AS TO THE ADMISSIBILITY OF

Application No. 27496/95
by M. M.
against Bulgaria

The European Commission of Human Rights (First Chamber) sitting in private on 10 September 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 28 March 1995 by M. M. against Bulgaria and registered on 1 June 1995 under file No. 27496/95;

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 22 January 1996 and the observations in reply submitted by the applicant on 23 April 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Bulgarian national born in 1964, is a school teacher residing in Sofia. Before the Commission she is represented by Ms. Zdravka Kalaydjieva and Ms. Anna Gavrilova-Ancheva, lawyers practising in Sofia.

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

A. Particular circumstances of the case

Developments leading to the divorce

In 1989 the applicant married Mr.E. On 14 March 1990 she gave birth to a boy, Z.

In 1992 the applicant and her husband became interested in the

activities of the religious society Warriors of Christ and attended its meetings together, occasionally also with their son.

Warriors of Christ was registered as a foundation on 20 April 1992 by the Sofia Regional Court. The charter stated that its aim was to engage in "dissemination of the ideas of the Bible, Christian education and charitable activities". The applicant submits that at the meetings of the foundation, attended by approximately 120 - 150 participants, there was a sermon dedicated to a certain topic from the Bible and "charismatic" church music. After February 1994, pursuant to an amendment in the legislation, Warriors of Christ needed a permission from the Council of Ministers in order to renew their registration. On 28 June 1994 the Council of Ministers refused to give permission for renewed registration to Warriors of Christ and 22 other religious societies without stating the reasons for the refusal.

In an information note, prepared by a "Committee for the Protection of the Family and of the Individuals" and submitted by the Government, it is explained that the fear of the devil is the basic element in the sect's doctrine. It is considered that the devil can be embodied in any person and that he has to be chased out by special spells. On the other hand, if somebody falls ill, it is only God who can decide whether this person should live. Without providing details, the information note states that in certain cases mothers have refused to apply medicaments prescribed for their children. The information note also states that the average age of the sect's members is nineteen and concludes that in the space of several months a new member of the sect can become infantile and close-minded, preoccupied only with the sect's activities and disinterested with the outside world.

In 1993 Mr. E gradually lost interest in the religious activities. Eventually the relations between the applicant and her husband deteriorated, Mr. E disapproving of his wife's continuing involvement with the religious society. In June 1993 Mr. E left the family home.

In June 1993 the applicant's husband brought Z. to his parents' house in the countryside, some 500 km away from Sofia. The applicant complained to the prosecution authorities but she and her husband eventually agreed that they would solve all their problems in court.

Z. stayed with his grandparents in the countryside until September 1993. The applicant spent an unspecified period of time there, returning to Sofia in September 1993. On 23 September 1993 Z. was back in Sofia and lived again with his mother in the family studio.

In July 1993 the applicant's husband brought an action for divorce before the Sofia District Court (Sofiiski raionen sad). He claimed that his wife had become uncaring for her family and had neglected the elementary household obligations; that she had become disrespectful and rude; that the applicant had maltreated Z. by hitting him and shouting at him for any trivial misdemeanour; that she had become obsessed with the religious activities of a sect, where she and her sister had been attending meetings until late at night; that the applicant wanted to involve their child with the sect; that the child gradually became psychologically instable and had a constant fear of corporal punishment; and that in general his wife did not care for the family but only for her sect.

In addition, the applicant's husband made a request to be granted the parental rights over the child.

Provisional custody of Z.

On 15 November 1993 Mr. E informed the applicant that he planned to take the child as he had recently rented an apartment. The applicant refused to give her consent.

On 24 November 1993 Mr. E took his son away from the kindergarten and brought him to his apartment. He declined to give his address to the applicant and refused to allow her to have any contact with the child.

Thereupon the applicant submitted to judge X., before whom the divorce proceedings were pending, a petition for provisional measures concerning the exercise of parental rights over the child. She stated that her husband had unlawfully kidnapped her son; that this was in breach of the prosecutor's instructions of July 1993; that her husband was incapable of taking care of a three years' old child; and that as an army officer he would be frequently away from home, whereas she as a school teacher was busy only half day. The applicant requested an injunction, which would oblige her husband to return Z. and grant her custody of him until the matter was finally resolved.

The father referred to the child's alleged irrational bursts of laughter, sleeping problems and neurotic tics. The Court held two hearings on the matter, heard several witnesses and appointed a medical expert.

In his report, based on the child's medical record and an examination, the expert stated that the child was healthy and no aberrations were observed except for a short blinking tic. As regards the irrational bursts of laughter, reported by the father, they could be indicative of a rare type of "temporal epilepsy" which, however, could not have any link with the alleged ill-treatment of the child. At a hearing held on 25 January 1994, asked whether attendance at meetings of "sects" in general was harmful for children of an early age, the expert stated that as far as he knew such attendance when it lasted for hours could be abnormal and could make a child nervous.

On the same day the Court delivered its order on the issue of a provisional grant of parental rights. The Court stated that it had been established that the applicant had attended meetings of the "sect Warriors of Christ" and that in all likelihood the child had been brought to such meetings on several occasions; that "people from Warriors of Christ" had visited the applicant in her home; that the medical expert had confirmed the negative mental development of the child and namely the existence of tics, nervousness and irrational bursts of laughter; that the expert had expressed the opinion that "the atmosphere during attendance at sects lasting for several hours [was]abnormal for a four years' old child as this would make it nervous and neurotic"; and that the father has recently rented an apartment, which would be a suitable place for the child to live in.

The Court stated further:

<Translation>

"... the Court finds that the interests of the child require, for the child to be raised correctly, that the father, who could guarantee tranquillity and everything necessary for his son, should take care of his bringing up and should obtain the parental rights."

The Court dismissed the applicant's petition and provisionally granted the parental rights to the father. The applicant was allowed to spend with her child every second Sunday and one month during the summer.

The applicant then submitted a petition to the President of the Sofia District Court requesting the removal of judge X., who had not hidden her open hostility towards the applicant's religious beliefs. Thus, judge X. had made remarks such as "Bulgaria is an orthodox country" and "we all know what the sects did to our children". Furthermore judge X. had deliberately used the words "the sect" when

describing the religious society Warriors of Christ and had also called its meetings "séances", which implied a negative meaning. As a whole it was obvious that judge X. had a hostile opinion towards non-orthodox religious beliefs based merely on general information from newspapers.

On 9 March 1994 the President of the Sofia District Court replied that a request for the removal of a judge had to be addressed to the chamber before which the case was pending.

Decision of the Sofia District Court of 2 June 1994

The divorce proceedings were then conducted by a chamber of the Sofia District Court without the participation of judge X. On 11 May 1994 the medical expert presented an additional report, stating that he had been told by the father that the child did not have sleeping problems and was not nervous any longer. The child was in good health. However, short tics of blinking were observed again. Also, it could be concluded that the child continued to suffer from "temporal epilepsy" with unknown etiology. In this respect the treatment undertaken so far had been correct and had to be continued.

On an unspecified date an information note of the Committee for the Protection of the Family and of the Individuals concerning Warriors of Christ was submitted to the Court (see above Developments leading to the divorce). However, it was not admitted in evidence as it did not meet the pertinent procedural requirements. Neither the parties, nor the court ex officio, sought any other evidence as regards the activities of Warriors of Christ.

