



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
(Just satisfaction)

STRASBOURG

14 February 2012

FINAL

09/07/2012

*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:

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyeu,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 24 January 2012,

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. In a judgment delivered on 2 December 2010 (“the principal judgment”), the Court held there had been a violation of Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights on account of the Russian authorities’ continued failure to establish the procedure for implementation of the applicant’s right to redemption of the 1982 bonds (*Yuriy Lobanov v. Russia*, no. 15578/03, 2 December 2010).

3. Under Article 41 of the Convention the applicant sought just satisfaction in respect of pecuniary and non-pecuniary damage.

4. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary damage, the Court reserved it and invited the Government and the applicant to submit, within six months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 59, and point 3 of the operative provisions).

5. The applicant maintained his claims. The Government filed additional observations.

THE LAW

6. 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

1. *The applicant*

7. The applicant submitted that he was the holder of 1982 bonds with a total nominal value of 19,845 “promissory roubles”. He produced the lists of their serial numbers, from which it appears that he possessed 231 bonds with the value of 35 “promissory roubles”, 158 bonds with the value of 70 “promissory roubles”, and 5 bonds with the value of 140 “promissory roubles”. He also submitted photocopies of the first and last bond in each series.

8. The applicant calculated the pecuniary damage in the following manner. Pursuant to the 1999 Conversion Procedure Act (see paragraph 20 of the principal judgment), interest on the converted securities was to accrue at a rate no lower than nine per cent per annum and the current value of his bonds amounted to 39,690 “promissory roubles”. In January 2003, the most recent date on which the value of the “promissory rouble” was calculated, it was equivalent to 32.34 Russian roubles (RUB); its current value was unknown. Multiplying the last known value of the “promissory rouble” by the current nominal value of his bonds and making an adjustment for the inflation during the time period that had lapsed since 2003, the applicant assessed his claim in respect of pecuniary damage at RUB 1,500,000 (EUR 43,415 at the official exchange rate on the date of submission of the claim).

2. *The Government*

9. The Government submitted firstly that the lists produced by the applicant were unreliable because the bonds had been issued with values of 25, 50 and 100 Soviet roubles rather than 35, 70 and 140 roubles as the applicant claimed. Moreover, he had produced copies of four bonds only.

10. The Government claimed that the applicant could have received 480 roubles for his four bonds if he had followed, in 1992 and 1993, the buy-out procedure established in Resolution no. 549 (see paragraph 15 of the principal judgment). This amount would have been “dramatically reduced” following the denomination on 1 January 1998, with one new

rouble equalling 1,000 old roubles. In these circumstances, the Government believed that the applicant's claim in respect of pecuniary damage was unsubstantiated.

11. Finally, the Government considered that the applicant should not, in any event, be awarded more than EUR 1,800, as were the applicants in the cases of *Malysh and Others v. Russia* (no. 30280/03, 11 February 2010), *Tronin v. Russia* (no. 24461/02, 18 March 2010), and *SPK Dimskiy v. Russia* (no. 27191/02, 18 March 2010).

3. The Court

12. The Court notes from the outset that the present case is similar to the above-mentioned cases of *Malysh and Others*, *Tronin* and *SPK Dimskiy*, in that it also had in its origin the Russian authorities' failure to legislate on the procedure for implementation of the applicant's entitlement arising out of bonds that had been recognised to have been the internal State debt of the Russian Federation (see, for instance, *Malysh and Others*, §§ 67, 82 and 85, cited above). However, in those cases the Russian authorities had been able to adopt the procedure for the buyout of the type of bonds that the applicants possessed before the Court's judgment was issued (*ibid.*, §§ 52-53). In those circumstances, the Court declined to make an award in respect of pecuniary damage, noting that it was open to the applicants to apply to the competent domestic authorities for redemption of their bonds (*ibid.*, § 90). By contrast, in the instant case the procedure for settlement of the applicant's entitlement has not been made available to date and the Court is therefore called upon to afford just satisfaction in respect of pecuniary damage.

13. The Court does not share the Government's doubt as to the authenticity of the lists of bonds produced by the applicant. Photocopies of the four bonds which the applicant submitted showed that their face value was 25, 50 and 100 Soviet roubles which corresponded to the denominations of the bonds issued in 1982. The denominations stated in the lists were expressed in "promissory roubles" which were equivalent to 1.4 times the face value of the bond (section 6 of the 1999 Conversion Procedure Act) and, accordingly, the original values of 25, 50 and 100 Soviet roubles were recalculated as new values of 35, 70 and 140 "promissory roubles".

14. The Government submitted that the calculation of the pecuniary damage should be based on the conditions for redemption of the bonds as they had existed in 1992 and 1993. The Court observes, however, that the events of the early 1990s fall outside its temporal jurisdiction and that the scope of its review in the instant case was limited to the period following the ratification of the Convention by the Russian Federation on 5 May 1998 (see paragraphs 25-30 of the principal judgment). Accordingly, the method of calculation suggested by the Government may not be applied in the instant case.

15. The applicant relied on the provisions of the domestic laws and regulations, including in particular the 1999 Conversion Procedure Act and the 1999 Base Value Act (see paragraphs 18-21 of the principal judgment), which were adopted during the period falling within the Court's temporal jurisdiction. He calculated the appreciation of the bonds at the minimum interest rate established in the 1999 Conversion Procedure Act and used the last known monetary equivalent of the "promissory rouble". The Government did not comment on the method of calculation employed by the applicant. Nor have they enacted any legislation governing the buyout of the applicant's bonds. Accordingly, the Court accepts the applicant's valuation of his entitlement in this part. However, the applicant also performed an adjustment of the resulting amount by an unspecified co-efficient which, according to him, represented the inflationary losses during the period from 2003 to the date of submission of his claims. As the applicant did not produce any documents, such as for instance certificates from the statistical service showing the inflation rate in the relevant period, the Court is unable to accept this part of the applicant's claim.

16. Having regard to the above considerations, the Court accepts the applicant's claim in the amount of RUB 1,283,574.60 which was equivalent to EUR 37,150 on the date of submission of the claim. The Court awards the latter amount to the applicant as compensation in respect of pecuniary damage.

B. Default interest

17. The Court considers it appropriate that the default interest rate 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. Holds

- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 37,150 (thirty-seven thousand one hundred and fifty euros) in respect of pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at 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;

2. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President