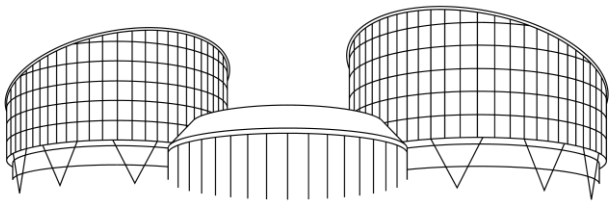

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ANDREYEVA v. RUSSIA

(Application no. 73659/10)

JUDGMENT

STRASBOURG

10 April 2012

FINAL

24/09/2012

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

In the case of Andreyeva v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 20 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 73659/10) 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, Ms Mariya Mikhaylovna Andreyeva ("the applicant"), on 25 November 2010. The President of the Chamber granted her leave to represent herself.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that she had been unable to obtain any payment from the State on Soviet bonds of a 1982 issue belonging to her.

4. On 17 March 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1918 and lives in St Petersburg.

6. The applicant holds a number of premium bonds issued in 1982 ("the 1982 USSR bonds", *облигации Государственного внутреннего*

выигрышного займа 1982 года). She deposited them in 1986 with Sberbank ("the Savings Bank" – *Сбербанк России*).

7. In December 1991 the USSR was dissolved. In February 1992 the Government of Russia acknowledged that the 1982 USSR bonds held by Russian nationals were a part of its internal debt. Later that year the Russian Government proposed a settlement to the holders of the 1982 USSR bonds ("the redemption scheme"). The redemption scheme provided for conversion of the 1982 USSR bonds into Russian bonds issued in 1992 or, alternatively, their buy-out by the Savings Bank at a price fixed by the Government. The applicant did not react to that offer, so, according to Governmental Decree no. 549 of 5 August 1992 describing the means of the redemption scheme, her bonds were automatically acquired by the Savings Bank. The bonds were extinguished and the redemption price of the 1982 USSR bonds was credited to the applicant's bank account.

8. Between 1995 and 2000, a series of Russian laws was adopted which provided for the conversion of Soviet securities, including the 1982 USSR bonds, into special Russian promissory notes. In particular, on 6 July 1996 the Promissory Value Act introduced the "promissory rouble" as the currency of special promissory notes issued by the Russian Federation. On 4 February 1999 the Base Value Act set out the general approach to be taken as regards the conversion of "promissory roubles" into Russian roubles. The Government were mandated to devise a more detailed procedure for the conversion. Although a regulation on the conversion process was adopted by the Government in 2000 ("Resolution no. 82"), the actual conversion did not start and application of the regulation has remained suspended, by a series of resolutions, to the present day. The application of the Base Value Act was suspended from 1 January 2003 to 1 January 2012 by successive federal laws.

9. In the 1990s the applicant brought proceedings against the Ministry of Finance of the Russian Federation and the Savings Bank seeking damages for the loss of value of her bonds. The first judgment on the merits was rendered in 1998. On 3 April 2003, following several rounds of court proceedings, the Basmanniy District Court of Moscow dismissed her claim. She appealed.

10. On 22 October 2003 the Moscow City Court, sitting as a court of appeal, satisfied her claim in part. In particular, the City Court found that the compulsory redemption of the bonds in 1992 had breached the applicant's rights. The City Court ordered that the applicant should be restored to the same position as other bondholders, whose bonds had not been subjected to compulsory redemption and had later been converted into special promissory notes of the Russian Federation. The City Court acknowledged the applicant's right to eighty-four special promissory notes having a total nominal value of 3,185 "promissory roubles". The court also "acknowledged the applicant's right to obtain redemption of the notes from

the State, under the conditions established by the legislation in force for the holders of special promissory notes".

11. The applicant brought supervisory review proceedings, but to no avail. In the ruling of 23 August 2004 a judge of the Moscow City Court explained that in the absence of a specific law defining the terms and conditions of the redemption of the special promissory notes, the State had no obligation to pay the applicant any particular amount.

12. On 22 February 2006 the applicant obtained a writ of execution against the Ministry of Finance in pursuance of the judgment of 22 October 2003. The writ was valid for three years. However, it was not enforced. The Government claimed that the applicant had not tried to enforce the writ by serving it on the Ministry of Finance.

13. In the following years the applicant initiated several sets of court proceedings against various State bodies and officials, seeking damages for the lengthy non-enforcement of the judgment of 22 October 2003, complaining of the failure of the Government and of the legislature to implement the Base Value Act, and so forth. It appears that all her claims were rejected, either for want of substantive jurisdiction over the dispute, or because the courts had found her claims unsubstantiated. In particular, the applicant sued the Ministry of Finance for its failure to redeem the promissory notes, claiming 110,000,000 Russian roubles under the heads of pecuniary and non-pecuniary damage. On 13 January 2009 the Moscow City Court, acting as the court of final instance, rejected her claims against the Ministry of Finance on the grounds that similar claims has already been examined in 2003, and, furthermore, the applicant had failed to justify the amount sought from the defendant.