On 2 June 1994 the Court divorced the applicant and her husband. In its judgment the Court stated that the applicant had not committed matrimonial offences. The allegation that the applicant had beaten her child in order to force him to accept her religious beliefs was unsubstantiated and unproven. It was also untrue that the applicant had refused to seek medical help when the child had been ill. The witness who had testified on this issue had never had close relations with the family. Furthermore this witness had clearly expressed her prejudice towards "non-traditional" religions. At the same time the statements of other witnesses, who testified that the applicant hadalways been "a normal mother" and her apartment had always been clean and tidy, appeared credible as they were neighbours of the family and did not have any interest in the case. The Court also discarded the allegations that the applicant had abandoned the care for her family because of her involvement with the religious society.

In respect of the parental rights over the child, the Court stated that both parties had the necessary qualities and would be equally good in bringing up the child. In these circumstances, since the boy had spent the last several months with his father and in view of the fact that new changes could perhaps bring again the traumatising effect of the quarrels between the parents, it was in the interest of Z. to stay with his father. For these reasons the Court granted the parental rights to the father.

The Court further granted to the applicant the right to spend with her son every second Saturday and up to twenty days every summer, as the child needed a personal contact with his mother. The attitude of the father, who did not abide by the request of the Court to disclose his address, was blameworthy.

Proceedings before the Sofia Regional Court

The applicant appealed against this decision to the Sofia Regional Court (Sofiiski gradski sad), requesting modification of the judgment insofar as it had granted the parental rights to the father.

On 8 October 1994 the Regional Court dismissed the applicant's

appeal. The Court stated inter alia that, as it transpired from the applicant's personal notes, she had been engaged with her religious activities two or three times per week and almost every Saturday and Sunday. Further on, the judgment stated:

<Translation>

"It had been established [by the District Court] that [the father] had better qualities as a parent and educator, and to take care for the child daily. He surrounded the child with love and attention. Having in mind how harmful for our young generation are the various sects and religious movements in this country, it is in the interest of the child to stay under the custody and the control of the parent of a sounder mind. It had been established that the mother was bringing the child to the meetings of her spiritual brothers and sisters, where he assisted at their various religious rituals, and at the meditations of his mother and aunt, which doubtlessly could fatally affect the fragile mind of a child. This could have harmed the child's health even more as it suffered from temporal epilepsy. After the spouses separated and the atmosphere at home calmed, the child started improving.

...

The request of the father to be present during the meetings of the child with his mother is ill-founded. There had been no indication of a behaviour of the mother which would endanger the life or the health of the child. Therefore it is not necessary to deprive her of the possibility to meet the child in private."

Proceedings before the Supreme Court

The applicant submitted a petition for review (pregled po reda na nadzora) before the Supreme Court, stating that the Sofia Regional Court had not addressed any of her arguments. Instead, the Court had completely replaced the reasoning of the first instance judgment bymaking arbitrary conclusions of fact without examining any fresh evidence, but by merely twisting the findings of the first instance court. Furthermore, without any evidence having been collected on the issue, the Court had drawn general conclusions concerning certain religious movements. In some parts the judgment resembled a newspaper article and not a well-founded conclusion of a court.

On 22 February 1995 the Supreme Court dismissed the applicant's petition for review. The decision stated, inter alia:

<Translation>

"The decision is lawful and in the interest of the minor child Z. The conclusion of the [Regional] Court that both parents had been taking care of the child was based on the evidence in the case. However, as a decisive criterion the Court has considered their capabilities to bring up the child. It had been established beyond any doubt, based exclusively on the confessions of the [applicant], that she had fallen under the influence of Warriors of Christ, a sect which is not duly registered. Several times per week she attends the sermons and the meetings of this sect and has neglected the care for her child. Her behaviour is dangerous for the interests of the child, who is only four years old. The [applicant] does not deny that she had been bringing the four year old Z. to the meetings of the sect. There could be no doubt that the presence of the child at such a public place is harmful to his mind and to his health in general.

The Court had granted the parental rights to the father who is the better parent and educator. He is an army officer and

the command of his unit has exempted him from trips and work on duty in view of his obligation to take care of the child. He copes successfully in bringing up the child. The medical report showed that in the last months, when he looked after the child on his own, the health of Z. had improved."

Subsequent developments

Since November 1993, when her former husband took Z., the applicant has seen the child only a few times. The father has refused to give his address.

On an unspecified date in 1994 the applicant filed a petition for the institution of enforcement proceedings concerning Mr. E's obligation to allow contact with the child every second Saturday. However, Mr. E did not appear when summoned by the enforcement authority. In a "certificate" dated 5 October 1995 and addressed to the military prosecution authorities, the enforcement judge stated that the "numerous summons" sent to Mr. E had not been received by him. Upon the order of the enforcement judge the police provided information about the address at which Mr. E was registered. However, the summons sent to this address were returned with a note that the addressee had left. The summons sent to the military unit where Mr. E worked were also returned unsigned. The applicant also sent to Mr. E, through a notary, a formal letter inviting him to discuss the contact arrangements. No response was received.

On 22 March 1995 the applicant filed a complaint with the Regional Military Prosecutor's Office (Okrazhna voenna prokuratura) in Sofia requesting the institution of criminal proceedings against her former husband for having disobeyed the judicial order concerning the contact with her son, an alleged crime under Section 182 of the Criminal Code (Nakazatelen kodeks). The Regional Prosecutor apparently instructed Mr. E to bring the child to meetings with the applicant at a hotel parking in Sofia. However, Mr. E and the child appeared only once, on 25 May 1995, the applicant having waited for them in vain on several occasions.

On 21 September 1995 the Regional Prosecutor refused to institute criminal proceedings stating that Mr. E could be criminally liable for failure to comply with the judicial order only in case the enforcement judge had not succeeded in implementing it.

On 16 October 1995 the applicant appealed against this decision to the General Military Prosecution (Prokuratura na vaorazhenite sili). The applicant stated that the criminal liability of the father arose from the very fact of his refusal to comply with the contact order; that the father was hiding his address; that the summons sent to the military unit where he worked were returned; and that the efforts of the enforcement judge to obtain execution had been fruitless.

On 6 December 1995 the appeal was dismissed. The decision stated that the conclusions of the Regional Prosecutor had been correct.

B. Relevant domestic law and practice

a. The relevant provision of the Family Code of 1985 (Semeen kodeks) concerning the custody of children following divorce reads as follows:

<Translation>

Section 106

"...
(2) The Court grants the parental rights after considering all circumstances in the light of the children's interest...
...

(5) Upon a parent's request or ex officio the court can modify or replace the measures [concerning the exercise of the parental rights] if there has been a change of the circumstances".

Interpretative Decision of the Supreme Court No. 1 of 1974 (PPVS No. 1/1974), which was applied by the courts in the applicant's case, lists inter alia the criteria which should govern the courts when deciding on the custody of a child following a divorce. Apart from the criteria concerning the physical and moral aptitude of the parents, the Decision states that account should be taken of the sex and the age of the child. As regards children of the male sex the father and the mother should be considered as equally apt to look after them. On the other hand the mother should have priority in cases of babies and children in their first years unless it is established that she has abandoned the child, that she is in poor health or that she is morally inapt.

b. The relevant provision of the Civil Procedure Code (Grazhdanski protsesualen kodeks), which governs the enforcement of certain type of judgments, reads as follows:

<Translation>

Section 421

"Where the act [provided for in the judgment] cannot be performed by another person, but is exclusively dependent on the will of the debtor, the enforcement judge, upon the creditor's request, shall compel the debtor to perform the act by imposinga fine of up to 20 leva. In case the debtor again does not perform the act, the enforcement judge shall impose subsequent fines of up to 20 leva, but not more than 200 leva altogether."

c. Section 182 para. 2 of the Criminal Code provides as follows:

<Translation>

"A parent or another relative [of a child], who fails to comply with, or in any other manner prevents the enforcement of, a judicial order concerning the exercise of parental rights or the contact with [the] child, shall be punished with correctional labour or a fine of up to 3,000 leva and, in very serious cases, with imprisonment of up to six months or a fine of up to 10,000 leva."

