CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39015/97
by Alfred LOTTER and Edith LOTTER
against Bulgaria

The European Court of Human Rights (First Section), sitting on 6 February 2003 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr G. BONELLO,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mrs E. STEINER, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 5 November 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Alfred Lotter and Mrs Edith Lotter, are Austrian nationals, who were born in 1956 and 1962 respectively. They were represented before the Court by Mr A. Garay, a lawyer practising in Paris.

The respondent Government were represented by their co-agent, Mrs G. Samaras, of the Ministry of Justice.

A. The circumstances of the case

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

1. The applicants' status in Bulgaria

The applicants, who are Jehovah's Witnesses and were married at the relevant time, visited Bulgaria for the first time in December 1992.

They returned on 1 March 1993 and remained in the country for the following several years, settling in Assenovgrad, a small town in Southern Bulgaria.

On 6 May 1993 the applicants registered in Bulgaria a limited liability company, declaring that it would deal with commercial agency matters, import-export, catering, manufacture of goods, etc. Relying on that registration, the applicants obtained temporary residence permits valid until 6 November 1995.

2. Measures against the applicants; orders to leave the country

On 22 April 1993 the local investigation service opened preliminary criminal investigation no. 430/93 into the activities of Jehovah's Witnesses. In April and July 1993 the first applicant and other followers of Jehovah's Witnesses were interrogated. The investigator stated to Mr Lotter that she considered his preaching an intrusion into the privacy of individuals and their homes and propaganda against the authorities, the Government and their policy.

In June 1994, following a legislative amendment requiring religious associations to re-register, by decision of the Council of Ministers a number of such associations, including the Jehovah's Witnesses' organisation in Bulgaria, were refused re-registration. The Council of Ministers' decision was taken without any form of adversarial proceedings and contained no reasons (see *Khristiansko Sdruzhenie "Svideteli na Iehova" (Christian Association Jehovah's Witnesses) v. Bulgaria*, no. 28626/98, Commission's decision of 3 July 1997, DR 90, p. 77).

Although the applicants were not members of the dissolved association, it was an established administrative practice in Bulgaria to consider that the

Council of Ministers' decision of June 1994 rendered unlawful all religious activity related to the Jehovah's Witness' cult.

On 14 July 1995 the applicants' home was searched by a police officer in the presence of Mr Lotter and two witnesses. The minutes stated that the purpose of the search had been to establish the presence of "written material preaching against the State institutions, the State order and legality". Books and leaflets of Jehovah's Witnesses were found and seized.

On 31 July 1995, in an internal report drawn up by the police in Assenovgrad, the following was stated about the applicants:

> "The Lotter family has settled in Assenovgrad ... with the purpose of spreading the doctrine of Jehovah's Witnesses. They organise the delivery and dissemination of [Jehovah's Witnesses'] literature.
>
> Having learned Bulgarian ... they are visiting homes themselves in order to convert adherents. They are very persistent. Nothing stops them. They endure scandals, offensive words and even physical assaults, accepting them as coming from God ...
>
> Mr Lotter's wife was appointed as German language teacher at the [local] high school, for the 1993/94 school year, without having passed a competition and without producing a document (diploma). The issue has been repeatedly raised with the municipality and in the press. As a teacher, she distributes [Jehovah's Witnesses'] literature among students".

On 19 October 1995 the commanding officer of the Plovdiv security service received a written information from the investigator conducting preliminary investigation no. 430/1993 which stated, *inter alia*:

> " ...Alfred Lotter has recruited persons with a criminal record who spread propaganda [for Jehovah's Witnesses] by going from house to house seeking new followers.
>
> Up to now, the [applicants'] commercial company has not carried on any commercial activity, as can be seen from the enclosed papers (extract from their tax returns).
>
> Having regard to the above and to the fact that the activities of the Jehovah's Witnesses are expanding and assuming alarming proportions for a town of the size of Assenovgrad in that people are running away from home, suffering from psychological disorders, refusing medical help and blood transfusions, committing suicide, etc., I ask you not to allow the Lotter family to continue to live in Bulgaria."

On 27 October 1995 the applicants sought an extension to their residence permits from the Plovdiv Regional Police Department. They were required to deposit their Austrian passports and residence permits together with their application.

On 28 November 1995 the commanding officer of the Plovdiv security service recommended to the police department concerned that the applicants' permits should be withdrawn or should not be renewed and that they should be banned from entering Bulgaria for three years. He based his

recommendation on the above written information and on the tax authority's findings that the applicants' company was not carrying on any business activities and produced no income for the State budget. He stated that their "registered commercial company" had only been used as a cover for proselytising, as they were members of Jehovah's Witnesses.

On 1 December 1995 the director of the police department issued administrative decisions nos. 1759 and 1761 withdrawing the applicants' residence permits and ordering them to leave Bulgaria by 29 December 1995. The decisions only stated that they were based on section 31(1) of the Aliens (RiB) Act (see below, Relevant Domestic Law). No reasons were provided.

3. Applicants' attempts to obtain administrative and judicial review

On 9 December 1995 the applicants appealed to the Ministry of the Interior stating that they had registered a company manufacturing art products, canvasses and plates for paintings, and had established business relations with German, Austrian and Italian companies, had paid taxes regularly and had made various investments in Bulgaria, where they wished to remain.

On 31 January 1996 the Ministry dismissed the appeal in the following terms:

> "The company registered in your name is not engaged in commercial activities, but is used by Jehovah's Witnesses, whose activities are prohibited in the Republic of Bulgaria. It follows that administrative decisions nos. 1759 and 1761 of 1 December 1995 are lawful and, therefore, your appeal is ill-founded."

The applicants also appealed to the Plovdiv Regional Court through the Regional Police Department on the grounds that the police had given no reasons for withdrawing their residence permits and that they had never done anything unlawful, their stay in Bulgaria being motivated by their commercial activity.

On 22 February 1996 the Plovdiv Regional Court was served with an opinion of the director of the Plovdiv Regional Police Department stating, *inter alia*, that:

> "...it is clear that the two Austrian citizens are engaged in illegal religious activities as propagators on behalf of the association "Jehovah's Witnesses", whose registration was refused by the Council of Ministers [in June 1994]. The applicants endanger the security and the interests of the country, as their activities jeopardise the mental and physical integrity of a large number of citizens...
>
> Section 7 § 1(a) [of the Aliens' (Residence in Bulgaria) Act] concerns the national security and the interests of our country; therefore, in our opinion, the impugned administrative orders are not amenable to judicial review, in accordance with ... the Administrative Procedure Act".

On 15 March 1996 the Plovdiv Regional Court held a hearing with the applicants' participation. On the same day it held that it had no jurisdiction to deal with their appeal as under section 34 § 1 of the Administrative Procedure Act, administrative measures relating to the national security were excluded from judicial review.

On 23 March 1996 the applicants appealed against that decision to the Supreme Court. Arguing that the revocation of their residence permits should be amenable to judicial review, the applicants stated that religious rights were fundamental Constitutional rights and that the impugned administrative orders nos. 1759 and 1761 were not decisions directly related to the country's security. They could not be regarded as such only because section 7 § 1(a) of the Aliens' (RiB) Act had been invoked or on the basis of the opinion of the local security service. The information that the applicants' commercial activities yielded no revenue for the State and the seizure of religious books did not constitute proof of activities endangering national security.

On 6 May 1997 the Supreme Court, which had in the meanwhile become the Supreme Administrative Court, dismissed the applicants' appeals at a hearing held in camera. The court held, *inter alia*:

(i) that the Regional Court had correctly held that it had no jurisdiction to deal with the matter as under section 34 of the Administrative Procedure Act administrative measures concerning national security could not be subject to judicial review; and

(ii) that the court had no jurisdiction to decide whether a law, in this case section 34 of the Administrative Procedure Act, violated the Constitution, that issue being solely for the Constitutional Court to decide.

4. Subsequent developments

On 22 October 1997 the police in Assenovgrad, acting upon complaints of residents, apprehended the first applicant who was going from door to door, seeking to engage in conversations and to distribute religious brochures. Administrative proceedings on charges that Mr Alfred Lotter was proselytising in breach of sections 6 and 16 of the Religious Denominations Act and that he resided on the Bulgarian territory without having a residence permit were instituted. These proceedings, which could have resulted in the imposition of fines, were abandoned.

According to press articles of 24 and 25 October 1997, the police in Assenovgrad and Plovdiv had told journalists that the first applicant had remained in Bulgaria after the end of 1995 pending the outcome of the proceedings against the withdrawal of his residence permit. Since his legal challenge had been unsuccessful, his expulsion was imminent.

The first applicant left Bulgaria at the end of 1997. It appears that the applicants divorced. The second applicant married a Bulgarian citizen and stayed in Bulgaria.

Following several months of negotiations, in February 1998 the Bulgarian Government and persons representing the dissolved association of Jehovah's Witnesses signed a friendly settlement in the proceedings before the former Commission (see *Khristiansko Sdruzhenie "Svideteli na Iehova" (Christian Association Jehovah's Witnesses) v. Bulgaria*, no. 28626/98, Commission's report of 9 March 1998 (friendly settlement), DR 92, p. 44). According to the terms of the settlement, the association undertook not to distribute among minors refusal-of-blood-transfusion forms and declared that it would not control or sanction its members for their choice of medical treatment.

Since October 1998 Jehovah's Witnesses in Bulgaria enjoy the status of a religious denomination.

B. Relevant domestic law

1. Constitution of the Republic of Bulgaria

Article 37

"(1) The freedom of conscience, the freedom of thought and the choice of religion and of religious or atheistic views shall be inviolable. The State shall assist the maintenance of tolerance and respect among the believers of different denominations, and among believers and non-believers.

(2) The freedom of conscience and religion shall not be practised to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others."

Article 120

"(1) The courts shall review the lawfulness of the administration's acts and decisions.

(2) Physical and legal persons shall have the right to appeal against all administrative acts and decisions that affect them, save in the cases expressly specified by Act of Parliament."

2. The Aliens [Residence in Bulgaria] Act (as in force at the relevant time) and until December 1998

According to section 31 § 1 in conjunction with section 7 § 1 an alien could be refused entry or the right to reside in Bulgaria if he has endangered the security or the interests of the Bulgarian State or his activities could pose a threat in this respect.

According to section 31 § 2 in conjunction with section 8 § 4 a residence permit granted for the purpose of commercial activities could be withdrawn if no such activities were performed by the alien.

An alien whose residence permit has been withdrawn shall be informed in writing and given notice to leave the country.

Under section 31a, an alien who has failed to leave the country within the time-limit indicated to him at the moment of withdrawal of his residence permit may be removed from Bulgarian territory. Where his presence constitutes a threat to public order or national security an expulsion under section 32 may be ordered.

Under the law as in force at the relevant time (the Aliens (RiB) Act in conjunction with sections 33-35 and 37 of the Administrative Procedure Act) all administrative decisions concerning residence permits and orders for removal from Bulgarian territory were subject to judicial review except those "directly concerning national security and defence".

The Aliens (RiB) Act was superseded by the Aliens Act of December 1998 which also excludes judicial review of decisions issued on grounds related to national security.

In accordance with sections 23 and 37 § 3 of the Administrative Procedure Act, in the absence of an advance enforcement order administrative decisions are not enforced pending the examination of administrative and judicial appeals against them. Exceptions to this rule may be introduced by Act of Parliament in respect of certain categories of administrative decisions. The Aliens (RiB) Act did not contain such an exception at the relevant time.

COMPLAINTS

The applicants complained under Articles 9 and 14 of the Convention that their right to freedom of religion had been violated and that they had been discriminated against in the exercise of that right because of their religious affiliation. They stated, in particular, that the Bulgarian authorities had acted arbitrarily and unlawfully and had ordered them to leave the Bulgarian territory only because they were Jehovah's Witnesses.

THE LAW

1. The Government's objection as regards the six months' time limit and alleged abuse

The Government submitted that since the orders withdrawing the applicants' residence permits were not amenable to judicial review, the six months' time limit under Article 35 § 1 of the Convention had started to run on 1 December 1995, the date on which these orders had been made and notified. However, the application had been submitted in November 1997. The applicants' attempt to rely, for the purposes of the six months time limit, on the date of the final decision in their futile judicial appeals was therefore abusive.

The applicants replied that they had validly appealed to the courts in accordance with the relevant procedural requirements. Had they not done so, the Government would have most probably pleaded failure to exhaust domestic remedies.

The Court finds that the allegation of abuse is groundless.

Further, the Court notes that under the relevant domestic law withdrawal of residence permits of aliens and orders for removal from Bulgarian territory were amenable to judicial review in all cases except where they directly concerned national security and defence. The applicants submitted judicial appeals stating, *inter alia*, that they did not pose a threat to national security. Furthermore, the applicants also argued that despite the provisions of the Aliens (RiB) Act and the Administrative Procedure Act, the Constitution entitled them to judicial review.

In these circumstances, it was not unreasonable for them to consider that they had to exhaust the possibilities for obtaining judicial review in Bulgaria before submitting an application to the former Commission.

It follows that the final decision within the meaning of Article 35 § 1 of the Convention was that of the Supreme Administrative Court of 6 May 1997. As the application was lodged less than six months after that date, on 5 November 1997, the Government's objection must be dismissed.

2. Complaints under Articles 9 and 14 of the Convention

The applicants complained that there had been a violation of their right to freedom of religion and that they had been discriminated against on religious grounds. They relied on Articles 9 and 14 of the Convention which provide:

Article 9

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in

community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] 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."

(a) Government's submissions

The Government submitted that following the Government's decision of June 1994 to dissolve an association of Jehovah's Witnesses in Bulgaria, every person within the jurisdiction of the Bulgarian authorities was under an obligation to abstain from preaching their cult, although that did not affect the individual freedom of religion. The applicants had breached that obligation. Following the withdrawal of their residence permits they had remained in Bulgaria unlawfully for two years and had later left voluntarily. They had not been removed from Bulgarian territory and no sanctions had been imposed. Therefore, there had been no interference with the applicants' Article 9 rights.

The Government also stressed that Bulgaria had been under no obligation to extend the validity of the applicants' residence permits which, in any event, had expired.

Alternatively, the Government maintained that any interference with the applicants' religious rights had been lawful, pursued a legitimate aim and had been necessary in a democratic society.

In particular, the impugned orders revoking the applicants' residence permits had been issued in accordance with the relevant law. They had not been reasoned as they concerned the national security. Nevertheless, information about the applicants' religious activities had later been presented to the Regional Court.

Arguing that there had been a legitimate aim as required by Article 9 § 2 of the Convention, the Government stated that the measures against the applicants were necessary in the interests of public safety, health and the rights and freedoms of others.

In the Government's view, in the assessment of the proportionality of the decisions complained of account should be taken of the specific circumstances obtaining in Bulgaria during the relevant period. Having just emerged from four decades of totalitarian suppression of religion - a time of grave disruptions in its religious and cultural life -, Bulgarian society had

become particularly unstable and susceptible to undue religious influence, including by dangerous and illegal movements. Therefore, active protective measures had been necessary to shield the population against religious teachings that posed a threat. Examining the activities of Jehovah's Witnesses, the authorities had established in June 1994 that they posed a threat by inciting others to refuse blood transfusion and to serve in the army. The authorities' position had only changed following the 1998 undertakings given by the association.

In this context, and regard being had to the fact that the applicants had spent a very short time in Bulgaria, did not have strong ties there, and could practice their religion in Austria, the Government maintained that the decision to withdraw their residence permits had been proportionate to the legitimate aim pursued. Moreover, the second applicant had been a teacher and had been in direct contact with children whom she could have easily influenced.

(b) Applicants' submissions

The applicants replied, as to the question whether there had been an interference with their rights under Article 9 of the Convention, that they had been refused permission to remain in Bulgaria and had been ordered to leave its territory on the basis of grave allegations that their religious activities posed a threat to national security. Moreover, these events had been widely reflected in the media in Bulgaria. In this context, the possibility of the applicants' remaining in Bulgaria and pursuing their activities had been irrevocably lost.

The applicants maintained that although the Convention did not enshrine a right to reside in a foreign country as such, the measures against them, which were motivated by the sole fact that they were Jehovah's Witnesses, constituted a grave and unjustified interference with their rights under Article 9 of the Convention taken alone and in conjunction with Article 14. The Convention guaranteed the fundamental right to religious freedom and manifestation of religion to all persons within the jurisdiction of member States, without regard to national borders. It was inconceivable that ordering a foreigner to leave on the sole basis of his or her religion could be a matter left outside the protection afforded by the Convention.

The applicants emphasised that they had never been members of the Jehovah's Witnesses' association in Bulgaria. They freely practised their religion without being legally bound by associative links. Therefore, the authorities' decision against the Jehovah's Witnesses' association could not affect them.

In any event, the applicants stated that the Government's reference to the alleged dangers of Jehovah's Witnesses' teachings were inconsistent with the fact that Jehovah's Witnesses had been accepted, in 1998, as a recognised religion in Bulgaria. It could not be seriously maintained that in

1995 Jehovah's Witnesses or the applicants endangered Bulgaria's public order or national security. In fact, the present case concerned unlawful and unjustified repressive measures against Jehovah's Witnesses in Bulgaria before 1998, and was thus similar to application no. 28626/95, declared admissible by the former Commission and settled in 1998.

(c) The Court's decision on admissibility

The Court considers, in the light of the parties' submissions, that the above complaints raise serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits. The Court concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President