AS TO THE ADMISSIBILITY OF

Application No. 35541/97
by Aadu OLL
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 27 May 1996 by Aadu OLL against Estonia and registered on 3 April 1997 under file No. 35541/97;

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 an Estonian citizen, born in 1932, residing in Tallinn, Estonia.

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

A. Particular circumstances of the case

On January 9, 1994 the applicant filed a civil suit against the company Vipo regarding the validity of a car sale's contract. The Tallinn City Court ("Tallinna Linnakohus")ruled in his favour by judgment of 2 June 1995.

On appeal by the defendant, the Tallinn Court of Appeal ("Tallinna Ringkonnakohus") revoked the city court's judgment on 12 February 1996.

The applicant lodged a cassation complaint with the Supreme Court

of Estonia against the appeal court's judgment claiming that the court had incorrectly interpreted the law.

On 17 April 1996 the Appeal Application Panel of the Supreme Court ("Riigikohtu Loakogu")refused leave to appeal by its unmotivated resolution.

B. Relevant domestic law

Paragraph 332 of the Code of Civil Procedure, adopted on 19 May 1993, provides in the relevant part:

[Translation]

> "(2) The Appeal Application Panel grants leave to appeal, if the appeal disputes the correctness of the application of substantive law or if it seeks an annulment of a court decision due to a serious violation of procedural norms which resulted or could have resulted in an incorrect court decision.
>
> (5) The Appeal Application Panel decides on the granting or refusal of leave to appeal without calling the parties to the proceedings, after an exchange of documents or before that, if it is obvious that the appeal is ill-founded.
>
> (6) Leave to appeal is not granted if the Appeal Application Panel unanimously agrees that the appeal is manifestly ill-founded in the light of the conditions set forth in section 2 ... of the current paragraph.
>
> (7) The Appeal Application Panel decides on the granting or refusal of leave to appeal by its resolution, which does not have to be motivated, within two months from the receipt of the appeal."

[Estonian]

> "(2) Loakogu annab menetlusloa, kui kaebuses vaidlustatakse materiaalõiguse normide kohaldamise õigsust või kui nõutakse kohtulahendi tühistamist protsessiõiguse normide olulise rikkumise tõttu, mis tõi kaasa või võis kaasa tuua ebaõige kohtulahendi.
>
> (5) Menetlusloa andmise või andmisest keeldumise otsustab loakogu, protsessiosalisi välja kutsumata, pärast dokumentide vahetamist või ka enne seda, kui loakogule on ilma selleta selge menetlusloa taotluse põhjendamatus.
>
> (6) Menetlusluba ei anta, kui loakogul on üksmeelselt selge kaebuse ilmne põhjendamatus käesoleva paragrahvi 2. ..l õikes sätestatud aluste puudumisel.
>
> (7) Menetlusloa andmise või andmisest keeldumise otsustab loakogu resolutsiooniga, mida ei pea põhjendama, kahe kuu jooksul kaebuse saamise päevast.

COMPLAINTS

The applicant complains under Article 6 of the Convention that he was prevented from having his cassation complaint examined in a fair and public hearing by a tribunal established by law. He complains that the proceedings before the Appeal Application Panel were not fair and public and that its decision was unmotivated. He alleges that the Appeal Application Panel examines cases on the merits.

THE LAW

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

Article 6 para. 1 (Art. 6-1) 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 recalls that the right to appeal does not feature among the rights and freedoms guaranteed by the Convention. No provision of the Convention 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).

According to para. 332 of the Code of Civil Procedure, the Appeal Application Panel of the Supreme Court grants leave to appeal if the appeal disputes the correctness of the application of substantive law or if there has been a serious procedural mistake. The Commission considers that an examination as to whether leave to appeal shall be granted is only an examination as to whether the conditions of para. 332 of the Code of Civil Procedure are satisfied. It does not amount to an examination of the merits of the appeal.

The Commission 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 follows that Article 6 (Art. 6) is not applicable to the proceedings in which the Appeal Application Panel of the Supreme Court of Estonia refused the applicant leave to appeal against the judgment of the Court of Appeal. 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