Interpretative decision No. 3 of 8 December 1983 of the Penal Plenary of the Supreme Court (TR na OSNK) states inter alia that "criminal liability under Section 182 para. 2 of the Criminal Code arises regardless of the fact whether civil enforcement proceedings had been instituted".

d. Under the Penal Procedure Code (Nakazatelno-protsesualen kodeks) the refusal of a prosecutor to institute criminal proceedings can be appealed against to the higher prosecutor.

COMPLAINTS

1. The applicant complains under Article 8 of the Convention that the deprivation of her parental rights was unlawful and not necessary as it was based solely on the fact that she belonged to a certain religious society.

The applicant submits that the conclusions of the courts were arbitrary and contradictory. The custody of the child was

provisionally granted to the father on the basis of presumptions about the allegedly harmful effect of "sects", adopted without the examination of a single piece of evidence on that issue. The District Court explicitly dismissed all allegations that the applicant's behaviour had been or could have been harmful for the child. The Regional Court, without any fresh findings of fact and merely on the basis of an unconcealed prejudice, upheld the custody measures again reestablishing the reason that "sects" in general were harmful for children.

2. The applicant also complains under Article 8 of the Convention that she has been deprived of any contact with her child as her former husband is allegedly hiding the child from her and as it is impossible for her to enforce the order allowing contacts every second Saturday. She instituted enforcement proceedings, but under the relevant provisions, which have not been amended for many years, the only measure which could be imposed on a non-abiding parent was a maximum fine of 200 leva, a nominal amount of money. She also requested the institution of criminal proceedings against her former husband for not abiding by the court order, but even if successful, such proceedings would concern the father's behaviour for a past period of time and not the execution of his obligations in the future.

3. The applicant complains under Article 9 of the Convention that the judicial decisions in her case constituted an indirect coercion on her to change her religious beliefs and not to manifest them. In their judgments the courts stated that her reluctance "to overcome herobsession" had been a matrimonial offence and as a whole expressed an openly hostile attitude towards her convictions. Furthermore, the only possibility for the applicant under Bulgarian law to regain the custody of the child would be an action for modification of the custody measures, which was possible only if there were fresh relevant circumstances. As the courts had clearly indicated that her involvement with a certain religious society had been the relevant fact motivating their decisions, they were in fact compelling the applicant to give up her beliefs if she wanted her child back.

4. The applicant complains under Article 14 in conjunction with Article 8 of the Convention that the courts distinguished between her and her former husband on the basis of their religious beliefs. The courts found that her former husband was "of a sounder mind", that it would be better for the child to be brought up by him and, accordingly, deprived her of parental rights, on the sole ground that the father was not involved in an untraditional religious society, whereas she was.

The applicant complains under Article 14 in conjunction with Article 9 of the Convention that the coercion as regards her religious beliefs was discriminatory as it distinguished between her and her former husband on the basis of their religious beliefs.

5. The applicant complains under Article 6 para. 1 of the Convention of the alleged bias of the courts. Thus judge X. during the hearings made remarks demonstrating her prejudice. The Regional and the Supreme Courts also clearly expressed their partiality in the reasoning of their judgments. The courts deliberately used terms like "sect", "meditation", "to indulge in rituals" and others, which were a striking expression of prejudice.

The applicant further complains under Article 6 para. 1 that the judicial decisions were arbitrary. Thus the Regional Court stated that the lower court had correctly considered the father as the better parent, whereas in fact the District Court had clearly stated that both spouses were equally good as parents. Similar arbitrary statements concerned the alleged harmful effect to the child of the activities of the religious society as the courts did not examine any evidence on this issue. They allegedly based their decisions on general attitudes created by the media. Also, the courts interpreted in a distorted

manner the medical reports and other evidence before them.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 28 March 1995 and registered on 1 June 1995.

