AS TO THE ADMISSIBILITY OF

Application No. 24571/94
by Grigor STOITCHKOV
against Bulgaria

Application No. 24572/94
by Lubomir SHINDAROV
against Bulgaria

The European Commission of Human Rights (First Chamber) sitting in private on 28 June 1995, the following members being present:

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

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 applications introduced on 14 March 1994 by Grigor Stoitchkov and Lubomir Shindarov against Bulgaria and registered on 8 July 1994 under file Nos. 24571/94 and 24572/94;

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

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

The first applicant, born in 1926, was Deputy Prime Minister of Bulgaria from 1978 until 1989. The second applicant, born in 1920 was Deputy Minister of Public Health from 1981 until 1989. The applicants are Bulgarian citizens, currently retired. Before the Commission the first applicant is represented by Mr. Eniu Komitov, and the second applicant by Mr. Georgi Varbanov, lawyers practising in Sofia.

Particular circumstances of the case

Preliminary investigations

In 1990 the Prosecutor General's Office brought charges against the applicants for failure to undertake the necessary protection measures against the effects of nuclear radiation, which had permeated into Bulgaria following the accident in the Chernobyl nuclear power station on 26 April 1986. At the time of the accident the first applicant was Chairman of the Standing Governmental Committee against

Natural Calamities and Severe Industrial Accidents, the second applicant was Chief State Sanitary Inspector of Bulgaria and also professor and researcher in medicine.

During the preliminary investigations documentary evidence was collected, witnesses were examined, and a group of leading national experts in medicine and a nuclear physicist submitted two reports.

On 22 February 1991 the Prosecutor General's Office indicted the applicants. According to the bill of indictment in 1986 and 1987 the applicants had failed to take adequate measures required by their respective positions despite having been regularly informed by experts about the radiation level and its medical consequences.

The applicants were indicted under Section 356z of the Criminal Code for violating existing rules for nuclear safety (see below Relevant domestic law). The indictment listed further provisions breached by the applicants such as the Law on the Peaceful Use of Nuclear Power, the Regulation on Nuclear Safety, the Regulation on Urgent Measures in Cases of Natural Calamities and Severe Industrial Accidents, the Law on the Public Health, and the Regulations for the Application of the Law on the Public Health.

The first applicant was also charged under Section 356i of the Criminal Code in connection with the economic losses which had occurred allegedly as a result of his behaviour (see below Relevant domestic law).

First instance proceedings

The Supreme Court, sitting as a court of first instance, held several hearings on the case, during which it heard experts and witnesses and examined other evidence. At the hearing on 15 April 1991 the applicants' lawyers requested that the Court should appoint an international expert group of representatives of the International Atomic Energy Agency. The Court declined the request and instead appointed another group of national experts.

On 12 December 1991 the Supreme Court sentenced the first applicant to three years' imprisonment and the second applicant to two years' imprisonment. The Supreme Court found the applicants guilty on the grounds and under the provisions referred to in the indictment. The reasoning part of the judgment stated inter alia that the first applicant "by virtue of his inactivity had breached Section 4 of Part II, Sections 5 and 6 of Part VII as such and in their functional link with the other provisions of the 1972 Regulation on Nuclear Safety, for example Section 4 of Part VI and Section 2 of Part VII."

Second instance proceedings

Upon the applicants' and the Prosecutor's appeals, the Chamber of the Supreme Court, sitting as a court of second instance, examined the case.

In the course of the proceedings, on 11 December 1992 the Council of Ministers adopted a new Regulation on Nuclear Protection, which replaced the 1972 Regulation on Nuclear Safety.

On 16 September 1993 the Court quashed the first applicant's conviction insofar as it concerned the crime under Section 356i of the Criminal Code and returned this part of the case to the Prosecutor General's Office. The Court found that the first instance Court had breached the first applicant's defence rights by declining the request of the defence for additional questions to the experts in connection with the assessment of the alleged economic losses.

