

APPLICATION N° 37505/97

Catherine ABRAINÍ LESCHI and others v/France

DECISION of 22 April 1998 on the admissibility of the application

Article 1 of the First Protocol *The friendship and co operation treaty signed by France and Russia on 7 February 1992 does not give rise to a right protected by Article 1 of Protocol No. 1 for French citizens holding unredeemed Russian bonds to receive compensation from the French Government*

Article 14 of the Convention *Conditions of application and notion of discrimination (recap of case law)*

Competence *ratione materiae* *The Convention does not guarantee, as such, a right to diplomatic protection*

Competence *ratione temporis* *The Commission is not competent to examine facts arising prior to the date of ratification of the Convention by the respondent State*

THE FACTS

The applicants are 433 French citizens. They are all members of the *association des petits porteurs de titres russes* (Association of Small Investors in Russian Bonds), an organisation registered under the 1901 Associations Act and based in Redessan, whose principal object is to campaign for the redemption of the bonds held by its small-investor members.

The applicants were represented before the Commission by the Montpellier law firm Cabrol Fabregat.

The facts of the case, as submitted by the applicants, may be summarised as follows

Historical background

Between 1860 and 1914, the Russian Government and a number of corporations issued a flood of bonds, to which many French investors subscribed via the national banks of the two countries. Following the 1917 Revolution, the USSR made no repayments on these bonds.

Diplomatic negotiations

In 1926, President Poincaré of France made a vain attempt to organise a Franco-Russian conference to resolve the repayment problem. In 1927, the Soviet Government accepted a scheme for compensating holders of Russian bonds, but this was never put into practice.

Following the break-up of the USSR, negotiations were resumed, culminating, on 7 February 1992, in the signature of a Franco-Russian friendship and co-operation treaty which came into force on 1 April 1993.

Article 22 of this treaty provides:

"The French Republic and the Russian Federation undertake to reach an agreement, within as short a time as possible, resolving the issues raised by each of them concerning the financial and material aspects of property and interests belonging to natural and artificial persons in either country."

On 2 April 1993, at a meeting of the Paris club, Russia acknowledged sole responsibility for all debts owed by the former Soviet Union.

According to a press article (*Le Figaro*, 7 July 1997) an agreement between France and Russia was reached in November 1996 and signed at the end of May 1997, under which Russia was to make eight payments of 50 million dollars each at six-monthly intervals.

On 24 March 1997, a commission was appointed to make proposals for the redemption of the bonds. According to the article referred to above, its mandate was as follows:

"The commission has a threefold mandate. First, it must identify all the holders of Russian bonds."

Once this stage is complete, it will have the difficult job of categorising the different types of bond (some having been issued by the State, others by real-estate companies, railway companies etc).

The commission will then make proposals for compensation. And its final task will be to verify that the Russian Government is actually making the repayments."

Still according to the article, an initial payment was made by Russia at the end of June 1997 and the commission met for the first time in July 1997. A second payment was expected in August 1997.

Proceedings in the administrative courts

On 18 May 1992, the *groupement national de défense des porteurs de titres russes* (the National Group for the Defence of Russian Bond-holders, the predecessor of the association of which the applicants are members) commenced proceedings in Paris Administrative Court, seeking an order for the French State to pay the holders of Russian bonds compensation of 45,522 77 French francs (FRF) plus FRF 20,000 per bond held.

On 17 December 1993 the Administrative Court dismissed the action in the following terms

"The plaintiff Association seeks to demonstrate that the State is liable by virtue of the conduct of the French authorities which, the plaintiff alleges, have refused to engage in negotiations with the Soviet State and its successors with a view to obtaining compensation for the Association's members. Any decisions taken by the French Government in this area are inseparable from the conduct of international relations between the two Governments and consequently the plaintiff's claim raises an issue which is inherently outside the jurisdiction of the courts

Even if it is true that the French Government have refused to give parliamentary time for debating a number of private member's bills concerning compensation for the bond-holders, this issue, which relates to the relationship between the Executive and Parliament, is {also} inherently outside the courts' jurisdiction

Article 1 of Protocol No. 1 to the European Convention on Human Rights is of no assistance to the plaintiff, since the interference and the breach of the rights enshrined in that provision cannot be imputed to the French State. Similarly, the plaintiff Association cannot succeed by relying on a breach of the provisions of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1, given that the discrimination it alleges is not attributable to the French Government either

Finally, the damage for which the plaintiffs seek redress flows directly from an act of a foreign State, which cannot engage the responsibility of the French State, even on the basis of the principle that the burden of State expenditure

should be distributed equally. In any event, in view of the risks of entering into financial dealings with a foreign State, this damage cannot be deemed extraordinary and special."

COMPLAINTS

1 The applicants, invoking Article 1 of Protocol No. 1 to the Convention, complain that the actions of the French State, which has accorded the former USSR financial advantages while failing to pursue the repayment negotiations, has deprived them of their ability to exercise their rights as creditors and has thus violated their right to peaceful enjoyment of their possessions.

2 The applicants, citing Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1, claim to be the object of discrimination by reason of an unjustified difference between their situation and that of citizens of other States who have been repaid.

THE LAW

1 The applicants allege a violation of Article 1 of Protocol No. 1 to the Convention, which provides 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.

The Commission will examine the following points:

a) The Commission notes at the outset that it has no jurisdiction *ratione temporis* to examine this complaint in so far as it relates to events prior to 3 May 1974, the date on which France ratified the Convention (see No. 9587/81 Dec. 13 12 82, D.R. 29 p. 228).

It follows that this aspect of the complaint is incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 thereof.

b) In so far as the applicants complain of the actions of the French authorities, the Commission observes that the Paris Administrative Court, in its judgment of 1 / December 1993, held as follows:

"The plaintiff Association seeks to demonstrate that the State is liable by virtue of the conduct of the French authorities which, the plaintiff alleges, have refused to engage in negotiations with the Soviet State and its successors with a view to obtaining compensation for the Association's members. Any decisions taken by the French Government in this area are inseparable from the conduct of international relations between the two Governments and consequently the plaintiff's claim raises an issue which is inherently outside the jurisdiction of the courts."

In this regard, the Commission recalls the principle of Commission case-law according to which "no right to diplomatic protection or other such measures by a High Contracting Party on behalf of persons within its jurisdiction is, as such, guaranteed by the Convention" (see, No 12822/87, Dec 9 12 87, D R 54, p 201 at p 203)

This part of the complaint must, therefore, be rejected as incompatible *ratione materiae* with the provisions of the Convention, as provided for in Article 27 para 2 of the Convention

c) The Commission must now establish whether the applicants have proved that they have a "possession" within the meaning of Article 1 of Protocol No 1

The first issue is whether the Franco Russian friendship and co operation treaty of 7 February 1992, which came into force on 1 April 1993, gave rise to a right for the applicants to obtain compensation which could be described as a "possession" within the meaning of that provision

Article 22 of the Treaty provides

"The French Republic and the Russian Federation undertake to reach an agreement, within as short a time as possible, resolving the issues raised by each of them concerning the financial and material aspects of property and interests belonging to natural and artificial persons in either country"

Unlike the case of *Beaumont v France* (Eur Court HR, judgment of 24 November 1994, Series A no 296-B and Comm Report 29 6 93), where the treaty between France and Morocco provided that Morocco would pay compensation in a single lump sum which France would be responsible for apportioning between the beneficiaries, thus giving rise to a right to compensation protected by the Convention (*ibid*, pp 60-61, para 28), in the present case, as the Commission observes, the treaty between France and Russia contains a mere declaration of intent to resolve, as soon as possible, the dispute concerning "the financial and material aspects of property and interests belonging to natural and artificial persons in either country"

The Commission deduces from this that the treaty in question does not give rise to a right to compensation for holders of Russian bonds which could fall within the scope of Article 1 of Protocol No 1 (see, *mutatis mutandis*, No 20944/92, Dec 20 2 95, D R 80, p 78 at p 84)

With regard to the agreement signed in May 1997, the Commission observes that the applicants have not provided any information as to its contents. Nor have they produced any evidence to support their claim that they are all the owners of unredeemed Russian bonds, or to prove that they have applied to the compensation commission.

Therefore, the Commission considers that the applicants have not demonstrated that they have possessions covered by Article 1 of Protocol No 1 to the Convention.

It follows that this complaint is incompatible *ratione materiae* with the provisions of Article 1 of Protocol No 1 as referred to in Article 27 para 2 of the Convention.

2 The applicants also allege a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No 1 to the Convention, in that they claim to have been treated differently from citizens of other States who have succeeded in being repaid.

Article 14 of the Convention provides as follows:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that Article 14 has no independent existence since it has effect solely in relation to the "rights and freedoms" safeguarded by the other substantive provisions of the Convention and its Protocols (see Eur Court HR, *Inze v Austria* judgment of 28 October 1987, Series A no 126, p 17, para 36, No 18890/91, 19048/91, 19049/91, 19342/92 and 19549/92, Dec 4 3 1996, D R 85, p 5, and No 23131/93 Dec 4 3 1996 D R 85 p 65).

As the Commission has already found that the applicants' complaint based on Article 1 of Protocol No 1 to the Convention is incompatible with that provision, the inevitable result is that this second complaint is also incompatible with the provisions of the Convention within the meaning of Article 27 para 2 thereof.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.