

AS TO THE ADMISSIBILITY OF

Application No. 34476/97  
by Edvin VESTERBY  
against Estonia

The European Commission of Human Rights (First Chamber) sitting in private on 1 July 1998, the following members being present:

MM M.P. PELLONPÄÄ, President  
N. BRATZA  
E. BUSUTIL  
A. WEITZEL  
C.L. ROZAKIS  
Mrs J. LIDDY  
MM L. LOUCAIDES  
B. MARXER  
B. CONFORTI  
I. BÉKÉS  
G. RESS  
A. PERENIC  
C. BÍRSAN  
K. HERNDL  
M. VILA AMIGÓ  
Mrs M. HION  
Mr R. NICOLINI  
  
Mrs M.F. BUQUICCHIO, Secretary to the Chamber

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

Having regard to the application introduced on 16 October 1996 by Edvin VESTERBY against Estonia and registered on 14 January 1997 under file No. 34476/97;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a dual citizen of Estonia and Sweden born in 1927. He resides in Vällingby, Sweden.

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

By decision of the Lääne County Commission for the Return and Compensation of Unlawfully Expropriated Property ("Õigusvastaselt Võõrandatud Vara Tagastamise ja Kompenseerimise Lääne Maakonnakomisjon") of 31 March 1995 the applicant and his two brothers were recognised as the lawful subjects of restitution in respect of their family's property which was nationalised in 1940. The property consisted of a plot of land of 47,99 ha and several buildings, including a house.

Pursuant to the decision of the county commission, the Noarootsi District Administration ("Noarootsi Vallavalitsus") ordered by decree No. 171 of 17 April 1995 the return of the property to the applicant

and his brothers.

On 10 May 1995 the resident of the house which was to be returned submitted a complaint to the single administrative judge of the Lääne County Court ("Lääne Maakohus") requesting that the decree No. 171 should be declared illegal and claiming that she was the rightful owner of the house and the surrounding buildings. By judgment of 24 October 1995 the court declared the decree of the district administration illegal and sent the case back to the administration for a new decision. The court based its judgment on the Republic of Estonia Principles of Property Reform Act which provides that unlawfully expropriated property is not subject to return if the property has lost its former distinct condition by undergoing significant changes in the form, value and size (Paragraph 12, sections 3(2) and 8). According to the expert evaluation carried out at the request of the district administration, the buildings in question had lost such distinct condition.

On 26 February 1996 the Tallinn Court of Appeal ("Tallinna Ringkonnakohus") confirmed the judgment of the first instance court. Leave to appeal to the Supreme Court was refused on 24 April 1996.

The applicant alleges that, following the court judgments, the current resident was allocated by the local administration 1,9 ha of land in connection with the recognition of her ownership of the contested buildings, according to Paragraph 9 the Land Reform Act.

## COMPLAINTS

The applicant complains about a violation of his rights under Article 1 of Protocol No. 1 to the Convention. In particular, he complains about the refusal of the authorities to recognise his right of inheritance with respect to the property of his family which was illegally expropriated in 1940.

## THE LAW

The applicant complains about non-restitution of part of his family's property. He invokes Article 1 of Protocol No. 1 (P1-1) to the Convention which provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission recalls Estonia's reservation with respect to the cited provisions contained in the instrument of ratification, deposited on 16 April 1996. The reservation reads in the relevant part as follows:

"In accordance with Article 64 (Art. 64) of the Convention, the Republic of Estonia declares that the provisions of Article 1 of the First Protocol (P1-1) shall not apply to the laws on property reform which regulate the restoration or compensation of property nationalised, confiscated, requisitioned, collectivised or otherwise unlawfully expropriated during the period of Soviet annexation... The reservation concerns the principles of the

Property Reform Act, the Land Reform Act...and their wording being in force at the moment the Ratification Act entered into force."

The Commission observes that the reservation includes references to specific acts, it is sufficiently precise and is accompanied by a brief summary of the relevant laws. The reservation thus satisfies the conditions for its validity under Article 64 (Art. 64) of the Convention.

The Commission considers that the Estonian reservation covers the applicant's complaint regarding the restitution of his family's property. It follows that the complaint must be rejected under Article 27 para. 2 (Art. 27-2) as being incompatible *ratione materiae* with the provisions of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO  
Secretary  
to the First Chamber

M.P. PELLONPÄÄ  
President  
of the First Chamber