



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

FIRST SECTION

CASE OF YURIY LOBANOV v. RUSSIA

(Application no. 15578/03)

JUDGMENT

STRASBOURG

2 December 2010

FINAL

11/04/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Yuriy Lobanov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 9 November 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 15578/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Yuriy Ivanovich Lobanov (“the applicant”), on 23 April 2003.

2. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged a violation of his property rights.

4. On 9 March 2007 the President of the First Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1938 and lives in Shuya in the Ivanovo Region.

6. The applicant is a holder of 1982 State premium loan bonds (*облигации Государственного внутреннего выигрышного займа 1982 года*) having a total nominal value of 19,845 “promissory roubles” (see paragraph 17 below).

7. In 1982, the USSR issued a State internal premium loan to finance certain State programmes (see paragraph 13 below). According to the

conditions of the loan, individuals could invest their money in State premium bonds and redeem them at any time during the term of the loan with interest at three per cent per annum. The term of the loan was fixed at twenty years. In that period, 160 State-organised draws were to be held in which some bonds would win cash prizes.

8. In 1992, the Government of the Russian Federation acknowledged its succession in respect of the obligations of the USSR under the 1982 loan and suspended payments under the 1982 State premium bonds (see paragraph 14 below).

9. Between 1995 and 2000, a series of Russian laws was adopted which provided for conversion of Soviet securities, including the 1982 loan bonds, into special Russian promissory notes (see paragraphs 16 to 20 below). The Government was mandated to devise a procedure for the conversion and fix the value of the promissory notes. Although a regulation on the conversion was adopted in 2000 (see paragraph 21 below), the actual conversion did not start and application of the regulation has remained suspended to the present day (see paragraph 22 below).

10. In early 2002, the applicant wrote to the Ministry of Finance to inquire about possibilities and time-limits for converting his 1982 bonds into Russian promissory notes. By a letter of 27 April 2002, a deputy director of the Internal Debt Department confirmed to the applicant that his bonds should be converted into the Russian promissory notes in accordance with the Savings Protection Act. The deputy director went on to explain why the conversion had not yet been possible:

“Section 10 of the [Conversion Procedure] Act provides that the procedure for calculating the interest accrued on the Russian promissory notes and the procedure for servicing the [internal] debt would be set out in a special federal law, which has not yet been enacted. In this connection, actual payments in [Russian] roubles under the promissory notes – as provided in the [Conversion Procedure] Act – cannot be made and the determination of the value of the [‘promissory rouble’] would be of no practical significance since its application has not yet been defined by the legislator.

...

Once the legislation on the procedure for calculating the interest and the debt-servicing procedure has been adopted, the Ministry of Finance will make the necessary arrangements for the conversion of USSR securities... into promissory notes and the servicing of them; it will also launch an open tender for selection of the conversion agent ...”

11. In November 2002 the applicant brought proceedings before the Supreme Court of the Russian Federation challenging the Government for inactivity and failure to put the redemption programme into effect.

12. On 4 December 2002 the Supreme Court refused to examine the applicant's claim. It found as follows:

“By virtue of the constitutional principle of separation of powers, the court may not, in civil proceedings, require the Government of the Russian Federation to enact a specific legal act if the law does not explicitly set out the duty of the Government to adopt appropriate regulation; the claim may not be accepted for examination by the court.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. On 30 December 1980 the USSR Cabinet of Ministers approved, by Resolution no. 1220, the issue of bonds of the 1982 State premium internal loan having nominal values of 25, 50 and 100 Soviet roubles. Their period of circulation was set at twenty years, from 1 January 1982 to 1 January 2002. Soviet citizens could either buy the 1982 bonds with their own money or obtain them in exchange for bonds from the earlier 1966 State premium internal loan. The 1982 bonds could be sold and redeemed throughout the entire period of circulation.

14. On 19 February 1992 the Government of the Russian Federation issued Resolution no. 97 concerning the 1982 State internal premium loan and a new Russian internal premium loan to be issued in 1992. It provided as follows:

“1. To confirm succession of the Government of the Russian Federation in respect of obligations of the former USSR to Russian Federation citizens arising out of the bonds of the 1982 State internal premium loan.

