AS TO THE ADMISSIBILITY OF

Application No. 28411/95
by Ianka RIENER
against Bulgaria

The European Commission of Human Rights sitting in private on 11 April 1997, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 6 April 1995 by Ianka RIENER against Bulgaria and registered on 1 September 1995 under file No. 28411/95;

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 15 and 22 July 1996 and the observations in reply submitted by the applicant on 26 November 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant was born in 1946 in Bulgaria. On an unspecified date she obtained Austrian nationality. It appears that she also remained a Bulgarian citizen. Before the Commission she is represented by Kindel & Kindel, a law firm based in Vienna, Austria.

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

A. Particular circumstances of the case

Background of the case

The applicant is a co-owner and the commercial director of a company registered in Austria. In January 1991 she also registered under her own name as a foreigner conducting economic activities in Bulgaria. Her main business was the importation of coffee in Bulgaria.

By decision of 1 July 1992 a district fiscal authority in Sofia found that the applicant owed 26,494,582 leva of unpaid excise tax and 4,104,925 leva of interest (the total amount due having been at the time the equivalent of about 1 million USD). The applicant's ensuing appeals were dismissed on 20 August 1992 by the Sofia fiscal authority (Stolichno danachno upravlenie) and on 7 April 1993, after a hearing on the matter, by the Sofia Regional Court (Sofiiski gradski sad).

On 7 October 1994 the Supreme Court (Varhoven sad) dismissed the applicant's petition for review of the above decisions. The applicant then instituted proceedings seeking to declare the fiscal decisions null and void. This was refused by the Sofia Regional Court on 28 October 1996.

In 1992 and 1993 the competent fiscal authorities attached monies belonging to the applicant or to her company in the amount of about 80,000 USD.

Prohibition against leaving the country

On 1 March 1995, following the issuance of a judicial writ of execution in respect of the sums due by the applicant, the Sofia fiscal authority wrote a letter to the Passport Department at the Directorate of the Police (Napravlenie "Pasporti i vizov rezhim" kam DNP) ("the Passport Police") asking them to impose on the applicant a prohibition against leaving Bulgaria under Section 7 of the Law on Passports for Travelling Abroad (Zakon za zadgranichnite pasporti) ("the Passport Law"), until the repayment of her debt, as established by the courts.

On 7 March 1995 the Passport Police issued an order which stated inter alia that a prohibition was imposed on the applicant against leaving the country and that her document for travelling abroad should be seized. The order referred to the fiscal decisions in the applicant's case, stated that she had Bulgarian and Austrian nationality, and relied on Section 29(1)(v) of the Law on the Sojourn of Aliens in Bulgaria (Zakon za prebivavane na chuzhdentzite v Balgaria) ("the Aliens Law").

In an internal form, apparently filled out by the fiscal authority and then sent to the Passport Police, it was stated that the measure against the applicant was effective from 6 March 1995 until 6 March 1996. However, this was not reflected either in the order, or in any later correspondence with the applicant, which spoke of a "temporary prohibition" without indicating its term of validity.

The order of 7 March 1995 indicated that it was subject to appeal under the Law on Administrative Procedure (Zakon za administrativnoto proizvodstvo) and that it should be notified to the applicant in a three days' time-limit. However, this was not done. The applicant saw a copy of the order for the first time more than a year later, on 24 April 1996, during the hearing in the proceedings before the Sofia Regional Court (see below).

On 4 April 1995 the Bulgarian border control authorities seized the applicant's Austrian passport when she attempted to leave Bulgaria and to enter Greece. The officers explained orally that there was a prohibition imposed on her against leaving the country but did not provide further details. They issued her with a certificate stating that her Austrian passport was seized without any mention of the grounds therefor.

Appeals against the prohibition

On 13 April 1995 the applicant sent a telegram to the Passport Police asking for the return of her Austrian passport and for an explanation. On 17 and on 19 April 1995 she repeated her request.

On 20 April 1995 the Passport Police replied that a prohibition against leaving the country under Section 29(1)(v) of the Aliens Law had been imposed. This had been done upon the request of the Sofia fiscal authority and was based on the applicant's obligation to pay 26,499,582 leva, as confirmed by the Supreme Court's decision of 7 October 1994.