On 18 October 1995 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 22 January 1996 after an extension of the time-limit fixed for that purpose. The applicant replied on 23 April 1996, also after an extension of the time-limit.

THE LAW

1. The applicant complains under Articles 6, 8, 9 and 14 (Art. 6, 8, 9, 14) of the Convention of the judicial decisions in her divorce proceedings and of the alleged impossibility to obtain the enforcement of the order allowing contact with her child. The Government raise a preliminary objection that the application is an abuse of the right of petition. Thus, the applicant's allegation that the judicial decisions in her case amounted to pressure on her to change her religious beliefs is groundless and misrepresents the real situation in Bulgaria, where religious freedom is guaranteed. Also, the applicant raises complaints without having employed all remedies available to her in the country. Moreover, the applicant is citing isolated phrases from the decisions in an attempt to mislead the Commission.

The Government also submit that the applicant is not originally from Sofia, that she has no real property there and that her income is low. In the light of these facts the Government note that often in divorce proceedings the real motive behind a request to obtain the custody of a child is in fact the desire to secure the right to use the family lodging, usually attributed to the custodial parent. The Government also submit that the applicant insists on her freedom of conscience and individual liberties in a speculative manner which, in their view, is not characteristic of a good mother who is concerned above all with the well-being of her child.

The applicant responds that the allegations of the Government are unfounded.

The Commission considers that the Government's objection could only be accepted if it were clear that the application was based on untrue facts. However, this is far from clear in the present case. The Commission, therefore, considers that the application cannot be rejected as constituting an abuse of the right of petition within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention (No. 8317/78, Dec. 15.5.80, D.R. 20, p. 44; No. 21987/93, Dec. 19.10.94, D.R. 79, p. 60).

2. The applicant complains under Article 8 (Art. 8) taken alone and in conjunction with Article 14 (Art. 8+14) of the Convention that the courts in her divorce proceedings attributed her child to his father on discriminatory grounds.

Article 8 (Art. 8) of the Convention, insofar as relevant, provides as follows.

> "1. Everyone has the right to respect for his ... family life ...
>
> 2. There shall be no interference by a public authority

with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14 (Art. 14) 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 Government submit that there has been no State interference with the applicant's rights under Articles 8 and 14 (Art. 8, 14) of the Convention as the case concerns divorce proceedings between two individuals.

In case it is considered that there has been an interference, the Government submit that it was lawful and necessary in a democratic society. The Government submit that the interest of the child was the paramount and only basis of the judicial decisions. The decisions were not based on the fact that the applicant had untraditional religious beliefs but on the finding that her behaviour influenced adversely the child's health. The courts relied on the evidence given by witnesses and by the applicant herself and found that she was attending meetings of her religious community several times per week, sometimes together with the child. The courts credited the father who stated that the applicant had lost any interest in her family as a result of her involvement with the sect. The courts also relied on the conclusions of the medical expert who stated that attendance at meetings of sects might be abnormal for children.

The Government further submit that the present case has to be distinguished from the Hoffmann case (Eur. Court H.R., Hoffmann judgment of 23 June 1993, Series A, no. 255-C) in that Warriors of Christ is a religious society which was initially registered by the Bulgarian courts but, following an amendment in the law which required renewed registration, was refused permission to re-register by decision of the Council of Ministers of 28 June 1994. As a result Warriors of Christ is an unlawful association since June 1994. For this reason the Bulgarian courts did not find it necessary to examine the activities of Warriors of Christ as they relied on the assessment of the Council of Ministers.

The applicant replies that a custody order in divorce proceedings is an inevitable State interference with one of the parent's rights under the Convention, but that in her case the interference was not justified under the second paragraph of Article 8 (Art. 8) of the Convention as it was based on discrimination.

This was so because the judicial decisions determining the custody of her child, with the exception of the decision of 2 June 1994, were all based on her religious beliefs. They expressed strong disproval of her involvement with Warriors of Christ, employing inadmissible language; considered that the fact of her belonging to an untraditional religious society was sufficient to make her less suitable to bring up a child; and stated that the father was of "a sounder mind" because he was not involved with such untraditional religion.

The applicant submits that the judicial decisions referred to her behaviour only to state that on several occasions she had brought her child to the meetings of Warriors of Christ. Moreover, when the courts stated that this was harmful for the child's health, this was not a finding of fact. The courts never collected any evidence as regards

the activities or the meetings of Warriors of Christ, but simply declared that sects were dangerous. The medical expert in the case expressly stated that the health problems of the applicant's child could not be linked to the allegations as regards the applicant's behaviour. The reasoning used by the courts was such that in effect it could apply to every person who attended meetings of an untraditional religious character. On the other hand, it was clear that no such reasoning would have been used if the applicant was attending, for example, driving lessons.

The applicant also submits that decisions attributing the custody of a four years' old child to the father are extremely rare in the Bulgarian judicial practice and could be seen only in cases of a serious inaptitude of the mother to take care of her child.

Having examined the applicant's complaint concerning the custody of her child, 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 have been established.

3. The applicant also complains, invoking Articles 8 and 14 (Art. 8, 14) of the Convention, of the alleged impossibility to obtain the execution of the judicial order allowing contact with her child.

The Government submit that the applicant has not exhausted all domestic remedies within the meaning of Article 26 (Art. 26) of the Convention. Thus, under Section 106 para. 5 of the Family Code the applicant is free to request a modification of the custody measures whenever there exists a change in the relevant circumstances. Referring to two decisions of the Supreme Court of 1969 and 1971 (2464-71-II and 1456-69-II) the Government submit that non-compliance, by the custodial parent, with contact arrangements can be sufficient to warrant a modification of the custody measures.

The Government submit that the execution of contact orders is governed by an interpretative decision of the Supreme Court of 1962 and not by Sections 421 - 422 of the Civil Procedure Code. The Government have not provided further detail on this decision of the Supreme Court.

The applicant replies that the Supreme Court's Interpretative Decision No. 4 of 1962 concerns the physical handing over, with the assistance of an enforcement judge, of a child living with one parent and attributed to the other parent. In her view this decision is not, and could not, be applicable as regards the execution of an order providing for regular visits and meetings between a child and a parent. The applicant submits that the only measures for the execution of a contact order are contained in Sections 421 - 422 of the Civil Procedure Code and they are inefficient.

The applicant submits that she has exhausted all domestic remedies and have resorted to all possible means to obtain execution of the contact order. Thus, she has instituted enforcement proceedings but the enforcement judge was unable to compel the father even to appear before him. The fines which the enforcement judge could impose were ridiculously low and would never bring a solution. Furthermore, she has attempted to institute criminal proceedings against her former husband under Section 182 of the Criminal Code but this was refused unlawfully and with arguments which contradict the judicial practice.

As regards the possibility to bring an action under Section 106 para. 5 of the Family Code the applicant submits that such an action does not concern the execution of the contact order but the delivery of a fresh custody or contact order, the execution of which would be again a question to be resolved. The applicant submits that a

successful outcome of a such an action is highly unlikely in her case. The refusal of the father to give his address and to cooperate were noted as early as in the course of the first instance proceedings, but this did not lead to a custody order in the applicant's favour. All institutions had complete disregard for the applicant's right to see her child, as they were burdened with prejudices against untraditional religious groups.

Examining the Government's objection under Article 26 (Art. 26) of the Convention, the Commission recalls that this provision requires that the applicant makes a normal use of the remedies which are available and sufficient and relate to the breaches alleged. It falls to the respondent State to establish that these conditions are satisfied (cf. No. 11889/85, Dec. 10.3.89, D.R. 59, p. 95; Eur. Court HR, Brozicek v. Italy judgment of 19 December 1989, Series A no. 167, p. 16, para. 32).

The Commission notes that Section 106 para. 5 of the Family Code concerns the adjustment of custody measures to fresh developments and not the execution of a contact order. The applicant should not be normally expected to resort to indirect legal tools only to put pressure on the father to observe the contact arrangements. Furthermore, it appears unlikely that the courts would alter the custody order after a significant amount of time spent by the boy with his father on the sole ground that the father does not allow the meetings provided for in the contact order. The Commission notes in this respect that the District Court in its judgment of 2 June 1994 observed the lack of cooperation of the father, who had refused to give his address, but nevertheless granted him the custody of Z. as the boy had lived with his father for seven months.

The Commission also notes that Interpretative Decision No. 4 of 1962 of the Supreme Court apparently concerns the measures to be taken in cases of reattribution of the custody of a child. In any event, the applicant instituted enforcement proceedings and thus put the matter in the hands of the enforcement judge. The Commission also notes that the applicant has submitted petitions seeking the institution of criminal proceedings against her former husband, and that these were rejected.

In these circumstances the Commission finds that the applicant has exhausted the domestic remedies within the meaning of Article 26 (Art. 26) of the Convention.

The Commission, having examined this complaint, 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 have been established.

4. The applicant complains under Article 9 (Art. 9) taken alone and in conjunction with Article 14 (Art. 9+14) of the Convention that the judicial decisions in her case constituted an indirect coercion on her to change her religious beliefs.

Article 9 (Art. 9) of the Convention, insofar as relevant provides as follows.

> "1. Everyone has the right to freedom of ... religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in 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."

The Government submit that the courts have not based their decisions on the applicant's religious beliefs as they were irrelevant. Therefore the contention that the applicant has to change her beliefs in order to obtain the custody of her child is groundless. The applicant is free to submit an action under Section 106 para. 5 of the Family Code to obtain the custody of the child if there are new relevant circumstances. Such circumstances could concern, for example, the father's behaviour in general and the relations between him and his son. A change of religious beliefs could not constitute a relevant new fact. The Government state that nothing prevents the applicant from manifesting her religious beliefs, the freedom of religion being protected in Bulgaria.

The applicant replies that the judicial decisions in her case were based on the arbitrary and prejudiced view of the courts that a mother with untraditional religious beliefs was dangerous for her child. Therefore, the only possibility for her to obtain the custody of the child by bringing an action under Section 106 para. 5 of the Family Code was to show that she has abandoned the sect and returned to "normality". This constitutes an indirect pressure on her to change her beliefs or at least to suppress or hide their manifestation.

The Commission, having examined the complaint under Articles 9 and 14 (Art. 9, 14) of the Convention, 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 have been established.

5. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that the courts in her case were partial and that the decisions of the Regional and of the Supreme Courts were based on arbitrary conclusions.

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

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

The Government submit that the courts were not partial. They referred to the applicant's religious activity only insofar as its impact on her family and her child was concerned.

In the Government's view the courts correctly assessed the evidence before them and provided all safeguards of a fair trial. The contention that there is a contradiction between the District Court's judgment of 2 June 1994 and the Regional Court's judgment of 8 October 1994 is unfounded. The Regional Court, when examining the District Court's judgment and the evidence in the case, was free to reach its own conclusions.

The applicant replies that the language and the arguments of the courts were clearly indicative of a prejudiced opinion. The courts are free in the assessment of the case, but the principle of a fair trial requires that this assessment be based on the evidence duly admitted in the course of the proceedings. Instead, in the applicant's view, the provisional custody order and the Regional and the Supreme Court's decisions relied exclusively on a presumption that sects are dangerous.

The Commission, having examined the complaint under Article 6

(Art. 6) of the Convention, 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 have been established.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber