ališić and Others*, cited above, § 21, and *Kovačić and Others*, cited above, §§ 32 and 46).

6. On 29 December 1989 the Ljubljana Basic Bank Zagreb was re-registered with effect from 1 January 1990 as the Zagreb Main Branch (in Slovenian and Croatian: *Ljubljanska banka d.d. Ljubljana – Glavna filijala Zagreb*, hereinafter: "the Ljubljana Bank Zagreb Main Branch") in the registers of commercial companies in both the then Socialist Republic of Slovenia and the Socialist Republic of Croatia (see *Kovačić and Others*, cited above, §§ 33 and 48), that is, as a business unit of the Ljubljana Bank

(in Slovenian: *del podjetja*, in Croatian: *dio poduzeća*) without legal personality (see paragraph 22 below).

7. Shortly after its declaration of independence on 25 June 1991, Slovenia nationalised the Ljubljana Bank. In 1994, it restructured the bank by virtue of the 1994 Amendments to the 1991 Constitutional Act Implementing the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia. Most of the bank's assets and a part of its liabilities were transferred to a new bank – the New Ljubljana Bank (*Nova Ljubljanska banka*, see paragraph 43 below). The old Ljubljana Bank was initially administered by the Bank Rehabilitation Agency of Slovenia. It is now controlled by a Slovenian Government agency – the Succession Fund (see *Ališić and Others*, cited above, § 49, and *Kovačić and Others*, cited above, §§ 52, 60 and 62-65).

2. Particular circumstances of the present case

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

(a) Enforcement proceedings instituted by the applicant bank

9. On 15 November 1991 the applicant bank instituted enforcement proceedings before the Osijek Commercial Court (*Trgovački sud u Osijeku*) against the company *IPK Tvornica šećera Osijek d.o.o.* (hereafter "the sugar factory") seeking payment of 11,401.20 Croatian kunas (HRK) together with the accrued statutory default interest. It relied on certified excerpts from its business records showing outstanding claims against the sugar factory arising out of loan agreements concluded on 25 November 1987 and 1 June and 11 December 1990.

10. On 22 September 1992 the court issued a writ of execution (*rješenje o izvršenju*) ordering the sugar factory to pay the amount sought.

11. On 31 May 1994 the applicant bank instituted another set of enforcement proceedings before the same court against the sugar factory seeking payment of HRK 137,698.99 together with the accrued statutory default interest. It again relied on certified excerpts from its business records showing outstanding claims against the sugar factory arising out of loan agreements concluded on 1 June and 26 October 1990.

12. On 26 July 1994 the court issued a writ of execution ordering the sugar factory to pay the amount sought.

13. On 21 September 1994 the applicant bank signed an agreement with *IPK Osijek d.o.o.* entitled "Protocol on the settling of obligations of IPK Osijek and companies in its ownership toward the Ljubljana Bank" (*Protokol o načinu reguliranja obveza IPK Osijek i poduzeća u njegovom vlasništvu prema Ljubljanskoj banci*, hereafter "the Protocol of 21 September 1994"). The agreement acknowledged that IPK Osijek was unable to service its debts toward the applicant bank because its facilities

were located in the zone affected by the Croatian War of Independence and had sustained substantial damage, which had significantly reduced its production capacities.

14. The agreement further stipulated that the applicant bank's claims against the sugar factory (as one of the companies owned by IPK Osijek) were to be converted into shares of that company. However, it also mentioned that, while that arrangement had been accepted by the board of directors of the Ljubljana Bank Head Office, the Bank Rehabilitation Agency of Slovenia had not agreed to the conversion.

15. Lastly, the agreement contained a non-enforcement clause (*pactum de non petendo*) whereby the applicant bank undertook not to seek enforcement of its claims against the companies owned by IPK Osijek until an inter-State agreement regulating the status of the Zagreb Branch of the applicant bank had been concluded. In particular, paragraphs 4 and 5 of the agreement read as follows:

> "4. IPK Osijek and companies in its ownership have regulated their obligations toward Ljubljana Bank – Zagreb Main Branch by previous agreements, the decision of the Board of Directors of the Ljubljana Bank Head Office and this Protocol.
>
> A moratorium shall be placed on all obligations, all previous agreements and all decisions until the conclusion of an inter-State agreement on the status of Ljubljana Bank – Zagreb Main Branch. In that connection the Ljubljana Bank – Zagreb Main Branch, Zagreb, undertakes not to seek compulsory execution of its claims based on final court judgments.
>
> 5. Ljubljana Bank – Zagreb Main Branch retains the right to pursue judicially its claims against IPK Osijek and companies in its ownership [but] only with a view to preventing those claims from becoming time-barred."

16. On 8 October 1999 Croatia and Slovenia concluded a bilateral agreement on property issues (hereafter "the Bilateral Agreement"). Paragraph 3 of Article 1 of the agreement expressly excluded the application of the Bilateral Agreement to issues related to the Zagreb Branch of the applicant bank (see paragraph 31 below).

17. On 27 October 2003 the applicant bank asked the Osijek Commercial Court to continue the enforcement in both sets of proceedings. It did so because the sugar factory had started to make a profit again and because the Croatian Supreme Court had interpreted the Bilateral Agreement as narrowing the exclusion clause provided in paragraph 3 of Article 1 only to claims which Croatia as a State had against the Ljubljana Bank (see paragraph 32 below).

18. In its response to the applicant bank's request to continue the enforcement, on 17 November 2003 the sugar factory replied that by signing the Protocol of 21 September 1994, the bank had agreed not to seek enforcement until the conclusion of an inter-State agreement regulating the status of the Zagreb Branch of the applicant bank, and that the terms of the Bilateral Agreement between Croatia and Slovenia were not the same as

those envisaged in the Protocol of 21 September, which specifically excluded issues related to the Zagreb Branch of the applicant bank.

19. By decisions of 15 and 16 December 2003 the Osijek Commercial Court stayed the two sets of enforcement proceedings. In so deciding, it entirely accepted the arguments advanced by the sugar factory. The relevant part of those decisions reads as follows:

> "Proceedings in this case shall be stayed until the conclusion of an inter-State agreement that would settle the enforcement issues between the creditor and the debtor.
>
> **Reasons**
>
> Given that the special agreement which would settle the enforcement issues between the creditor and the debtor has to date not been concluded, which means that this issue (section 12 of the Civil Procedure Act) has not been resolved yet, the court in accordance with section 213(1) of the Civil Procedure Act taken in conjunction with section 14 of the Enforcement Procedure Act, decided as stated in the operative provisions."

20. On 30 December 2003 the applicant bank appealed against those decisions. It argued that (a) it had not had an opportunity to comment on the sugar factory's submissions of 17 November 2003 (see paragraph 18 above) as they had never been served on it; (b) the sugar factory was not a party to the Protocol of 21 September 1994 (see paragraphs 13-15 above), which was therefore inapplicable to the enforcement proceedings in question; (c) the protocol in any event referred to claims based on final court judgments (see paragraph 15 above) whereas the enforcement proceedings in question were based on excerpts from the bank's business records (see paragraphs 9 and 11 above); and (d) the contested decisions were contrary to the case-law of the Supreme Court, according to which the Bilateral Agreement only excluded issues relating to claims Croatia had against the bank (see paragraph 32 below) and thus did not prevent private individuals or companies from pursuing judicially their claims against the bank or *vice versa*.

21. By decisions of 9 May and 20 June 2006 the High Commercial Court (*Visoki trgovački sud Republike Hrvatske*) dismissed the applicant bank's appeals and upheld the first-instance decisions. In addition to the reasons adduced in the contested decisions, that court also added that the proceedings should have been stayed for yet another reason, namely, because the Zagreb Main Branch had been deleted from the register of commercial companies in Croatia.

22. The relevant part of the High Commercial Court's decision of 9 May 2006 reads as follows:

> "It is true that these proceedings were stayed until the conclusion of an inter-State agreement that would settle the enforcement issues between the creditor and the debtor. However, the case-file contains a certificate [issued] by the Zagreb Commercial Court ... of 22 August 2002 indicating that on 29 December 1989 the

> Zagreb Main Branch was, on the basis of the decision of the Ljubljana Basic Court [no.] Srg-3289/89, recorded as a business unit of the bank without legal personality, as a result of which on 5 June 1996 the subject was deleted from the register [of commercial companies] as a legal entity with effect from the date those facts had been established. It follows, given that the enforcement creditor no longer exists, that the first-instance court acted correctly when it stayed the proceedings because that was in accordance with section 212(1) subparagraph 4 of the Civil Procedure Act ...
>
> It follows from the foregoing that the appeal of the enforcement creditor is unfounded and thus had to be dismissed ..."

23. The relevant part of the High Commercial Court's decision of 20 June 2006 reads as follows:

> "It first has to be noted that the Ljubljana Bank – Zagreb Main Branch was deleted from the register of commercial companies [in Croatia] of the Zagreb Commercial Court ...
>
> The first-instance court stayed the proceedings, relying on section 213 of the Civil Procedure Act. However, the conditions for staying the proceedings on the basis of section 212(1) subparagraph 4 of the [same] Act have also been met.
>
> It follows from the foregoing that the first-instance court acted correctly when it stayed the proceedings. It further follows that the appeal of the Ljubljana Bank – Zagreb Main Branch is unfounded and thus had to be dismissed ...".

24. On 18 October and 2 November 2006 the applicant bank lodged constitutional complaints against the decisions of the commercial courts alleging that its right to equality before the law, the right to a fair hearing and the right to appeal guaranteed by the Constitution, had been violated. In so doing, it reiterated the arguments it had made before the appellate court (see paragraph 20 above). It added that it was a foreign legal entity incorporated under Slovenian law and registered as such in the register of commercial companies in Slovenia. Therefore, contrary to the view of the High Commercial Court, the fact that its Zagreb Main Branch had been deleted from the register of commercial companies in Croatia did not mean that the entire company had ceased to exist as a legal entity within the meaning of section 212(1) subparagraph 4 of the Civil Procedure Act, which provided for the mandatory stay of proceedings in such cases (see paragraph 34 below). In that connection, the applicant bank in its constitutional complaints stated as follows:

> "1. The Zagreb Commercial Court was not the court of registration for the enforcement creditor Ljubljana Bank as a legal entity.
>
> 2. As the complainant has never been registered with the Zagreb Commercial Court, it could not have been deleted by that court either. That court is not the relevant court of registration for the complainant, given that the complainant's registered office is in Ljubljana and the complainant is a foreign legal entity ...
>
> ...
>
> From the complainant's name it is evident that it is a joint stock company and that its registered office is in Ljubljana.

Given that the complainant's seat as a joint stock company is in Ljubljana, Republic of Slovenia, the complainant is a foreign legal entity.

...

It follows from the excerpts from the register of commercial companies relevant for the complainant [that is, from the register of the Ljubljana District Court] that:

- the complainant, Ljubljana Bank, was recorded in the register of commercial companies of the Ljubljana District Court ... on 19 December 1989 on the basis of the decision of the Ljubljana Basic Court no. Srg 2641/89.

- on the basis of a decision of the Ljubljana Basic Court of 29 December 1989 no. Srg 3289/89 in the register folder ... of the complainant Ljubljana Bank as a joint stock company, the Zagreb Main Branch is recorded as a business unit of the complainant.

...

From the foregoing it is evident that the complainant Ljubljana Bank ran business on the territory of the Republic of Croatia through the Zagreb Main Branch as its business unit, the operation of which generated monetary claims that became due in the period between 31 August 1991 and 31 December 1991. These were pursued in enforcement proceedings against the debtor whose registered office is in the Republic of Croatia. After the dissolution of the SFRY, that is, after 8 October 1991 as the independence day of the Republic of Croatia, the Zagreb Main Branch as a business unit of the complainant became a business unit of a foreign bank."

25. By decision of 24 November and 15 December 2006 the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared the applicant bank's constitutional complaints inadmissible. It held that the contested decisions did not involve the determination of the bank's rights or obligations, or of any criminal charge against it, within the meaning of section 62(1) of the Constitutional Court Act (see paragraph 33 below), and that therefore a constitutional complaint could not be lodged against those decisions. The Constitutional Court served both of its decisions on the applicant bank's representative on 27 December 2006.

26. The applicant bank submitted that on the basis of calculations prepared by Z.R., an appointed court expert in finance, as of 15 June 2007 the claims it sought to enforce in the above two sets of enforcement proceedings against the sugar factory, including costs and the accrued statutory default interest, totalled HRK 422,041,634.40.

(b) Media reports

27. The applicant bank claimed that the decisions to stay the proceedings had been made under the influence of Mr S.L., who had been the Deputy Prime Minister of Croatia in the period between 27 January 2000 and 22 December 2003. In support of its allegations it submitted three newspaper articles from two Croatian daily newspapers.

28. On 9 March 2004 the business daily *Dnevnik* published on its front page an article entitled "The Ljubljana Bank is seizing [the assets of]

Croatian companies" (*Ljubljanska banka plijeni hrvatske tvrtke*). The front page featured a photograph of S.L. next to which there was a text that read as follows:

> "S.L.: It is dubious that the Croatian courts are making awards in favour of a legal entity which actually does not exist."

The article continued on page 3. Next to it, on the left side, there was a small column featuring another photograph of S.L. The column read as follows:

> **L.: How we prevented the enforcement**
>
> "The first enforceable judgment against IPK [Osijek] in favour of the Ljubljana Bank was adopted in May 2003. However, as explained by the former Deputy Prime Minister S.L., one had managed to prevent the enforcement by disputing the adoption of the judgment in favour of a legal entity which does not formally exist in Croatia. For S.L. it is still dubious that the Croatian courts are making awards in favour of an inexistent legal entity because in such cases it is in his view questionable who is receiving that money."

29. The article published in the daily *Slobodna Dalmacija* on 3 November 2006 entitled "L.: I influenced the court" (*L.: Utjecao sam na sud*) reads as follows:

> UNUSUAL CONFESSION OF THE FORMER DEPUTY PRIME MINISTER
>
> **L.: I influenced the court**
>
> "Slovenia's high representative for succession M.P. claims that the problem of the Ljubljana Bank would have been resolved a few years ago if the Deputy Prime Minister at the time, S.L., had not obstructed enforcement proceedings in which the bank should have received money to pay off its savers.
>
> S.L. himself admits that he influenced the enforcement of the Osijek court judgment according to which the money from a certain company had to be paid to some, as he says, strange people. He is persuaded that the money was not intended to be paid to savers, nor would they have ever seen it.
>
> 'There is not much point in commenting on shameful statements of Slovenian politicians who deny that they stole from the people who trusted them by depositing their money in their bank. That problem should not even have appeared and when it did the politicians were those who could have resolved it quickly and efficiently' L. states. The problem of recovering the debt [i.e. old foreign currency savings], he is convinced, can now be resolved only before the European court."

30. The article prompted the reactions of several public figures, which were published in an article in the same daily newspapers the next day. In particular, the president of the Croatian Association of Judges at the time, Mr V.G., claimed that S.L. had committed a criminal offence and suggested that the Principal State Attorney bring criminal charges. The then president of the Parliamentary Judiciary Committee, Mr. E.T., stated that S.L. had grossly violated the Constitution, whereas a member of the same party as

S.L., Mr. I.J., who was at the time the vice-president of that party's parliamentary "club", was more reserved, suggesting that S.L. might not have breached the law.

B. Relevant Croatian and international law and practice

1. Bilateral Agreement between Slovenia and Croatia on Property Issues

(a) Relevant provisions

31. The Bilateral Agreement between Croatia and Slovenia on Property Issues (*Ugovor između Republike Hrvatske i Republike Slovenije o uređenju imovinskopravnih odnosa*, Official Gazette of the Republic of Croatia – International Agreements nos. 15/99 and 4/00) was signed on 8 October 1999 and entered into force on 23 February 2000. The relevant Article reads as follows:

Article 1

"The provisions of this Agreement concern the resolution of property issues that arose before and after the Contracting Parties gained independence.

...

The resolution of issues related to Krško Nuclear Power Plant and the Ljubljana Bank – Zagreb Main Branch is not the subject of this Agreement, but shall be regulated by separate agreements."

(b) Case-law of the Supreme Court

32. In its decisions nos. Gzz-166/02 of 27 February 2003 and Gzz-139/02 of 15 April 2003 and its judgment no. Rev 2029/01 of 16 March 2004, the Supreme Court interpreted Article 1 of the Bilateral Agreement in the following way:

"According to Article 1 paragraph 1 of the Agreement [its] provisions concern the resolution of property issues that arose before and after the Contracting Parties gained independence, whereas paragraph 3 of that Article stipulates that the resolution of issues relating to the Krško Nuclear Power Plant and the Ljubljana Bank – Zagreb Main Branch is not the subject of the Agreement but will be regulated by separate agreements.

Property issues related to the Ljubljana Bank – Zagreb Main Branch [referred to in Article 1 paragraph 3 of the Agreement], are [legal] issues arising from contracts on savings deposits in foreign currency, which Croatian citizens concluded with that bank. In that connection, one should distinguish between foreign-currency savings deposits which the clients of the Ljubljana Bank transferred into public debt of the Republic of Croatia [on the basis of legislation allowing Croatian savers to transfer their foreign-currency savings at the Zagreb Main Branch to Croatian banks, enacted by Croatia after the Zagreb Main Branch stopped repaying them their savings] – in which case the contracts on savings deposits between [them] and the Ljubljana Bank

were terminated (transferred foreign currency savings) and a new [legal] relationship between the Republic of Croatia and the Ljubljana Bank Zagreb Main Branch was created – from those cases where Croatian savers did not transfer their foreign currency savings deposits to Croatian banks or into public debt of the Republic of Croatia (non-transferred foreign-currency savings) [and where thus] contractual relations between [them] and the Ljubljana Bank regarding [their] foreign-currency savings deposits remained unchanged.

In the opinion of this court, the subject of the inter-State agreement between the Republic of Croatia and the Republic of Slovenia could have been only a [legal] relationship arising from the so-called transferred foreign-currency savings, because within that [legal] relationship Croatia is the holder of rights and obligations with respect to the Ljubljana Bank Zagreb Main Branch and was therefore entitled to negotiate those rights and obligations with third parties, in this case with the Republic of Slovenia. On the other hand, non-transferred foreign currency savings could not be, nor were they, the subject of the Agreement, which is why that legal relationship is not covered by Article 1 paragraph 3 [thereof]."

2. Constitutional Court Act

33. The relevant part of the 1999 Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 99/99 of 29 September 1999 – "the Constitutional Court Act"), as amended by the 2002 Amendments (*Ustavni zakon o izmjenama i dopunama Ustavnog zakona o Ustavnom sudu Republike Hrvatske*, Official Gazette of the Republic of Croatia, no. 29/2002 of 22 March 2002), which entered into force on 15 March 2002, reads as follows:

Section 62

"1. Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the decision of a State authority, local or regional government, or a legal person invested with public authority, on his or her rights or obligations, or as regards a suspicion or accusation of a criminal offence, has violated his or her human rights or fundamental freedoms, or the right to local or regional government, guaranteed by the Constitution ("constitutional right") ...

2. If another legal remedy is available in respect of the violation of the constitutional rights [complained of], the constitutional complaint may be lodged only after this remedy has been exhausted.

3. In matters in which an administrative action or, in civil and non-contentious proceedings, an appeal on points of law [*revizija*] is available, remedies shall be considered exhausted only after the decision on these legal remedies has been given."

3. Civil Procedure Act

34. The relevant provisions of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/77 with subsequent amendments, and Official Gazette of the Republic of Croatia no. 53/91 with subsequent amendments) provide as follows:

Section 12(1) and (2)

"When the court's decision depends on the prior resolution of an issue as to the existence of a certain right or legal relationship, and that issue has not yet been decided by a court or other competent authority (the preliminary issue), the court may settle the issue itself, unless special legislation provides otherwise.

The court's decision on a preliminary issue shall have legal effect only in the civil proceedings in which the issue was settled."

STAY, DISCONTINUATION AND SUSPENSION OF PROCEEDINGS

Section 212

"Proceedings shall be stayed:

...

4) if a party which is a legal entity ceases to exist ...,

..."

...

Section 213(1)

"The court shall stay the proceedings also:

1) if it decided not to settle the preliminary issue itself (section 12),

2) ..."

Section 215(1)

"Proceedings stayed on grounds referred to in sub-paragraphs 1) to 5) of section 212 of this Act shall be resumed if ... the legal successors of the legal entity take over the proceedings or if the court, at the request of the opposing party or of its own motion, invites them to do so."

4. The 1978 Enforcement Procedure Act

35. The relevant part of the Enforcement Procedure Act (*Zakon o izvršnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia, no. 20/78 with subsequent amendments, and Official Gazette of the Republic of Croatia no. 53/91 with subsequent amendments), which was in force between 1 October 1978 and 10 August 1996, provided as follows:

Application of provisions of the Civil Procedure Act

Section 14

"Unless otherwise provided for by this Act or another statute, in enforcement ... proceedings the provisions of the Civil Procedure Act shall apply *mutatis mutandis*."

5. Commercial Companies Act

36. Sections 611-618 of the Commercial Companies Act (*Zakon o trgovačkim društvima*, Official Gazette of the Republic of Croatia no. 111/93 with subsequent amendments), which has been in force since 1 January 1995, regulates the status of foreign commercial companies in Croatia.

37. In particular, section 612(2) provides that a foreign commercial company may not run a business in Croatia until it has established a subsidiary in Croatia.

38. Section 613(1) provides that the rules for establishment and registration of subsidiaries are the same for both domestic and foreign commercial companies. Under section 7(2), subsidiaries are not legal entities and the rights and obligations arising from their operation are those of the parent company.

39. Section 613(2) provides that the foreign commercial company has to apply for registration of its Croatian subsidiary to the commercial court having jurisdiction over the registered office of the subsidiary.

40. Section 616(2) reiterates the rule set out in section 7(2) for subsidiaries of domestic companies, namely, that the rights and obligations arising from the operation of a foreign subsidiary are those of the foreign parent company.

41. Sections 634 to 647 contain transitional and final provisions. In particular, section 644 refers to business units (*dijelovi poduzeća*) and reads as follows:

Business units

Section 644

> "(1) Business units authorised to perform certain legal transactions, which are recorded in the companies' register on the day of the entry into force of this Act, shall continue to operate in the manner recorded in that register. Companies must, at the latest within the time-limit for bringing their bylaws in line with this Act [that is, until 31 December 1995], apply to the [relevant commercial] court to have those business units registered as subsidiaries ... or to abolish them.
>
> (2) The court shall of its own motion delete from the companies' register business units referred to in paragraph (1) of this section in respect of which [their parent company] did not act in the manner prescribed therein."

6. Other relevant case-law

42. According to the interpretation adopted by Croatian courts (see, for example, the Supreme Court's judgment no. Revt 102/07-2 of 23 September 2009 and the Constitutional Court's decisions no. U-III-64884/2009, U-III-97/2010, and U-III-1881/2010 of 3 April 2014), claims the Ljubljana Bank had against various Croatian companies arising from loans it had granted them in former Yugoslavia, had been transferred to the New Ljubljana Bank

(*Nova Ljubljanska banka*) by the entry into force on 27 July 1994 of the 1994 Amendments to the 1991 Constitutional Act of Slovenia, in particular by virtue its section 22(b) paragraph 1 (see paragraph 7 above and paragraph 43 below). Thus, in those courts' view, the Ljubljana bank had no standing to sue in order to obtain repayment of such loans.

C. Relevant Slovenian law

43. The relevant provision of the 1991 Constitutional Act Implementing the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (*Ustavni zakon za izvedbo Temeljne ustavne listine o samostojnosti in neodvisnosti Republike Slovenije*, Official Gazette of the Republic of Slovenia no. 1/91 – hereafter: "the 1991 Constitutional Act of Slovenia"), as amended by the 1994 Amendments (*Ustavni zakon o dopolnitvah Ustavnega zakona za izvedbo Temeljne ustavne listine o samostojnosti in neodvisnosti Republike Slovenije*, Official Gazette of the Republic of Slovenia no. 45/94 – hereafter: "the 1994 Amendments to the 1991 Constitutional Act", see paragraph 7 above), which entered into force on 27 July 1994, reads as follows:

Section 22(b)

"The Ljubljana Bank d.d., Ljubljana and the Maribor Credit Bank, d.d. Maribor shall transfer their respective businesses and assets to the new banks established under the provisions of this Constitutional Act.

Notwithstanding the provisions of the preceding paragraph, the Ljubljana Bank d.d., Ljubljana and the Maribor Credit Bank, d.d. Maribor shall retain:

(i) all potential obligations arising out of joint liability under the 'New Financing Agreement' and other potential obligations arising out of relations with the National Bank of Yugoslavia and the former SFRY in the part where the debtors are [located] in other republics of the former SFRY;

(ii) the relevant portion of potential claims under those headings;

(iii) all obligations relating to foreign currency [deposited] on foreign-currency ordinary and savings accounts in respect of which the Republic of Slovenia did not assume guarantees under section 19 of this Act;

(iv) obligations to the National Bank of Yugoslavia and those obligations to foreign creditors that were guaranteed by the SFRY where funds were used by the ultimate beneficiaries from other republics of the former SFRY;

(v) the claims related thereto.

The Ljubljana Bank d.d., Ljubljana shall maintain its links with the existing branches and subsidiaries of Ljubljana Bank d.d. based in the other republics on the territory of the former SFRY, but shall retain the corresponding share of claims against the National Bank of Yugoslavia in respect of foreign-currency savings accounts."

COMPLAINTS

44. The applicant bank complained, under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto, of the non-enforcement of the two writs of execution issued in its favour.

45. The applicant bank further complained under Article 6 § 1 of the Convention that the domestic courts in the two above-mentioned sets of enforcement proceedings had been conducted under the influence of the former Deputy Prime Minister and had thus not been independent.

46. Under the same Article, the applicant bank also complained that the principles of adversarial hearing and equality of arms had not been observed in those two sets of enforcement proceedings. The applicant bank had not had a chance to comment on the sugar factory's submissions of 17 November 2003 (see paragraph 18 above), as they had never been served on it.

47. In addition, the applicant bank complained, under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 thereto, that it had been discriminated against as a foreign (Slovenian) company.

48. Lastly, the applicant bank complained that it had not had an effective remedy as the Constitutional Court had declared its constitutional complaints inadmissible.

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49. The Court notes at the outset that the applicant bank instituted proceedings before the Court by lodging an individual application under Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

50. The Court therefore considers that it first has to examine whether the applicant bank as a legal entity has standing to do so. It reiterates in this connection that a legal entity may lodge an individual application only if it may be regarded as a "non-governmental organisation" within the meaning of Article 34 of the Convention as interpreted in the Court's case-law.

51. The term "non-governmental organisation" referred to in that Article is opposed to "governmental organisation", which includes, *inter alia*, State-owned companies which do not enjoy "sufficient institutional and operational independence from the State" (see *Zastava It Turs v. Serbia* (dec.), no. 24922/12, §§ 19-23, 9 April 2013).

52. In this connection the Court reiterates its findings in the *Ališić* case regarding the applicant bank (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, §§ 114-16, 16 July 2014):

> "114. Having found that Ljubljanska Banka Ljubljana and Investbanka were and still are liable for 'old' foreign-currency savings in their Bosnian-Herzegovinian branches, it must be examined, as the Chamber did, whether Slovenia and Serbia were responsible for the failure of those banks to repay their debt to the applicants. In this regard, the Court reiterates that a State may be responsible for debts of a State-owned company, even if the company is a separate legal entity, provided that it does not enjoy sufficient institutional and operational independence from the State to absolve the latter from its responsibility under the Convention .... The key criteria used in the above-mentioned cases to determine whether the State was indeed responsible for such debts were as follows: the company's legal status (under public or private law); the nature of its activity (a public function or an ordinary commercial business); the context of its operation (such as a monopoly or heavily regulated business); its institutional independence (the extent of State ownership); and its operational independence (the extent of State supervision and control).
>
> 115. Additional factors to be taken into consideration are whether the State was directly responsible for the company's financial difficulties, siphoned the corporate funds to the detriment of the company and its stakeholders, failed to keep an arm's-length relationship with the company or otherwise acted in abuse of the corporate form .... Lastly, as to the companies under the regime of social ownership, which was widely used in the SFRY and is still used in Serbia, the Court has held that they do not, in general, enjoy 'sufficient institutional and operational independence from the State' to absolve the latter from its responsibility under the Convention (see, among many other authorities, *R. Kačapor and Others*, cited above, §§ 96-99, and *Zastava It Turs v. Serbia* (dec.), no. 24922/12, §§ 19-23, 9 April 2013).
>
> 116. ... the Court notes that Ljubljanska Banka Ljubljana is State-owned by Slovenia and controlled by a Slovenian Government agency – the Succession Fund .... It is moreover crucial that by virtue of an amendment to the 1991 Constitutional Act, Slovenia transferred most of that bank's assets to a new bank, to the detriment of the bank and its stakeholders .... The State thus disposed of Ljubljanska Banka Ljubljana's assets as it saw fit .... The Grand Chamber therefore agrees with and endorses the Chamber's finding that there are sufficient grounds to deem Slovenia responsible for Ljubljanska Banka Ljubljana's debt to Ms Ališić and Mr Sadžak. ...."

53. Even though those findings were made in the context of responsibility of the State under Article 1 of Protocol No. 1 to the Convention for the debts of State-owned companies, the Court has already held that findings made in such context apply with equal force in the context of determining whether a (State-owned) company may be considered a "non-governmental organisation" within the meaning of Article 34 of the Convention (compare *Zastava It Turs*, cited above, §§ 21-23, with *R. Kačapor and Others v. Serbia*, nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06, §§ 97-99, 15 January 2008).

54. The Court therefore considers that although the applicant bank is a separate legal entity, it does not enjoy sufficient institutional and operational independence from the State and must, for the purposes of Article 34 of the

Convention, be regarded as a governmental organisation (see *Zastava It Turs*, loc. cit.). It thus has no standing to lodge an individual application with the Court.

55. This is so regardless of the fact that in the instant case the applicant bank is not a governmental organisation of the respondent State. In particular, the Court has already held that the rule that governmental bodies or public companies under the strict control of a State are not entitled to bring an application under Article 34 of the Convention, would apply even if the application was lodged by such company incorporated in a State which is not party to the Convention (see *Islamic Republic of Iran Shipping Lines v. Turkey*, no. 40998/98, § 81, ECHR 2007-V). Indeed, there is nothing in the text of Article 34 of the Convention to suggest that the term "non-governmental organisation" could be construed so as to exclude only those governmental organisations which could be regarded as a part of the respondent State.

56. It follows that the present application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 4 June 2015.

Søren Nielsen
Registrar

Isabelle Berro
President