2. Starting from 20 February 1992, to discontinue sale and purchase of bonds of that loan and holding of prize draws.

3. To issue the 1992 Russian internal premium loan.

...

6. To give Russian Federation citizens who are holders of bonds of the 1982 State internal premium loan the right to voluntary exchange of the bonds against State securities, including 1992 Russian internal premium loan bonds, shares in the Savings Bank of the Russian Federation, and also to credit the proceeds from sale of bonds to deposits open in the Savings Bank of the Russian Federation, from 1 October 1992...”

15. By Resolution no. 549 of 5 August 1992, the Russian Government decided that from 1 October 1992 to 1 October 1993 the Savings Bank would be authorised to purchase 1982 bonds and exchange them for 1992 bonds at the rate of 160 Russian roubles for one bond with a nominal value of 100 roubles.

16. On 10 May 1995 the Savings Protection Act (no. 73-FZ, *ФЗ «О восстановлении и защите сбережений граждан Российской Федерации»*) was enacted. The State guaranteed the protection of Russian citizens' savings, including their investments in State securities issued by the USSR and RSFSR before 1 January 1992 (section 1). Guaranteed savings

were recognised as part of the internal State debt of the Russian Federation secured with the entirety of the assets available at the disposal of the Government of Russia (sections 2 and 3). Soviet securities were to be converted into special promissory notes of the Russian Federation with a special promissory value (sections 5 and 7). Separate laws were to be enacted to determine the procedure for converting Soviet securities into Russian promissory notes and to determine their current value (section 12).

17. On 6 July 1996 the Promissory Value Act (no. 87-FZ, *ФЗ «О порядке установления долговой стоимости единицы номинала целевого долгового обязательства Российской Федерации»*) introduced the “promissory rouble” as the currency of special promissory notes of the Russian Federation (section 1). The actual value of the “promissory rouble” was to be determined as a proportion of the “control value” of the consumer goods basket and its “base value” at the prices that prevailed in the RSFSR in 1990 (section 2). The “control value” was to be calculated on a weekly basis by the State Statistical Service and the “base value” was to be fixed in a federal law (sections 3 to 7). The Government was to publish the current value of the “promissory rouble” within one month of the Act's coming into force.

18. On 4 February 1999 the Base Value Act (no. 21-FZ, *ФЗ «О базовой стоимости необходимого социального набора»*) was enacted in pursuance of the Promissory Value Act. It set the “base value” at 464 Soviet roubles. Its application was suspended from 1 January 2003 to 1 January 2012 by successive federal laws (no. 176-FZ of 24 December 2002, no. 186-FZ of 23 December 2003, no. 173-FZ of 23 December 2004, no. 189-FZ of 26 December 2005, no. 238-FZ of 19 December 2006, no. 198-FZ of 24 July 2007, and no. 206-FZ of 24 November 2008).

19. On 15 March 1999 the State Statistical Service approved guidelines on calculation of the “control value” (resolution no. 19).

20. On 12 July 1999 the Conversion Procedure Act (no. 162-FZ, *ФЗ «О порядке перевода государственных ценных бумаг СССР и сертификатов Сберегательного банка СССР в целевые долговые обязательства Российской Федерации»*) confirmed that bonds of the 1982 State internal premium loan which are still in circulation in Russia are part of the guaranteed savings of Russian citizens (section 1). Sections 3 to 8 set out the general principles for conversion of the bonds into special promissory notes of the Russian Federation. The debt servicing procedure was to be governed by a separate federal law (section 10). Section 11 specified that the guarantees of the Savings Protection Act were fully applicable to securities which had not been converted into Russian promissory notes and that no statute of limitation applied to claims arising out of those securities.

21. In pursuance of section 15 of the Conversion Procedure Act, on 29 January 2000 the Russian Government approved a regulation on the

procedure for conversion of USSR securities into Russian promissory notes (Resolution no. 82). It set out that conversion into promissory notes would be performed by putting a stamp on the face of the bonds, which would certify the fact of conversion and also the nature, face value and interest rate of the new promissory note (paragraph 3). Converted bonds were to be entered into a register maintained by the Ministry of Finance (paragraph 4). The conversion was to be carried out by a designated lending agency, which the Ministry of Finance was to choose by tender (section 5).

