AS TO THE ADMISSIBILITY OF

Application No. 35648/97
by Viktor KUZMIN
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. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
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 12 December 1996 by Viktor KUZMIN and registered on 17 April 1997 under file No. 35648/97;

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 Russian citizen, born in 1932. He resides in Tallinn, Estonia.

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

By judgment of 12 April 1995 the Tallinn City Court ("Tallinna Linnakohus") dismissed the applicant's claim to be reinstated in service and granted compensation as a result of his dismissal from the Estonian Shipping Company ("Eesti Merelaevandus"). On 31 August 1995 the Tallinn Court of Appeal ("Tallinna Ringkonnakohus") confirmed the judgment of the first instance court. The applicant filed a cassation complaint, which according to procedural requirements must be lodged with the Court of Appeal, but failed to submit it within the prescribed time limit, i.e. within 10 days from the day following the receipt of the court judgment by the applicant on 5 October 1995. By decree of 29 December 1995 the Tallinn Court of Appeal rejected his request for a renewal of the time limit as the applicant had given no compelling

reason for missing the deadline. On 14 February 1996 the Supreme Court refused to grant leave to appeal against the decree.

The applicant subsequently attempted to re-open the proceedings, but the Appeal Application Panel of the Supreme Court ("Riigikohtu Loakogu") refused leave to appeal by its unmotivated resolution of 5 June 1996. The applicant claims that due to a change in his address he was notified of the refusal only on 5 September 1996.

COMPLAINTS

The applicant complains under Article 6 of the Convention that the decision of the Appeal Application Panel of 5 June 1996 prevented him from having his case reviewed by the Supreme Court. He complains that the proceedings before the Appeal Application Panel were not fair and public and that its decision was unmotivated.

THE LAW

Invoking Article 6 (Art. 6) of the Convention, the applicant complains that he was denied review of his case by the Supreme Court and that the Appeal Application Panel did not examine his complaint in a fair and public hearing and that its decision was unmotivated.

Article 6 para. 1 first sentence (Art. 6-1) 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 applicant's complaint relates to the proceedings concerning his petition for a re-opening of his case. In this respect, the Commission recalls its constant case-law that the provision of Article 6 para. 1 (Art. 6-1) of the Convention does not oblige States to allow individuals the opportunity of having their case re-opened once the judgment has become final (No. 24469/94, Dec. 2.12.94, D.R. 79, p. 141; No. 7761/77, Dec. 8.5.78, D.R. 14, p. 171). The Commission further recalls that the provision is not applicable to proceedings which determine whether the case in civil matter is to be re-opened or not (No. 7761/77, Dec. 8.5.78, D.R. 14, p. 171).

It follows that Article 6 (Art. 6) does not apply to the proceedings in which the Appeal Application Panel of the Supreme Court of Estonia refused the applicant leave to appeal regarding the re-opening of his case. This complaint is thus incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO	M.P. PELLONPÄÄ
Secretary	President
to the First Chamber	of the First Chamber