FIFTH SECTION

CASE OF RIENER v. BULGARIA

(Application no. 46343/99)

JUDGMENT

STRASBOURG

23 May 2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Riener v. Bulgaria,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 2 May 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 46343/99) against the Republic of Bulgaria lodged on 28 August 1997 with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mrs Ianka Riener ("the applicant"), an Austrian national who at the relevant time also had a Bulgarian nationality.

2. The applicant was represented by Dr H. Vana, a lawyer practising in Vienna. The Bulgarian Government ("the Government") were represented by their agents, Ms M. Dimova, Ms M. Kotzeva and Ms K. Radkova, of the Ministry of Justice.

3. The applicant alleged, in particular, that there had been violations of Articles 8 and 13 of the Convention and Article 2 of Protocol No. 4 to the Convention in respect of the prohibition against her leaving Bulgaria, the refusal of her request to renounce Bulgarian citizenship and the alleged lack of effective remedies in relation to those events.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. On 25 March 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, on 14 December 2004, the Court decided to examine the merits of the application at the same time as its admissibility.

6. The applicant being of Austrian nationality, by letter of 16 December 2004 the Austrian Government were invited to state whether they wished to intervene in accordance with Article 36 of the Convention. They did not avail themselves of that possibility.

7. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, Mrs Ianka Riener, was born in 1946 in Lubimetz, Bulgaria, and lives currently in Sofia.

A. Relevant background

9. The applicant moved to Austria in 1985 and in 1986 married an Austrian national. In December 1989 she obtained Austrian nationality. Until December 2004 she remained a Bulgarian national (see paragraphs 48-52 below).

10. The applicant has a daughter, born in 1963 in Bulgaria, currently an Austrian national living in Austria with her husband and children (the applicant's grandchildren).

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

12. Between 1991 and 1995 the applicant spent most of her time in Bulgaria. She has remained there ever since.

13. By decision of 1 July 1992 a district fiscal authority in Sofia found that the applicant owed 26,494,582 "old" Bulgarian levs ("BGL") of unpaid excise tax and BGL 4,104,925 of interest (the total amount due having been at the time the equivalent of about 1 million United States dollars ("USD"). The applicant's ensuing appeals were dismissed on 20 August 1992 by the Sofia fiscal authority and on 7 April 1993, after a hearing on the matter, by the Sofia City Court. On 7 October 1994 the Supreme Court dismissed the applicant's petition for review (cassation) 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.

14. In 1992 and 1993 the fiscal authorities attached certain monies in bank accounts of the applicant and her company. It appears that not more than BGL 400,000 (less than 2 % of the debt) was thus collected in 1992.

15. In 1993 the fiscal authorities attached another USD 50,000. A smaller amount of money was seized from the applicant in relation to a criminal investigation against her, opened in 1991. The investigation was discontinued in 1993 and the money restored to her later (see paragraphs 53-56 below).

B. Prohibition against the applicant leaving the country ("the travel ban")

1. Events before April 1997

16. On 1 March 1995 the Sofia fiscal authority asked the Passport Department at the Directorate of the Police (Napravlenie "Pasporti i vizov rezhim, DNP) ("the Passport Police") to impose on the applicant a travel ban under section 7 of the Law on Passports for Travelling Abroad (Zakon za zadgranichnite pasporti) ("the Passport Law"), until the payment of her debt, as established by the courts.

17. On 7 March 1995 the Passport Police issued an order which stated *inter alia* that a prohibition was imposed against the applicant 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).

18. 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 applicant did not have a Bulgarian passport.

19. Upon the applicant's complaint, on 20 April 1995 the Passport Police informed her that a travel ban under section 29(1)(v) of the Law on the Sojourn of Aliens had been imposed, in relation to the applicant's obligation to pay BGL 26,499,582.

20. On 26 May 1995 the applicant submitted an appeal to the Ministry of the Interior. She stated that the measure was unlawful as on other occasions she had been considered a Bulgarian citizen. On 22 June 1995 the Ministry replied stating that the measure against her had been based both on section 7(e) of the Passport Law and on section 29(1)(v) of the Law on the Sojourn of Aliens and had been lawful.

21. On 28 June 1995 the applicant submitted an appeal to the Sofia City Court. She stated, *inter alia*, that she was a Bulgarian citizen and measures under section 29 of the Law on the Sojourn of Aliens could not be applied against her. She also claimed that the authorities held an adequate security

as they had attached funds of the Austrian company worth USD 50,000. 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.

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

23. On 13 June 1996 the Sofia City Court dismissed the appeal. It 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 Law on Sojourn of Aliens. 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 Law on the Sojourn of Aliens and on the Passport Law.

24. On 25 June 1996 the applicant submitted to the Supreme Court a petition for review (cassation). On 17 March 1997, the Supreme Administrative Court, to which the case was transmitted following a reform in the judicial system, dismissed the applicant's petition for review (cassation). It appears that another appeal against these decisions was dismissed by the Supreme Administrative Court on 13 June 1999.

2. The decision of the former Commission of 11 April 1997 in application no. 28411/95

25. By partial decision of 12 April 1996 and final decision of 11 April 1997 (DR 89, p. 83) the former European Commission of Human Rights declared inadmissible the applicant's application in which she claimed, *inter alia*, that there had been violations of her right to freedom of movement and to respect for her private and family life on account of the restrictions on her travelling outside Bulgaria. The Commission found that the former complaint was incompatible *ratione materiae* with the provisions of the Convention as Bulgaria had not been a party to Protocol No. 4 of the Convention and that the latter complaint, examined under Article 8 of the Convention, was manifestly ill-founded, the applicant not having substantiated details about her family circumstances or whether or not she actually lived with her family between 1991 and 1995. The Commission also noted that there were no obstacles against the applicant's family joining her in Bulgaria. In these circumstances there was no interference with her rights under Article 8 of the Convention.

3. Events after the decision of the former Commission

(a) The authorities' refusal to lift the travel ban and ensuing proceedings

26. In 1996 and 1997 the value of the Bulgarian currency depreciated sharply and the inflation rate ran high. Statutory default interest rates also increased significantly but did not compensate fully for the inflation and the depreciation of the currency. As a result, persons owing monetary debts denominated in Bulgarian currency saw the burden of their debt diminish.

27. According to calculations made by the fiscal authorities, as of 25 June 1997 the applicant's outstanding debt was BGL 317,482,761 (the equivalent of approximately USD 160,000 at that time).

28. On 18 July 1997 the applicant requested the Ministry of the Interior to terminate the prohibition against her leaving the country. On 5 August 1997 the request was refused. The decision stated that the prohibition was still in force and that the matter could not be re-examined, all administrative and judicial avenues of appeal having been exhausted.

29. The applicant appealed against that refusal to the Sofia City Court which, on 11 November 1997, granted the appeal and set aside the refusal of the Ministry of the Interior. The court noted that the prohibition had been based on the Law on the Sojourn of Aliens. However, the applicant also had a Bulgarian nationality and, therefore, was not an alien. The authorities should have applied the Passport Law. Furthermore, the fiscal authorities were holding a significant amount as security, which could probably satisfy their claim against the applicant. It appears that the latter conclusion of the court was not based on a precise calculation of the debt. The Sofia City Court's judgment of 11 November 1997 never entered into force as the Ministry of the Interior successfully appealed (see paragraphs 38-40 below).

30. On 14 November 1997 the passport police issued a new order prohibiting the applicant's leaving Bulgaria. The order referred to new enforcement proceedings opened by the fiscal authorities in respect of the same debt. It was based on section 29(1)(v) of the Law on the Sojourn of Aliens.

31. Following these developments, there were two separate sets of judicial proceedings and two administrative proceedings, all concerning the travel ban imposed on the applicant:

(b) First set of judicial proceedings

32. On an unspecified date in 1997 the applicant appealed to the Sofia City Court against the order of 14 November 1997.

33. On 20 May 1999 the Sofia City Court dismissed her appeal, noting that the applicant owed significant amounts and that insufficient security had been provided.

34. Upon the applicant's cassation appeal, on 21 June 2000 the Supreme Administrative Court upheld the lower court's decision. Addressing the applicant's argument that the new Aliens Law, in force since December 1998, should be applied, the court stated that that law did not have retroactive effect. The courts' task was to assess the lawfulness of the impugned administrative order in accordance with the law as in force at the moment when it was issued. Furthermore, it was not true that there had been "violations of international law".

(c) Administrative proceedings

35. Separately, in 2000 the applicant also submitted administrative appeals against the order of 14 November 1997. She relied, *inter alia*, on Protocol No. 4 to the Convention, in force for Bulgaria as of 4 November 2000.

36. Her appeal to the Ministry of the Interior was dismissed on 12 December 2000. The reply stated that the travel ban could only be lifted in case of payment of the debt or if sufficient security were deposited. As to the Fourth Protocol to the Convention, its Article 2 provided that freedom of movement could be restricted by national law. The former Law on the Sojourn of Aliens and the new Aliens Law provided for such restrictions.

37. The applicant's appeal to the Ministry of Finance was dismissed on 2 January 2001. She received a letter explaining that the measures against her were lawful as she had not paid her debt. Furthermore, the applicant could not rely on the Fourth Protocol to the Convention, which had entered into force for Bulgaria in 2000, because the impugned order had been issued on 14 November 1997.

(d) Second set of judicial proceedings

38. On an unspecified date in 1997 the Ministry of the Interior appealed against the Sofia City Court's judgment of 11 November 1997 (see paragraph 29 above). In these proceedings the Ministry's request for a stay of execution was granted on 23 December 1997 by the Supreme Administrative Court. In her submissions to the courts the applicant relied, *inter alia*, on Articles 8 and 13 of the Convention.

39. On 22 December 1999 the Supreme Administrative Court set aside the Sofia City Court's judgment of 11 November 1997 and dismissed the applicant's request for the termination of the travel ban. The court found that the deposit held by the fiscal authorities as security was insufficient. It also found that prohibitions on leaving the country could be imposed on Bulgarian and foreign nationals alike and that it was not unlawful to rely on the Law on the Sojourn of Aliens. Although certain aspects of the legislation as in force at the time the prohibition had been imposed might have been unclear, the applicant was not entitled to rely thereon with the purpose to leave the country without having paid her debt. The court also

stated that the prohibition would remain in force as long as the reasons for which it had been imposed remained valid.

40. The applicant's subsequent request for reopening of these proceedings was dismissed on 19 March 2001.

(e) Continuing refusals of the authorities to lift the travel ban

41. The prohibition against the applicant leaving Bulgaria remained in force. Throughout the relevant period, by way of yearly internal notes the fiscal authorities informed the passport police that the applicant had not paid yet.

42. On 13 February 2002 the applicant's Austrian passport was returned to her without prejudice to the prohibition on her travelling outside Bulgaria, which remained in force.

43. On 10 February 2003 the applicant again requested that the travel ban be lifted, arguing that the statutory limitation period in respect of her debt had expired.

44. By letter of 13 February 2003 the Passport police refused. The applicant filed an appeal with the Sofia City Court, but it was never examined.

(f) The lifting of the travel ban

45. On 26 August 2004 the Sofia tax authority sent a letter to the Ministry of the Interior, Directorate of Migration, stating, *inter alia*:

> "Having regard to the fact that the absolute prescription period with regard to the [applicant's] fiscal debt, which was established by administrative decisions of 1 July 1992 and 9 October 1992, has expired and taking into consideration the fact that the [applicant] has made an objection with reference to the expiry of the prescription period, [it follows that] the fiscal administration's right to seek the collection of the debt is extinguished... Therefore, there are no longer valid grounds for the prohibition against [the applicant] leaving the country... You are requested to repeal [that] administrative measure..."

46. On 27 August 2004 the Ministry of the Interior repealed the prohibition. On 1 September 2004 the applicant received a copy of the order.

47. The applicant remained in Bulgaria. In her letter of 23 September 2005 to the Court she explained that she stayed because she needed to organise the liquidation of her husband's company in Bulgaria and that she would leave as soon as the liquidation procedure was completed.

C. The applicant's requests to renounce her Bulgarian citizenship

48. In 1989, 1994 and 1995 the applicant's requests to renounce her Bulgarian citizenship were refused by way of unreasoned decisions.

49. In February 2001 the applicant submitted again a request to the Ministry of Justice, seeking to renounce her Bulgarian citizenship. By decree of the President of Bulgaria of 12 October 2001 the request was refused. The decree is not amenable to judicial review (see paragraph 70 below). The applicant nevertheless attempted to institute judicial proceedings, challenging the fact that the Ministry of Justice had given a negative opinion on her request, before its transmission to the President. Those proceedings ended by final decision of 22 April 2004 of the Supreme Administrative Court, whereby the applicant's appeal was declared inadmissible.

50. Despite the refusal of her request, as she did not wish to be regarded as a Bulgarian citizen, the applicant refused to apply for Bulgarian identity papers and as a result encountered certain difficulties in respect of health care, housing, etc in the period 2001–2004. The applicant wished to have papers of a foreigner residing in Bulgaria. However, she was repeatedly informed that in accordance with the relevant law Bulgarian citizens who held a second citizenship were considered as Bulgarian citizens for purposes of their relations with the Bulgarian authorities.

51. On 19 June 2003 the applicant requested again to renounce her Bulgarian citizenship. In 2003 the Austrian Embassy in Sofia inquired with the Bulgarian authorities about the applicant's situation, expressed the view that the statutory prescription period for the applicant's debt had expired and considered that the applicant's request to renounce her Bulgarian citizenship could be granted.

52. By decree of 8 December 2004, the Vice President of Bulgaria granted the applicant's request to renounce her Bulgarian citizenship. The applicant was informed thereof by letter of 25 January 2005.

D. Other developments

53. On 23 November 1998 the Sofia District Court gave judgment in a case concerning the applicant's appeal against the attachment order made by the fiscal authorities in 1993. The attachment order was declared unlawful and set aside. As a result, on 6 January 1999 the fiscal authorities lifted the attachment of USD 50,000 which was paid to the applicant's bank account.

54. In September 1999 the applicant brought an action against the fiscal authorities and several courts claiming damages as a result of numerous allegedly unlawful acts against her.