22. Starting from 2003, the application and implementation of Resolution no. 82 was repeatedly suspended by successive Government Resolutions (no. 625 of 14 October 2003, no. 349 of 13 July 2004, no. 489 of 4 August 2005, no. 467 of 28 July 2006, no. 479 of 25 July 2007, no. 558 of 22 July 2008, no. 594 of 21 July 2009, and no. 387 of 1 June 2010).

23. On 17 March 2004 the Presidium of the Moscow Regional Court quashed, by way of supervisory review, all the judgments in a civil case in which the claimants sued the Russian Government for their failure to determine the value of the “promissory rouble” (decision no. 229). It held as follows:

“The claims raised by Mr and Ms K. fall outside the courts' competence; a court may not encroach on the competence of the executive body by requiring it to perform actions or to issue regulations which are within the competence of that body. The court may only ... assess the compliance of the Government regulations with Russian federal legislation. Besides, district courts have no competence over such claims. Pursuant to Article 220 § 1 of the Code of Civil Procedure, a court shall discontinue the proceedings if the claim may not be examined and determined in civil proceedings.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

24. The applicant complained, without invoking a specific Convention provision, about a violation of his property rights owing to the failure of the Russian authorities to fulfil their obligations under the 1982 State premium bonds. The Court considers that this complaint falls to be examined from the standpoint of Article 1 of Protocol No. 1 which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

1. *Compatibility* *ratione temporis*

25. The Court observes at the outset that the bonds which are at issue in the present case were introduced in 1982, that is before the ratification of the Convention by Russia, which occurred on 5 May 1998. Accordingly, the Court must verify, even though this objection was not raised by the Government in the present case, whether it has competence *ratione temporis* to examine the present application (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-...).

26. The Court reiterates that its jurisdiction *ratione temporis* covers only the period after the ratification of the Convention or its Protocols by the respondent State. From the ratification date onwards, all the State's alleged acts and omissions must conform to the Convention or its Protocols and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (see *Broniowski v. Poland* (dec.) [GC], no. 31443/96, § 74, ECHR 2002-X).

27. Accordingly, the Court is competent to examine the facts of the present case for their compatibility with the Convention only in so far as they occurred after 5 May 1998, the date of ratification of Protocol No. 1 by Russia. It may, however, have regard to the facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date.

28. The factual basis for the applicant's Convention claim is the alleged failure of the Russian State to satisfy his entitlement to redemption of the Soviet bonds which he had acquired in 1982. Following the formal dissolution of the USSR in December 1991, the Russian Government confirmed its succession in respect of obligations arising out of the 1982 bonds and launched a programme for their redemption and exchange for the bonds of a new Russian internal loan (see paragraph 14 above). This programme was discontinued in 1995 upon enactment of the Savings Protection Act, which declared the bonds to be part of the Russian State's internal debt and guaranteed the Russian citizens' investments in State securities issued by the USSR and RSFSR before 1 January 1992, including the 1982 bonds.

29. Since the enactment of the Savings Protection Act the applicant has continuously held a claim against the Russian State arising out of the 1982

bonds. This claim existed both on the date of ratification of the Convention by Russia and on the date of submission of the application to the Court. Despite the changes in the implementing legislation which was in part suspended in application, the relevant provisions of the Savings Protection Act have never been revoked or annulled. In addition, the Conversion Procedure Act, adopted in 1999, explicitly acknowledged the existence of the entitlement and specified that no statute of limitation applied to claims arising out of USSR securities which had not yet been converted into Russian promissory notes (see paragraph 20 above). It follows that the legal basis for the entitlement which is the subject matter of the applicant's complaint before the Court has been established in domestic legislation on a continuing basis.

30. It follows that, in so far as the applicant's complaint is directed against the failure of the Russian State to implement the entitlement vested in him under Russian law – an entitlement which existed on 5 May 1998 and still exists today – the Court has temporal jurisdiction to entertain the application.

2. *Compatibility ratione materiae*

31. The Government did not express a view as to whether they considered the 1982 bonds to have been the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1. Nevertheless, the Court has to satisfy itself that it has jurisdiction *ratione materiae* in any case brought before it. To hold the contrary would mean that where a respondent State waived its right to plead or omitted to plead incompatibility, the Court would have to rule on the merits of a complaint against that State concerning a right not guaranteed by the Convention (see *Blečić, loc. cit.*).

32. The Court reiterates that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning, which is not limited to ownership of physical goods and is independent of the formal classification in domestic law: certain other rights and interests, such as debts, constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. The issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Broniowski (dec.)*, cited above, § 98).

33. The Court observes that the instant case is similar to the recent case of *Suljagić v. Bosnia and Herzegovina*, in which it was determined that a claim arising out of the foreign currency savings deposited with Yugoslav banks before the dissolution of the Socialist Federal Republic of Yugoslavia amounted to a "possession" within the meaning of Article 1 of Protocol No. 1 (no. 27912/02, §§ 34-36, 3 November 2009). Similarly to Mr Suljagić, the applicant in the present case decided to invest his savings in 1982 State premium loan bonds. In accordance with the conditions of the

loan, he acquired an entitlement to have the bonds redeemed by the State with accumulated interest at any time during the entire period of the bonds' circulation, which had been fixed at twenty years, that is until 2002 (see paragraph 13 above). As noted above, the Russian State acknowledged its succession in respect of the USSR's obligations arising out of the 1982 bonds and took upon itself the obligation to have them converted into special Russian promissory notes which could be exchanged for cash upon determination of their value. The Court therefore finds that the applicant had, and still has, a claim amounting to a "possession" within the meaning of Article 1 of Protocol No. 1.

34. It follows that the application is compatible *ratione materiae* with the provisions of the Convention.

3. *Compatibility ratione personae*

35. The Government pointed out that the 1982 bonds had been an obligation of the USSR.

36. The Court observes that, by Resolution no. 97 of 19 February 1992, the Russian Government explicitly confirmed its succession in respect of obligations of the former USSR to Russian citizens arising out of the 1982 State internal premium loan (see paragraph 13 above). The same guarantee was contained in sections 1 to 3 of the 1995 Savings Protection Act, which recognised USSR securities, including 1982 bonds held by Russian citizens, as part of the Russian State's internal debt secured with the entirety of the assets at the Russian Government's disposal (see paragraph 16 above). It appears therefore that the Russian State took upon itself an obligation to settle the debt arising out of the bonds. The applicant being a Russian national and holder of the 1982 bonds, he was undoubtedly eligible to benefit from the settlement.

37. It follows that the Russian Federation has voluntarily accepted its responsibility in respect of the applicant's entitlement and that no issue arises regarding the compatibility *ratione personae* of the present application.

4. *Exhaustion of domestic remedies*

38. Finally, the Government claimed that the applicant had not exhausted domestic remedies because he had not applied to a district court or to a prosecutor.

39. The applicant responded that a district court would not be competent to decide on such an issue.

40. The Court observes that the Government did not refer to any legislative provisions or case-law in support of their allegation that a district court or a prosecutor's office would have been able to provide effective redress in a situation where an individual complains about the Government's

failure to adopt implementing legislation. It is further noted that the Presidium of the Moscow Regional Court, ruling on a similar claim concerning the Government's failure to act, held that district courts have no competence over such claims and that such claims may not be examined or determined in civil proceedings (see paragraph 23 above). Accordingly, the Court dismisses the Government's objection as to non-exhaustion of domestic remedies.

5. Conclusion as to the admissibility of the application

41. As far as compliance with Article 1 of Protocol No. 1 is concerned, the Court considers that the application raises serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits.

42. No ground for declaring the application inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. Arguments by the parties

43. The Government submitted that in 1992 the Russian Federation had taken on the USSR's obligations arising out of the 1982 bonds and had offered their holders a choice between having them redeemed by the Savings Bank and having them converted into 1992 Russian bonds. The applicant had not made use of either option.

44. The applicant contended that both options had only existed from 1992 to 1995, during a period of high inflation and sharp devaluation of Russian currency, and had therefore been financially disadvantageous for bond holders. He pointed out that the Russian State had acknowledged its debt arising out of the 1982 bonds but that the Russian Government had done nothing to extinguish it, despite the federal laws that had already been adopted.

2. The Court's assessment

45. The Court notes at the outset that for the purposes of Article 1 of Protocol No. 1 the applicant's "possessions" consisted in his entitlement to obtain some form of compensation for, or redemption of, the 1982 bonds. As noted above, although the debt arising out of the bonds had been recognised by the Russian State in a series of legislative acts, the absence of implementing regulations has made redemption of the bonds impossible. The thrust of the applicant's complaint was thus directed against the lack of legal regulation of his entitlement and absence of a specific procedure for redemption of bonds of that type. This element distinguishes the present

case from those cases in which the legislative framework had already been put in place but applicants were dissatisfied with the level of compensation available to them (see, for example, *Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004). On the other hand, the Court has recently had an opportunity to examine a series of cases substantially similar to the present one, in which the absence of implementing regulations for redemption of a different type of Russian bonds, *Urozhay-90*, was at issue (see *Malysh and Others v. Russia*, no. 30280/03, 11 February 2010; *SPK Dimskiy v. Russia*, no. 27191/02, 18 March 2010; and *Tronin v. Russia*, no. 24461/02, 18 March 2010). It will draw inspiration from its findings in those cases in its analysis of the present one.

46. The Court reiterates that the boundaries between the State's positive and negative obligations under Article 1 of Protocol No. 1 do not lend themselves to precise definition. The applicable principles are nonetheless similar. Whether the case is analysed in terms of a positive duty of the State or in terms of an interference by a public authority which needs to be justified, the criteria to be applied do not differ in substance. In both contexts regard must be had to the fair balance which needs to be struck between the competing interests of the individual and of the community as a whole. It also holds true that the aims mentioned in that provision may be of some relevance in assessing whether a balance has been struck between the demands of the public interest involved and the applicant's fundamental right of property. In both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (see *Broniowski v. Poland* [GC], no. 31443/96, § 144, ECHR 2004-V, and *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, §§ 98 et seq., ECHR 2003-VIII).

47. In the present case the applicant's submission under Article 1 of Protocol No. 1 was that the Russian State, having conferred on him an entitlement to seek redemption of the 1982 bonds, made it impossible to benefit from that entitlement, by failing for years to adopt the implementing regulations. That situation may well be examined in terms of a hindrance to the effective exercise of the right protected by Article 1 of Protocol No. 1 or in terms of a failure to secure the implementation of that right (compare *Broniowski*, § 146, and *Malysh and Others*, § 75, both cited above).

48. The Court will determine whether the conduct of the Russian State was justifiable in the light of the principles of lawfulness, pursuance of a legitimate aim in the public interest and striking of a fair balance between the general interest of the community and the applicant's right to the peaceful enjoyment of his possessions (see, for a detailed description of those principles, *Broniowski*, cited above, §§ 147-151).

49. As regards the lawfulness requirement, the Court notes that the application of the Base Value Act and the Government-approved conversion regulation, which were together the necessary elements for performing the

conversion of 1982 bonds into Russian promissory notes, was repeatedly suspended through the Government regulations and federal laws for each successive year (see paragraphs 18 and 22 above). It is therefore satisfied that an interference with, or a restriction on, the exercise of the applicant's right to the peaceful enjoyment of his possessions was "provided for by law" within the meaning of Article 1 of Protocol No. 1.

50. As the Court has already observed in the *Malysh and Others* judgment with regards to the existence of a legitimate aim in the public interest, in the 1990s the Russian State went through a tumultuous transition from a State-controlled to a market economy. Its economic well-being was further jeopardised by the financial crisis of 1998 and the sharp devaluation of the national currency. Even though it has achieved relative prosperity and wealth in recent years, the Court agrees that defining budgetary priorities in terms of favouring expenditure on pressing social issues to the detriment of claims with a purely pecuniary nature was a legitimate aim in the public interest (see *Malysh and Others*, § 80, cited above).