On the other hand the Chamber of the Supreme Court upheld the

applicants' conviction under Section 356z of the Criminal Code, though it modified the reasons therefor as the first instance Court had incorrectly examined the applicants' acts under various provisions of different laws and regulations. Some of those provisions were inapplicable as they could not be considered "rules for nuclear safety" within the meaning of Section 356z of the Criminal Code. Others did not directly concern the applicants' behaviour. Instead, it had been necessary and sufficient to examine whether Section 2 Part VII of the Regulation on Nuclear Safety had been breached. The crime which the applicants had committed was still that under Section 356z of the Criminal Code, but in conjunction only with Section 2 Part VII of the Regulation on Nuclear Safety. Although this specific provision had not served as ground for either the indictment or the first instance judgment, the modification of the judgment did not impede the applicants' defence rights and the case did not have to be returned to the Prosecutor General's Office. This was so because there was no change in the facts on which the conviction had been based and also because Section 2 Part VII of the Regulation on Nuclear Safety was in fact a general summary rule for nuclear safety, which embodied the various provisions invoked in the indictment and the first instance decision. The applicants had had the opportunity to discuss in their pleadings the issues relating to the breach of Section 2 Part VII of the Regulation on Nuclear Safety and they had in fact done so.

The Chamber of the Supreme Court also discussed the applicants' argument that certain paragraphs in the first instance judgment disclosed political bias. The Court found that the judgment had always referred to, and had based its conclusions on, an analysis of the applicants' behaviour during the relevant period of time, not on their political beliefs. The Court also dismissed as unsubstantiated the applicants' assertion that the purpose of the trial had been political. The applicants' sole argument had been that they had been randomly chosen to stand trial among many other former officials, equally involved in the events at issue.

As a result of this judgment the first applicant's punishment was reduced to two years' imprisonment. The second applicant's term of imprisonment remained unchanged.

Review proceedings

The applicants submitted petitions for review before the Penal Plenary of the Supreme Court in accordance with Section 350 of the Code of Criminal Procedure (see below Relevant domestic law), alleging inter alia that the modification of the judgment by the second instance Court had violated their defence rights and that the Court should have applied the new Regulation on Nuclear Safety, adopted in 1992, which contained different rules.

On 1 October 1993, upon the applicants' petition, the Supreme Court temporarily suspended the execution of their sentences in view of the complexity of the case.

On 6 July 1994, after several hearings, the Penal Plenary of the Supreme Court upheld the applicants' convictions and also decided to release the second applicant on probation in view of his age and health.

In response to the applicants' argument concerning the revised reasoning in the second instance judgment, the Court stated that throughout the proceedings the applicants had been on trial for the same crime and based on facts for the breach of the same general rule for nuclear safety, namely the rule that the exposure of the population to nuclear radiation should be as low as reasonably achievable. This had not changed simply because the indictment and the first instance judgment had referred to various specific elaborate rules, whereas the second instance Court had chosen to point to the provision containing

the general rule. Moreover, the applicants had built their defence on challenging the applicability of precisely this general rule by stating that it had been merely a scientific theory and not a legally binding rule. Therefore, and since no new facts had served as grounds for the conviction, the Court found that there had been no violation of the applicants' defence rights.

Addressing the applicants' complaint that the new Regulation for Nuclear Protection should have been applied, the Court found that the 1992 Regulation was even less favourable for the applicants and therefore the case did not fall under Section 2 para. 2 of the Criminal Code, which provided for the application of the more favourable provision, had the law been changed before the judgment's entry into force. Moreover, the rule of Section 2 Part VII of the old Regulation was reiterated in the 1992 Regulation albeit in a different wording.

In a dissenting opinion, the minority stated inter alia, that the modification of the grounds for the sentence had been in violation of the applicants' defence rights. This was so because the second instance Court had found that various provisions on nuclear safety, referred to in the first instance judgment, had been inapplicable and therefore the Court had in fact quashed the first instance judgment. It was unlawful despite such findings to uphold the judgment and to substitute completely its grounds.

Relevant domestic law

a. Sections 356z and 356i of the Bulgarian Criminal Code, insofar as relevant, state as follows:

<Translation>

Section 356z

"(1) Whoever breaches the rules for nuclear and radiation safety, having knowingly disregarded the likelihood that bodily harm or death might be caused to others, shall be punished with imprisonment of up to three years."

..."

Section 356i

"Where by virtue of a crime under [Section 356z], as a result of a negligent conduct:

a) there has been substantial pecuniary damage;
...

the punishment shall be: under subpara. (a), imprisonment of up to five years; ..."

<Bulgarian>

Chlen 356z

"(1) Koito narushi pravilata za iadrenata ili radiatsionnata bezopasnost, kato dopuska, che mozhe da posledva telesna povreda ili smurt na drugigo, se nakazva s lishavane ot svoboda do tri godini.

..."

Chlen 356i

"Kogato s deianie po predhodnia chlen po nepredpazlivost sa prichineni:

a) znachitelni imushtestveni vredi;
...

nakazanieto e po bukva "a" - lishavane ot svoboda do pet godini;
..."

b. The Code of Criminal Procedure, which defines the Supreme Court powers in the review proceedings, states insofar as relevant:

<Translation>

Section 328

"The judgment shall be modified or set aside:

1. whenever it is contrary to the law;
2. whenever substantial breaches of procedural law have occurred;
3. whenever there has been deficiency of proof;
4. whenever it is ill-founded;
5. whenever the punishment imposed is manifestly unfair."

Section 349

"(1) Review proceedings shall be admissible for the examination of:

1. conviction judgments, which have entered into force;
2. decisions for termination of the criminal proceedings ...;
3. second instance judgments ...;

..."

Section 350

"Review proceedings shall be instituted upon the petition of the convicted ..."

Section 356

"Review proceedings shall be admissible in the case of substantial breaches under Section 328."

Section 357

"(1) Should it find the petition for review well founded, the review court shall either:

1. set aside the first and the second instance judgments and return the case for renewed examination;

2. set aside the first and the second instance judgments and suspend or terminate the proceedings;

3. set aside the second instance judgments and uphold or modify the first instance judgment;

4. modify the second instance judgment.

..."

<Bulgarian>

Chlen 328

"Prisadata podlezhi na otmeniavane ili izmeniavane:
1. kogato e narushen zakonat;

2. kogato e dopusnato sashtestveno narushenie na protsesualnite pravila;
3. kogato e postanovena pri nepalnota na dokazatelstvata;
4. kogato ne e obosnovana;
5. kogato nalozhenoto nakazanie e iavno nespravedlivo."

Chlen 349

"(1) Na pregled po reda na nadzora podlezhat:
1. vlezlite v sila prisadi;
2. vlezlite v sila opredelenia, s koito se prekratiava nakazatelnoto presledvane ...;
3. resheniata na vtorata instantsia ...
..."

Chlen 350

"Proizvodstvoto za pregled po reda na nadzora se obrazuva po molba na osadenia ..."

Chlen 356

"Pregled po reda na nadzora se dopuska pri osobeno sashtestveni narushenia po chlen 328."

Chlen 357

"(1) Kogato nameri predlozhenieto za pregled po reda na nadzora za osnovatelno, nadzornata instantsia mozhe:
1. da otmeni prisadata na parvata instantsia i reshenieto na vtorata instantsia i da varne deloto za novo razglezhdane;
2. da otmeni prisadata na parvata instantsia i reshenieto na vtorata instantsia i da prekrati ili spre nakazatelnoto proizvodstvo;
3. da otmeni reshenieto na vtorata instantsia i da ostavi v sila ili izmeni prisadata;
4. da izmeni reshenieto na vtorata instantsia.

..."

COMPLAINTS

The applicants complain of the alleged unfairness of the criminal proceedings, of violations of their defence rights and of the alleged partiality of the courts. Thus they were convicted for the violation of a provision which had not been brought against them prior to the decision of the second instance court. Moreover, they were convicted for the violation of a regulation which had been replaced by new legislation in the course of the second instance proceedings. The applicants further complain that the first instance court rejected their request for the appointment of an international expert group, such international participation having been essential in view of the complexity of the case and the partiality of the national experts. The applicants invoke Article 6 paras. 1 and 3(a),(b) and (c) of the Convention.

The applicants submit that numerous phrases in the judicial decisions indicate political bias against them. Moreover, during the trial there were demonstrations before the court and a campaign in the media, which made the proceedings political. In this respect Article 14 of the Convention in conjunction with Article 6 has been violated.

THE LAW

1. The applicants complain under Article 6 paras. 1 and 3 (a),(b) and (c) (Art. 6-1, 6-3-a, 6-3-b, 6-3-c) of the Convention of the alleged unfairness of the criminal proceedings, of violations of their

right to prepare their defence and of the alleged partiality of the courts. They also complain under Article 14 in conjunction with Article 6 (Art. 14+6) of the Convention of the alleged discrimination on political grounds. Article 6 paras. 1 and 3(a),(b) and (c) (Art. 6-1, 6-3-a, 6-3-b, 6-3-c) of the Convention, insofar as relevant, state as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> a. to be informed promptly ... and in detail, of the nature and cause of the accusation against him;
>
> b. to have adequate time and facilities for the preparation of his defence;
>
> c. to defend himself in person or through legal assistance of his own choosing ..."

2. The Commission, having regard to the similarities of the applications, finds it convenient to join them in accordance with Rule 35 of its Rules of Procedure.

3. The Commission has first examined its competence ratione temporis and ratione materiae in the present case.

a) 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 applicants' complaints relate to a period of time prior to 7 September 1992, the Commission finds that this part of the applications 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, 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 16 September 1993, i.e. after 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 ending with the decision of the Chamber of the Supreme Court of 16 September 1993.

b) The Commission must next examine whether the review proceedings before the Penal Plenary of the Supreme Court, ending with the judgment of 6 July 1994, fall within the scope of Article 6 (Art. 6) of the Convention.

The Commission notes that it was within the powers of the Penal

Plenary of the Supreme Court to examine, and in fact it did examine, whether the first and second instance judgments were contrary to the law or ill-founded, whether there had been a substantial breach of procedure or whether the punishment had been manifestly unfair. The Penal Plenary of the Supreme Court in the review proceedings was competent to quash the judgments of the Supreme Court and of the Chamber of the Supreme Court or, as it happened, to uphold them.

In the Commission's view these proceedings must therefore also be regarded as having the effect of determining the criminal charges against the applicants within the meaning of Article 6 para.1 (Art. 6-1) of the Convention.

4. The applicants complain under Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention that they were convicted for the violation of a provision which had not been brought against them prior to the decision of the second instance court.

As the requirements of paragraph 3 of Article 6 (Art. 6-3) are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1 (Art. 6-1), the Commission will examine the complaints under both paragraphs taken together (cf. F.C.B. v. Italy judgment of 28 August 1991, Series A no. 208-B, p. 20, para. 29).

The Commission recalls its case-law according to which an accused person has the right to be informed not only of the grounds for the accusation, that is, not only of the acts with which he is charged and on which the indictment is based, but also of the nature of the accusation, namely the legal classification of the acts in question. In addition, because of the logical link between subparagraphs 3(a), (b) and (c) of Article 6 (Art. 6-3-a, 6-3-b, 6-3-c), the information about the nature and cause of the accusation must be adequate to enable the accused to prepare his defence accordingly (No.524/59, Dec. 19.12.60, Yearbook 3 pp.322, 344; No 8490/79, Dec. 12.3.81, D.R. 22 p.140). In the present case the question arises whether there had been a change in the nature of the accusation and if so, whether the applicants had been able to defend themselves against it.

The Commission notes that throughout the proceedings the applicants were accused under the same provision of the Criminal Code, namely Section 356z. In the indictment and in the first instance judgment, the conclusion that the applicants' acts constituted a violation of Section 356z resulted from an analysis of numerous provisions from several laws and regulations such as the Law on Peaceful Use of Nuclear Power, the Law on Public Health, the Regulation on Nuclear Safety, the Regulation on Urgent Measures in Cases of Natural Calamities and Severe Industrial Accidents. The Chamber of the Supreme Court, acting as second instance court, based the reasoning of its judgment on only one provision, namely Section 2 Part VII of the Regulation on Nuclear Safety, which had been mentioned in, but not stated as a ground for, the first instance judgment.

Furthermore, the Chamber of the Supreme Court and the Penal Plenary of the Supreme Court in the review proceedings found that Section 2 Part VII was a general rule embodying various specific rules for nuclear safety, among them those which had been the grounds for the indictment and the first instance judgment. Furthermore, the indictment and the first instance judgment in its 77 pages, discussed in their reasoning parts numerous departmental regulations and chose to state as grounds for their final conclusions only part of them. Notably Section 2 Part VII of the Regulation on Nuclear Safety was among the provisions discussed in the reasoning part of the first instance judgment.

Throughout the proceedings, moreover, the applicants' lawyers founded their submissions inter alia on the statement that all rules for nuclear safety and above all the general rule for nuclear safety,

which was that embodied in Section 2 Part VII of the Regulation on Nuclear Safety, had merely been the expression of a scientific theory, and therefore not applicable as binding legal rules. In addition, the applicants presented all their arguments against the application of Section 2 Part VII in the review proceedings, where the Penal Plenary of the Supreme Court examined inter alia whether the judgments under review were contrary to the law, ill-founded or proof deficient. As a result, the applicants could and in fact did defend themselves under this provision.

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

5. The applicants further complain under Article 6 (Art. 6) of the Convention that the first instance court rejected their request for the appointment of an international expert group and that all the judgments in their case disclosed political bias. They also invoke Article 14 in conjunction with Article 6 (Art. 6) stating that there had been discrimination on political grounds against them and that the purpose of their conviction had been political.

Insofar as these complaints concern the preliminary investigation and the first instance proceedings ending with the judgment of 12 December 1991, the Commission has just found that it is not competent ratione temporis to examine this part of the complaints.

As regards the remainder of the complaints under Article 6 (Art. 6) of the Convention, the Commission recalls that its 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).

In the present case the Commission finds no indication that in the second instance proceedings and in the review proceedings, the applicants, who were represented by four lawyers, could not sufficiently put forward their point of view, that the judges were biased or that the proceedings were otherwise unfairly conducted. Moreover, the judgments resulted from the analysis of evidence derived from documents, testimonies of numerous witnesses and reports of several groups of leading national experts. The Courts addressed in detail almost every objection of the applicants. Furthermore, it does not transpire that the judgments disclosed judicial prejudice toward the applicants' political beliefs.

As regards their complaints under Article 14 in conjunction with Article 6 (Art. 14+6) of the Convention of the alleged discrimination on political basis, the Commission has just found that there is no appearance of a political bias in the present case.

This conclusion is equally valid insofar as the applicants may be understood as complaining under Article 18 in conjunction with Article 5 subpara. (1)(a) (Art. 18+5-1-a) of the Convention in that the purpose of their conviction had been political.

It follows that this part of the applications is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

6. The applicants also invoke Article 6 (Art. 6) of the Convention in that they were convicted based on a provision of the Regulation on Nuclear Safety, which had been replaced by new legislation in the course of the second instance proceedings.

The Commission, which has examined this complaint under Article 7 of the Convention, finds that the applicants had been prosecuted and

convicted under Section 356z of the Criminal Code, which had never been amended. Moreover, the departmental regulation at issue had been in force from 1972 until 1992, i.e. at the time when the criminal offence was committed. In any event, the penalty imposed on the applicants had been reduced and mitigated, rather than increased by the second instance and the review Courts.

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

For these reasons, the Commission, unanimously,

1. DECIDES TO JOIN APPLICATIONS Nos. 24571/94 AND 24572/94;

2. DECLARES THE APPLICATIONS INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)