CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39203/02
by Eduard NAGULA
against Estonia

The European Court of Human Rights (Fourth Section), sitting on 25 October 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 20 October 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Eduard Nagula, is a Russian national who was born in 1934 and lives in Sochi, Russia. The respondent Government were represented by Mrs M. Hion, Director of the Human Rights Division in the Legal Department of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

The applicant was born in Vasilkov, Ukraine. From 1957 to 1985 he served as a career officer in active service with the Soviet armed forces in different parts of the former Soviet Union. In 1981 he moved to Estonia to serve there.

In 1982 the applicant's wife, Mrs Emma Nagula, whom he had married in 1959 in Oriol, the Russian Federation, his mother-in-law, Mrs Zinaida Nabokova (born in 1912) and his son, Mr Konstantin Nagula (born in 1960), moved to Estonia. Mrs Zinaida Nabokova and Mr Konstantin Nagula currently live in Estonia and both hold permanent residence permits.

In 1985 the applicant was assigned to the reserves. In 1988 he began work as a taxi driver in Tallinn. His wife also worked as a civilian. The applicant's mother-in-law needs taking care of due to her age.

On 26 July 1994 Estonia and Russia concluded a treaty on the withdrawal of Russian troops from Estonian territory.

On 1 January 1995 the applicant was discharged from the Russian naval forces with the rank of senior captain.

In 1995 the applicant and his wife applied, unsuccessfully, for a flat near Moscow under a Russian aid programme.

On 20 March 1995 the applicant and his wife applied for residence permits in Estonia. On 2 July 1996 they were issued with temporary five-year residence permits.

On 18 November 1996 the applicant submitted an application for a flat in Russia under an aid programme run by the United States of America. The application form was in Russian and contained the words "United States Agency for International Development" in its header.

On the application form, which the applicant signed, it was stated that if his application were to be approved and he were to be allocated a flat under the aid programme, he and his family, before moving to Russia and obtaining registration of residence (*propiska*), keys to the flat and authorisation to use it (*order*), must vacate the dwelling at their disposal in Estonia, cancel their registration of residence there and not seek to stay in the Baltic countries as permanent residents. It further stated that in the future the applicant would be allowed to visit the Baltic countries only as a foreign visitor. It stated that he and his family did not own a dwelling in the Baltic countries and that they would not seek to acquire ownership of or sell the dwelling at their disposal at that time, and that they had not received and would not receive any payment for vacating their current dwelling. The applicant also confirmed that at the time of signing the application he and his family did not have any other dwelling in Russia. According to the application form participation in the programme was voluntary; the person

signing stated that he was aware that in the event of failure to leave the Baltic country within 45 days and to settle in the dwelling offered to him within three months of receipt of the notice offering it to him, he would lose all his rights to the dwelling under the aid programme. He would become the owner of the dwelling allocated to him only after he had resided there permanently for one year.

According to another form, apparently submitted by the applicant to Abt Associates Inc., one of the companies responsible for implementation of the aid programme under a contract with the United States Agency for International Development, the applicant's family comprised two members – the applicant himself and his wife.

On 18 April 1997 the applicant requested the Registry Department of the Kesklinn District Authority (*Kesklinna Valitsuse Elanike Registriosakond*) of the City of Tallinn to cancel his and his wife's registration of residence at Narva maantee 19-43 in Tallinn in connection with their move to Russia. On 5 May 1997 the request was granted.

Under the aid programme, the applicant was allocated a flat at 32 Tenevoi Street, Sochi. On 1 October 1997 he moved in. On 18 November 1997 the applicant's residence was registered at that address (he obtained *propiska*).

In January 2001 the applicant and his wife applied for an extension of their residence permits in Estonia. On 17 July 2001 the Minister of the Interior refused their request. The refusal was based on two grounds. Firstly, the applicant had served as a professional member of the armed forces of a foreign country and had retired from that post. That ground applied also to his wife. Secondly, both the applicant and his wife had committed themselves to leaving Estonia and had been allocated accommodation abroad within the framework of an international aid programme.