II. RELEVANT DOMESTIC LAW

14. For the relevant domestic law on State premium bonds and promissory notes of the Russian Federation, see the case of *Yuriy Lobanov v. Russia*, no. 15578/03, §§ 13 et seq., 2 December 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

15. The applicant complained that despite the court judgment of 2003, which had acknowledged her right to eighty-four promissory notes worth 3,185 "promissory roubles", she had remained unable to receive any money

from the State. This complaint falls to be examined under Article 1 of Protocol No. 1 to the Convention, 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

16. The Government submitted the following. In 1992 the Russian Federation had taken on the USSR's obligations arising out of the 1982 USSR 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. Her bonds had therefore been acquired by the State within the 1992 conversion scheme. In 2003 the courts had restored her rights to the bonds, which, in the meantime, had been converted into eighty-four promissory notes of the Russian Federation. However, the redemption of those promissory notes was not provided for by law. In 2000 the Government had adopted Resolution no. 82, which had specified the means of conversion of the USSR's internal debt into promissory notes of the Russian Federation and their future redemption, but in 2003 – 2011 the redemption had been suspended by the Government. The applicant had not served the writ of execution on the Ministry of Finance. In addition, the law had not set out the means of redemption of promissory notes of that type. As a result, the 2003 judgment in the applicant's favour had not been enforced. The Government concluded that the applicant's claim was manifestly ill-founded.

17. The applicant maintained her claim. She indicated, referring to the judgment of 22 October 2003, that the buy-out of the 1982 USSR bonds had been unlawful and unfavourable for the bondholders. She also claimed that the prolonged non-enforcement of that judgment had violated her rights under the Article 1 of Protocol No. 1 to Convention.

18. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

19. The Court observes that the applicant's situation in this case, starting from 22 October 2003, when the Russian courts recognised her right to eighty-four promissory notes, is similar to that of the applicant in the case of *Yuri Lobanov*, cited above. Thus, she acquired a certain number of 1982 USSR bonds before 1992 and those bonds were later recognised by the State as a part of its internal debt and converted into Russian promissory notes. In view of the above, and having regard to the legislation adopted in 1999 – 2000, the Court finds that the applicant had a legitimate expectation of having those promissory notes redeemed at some point, although their exact value and other conditions of their redemption remained undefined.

20. The Court further notes that "the application of the Base Value Act and the Government-approved conversion regulation ... was repeatedly suspended through the Government regulations and federal laws for each successive year" (see *Yuri Lobanov*, § 49). By failing for years to implement appropriate regulations, the Government brought the situation within the ambit of Article 1 of Protocol no. 1 to the Convention (ibid., § 47). Although the decisions postponing the implementation of the redemption scheme were taken by the Russian authorities in a lawful manner and pursued a legitimate aim (ibid., §§ 49 – 50), "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" (ibid., § 52).

21. The applicant's alleged failure to initiate enforcement proceedings against the Ministry of Finance, to which the Government referred, is, in the opinion of the Court, irrelevant: even if she had, it is unclear how the judgment of 22 October 2003 could have been enforced in the absence of a specific legal mechanism for the redemption of the promissory notes or their conversion into Russian roubles. The Government did not rely upon any other argument or factual information which would warrant a departure from the Court's findings in the *Yuri Lobanov* case.

22. The Court concludes that the State failed to strike a fair balance between the applicant's interests under Article 1 of Protocol no. 1 to the Convention and the public interest in the area of State finances. There has accordingly been a violation of this provision.

II. OTHER ALLEGED VIOLATION OF THE CONVENTION

23. The applicant also complained of a violation of Article 6 of the Convention, together with Article 13 of the Convention, on account of the forced redemption of her 1982 USSR bonds in 1992. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that these facts do not disclose

any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant sought 110,000,000 roubles – a sum identical to the sum she had earlier claimed from the State in the domestic proceedings (see paragraph 14 above). It is unclear whether that amount included only a claim for compensation for pecuniary damage or whether it included non-pecuniary damage as well.

26. The Government objected to the applicant's calculations and maintained that they were not based in law and not supported by any evidence. The Government further claimed that the applicant had failed to indicate the amount sought under the head of non-pecuniary damage and should not, therefore, be awarded anything on this account.

27. The Court notes that the eighty-four promissory notes constitute the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1. The Court's finding that the State failed to develop and implement a redemption scheme (see paragraph 21 above) cannot be interpreted as establishing any particular method of redemption or defining *in abstracto* the value of the promissory notes. However, the applicant's claims under this head cannot be rejected simply because of the authorities' failure to define conditions of redemption (cf., *mutatis mutandis*, *Malysh and Others v. Russia*, no. 30280/03, §§ 69 and 90, 11 February 2010).

28. Having regard to all materials in its possessions, and taking into account the applicant's personal situation, and, in particular, her age, the Court finds it appropriate to award the applicant, on account of both pecuniary and non-pecuniary damages, the amount of EUR 4,300, plus any tax that may be chargeable on this amount.

B. Costs and expenses

29. The applicant also sought costs and expenses incurred in the proceedings before the domestic courts. She did not specify the amounts claimed.

30. The Government indicated that the applicant had failed to produce itemised particulars of claim related to her costs and expenses or any relevant documents.

31. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, only costs and expenses related to proceedings which have a direct connection with the subject-matter of the complaint may be reimbursed. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses incurred in the domestic proceedings in full, as those proceedings had no direct bearing on the essence of the applicant's complaint which gave rise to the finding of a violation of the Convention in the present case.

C. Default interest

32. 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. *Declares* the complaint concerning the respondent's State failure to develop a redemption scheme for the promissory notes admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to 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 4,300 (four thousand three hundred euros), plus any tax that may be chargeable on this amount, in respect of pecuniary and non-pecuniary damage;

(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 10 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President