51. On the question of the striking of a fair balance between the general interest and the applicant's rights, the Court reiterates that the rule of law underlying the Convention and the principle of lawfulness in Article 1 of Protocol No. 1 require States not only to respect and apply, in a foreseeable and consistent manner, the laws they have enacted, but also, as a corollary of this duty, to ensure the legal and practical conditions for their implementation (see *Broniowski*, cited above, §§ 147 and 184). In the context of the present case, those principles required the Russian State to fulfil in good time, in an appropriate and consistent manner, the legislative promises it had made in respect of claims arising out of the 1982 bonds (compare *Malysh and Others*, § 82, cited above). In particular, it was incumbent on the authorities to legislate on the conditions for implementation of the bond-bearers' entitlement, with a view to satisfying the undertaking that had been created through the enactment of the Savings Protection Act and follow-up legislation.

52. In the period that immediately followed the enactment of the Savings Protection Act in 1995, the Russian Parliament promptly enacted a number of legislative acts that were required for its successful implementation, such as the 1996 Promissory Value Act, the 1999 Base Value Act, and the 1999 Conversion Procedure Act. Those acts laid down a legislative framework for settlement of bond-bearers' entitlements, which had been continuously recognised as part of the State's internal debt. In early 2000, the Russian Government adopted a regulation on the application of the conversion procedure. However, for reasons that remain unclear to the Court, as no explanation was put forward by the Government, starting from 2003 the application and implementation of the existing legal framework governing redemption of the 1982 bonds was repeatedly suspended, year by year. The information available to the Court does not allow it to find that the Russian

Government took any measures in that period with a view to satisfying the claims arising out of the bonds. An appropriate balancing exercise determining the exact amount that would be required to settle the debt under the bonds in relation to other priority expenses could not have been possible in the absence of crucial figures, such as the quantity and total valuation of the remaining bonds. While the Court agrees that the radical reform of Russia's political and economic system, as well as the state of the country's finances, may have justified stringent financial limitations on rights of a purely pecuniary nature, it finds that the Russian Government were not able to adduce satisfactory grounds justifying, in terms of Article 1 of Protocol No. 1, the continuous failure over many years to implement an entitlement conferred on the applicant by Russian legislation (compare *Malysh and Others*, § 83, cited above).

53. As regards the conduct of the applicant, the Court has no competence *ratione temporis* to examine the options that were available to the bond-bearers prior to the ratification of the Convention and the Protocol. It notes, however, that since the enactment of the Savings Protection Act he has had a legitimate expectation of obtaining some form of compensation for, or redemption of, his bonds. He did not remain passive, but rather displayed an active attitude by making requests to the competent authorities and lodging claims with the domestic courts. In these circumstances, it cannot be said that the applicant was responsible for, or culpably contributed to, the state of affairs which he complained about (compare *Broniowski*, § 181, and *Malysh and Others*, § 84, both cited above). Rather, as the Court has found on the strength of the evidence before it, the hindrance to the peaceful enjoyment of his possessions was solely attributable to the respondent State.

54. On balance, the Court considers that the Russian authorities, by imposing successive limitations on the application of the legislative and regulatory provisions establishing the basis for the applicant's right to redemption of the 1982 bonds and by failing for years to put into practice the procedure for implementation of that entitlement, kept the applicant in a state of uncertainty, which was incompatible in itself with the obligation arising under Article 1 of Protocol No. 1 to secure the peaceful enjoyment of possessions, notably with the duty to act in good time and in an appropriate and consistent manner where an issue of general interest is at stake (see *Broniowski*, §§ 151 and 185, and *Malysh and Others*, § 85, both cited above).

55. There has therefore been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

57. The applicant submitted that he was the holder of 1982 bonds with a total nominal value of 19,845 “promissory roubles”. Pursuant to the Conversion Procedure Act, interest on the converted securities was to accrue at a rate no lower than ten per cent per annum and the current value of his bonds amounted to 39,690 “promissory roubles”. In January 2003, the “promissory rouble” was equivalent to 32 Russian roubles (RUB); its current value is unknown. Multiplying the last known value of the “promissory rouble” by the current nominal value of his bonds and making an adjustment for the time that lapsed since 2003, the applicant assessed his claim in respect of pecuniary damage at RUB 1,500,000.

58. The Government submitted that no compensation should be awarded to the applicant because there had been no violation of his rights.

59. The Court considers that the question of the application of Article 41 in respect of pecuniary damage is not ready for decision. Accordingly, it shall be reserved and the subsequent procedure fixed, having regard to any agreement which might be reached between the Government and the applicant (Rule 75 § 1 of the Rules of Court).

B. Non-pecuniary damage

60. The applicant asked the Court to determine the appropriate award in respect of non-pecuniary damage.

61. The Government submitted that the applicant had failed to produce any evidence of non-pecuniary damage.

62. The Court reiterates its constant position that an applicant cannot be required to furnish any proof of non-pecuniary damage he or she has sustained (see, among many others, *Antipenkov v. Russia*, no. 33470/03, § 82, 15 October 2009; *Pshenichnyy v. Russia*, no. 30422/03, § 35, 14 February 2008; *Garabayev v. Russia*, no. 38411/02, § 113, ECHR 2007-VII (extracts); and *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). It further considers that the applicant must have suffered anxiety and frustration on account of the authorities' prolonged failure to devise a procedure for settlement of his entitlement. Making its assessment on an

equitable basis, the Court awards the applicant EUR 1,800 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

C. Costs and expenses

63. The applicant did not claim any costs and expenses. Accordingly, there is no call to make an award under this head.

D. Default interest

64. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds* that as far as any pecuniary damage is concerned, the question of the application of Article 41 is not ready for decision and accordingly:
 - (a) *reserves* the said question;
 - (b) *invites* the Government and the applicant to submit, within six months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 2 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Malinverni is annexed to this judgment.

C.L.R.
A.M.W.

CONCURRING OPINION OF JUDGE MALINVERNI

(Translation)

In the present case I joined the rest of my colleagues in finding a violation of Article 1 of Protocol No. 1. However, I have considerable difficulty in subscribing to the reasoning which led the Court to that conclusion.

In paragraph 46 of the judgment, the Court points out that the present case could be considered either in terms of interference with the applicant's right to the peaceful enjoyment of his possessions or in terms of the State's positive obligations, given that “the boundaries between the State's positive and negative obligations under Article 1 of Protocol No. 1 do not lend themselves to precise definition”.

One can only agree with this statement. However, I am of the view that, when faced with a choice between these two approaches, the Court must opt for whichever it considers more appropriate, and then adhere to its choice.

The judgment does not do this, however. In paragraph 47 already, it states that “[the] situation may well be examined in terms of a hindrance to the effective exercise of the right protected by Article 1 of Protocol No. 1 or in terms of a failure to secure the implementation of that right”.

Paragraphs 48 to 50 favour the interference approach, as they examine whether the conditions of lawfulness, pursuance of a legitimate aim and proportionality were met.

Paragraph 51, meanwhile, sees the Court revert to the positive obligations approach, stating that “[i]n the context of the present case, those principles required the Russian State to fulfil in good time, in an appropriate and consistent manner, the legislative promises it had made in respect of claims arising out of the 1982 bonds”. The same applies to paragraphs 52 to 54.

I find this shifting between one approach and another unsatisfactory. In my view, the present case should have been examined solely in terms of the State's positive obligation to enact legislation. As the judgment itself states, “although the debt arising out of the bonds had been recognised by the Russian State in a series of legislative acts”, it was “the absence of implementing regulations” which made “redemption of the bonds impossible” (paragraph 45).

The Russian Supreme Court, moreover, did not err in refusing to examine the applicant's claim on the ground that “[b]y virtue of the constitutional principle of separation of powers, the court may not, in civil proceedings, require the Government of the Russian Federation to enact a specific legal act...” (paragraph 12).