The applicant and his wife submitted a complaint to the Tallinn Administrative Court (*Tallinna Halduskohus*) which, by a judgment of 9 October 2001, dismissed the complaint. It observed that the Aliens Act provided that the residence permits of former professional members of the armed forces of a foreign country and their family members could be extended only in exceptional circumstances. The order by the Minister of the Interior had not provided grounds as to why such an exception did not apply in the case of the applicant and his wife. Nevertheless, the Administrative Court found the order to be lawful, since the Aliens Act did not in any case permit extension of the residence permits of persons who had committed themselves to leaving Estonia and who had been granted accommodation abroad within the framework of an international aid programme. The Administrative Court agreed with the Minister of the Interior that that ground for refusing the extension was absolute and did not leave the authorities any discretion.

In an appeal to the Tallinn Court of Appeal (*Tallinna Ringkonnakohus*), the applicant and his wife contested the retroactive application of the provision of the Aliens Act refusing extensions of residence permits to persons who had committed themselves to leaving Estonia and who had been granted accommodation abroad within the framework of an international aid programme. The Aliens Act had not contained the disputed provision at the time when the appellants had participated in the aid programme and been granted accommodation in Russia. The appellants argued that their right to have their legitimate expectations fulfilled had been violated, as had the principle of legal certainty. They also noted that the aid programme had been based on a treaty between the United States of America and the Russian Federation; Estonia had not been a party to the aid programme. The applicant and his wife had not undertaken a commitment to leave Estonia *vis-à-vis* that country.

On 10 April 2002 the Tallinn Court of Appeal upheld the judgment of the Administrative Court. The Court of Appeal held that the principle of legitimate expectation could not extend to preventing the legislator from making any changes to the legislation in force at any point in time. At the time they had decided to take part in the aid programme, the appellants had been aware that on being granted accommodation in Russia they would have to leave Estonia. They had consented to settle in Russia and they had been granted a flat in Sochi in 1997. The appellants could not have had any legitimate expectation that their residence permits would be extended, as the impugned provision had been introduced into the Aliens Act in 1999, that is, before the appellants had submitted their request for extension of their residence permits. The Court of Appeal agreed with the first-instance court's assessment that the appellants' right to family life had not been violated.

The Supreme Court (*Riigikohus*) refused leave to appeal on 12 June 2002.

B. Relevant domestic law

Section 12(4) of the Aliens Act (*Välismaalaste seadus*) listed the instances in which a residence permit could not be issued or extended. Section 12(4)(7) provided that a permit could not be issued or extended if the alien applying for it had served as a professional member of the armed forces of a foreign state, had been assigned to the reserve forces thereof or had retired therefrom. Section 12(4)(14) provided that residence permits could not be issued or extended either for the spouse and minor children of a person referred to in section 12(4)(7). Section 12(5), however, provided that, by way of exception, a temporary residence permit could be issued or extended for the alien concerned if this was not excluded on other grounds under the same provision.

Section 12(9)(4) of the Aliens Act provided that a residence permit could not in any case be issued or extended if the person concerned had, *inter alia*, committed himself or herself to leaving Estonia or had been granted accommodation abroad within the framework of an international aid programme. This provision was adopted on 21 September 1999 and entered into force on 1 October 1999. In 2001 it was the subject of an amendment which does not appear to be relevant to the present case.

C. Aid programme

According to the Government, in April and July 1993 the President of the United States of America and the President of the Russian Federation had agreed to undertake a project to provide up to 5,000 units of housing for Russian military officers demobilised from the Baltic countries or elsewhere outside Russia. The Government noted that, as Estonia had not been a party to the agreement, they did not have the originals of the documents at their disposal and could not provide them.

