AS TO THE ADMISSIBILITY OF

Application No. 30239/96
by Shane EVANS
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 6 February 1996 by Shane Evans against the United Kingdom and registered on 16 February 1996 under file No. 30239/96;

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 1971 and resident in Clwyd, Wales. 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 1995 the applicant, who was a Senior Aircraftman in the Royal Air Force, was charged (pursuant to section 70 of the Air Force Act 1955) with two charges of the civilian criminal offence of assault contrary to the Criminal Justice Act 1988. He was also charged with drunkenness contrary to the Air Force Act 1955.

The Convening Officer, by order dated 25 May 1995, convened a district court-martial to try the applicant on the charges. On 28 June 1995 the court-martial found the applicant guilty of one of the assault charges and of drunkenness. He was sentenced to 112 days detention and to be dismissed from the air force.

The Confirming Officer confirmed the applicant's conviction and sentence.

On 4 August 1995 the applicant petitioned the Defence Council against conviction and sentence. As regards his conviction he submitted that the police had not released jurisdiction to the air force authorities and that, accordingly, the court-martial did not have jurisdiction in the matter. He also submitted that, in light of various factors, the sentence was too severe. By letter dated 13 September 1995 the applicant's representative was informed of the decision, taken by the Air Force Board, to reject this petition.

On 22 September 1995 the applicant applied to a single judge of the Courts-Martial Appeal Court for leave to appeal to that court against conviction raising the same jurisdiction matter as before the Defence Council. On 21 December 1995 this application was rejected. The single judge found that the applicant should have raised the jurisdiction point before he pleaded to the charges during the court-martial itself.

B. Relevant domestic law and practice.

The Commission refers to the "Relevant domestic law and practice" contained 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 6 February 1996 and was registered on 16 February 1996.

On 12 April 1996 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 J. LIDDY

Secretary
to the First Chamber

President
of the First Chamber