AS TO THE ADMISSIBILITY OF

Application No. 24140/94
by Tserkovsky PETROV
against Bulgaria

The European Commission of Human Rights (First Chamber) sitting in private on 22 February 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
I. BÉKÉS
E. KONSTANTINOV
G. RESS

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 10 January 1994 by Tserkovsky PETROV against Bulgaria and registered on 12 May 1994 under file No. 24140/94;

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

a. Particular circumstances of the case

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

The applicant, a Bulgarian national, born in 1940, resides in the town of Stamboliiski, Bulgaria.

In 1990 he was appointed manager of a storage house situated in Libya and run by the Bulgarian state owned enterprise Technoexportstroy (TES). Before his departure from Bulgaria, the applicant signed a contract for employment, which in its Article 7 provided that the employee should be entitled to travel expenses to Libya and back if he stayed there for at least 24 months.

The applicant arrived in Libya on 1 April 1990. On 15 April 1990 he filed with the TES Libyan branch a request for termination of his employment. He stated that the storage house was in a chaotic condition and therefore he would not assume responsibility for the items on stock. In his request the applicant also referred to the fact that as a result of those problems he suffered from high blood pressure and a heart pain condition. The request specifically stated that it was an application for termination of the employment contract "upon mutual consent of the parties".

The applicant did not receive an answer. On 22 April 1990 he

returned to Bulgaria.

On 25 June 1990 the Director of TES central office issued an order for the termination of the employment contract. The order referred to the provision of the Labour Code (Codex na truda) concerning termination upon mutual consent, and also stated that the term of the contract had not expired. It was further stated that the applicant's travel expenses should be borne by him.

On 17 August 1990 the applicant underwent a medical examination and obtained a certificate stating that he had high blood pressure and neurosis and that the working conditions in Libya were counter-indicated.

As apparently TES had originally paid the travel expenses, they refused to pay the applicant's salary for his 21 days of work, an amount equivalent to approximately half of the travel expenses.

The applicant filed a claim before the Labour Arbitration Committee (Komisia za trudovi sporove) requesting the annulment of the order of 25 June 1990 insofar as it required him to bear the travel expenses. This claim, the applicant's appeal before the court and his petition for review to the Supreme Court were dismissed. The last decision was delivered on 4 October 1991.

On 8 August 1991 TES brought an action against the applicant for the outstanding part of the travel expenses. The applicant filed a response, describing the irregularities at the storage house and stating that TES was in breach of the employment contract for failure to provide normal working conditions. As evidence on this point the applicant submitted copies of inventory lists, relevant regulations and a copy of his letter to the auditors of TES, requesting an investigation at the storage house. He also referred to the fact that in Libya his health had deteriorated.

On 20 May 1992 the District Court (Raionen Sad) held the applicant responsible to pay the amount of the claim on the grounds that the employment contract had been terminated upon the applicant's demand, that moreover he was in default as he had left Libya before obtaining his employer's consent and therefore had to pay the travel expenses. On 7 September 1992 his appeal was dismissed by the Regional Court (*krajen Sad), which found that the employment had been terminated upon the initiative of the applicant and this in itself established his obligation to bear the travel expenses.

On 16 September 1993, after a hearing on the applicant's application for review (pregled po reda na nadzora), the Supreme Court upheld the lower courts' decisions stating inter alia that "a well founded and legally correct answer has been given to all complaints of the applicant" and that "all the relevant evidence has been collected and well founded conclusions have been made". The Court further discussed the relevant evidence and found that the applicant had not requested resignation on medical grounds and had not undertaken any step to establish his illness until after several months following his return from Libya.

The applicant introduced his application before the Commission on 10 January 1994.

b. Relevant domestic law

The Civil Procedure Code, which defines the powers of the Supreme Court in the review proceedings, states inter alia:

<Translation>

Article 207

"The .... Court shall set aside entirely or partially the judgment ... :

a) whenever it is contrary to the law;

b) whenever substantial breaches of procedural law have occurred during the proceedings or in connection with the delivery of the judgment;

....

d) whenever the judgment is ill-founded."

Article 225

"(1) Review proceedings shall be initiated upon a party's application ...

(2) The Chief Prosecutor General shall have the right to introduce a proposal for review on his own motion.

(3) Review proceedings shall be admissible in the event of breaches under Art. 207 items "a", "b" and "d".

Article 226

"(1) An application for review may be introduced within two months after the judgment's entry into force, and a proposal for review - within a year. ..."

Article 227

"(1) The applications and the proposals for review shall be examined by three judges of the Supreme Court ..."

...

(3) The judgments in the proceedings referred to in the preceding paragraphs shall not be subject to review."

Article 229

"....

(2) Where a judgment is set aside for breaches under Art.207 "b", the Supreme Court shall direct the case for new examination ... where the collection of additional evidence would be extremely difficult. In all other cases, the Supreme Court shall decide the case on the merits."

<Bulgarian>

Chlen 207

"... sad[at] otmeniava iztsialo ili otchasti .... reshenie[to]:

a) kogato protivorechi na zakona;

b) kogato pri razglejdane na deloto ili pri postanoviavane na reshenieto sa bili dopusnati sashtestveni narushenia na sadoproizvodstvenite pravila;

....

d) kogato reshenieto e neobosnovano."

Chlen 225

"(1) Proisvodstvoto za pregled po reda na nadzora se obrasuva po molba na stranite ...

(2) Glavniat prokuror pravi predlojenie za pregled po reda na nadzora po svoi pochin.

(3) Pregled po reda na nadzora se dopuska pri narushenia, dopusnati po chl. 207, bukvi "a", "b" i "d".

Chlen 226

"(1) Molba za pregled moje da se podade do dva mesetsa ot vlizane na reshenieto v sila, a predlojenie za pregled - do edna godina. ..."

Chlen 227

"(1) Molbite i predlojeniata se razglejdat ot trichlenen sastav na Varhovnia sad ...

...

(3) Resheniata po predhodnite alinei ne podlejat na pregled po reda na nadzora."

Chlen 229

"...

(2) Pri otmiana na reshenie na osnovanie chl. 207 bukva "b" Varhovniat sad moje da varne deloto za novo razglejdane ... samo kogato sabiraneto na dopalnitelni dokazatelstva predstavliava osobena trudnost. V ostanalite sluchai toi reshava deloto po sashtestvo."

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention that the proceedings were unfair as the courts in their decisions did not discuss the evidence concerning the irregularities at the storage house. The applicant states that, had evidence on this issue been discussed, it could have been established that TES breached the employment contract by failing to provide normal working conditions. It would therefore have had to bear the travel expenses.

The applicant complains that his case was decided wrongly and states that this disclosed a lack of impartiality and fairness under Article 6 para. 1 of the Convention.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention of the unfairness of the proceedings and the incorrect decisions. This provision states, insofar as relevant:

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

The Commission recalls that the Convention has entered into force in respect of Bulgaria on 7 September 1992, and in accordance with the generally recognised principles of international law, the Commission is only competent to examine complaints against violations of the Convention by virtue of acts, facts or decisions that have occurred after that date. Insofar as the applicant's complaints relate to a period of time prior to 7 September 1992, the Commission finds that this part of the application is outside its competence ratione temporis and therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

Nevertheless, the Commission recalls its case-law according to which "when the Commission's competence (ratione temporis) begin in the

course of proceedings before a second instance, it may examine such proceedings, but not those at first instance" (No.8261/78, Dec. 11.10.79, D.R. 18, p.150) and "where a court delivers a judgment after the entry into force of the Convention in respect of the State in question, the Commission is competent ratione temporis to ensure that the proceedings which this judgment concluded complied with the Convention, because proceedings conducted before a court are concluded by the final decision, which embodies any defects by which they may be affected." (No.9453/81, Dec. 13.12.82, D.R. 31, p.204). Noting that the second instance decision in the instant case was delivered on 7 September 1992, which was the very date of the Convention's entry into force in respect of Bulgaria, the Commission finds that it is competent ratione temporis to examine the second instance proceedings leading to the decision of the Regional Court of 7 September 1992.

2. The Commission must next examine whether the applicant has complied with the six months' time limit under Article 26 (Art. 26) of the Convention. In the Commission's view the six months must be calculated from the last date of the proceedings determining the applicant's civil rights and obligations within the meaning of Article 6 para 1 (Art. 6-1) of the Convention. It is therefore necessary to examine whether the review proceedings before the Supreme Court ending with the judgment of 16 September 1993 fall within the scope of this provision.

The Commission notes that it was within the powers of the Supreme Court to examine, and in fact it did examine, whether the lower courts' judgments were contrary to the law or ill-founded and whether there had been a substantial breach of procedure. The Supreme Court in the review proceedings was competent to quash the lower courts' judgments or, as it happened, to uphold them. These proceedings must therefore in the Commission's view be regarded as having the effect of determining the applicant's civil rights and obligations within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

As there was no further effective remedy available in the instant case, it follows that the judgment of the Supreme Court of 16 September 1993 was the final decision within the meaning of Article 26 (Art. 26) of the Convention. As the applicant has introduced his application before the Commission less than four months after it, the Commission finds that he has complied with the six months' time limit under Article 26 (Art. 26) of the Convention.

3. In respect of the applicants' complaints relating to Article 6 (Art. 6) of the Convention, the Commission has just found that in the present case it is competent ratione temporis and ratione materiae to examine the proceedings ending with the judgment of the Regional Court of 7 September 1992, and the review proceedings before the Supreme Court.

In the examination thereof the Commission first recalls that it is for the national courts to assess the evidence before them. The Convention organs' task is to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (see Eur. Court H.R., Windisch judgment of 27 September 1990, Series A no. 186 p. 10, para. 25).

Moreover, in the present case the Commission finds no indication that in the proceedings concerned the applicant could not sufficiently put forward his point of view, or that the proceedings were otherwise unfairly conducted. The Commission notes in particular that there is no indication that the applicant, as far as the nature of the appeal and the review proceedings permitted, sought to present relevant evidence and that this was arbitrarily rejected by the courts. Indeed, the applicant does not claim that his statements elaborating the facts at issue and his arguments were not admitted by the courts.

Insofar as the applicant complains that the courts insufficiently gave reasons for their decisions, the Commission recalls its established case law, according to which Article 6 para. 1 (Art. 6-1) of the Convention "does not imply that the reasons set out by a court must deal in detail with each of the points which one of the parties may consider to be fundamental to his case, and a party does not have an absolute right to require the court to provide reasons for the rejection of each of his arguments" (No. 10938/84, Dec. 9.12.86, D.R. 50 p.114). In the present case the Regional Court and the Supreme Court gave sufficient reasons for their decisions where they found that the applicant himself had taken the initiative to terminate his employment and that this in itself had established his obligation to bear the travel expenses.

It follows that the remainder of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber President of the First Chamber

(M.F.BUQUICCHIO) (C.L.ROZAKIS)