



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

FIRST SECTION

CASE OF SPK DIMSKIY v. RUSSIA

(Application no. 27191/02)

JUDGMENT

STRASBOURG

18 March 2010

FINAL

04/10/2010

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

In the case of SPK Dimskiy 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 25 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 27191/02) 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 the Agricultural production co-operative (SPK) ‘Dimskiy’ (“the applicant”), on 30 May 2002.

2. The applicant was represented by Mr V. Okunev, a lawyer practising in Blagoveshchensk. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their new Representative, Mr G. Matyushkin.

3. The applicant alleged, in particular, that the failure on the part of the Russian Government to implement the procedure for redemption of *Urozhay-90* bonds had been in breach of Article 1 of Protocol No. 1.

4. By a decision of 11 September 2008 the Court declared the application admissible.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is the agricultural production co-operative “Dimskiy” (*сельскохозяйственный производственный кооператив «Димский»*), a

legal entity under the Russian law, established in 1992 in the village of Novoaleksandrovka in the Tambov District of the Amur Region. The applicant was subsequently re-organised into a joint-stock company “Dimskoye” (ОАО «Димское»).

A. Background information on *Urozhay-90* bonds

7. In 1987 the General Secretary of the USSR Communist Party Mikhail Gorbachev presented his “basic theses”, which laid the political foundation for economic reform heralding the transition to a market economy. Several laws were enacted which opened up the State-dominated planned economy to private enterprise. However, the Government preferred to keep control over consumer prices rather than leaving them to be determined by the free market.

8. By 1990 Government spending increased sharply as a growing number of unprofitable enterprises required State support, whereas more resources were diverted to subsidise consumer prices. At the same time, the elimination of central control over production decisions, especially in the consumer-goods sector, led to a breakdown in traditional supply-demand relationships. This resulted in pervasive shortages of food and basic consumer goods. The Government reacted by introducing ration stamps for food and certain hygiene articles.

9. In addition to ration stamps, the Government of the Russian Socialist Federative Soviet Republic (RSFSR)¹ put into circulation several types of so-called “commodity bonds” (*товарные чеки*) which gave their bearers the right to purchase consumer goods, such as refrigerators, washing machines, tape recorders and passenger cars. The *Urozhay-90* (“Harvest-90”) bonds were one of many types of bonds; they were distributed among agricultural workers and companies which had sold grain and other agricultural produce to the State in 1990 and 1991. Those bonds were designed to encourage agricultural workers to sell produce to the State in exchange for the right to priority purchasing of goods in high demand (see paragraph 26 below). The State paid workers for the produce at fixed prices and also gave them bonds in amounts proportionate to the value of the produce sold.

10. The *Urozhay-90* bonds were not legal tender, but they had a certain nominal value indicated on their face. That value determined the maximum purchase price of consumer goods which could be sold on production of the bonds. The bonds were not intended for payment but merely for certification of the right to purchase specific goods; the sale of goods was conditional on payment of the full purchase price by the bond-holder and production of the bonds for the same amount. The bonds were not registered in the person’s

1. The RSFSR adopted the Declaration on State Sovereignty on 12 June 1990.

name or otherwise personalised and the Government Resolution did not prevent them from being transferred among individuals and legal entities.

11. On 2 January 1992 the Russian Government decided to put an end to the regulation of retail prices. Shops began to fill up with merchandise but prices increased at a staggering speed (the inflation rate in 1992 was 2,600%). In March 1992, the Government established that goods available under the bonds would be sold at the prices fixed before 2 January 1992 (see paragraph 27 below).

12. In August 1992 the Government introduced the possibility of buying out the bonds with a coefficient of 10. In 1994, the coefficient was raised to 70 (see paragraphs 28 and 29 below). It appears that a significant number of bonds were bought out by the State before the buyout operations were stopped in 1996 (see paragraph 31 below).

13. In 1995 the status of the commodity bonds was codified in the Commodity Bonds Act passed by Parliament (see paragraph 30 below). Its text was very laconic, shorter than one page, but it purported to cover every type of commodities bonds issued in previous years. Section 1 recognised the commodity bonds as part of the internal debt of the Russian Federation; section 2 fixed at ten years the limitation period for the obligations arising out of commodity bonds (the starting date was not specified); section 3 required the Government to adopt a programme for settlement of the internal debt.

14. In 2000 the Government presented the programme for settlement of the internal debt (see paragraph 33 below). It covered every type of commodity bond, save for the *Urozhay-90* bonds. A few months before the Commodity Bonds Act was amended so as to provide that the settlement of the debt under the *Urozhay-90* bonds would be regulated by a special federal law (see paragraph 32 below).

15. Between 2003 and 2009 the application of section 1 of the Commodity Bonds Act was suspended in the part concerning the *Urozhay-90* bonds, in accordance with the laws on the federal budget for each successive year (see paragraph 34 below).

16. In 2009 Parliament passed a law on the buyout of the *Urozhay-90* bonds and the Government issued implementing regulations which set out a detailed procedure for buyout of the bonds (see paragraphs 35 and 36 below).

B. The applicant's attempts to obtain redemption of the bonds

17. The applicant holds *Urozhay-90* bonds with a total nominal value of 343,375 non-denominated Russian roubles (RUR).

18. On 1 March 2001 the applicant brought an action against the Russian Government, seeking to recover 8,236,498 Russian roubles (RUB) as

compensation for the bonds. The amount was calculated as the nominal value of the bonds multiplied by the official inflation co-efficient.

19. On 7 May 2001 the Commercial Court of the Amur Region issued a decision to dismiss the applicant's claim. It noted that the federal law establishing the procedure for redemption of *Urozhay-90* bonds had not yet been adopted and their maturity date had not been determined. The Commercial Court held that the plaintiff had not yet obtained the right to lodge this claim.

20. On 20 June 2001 the Appeals Division of the Commercial Court of the Amur Region quashed the decision of 7 May 2001 on procedural grounds and remitted the claim for a new examination.

21. On 27 August 2001 the Commercial Court of the Amur Region gave judgment. It established that the Ministry of Finance, rather than the Russian Government, should have been the proper defendant in the applicant's claim for damages because the Russian Government had not committed any unlawful actions. As the applicant refused to substitute the original defendant or to join the Ministry of Finance as a co-defendant and as the court was not competent to do so of its own motion, it determined to disallow the applicant's claim.

22. On 22 October 2001 the Appeals Division of the Commercial Court of the Amur Region upheld the judgment of 27 August 2001.

23. Counsel for the applicant, Mr Okunev, submitted a cassation appeal. On 23 November 2001 the Federal Commercial Court of the Far-Eastern Circuit fixed the hearing date for 11 December 2001. Mr Okunev had been notified of that decision on 3 December 2001 by registered mail.

24. On 11 December 2001 the Federal Commercial Court heard oral submissions by Mr Okunev and adjourned the hearing until 17 December 2001.

25. On 17 December 2001 Mr Okunev did not appear at court. In the absence of any valid reason for his absence, the Federal Commercial Court proceeded with the hearing and upheld, in the final instance, the judgments of 27 August and 22 October 2001. It confirmed that the actions of the Russian Government had been lawful and that the Ministry of Finance was responsible for the debts chargeable to the treasury.

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. On 26 July 1990 the RSFSR Council of Ministers adopted Resolution no. 259 on urgent measures for increasing the purchase of agricultural products harvested in 1990 and for ensuring their safe keeping. Its relevant parts resolved as follows:

I. Measures to increase the independence of decision-making by collective and Soviet farms concerning the sale of the harvest

“1. To authorise all manufacturers of agricultural produce to sell the surplus of such produce that remains after delivery under existing agreements ... to procurers or other consumers at negotiated prices...

2. To declare inadmissible any restrictions on the sale or shipment of agricultural produce to consumers in autonomous districts or regions of the RSFSR under paragraph 1 of the present resolution... Should local councils introduce such restrictions in their territories, the RSFSR Council of Ministers may stop issuing *Urozhay-90* bonds or delivering goods on the basis of them in those territories...”

II. Measures to encourage the sale of agricultural produce to the State through the reciprocal sale of goods in high demand

“7. To begin issuing, in 1990, *Urozhay-90* bonds to employees of collective and Soviet farms, other agro-industrial enterprises and organisations, peasants’ farms and owners of personal subsidiary land plots in respect of agricultural produce sold to the State.

To determine that the bonds certify the right to purchase goods in high demand at retail prices in trade outlets. The said bonds are not legal tender.

8. The RSFSR Ministry of Finance and the RSFSR Ministry of Agriculture and Food will, until 1 September 1990, print and put into circulation through the branches of the RSFSR State Bank *Urozhay-90* bonds for a total amount of 10 billion roubles. The bonds are to be used before 1 October 1991.

9. To establish that *Urozhay-90* bonds are issued by the branches of the RSFSR State Bank:

- to all producers who sold standard products to the State between 1 July 1990 and 30 June 1991 ... in an amount equivalent to 10% of the value of the products sold...

...

13. The Russian Consumers’ Association is to submit to the RSFSR Ministry for Foreign Economic Relations requests for those goods in high demand which are to be sold on production of the *Urozhay-90* bonds, and organise their sale, on advance orders by citizens and organisations, at regional fairs and exhibitions and in specialised trade outlets. The Consumers’ Associations is to deliver goods to the consumers on the basis of the *Urozhay-90* bonds no later than 1 January 1990 [*sic*]. In 1991 orders under the said bonds will be executed within two months.”

27. On 15 March 1992 the Russian Government issued Resolution no. 161, intended to compensate the owners of *Urozhay-90* bonds for an increase in retail prices. It resolved, in particular:

“1. To establish that passenger cars and other consumer goods which are made available to citizens as a reward for the grain and other agricultural produce that was

sold to the State in 1990 and 1991 are to be sold at the retail prices that prevailed before 2 January 1992...

2. To extend the period of validity of the *Urozhay-90* bonds until the end of 1992..."

28. On 10 August 1992 the Government adopted Resolution no. 1442-r. It required the Russian ministries to allocate substantial amounts for the purchase of goods that were to be sold on production of the *Urozhay-90* bonds. It further provided:

"4. The Ministry for Trade and Material Resources, in cooperation with the Central Consumers' Union, shall define, within two weeks, the list of goods intended for the implementation of the *Urozhay-90* bonds..."

5. The Prices Committee of the Ministry of the Economy shall determine the increase in prices of domestic and imported goods since 1990... The price difference shall be reimbursed from the republican budget.

6. The Ministry of Agriculture shall carry out an inventory of bonds held by agricultural enterprises and organisations and private individuals as on 1 September.

7. The Ministry of Finance and the Ministry of Agriculture shall, within two weeks, lay down the procedure for the buyout of the *Urozhay-90* bonds through the branches of the Savings Bank. It is to be taken into account that these bonds may be either used for purchasing goods or bought out by the State with a coefficient of 10."

29. On 16 April 1994 the Government approved Regulation no. 344 on State commodity bonds, which provided as follows:

"With a view to redeeming the State commodity bonds and preventing accrual of the State's liability to compensate for price differences, the Government of the Russian Federation resolves:

1. The Ministry of Finance of the Russian Federation –

– will buy out ... the *Urozhay-90* bonds at a price equivalent to their nominal value multiplied by 70 and credit that amount into a bank account..."

30. On 1 June 1995 the Commodity Bonds Act (no. 86-FZ, *ФЗ «О государственных долговых товарных обязательствах»*) was enacted. It provided that State commodity bonds, including *Urozhay-90* bonds, would be recognised as part of the internal State debt of the Russian Federation (section 1). The obligations arising out of the commodity bonds would be settled in accordance with the general principles of the Russian Civil Code, the limitation period being set at ten years (section 2). The original wording of section 3 provided:

"The Government of the Russian Federation shall draft, in 1995-1997, the State Programme for settlement of the internal debt of the Russian Federation described in section 1, based on the principle of full compensation. The Programme shall provide for redemption terms ... convenient for citizens, including, according to their choice: provision of goods designated in ... the State bonds issued to agricultural suppliers ...;

redemption of State commodity bonds at consumer prices prevailing at the time of the redemption ...; conversion of the debt into State securities...”

31. On 16 January 1996 the Government adopted Resolution no. 33, by which it annulled Regulation no. 344 and instructed the Ministry of Finance to redeem the State commodity bonds within the amounts allocated for that purpose in the federal budget.

32. On 2 June 2000, section 3 of the Commodity Bonds Act was amended to provide that the procedure for implementation of the State’s obligations to holders of the *Urozhay-90* bonds would be determined in a special federal law.

33. On 27 December 2000 the Government adopted the State Programme for settlement of the internal debt of the Russian Federation. Paragraph 14 of the Programme provided that the procedure for payments in respect of the *Urozhay-90* bonds would be determined in a special federal law.

34. In 2003 the application of section 1 of the Commodity Bonds Act was for the first time suspended in the part concerning the *Urozhay-90* bonds. The suspension clause was maintained in the following years (Federal Law 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; and no. 198-FZ of 24 July 2007).

35. On 19 July 2009 a federal law governing the procedure for the buyout of the *Urozhay-90* bonds was adopted (no. 200-FZ – “the Buyout Act”). It established that holders of the bonds would be paid, in the period between 15 December 2009 and 31 December 2010, an amount equivalent to the nominal value of the bonds divided by 1,000 (section 2). The law also amended the Commodity Bonds Act by removing the reference to the *Urozhay-90* bonds from section 1 of that Act.

36. On 15 September 2009 the Government issued Resolution no. 749, setting out the detailed procedure for payments in exchange for the production of *Urozhay-90* bonds.

37. On 15 December 2000 the Constitutional Court gave a decision on an application lodged by the Parliament of the Sakha (Yakutiya) Republic, which had claimed that the amendments of 2 June 2000 (see above) had indefinitely delayed the implementation of the State’s obligations towards the bearers of the *Urozhay-90* bonds. The Constitutional Court declared the application inadmissible for the following reasons:

“In its [previous decisions] the Constitutional Court has already determined that a unilateral change in the scope of the State’s obligations towards individuals, including the obligation to sell goods in exchange for commodity bonds, is impermissible. This does not exclude, however, the possibility of imposing restrictions on the property rights of individuals – in an established form and within the constitutional limits – in the matter of State obligations, which is compatible with Article 55 § 3 of the Constitution.

In particular, it follows from the case-law of the Constitutional Court ... that implementation of the rights and lawful interests of individual citizens or groups of citizens should not excessively and adversely affect the budgetary resources allocated for satisfying the rights and interests of society as a whole. This principle becomes particularly relevant in a situation where budgetary resources are insufficient to resolve many social problems relating to the exercise of the rights to life and personal dignity. It follows that the balance between the rights and lawful interests of the individuals who act as creditors for the State in property relationships, on the one hand, and everyone else, on the other hand, may, in principle, be struck only in the form of an act of Parliament.

Hence, given that the legislature may restrict individual rights and freedoms (including property rights) for the purpose of the protection of the rights and lawful interests of others, a review of the federal law amending section 3 of the Commodity Bonds Act by the Constitutional Court would imply an assessment of the financial and economic justification for the legislative decision on the procedure for settlement of State commodity bonds, which ... falls outside the jurisdiction of the Constitutional Court.

When examining claims relating to settlement of the State commodity bonds, courts of general jurisdiction have the right and duty to interpret the legislative provisions in the light of the interests of the individual (Articles 2 and 18 of the Constitution) and be guided, in particular, by section 2 of the Commodity Bonds Act, which establishes that State commodity bonds are to be settled in an appropriate form and in accordance with the Civil Code of the Russian Federation.”

THE LAW

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

38. The applicant complained under Article 1 of Protocol No. 1 about the Russian State’s continued failure to legislate on the procedure for redemption of *Urozhay-90* bonds. Article 1 of Protocol No. 1 provides:

“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. The Government's preliminary objection

39. The Government, in their additional observations of 18 November 2008 following the Court's decision as to the admissibility of the application on 11 September 2008, contended for the first time that the applicant had not exhausted domestic remedies in respect of its complaint under Article 1 of Protocol No. 1. They submitted that the Russian courts had not actually taken cognisance of the merits of the applicant's claim because it had been lodged against the wrong defendant and therefore rejected on a procedural ground. Furthermore, the applicant had not applied to the Supreme Commercial Court of the Russian Federation with a request for supervisory review.

40. The applicant pointed out that the Government's objection as to the non-exhaustion of the domestic remedies was belated at this stage of proceedings.

41. The Court reiterates that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *Prokopovich v. Russia*, no. 58255/00, § 29, ECHR 2004-XI (extracts), with further references). The Government's submissions referred to the events that had occurred before the application was lodged with the Court and there had been no relevant legal developments thereafter. There are no exceptional circumstances which would have absolved the Government from the obligation to raise their preliminary objection before the Court's decision as to the admissibility of the application on 11 September 2008.

42. Consequently, the Government are estopped from raising a preliminary objection of non-exhaustion of domestic remedies at the present stage of the proceedings. The objection must therefore be dismissed.

B. Submissions by the parties

1. The applicant

43. The applicant pointed out that it had received the *Urozhay-90* bonds in 1990 in exchange for the agricultural produce it had supplied to the State. At that time it existed in the form of a collective farm (колхоз), but had been subsequently re-organised into the agricultural co-operative "Dimskiy".

44. The applicant emphasised that the State had not discharged its obligations under the bonds which have remained outstanding to date. According to the general principles of Russian law, any outstanding obligation or debt has a value. The obligation arising out of the bonds could be settled either by implementing the right to purchase goods in high

demand or, if that right had not been implemented, by paying compensation in the amount indicated in the bond. However, neither has been done which amounted to a breach of trust and confidence in business relations between the applicant and the State and also frustrated the applicant's legitimate expectation to be paid for the produce it had supplied to the State.

45. The Government's argument about insufficient budgetary funds as a reason for introducing a moratorium on settlement of the commodity bonds was unconvincing for the applicant. As of late the revenues of the Russian federal budget had constantly exceeded expenditure and multi-billion amounts had been transferred into the Stabilisation Fund. In the applicant's view, there were no exceptional circumstances which would be able to account for such a protracted failure to regulate the payment of compensation under the Urozhay-90 bonds.

2. The Government

46. The Government claimed that the *Urozhay-90* bonds did not constitute "property rights" or "possessions" within the meaning of Article 1 of Protocol No. 1. They distinguished the present case from the *Broniowski v. Poland* case ([GC], no. 31443/96, ECHR 2004-V), in which the obligation of the Polish authorities to compensate repatriated persons for abandoned property had not been disputed. In the Government's view, the present case had similarities with the situation obtaining in the *Grishchenko v. Russia* case ((dec.), no. 75907/01, 8 July 2004), in which the Court had found that the applicant's claim under a commodity bond for the purchase of a Russian-made car had not been sufficiently established to be enforceable.

47. The Government emphasised the specific legal nature of the *Urozhay-90* bonds. The bonds were not legal tender; they could not be exchanged for goods or money. They merely certified the holder's right to purchase goods in high demand, but he or she could only do so at his or her own expense. The bonds were distributed in addition to payment for agricultural produce as an incentive for farmers to sell produce to the State. Thus, the face value of a bond did not represent the amount the State owed to the holder but rather the scope of the holder's entitlement to purchase goods which had not been otherwise available for purchase in the early 1990s.

48. The Government pointed out that the bonds had been issued as an individual incentive and that the applicable regulations did not provide for a possibility of their sale or purchase. Referring to the fact that the applicant had been incorporated in 1992, they claimed that the applicant's bonds had been bought from third parties. It could not therefore be said to have suffered an "individual and excessive burden", because it had not submitted any information on the price at which it had purchased the bonds.

49. According to the Government's position, the obligations arising out of the *Urozhay-90* bonds could not be described as a "debt" because the holders had not given their money to the State and because the State had paid for the agricultural produce. Their recognition in the Commodity Bonds Act as internal debt was "mistaken". The application of the Act had been suspended by successive laws on the federal budget. The interference therefore had a lawful basis and the domestic courts had taken reasoned and justified decisions to dismiss the applicant's claims. It was also in the public interest since, in a situation where the budgetary resources were insufficient to satisfy pressing social needs, the State had a duty to protect the budget from excessive spending.

50. Finally, the Government indicated that at the time of submission of their memorandum a draft law governing the procedure for buyout of the *Urozhay-90* bonds had been prepared and submitted to Parliament for a vote. The law would regulate all aspects of redemption of the bonds.

C. The Court's assessment

1. Applicability of Article 1 of Protocol No. 1

51. The concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of material goods and is independent from the formal classification in domestic law. In the same way as material goods, certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. In each case 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*, cited above, § 129; *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II; and *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I).

52. When declaring the application admissible, the Court examined the issue of applicability of Article 1 of Protocol No. 1. It found that the scope of the entitlement conferred by the *Urozhay-90* bonds on their holders had not been identical throughout their lifetime. In the initial period following their introduction and until early 1992, the bonds had had no independent value, being merely an administrative instrument for the distribution of consumer goods in high demand. In the subsequent period the right the bonds had originally certified – the right to purchase goods in high demand – lost its value and relevance on transition to the market economy. However, the legal regulations governing the bonds evolved in line with the changing economic conditions in Russia, with the result that the bonds were firstly treated as equivalent to discount coupons, later gave access to

monetary compensation and, eventually, were recognised as part of the internal debt by the Commodity Bonds Act.

53. The Court further noted that by enacting the Commodity Bonds Act in 1995, the Russian State had taken upon itself an obligation to settle the debt arising out of the *Urozhay-90* bonds. That obligation existed both on the date of the ratification of Protocol No. 1 by Russia (5 May 1998) and on the date of the submission of the present application to the Court. Although the application of the relevant provision of the Commodity Bonds Act had been suspended for many years, it had not been revoked or annulled. Moreover, despite the discrepancy in the grounds invoked by the domestic courts which had rejected the applicant's claims, the domestic judgments had acknowledged the existence of a debt arising out of the *Urozhay-90* bonds under the Commodity Bonds Act and chargeable to the State.

54. In sum, the Court found that the applicant had a proprietary interest which was both recognised under Russian law and acknowledged by Russian courts and which qualified for protection under Article 1 of Protocol No. 1. It finds nothing in the Government's present arguments to change the conclusion that, as has already been established in the decision on admissibility, the applicant's right to obtain redemption of the debt arising out of the *Urozhay-90* bonds constitutes a "possession" within the meaning of that Convention provision.

55. Following the decision on the admissibility of the application, the Russian Parliament amended the Commodity Bonds Act by removing the reference to the *Urozhay-90* bonds, and also passed a law governing the buyout of those bonds. This welcome development has put an end to the situation of legal uncertainty which was the main subject of the applicant's complaint. However, the Court reiterates that the issue must be seen from the perspective of what "possessions" the applicant had on the date of the Protocol's entry into force and, critically, on the date on which he submitted the complaint to the Court (see *Broniowski*, cited above, § 132). As noted above, on both those dates the debt arising out of the bonds had been recognised but the implementing regulations had not been adopted, making redemption of the bonds impossible.

56. The fact that the applicant complained about the lack of legal regulation of its entitlement distinguishes the present case from the situation obtaining in the *Grishchenko* case, to which the Government referred above. Ms Grishchenko possessed a different type of a commodity bond, one that originally certified her right to purchase a passenger car. She lodged a complaint with the Court after the Government had defined the procedure for redemption of bonds of that type, because she was dissatisfied with the Government's decision to grant an allegedly insufficient sum of money instead of a real car. The thrust of her complaint under Article 1 of Protocol No. 1 was therefore not the lack of regulation of her entitlement but rather

the adequacy of compensation, a matter which is not in issue in the instant case.

57. Having regard to the above, the Court finds that for the purposes of Article 1 of Protocol No. 1, the applicant's "possessions" comprised the entitlement to obtain some form of compensation for, or redemption of, the *Urozhay-90* bonds. While that right was created in a kind of inchoate form, as its materialisation was conditional on the enactment of implementing legislation, at the material time section 1 of the Commodity Bonds Act clearly constituted a legal basis for the State's obligation to implement it (compare *Broniowski*, cited above, § 133).

2. *The applicable rule and the nature of the alleged violation*

58. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see *Broniowski*, § 134; *Iatridis*, § 55; and *Beyeler*, § 98, all cited above).

59. The parties did not take a clear position on the question under which rule of Article 1 of Protocol No. 1 the case should be examined. Having regard to the complexity of the legal and factual issues involved, the Court considers that the alleged violation of the applicant's property rights cannot be classified in a precise category. In any event, the situation mentioned in the second sentence of the first paragraph is only a particular instance of interference with the right to peaceful enjoyment of property as guaranteed by the general rule laid down in the first sentence (see *Beyeler*, cited above, § 106). The case should therefore more appropriately be examined in the light of that general rule (compare *Broniowski*, cited above, §§ 135-136).

60. The Court further 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 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 between the demands of the public interest involved and the applicant's fundamental right of property has been struck. 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*, cited above, § 144, and *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, §§ 98 et seq., ECHR 2003-VIII).

61. In the present case the applicant's submission under Article 1 of Protocol No. 1 is that the Russian State, having conferred on it an entitlement to seek redemption of the *Urozhay-90* 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*, cited above, § 146).

62. 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 its possessions (see, for a detailed description of those principles, *Broniowski*, cited above, §§ 147-151).

3. Compliance with Article 1 of Protocol No. 1

(a) Respect for the principle of lawfulness

63. The Court notes that the application of section 1 of the Commodity Bonds Act in the part concerning the *Urozhay-90* bonds was repeatedly suspended through the laws on the federal budget for each successive year (see paragraph 34 above).

64. It is therefore satisfied that an interference with, or a restriction on, the exercise of the applicant's right to the peaceful enjoyment of its possessions was "provided for by law" within the meaning of Article 1 of Protocol No. 1.

(b) Existence of a legitimate aim in the public interest

65. The Government indicated that the restriction on the implementation of the bond-holders' entitlement sought to prevent excessive expenditure from the federal budget. This position was reflected in the decision of the Russian Constitutional Court, which held that the necessity to restrict property rights could arise "in a situation where budgetary resources [were] insufficient to resolve many social problems relating to the exercise of the rights to life and personal dignity" (see paragraph 37 above).

66. The Court observes that 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.

(c) Striking of a fair balance between the general interest and the applicant's rights

67. The Court notes at the outset that, by contrast with the situation obtaining in the above-mentioned *Broniowski* case and other similar cases, for instance, *Ramadhi and Others v. Albania* (no. 38222/02, 13 November 2007) and *Deneş and Others v. Romania* (no. 25862/03, 3 March 2009), the applicant had not suffered an initial taking or loss of property which the State had undertaken to compensate for. The bonds of which the applicant was the holder were given to agricultural workers as an additional incentive to encourage them to sell their produce to the State, which had paid for it at fixed prices. Nor could these bonds be used as legal tender or a money substitute: they certified the bearer's right to purchase goods in high demand but the buyer still had to pay the full purchase price in cash or otherwise. These particular features of the bonds may be relevant for an assessment of the level of compensation which was eventually offered to the bond-holders, since the Court has already considered that a substantially reduced amount of compensation may be acceptable in a situation in which the compensatory entitlement does not arise from any previous taking of individual property by the respondent State but is designed to mitigate the effects of a taking or loss of property not attributable to the State (see *Broniowski*, cited above, §§ 182 and 186). However, the Court reiterates that the applicant's complaints in the instant case do not concern the amount of compensation recoverable under the Buyout Act passed in 2009; its grievances stemmed from the fact that, in passing the Commodity Bonds Act, the Russian State had voluntarily taken upon itself an obligation towards bearers of the bonds that had not been discharged for many years owing to the absence of a legislative framework for its implementation.

68. 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 *Urozhay-90* bonds. 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 Commodity Bonds Act. The Court is not persuaded by the Government's submission that the recognition of the bonds as part of the State's internal debt had been "mistaken". Even if this were so, no explanation was offered as to why that alleged mistake had not been promptly identified and corrected through an appropriate amendment of the Commodity Bonds Act. It could not have been due to a mere oversight or oblivion because the application of section 1 of the Commodity Bonds Act in the part concerning the *Urozhay-90* bonds had been explicitly and repeatedly suspended for many years in the successive laws on the federal budget.

69. During the entire period between the enactment of the Commodity Bonds Act in 1995 and the approval of the Buyout Act in 2009, the conduct of the Russian authorities appears to have been passive *vis-à-vis* the implementation of the entitlement of the bond-bearers which had been continuously recognised as part of the State's internal debt. 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. No draft legislation governing the State's obligations under the bonds had been proposed or discussed in Parliament. The preparatory work which was essential for drafting such legislation had not been carried out. The inventory of the bonds, which had already been decided upon in the Government's Resolution of 10 August 1992 (see paragraph 28 above), had never been completed and, accordingly, the exact number and amount of the outstanding bonds could not have been known. The Court therefore finds that the Government's argument that the restrictions on redemption of the bonds had been necessary to prevent excessive expenditure from the federal budget is hardly persuasive. 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.

70. As regards the conduct of the applicant, the Court reiterates that following the enactment of the Commodity Bonds Act it had a legitimate expectation of obtaining some form of compensation for, or redemption of, the *Urozhay-90* bonds. It did not remain passive but rather displayed an active attitude by filing a claim with the domestic courts and making use of

the appeals procedure. The Government did not suggest that any other effective domestic remedies were available to it. In these circumstances, it cannot be said that the applicant was responsible for, or culpably contributed to, the state of affairs which it complained about (compare *Broniowski*, cited above, § 181). Rather, as the Court has found on the strength of the evidence before it, the hindrance to the peaceful enjoyment of its possessions was solely attributable to the respondent State.

71. On balance, the Court considers that the Russian authorities, by imposing successive limitations on the application of the legislative provision establishing the basis for the applicant's right to redemption of the *Urozhay-90* bonds and by failing for years to legislate on 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, in an appropriate and consistent manner where an issue of general interest is at stake (see *Broniowski*, cited above, §§ 151 and 185).

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

73. The applicant complained that the Federal Commercial Court had not notified its counsel of the date of the hearing before it and undermined thereby the right to a fair hearing enshrined in Article 6 § 1 of the Convention, which provides as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

74. The applicant claimed that counsel had not been notified of the adjournment of the hearing until 17 December 2001 by mail delivery.

75. The Government submitted that counsel had been informed by mail that the hearing would take place on 11 December 2001. On that date he had appeared before the Federal Commercial Court and made oral submissions. The court had subsequently decided to adjourn the hearing until 17 December 2001, of which counsel had been immediately informed. However, on 17 December 2001 he had not appeared at court.

76. The Court has previously found a violation of the right to a “public and fair hearing” in several cases against Russia, in which a party to civil litigation was deprived of an opportunity to attend the hearing because of the belated or defective service of the summons (see *Yakovlev v. Russia*, no. 72701/01, §§ 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, §§ 27 et seq., 20 October 2005; and *Mokrushina v. Russia*, no. 23377/02, 5 October 2006). The situation in the present case was different. Counsel for the applicant had been duly informed of the hearing

on 11 December 2001 by mail. The decision to adjourn the hearing until 17 December 2001 had been communicated to him in person. Thus, it transpires that he had been fully aware of the new hearing date but had not appeared at court, without giving a valid reason for his absence.

77. There has therefore been no violation of Article 6 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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. Damage

79. The applicant claimed RUR 21,241,324.10 as compensation in respect of pecuniary damage, which represented the nominal value of the bonds adjusted for the inflation since 1991, and 10,000 euros (EUR) in respect of non-pecuniary damage.

80. The Government objected to an award of just satisfaction, claiming that the applicant had not suffered any damage because the bonds had not been legal tender and only certified the bearer’s right to buy goods in high demand. They also considered that the claim for non-pecuniary damage was excessive and unsubstantiated.

81. As regards pecuniary damage, the Court notes that, following the enactment of the Buyout Act in 2009 and the Government’s Resolution governing the buyout procedure (see paragraphs 35 and 36 above), it is now open to the applicant to apply to the competent domestic authorities for redemption of its bonds.

82. The Court further considers that, in the circumstances of the case and having regard to the applicant’s status as a legal entity, the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage. Accordingly, it dismisses the applicant’s claim in respect of damage.

B. Costs and expenses

83. The applicant further claimed the court fee of RUR 55,241.62 and RUR 99,000 for its representation in the domestic and Strasbourg proceedings. Copies of legal-services agreements were submitted. The Government did not make specific comments on this claim.

84. Having regard to the material in its possession, the Court considers it reasonable to award EUR 1,000, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

85. 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. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
2. *Holds* that there has been no violation of Article 6 of the Convention;
3. *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 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President