AS TO THE ADMISSIBILITY OF

Application No. 41457/98
by Ellen HEINMAA and Jevgenia LUGINA
against Estonia

The European Commission of Human Rights (First Chamber) sitting in private on 21 October 1998, the following members being present:

MM M.P. PELLONPÄÄ, President
N. BRATZA
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
I. BÉKÉS
G. RESS
A. PERENIČ
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 6 August 1997 by Ellen HEINMAA and Jevgenia LUGINA against Estonia and registered on 3 June 1998 under file No. 41457/98;

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 applicants, Mrs. Heinmaa and Mrs. Lugina, are Estonian citizens, born in 1927 and 1936 respectively and residing in Tallinn.

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

1. Proceedings concerning the applicants' dismissal

On 31 December 1992 the applicants were dismissed from their work as long distance call operators in the Tallinn Long Distance Telephone Service ("Tallinna Telefonikaugejaam") which was part of the state enterprise Estonian Telecommunications.

As a result of the subsequent re-organisation of the enterprise, most of its functions were taken over by the newly created company Estonian Telephone ("Eesti Telefon") with a new organisational structure.

The applicants submitted a complaint to the Tallinn City Court ("Tallinna Linnakohus") which, by judgment of 13 June 1994, declared their dismissal unlawful, ordered the reinstatement of the applicants in their work and granted compensation for the forced absence from work.

On appeal by the defendant, the Tallinn Court of Appeal ("Tallinna Ringkonnakohus") confirmed the judgment of the city court on 16 November 1994. Leave to appeal to the Supreme Court was refused to the defendant on 8 February 1995.

2. Proceedings concerning the execution of the judgment of 13 June 1994

Following the judgment, the telephone company paid the applicants compensation for their forced absence from work and created in one of its sub-units (the Tallinn Telephone Network) two extra operator positions to which the applicants were hired on 21 June 1994. The applicants, however, refused to accept the positions. Since they formerly worked as long distance call operators, they considered that they should have been offered positions in the company's sub-unit which administered long distance services (the Operator Service). As the applicants failed to make an appearance in their workplace they were dismissed on 29 June 1994.

a) Application brought before the Execution Bureau

On 17 August 1995 the applicants complained to the Tallinn-Harju Execution Bureau that the city court judgment of 13 June 1994 had not been fully executed. After it had made several requests to the telephone company to secure effective compliance with the court's reinstatement order, the execution bureau brought the matter before the Tallinn City Court which by decree of 12 December 1995 ordered the imposition of a fine on the company.

Following the court order, the company asked the court for an exemption of the fine as it considered that it had fully complied with the court judgment. By decree of 12 January 1996 the Tallinn City Court dismissed the company's request as it considered that

the applicants had not been restored to the positions of long distance operators that they held before their unlawful dismissal.

On appeal by the defendant, the Tallinn Court of Appeal on 19 March 1996 revoked the decree of the city court on formal grounds and sent the case back for reconsideration.

b) Request for clarification of the judgment of 13 June 1994

On 18 September 1995 the applicants submitted a request to the Tallinn City Court to clarify the court judgment of 13 June 1994. In particular, they asked the court to decide on the question into which structural unit of the re-organised company they should have been reinstated. By decree of 23 October 1995 the city court dismissed the applicants' request for lack of competence. On 13 December 1995 the Tallinn Court of Appeal revoked the decree of the city court and ordered the court to reconsider the applicants' request. By decree of 19 April 1996 the Tallinn City Court explained that the applicants should be restored to their previous positions of long distance operators. On 5 June 1996 the Tallinn Court of Appeal revoked the decree on formal grounds and ordered a new consideration of the applicants' request by the city court.

By decree of 27 August 1996 the Tallinn City Court joined the applicants' request concerning the interpretation of the judgment of 13 June 1994 and the request presented by the Tallinn-Harju Execution Bureau to fine the telephone company for non-execution of the same judgment. As regards the former, the court issued an explanation similar to the one contained in its decree of 19 April 1996, i.e. that the applicants needed to be reinstated in long distance operator positions. The court dismissed the request to fine the telephone company because of the controversies which had arisen in the execution process.

Following appeal by the defendant, the Tallinn Court of Appeal on 2 December 1996 revoked the city court's decree. The appeal court found that the defendant had in fact executed the city court judgment of 13 June 1994 by reinstating the applicants as operators in June 1994 as the applicants had never disputed the lawfulness of the decision to dismiss them for the second time on 29 June 1994.

Leave to appeal to the Supreme Court was refused on 12 February 1997.

COMPLAINTS

1. The applicants complain that, due to incorrect interpretation of facts and law by the domestic courts, they have not been restored to the positions of long distance operators as required by the city court judgment of 13 June 1994.

2. The applicants also complain under Article 6 of the Convention that the authorities have not been able to guarantee the execution of the Tallinn City Court judgment of 13 June 1994 within a reasonable time.

3. The applicants further complain that they were not entitled to a public hearing before the Supreme Court in violation of Article 6 of the Convention.

THE LAW

1. The applicants complain that mistakes made by the domestic courts have prevented them from getting back their previous jobs as long distance operators.

The Commission recalls that under Article 19 of the Convention its sole task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with applications alleging that errors of law or of fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (see, for example, No. 19890/92, Dec. 3.5.93, D.R. 74, p. 234; No. 17722/91, Dec. 8.4.91, D.R. 69, p. 345).

In the present circumstances, the Commission considers that there is no appearance of a violation of the rights and freedoms set forth in the Convention.

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

2. The applicants complain under Article 6 of the Convention about the length of the execution proceedings concerning the judgment of the Tallinn City Court of 13 June 1994.

Article 6 paragraph 1 first sentence of the Convention provides:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Commission observes that the applicants' complaint relates to proceedings which started no later than 17 August 1995. The Commission first recalls that, according to the generally recognised principles of international law, the Convention is binding on the Contracting Parties only in respect of facts occurring after its entry into force. Estonia ratified the Convention and accepted the right of individual petition on 16 April 1996. It follows that the Commission cannot as such examine under the Convention the proceedings and judgments delivered prior to that date. The Commission must therefore

take as a starting point the date of 16 April 1996 and the stage reached in the proceedings on that date.

In the present circumstances, the period to be examined as to its reasonable length commenced with the decree of the Tallinn City Court of 19 April 1996 and ended with the decision of the Supreme Court of 12 February 1997. The Commission considers that the duration of the proceedings at three instances within ten months does not exceed the reasonable time requirement within the meaning of Article 6 para. 1 of the Convention.

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

3. The applicants complain about the lack of a public hearing before the Supreme Court in violation of Article 6 of the Convention which provides in the relevant part as follows:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Commission observes that the applicants' complaint relates to the proceedings in which the Supreme Court refused to grant the applicants leave to appeal.

In this respect the Commission recalls that the right to appeal does not feature among the rights and freedoms guaranteed by the Convention. No provision of the Convention, therefore, requires the High Contracting Parties to grant persons under their jurisdiction an appeal to a Supreme Court. If a High Contracting Party makes provision for such an appeal it is entitled to prescribe the rules by which this appeal shall be governed and fix the conditions under which it may be brought (No. 11826/85, Dec. 9.5.89, D.R. 61, p. 138).

The Commission further recalls that, when a Supreme Court determines, in a preliminary examination of a case, whether or not the conditions required for granting leave to appeal have been fulfilled, it is not making a decision relating to "civil rights and obligations" (ibid). It finds that Article 6 is not applicable to the proceedings in which the Estonian Supreme Court, without entering on the merits, refused the applicants leave to appeal against the decision of the Court of Appeal. It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 27 para. 2.

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