On 19 May 1995 the applicant sent another telegram to the Passport Police requesting information as regards the date, number and type of the administrative order imposing on her a prohibition against leaving the country and asking which administrative organ had issued the order.

On 26 May 1995 the applicant submitted to the Ministry of the Interior (MVR) an appeal under the Aliens Law against the prohibition from leaving the country. She stated that the measure was unlawful as on other occasions she had been considered a Bulgarian citizen.

On 22 June 1995 the Ministry of the Interior sent a letter to the applicant which stated that the measure against her was lawful. It was based both on Section 7(e) of the Passport Law and on Section 29(1)(v) of the Aliens Law. The letter further informed the applicant of her right to appeal under the Law on Administrative Procedure.

On 28 June 1995 the applicant submitted an appeal to the Sofia Regional Court. She stated that the confiscation of her Austrian passport was unlawful as she had not been given a copy of any order authorising such an act. Furthermore, she has a second, Bulgarian, nationality and measures under Section 29 of the Aliens Law could not be applied against her. In any event, the authorities had an adequate security for the payment of the excise tax as they had attached funds of the Austrian company worth 80,000 USD. Insofar as Section 7 (e) of the Passport Law had been invoked, this provision concerned the possibility to refuse the issuance of, or to seize, a Bulgarian passport, not an Austrian one.

In her additional written submissions the applicant stated inter alia that her fundamental human rights were at stake and that there have been breaches of Articles 5, 6 and 13 of the Convention.

On 24 April 1996 the Court held a hearing, which was attended by the parties and their representatives. The applicant's husband was also present.

On 13 June 1996 the Court dismissed the appeal. The Court found that the applicant's obligation to pay a significant amount in taxes, as

established by the courts, was a sufficient ground, under Section 7(e) of the Passport Law, to seize any passport which is used for international travel. Unpaid tax was also a ground to impose a prohibition against leaving Bulgaria under Section 29(1)(v) of the Aliens Law. Although this provision did not provide expressly for a confiscation of a foreign passport, if applied in conjunction with the relevant regulations, it clearly allowed such measure in respect of a person against whom there had been a decision prohibiting his departure from Bulgaria. Since the applicant had double citizenship the authorities correctly relied both on the Aliens Law and on the Passport Law.

On 25 June 1996 the applicant submitted to the Supreme Court a petition for review (molba za pregled po reda na nadzora). She stated inter alia that the Regional Court had interpreted wrongly the relevant provisions. Moreover, no answer had been given to the complaints concerning the procedural irregularities.

On 15 November 1996 the applicant wrote to the Supreme Court insisting on a speedy examination of her petition for review in view of the fact that her liberty of movement was at stake.

Prolongation of the prohibition

On 23 February 1996 the Passport Police wrote to the Sofia fiscal authority informing them that the measure against the applicant would expire on 6 March 1996 and asking whether its prolongation was necessary.

In reply the Sofia fiscal authority on 6 March 1996 requested from the Passport Police a prolongation of one year, stating that the applicant had not paid her debt.

The parties have not indicated whether a formal decision of prolongation followed, and if so, whether it was served on the applicant.

B. Relevant domestic law (translations and summaries)

1. Section 35(1) of the Constitution provides that "[e]veryone shall have the right to ... leave the country" and that this right "may be subject to restrictions provided for only by act of Parliament, in the interest of national security, for the protection of public health and the rights and freedoms of others."

2. The Law on the Passports for Travelling Abroad ("the Passport Law") in Sections 7(e) and 8 provides that the issuance of a passport may be refused, or the passport may be seized, if, inter alia, the person concerned has "significant pecuniary obligations, established by the courts, to the State, to Bulgarian legal persons or nationals, except if the [person's] possessions cover the obligations or if he submits a duly executed collateral."

3. The Law on the Sojourn of Aliens ("the Aliens Law"), insofar as relevant, provides as follows:

Section 3

"An alien, within the meaning of this Law, shall be every person who is not a Bulgarian citizen, but is a citizen of another country or has no citizenship."

Section 13

"(1) An alien's identity documents can be seized by the competent authorities on the grounds provided for by an act of Parliament in respect of Bulgarian citizens."

Section 29

"(1) An alien shall not be allowed to leave the country whenever it has been established that: ...

(v) he owes the State the payment of a fine or another pecuniary obligation;

(2) The alien may be authorised by the competent state organ to leave the country if there are guarantees that he will fulfil his obligations under subpara ... (v) or if he has deposited a security ..."

4. Sections 33 and 34 of the Law on Administrative Procedure provide that all administrative acts, except those specifically excluded by Section 34 and by other acts of Parliament, can be appealed against before the courts. A separate law, the Law on Administrative Offences and Punishment (Zakon za administrativnite narushenia i nakazania), deals with the procedure for the punishment of administrative offences.

COMPLAINTS

1. The applicant, invoking Articles 5 and 8 of the Convention, complains of the confiscation of her Austrian passport and of the prohibition imposed on her from leaving Bulgaria. She submits that her right to liberty was violated. The measures against her were unlawful because she was never served with an official order and because the authorities acted in complete disregard of any legal procedure. Also, there has been a breach of her right to respect for her private and family life, as she could not join her husband and daughter in Austria.

2. The applicant alleges a breach of Articles 6 and 13 in that most of her telegrams and petitions to various institutions concerning the confiscation of her Austrian passport remained unanswered and that her appeal to the Sofia Regional Court has not been examined yet.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 6 April 1995 and registered on 1 September 1995.

On 12 April 1996 the Commission (First Chamber) decided to communicate the applicant's complaints under Articles 6, 8 and 13 concerning the confiscation of her passport, the prohibition against leaving Bulgaria, and the alleged lack of an effective remedy in this respect. The remainder of the application was declared inadmissible.

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

On 8 April 1997 the Plenary Commission decided that the case shall be transferred from the First Chamber to it (Article 20 para. 4 of the Convention).

THE LAW

1. The applicant, invoking Articles 5 and 8 (Art. 5, 8) of the Convention, complains of the confiscation of her Austrian passport and of the prohibition against leaving Bulgaria.

The Government submit that the requirements of Article 26 (Art. 26) of the Convention are not met because the application was

introduced only two days following the seizure of the applicant's passport, and therefore, before the institution of any domestic proceedings. The Government also submit that the applicant has not exhausted the judicial remedies available to her. Moreover, contrary to any normal practice, when addressing complaints to the administrative authorities she sent telegrams instead of formal letters.

The Government further state that the impugned measures were an interference with the applicant's private life, but that it was lawful and necessary in a democratic society for the economic well-being of the country.

Thus, the applicant owed a significant amount in unpaid tax. Imposing a prohibition against leaving the country in such cases has a clear legal basis and is applicable both to Bulgarian nationals and to foreigners residing in the country, as provided for under the Passport Law and the Aliens Law respectively. The applicant cannot claim to be exempted from this legislation simply because she has both a Bulgarian and a foreign nationality. In her case the authorities initially relied on the Aliens Law because the applicant had always presented herself as an Austrian and, when attempting to leave the country on 4 April 1995, had presented her Austrian passport.

The applicant replies that she has exhausted all domestic remedies. She submits that her husband, her daughter and her son-in-law live in Vienna, that she has been separated from them since 4 April 1995, and that therefore there has been an interference with her right to respect for her family life.

In her view this interference is unlawful as she does not owe taxes, the judicial decisions in the fiscal proceedings having been wrong. Furthermore, the seizure of her Austrian passport had no legal basis. Thus, the Passport Law allowed only for the seizure of a Bulgarian passport and the Aliens Law did not provide for the seizure of a foreign passport. Moreover, there have been serious breaches of administrative procedural law.

The applicant also contends that the interference with her family life was not necessary in a democratic society. Thus, the authorities had a security worth $80,000 which in November 1996 corresponded to 28 million leva.

As regards the Government's objections under Article 26 (Art. 26) of the Convention the Commission need not decide whether the requirements of this provision have been complied with, as the applicant's complaints are in any event partly incompatible with the provisions of the Convention and partly manifestly ill-founded.

2. The Commission notes at the outset that the applicant's complaints in their essence concern restrictions on her freedom of movement. Thus, in her submissions before the domestic authorities the applicant complained of a breach of her "right to liberty" and referred to Articles 5, 6 and 13 (Art. 5, 6, 13) of the Convention and to her "right to liberty of movement". Also, she raised the same complaint before the Commission (see the Commission's partial decision of 12 April 1996).

The Commission recalls that the freedom to leave a country is provided for in Article 2 para. 2 of Protocol No. 4 (P4-2-2) to the Convention. However, Bulgaria has not ratified this Protocol.

It follows that this part of the application has to be rejected as being incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

3. Insofar as the applicant's complaints, as presented by her, may give rise to a separate issue under Article 8 (Art. 8) of the Convention, the Commission notes that there has been no claim on the part of the

applicant that it was impossible for her family to join her in Bulgaria or to visit her there regularly (cf. Eur. Court HR, Abdulaziz, Cabales and Balkandali v. the United Kingdom judgment of 28 May 1985, Series A no. 94, para. 68). The Commission notes that the applicant's husband was in Sofia in April 1996.

Furthermore, the Commission notes that the applicant, who is represented by a lawyer, has not substantiated any details about her family circumstances, such as for example the age of her daughter or the existence of effective cohabitation before 4 April 1995 (cf. No. 28952/95, Dec. 28.2.96, unpublished). Moreover, the Commission notes that at least since 1991, four years prior to the impugned measures, the applicant had apparently been living, or at least spending a significant amount of time, in Bulgaria.

In these circumstances the Commission considers that the applicant has not substantiated the existence of an interference with her right to respect for her private and family life under Article 8 (Art. 8) of the Convention.

It follows that this part of the application has to be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant complains that the authorities did not deal properly with her complaints against the confiscation of her passport. She invokes Articles 6 and 13 (Art. 6, 13) of the Convention.

The Government submit that the Law on Administrative Procedure provides for a possibility for judicial examination of the applicant's complaints, which is an effective remedy.

The applicant replies that the prohibition against leaving the country was a punishment and that therefore the proceedings leading to it should be considered as criminal within the meaning of Article 6 (Art. 6) of the Convention. Also, the administrative authorities dealt with her complaints arbitrarily and did not follow any legal procedure. Moreover, during the hearing on 24 April 1996 the judge at the Sofia Regional Court dictated for the record a summary of the oral submissions of the applicant's lawyer, instead of allowing their literal recording, as was done when the adverse party spoke.

a) The Commission recalls that there are three criteria to be taken into account when deciding whether a person was "charged with a criminal offence" for the purposes of Article 6 (Art. 6). These are: the classification of the proceedings under national law (this factor being a starting point and of relative weight); the nature of the proceedings; and the nature and the degree of severity of the penalty (Eur. Court HR, Benham v. the United Kingdom judgment of 10 June 1996, para. 56, to be published in Judgments and Decisions 1996).

The Commission notes that the prohibition against leaving the country was imposed in order to secure the payment of taxes due under a final judgment. This measure was provided for under administrative law. Also, the applicable procedure was not that under the Law on Administrative Offences and Punishment, but under the Law on Administrative Procedure.

Moreover, such prohibition could be imposed on anyone owing a significant amount, the existence of a wilful refusal to pay or of negligence being irrelevant. Finally, the ban on leaving the country could not be replaced by imprisonment under any circumstance.

It does not appear, therefore, that the proceedings related to the travel ban involved any "criminal charge" within the meaning of Article 6 (Art. 6) of the Convention. This provision, accordingly, was not applicable to the proceedings in question.

It follows that insofar as the applicant invokes Article 6 (Art. 6) of the Convention, her complaint must be rejected as incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 27 para. 2 (Art. 27-2).

b) Examining the applicant's complaint under Article 13 (Art. 13) of the Convention, and assuming that she had an arguable claim of a breach of another Convention Article, the Commission notes that the applicant was able to seize the courts and that the Sofia Regional Court delivered a reasoned decision after examining the complaints and following a hearing. It does not appear, therefore, that the applicant was denied an effective remedy.

It follows that the complaint under Article 13 (Art. 13) of the Convention is manifestly ill-founded and has to be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

H.C. KRÜGER	S. TRECHSEL
Secretary	President
to the Commission	of the Commission