AS TO THE ADMISSIBILITY OF

Application No. 28858/95
by George GANCHEV
against Bulgaria

The European Commission of Human Rights sitting in private on 25 November 1996, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
H. DANELIUS
F. MARTINEZ
J.-C. GEUS
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 26 September 1995 by George GANCHEV against Bulgaria and registered on 5 October 1995 under file No. 28858/95;

Having regard to :

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 29 May 1996 and the observations in reply submitted by the applicant on 25 September 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Bulgarian national born in 1939 and residing in Sofia. He is the leader of the political party Bulgarian Business Block (Balgarski Biznes Blok) and was, as from January 1995, a Member of Parliament, the termination, in April 1995, of his functions as a Member of Parliament being the object of the present application.

Particular circumstances of the case

The facts of the case as submitted by the parties may be summarised as follows.

The applicant was born in Bulgaria and is a Bulgarian citizen as from birth. He spent an unspecified number of years in the United States of America and became a United States citizen by naturalisation.

In January 1991 the Sofia Regional Court (Sofiiski gradski sad) registered the Bulgarian Business Block as a political party. The applicant was elected its chairman. In the end of 1991 the applicant was registered as a candidate for President of Bulgaria. At the first round of the elections he obtained 17% of the vote and did not qualify for the run-off.

On 12 November 1994 the applicant requested to be registered in the Varna electoral district (Varnenski izbiratelen raion) as a candidate for the parliamentary elections in December 1994. On the same date he submitted a declaration stating that he met the legal requirements for election as provided for by, inter alia, Section 65 para. 1 of the Constitution, which stipulates that only Bulgarian citizens without a second citizenship can stand for election (see below Relevant domestic law).

On 15 November 1994 the applicant was registered as a candidate.

Following the elections, on 27 December 1994 the Central Election Commission (Zentralna izbiratelna komissia) declared that the applicant was elected a Member of Parliament from the Varna electoral district.

On 12 January 1995 the applicant was sworn in as a Member of Parliament.

On 2 March 1995 the Chief Public Prosecutor (Glaven prokuror) seized the Constitutional Court (Konstitutsionen sad) requesting the termination of the applicant's functions as a Member of Parliament on the ground that the applicant had had double citizenship at the time of his election. On 8 March 1995 the Constitutional Court accepted the case, communicated it to the applicant, to the Parliament, and to the parliamentary group of the Bulgarian Business Block and invited them to submit observations.

The Court received and accepted written observations from the applicant and his lawyer, from the parliamentary group of the Bulgarian Business Block, from the Parliamentary Ethics Commission (Komissia po parlamentarna etika) and from the Parliamentary Commission on Human Rights and Religious Confessions (Komissia po pravata na choveka i veroizpovedaniata). The Court also admitted in evidence four letters from the United States Ambassador in Sofia.

The first letter, sent on 31 January 1995 in response to the Chief Public Prosecutor's query, stated, insofar as relevant:

"In response to your letter of this date concerning the citizenship of Mr. George Ganchev, I am authorised to inform you that he is a citizen of the United States of America."

On 6 February 1995, in a second letter to the Prosecutor, the Ambassador stated that upon the applicant's request the United States authorities were examining the issue whether the applicant had lost his United States citizenship by virtue of his registration as a candidate for the December 1994 Bulgarian elections.

A third letter, dated 1 March 1995 and again addressed to the Prosecutor, stated, insofar as relevant:

"... the United States Government has determined that [the applicant] is not a United States citizen. An appropriate document so stating has been issued to [the applicant]."

The fourth letter from the United States Ambassador, sent on 27 March 1995 to the Constitutional Court in response to the Court's request for information about the date and the grounds for the applicant's loss of citizenship, stated that each of the three previous letters had been correct at the time it had been written.

The Court then requested the applicant to present the document issued to him by the United States authorities and mentioned in the Ambassador's letter of 1 March 1995. However, the applicant refused to do so.

On 13 April 1995 the Constitutional Court delivered its judgment. The Court found that the applicant, at the time of his registration as a candidate and at the time of his election, had not met the pertinent legal requirements to stand for election as provided for in Section 65 para. 1 of the Constitution. On this ground the Court terminated the applicant's term of office as a Member of Parliament.

The Court noted that the applicant had obtained United States citizenship by naturalisation and that this had been undisputed. The issue to be resolved was, accordingly, whether the applicant had lost this citizenship prior to his election as a Member of Parliament.

