AS TO THE ADMISSIBILITY OF

Application No. 35086/97
by Argo VIIKMAN
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 April 1996 by Argo VIIKMAN against Estonia and registered on 25 February 1997 under file No. 35086/97;

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 1960, residing in Tartu, Estonia.

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

1. By judgment of the Tartu City Court ("Tartu Linnakohus) of 18 April 1994 the applicant was reinstated in his work at the University of Tartu and awarded compensation for the forced absence from work resulting from his illegal dismissal. Alleging non-execution of the compensation order, the applicant submitted a complaint to the Tartu Administrative Court ("Tartu Halduskohus") regarding the actions of the Tartu Execution Bureau ("Tartu Täitevbüroo"). The court dismissed his complaint by judgment of 10 November 1995, which was confirmed by the Tartu Court of Appeal("Tartu Ringkonnakohus") on 16 February 1996. Leave to appeal was refused by the Appeal Application Panel of the Supreme Court ("Riigikohtu Loakogu") by its unmotivated resolution of 10 April 1996. The applicant was notified of this refusal

on 16 April 1996.

2. On 25 April 1996 the applicant made an attempt to access his case file in the Supreme Court with a view to discovering the reasons for the rejection of his appeal. He was stopped by the court's security guard and refused entry to the building.

3. The applicant alleges that he has won 400 000 EEK in a lottery. As the Estonian Lottery refused payment, the applicant submitted a complaint to the Tallinn City Court regarding the winning conditions of his lottery tickets. The complaint was rejected by the court on formal grounds by decree of 7 October 1994, which was confirmed by the Tallinn Court of Appeal("Tallinna Ringkonnakohus") on 2 November 1994.

The applicant brought the same case before the Tartu City Court, which rejected it on formal grounds by decree of 6 April 1995, confirmed by the Tartu Court of Appeal ("Tartu Ringkonnakohus") on 26 June 1995. The Supreme Court, after holding a public hearing, upheld the decision of the appeal court by decree of 8 November 1995.

On 29 January 1996 the applicant re-submitted his complaint in the form prescribed by law to the Tartu City Court, which considered it on the merits. By judgment of 26 July 1996 the court dismissed it, after holding a public hearing.

The applicant lodged an appeal against this judgment. According to procedural requirements an appeal must be filed with the first instance court which then transmits it to the appeal court. In the present case, the Tartu Court of Appeal returned the file to the first instance court pointing out that the applicant had not paid in advance the full court fee in the amount of 12 700 EEK.

On 24 September 1996 the Tartu City Court ordered the applicant to pay the full court fee by 10 October 1996. The applicant submits that the fee was too high and that the request to pay it was illegal. On 23 October 1996 the court rejected the appeal on formal grounds, i.e. for failure to pay the fee within the prescribed time limit.

The city and appeal courts in Tartu and Tallinn examined the formal requirements for the admissibility of the applicant's claim in all three sets of proceedings without holding a public hearing.

COMPLAINTS

1. With regard to the first procedure, the applicant complains about a violation of his rights under Article 6 of the Convention. In particular, he complains that the refusal of the Appeal Application Panel of the Supreme Court of Estonia on 10 April 1996 to grant him leave to appeal was not decided in a public hearing, that the decision was unmotivated and therefore arbitrary, and that he was deprived of the possibility to defend his case.

2. Invoking Article 6 of the Convention, the applicant also complains that he was not allowed access to his case file in the Supreme Court.

3. With regard to the civil proceedings concerning his lottery claim, the applicant complains under Article 6 of the Convention that the city and appeal courts of Tartu and Tallinn did not hold public hearings and that they decided on his case only on the basis of the written material he submitted. He further complains that the court fee, as fixed by the Tartu Court of Appeal, was too high and did not enable him to have access to a court.

THE LAW

1. The applicant complains under Article 6 (Art. 6) of the Convention that the Appeal Application Panel of the Supreme Court considered his case in a closed hearing without his presence and that its decision is unmotivated and arbitrary.

The Commission considers that it is not required to decide whether or not the applicant's complaints about the procedure in the Appeal Application Panel of the Supreme Court disclose any appearance of a violation of the Convention.

The Commission observes that the complaints relate to a period prior to 16 April 1996, which is the date of entry into force of the Convention with respect to Estonia. It follows that this part of the application is incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant complains that on 25 April 1996 he was not allowed to see his case file in the Supreme Court in violation of Article 6 (Art. 6) of the Convention.

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 in which the Supreme Court refused to grant the applicant leave to appeal by decision of 10 April 1996. The Commission first recalls that Article 6 (Art. 6) of the Convention is not applicable to leave to appeal proceedings before a Supreme Court as they do not involve the determination of civil rights and obligations within the meaning of Article 6 (Art. 6) of the Convention (No. 11826/85, Dec. 9.5.89, D.R. 61, p. 138). In the present case, however, the applicant complains that, after the final decision to refuse leave to appeal was taken, he could not have access to the file. The Commission notes that the applicant's purpose in gaining access to his file was to determine the reasons for the refusal. In this respect, the Commission notes that domestic law expressly provides that the decisions of the Appeal Application Panel of the Supreme Court to grant or refuse leave to appeal in the administrative proceedings are unmotivated (Para. 46(6) of the Code of Administrative Procedure). Access to his file would therefore not have enabled the applicant to find out the reasons for the rejection of his request. Finally, the Commission notes that the applicant has not alleged that he was denied access to his case file at the appeal stage of the proceedings.

It follows that, even assuming that the complaint falls within the Commission's competence ratione temporis, this part of the application is manifestly ill-founded and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains under Article 6 (Art. 6) of the Convention about access to court and the absence of a public hearing in three sets of proceedings concerning the winning conditions of his lottery tickets.

The Commission considers that it is not required to decide whether or not the applicant's complaints regarding the first and the second set of proceedings brought before the Tallinn City Court and before the Tartu City Court disclose any appearance of a violation of the Convention, since the final decisions in these proceedings are dated 2 November 1994 and 8 November 1995 respectively, i.e. prior to 16 April 1996, which is the date of entry into force of the Convention

with respect to Estonia.

It follows that this part of the application is incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

With regard to the third set of proceedings brought before the Tartu City Court on 29 January 1996, the Commission recalls that Article 6 para. 1 (Art. 6-1) does not prevent Contracting States from regulating access to appeal jurisdictions, in order to ensure the proper administration of justice (No. 12275/86, Dec. 2.7.91, D.R. 70, p. 47). In the circumstances of the case, the Commission considers that the applicant has not shown that the amount of the fee was in any way illegal or arbitrary. The Commission also observes that the applicant failed to avail himself of the possibility under domestic law (Para. 54(3) of the Code of Civil Procedure) to ask the court for an exemption of the fee he considered excessive.

It follows that this part of the application is manifestly ill-founded and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

As regards the applicant's claim of the lack of a public hearing in determining the admissibility of his appeal against the judgment of the Tartu City Court of 26 July 1996, the Commission recalls that a tribunal which rejects a claim on procedural grounds is not determining a dispute on civil rights and obligations (No. 12624/87, Dec. 10.7.89, D.R. 62, p. 207). Article 6 para. 1 (Art. 6-1) is, therefore, not applicable to such proceedings.

It follows that this part of the application is incompatible ratione materiae with 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
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber