AS TO THE ADMISSIBILITY OF

Application No. 27409/95
by Hugh CAMPBELL
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 18 May 1995 by Hugh Campbell against the United Kingdom and registered on 25 May 1995 under file No. 27409/95;

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 1962 and is currently in prison in Wolverhampton. 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 May 1994 the applicant (who was at the time a Staff Sergeant in the army of the United Kingdom on exercises in Kenya) was charged pursuant to section 70 of the Army Act 1955 with, inter alia, the civilian criminal offence of assault and inflicting grievous bodily harm contrary to the Criminal Justice Act 1988 and the Offences Against the Person Act 1861, respectively.

The Convening Officer, by order dated 1 July 1994, convened a general court-martial to be held in Berlin. On 20 July 1994 the applicant was found guilty as charged. He was sentenced to imprisonment

for three years, to be reduced to the ranks and to dismissal from the army.

The applicant subsequently petitioned the Confirming Officer in relation to the severity of his sentence only. The Confirming Officer confirmed the applicant's conviction but reduced his sentence by six months.

On 3 March 1995 the applicant petitioned the Defence Council but this petition was also rejected, confirmation of this rejection being sent to the applicant's commanding officer on 31 March 1995.

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).

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 18 May 1995 and was registered 25 May 1995.

On 4 July 1995 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 recalls that, pursuant to Article 26 (Art. 26) of the Convention, it is only competent to consider complaints after all domestic remedies have been exhausted according to the generally recognised rules of international law.

In this respect, the Commission notes that the applicant did not apply for leave to appeal to the Courts-Martial Appeal Court. However, it is noted that the applicant's grounds of appeal to the Confirming Officer related to the severity of his sentence only. There is no indication that the grounds upon which the petition to the Defence Council was based were any different. However, there is no appeal against sentence to the Courts-Martial Appeal Court and, accordingly, the Commission is of the view that the matters which the applicant challenged at a domestic level did not constitute matters which the Courts-Martial Appeal Court was competent to consider.

Accordingly, the Commission does not consider that this applicant's failure to appeal to the Courts-Martial Appeal Court

constitutes a failure to exhaust domestic remedies.

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