55. On 15 May 2003 the Sofia City Court dismissed the claims. The court acknowledged, *inter alia*, that the attachment imposed by the fiscal authorities in 1993 had been declared unlawful in 1998 and that the seizure of an amount of money in 1991 by the investigation authorities had also been annulled. As a result, in principle the applicant was entitled to compensation under the State Responsibility for Damage Act. However, she

had failed to prove the amount of the loss suffered. Her action was, therefore, unsubstantiated and ill-founded. As far as alleged losses resulting from the travel ban were concerned, the court found that the prohibition on the applicant leaving Bulgaria was lawful and no issue of State liability arose.

56. The applicant appealed to the Sofia Appellate Court. The outcome of those proceedings is unknown.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Prohibition against leaving the country

57. Article 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 by act of Parliament, in the interest of national security, for the protection of public health and the rights and freedoms of others."

58. At the time when the initial prohibition was imposed, the relevant legal provisions were those of the Law on the Passports for Travelling Abroad (the Passport Law) and the Law on the Sojourn of Aliens.

59. The Passport Law, in sections 7(e) and 8, provided that the issuance of a passport might be refused, or the passport seized, if, *inter alia*, the person concerned had "significant pecuniary obligations, established by the courts, owed to the State or to Bulgarian legal persons or nationals, except if the [person's] possessions cover the obligations or if a duly executed collateral is submitted."

60. Section 29 of the Law on the Sojourn of Aliens insofar as relevant, provided that an alien might be refused permission to leave the country where he or she owed the payment of a fine or another pecuniary obligation to the State. Paragraph 2 of section 29 provided:

> "The alien may be authorised by the competent state organ to leave the country if there are guarantees that he [or she] will fulfil the obligations ... or if a security has been deposited..."

61. In December 1998 the Law on the Sojourn of Aliens was superseded by the Aliens Law.

62. Its section 43 provides that a prohibition on leaving the country may be imposed on aliens or persons who hold at the same time a Bulgarian and a foreign nationality.

63. In the initial text of the 1998 Aliens Law, one of the grounds for such a prohibition was unpaid debts. According to section 43 as in force since 2002, only unpaid debts owed to the State and exceeding 5,000 "new"

Bulgarian levs ("BGN") (approximately EUR 2,500) may serve as grounds for a ban on leaving the country.

64. On 1 April 1999 the Passport Law was superseded by new legislation, the Law on the Bulgarian Identity Documents.

65. Under section 75(5) of the new law, Bulgarian citizens who owe significant amounts to the State may be prevented from leaving the country.

66. Under all relevant provisions, the only grounds on which a prohibition on leaving the country may be lifted are payment of the debt or the deposit of sufficient security. The prohibition is not subject to a statutory maximum of duration.

B. Prescription periods for fiscal receivables

67. In accordance with section 22 of the Fiscal Procedure Act, in force until 1 January 2000, the statutory prescription period for fiscal and other public receivables was five years. That provision remains applicable to all fiscal receivables that became due before 1 January 2000 (Decision no. 8179 of 25.08.2003 in case no. 7256/02 of the Supreme Administrative Court).

68. In accordance with section 6 §§ 3 and 4 of the Collection of State Receivables Act 1989, in force until June 1996 (applicable in respect of receivables that became due before June 1996) and section 4 §§ 3 and 4 of the Collection of State Receivables Act 1996, as in force between June 1996 and 1 January 2000, a fresh five years' prescription period starts to run whenever the fiscal authorities undertake action to seek payment. It appears that as long as judicial proceedings concerning the fiscal receivable are pending, it is considered that action to seek payment is being undertaken (Decision no. 2352 of 16 March 2004 in case no. 4396/03 of the Supreme Administrative Court). Regardless of any suspension or renewal of the prescription period, fiscal receivables that became due before 1 January 2000 are considered prescribed after fifteen years ("absolute prescription period") (section 6 § 5 of the Collection of State Receivables Act 1989 and section 4 § 5 of the Collection of State Receivables Act 1996).

69. As of 1 January 2000, the new Fiscal Procedure Code regulates prescription periods in respect of receivables that became due after its entry into force. The "absolute prescription period" under the Code is ten years.

C. Renunciation of Bulgarian nationality

70. In accordance with section 20 of the Bulgarian Citizenship Act, a Bulgarian citizen living permanently abroad and having acquired a foreign nationality may file a request for renunciation of Bulgarian nationality. The request is processed by the Ministry of Justice. A final decision is taken by the President of the Republic. The law does not require reasons to be given

for a refusal of a request to renounce Bulgarian nationality. The President's decree is not amenable to judicial review (procedural decision of the Supreme Administrative Court no.1183 of 23.02.2001 in case no. 9708/2000).

71. Under the relevant fiscal law, renunciation of Bulgarian nationality is not among the grounds on which an individual may be relieved from the obligation to pay tax liabilities.

III. RELEVANT INTERNATIONAL MATERIALS

A. Restrictions on the right to leave one's country imposed for tax obligations

1. Restrictions in the domestic law of member states and other countries

(a) "Civil law" countries

72. In the law of several member states a possibility for imposing a ban on leaving one's country due to tax obligations is expressly provided for: Croatia, Moldova, the Netherlands, Slovakia, Georgia, Poland, Russia, Ukraine and Norway. In Greece and Hungary the legal provisions allowing restrictions on the right to leave one's country due to tax debts have now been abolished.

73. In most states the possibility to resort to a travel ban for unpaid taxes is not unconditional. In particular, in Croatia, a passport application can be denied if there is a justified suspicion that the applicant was going to evade a tax obligation. In the Netherlands, the law states that a travel document can be refused or invalidated if there is good reason to believe that the person is neglecting his obligation to pay taxes. In Slovakia, a passport can be withdrawn or its issue refused to a citizen upon a court's or tax authority's request when the person avoids the enforcement of the decision, or obstructs it or there is reason to believe that he or she will do so (an alien's freedom to leave the country can also be restricted). In Poland "unfulfilled obligations established by a court" can serve as grounds for a travel ban only if there is a serious risk that the person's travel abroad will render the fulfilment of the obligation impossible. In Norway, under the Enforcement of Civil Claims Act 1992, a debtor may be barred from leaving the country if that is essential for the enforcement of a court decision and seizure of property does not provide sufficient security (a prohibition order cannot be issued if, in view of the nature of the case and all of the

circumstances involved, it would be a disproportionately severe measure and the order automatically ceases to have effect after 3 months).

74. A further area in which countries resort to travel bans, is bankruptcy proceedings. The laws of several countries stipulate that a court may impose a prohibition against a debtor leaving the country in order to secure his presence before the court (e.g. Estonia, Denmark, Finland, Italy, Norway). Most member States' legal systems provide for prohibitions against leaving the country in respect of defendants in criminal proceedings.

(b) Common-law jurisdictions

75. In common-law jurisdictions, travel bans may be imposed by way of injunction.

(i) United Kingdom

76. In the United Kingdom, the tax authorities may seek from the courts a *Mareva* injunction (an order preventing the other party from disposing of assets outside the country), an injunction under section 37(1) of the Supreme Court Act 1981 to restrain the other party from leaving the jurisdiction ("*Bayer* injunction") or the writ of "*ne exeat regno*", an ancient writ which has much the same effect.

77. The simple fact that the person concerned has failed to pay would not be enough to satisfy the criteria for an injunction. In order to obtain an injunction under s. 37(1) restraining someone from leaving the country, the claimant must persuade the court that it is "necessary and convenient" to grant the order, for example, that the other party has information which he is refusing to disclose and which, if he is allowed to leave the United Kingdom, he will never disclose. A writ of "*ne exeat regno*" may be issued if several conditions are satisfied, such as, *inter alia*, cause to believe that the other party's absence from the jurisdiction would materially prejudice the claimant in pursuing the action.

78. Because the orders above are interferences with the liberty of the subject, they should last no longer than necessary – e.g. until the other party has disclosed all the information that they were refusing to disclose. The orders can be discharged on grounds that one of the requisite conditions was not in fact fulfilled but also on 'equitable' grounds.

(ii) Ireland

79. While the right to travel abroad is recognised as an implicit constitutional right in national case law, the courts have also recognised restrictions, in particular where there are "undischarged obligations".

80. In civil contexts, Irish courts, like English courts, may make use of *Mareva* injunctions or *Bayer* injunctions, as described above. The High Court has held that such orders could be granted only in exceptional and compelling circumstances. Probable cause for believing that the defendant

is about to absent himself from the jurisdiction with the intention of frustrating the administration of justice and/or an order of the court is a condition for granting an injunction. The injunction should not be imposed for punitive reasons. The injunction ought not to be granted where a lesser remedy would suffice and it should be interim in nature and limited to the shortest possible period of time. The defendant's right to travel should be out-balanced by those of the plaintiff and the proper and effective administration of justice.

2. Article 12 of the International Covenant on Civil and Political Rights and the practice of the United Nations Human Rights Committee

81. Article 12 of the ICCPR, which served as a basis for the drafting of Article 2 of Protocol No. 4 to the Convention, reads, in so far as relevant:

> "... (2) Everyone shall be free to leave any country, including his own.
>
> (3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant..."

82. The preparatory work of paragraph 3 of Article 12 reveals that, before agreeing on the general formula, the drafters had attempted first to come up with an exhaustive list of all grounds for restriction. The first draft thus contained no less than 14 reasons for which freedom of movement could be restricted, including tax debts. The list was eventually abandoned in favour of a general restriction clause.

83. The UN Human Rights Committee has not dealt specifically with the issue of tax debts either in its General Comment No. 27 (1999) on Article 12 of the ICCPR or in its observations on State reports in the context of the monitoring procedure. General Comment No. 27 (1999) contains some observations on the interpretation of Article 12:

> "Article 12, paragraph 3, clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.
>
> The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided."

84. In the context of the complaint procedure, in the case of *Miguel González del Río v. Peru*, the Committee was called to examine the

proportionality of the restriction on the applicant's freedom to leave his country imposed in judicial proceedings which had been delayed. It held as follows:

> "The Committee considers that pending judicial proceedings may justify restrictions on an individual's right to leave his country. But where the judicial proceedings are unduly delayed, a constraint upon the right to leave the country is thus not justified. In this case, the restriction on Mr. González' freedom to leave Peru has been in force for seven years, and the date of its termination remains uncertain. The Committee considers that this situation violates the author's rights under article 12, paragraph 2..."

B. Restrictions on renunciation of nationality on grounds of tax obligations

1. Restrictions in the domestic law of member states and other countries

85. The national citizenship laws generally provide that a renunciation request can be accepted only if the person concerned has acquired the citizenship of another state or has given assurances of acquiring one. Many states also require that the person concerned has his habitual residence abroad.

86. In a number of states renunciation requests may be refused in connection with military service duties (Austria, Estonia, France, Croatia, Germany, Greece, Latvia and Moldova) or if the person concerned is subject to criminal proceedings or has to serve a sentence imposed by a court (Albania, Austria, Bulgaria, Greece, Hungary, Lithuania, Romania, Russia, Slovakia and Ukraine).

87. The laws of Bulgaria, Croatia, Hungary, Romania and Slovakia provide explicitly that a person may not be released from citizenship if he or she has tax debts to the State. Also, under the laws of Albania, Estonia, Finland, Latvia and Russia, "unfulfilled obligations to the State" – which apparently may include tax debt – are grounds for refusing a renunciation request.

88. In Ireland the law explicitly separates renunciation of citizenship from any liability, specifying that renunciation does not free the person from any obligation or duty imposed or incurred before the severance of the link to the nation. In the United States of America, similarly, the act of renouncing citizenship may have no effect on the person's tax obligations.

2. The Council of Europe's European Convention on Nationality ("the ECN")

89. The ECN, which entered into force for several states in 2000, was signed by Bulgaria in 1998 and ratified in February 2006 (entry into force for Bulgaria on 1 June 2006). Its Article 8 provides:

> "Loss of nationality at the initiative of the individual
>
> 1. Each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless.
>
> 2. However, a State Party may provide in its internal law that renunciation may be effected only by nationals who are habitually resident abroad."

90. According to the Explanatory report, it is not acceptable to refuse renunciation merely because persons habitually resident in another State still have military obligations in the country of origin or because civil or penal proceedings may be pending against a person in that country of origin. Civil or penal proceedings are independent of nationality and can proceed normally even if the person renounces his or her nationality of origin (paragraphs 78 and 81 of the report).

91. Article 11 of the ECN requires that "... decisions relating to the acquisition, retention, loss, recovery or certification of its nationality contain reasons in writing."

THE LAW

I. ALLEGED VIOLATIONS OF THE CONVENTION WITH REGARD TO THE TRAVEL BAN AND THE ALLEGED LACK OF EFFECTIVE REMEDIES AGAINST IT

92. The applicant complained that for more than nine years she had not been allowed to leave Bulgaria. In her view that prohibition had been unlawful and unjustified. The applicant emphasised the fact that her family lived in Austria.

93. The Court has jurisdiction to review the circumstances complained of by an applicant in the light of the entirety of the Convention's requirements. In the performance of that task it is, notably, free to attribute to the facts of the case, as found to be established on the evidence before it, a characterisation in law different from that given by the applicant or, if need be, to view the facts in a different manner; furthermore, it has to take account not only of the original application but also of the additional documents intended to complete the latter by eliminating initial omissions

or obscurities (see *K.-H.W. v. Germany* [GC], no. 37201/97, § 107, ECHR 2001-II (extracts), *Camenzind v. Switzerland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 50 and *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, pp. 15–16, § 44).

94. Having regard to the circumstances of the present case the Court considers that the alleged interference with the applicant's freedom of movement as protected by Article 2 of Protocol No. 4 to the Convention and the alleged unavailability of effective domestic remedies in this respect (Article 13 of the Convention) are at the heart of the case.

A. Admissibility

1. The Court's jurisdiction ratione temporis

95. As noted by the Government, with regard to the complaints under Article 2 of Protocol No. 4 to the Convention, taken alone and in conjunction with Article 13 of the Convention, the Court's jurisdiction *ratione temporis* begins on 4 November 2000, the date on which Protocol No. 4 came into force in respect of Bulgaria. The Court may nevertheless have regard to facts and decisions prior to that date, in so far as they remained relevant after 4 November 2000.

96. In so far as the applicant's complaints fall to be examined under Article 8 of the Convention, taken alone and in conjunction with Article 13, the Court has jurisdiction *ratione temporis* to examine the relevant period in its totality, the Convention having entered into force for Bulgaria on 7 September 1992.

2. Article 35 § 1 of the Convention

97. The Government stated that the applicant had failed to exhaust all domestic remedies and had not complied with the six months' time-limit under Article 35 § 1 of the Convention.

98. In support of that submission, the Government stated that the applicant had introduced her application prior to the decisions of the domestic authorities on some of her appeals, that some of the proceedings she had instituted were still pending and that in the applicant's case there had been several separate administrative decisions which should be regarded as separate acts of the authorities.

99. The applicant replied that she had tried to no avail all possible judicial and administrative remedies.

100. The Court notes that the applicant appealed repeatedly against the relevant administrative decisions, including to the highest jurisdiction in Bulgaria. Following the entry into force for Bulgaria of Protocol No. 4 to

the Convention she filed additional administrative appeals and a judicial appeal and raised expressly before the domestic authorities the grievances she maintains before the Court (see, *inter alia*, paragraphs 32-44 and 55 above). The Government have not claimed that the applicant stood a better chance to obtain relief had she filed more of the same appeals and have not referred to any other effective remedy that she could have used but has not done so.

101. As to the six months' time-limit, the Court notes that the applicant's complaints concern a ban against her leaving Bulgaria which was imposed in 1995 on grounds of her unpaid tax debt and was in force without interruption until 27 August or 1 September 2004 (see paragraphs 17 and 46 above). In such circumstances the six months' time limit could only start running after the situation complained of was brought to an end. The fact that the travel ban was periodically re-confirmed and that several sets of proceedings ensued cannot lead to the conclusion that the events complained of were composed of separate and unrelated occurrences so that a fresh six months' period should start to run after every relevant decision. Therefore, it suffices to note that in the present case the initial application and the additional complaints under Article 2 of Protocol No. 4 were submitted during the period when the travel ban was in force.

102. In sum, the Court finds that the applicant has exhausted all domestic remedies and has submitted the complaints concerning the travel ban in compliance with Article 35 § 1 of the Convention.

3. Other grounds for inadmissibility

103. Some of the events complained of were the subject matter of application no. 28411/95, declared inadmissible by the former Commission (decision of 11 April 1997, DR 89, p. 83). However, the present case concerns essentially a continuous situation and the new developments since 1997 constitute "relevant new information" within the meaning of Article 35 § 2 (b) of the Convention. The application is not, therefore, substantially the same as application no. 28411/95 and cannot be rejected on that ground.

104. Furthermore, the Court considers, in the light of the parties' submissions, that the complaints concerning the travel ban and the alleged lack of effective remedies in this respect raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

B. Merits

1. Alleged violation of Article 2 of Protocol No. 4 to the Convention

105. That provision reads, in so far as relevant:

> "... 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of [this right] other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others..."

(a) The parties' arguments

106. The applicant submitted, *inter alia*, that she had been the victim of an unlawful and arbitrary repression. The travel ban had been unlawful and resulted in her ten-year imprisonment in the country she wanted to leave.

107. As regards the alleged unlawfulness of the measures against her, the applicant submitted that in their decisions of 1992-1994, the Bulgarian authorities had failed to distinguish between her activities as a physical person engaged in commerce and her position as manager of the Austrian company she owned. That had resulted in wrong assessment of her tax liability. In reality she did not owe taxes. The applicant also complained that the legal basis of the travel ban had been unclear as the authorities had relied on different legal provisions in different decisions.

108. The Government stated that the measures against the applicant had been lawful and necessary in a democratic society for the maintenance of *ordre public* and the protection of the rights and freedoms of others. Emphasising that the applicant had owed significant amounts in taxes and had refused to pay, contesting her debt, the Government considered that the measure against the applicant had been imposed on an individual basis, taking into account her behaviour. Also, the applicant had owned and managed a firm in Austria, not in Bulgaria, which allegedly meant that no security for payment had been available. The principle of proportionality had been respected.

(b) The Court's assessment

109. Article 2 of Protocol No. 4 guarantees to any person a right to liberty of movement, including the right to leave any country for such other country of the person's choice to which he or she may be admitted. Any measure restricting that right must be lawful, pursue one of the legitimate aims referred to in the third paragraph of the above-mentioned Convention provision and strike a fair balance between the public interest and the

individual's rights (see *Baumann v. France*, judgment of 22 May 2001, *Reports of Judgments and Decisions 2001-V*, p. 217, § 61).

(i) Whether there was an interference

110. The prohibition against the applicant leaving Bulgaria constituted an interference by a public authority with her right to leave the country, as guaranteed by Article 2 § 2 of Protocol No. 4 to the Convention.

111. It must be established, therefore, whether or not the interference was lawful and necessary in a democratic society for the achievement of a legitimate aim.

(ii) Lawfulness

112. The applicant owed a significant amount in taxes, as established by final judicial decisions which had entered into force prior to the impugned events. The applicant's complaint that those decisions were arbitrary was rejected by the former Commission as being manifestly ill-founded (see partial decision of 12 April 1996 in application no. 28411/95). While it appears that there was certain ambiguity as to whether the Passport Law or the relevant legislation on the residence of foreigners applied in respect of the travel ban imposed on the applicant (who had double citizenship until 2004), the Bulgarian courts examined in detail her arguments and dismissed them in reasoned decisions (see paragraphs 20-24 above). On the basis of the material before it, the Court is satisfied that the prohibition against the applicant leaving Bulgaria had legal basis in Bulgarian law.

113. In the Court's view, the remaining questions related to the travel ban's lawfulness, such as the foreseeability and clarity of the authorities' legal acts in particular, with regard to the duration of the travel ban, the calculation of the debt and the issue of prescription are closely linked to the issue of proportionality and fall to be examined as an aspect thereof, under paragraph 3 of Article 2 of Protocol No. 4 to the Convention (see, *mutatis mutandis*, *T.P. and K.M. v. the United Kingdom*, [GC], no. 28945/95, ECHR 2001-V, § 72, and *Chapman v. the United Kingdom* [GC], no. 27238/95, ECHR 2001-I, § 92).

(iii) Legitimate aim

114. The aim of the interference with the applicant's right to leave Bulgaria was to secure the payment of considerable amounts in taxes, owed by her.

115. The Court observes that Article 1 of Protocol No. 1 to the Convention, which concerns the protection of property, reserves the right of States to enact such laws as they deem necessary for the purpose of securing the payment of taxes. Bulgaria is a party to Protocol No. 1 to the Convention.

116. In the law of several member states of the Council of Europe, in certain circumstances and subject to conditions, unpaid taxes may be a ground for restrictions on the debtor's freedom of movement (see paragraphs 72-80 above). The purpose of such restrictions is, as in the present case, maintaining of *ordre public* and protection of the rights of others.

117. The Court considers, therefore, that the travel ban imposed on the applicant had a legitimate aim under Article 2 of Protocol No. 4.

(iv) Proportionality

118. The parties failed to produce conclusive evidence about the exact amount of the debt owed by the applicant. Since the imposition of the travel ban several assessments had been made and the figures differed (see paragraphs 19, 26, 27, 29 and 39 above). Between 1992, when the fiscal authorities first sought payment, and 2004, when the debt was declared extinguished by prescription, its value decreased as a result of the depreciation of the Bulgarian currency. Despite those facts, it appears that as of November 2000, when Protocol No. 4 entered into force for Bulgaria, the applicant owed the equivalent of at least EUR 150,000, probably more (see paragraphs 26 and 27 above).

119. The public interest in recovering unpaid tax of such an amount could warrant appropriate limitations on the applicant's rights. States have a certain margin of appreciation to frame and organise their fiscal policies and make arrangements to ensure that taxes are paid (see, *mutatis mutandis*, *Hentrich v. France* judgment of 22 September 1994, Series A no. 296-A, § 39).

120. The Court notes, however, that as of November 2000, when Protocol No. 4 to the Convention entered into force for Bulgaria (see paragraph 95 above concerning the Court's competence *ratione temporis*), the prohibition against the applicant leaving the country had been in place for more than five years. Furthermore, it remained unaltered for nearly four more years, until September 2004.

121. Even where a restriction on the individual's freedom of movement was initially warranted, maintaining it automatically over a lengthy period of time may become a disproportionate measure violating the individual's rights (see *Luordo v. Italy*, no. 32190/96, 17 July 2003, *mutatis mutandis* *İletmiş v. Turkey*, no. 29871/96, 6 December 2005, and the similar position taken by the UN Human Rights Committee in the case of *Miguel González del Río v. Peru* – see paragraph 84 above).

122. It follows from the principle of proportionality that a restriction on the right to leave one's country on grounds of unpaid debt can only be justified as long as it serves its aim – recovering the debt (see *Napijalo v. Croatia*, no. 66485/01, 13 November 2003, §§ 78-82).

123. That means that such a restriction cannot amount to a *de facto* punishment for inability to pay.

124. In the Court's view, the authorities are not entitled to maintain over lengthy periods restrictions on the individual's freedom of movement without periodic reassessment of their justification in the light of factors such as whether or not the fiscal authorities had made reasonable efforts to collect the debt through other means and the likelihood that the debtor's leaving the country might undermine the chances to collect the money.

125. In the applicant's case it does not appear that the fiscal authorities actively sought to collect the debt, either before or after the entry into force for Bulgaria of Protocol No. 4 to the Convention. In particular, after 1993 no fresh effort was made to seize any asset or movable property of the applicant in Bulgaria. The sum of USD 50,000 owned by her was attached until 3 January 1999 but was never seized and, after that date, was paid back to the applicant. The possibility of inquiring into the applicant's resources in Austria, if any, was never contemplated by the fiscal authorities (see paragraphs 14-47 and 53-56 above). The Court considers that the authorities' failure to employ obvious means for the collection of at least a portion of the debt undermines the respondent Government's position that the travel ban remained necessary for its collection or proportionate to the far-reaching restriction imposed on the applicant's freedom of movement.

126. Contrary to the respondent Government's assertion, the periodic "confirmations" of the travel ban were not based on analysis of the applicant's attitude, on information about her resources or any concrete indication that the chances for recovery would be jeopardised if she were allowed to leave the country. The fact that the applicant had a family abroad was not taken into consideration. Neither the administrative decisions related to the travel ban, nor the courts' judgments upholding them contained any proportionality analysis, either before or after the entry into force of Protocol No. 4 to the Convention in respect of Bulgaria (see paragraphs 17, 19, 23, 28, 34, 36, 37 and 39-44 above).

127. That was so because the applicable law treated as irrelevant the question whether or not the fiscal authorities made efforts to secure payment by other means, the debtor's attitude and his or her potential ability to pay. The only grounds on which the travel ban could be lifted were payment, submission of sufficient security (apparently understood as security covering the full amount) or, as it happened in the event, extinction of the debt by prescription (see paragraphs 36, 37, 39 and 57-66 above). In these circumstances the travel ban was in reality an automatic measure of indefinite duration. The yearly "confirmations" were merely information notes certifying that the applicant had not paid, with the automatic consequence of the travel ban remaining in place, without examination of its justification and proportionality (see paragraph 41 above).

128. The Court considers that the "automatic" nature of the travel ban ran contrary to the authorities' duty under Article 2 of Protocol No. 4 to take appropriate care that any interference with the right to leave one's country should be justified and proportionate throughout its duration, in the individual circumstances of the case. It notes in this context that in the domestic law of a number of member states prohibitions against leaving the country for unpaid taxes can only be imposed if there are concrete reasons to believe that the person concerned would evade payment if allowed to travel abroad. Also, in a number of countries there are limitations on the duration of the restrictions (see paragraphs 73, 77-80 above). Regardless of the approach chosen, the principle of the proportionality must apply, in law and in practice. It did not in the present case.

129. Moreover, the Bulgarian authorities never clarified the date on which the relevant prescription period expired and made divergent calculations of the amount of the debt. The manner in which the authorities handled the yearly "confirmations" and the prescription question – through internal notes that were not communicated to the applicant – is difficult to reconcile with the legal certainty principle, inherent in the Convention. In this respect the relevant law did not provide sufficient procedural safeguards against arbitrariness (see paragraphs 27, 29, 39, 41, 43-45 and 67-69 above).

130. In sum, having regard to the automatic nature of the travel ban, the authorities failure to give due consideration to the principle of proportionality, the lack of clarity in the relevant law and practice with regard to some of the relevant issues and the fact that the prohibition against the applicant leaving Bulgaria was maintained over a lengthy period, the Court considers that it was disproportionate to the aim pursued. It follows that has been a violation of the applicant's right to leave any country, as guaranteed by Article 2 § 2 of Protocol No. 4.

2. Alleged violation of Article 8 of the Convention

131. That provision reads, in so far as relevant:

> "1. Everyone has the right to respect for his private and 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."

(a) The parties' arguments

132. The applicant stated that the travel ban, which she considered unlawful and arbitrary, had destroyed her private and family life. In particular, the impossibility to spend time with her husband, daughter and grandchildren who lived in Austria had been particularly painful.

133. The Government stated that the applicant's husband and daughter had been free to visit her in Bulgaria. Also, the applicant had close family and links with Bulgaria, where her mother and brother live. Accepting that there might have been an interference with the applicant's right to respect for her family life, the Government considered that it had been lawful and proportionate to the legitimate aim pursued.

(b) The Court's assessment

134. The Court examined above, under Article 2 of Protocol No. 4 to the Convention, the applicant's complaint that the prohibition against her leaving Bulgaria was a disproportionate measure adversely affecting her. While the temporal scope of its competence under Article 2 of Protocol No. 4 did not encompass the period prior to November 2000, the Court had regard to the authorities' approach, legislation and decisions that had not undergone relevant substantial changes since the imposition of the travel ban. In these circumstances, the Court finds that it is not necessary to examine essentially the same facts and decisions also under Article 8 of the Convention. The Court also notes that part of the period pre-dating the entry into force of Protocol No. 4 in respect of Bulgaria was the subject matter of the former Commission's decision of 11 April 1997 (see paragraph 25 above), which dealt with the applicant's complaints from the angle of Article 8 of the Convention.

3. Alleged violation of Article 13 in conjunction with Article 8 and Article 2 of Protocol No. 4 to the Convention

135. Article 13 provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

(a) The parties' arguments

136. The applicant stated that her attempts to obtain a revision of the prohibition on her leaving Bulgaria were to no avail as the authorities acted arbitrarily and refused to examine her arguments.

137. The Government stated that the applicant's numerous complaints and appeals had been duly examined by the authorities who had given reasoned decisions. The fact that he appeals had been unsuccessful did not mean that the remedies available to her had been ineffective.

(b) The Court's assessment

138. Where there is an arguable claim that an act of the authorities may infringe the individual's right to leave his or her country, guaranteed by Article 2 of Protocol No. 4 to the Convention, or that person's right to

respect for private and family life, protected by Article 8 of the Convention, Article 13 of the Convention requires that the national legal system must make available to the individual concerned the effective possibility of challenging the measure complained of and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality (see, *mutatis mutandis*, *Shebashov v. Latvia* (dec.), 9 November 2000, no. 50065/99 and *Al-Nashif v. Bulgaria*, no. 50963/99, 20 June 2002).

139. There is no doubt that the applicants' complaints under Article 8 and Article 2 of Protocol No. 4 to the Convention in respect of the prohibition against her leaving Bulgaria were arguable. She was entitled, therefore, to an effective complaints procedure in Bulgarian law.

140. Bulgarian law provided for a possibility to appeal to a court against an order imposing a prohibition on leaving the country. The applicant's appeals against the travel ban were examined by the courts, which gave reasoned decisions.

141. In their analysis, however, the courts were only concerned with the formal lawfulness of the ban and the question whether or not the applicant had paid her debt or provided sufficient security. Once satisfied that that she had not paid, the courts and the administrative authorities automatically upheld the travel ban against the applicant. The duration of the restrictions imposed on the applicant, the applicant's potential ability to pay, questions such as whether or not the fiscal authorities had explored other means of collecting the debt and whether there was concrete information indicating that lifting the travel ban might result in compromising the chances of collecting the debt were all irrelevant. The applicant's right to respect for her private and family life was also considered as irrelevant and no attempt was made to assess whether the continuing restrictions after certain lapse of time were still a proportionate measure, striking a fair balance between the public interest and the applicant's rights (see paragraphs 23, 25, 28, 34, 36, 37, 39-44 and 57-66 above).

142. However, a domestic appeals procedure cannot be considered effective within the meaning of Article 13 of the Convention, unless it affords a possibility to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. Giving direct expression to the States' obligation to protect human rights first and foremost within their own legal system, Article 13 establishes an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights (see *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI, § 152, and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, ECHR 2001-V, § 107).

143. The limited scope of review afforded by Bulgarian law in the applicant's case did not satisfy the requirements of Article 13 of the

Convention in conjunction with Article 8 and Article 2 of Protocol No. 4. She did not have any other effective remedy in Bulgarian law. It follows that there has been a violation of Article 13 of the Convention.

II. ALLEGED VIOLATIONS OF THE CONVENTION IN RESPECT OF THE REJECTION OF THE APPLICANT'S REQUEST TO RENOUNCE HER BULGARIAN NATIONALITY

144. The applicant complained that her requests to renounce her Bulgarian nationality were repeatedly refused which, in her view, encroached on her Convention rights. She also complained, relying on Articles 6 and 13 of the Convention, that the refusals were unreasoned and were not amenable to appeal.

145. The Court considers that those complaints fall to be examined under Articles 8 and 13 of the Convention.

A. Admissibility

146. The Government did not comment on the admissibility of the above complaints.

147. The Court considers, in the light of the parties' submissions, that the complaints concerning the refusal of the applicant's requests to renounce her Bulgarian nationality raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

B. Merits

1. The parties' submissions

148. The Government admitted that the applicant's unpaid debt had been the reason underlying the refusal of her requests to renounce her Bulgarian nationality. They stated, however, that the refusal had had no incidence on her private and family life. In particular, the applicant's right to leave the country did not depend on whether or not she remained a Bulgarian national.

149. To the extent that the refusal of the applicant's request to renounce her Bulgarian nationality could be regarded as an interference with Article 8 rights, the Government, referring to their submissions concerning the travel ban (see paragraph 112 above), stated that the interference had been lawful and proportionate.

150. The applicant stated that she wished to renounce her Bulgarian citizenship as she felt Austrian, because of her job and family circle, because of the fact that under Austrian law she could not have double citizenship and also because she did not want to have Bulgarian identity papers. The applicant also referred to her submissions in relation to the prohibition on her leaving Bulgaria.

2. The Court's assessment

151. Although a "right to nationality" similar to that in Article 15 of the Universal Declaration of Human Rights is not guaranteed by the Convention or its Protocols, the Court has previously stated that it is not excluded that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (see *Karassev v. Finland* (dec.), no. 31414/96, ECHR 1999-II, with further references and *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, ECHR 2002-II (extracts)).

152. In the present case the applicant's complaint does not concern a denial of citizenship, but her wish to renounce her Bulgarian citizenship and the authorities' refusal, until December 2004, to entertain her request.

153. The Court considers that no right to renounce citizenship is guaranteed by the Convention or its Protocols. Other relevant international instruments and the national law of member states apply in such matters (see paragraphs 89-95 above).

154. Nevertheless, the Court cannot exclude that an arbitrary refusal of a request to renounce citizenship might in certain very exceptional circumstances raise an issue under Article 8 of the Convention if such a refusal has an impact on the individual's private life.

155. In the present case the impugned refusal did not entail any legal or practical consequences adversely affecting the applicant's rights or her private life.

156. In particular, as regards the applicant's statement that under Austrian law she could not have double citizenship, the Court notes that the applicant obtained Austrian citizenship in 1989 and has not shown that under Austrian law there was a risk of her losing her Austrian citizenship on the ground that her requests to renounce her Bulgarian citizenship had been refused (see paragraphs 9 and 51 above). The Bulgarian authorities' refusals did not, therefore, have any impact on her Austrian nationality.

157. Furthermore, as regards the applicant's freedom of movement and possibility to travel to Austria and interact with her professional and family circle there, it is noted that during the relevant period those were restricted on account of the travel ban imposed on her for unpaid taxes, not in relation to her Bulgarian citizenship. Under the relevant law such restrictions on the right to leave Bulgaria could be imposed in respect of Bulgarian and foreign

nationals on essentially the same grounds (see paragraphs 58-65 above). In addition, under Bulgarian fiscal law renunciation of citizenship could not result in releasing an individual of the obligation to pay her debt (see paragraph 71 above).

158. The applicant also stated that the impugned refusals affected her adversely as she felt Austrian and did not want to have Bulgarian identity papers. In the particular circumstances of the present case, the Court cannot accept that the alleged emotional distress resulting from the applicant's being "forced" to remain Bulgarian citizen amounted to an interference with her right to respect for her private life as protected by Article 8 of the Convention.

159. The Court finds that the refusal of the applicant's request to renounce her citizenship did not interfere with her right to respect for her private life, within the meaning of Article 8 of the Convention and that she did not have an arguable claim under that provision. It follows that there has been no violation of Article 8 in this respect and that Article 13 did not apply.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

160. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. Pecuniary damage

161. The applicant asserted that but for the prohibition on her leaving Bulgaria she would have worked for her Austrian company and would have earned pension rights which would have enabled her to receive EUR 59,044 in pension payments between the age of 60 and 66 (i.e. for the period 2006–2012) and an additional EUR 106,984 between the age of 66 and 84 (i.e. for the period 2012–2030). The applicant claimed, in addition, EUR 43,100 in respect of the cost of telephone calls between her and her husband in Austria for a period of nine years, EUR 27,000 for her husband's travel expenses between Austria and Bulgaria, EUR 54,000 in respect of losses resulting from the fact that the applicant and her husband had to maintain two separate households instead of one and EUR 20,500,000 in respect of lost gains from business activities the applicant would have undertaken but for the prohibition against her leaving Bulgaria. Within the time-limit

provided for that purpose, the applicant submitted a copy of an expert opinion concerning, *inter alia*, the probable profits the applicant could have realised had she continued her coffee importation business after 1993 and her expenses in relation to judicial proceedings concerning her fiscal liability. She also submitted documents concerning a business project in Austria.

162. The Government stated that the claims were exorbitant, not supported by relevant evidence and concerned alleged losses that were not the direct result of the impugned events.

163. The Court considers that the applicant's claims are not supported by convincing evidence. The claims as regards her alleged pension rights and losses from unrealised business projects are based on speculations, not on real facts. The applicant has not stated why it was not possible to conduct her business activities from Sofia. As regards telephone calls, travel expenses and the cost of maintaining two households, the Court notes that even before the prohibition against the applicant leaving Bulgaria between 1991 and 1995, she spent most of her time there and that she remained in Bulgaria following the lifting of the travel ban in 2004 (see paragraphs 11 and 47 above). In these circumstances the claims in respect of pecuniary damages are dismissed.

2. Non-pecuniary damage

164. The applicant claimed EUR 1,500,000 in respect of the hardship she endured and, in particular, the separation from her husband, daughter and grandchildren and from friends in Austria.

165. The Government stated that the claim was exorbitant.

166. The Court considers that the applicant must have suffered non-pecuniary damage as a result of the violations of her rights found in the present case. In determining the amount, the Court takes into account the fact that even before the prohibition against her leaving Bulgaria, between 1991 and 1995, the applicant spent most of her time there and that she remained in Bulgaria following the lifting of the travel ban in 2004 (see paragraphs 11 and 47 above). Having regard to the above and also to all circumstances of the case as a whole, the Court, deciding on an equitable basis, awards EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

167. The applicant claimed EUR 32,840 in respect of lawyers' fees in Bulgaria and in Austria. She submitted a copy of a bill presented by her Austrian lawyer, concerning work done on various matters, including the fiscal proceedings against the applicant in Bulgaria and the prohibition against her leaving Bulgaria.

168. The Government stated that the claims were excessive and not supported by relevant evidence.

169. The Court considers that the applicant has undoubtedly made expenses for legal fees in relation to the prohibition against her leaving Bulgaria and the proceedings before the Court. However, some of the claims apparently concern the fiscal proceedings against the applicant, not the travel ban that gave raise to a finding of a violation of the Convention in the present case. Furthermore, a reduction should be applied on account of the fact that some of the applicant's complaints were rejected. Having regard to all relevant circumstances, the Court awards EUR 5,000 in respect of costs and expenses.

C. Default interest

170. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* the admissible unanimously;

2. *Holds* unanimously that there has been a violation of Article 2 of Protocol No. 4 to the Convention in respect of the prohibition against the applicant leaving Bulgaria;

3. *Holds* by six votes to one that it is not necessary to examine separately the complaint under Article 8 of the Convention in respect of the prohibition against the applicant leaving Bulgaria;

4. *Holds* unanimously that there has been a violation of Article 13 of the Convention in conjunction with Article 8 of the Convention and Article 2 of Protocol No. 4 to the Convention in respect of the prohibition against the applicant leaving Bulgaria;

5. *Holds* unanimously that there have been no violations of Articles 8 and 13 of the Convention in respect of the refusal of the applicant's requests to renounce her Bulgarian citizenship;

6. *Holds* unanimously

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;

(ii) EUR 5,000 (five thousand euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Maruste is annexed to this judgment.

P.L.
C.W.

PARTLY DISSENTING OPINION OF JUDGE MARUSTE

To my regret I do not share the majority view that there has been no violation of Article 8 in respect of the applicant's complaint concerning the travel ban, and that the Court's assessment and finding in that respect should be confined to Article 2 of Protocol No. 4. I am of the opinion that Article 8 has also been infringed in this case, for the following reasons.

According to my understanding, the scope of Article 2 of Protocol No. 4 is narrow and relates, *stricto sensu*, to liberty of movement and freedom to choose a residence. It clearly does not cover all the problems and complaints raised by the applicant. It is obvious that the restrictions placed on the applicant's right of movement had a direct impact on her private and family life. It is scarcely credible that the fact that the applicant was prevented for nine and a half years from leaving Bulgaria, and thus could not visit her husband, her adult daughter and her grandchildren who lived in Austria did not adversely affect her family life. This, by the way, was not disputed by the Government.

It is true that there were no legal obstacles to the applicant's family visiting her or even settling with her in Bulgaria. But it is taking matters too far if we accept that a financial (tax) dispute between an individual and the State entitles the State to place an additional burden on other people who are not parties to the dispute or otherwise linked to it and who, moreover, are nationals of another State. In this case the State opted for the most stringent, not to say punitive, restrictions while other legal options for securing resolution of the tax dispute were not considered. The restrictions were therefore disproportionate. Unfortunately, the domestic courts and administrative authorities were rather formalistic and legalistic in their approach, and did not explore other means of collecting the debt. Nor did they have regard to the fact that other rights of the applicant, including her right to respect for her private and family life, were infringed as a result. Accordingly, a fair balance was not struck between the public interest and the applicant's rights.

Although I voted for a non-violation of Articles 8 and 13 of the Convention in respect of the refusal of the applicant's request to renounce her Bulgarian citizenship, as a separate issue, my second argument in favour of a violation of Article 8 in general is that I see nationality (citizenship) as part of someone's identity. If Article 8 covers the right to self-determination in respect of, for example, sexual orientation and so forth, it undoubtedly also covers the right to self determination in respect of nationality and citizenship. It is true that the Convention does not guarantee the right to citizenship. But it follows from the general idea of freedom, freedom of choice and self-determination that there should be a right to apply for citizenship and also a negative right to renounce it. This is part of the social, cultural and political self-determination of the individual which, to my

mind, also falls within the general scope of Article 8. Furthermore, under Bulgarian law, renunciation of citizenship cannot result in exemption of the individual from the obligation to pay his or her tax debts. Consequently, the refusal was unnecessary and arbitrary and infringed the applicant's rights under Article 8.