

AS TO THE ADMISSIBILITY OF

Application No. 16350/90
by Enno SAARESTIK
against Sweden

The European Commission of Human Rights sitting in private
on 6 September 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO

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

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

Having regard to the application introduced on 23 March 1990
by Enno SAARESTIK against Sweden and registered on 27 March 1990 under
file No. 16350/90;

Having regard to the report provided for in Rule 40 of the
Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a citizen of the Soviet Union (Estonia), born
in 1966. He is presently in Sweden. Before the Commission the applicant
is represented by Mr. Hans Bredberg, a lawyer practising in Stockholm.

The applicant and his daughter came to Sweden on 3 July 1988
with a visa to stay in Sweden for 90 days. The applicant applied for
political asylum and a residence permit in Sweden on the ground that he
had refused to comply with a draft order for military service and that
if he were returned to the Soviet Union he would risk imprisonment for
desertion.

On 8 February 1990 the Government (the Ministry of Labour)
rejected the request for asylum and a residence permit and ordered that
the applicant and his daughter be expelled.

On 9 March 1990 the National Immigration Board (statens invandrarverk) refused to stay the enforcement of the expulsion.

On 12 March 1990 the Immigration Board refused a fresh request for a residence permit.

On 23 March 1990 the Immigration Board again refused to stay the enforcement of the expulsion.

On 26 March 1990 the Immigration Board refused a new request for a residence permit.

On 28 March 1990 the Immigration Board decided that the enforcement of the expulsion order should be stayed until further notice in view of the latest development in the Baltic States.

COMPLAINTS

1. The applicant complains that if he is returned to the Soviet Union there is a risk that he will be subjected to torture or inhuman or degrading treatment contrary to Article 3 of the Convention. He states that, during military service, he has previously been subjected to such treatment and has submitted a medical certificate.

2. The applicant also alleges a violation of Article 6 of the Convention on the ground that, if returned, he would not be given a fair hearing by an impartial tribunal as the legal system of the Soviet Union does not meet those standards.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 March 1990 and registered on 27 March 1990.

On 27 March 1990 the President of the Commission decided, pursuant to Rule 36 of the Rules of Procedure, not to indicate to the Government that the applicant should not be expelled to the Soviet Union, pending the Commission's further examination of the case.

THE LAW

The applicant complains that his expulsion to the Soviet Union would involve a violation of Articles 3 (Art. 3) and 6 (Art. 6) of the Convention.

The Commission recalls that it is not normally for the Convention institutions to pronounce on the existence of potential violations of the Convention. A departure from that principle is made in cases where an applicant claims that a decision to expel or extradite him would, if implemented, be contrary to Article 3 (Art. 3) by reason of its foreseeable consequences in the country of destination. The Convention institutions will, however, only examine complaints of potential violations where the expulsion or extradition is imminent.

In the present case, in view of the Immigration Board's decision of 28 March 1990, there is no indication that the applicant's expulsion to the Soviet Union is imminent.

In these circumstances, there is no appearance of a violation of Article 3 (Art. 3) or Article 6 (Art. 6) of the Convention.

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

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)