AS TO THE ADMISSIBILITY OF

Application No. 27772/95
by Nigel David GOOCH
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 1995 by Nigel David Gooch against the United Kingdom and registered on 30 June 1995 under file No. 27772/95;

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 1964 and is currently in prison in Birmingham. 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.

On 6 May 1994 the applicant, who was at the time a Lance Corporal in the army of the United Kingdom, was convicted by a general court-martial (pursuant to section 70 of the Army Act 1955) of the civilian criminal offence of buggery contrary to the Sexual Offences Act 1956. He was sentenced to imprisonment for three years, to dismissal from the army and to be reduced to the ranks.

On 20 May 1994 the applicant petitioned the Confirming Officer in relation to his conviction and sentence. On 20 June 1994 the Confirming Officer confirmed the applicant's conviction and sentence.

On 25 August 1994 the applicant petitioned the Defence Council against conviction and sentence. By letter dated 11 October 1994 the applicant's then representative was informed that the Army Board (who took the decision on the petition on behalf of the Defence Council) had rejected the petition.

On 16 October 1994 the applicant applied to a single judge of the Courts-Martial Appeal Court for leave to appeal to that court against his conviction and for an extension of time to do so. On 6 January 1995 the application was rejected by a single judge of that court. Though the applicant had been out of time in lodging his application, the single judge considered the merits of the application for leave to appeal but rejected the application.

On 17 March 1995 the full Courts-Martial Appeal Court, having also considered the merits of the application for leave to appeal, refused leave to appeal.

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 nd 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 1995 and was registered on 30 June 1995.

On 18 October 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 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

J. LIDDY
President

to the First Chamber of the First Chamber