The applicant claimed three separate grounds why he had allegedly ceased to be a citizen of the United States of America.

The first argument was that he had relinquished his second citizenship in a written declaration submitted to the United States consular office in Sofia. The applicant apparently did not state the date of his declaration and did not submit any evidence in this respect. The Court found that any such declaration could have been made only after 31 January 1995 and therefore was irrelevant to the issue whether the applicant had been eligible to stand for election in December 1994. This was so in view of the contents of the four letters of the United States Ambassador and also in view of the applicant's refusal to present the document issued to him by the United States authorities and mentioned in the Ambassador's letter of 1 March 1995.

The applicant further contended that he had lost his second citizenship in November 1994 by the very act of registering to stand for election in Bulgaria. Thus, Section 349 (4) of the Immigration and Nationality Act of the United States of America stated inter alia that "a person ... shall lose his United States nationality by voluntarily ..., with the intention of relinquishing United States nationality, ... accepting, serving in, or performing the duties of an office, post or employment under the government of a foreign state..."

The applicant also stated that he had lost his United States citizenship based on the provisions of the Naturalisation Treaty, concluded between Bulgaria and the United States of America in 1923. Thus, under Article III of the Treaty a national of either country, who was naturalised in the other, was to "be held to have renounced his naturalisation" if he renewed his residence in his country of origin without the intent to return to that in which he was naturalised. Under the same provision "the intent not to return [might] be held to exist when a person naturalised in one country [had] resided more than two years in the other."

The Court dismissed these arguments stating that the applicant could cease to be a United States citizen only if, in addition to the existence of certain substantive legal conditions, an act to this effect was issued by the competent United States authority under a

pertinent legal procedure. Since such an act was issued only after 31 January 1995, it followed that the applicant had been a citizen of the United States at the time of his election as a Member of Parliament.

In a dissenting opinion Constitutional Judge Todorov stated that, inter alia, it was doubtful whether the Court could rely on the letters of the United States Ambassador and that loss of citizenship ex lege, by virtue of performing certain acts, as provided for in the Immigration and Nationality Act of the United States of America and in the Naturalisation Treaty between Bulgaria and the United States of America, was possible and should have been taken into account.

On an unspecified date the prosecution authorities instituted, ex officio, preliminary investigations against the applicant on suspicion of having contravened Section 313 of the Penal Code (Nakazatelen Kodeks) by knowingly making a false declaration when registering to stand for election in November 1994. On 30 May 1995 the Varna District Prosecutor (Varnenski raionen prokuror) terminated the proceedings as, in her view, the applicant had lost his United States citizenship ex lege, based on the provisions of the United States pertinent legislation and the Naturalisation Treaty between Bulgaria and the United States of America. In any event, no wilful conduct had been established.

Relevant Domestic Law

The pertinent provisions of the Bulgarian Constitution of 1991, insofar as relevant, provide as follows:

<Translation>

Section 65

"(1) Any Bulgarian citizen who does not hold another citizenship ... shall be eligible for election as a Member of Parliament."

Section 72

"(1) The functions of a Member of Parliament shall be terminated before the expiry of his term of office in cases of:

...

3. establishing his ineligibility or incompatibility;

(2) The decision for termination shall be taken, ... under subparagraph 3, by the Constitutional Court."

Section 150

"(1) The Constitutional Court can be seized by ... the Chief Public Prosecutor."

COMPLAINTS

The applicant complains that the Constitutional Court decided wrongly that he had been still a United States citizen at the time of his election as a Member of Parliament. He submits that he had lost his United States citizenship before the elections. Moreover, the Court was partial and the resulting termination of his term of office as a Member of Parliament was a politically motivated action.

The applicant submits that he has lost his United States nationality as early as in 1992, when he stood for election for President of Bulgaria. Also, he uses his Bulgarian passport when travelling abroad. Moreover, Constitutional Judge Todorov, a leading

Bulgarian professor in international law, was of the opinion that the applicant had ceased to be a citizen of the United States. This opinion was shared by another professor of international law, who had worked at the United Nations Organization; it was supported in the submissions to the Court made by two Parliamentary Commissions and by the Bulgarian Business Block; and was also confirmed by the District Prosecutor in Varna.

The applicant has asked the Commission to clear his name from the false accusations and to help him to be reinstated in the Parliament, to which he was elected by a democratic vote.

The applicant does not invoke any particular provision of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 26 September 1995 and registered on 5 October 1995.

