AS TO THE ADMISSIBILITY OF

Application No. 40108/98
by Ingrid STALÅS
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 13 December 1996 by Ingrid STALÅS against Estonia and registered on 4 March 1998 under file No. 40108/98;

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 applicant is a dual citizen of Estonia and Sweden, born in 1925 and residing in Norrtälje, Sweden. She is represented before the Commission by Mr. Peeter Aspe, a lawyer practising in Stockholm.

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

By decision of the Lääne County Commission for the Return and Compensation of Unlawfully Expropriated Property ("Õigusvastaselt Võõrandatud Vara Tagastamise ja Kompenseerimise Läänemaa Komisjon") of 5 August 1994, the applicant was recognised as the subject of restitution with respect to the property which had previously belonged to her grandfather. The property, consisting of a plot of land of 50 ha and several buildings, was expropriated following the owner's departure to Sweden in 1944. In 1970 the buildings were sold to a third person who continues to occupy them.

The applicant applied for a return of the buildings to the Noarootsi District Administration ("Noarootsi Vallavalitsus") which dismissed it by decree of 18 October 1995. The district administration based its decision on the Principles of Property Reform Act of 1991 which provides that unlawfully expropriated property is not subject to return if the property is in the possession of a person who had acquired it in good faith (Paragraph 12, section 3 (3)).

The applicant submitted a complaint to the administrative judge of the Lääne County Court ("Lääne Maakohus") with a request to declare the decree of the district administration illegal. On 15 January 1996 the judge dismissed the applicant's complaint. By judgment of 9 April 1996 the Tallinn Court of Appeal ("Tallinna Ringkonnakohus") confirmed the dismissal. On 19 June 1996 the Appeal Application Panel of the Supreme Court ("Riigikohtu Loakogu") rejected the applicant's request for leave to appeal as being manifestly ill-founded.

COMPLAINTS

1. The applicant complains that she was refused leave to appeal as the Supreme Court wrongly considered her appeal to be manifestly ill-founded. She also complains that, when examining her request for leave to appeal, the Appeal Application Panel of the Supreme Court did not meet the requirements of a "tribunal" within the meaning of Article 6 para. 1 of the Convention, given that this panel cannot "determine" the matter judicially.

2. The applicant furthermore complains that the refusal to restitute to her the expropriated property which had previously belonged to her grandfather violated her inheritance rights. The applicant invokes no specific Convention provision in this respect.

THE LAW

1. The applicant complains that she was refused leave to appeal to the Supreme Court and that the Appeal Application Panel and the proceedings before it did not meet the requirements of Article 6 para. 1 of the Convention.

Article 6 para. 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 first 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 applicant 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.

2. The applicant complains about a violation of her inheritance rights due to non-restitution of her grandfather's expropriated property.

The Commission considers that the applicant's complaint falls in substance under Article 1 of Protocol No. 1 to the Convention which provides:

"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 preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission recalls Estonia's reservation with regard to the cited provisions contained in the instrument of ratification, deposited on 16 April 1996. The reservation reads in the relevant part as follows:

"In accordance with Article 64 of the Convention, the Republic of Estonia declares that the provisions of Article 1 of the First Protocol shall not apply to the laws on property reform which regulate the restoration or compensation of property nationalised, confiscated, requisitioned, collectivised or otherwise unlawfully expropriated during the period of Soviet annexation... The reservation concerns the principles of the Property Reform Act... and [its] wording being in force at the moment the Ratification Act entered into force."

The Commission observes that the reservation includes references to specific acts, it is sufficiently precise and is accompanied by a brief summary of the relevant laws. The reservation thus satisfies the conditions for its validity under Article 64 of the Convention.

The Commission considers that the Estonian reservation covers the applicant's complaint regarding the restitution of property. It follows that the complaint must be rejected under Article 27 para. 2 as being incompatible ratione materiae with the provisions of the Convention.

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