



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

FIRST SECTION

CASE OF FOMIN AND OTHERS v. RUSSIA

(Application no. 34703/04)

JUDGMENT

STRASBOURG

26 February 2013

FINAL

08/07/2013

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

In the case of Fomin and Others v. Russia,

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

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 February 2013,

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

PROCEDURE

1. The case originated in an application (no. 34703/04) against the Russian Federation lodged on 10 August 2004 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Russian nationals, Mr Aleksandr Ivanovich Fomin, Ms Tamara Ivanovna Fomina, Ms Tatyana Aleksandrovna Fomina, Ms Yulia Aleksandrovna Fomina (“the first”, “the second”, “the third” and “the fourth” applicant), who were born in 1938, 1946, 1970, and 1976 respectively, and live in Magnitogorsk, Chelyabinsk Region. On 30 March 2011 the Court received a power of attorney issued in the first applicant’s name by Ms Olga Aleksandrovna Fomina, born in 1976 (“the fifth applicant”), whose name was also mentioned in subsequent submissions. In the course of the proceedings before the Court, the third, fourth and fifth applicants got married and changed their names to Ms Tatyana Aleksandrovna Gnatyuk, Ms Yulia Aleksandrovna Minkina and Ms Olga Aleksandrovna Ilyina respectively.

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

3. In particular the applicants alleged that their property rights had been violated on account of the failure of the State to redeem governmental bonds.

4. On 8 December 2010 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

A. Proceedings for redemption of State bonds

5. On an unspecified date the first applicant bought 1982 State premium bonds (*облигации Государственного внутреннего выигрышного займа 1982 года*), which were issued by the USSR Government in 1982 in order to finance certain State programmes. It was stipulated at the time of issue that the bonds would be redeemed by 2004 at the latest.

6. In 1992, the Government of the Russian Federation acknowledged their succession in respect of the USSR's obligations under the 1982 loan and suspended payments under the 1982 State premium bonds.

7. Subsequently, the first applicant converted all but forty-four 1982 State premium bonds into 235 1992 Russian bonds.

8. Between 1995 and 2000, a series of legislative and regulatory acts was enacted providing for the conversion of Soviet securities, including 1982 State premium bonds, into special Russian promissory notes. The Government were mandated to devise a procedure for the conversion and to fix the value of the promissory notes. Although regulations on the conversion were adopted in 2000, the actual conversion did not start and application of the regulations remained suspended.

9. The first applicant brought proceedings before the Ordzhonikidzevskiy District Court of Magnitogorsk, seeking redemption of his 1992 Russian bonds and affirmation that the forty-four 1982 State premium bonds had retained their purchase power.

10. On 28 March 2005 the court granted the claim in part, declaring that the 1982 bonds had retained their value and purchase power proportionate to the USSR currency exchange rate in 1990. The judgment entered into force.

11. The first applicant immediately brought proceedings before the Pravoberezhniy District Court of Magnitogorsk to recover the value of nine of his 1982 State bonds.

12. By a judgment of 17 May 2005 the court dismissed the claim, finding that the Government had not yet developed a conversion mechanism for the bonds. On 21 July 2005 the judgment was upheld on appeal by the Chelyabinsk Regional Court.

13. At the present time the first applicant holds nine 1982 State premium bonds with a nominal value of 450 roubles.

B. Non-enforcement of a judgment against a private party

14. On 20 June 1997 the Pravoberezhniy District Court of Magnitogorsk ordered the debtor, M., to repay the applicants 1,100,000 Russian roubles (RUB).

15. On 20 June 2003 the same court awarded the applicants interest on the unpaid debt in the amount of RUB 1,100,000.

16. Following the bailiff's failure to recover the debt, in 2003 the applicants brought a civil claim against M., seeking determination of his share in a flat that he owned jointly with his spouse and child, and its seizure to enforce the court decisions.

17. On 21 October 2003 the Ordzhonikidzevskiy District Court of Magnitogorsk disallowed the claim on the ground that the flat was M.'s only housing and hence could not be seized for recovery of the debt.

18. By a decision of 19 February 2004 the Chelyabinsk Regional Court upheld the judgment on appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. A summary of the relevant domestic law and practice is provided in the judgment in the *Yuriy Lobanov v. Russia* case (no. 15578/03, §§ 13-23, 2 December 2010).

THE LAW

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

20. The applicants complained that their property rights had been violated by the Russian authorities' failure to fulfil their obligations under the 1982 State premium bonds. The complaint falls to be examined under 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

21. The Court considers that the second, third, and fourth applicant had neither taken part themselves in any of the relevant proceedings at the national level, nor submitted any complaints on the matter in their own name before the Court. Further, the Court notes that the fifth applicant was neither mentioned in the application forms submitted by the other applicants, nor submitted an application form of her own. Therefore, in respect of the second, third, fourth, and fifth applicants the application must be rejected in accordance with Article 35 § 3 and 4 of the Convention.

22. The Court notes that the first applicant's complaint 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

1. Arguments of the parties

23. The applicant alleged that the prolonged failure of the State to redeem the nine 1982 State premium bonds had violated his property rights. He considered that the nine bonds effectively constituted his possessions and that their status was recognised by the domestic courts. Failure to redeem the bonds had resulted in interference with his property rights which was unlawful, had no legitimate aim, and did not ensure a fair balance between public and private interests.

24. The Government acknowledged that the nine 1982 State premium bonds may be considered as a possession within the meaning of Article 1 of Protocol No. 1. At the same time they contended that the interference with the applicant's property rights had been lawful since the necessary domestic legal framework had been put in place. They further stressed that, as the Court had acknowledged in the case *Malyshev and Others v. Russia* (no. 30280/03, § 80, 11 February 2010), the harsh economic situation in Russia in the 1990s necessitated some restrictions on private property, and thus the interference had pursued a legitimate aim. Lastly, the Government argued that a fair balance between public and private interests had been ensured in the applicant's case, because he had been afforded the opportunity – and indeed had chosen – to convert the majority of his 1982 State premium bonds into 1992 Russian bonds. In respect of the remaining bonds, he had not used that option and thus could not be considered to be a victim within the meaning of Article 34 of the Convention.

2. *The Court's assessment*

25. The Court is mindful that on several previous occasions it has been called upon to rule whether governmental bonds issued in the USSR, but later recognised as Russian state debt, constitute possessions within the meaning of Article 1 of Protocol No. 1. The Court has consistently concluded that, given that Soviet securities were recognised under Russian legislation as Russian Federation Government debt and that such recognition entails compensation or redemption, those securities are considered as possessions under the Convention (see, among other authorities, *Malysh and Others*, cited above; *Tronin v. Russia*, no. 24461/02, 18 March 2010; *Yuriy Lobanov*, cited above; and *Andreyeva v. Russia*, no. 73659/10, 10 April 2012)

26. The Court notes that in the present case, both the applicant and the Government agreed that the 1982 State premium bonds constituted the applicant's possessions within the meaning of Article 1 of Protocol No. 1. Equally, both parties agreed that there had been an interference with the applicant's property rights. Having regard to the circumstances of the case and the case-law cited above, the Court finds no reason to reach a diverging conclusion.

27. Thus the issue to be resolved by the Court is whether such interference complied with the requirements prescribed within the Convention system. The Court reiterates that, for the interference to be compatible with Article 1 of Protocol No. 1, it must be lawful, pursue a legitimate aim, and ensure a fair balance between public and private interests (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 147-51, ECHR 2004-V).

28. In the *Yuriy Lobanov* case (cited above), the Court has already dealt with a fundamentally identical issue concerning an individual's inability to redeem 1982 State premium bonds. The Court found that, while the interference had been lawful and had pursued a legitimate aim, a fair balance had not been struck between the interests of the applicant and those of the State. The Government had not given any satisfactory justification, in terms of Article 1 of Protocol No. 1, for their continuous failure over many years to implement an entitlement conferred on the applicant by Russian legislation (*ibid.*, §§ 49-52, and 54).

29. Nor have the Government advanced such a justification in the present case. The fact that the applicant had an opportunity to convert – and indeed converted – the majority of his 1982 State premium bonds into 1992 Russian bonds did not relieve the State of its obligation to ensure a fair balance between public and private interests in respect of the nine bonds retained by the applicant. Russian legislation allowed the conversion of certain Soviet securities into Russian securities as an alternative to redemption, and the applicant was under no obligation to opt for it.

30. The foregoing considerations are sufficient to enable the Court to conclude that there has accordingly been a violation of Article 1 of Protocol No. 1 on account of the prolonged and unjustified failure of the State to put in practice the procedure for redemption of 1982 State premium bonds.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. Lastly, the applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 of various violations in the course of the first and second sets of proceedings. 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 complaint do not disclose any violation of the provisions invoked. They are inadmissible and must be rejected in accordance with Article 35 § 1 and 3 (a) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The first applicant claimed 27,954,725 Russian roubles (RUB) (698,868 euros (EUR)) in respect of pecuniary damage for the nine bonds he currently owns. The nominal value of the bonds is 450 roubles.

34. The Government disagreed. They contended that the first applicant’s method of calculation had no legal basis and that he had failed to take into account the redenomination of the rouble in 1998.

35. The Court notes that indeed the applicant’s calculation is not based on any method in the domestic law and ignores the redenomination of the Russian currency. Having regard in particular to the just satisfaction awarded to the applicants in cases raising identical issues under the Convention (see, for example, *Yuriy Lobanov*, cited above, (just satisfaction)), the Court awards EUR 1,200 to the first applicant as compensation in respect of pecuniary damage.

36. The applicant did not submit a claim for non-pecuniary damage. Having regard to the case-law and the well-established practice, the Court finds that there are no grounds for awarding any sum on that account.

B. Costs and expenses

37. The applicant did not claim any costs and expenses. Accordingly, the Court considers that there is no call to award any sum on that account.

C. Default interest

38. 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 first applicant's complaint about violation of his property rights by failure of the State to redeem 1982 State premium bonds admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay the first applicant Mr Aleksandr Ivanovich Fomin, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,200 (one thousand two hundred euros) in respect of pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State 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 26 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President