AS TO THE ADMISSIBILITY OF

Application No. 29303/95
by Sekul KOVACHEV
against Bulgaria

The European Commission of Human Rights (First Chamber) sitting in private on 10 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

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

Having regard to the application introduced on 11 September 1995 by Sekul KOVACHEV against Bulgaria and registered on 17 November 1995 under file No. 29303/95;

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 31 July 1996 and the observations in reply submitted by the applicant on 15 October 1996;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Bulgarian national born in 1930 and residing in the village of Svetlia, municipality Kovachevzi, the region of Sofia. Before the Commission he is represented by Mr. Ionko Grozev, a lawyer practising in Sofia.

A. Particular circumstances of the case

Since 1989, due to serious health problems, the applicant has been disabled and in receipt of a social pension as a physically handicapped person under the Pension Law.

On an unspecified date the applicant submitted to the Kovachevzi

municipal Social Care Centre (Obshtinski tzentar za sotzialni grizhi) applications for certain additional social payments provided for under the Social Assistance Regulation ("SAR") (Pravilnik za sotzialno podpomagane). He claimed that the provisions of the SAR entitled him to a monthly income allowance and to other social payments, such as, inter alia, allowances for medicaments, and for travelling to and back from a rehabilitation centre. On unspecified dates the municipal Social Care Centre refused the applicant's requests.

The applicant then appealed before the mayor of Kovachevzi. On 1 June 1993 the mayor dismissed his claims. In a letter sent to the applicant he gave detailed explanations and stated, inter alia, that the applicant was in receipt of a certain amount in monthly income allowance under Section 5 of the SAR, and that the Regulation did not entitle him to any additional sums.

As the applicant was not satisfied, in January 1994 he submitted to the Radomir District Court (Rayonen sad) a civil action against the municipal Social Care Centre claiming 58,128 leva in unpaid social benefits due for a two year period, between 1 January 1992 and 1 January 1994. The applicant claimed that he was entitled to a larger monthly income allowance under Section 5, a supplementary rent allowance under Section 8, an allowance for medical expenditures under Section 10a, and annual allowances for heating and rehabilitation expenditures under Sections 12 para. 1 and 16 para. 1 of the SAR.

On 8 June 1994 the District Court rejected the action stating that under Sections 19 - 22 of the SAR the examination of claims for social benefits was within the competence of the local Social Care Centre. Its decisions concerning particular one-time benefits could be challenged before the mayor and, as regards claims for regular monthly benefits, before the National Social Care Centre (Natzionalen tzentar za sotzialni grizhi). Therefore the court was not competent to examine the applicant's claims.

On 7 September 1994, upon the applicant's appeal, this decision was confirmed on the same grounds by the Pernik Regional Court (Okrazhen sad). The applicant's ensuing petition for review was dismissed by the Supreme Court (Varhoven sad) on 20 March 1995.

B. Relevant domestic law (translations and summaries)

1. Section 51 of the Bulgarian Constitution provides, insofar as relevant:

"Citizens shall have the right to social security and welfare assistance..."

2. The Social Assistance Regulations.

The applicant's claims for social payments concerned a period of time during which two different pieces of legislation were in force.

The first was the Social Assistance Regulation adopted in March 1991 ("SAR-1991"), in force until 24 July 1992. Its Section 4(1) provided for a monthly income allowance payable to those who met the conditions listed therein. Sections 9, 10 and 11 provided that handicapped persons under certain conditions "[had] a right" to other social benefits such as, inter alia, a free pass for the public transport. Sections 15 - 17 provided that all social benefits were granted by decision of the district social care centres, which were subject to appeal to a commission appointed by the mayor.

A new Social Assistance Regulation ("SAR-1992") is in force since 25 July 1992.

Its Section 5 provides that everyone whose income is below a certain, individually determined, minimum amount "[s]hall have the

right to a monthly welfare pecuniary or in-kind allowance ...". The provision contains detailed rules for the determination of the minimum amount, based on age and family situation. The monthly allowance is the difference between the minimum amount and the income of the family. Sections 6 and 7 contain other detailed conditions as regards the assessment of property and income for purposes of determining the entitlement to the allowance.

Section 8 provides for a "right" to a supplementary rent allowance and defines the conditions for its payment.

Section 10a stipulates, inter alia, that persons meeting certain conditions have the "right" to receive medicaments free of charge or with a price reduction.

Section 12 provides that ad hoc payments "can be made" in cases of difficulties caused, inter alia, by illness, or the purchase of expensive medicaments or heating supplies.

Section 16 provides, inter alia, that certain categories of handicapped persons "shall have the right" to free rehabilitation once per year.

Section 19 para. 1 provides as follows.

"(1) The local social care organs shall be obliged to ensure, under the rules of this Regulation, the right of the citizens to the monthly allowance and shall, in addition, assess the legal possibility for other types of assistance."

According to Sections 19 and 20 appeals concerning particular ad hoc benefits are examined by the mayor and appeals as regards monthly benefits, by the National Social Care Centre.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention of the refusal of the courts to examine on the merits his claims for the payment of social benefits. This allegedly amounted to a breach of the applicant's right to a hearing before an impartial and independent tribunal in the determination of his civil right to certain social benefits.

The applicant states that Bulgarian law provides for a right to certain social welfare payments. This right is enshrined in Section 51 of the Bulgarian Constitution and is elaborated in the Social Assistance Regulation, whose provisions clearly delimit the circle of entitled persons and the types and the amounts of the various allowances. There is no room for discretion left to the local administrative authority to decide whether or not to grant a particular allowance.

Furthermore, based on the criteria established in the Court's case-law (Eur. Court HR, Feldbrugge v. Netherlands judgment of 29 May 1986, Series A no. 99; Deumeland v. Germany judgment of 29 May 1986, Series A no. 100; and Salesi v. Italy judgment of 26 February 1993, Series A no. 257-E), this right is of a civil character as it is personal and economic in its nature.

In the applicant's view the bodies which are competent to determine the civil right at issue, i.e. the mayor and the National Social Care Centre, cannot be considered as independent tribunals.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 11 September 1995 and

registered on 17 November 1995.

On 12 April 1996 the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 22 July 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 15 October 1996.

On 10 September 1996 the Commission granted the applicant legal aid.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention of the refusal of the courts to examine on the merits his claims for the payment of social benefits. He alleges that as a result he could not have a hearing before an impartial and independent tribunal in the determination of his civil right to certain social benefits.

Article 6 para. 1 (Art. 6-1) of the Convention, insofar as relevant, provides as follows.

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by an independent and impartial tribunal ..."

2. The Government state that the entitlements under Sections 9, 10 and 11 of the SAR-1991 and those under Sections 5, 8, 10a and 19 of the SAR-1992 are "rights", as the competent administrative authority has no discretion whether to grant them or not. As regards the remaining benefits claimed by the applicant, the Government maintain that they were discretionary. The Government further admit that the National Social Care Centre cannot be considered an independent tribunal within the meaning of Article 6 (Art. 6) of the Convention and that the applicant could not have a hearing on the merits before a court.

However, the Government also make a detailed analysis of the sums received by the applicant between 1 January 1992 and 1 January 1994. On this basis they find that the applicant's lump monthly income exceeded at all times the minimum amount and conclude that his claim for additional monthly allowance under Section 5 of the SAR-1992 was unfounded and was, therefore, rightly dismissed. The Government also state that the applicant's remaining claims for other social benefits were unfounded.

Furthermore, his claims before the domestic authorities were allegedly completely unreasonable as he did not submit any evidence to support them. Moreover, the applicant attempted to mislead the Commission as he did not clarify that on 10 January 1992 his handicap had been assessed of a lower category, and that as a result he was not entitled to certain social benefits which he claimed. Therefore, the application is an abuse of the right to petition to the Commission.

The applicant replies inter alia that he genuinely believes that he is entitled to the sums which he claimed before the national authorities. Thus, the applicant considers that the monthly income allowance under Section 4(1) of SAR-1991 and Section 5 of SAR-1992 is intended to provide a "safety net" for persons whose income is insufficient to ensure a living. Therefore, the in-kind assistance received from the local Social Care Centre should not have been taken into account when determining his monthly income for purposes of the SAR. This is so because the in-kind assistance is not provided on a regular basis and is discretionary. Furthermore, 270 leva per month were withheld from the applicant's pension between September and

December 1993, to cover payments under a judicial decision. His income was thus brought well bellow the guaranteed minimum. Also, the applicant was denied some other benefits and sought compensation for this.

3. The Commission considers that the Government's assertion that there has been an abuse of the right to petition within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention could only be accepted if it were clear that the application was based on untrue facts. However, most of the facts on which the application is based even appear to be undisputed between the parties (No. 8317/78, Dec. 15.5.80, D.R. 20, p. 44; No. 21987/93, Dec. 19.10.94, D.R. 79, p. 60).

Having examined the applicant's complaint under Article 6 para. 1 (Art. 6-1) of the Convention, the Commission finds that it raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. This part of the application cannot, therefore, be regarded as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, and no other grounds for declaring it inadmissible has been established.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION ADMISSIBLE,
without prejudging the merits of the case.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber