AS TO THE ADMISSIBILITY OF

Application No. 24895/94
by Scott BIRNIE
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
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 23 June 1994 by Scott Birnie against the United Kingdom and registered on 12 August 1994 under file No. 24895/94;

Having regard to the reports provided for in Rule 47 of the Rules of Procedure of the Commission and the respondent Government's indication that they have no observations on the admissibility of the applicant's complaints;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1951 and resident in Oxfordshire. He is represented before the Commission by Mr. Gilbert Blades a solicitor practising in Lincoln. The facts as submitted by the applicant may be summarised as follows.

A. Particular circumstances of the case.

In or about March 1992 the applicant, then a squadron leader in the Royal Air Force of the United Kingdom, was suspected of the theft of goods on 8 March 1992 from an air force base in the United States. In June 1992 the United States Department of Justice waived jurisdiction and deferred prosecution of the matter to the United Kingdom's air force authorities.

In February 1993 the applicant was formally charged (pursuant to section 70(1) of the Air Force Act 1955), by the air force authorities of the United Kingdom, with the civilian criminal offence of theft contrary to the Theft Act 1968. The Convening Officer, by order dated 19 February 1993, convened a general court-martial in the United

Kingdom to try the applicant on the charge. On 3 March 1993 the court-martial found the applicant guilty of theft of three sports vests and two sports pants. He was sentenced to dismissal from the air force.

The applicant petitioned the Confirming Officer against conviction and sentence. However, on 28 April 1993 his conviction and sentence were confirmed by the Confirming Officer.

On 10 May 1993 the applicant petitioned the Defence Council against his conviction. By letter dated 2 August 1993 the applicant's representative was informed of the decision, taken by the Air Force Board, to reject this petition.

The applicant subsequently applied to a single judge of the Courts-Martial Appeal Court for leave to appeal against conviction to that court. This application was rejected on 2 December 1993. On 12 February 1994 the applicant renewed his application before the full Courts-Martial Appeal Court and this application was rejected on the 14 July 1994.

B. Relevant domestic law and practice.

The Commission refers to the "Relevant domestic law and practice" contained in the judgment in the Findlay case (Eur. Court HR, Findlay v. the United Kingdom judgment of 25 February 1997, to be published in Reports of Judgments and Decisions for 1997) and in its report on the Coyne application (No. 25942/94, Comm. Report 25.6.96, unpublished).

COMPLAINTS

The applicant complains under Article 6 of the Convention that he was denied a fair and public hearing by an independent and impartial tribunal established by law.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 June 1994 and was registered on 12 August 1994.

On 7 December 1994 the Commission decided to communicate and adjourn the application.

On 2 July 1996 the Commission decided to request the Government's observations. In their letter received on 7 November 1996 the Government stated that they have no observations on the admissibility of the application.

THE LAW

The applicant complains under Article 6 (Art. 6) of the Convention that he was denied a fair and public hearing by an independent and impartial tribunal established by law. The Government have no observations on the admissibility of the applicant's complaints.

The Commission considers that the application raises complex and serious issues under Article 6 (Art. 6) of the Convention which require determination on the merits. It follows that these complaints of the applicant cannot be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring them inadmissible has been established.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber