AS TO THE ADMISSIBILITY OF

Application No. 29785/96
by M. N.
against Bulgaria

The European Commission of Human Rights (First Chamber) sitting in private on 4 September 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
G.B. REFFI
B. CONFORTI
N. BRATZA
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 August 1995 by M.N. against Bulgaria and registered on 11 January 1996 under file No. 29785/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Bulgarian national born in 1943 and residing in Varna.

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

On 12 May 1995 the applicant entered into a contract with A.B., a private limited liability company which was advertising in the press that it was paying "high interest rates and dividends" on loans. Under this contract the applicant lent to A.B. 372,960.00 leva for a period of three months. In return A.B. promised to pay to the applicant 40,320.00 leva each month and 252,000.00 leva at the end of the three month period. The contract did not provide for the payment to the applicant of interest or any other additional sum.

In April and May 1995 various newspapers in Bulgaria published information that the companies which were offering high interest rates were operating unlawfully and were financially unsound. The articles predicted that these companies would soon collapse.

On 26 May 1995 the police blocked the office of A.B., conducted a search and seized money and documents. It transpires from the applicant's submissions that after 26 May 1995 the company has not resumed its activities. According to press materials submitted by the

applicant A.B. never engaged in any business, but was created and operated as a "financial pyramid". Its only activity was allegedly the accumulation of funds which were then transferred to other private bank accounts or abroad. Criminal proceedings on unspecified charges have been instituted against persons involved in the business of A.B.

Throughout 1995 in Bulgaria, and especially in Varna, there were numerous cases of private companies having accumulated large amounts of money through loans from the population and having subsequently collapsed. Thousands of people allegedly lost their money in such transactions. Some of them joined efforts with the aim to obtain the repayment of their "deposits" and the punishment of those responsible for the operation and the collapse of the "financial pyramids".

The applicant is involved in the activities of such a committee and is one of its leaders. The committee published numerous articles in the press, held several rallies and meetings and complained to the Parliament and to other institutions. The applicant met the President of Bulgaria and many other officials to seek support. In January 1996 the committee was registered as a non-profit association and obtained legal personality. The applicant was elected to the governing body of the association.

In June 1995 the Parliament appointed an inquiry commission to investigate the events which had led to the collapse of the "financial pyramid structures" and to recommend measures for the safeguard of the rights of individuals. In July 1995 the commission published its report. It stated inter alia that the Bulgarian National Bank, the fiscal authorities and the prosecution authorities had not taken sufficient measures to prevent the fraudulent activities of certain private companies. Thus, the authorities had not reacted to clearly misleading advertisements by informing the public of the risks inherent in the advertised transactions. Moreover, the prosecution authorities had not investigated speedily the information about criminal frauds.

On 1 June 1995 the applicant complained to the Regional Prosecutor's Office (Okrazhna prokuratura) in Varna that she was deprived of her savings. On behalf of an unspecified number of persons who were in a similar situation, she requested to be informed of the financial situation of A.B. and of the "real reasons" for the police intervention on 26 May 1995. She also requested that all assets of A.B. should be attached and that the creditors should receive back from the State the amounts which they had lent to A.B. The applicant also sent numerous petitions to the prosecution authorities requesting the punishment of the persons involved with financial pyramids. She received regularly responses from the various levels of the prosecution authorities, who were informing her of the opening of criminal proceedings against certain persons. In a letter of 7 September 1995 the Regional Prosecutor in Varna stated that she should consult a lawyer in order to obtain repayment of the amounts due to her by A.B.

The applicant apparently has not brought an action against A.B. for the repayment of the amounts due under their contract and has not instituted proceedings to collect these amounts from assets belonging to A.B. and seized by the police. She has not instituted proceedings under the Law on State Liability for Damages (**kon za otgovornostta na darzhavata za vredi prichineni na grazhdani).

COMPLAINTS

The applicant complains under Article 1 of Protocol No. 1 to the Convention that she and many other persons cannot recover the money which they had paid to private companies under loan contracts.

The applicant submits that the State was responsible for these problems because the private companies in question were registered with the commercial registers at the courts and even had fiscal

registrations. This meant that the State approved of their activities. Furthermore, the State has failed in its obligation to prevent fraud and crime as it did not intervene on time and did not discourage ordinary people from depositing their life savings with shady companies.

Moreover, the applicant contends that the State was responsible because it intervened with the business of the private companies through brutal police actions, thus suspending the repayment of amounts due under the loans. Thus, in the applicant's case A.B. could have honoured their contract if the police had not suspended its activities.

In the applicant's view the responsibility of the State also stems from the fact that the criminals from A.B. and other companies were not prosecuted actively. Some of them are at large and others have escaped abroad.

Moreover, the applicant submits that corrupt State officials were involved in the financial pyramids. In fact the pyramids were organised and run secretly by the State and aimed at the accumulation of resources, stolen from ordinary people, to be used in the process of the privatization in the economy.

THE LAW

1. The applicant complains under Article 1 of Protocol No. 1 (P1-1) to the Convention that she and thousands of persons who have "deposited" their money with private "financial pyramids" have not obtained and are unlikely to receive payment.

Article 1 of Protocol No. 1 (P1-1) to the Convention reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Firstly, the Commission recalls that the Convention does not provide for an "actio popularis", but requires, when the right to individual petition under Article 25 (Art. 25) is being exercised, that the applicant claim to be the victim of a violation of the Convention. In the present case the applicant has not shown to have been empowered to act for other individuals who have lost their money in "financial pyramids". The Commission, therefore, can only consider the applicant's complaints insofar as she herself is concerned (No. 8612/79, Dec. 10.5.79, D.R. 15 p. 259).

The Commission recalls in this respect the three distinct rules of Article 1 Protocol No. 1 (P1-1) to the Convention. The first which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and the third rule, which are concerned with particular instances of State interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle

laid down in the first rule (see, for example, Eur. Court H.R., the Pressos Compania Naviera S.A. and Others judgment of 20 November 1995, Series A No. 332, pp. 21-22, para. 33).

In certain specific circumstances the State may be responsible under Article 1 of Protocol No. 1 (P1-1) for interferences with peaceful enjoyment of possessions resulting from transactions between private individuals. However, there is no State interference where the facts complained of are not the product of an exercise of governmental authority but concern exclusively relationships of a contractual nature between private individuals (Eur. Court HR, Gustafsson v. Sweden judgment of 25 April 1996, para. 60). Thus, for example, Article 1 of Protocol No. 1 (P1-1) cannot be interpreted as establishing an obligation for the State to maintain the purchasing power of sums deposited with financial institutions by way of a systematic indexation of savings (No. 8724/79, Dec. 6.3.80, D.R. 20 p. 226; cf. also No. 25045/94, Dec. 12.4.96, unpublished).

In the present case the Commission need not decide whether the applicant's contractual right to receive certain amounts from A.B. is a "possession" within the meaning of Article 1 of Protocol No. 1 (P1-1) to the Convention as the application is in any event inadmissible for the following reasons.

The Commission first notes that the applicant has not been deprived of her contractual right to receive payments from A.B. by the State or, indeed, by anyone else, the existence of her right never having been disputed. Furthermore, it does not appear that the authorities have in any way prevented the payment of A.B.'s debts out of this part of its assets which was seized by the police. The Commission notes that the applicant has not instituted any proceedings in order to obtain payment from the seized funds or from other property belonging to A.B.

The Commission finds, therefore, that the facts of the present case cannot be regarded as a deprivation of possessions within the meaning of the second sentence of Article 1 para. 1 of Protocol No. 1 (P1-1) to the Convention.

Insofar as the applicant complains that the actions of the police interfered with the normal business of A.B. and thus affected adversely its ability to pay to the applicant, even assuming that this can be regarded as a State interference with the applicant's rights under Article 1 of Protocol No. 1 (P1-1) to the Convention, the Commission finds that the applicant has not exhausted all domestic remedies within the meaning of Article 26 (Art. 26) of the Convention as she has not brought proceedings for damages under the Law on State Liability for Damages. In any event, the applicant has not substantiated any reasons why such interference, which apparently aimed at the prevention of fraudulent financial activities, was not justified under the second paragraph of Article 1 of Protocol No. 1 (P1-1) to the Convention.

As regards the remaining contentions of the applicant the Commission finds that she has not established the existence of an interference on the part of the State with her right to peaceful enjoyment of her possessions. Thus, the findings of the Parliamentary commission cannot be interpreted as indicating that the State has interfered with property rights. Also, it does not appear that the alleged lack of sufficient warnings to the public against deceptive private companies, or the registration of private limited liability companies in the commercial records at the courts may engage the responsibility of the State for the fraudulent activities of individuals.

It follows that the applicant's complaints under Article 1 of Protocol No. 1 (P1-1) to the Convention are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

2. Insofar as the applicant complains that those responsible for the operation and the collapse of the "financial pyramids" have not been punished, the Commission recalls that the Convention does not guarantee a right to institute criminal proceedings against third persons (No. 7116/75, Dec. 4.10.76, D.R. 7, p. 91).

It follows that the remainder of the application is incompatible ratione materiae with the provisions of the Convention and has to be rejected under Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber