The Case of the Ljubljanska Banka

Banks, it seems, are never far from the headlines in Slovenia these days. Following the banking crisis and the large bailout in 2013, the State has now been ordered to pay compensation to two account holders of the Ljubljanska Banka. In the case of Alešić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia, before the European Court of Human Rights (ECHR), defunct Slovenian bank Ljubljanska Banka (LB) and Serbian Investabanka were deemed to have unfairly denied access to personal deposits of account holders in Bosnia and Herzegovina. The governments of Serbia and Slovenia, as the guarantor of these accounts following secession from Yugoslavia have been ordered to repay the full amount plus the accrued interest, plus an additional €4.000 in damages each.

This article will focus on the case of LB. This is the second time the court has ruled against Slovenia in this case (the first time being in 2012). It has also set a precedent that will enable other former account holders to come and claim their accounts. According to the court, there are over a thousand such cases pending on behalf of more than eight thousand people.

The court case was based on the applicants insisting that that their rights had been violated according to Article 1 of Protocol 1 of the European Convention on Human Rights, which states that no-one shall be deprived of enjoying their possessions and property. In addition Articles 13 and 14 of the convention were used to justify the court case (the right to an effective remedy and the prohibition of discrimination, respectively). The applicants had not been able to access their savings accounts, deposited in the LB Sarajevo and the Investabanka Tuzla. The court deemed this as denial of property rights, and thus ruled in favor of the applicants under Article 1 of Protocol 1 of the convention. The court also found in their favor under article 13. Both Slovenia and Serbia argued that this should not apply because the applicants had not exhausted all the court procedures in the successor states. However, because of the lack of assets still remaining under LB, the court deemed it impossible for the applicants to receive compensation except through the guarantor state, in this case Slovenia.

Only on Article 14 did the court rule against the applicants. They found that this was not a case of discrimination in the individual cases of the applicants. Slovenia also argued that this was a succession issue. The court should therefore examine the conditions of the succession negotiations that occurred on this issue previously, from 2002 under the mediation of the Bank of International

Settlements (BIS). Though these negotiations remain unresolved as BIS proposed to resolve this on the principle of territoriality, meaning liability would be with the state where the account was physically opened, putting most of the burden on Bosnia and Herzegovina. This was supported by Slovenia and Serbia, but opposed by both Croatia and Bosnia and Herzegovina.

On the surface this case is about three applicants sueing the successor states of Yugoslavia for the return of their deposits in foreign currency, deposited in the Ljubljanska Banka Sarajevo and the Investabanka branch in Tuzla. Beyond the objective reasons for the case, it opens questions about the unfinished business of the destructive and violent Yugoslav collapse, and the divisions that ensued. Economics is often overlooked as a factor in the collapse of Yugoslavia. Yet the decline of the economy, large debts and various International Monetary Fund (IMF) adjustment programmes played a role in opening space for nationalist tensions to gain a foothold. The austerity intensified social and national cleavages, as the republics were struggling with fewer resources yet still paying taxes to the federal state. This was particularly an issue for Slovenia and Croatia, who were claiming that their taxes were going to support places like Kosovo and Macedonia. As Yugoslavia splintered into independent states, the new governments solidified their borders and set about creating new social, political and economic norms. The complicated changes in the banking system over this period of decline, roughly from the 1980s on, are a part of this story.

Until 1990, three types of banks existed in Yugoslavia. Locally, it was possible for socially owned enterprises to open banks. These could then be combined to form associative banks operating across the territory. Each Republic also had a national bank along with the National Bank of Yugoslavia. With the onset of the economic crisis and the decline in value of the currency, the Dinar, debts denominated in United States Dollars became more expensive. As a result, account holders were encouraged to deposit foreign currency, with high interest rates as an incentive. The state acted as guarantor for these deposits, and they were transferred, or 're-deposited', in the national banks and then on to the National Bank of Yugoslavia. In the case of the Ljubljanska Banka Sarajevo, as part of the Ljubljanska Banka Ljubljana, the deposits were re-deposited in the Slovenian National Bank. The agreement, as detailed in the ECHR case, was for LB Sarajevo to transfer the balance of the foreign currency deposits, that is the positive difference between the amount deposited and withdrawn over the course of a year. Money was returned when necessary for ensuring liquidity levels in the bank. Only about 17 percent of these deposits were ever returned to Sarajevo. But in 1990 banking reforms allowed banks to become independent, which LB did, turning the associate banks into branches of the Ljubljana-based bank.

The high interest foreign currency savings accounts, such as held by the applicants in this case, were guaranteed by the National Bank of Yugoslavia. The need for foreign currency was driven by the international economic recession, but also growing debts that followed structural adjustment. But with secessions came an incredibly convoluted series of laws in the emerging states that will only be briefly analyzed here. These laws were also subject to internal challenges and changed over the twenty three years since Yugoslavia began to disintegrate. Bosnia and Herzegovina initially took over the guarantee for all the old foreign currency accounts in banks located on its territory. But the accounts remained frozen through out the 1990s and 2000s, though they could be used for purchase of state-owned property. However, in 2007 this changed, whereby the federal state of Bosnia and

Herzegovina and Herzegovina undertook to repay all foreign currency accounts but only in domestic banks, while offering to help citizens with the recovery of accounts from Serbia and Slovenia.

It is also worth noting that in 1993 an independent, private successor bank to the LB Sarajevo by the same name officially registered itself in Bosnia and Herzegovina. This bank declared itself liable for the assets and commitments of its predecessor. But as early as 1994 the National Bank of Bosnia and Herzegovina found this situation unclear and demanded a balance sheet detailing the new banks liabilities, and clarification of its relationship to the LB in Slovenia. In 2004 the incorporation of the LB Sarajevo as a successor of the Sarajevo branch of LB was rescinded by the Bosnia and Herzegovinian state after the requested information was not provided.

In Slovenia the state also accepted liability for domestically held foreign currency accounts. But at the same time the state transferred most of the assets, though few of the liabilities to a new bank, the Nova Ljubljanska Banka. A series of court decisions then appeared to absolve the state of guaranteeing the responsibilities of LB. This decision was overturned in 2009 by Slovenia’s highest court. Since then the lower courts in Slovenia have been ruling that the state must assume these debts. As was already mentioned, much of the foreign currency was transferred through LB in the redepositing scheme. Despite Slovenian claims that this money was deposited by the NBY in foreign accounts, the ECHR ruling states that it is not clear how much of that money stayed in Slovenia and how much ended up in the National Bank of Yugoslavia.

In these changes we can see the first manifestations in Europe of what is now generally called neoliberalism. The desperate need for stability in the economic system led to liberalizing reforms that facilitated a huge accumulation of personal income by private and state interests. This upwards accumulation of wealth through the banks at the end of Yugoslavia’s existence set a pattern of economic decisions that are still being felt today. It is an unproductive redistribution of existing wealth and not the creation of new income. Later this logic appeared in the cheap loans given out by Slovenian banks and the construction bubble that burst in 2008 with the onset of the crisis. Debts were again a crucial factor. Only with the construction bubble, it was now bringing down whole companies and clogging the banks with “toxic assets”. This was resolved in 2013 with a €4 billion bailout by the state, with the largest share of this money going to Nova Ljubljana Banka. Private money in the form of tax income transferred to the financial markets.

A lot of transactions and movements by the banks in ex-Yugoslavia remain obscured. In the ruling of this case, for example, the Court mentions, as if in passing that LB Sarajevo transferred around $14 million to a foreign account (allowed only after reforms had been passed). Today that money has yet to be recovered, nor is there any indication where it ended up. For Slovenia this ruling could result in a huge financial burden added to an already fragile economy. The ruling has opened the door for both individuals to come forth and claim their deposits with interest, and for Croatia and Macedonia to reclaim the payments they gave out though the responsibility was with Slovenia and the LB. As the court did not mandate that Slovenia organize a systematic repayment of claims, it is likely going to take further legal procedures before other account holders are given their money back. Most surprising is perhaps the fairly muted reaction in Slovenia. It has hardly registered in the media and it is not a major topic in the newly formed government of Prime Minister Miro Cerer. Along with the other important case involving the Erased of Slovenia[1] this is an issue that goes right to the heart of the transition legacy of Slovenia, challenging the perception that Slovenia emerged from Yugoslavia without getting entangled in the violent and messy dissolution of Yugoslavia. Far from it.

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1 25.671 people who lost their status as permanent residence after independence. They were transferred to the status of foreigner and with that became immigrants overnight, losing both status and accumulated rights, such as pensions.