On 26 February 1996 the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 29 May 1996, after an extension of the time-limit fixed for that purpose. On 5 June 1996 a copy of the Government's observations was sent to the applicant who was invited to submit, before 10 July 1996, any written observations which he might wish to make in response. The applicant did not reply within this time-limit and did not request its extension. By letter of 28 August 1996 the applicant was warned about the provision of Article 30 para. 1(a) of the Convention. On 25 September 1996 the applicant acknowledged receipt of the Secretariat's letter of 28 August 1996 and stated that he had replied on an unspecified date to the Government's observations, his reply apparently not having been received by the Commission. The applicant's letter of 25 September 1996 also contained his response to the Government's observations.

THE LAW

The applicant complains that the Constitutional Court decided wrongly when examining whether he had been eligible to stand for election as a member of Parliament. He submits that the Court was partial and that the termination of his term of office as a Member of Parliament was a politically motivated action.

The Commission has examined the applicant's complaints under Article 3 of Protocol No. 1 (P1-3) to the Convention which provides as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

The Government submit that the applicant has complied with the requirements of Articles 26 and 27 (Art. 26, 27) of the Convention. They also submit that the decision of the Constitutional Court in the applicant's case is a serious breach of his rights, that it also violates the sovereignty of the electorate who had elected him to Parliament, and that it has damaged the prestige of his political party.

The Government refer to the Mathieu-Mohin and Clerfayt v. Belgium judgment of 2 March 1987 (Eur. Court HR, Series A no. 113) and to the Commission's practice stating that the applicant's complaints fall within the scope of Article 3 of Protocol No. 1 (P1-3) to the

Convention, as this provision covers the issue of eligibility to stand for elections for Parliament. The Government note at the same time that the applicant does not challenge the constitutional rule whereby a person having double citizenship is not eligible to be elected to Parliament. His complaints concern only the manner in which the Constitutional Court examined the facts and the law in respect of his double citizenship and the prejudice suffered by him as a result of the Court's decision.

The Government submit that the decision of the Constitutional Court is ill-founded and lacks solid argumentation, as indicated in the dissenting opinion of Judge Todorov. Thus, while it is undisputed that having double citizenship makes a candidate ineligible to stand for election, it may be open to discussion, in the Government's view, whether the office of a Member of Parliament with double citizenship should be terminated or whether the elected person should only be obliged to renounce his second nationality.

The Government further note that the applicant registered a political party in Bulgaria, ran for President in 1992 and won 17 % of the vote in the first round, and registered for elections for Parliament in 1994. From these facts it is allegedly clear that the applicant did not have any intention to return to the United States, and that therefore he had lost his United States citizenship before the 1994 elections, under the provisions of the Bulgarian - U.S. Naturalisation Treaty. The Government submit that the Constitutional Court wrongly assessed this issue, the correct assessment having been given in the dissenting opinion of Judge Todorov.

Moreover, the Constitutional Court wrongly dismissed the applicant's arguments based on the provisions of the U.S. Immigration and Nationality Act.

The applicant replies that the Government's observations prove that the Constitutional Court acted unlawfully in his case.

The Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (No. 10000/82, Dec. 4.7.83, D.R. 33, pp. 247, 255).

Article 3 of Protocol No. 1 (P1-3) to the Convention guarantees the individual's right to stand for election and, once elected, to sit as a Member of Parliament (No. 10316/83, Dec. 7.3.84, D.R. 37, p. 129, 133).

This right is not absolute. Article 3 of Protocol No. 1 (P1-3) does not in principle preclude States from subjecting this right, in their internal legal orders, to conditions. States have a wide margin of appreciation in this respect, but it is for the Convention organs to determine in the last resort whether the requirements of the Convention have been complied with. They have to satisfy themselves that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate. Also, for purposes of Article 3 of Protocol No. 1 (P1-3), any electoral system must be assessed in the light of the political evolution of the country concerned; features that would be unacceptable in the context of one system may accordingly be justified in the context of another (Eur. Court HR, Mathieu-Mohin and Clerfayt v. Belgium judgment of 2 March 1987, Series A no. 113, pp. 23, 24, paras. 52, 54).

The Commission notes that in the present case the Government submit that there has been a breach, on the part of Bulgaria, of

Article 3 of Protocol No. 1 (P1-3) to the Convention, and that therefore the application is admissible.

However, the Commission recalls that an issue going to the merits of a case, such as for example the question of applicability of a Convention provision, has to be examined independently of the attitude of the respondent State (Eur. Court HR, H. v. France judgment of 24 October 1989, Series A no. 162, p. 20, para. 47; cf. also No. 14365/88, Dec. 17.5.90, unpublished; Robins v. the United Kingdom, Comm. Rep. 4.7.96. paras. 27, 28 and 38).

The assertion of the Government that the facts complained of constituted a violation of Article 3 of Protocol No. 1 (P1-3) to the Convention is a statement concerning the merits of the application which cannot be relied upon by the Commission, even at the stage of admissibility, without an independent assessment of the case.

The Commission must, therefore, undertake an examination of the facts of the case and also of the submissions of the parties, and on this basis establish whether the application is inadmissible on any ground related to the merits of the case.

The Commission notes at the outset that the applicant does not challenge the constitutional rule whereby a person having double citizenship is not eligible to be elected to Parliament. His submissions indicate that he is concerned only with the allegedly wrong and partial assessment of the facts and of the law in the decision of the Constitutional Court in his case. Furthermore, the applicant did not object to the Government's observations where they expressed the same understanding about the scope of his complaints.

In this situation, the Commission is only called upon to examine whether the manner in which the Constitutional Court terminated the applicant's functions as a Member of Parliament was arbitrary or unreasonable, or otherwise encroached the very essence of the applicant's right to stand for election and, once elected, to sit as a Member of Parliament, as derived from Article 3 of Protocol No. 1 (P1-3) to the Convention.

In this respect the Commission notes that the Constitutional Court in the applicant's case acted under its constitutional competence to examine the eligibility of a Member of Parliament. The Court was seized by the Chief Public Prosecutor, as provided for under Section 150 of the Constitution.

The Commission further notes that the Court invited and accepted written memorials from the applicant and his lawyer, from several institutions and from a political party. The Court examined all evidence in the case and gave a detailed reasoning, addressing the relevant arguments of the applicant.

In its findings, the Court relied inter alia on letters from the U.S. Ambassador in Sofia, which indicated that on 31 January 1995, a month and a half after the elections, the applicant was still a citizen of the United States. Based on the principles of international law, it was not arbitrary to accept that the authorities of the State concerned, the United States of America, were competent to certify whether the applicant did or did not have this State's nationality. Furthermore, the Constitutional Court noted that the applicant refused to submit a copy of the certificate which allegedly proved that he had relinquished his United States citizenship. In this respect it does not appear unreasonable to conclude that, if the applicant had lost his U.S. citizenship, this must have happened after 31 January 1995 and, hence, after the elections.

As regards the submissions of the parties related to the allegedly wrong interpretation of the law of the United States and of the evidence in the case, the Commission finds that it cannot, as urged

in the present case, embark on a revision of the impugned judgment, substitute its own assessment of the facts and of the law for that of the Constitutional Court, or state whether dissenting Judge Todorov or the majority decided correctly.

Lastly, the argument was advanced that, even if the applicant had had double nationality at the time of the elections, the Constitutional Court should not have terminated his functions of deputy, but should have obliged him to relinquish his second citizenship. However, the Commission notes that only the Government, and not the applicant, have raised this issue before the Commission. Moreover, it has not been shown that the applicant has raised it before the Constitutional Court.

The Commission does not consider, therefore, that the Constitutional Court decided arbitrarily or that it acted in a manner which was otherwise incompatible with the essence of the applicant's right to be elected and to sit as a Member of Parliament, as protected under Article 3 of Protocol No. 1 (P1-3) to the Convention.

The applicant also contends that the Constitutional Court was partial and that he was a victim of a political plot. Examining this allegation under Article 3 of Protocol No. 1 (P1-3) taken alone or in conjunction with Articles 14 or 18 (P1-3+14, P1-3+18) of the Convention, the Commission notes that the applicant's sole argument was that the Court decided wrongly and arbitrarily. However, the Commission has already dealt with this assertion.

The Commission further finds that the applicant's complaint of the alleged partiality of the Constitutional Court, apart from its pertinence under Article 3 of Protocol No. 1 (P1-3) to the Convention, does not fall to be examined under any other provision. The Commission notes inter alia that the Convention does not provide for procedural guarantees, as such, in proceedings determining the eligibility for Parliament (cf., mutatis mutandis, No. 15344/89, Dec. 14.12.89, D.R. 64 p. 210).

The Commission finds, therefore, that the application is manifestly ill-founded and has to be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

H.C. KRÜGER	S. TRECHSEL
Secretary	President
to the Commission	of the Commission