The Government submitted to the Court a copy of the "Russian Military Officer Resettlement Program – Housing Certificate Program" (in English) and the "Russian Military Officer Resettlement Program – Housing Construction Program – Information Digest" (in Russian and in English). These information materials appear to have been handed out by the American organisers of the aid programme to the participating Russian officers.

According to the information material, the "Russian Military Officer Resettlement Program" had been set up in order to provide up to 5,000 units of housing for Russian military officers demobilised mainly from the Baltic countries. About half of the units of housing were to be built, the rest being provided through a housing certificate programme.

In order to take part in the programme, officers had to submit their discharge order, passport, official confirmation of the size and composition of the family, official confirmation of current residence in the Baltic countries and a signed application for participation in the programme. The latter included statements to the effect that, upon obtaining housing under the programme, the officer and his family would vacate their present dwelling(s) in the Baltic countries and would not seek permanent residence in any of the Baltic Republics, and from then on would enter the Baltic Republics only as foreign visitors. The officers had to declare that they and their families did not own housing in Russia nor would they own, acquire or sell any dwellings in the Baltic countries, and would not receive any payments for vacating any dwelling. Officers declared their understanding that if they were found to be eligible to participate in the programme and if all the programme's terms and conditions were met, they would receive a suitable flat (under the housing construction programme) or financial

assistance for the purchase of housing units (under the housing certificate programme).

In order to obtain a registration of residence (*propiska*) for their new flat from the passport office, officers had to present their Russian passport and the Russian passports of all family members along with proof of cancellation of their registration of residence in the Baltic countries (*vypiska*) for all members of the family. They had to move in within 45 days of notification by the Russian social welfare services or the local authorities, failing which their flat could be reassigned.

Participation in the programme was voluntary; no enrolment fee was required.

D. The Estonian-Russian treaties

After the independence of the Republic of Estonia was restored on 20 August 1991, Soviet troops remained in the country. Following the dissolution of the Soviet Union, the Russian Federation assumed jurisdiction over the Soviet armed forces. On 26 July 1994 Estonia and Russia concluded a treaty on the withdrawal of Russian troops from Estonia and the conditions under which they could reside temporarily in Estonia. On the same day, Estonia and Russia concluded an agreement concerning social guarantees to the retired military personnel of the armed forces of the Russian Federation in Estonia. The treaty and the agreement entered into force on 2 February 1996, having applied on a provisional basis since 26 July 1994, the date on which they had been signed.

Under the terms of the treaty, the Russian Federation undertook to withdraw from Estonia, by 31 August 1994, all military personnel who were in active service with the Russian armed forces. Family members of military personnel in active service who did not have a dwelling in Russia were allowed to remain in Estonia for up to one year.

The agreement provided that retired military personnel, that is, persons discharged from the army and receiving a pension, and their family members, could apply for residence permits in Estonia. The Estonian Government could refuse the application for a residence permit on grounds of national security.

COMPLAINTS

1. The applicant complained under Article 8 of the Convention that his right to respect for his private and family life had been violated, as he and his wife had been refused extension of their residence permits in Estonia. The family had been forcibly split in two and free communication between

them had been hindered, without there being any legitimate reason under Article 8 § 2. The applicant maintained that the Estonian Government had forced him and his wife to move out of the country temporarily and had deprived them of their living space, their movable and immovable property and their right to freedom of movement.

2. Further, he complained under Article 6 § 1 that his case had been decided in breach of several statutory procedural time-limits, that the proceedings had been excessively long and that the courts had not been independent and impartial.

3. The applicant maintained that there had been a violation of Article 6 § 3 as, despite his lack of financial resources, he had not been afforded free legal assistance. He did not understand Estonian, the language of the proceedings. An interpreter had been provided only in the first-instance administrative court.

4. The applicant alleged a violation of Article 7, as the legislation under which he had been refused extension of his residence permit had been applied retroactively.

5. The applicant argued that Article 13 had been violated, as the courts had been completely lacking in independence. They had been biased, having been bound by Government policy.

6. The applicant submitted that Article 14 had also been violated as the Government had discriminated against him and his family on the basis of their language, national and social origin and property status.

7. The applicant further complained of a violation of Article 1 of Protocol No. 1 to the Convention. He maintained that he and his family had been deprived of their accommodation and of their movable and immovable property in Estonia. They had received no help from the Government in selling the property.

8. The applicant also complained that he and his wife had been expelled by the Estonian Government, in violation of Article 3 § 1 of Protocol No. 4 to the Convention. He contended that he and his family had been permanently registered as inhabitants of Tallinn (they had had *propiska*) since 1982. He maintained that he had been an Estonian citizen, that is, he had resided on the territory of Estonia on a valid legal basis. When Estonia became independent, he had been deprived of that right. He relied on Article 2 § 1 of Protocol No. 4 to the Convention.

9. The applicant complained that all his arguments against expulsion, as well as his requests to have the case reviewed by the Governmental Commission of Estonia, had been rejected, in violation of Article 1 § 1 of Protocol No. 7 to the Convention.

THE LAW

1. The applicant complained that the refusal of the authorities to extend his and his wife's residence permits in Estonia had violated his right to respect for his private and family life. His family had been split in two – his son and mother-in-law had stayed in Estonia on the basis of permanent residence permits, while the Government had forced him and his wife to leave the country temporarily, thereby hindering free communication between the two parts of the family. The Government had deprived them of their living space, their movable and immovable property and their right to freedom of movement. He relied on Article 8 of the Convention, which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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."

The Government submitted that the Convention did not guarantee a right to a residence permit and that, consequently, that complaint was incompatible *ratione materiae* with the provisions of the Convention. In any event, they were of the opinion that the Estonian authorities had not interfered with the applicant's right to respect for his private and family life and his home. The applicant had participated in the aid programme on a voluntary basis and had committed himself to leaving Estonia after being granted a flat in Russia. The Government stressed that the applicant had lodged an application to participate in the programme immediately after he had received a five-year residence permit. They submitted that the applicant had left Estonia voluntarily and together with his wife had settled in Sochi.

The applicant emphasised that the provision of the Aliens Act on the basis of which he and his wife had been denied an extension of their residence permits had entered into force only on 1 October 1999, that is, two years after they had been granted the flat in Sochi. The provision had had retroactive effect. The applicant also submitted that the fact that he had a flat in a particular country did not place him under an obligation to live in that country.

The Court reiterates that the Convention does not guarantee the right of an alien to enter or to reside in a particular country. However, the removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8 § 1 of the Convention (see *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001-IX).

The Court recalls that in the case-law of the Convention organs relating to expulsion and extradition measures the main emphasis has consistently been placed on the aspect of "family life", which has been interpreted as encompassing the effective "family life" established in the territory of a Contracting State by aliens lawfully resident there, it being understood that "family life" in this sense is normally limited to the core family (see *Slivenko v. Latvia* [GC], no. 48321/99, § 94, ECHR 2003-X, with further references).

The Court observes that the case-law has consistently treated the expulsion of long-term residents under the head of "private life" as well as that of "family life", some importance being attached in this context to the degree of social integration of the persons concerned (see *Slivenko*, cited above, § 95).

As regards the specific circumstances of the present case, the Court first notes that it has no reason to doubt that the applicant had a family life in Estonia within the meaning of Article 8 of the Convention. It observes, however, that the applicant left Estonia voluntarily and together with his wife settled in Sochi, Russia, while his son and mother-in-law continued to live in Estonia.

The first issue arising is whether the applicant must be considered to have waived any right that he had under Article 8 of the Convention to maintain his residence in Estonia. According to the Court's case-law the waiver of a right guaranteed by the Convention must be made in an unequivocal manner and must not run counter to any important public interest (see *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 20, § 66).

In that regard the Court notes that the applicant was refused a residence permit in Estonia on 17 July 2001. By then he had already signed the application form for participation in the aid programme (on 18 November 1996). On 18 April 1997 he had requested the Estonian authorities to cancel his and his wife's registration of residence in Tallinn in connection with their move to Russia; on 5 May 1997 the request had been granted. On 1 October 1997 he had received keys to his flat in Sochi and had moved in on the same day. On 18 November 1997 the flat in Sochi had been registered as his place of residence (he had been issued with *propiska*).

The applicant stated at the hearing in the Administrative Court of Tallinn that he was the owner of the flat in Sochi. The Court notes that according to the conditions of the aid programme, he had to have resided there permanently for one year in order to become the owner. The Court is satisfied that he had given up his residence in Estonia permanently, even though the residence permit issued to him in 1996 for a period of five years had not been revoked.

The Court is not persuaded by the applicant's argument that his undertaking to leave Estonia was made *vis-à-vis* the United States of

America rather than Estonia. It must have been clear from the context in which the applicant agreed to participate in the aid programme that the object of the programme was to facilitate the withdrawal of Russian troops from, *inter alia*, Estonia. The different elements in this process were inextricably linked; the granting of the flat in Russia to the applicant was directly connected with the obligation of the Russian Federation to withdraw its troops from Estonia under the treaty and with the applicant's undertaking to leave the country.

The Court finds, on the evidence before it, in particular the applicant's express declarations and the steps he took to honour his part of the resettlement agreement, that he must be considered to have unequivocally waived any rights he may have had under Article 8 to remain in Estonia. Furthermore, having regard to the treaty between Estonia and Russia on the withdrawal of troops and the commitment made by the applicant, the Court considers that the waiver does not appear to run counter to any public interest.

Therefore, the Court finds that this part of the complaint under Article 8 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

As regards the remainder of the allegations made by the applicant under Article 8, the Court notes that the applicant has failed to substantiate them. It does not appear from the material in the Court's possession that the respondent State deprived the applicant of his living space or his movable and immovable property, or that his right to freedom of movement was restricted. Neither is there any indication that the authorities hindered free communication within the applicant's family.

It follows that this part of the complaint also is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant further complained that his case had been decided in breach of several statutory procedural time-limits, that the proceedings had been excessively long and that the courts had not been independent and impartial. He relied on Article 6 § 1 of the Convention, which reads:

> "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 Court reiterates that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6 § 1 of the Convention (see *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X). It finds also in the present case that the proceedings concerning the issuing and extension of residence permits and the subsequent review thereof in the administrative court proceedings did not entail the "determination of ... civil rights and obligations or of any

criminal charge against...” the applicant. Article 6 § 1 is therefore inapplicable.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

3. The applicant maintained that Article 6 § 3 had also been violated in the administrative court proceedings, since the authorities had not provided him with free legal assistance. He did not understand Estonian, the language of the proceedings.

However, the Court notes that, since the applicant was not “charged with a criminal offence”, Article 6 § 3 is inapplicable.

It follows that this complaint too is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

4. The applicant claimed that there had been a violation of Article 7 since, at the time he and his wife had been allocated the flat under the aid programme (in November 1997), there had been no restrictions under national or international law on the right of those participating in the programme to obtain residence permits in Estonia. The amendments to the Aliens Act had been adopted on 1 October 1999, that is, two years later, and amounted to retrospective punishment in breach of Article 7.

However, the Court considers that the impugned measure did not constitute a criminal matter within the meaning of Article 7, which is therefore inapplicable.

It follows that this complaint too is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

5. The applicant argued that the Estonian courts had been completely biased and lacking in independence, having been bound by Government policy. He relied on Article 13 of the Convention, which reads:

> “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.”

The Court reiterates that Article 13 of the Convention requires the provision of a domestic remedy allowing the competent “national authority” both to deal with the substance of the relevant Convention complaint and to grant appropriate relief (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 47, § 120). The “effectiveness” of a “remedy” within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

The Court notes that the applicant had a right to challenge the authorities’ refusal to extend his residence permit before an administrative court, which he in fact did. Furthermore, following an appeal by the

applicant, his complaint was adjudicated by the Court of Appeal. There is nothing to indicate that the Estonian courts lacked the requisite independence. They were, moreover, empowered to examine the merits of the applicant's complaints, and both the judgments provided sufficient reasoning concerning the applicant's complaints. In the light of all the material in its possession, the Court finds that this complaint discloses no appearance of a violation of Article 13 of the Convention.

Even assuming that the applicant had an arguable claim for the purposes of Article 13, it follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

6. The applicant complained that the Government had discriminated against him and his family because of their language, national and social origin and property status. He claimed that he had suffered a loss of income throughout the course of the judicial proceedings. He relied on Article 14 of the Convention, which reads:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court notes that it does not appear from the material in its possession that the applicant raised these complaints in the course of the domestic court proceedings.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

7. The applicant further complained that he and his family had been deprived of their accommodation and their movable and immovable property in Estonia. They had received no help from the Government in selling the property. The applicant invoked Article 1 of Protocol No. 1 to the Convention, which reads, insofar as relevant:

> "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 Court considers that the applicant's allegation concerning a violation of his property rights is unsubstantiated. It finds no indication that any obstacles had been put in the way of the applicant with regard to the enjoyment of his property. The Convention does not oblige States to provide individuals with any specific assistance in disposing of their property on leaving the country concerned. The Court also notes that in the Government's submission, which has not been disputed by the applicant, the applicant never owned the flat at Narva maantee 19-43 in Tallinn. He, his wife, his son and his mother-in-law had been occupying the flat as tenants. Furthermore, on 27 May 1994, the applicant's son had acquired

ownership of the flat. According to the Government the applicant's son is still in possession of the flat.

The Court notes that it has no information concerning any other property of which the applicant might have been dispossessed.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

8. The applicant complained that he and his wife had been expelled by the Estonian authorities. Since 1982 they had been permanently registered as inhabitants of Tallinn (they had had *propiska*). He maintained that he had been an Estonian citizen, that is, he had resided on the territory of Estonia on a valid legal basis. When Estonia became independent, he had been deprived of that right. He relied on Articles 2 § 1 and 3 § 1 of Protocol No. 4 to the Convention which, in so far as relevant, provide:

Article 2 § 1 of Protocol No. 4

"Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

Article 3 § 1 of Protocol No. 4

"No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national."

The Court reiterates that for the purposes of Article 3 of Protocol No. 4 applicants' "nationality" must be determined, in principle, by reference to national law (see *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 77, ECHR 2002-II). It does not find it established that the applicant was a citizen of Estonia within the meaning of Estonian law. Furthermore, there is no indication that the applicant's freedom of movement or his freedom to choose his residence were restricted at the time when he was lawfully on the territory of Estonia.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

9. The applicant complained that all his arguments against expulsion, and his requests to have the case reviewed or brought before the Governmental Commission of the Republic of Estonia, had been rejected, in violation of Article 1 § 1 of Protocol No. 7 to the Convention, which reads:

"An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

(a) to submit reasons against his expulsion,

(b) to have his case reviewed, and

(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority."

Leaving aside the question whether the applicant was expelled from Estonia within the meaning of the above provision and whether it should be considered that he waived his rights, the Court notes that the applicant's case was adjudicated by an administrative court and, following an appeal by him, also by a court of appeal. At both levels it was open to him to submit arguments against the authorities' refusal to extend his residence permit. In the light of all the material in its possession, the Court finds that this complaint does not disclose any appearance of a violation of Article 1 § 1 of Protocol No. 7 to the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President