AS TO THE ADMISSIBILITY OF

Application No. 30280/96
by Stephen M. JORDAN
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 14 January 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 19 February 1996 by Stephen M. JORDAN against the United Kingdom and registered on 23 February 1996 under file No. 30280/96;

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 a British citizen born in 1971 and resident in Wednesbury. He is represented before the Commission by Mr John Mackenzie, a solicitor practising in London.

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

A. Particular circumstances of the case

1. Pre-trial detention

The applicant joined the British Army in 1988. On 28 March 1995 he was due to be interviewed by the Special Investigation Branch ("SIB") of the military police in relation to the misuse of army travel warrants. He went missing from his unit. On 20 April 1995 he was arrested by the civilian police and returned to his unit. The applicant claims that he was not brought before his Commanding Officer until 5 May 1995 at which stage he was informed of the charge against him of absence without leave for 21 days. His Commanding Officer dealt with the charge summarily and sentenced him to 28 days detention and to

28 days stoppage of pay. The applicant served 23 days (after remission for good conduct in detention).

The applicant was therefore due for release on 27 May 1995 but his detention continued on the basis of a number of suspected offences involving the making of fraudulent motor mileage claims that were being investigated by the SIB. Between that date and 16 June 1995 the applicant was interviewed in that respect three times by the SIB. The applicant instructed a civilian solicitor (his current representative) on 15 June 1995 while that solicitor had been visiting another detainee. On 16 June 1995 the applicant was brought before his Commanding Officer and a charge sheet recording one charge under the Theft Act 1968 relating to the making of fraudulent motor mileage claims was read to the applicant. The army authorities accepted (in the High Court proceedings referred to below) that, since Rule 4 of the Rules of Procedure (Army) 1972 had not been fulfilled until 16 June 1995, the applicant's detention between 29 May (being 48 hours after the beginning of his second period of detention) and 16 June 1995 was unlawful. They claimed that, during that Rule 4 procedure, the Commanding Officer explained to the applicant that he was being detained because of the serious nature of the charge against him.

On 25 August 1995 the applicant was served with the abstract of evidence. On 29 August 1995 a further charge sheet was read to the applicant which included eight additional and similar charges (obtaining property by deception contrary to the Theft Act 1968) and the applicant was remanded for trial by court-martial. On 15 September 1995 the applicant applied for legal aid under the army legal aid scheme; he was offered legal aid on 6 October 1995, legal aid was granted on 1 November 1995 and his solicitor was notified of the grant of legal aid by letter which arrived on 6 November 1995. This latter date was two weeks before the date which had by then been fixed for the court-martial hearing (20 November 1995).

The applicant's solicitor, by letter dated 13 October 1995, complained to the military authorities that the applicant had been informed on or around 10 October 1995 by the officer designated to administer the applicant's court-martial that, if he had not been represented by a civilian solicitor, he would already have been tried and received 18 months imprisonment, whereas now he awaited a court-martial with a potential sentence of 5 years imprisonment. The army authorities responded initially by confirming that they would investigate the matter and confirmed, by letter dated 23 October 1995, that the applicant had subsequently admitted that no officer had spoken to him on this matter or made any such comment. The applicant's representative responded by pointing out that the applicant had been interviewed in relation to the matter by the same officer whom it was alleged had initially made the comments and without a lawyer being present.

On 16 October 1995 the applicant's solicitor sought copies of the applicant's medical records for the purposes of the court-martial. By order dated 31 October 1995, a district court-martial was convened to try the applicant on the charges. Certain medical records were furnished on 13 and 17 November 1995 but the consultants' notes remained outstanding until 23 November 1995. The army authorities submitted before the High Court that the consultant's notes were not held by the battalion but were retained at the military hospital which was in the course of closure - accordingly, those notes had been dispatched to another hospital and from there to another place for the purpose of preparing micro-fiche copies.

In view of the applicant's solicitor's unwillingness to proceed with the court-martial without all medical notes, it was decided to adjourn the court-martial which had been fixed for 20 November 1995.

In November 1995 the applicant commenced habeas corpus

proceedings in the High Court. By letter dated 27 November 1995 to the applicant's lawyer, the Directorate of Army Legal Services confirmed that legal aid was not available under the army legal aid scheme for habeas corpus proceedings. The affidavit filed on behalf of the army authorities in those proceedings accepted that the 40 day delay report had not been completed and that the 100 day delay report had been completed over a month and half late (17 October 1995). On 11 December 1995 the army authorities gave an undertaking to the High Court that the applicant would be released from close arrest and held under open arrest. He was released from close arrest to open arrest on the same day. A further date fixed for the court-martial (6 December 1995) was vacated as the applicant's solicitor was not yet ready for the hearing. At least two other dates were fixed for the court-martial (6 February 1996 and 1 December 1997) but the court-martial has not yet taken place.

The applicant was released from open arrest in mid-1996 and was sent on leave. It appears that he was charged in mid-1997 on a number of additional offences relating to the misuse of army travel warrants. The applicant remains on leave.

2. Detention conditions, medical treatment and assault

The applicant was held in the following military establishments: from 21 to 28 April 1995 at the guardroom at Wellington Barracks; from 28 April to 4 May 1995 at Queen Elizabeth Military Hospital; from 4 May to 14 July 1995 at the guardroom at Wellington Barracks; from 14 July to 7 August 1995 at the guardroom at Victoria Barracks; from 7 August to 23 October 1995 at the guardroom at Wellington Barracks and from 23 October to 11 December 1995 at the Military Correctional Training Centre ("MCTC" - a military prison). A letter dated 13 October 1995 from Wellington barracks confirmed that, due to the cramped size of all barracks in London, the guardroom at Wellington Barracks was considered best suited to holding soldiers for not more than 28 days detention and it was barracks policy to send all soldiers awarded 28 days or more detention to the MCTC. The guardroom in Wellington barracks consists of 12 cells, a utilities room and washing facilities. Although it was initially intended to send the applicant to the MCTC, the regimental medical officers at the MCTC would not take the applicant because of his epilepsy which was diagnosed in early June 1995. By October 1995, the applicant's fits had ceased and he was accepted by the MCTC.

The applicant was prescribed medication for his epilepsy by the army medical personnel. The proceedings before the High Court indicate that the army authorities and the applicant did not dispute that the applicant suffered epileptic fits on the following dates: 22 April, 23 April, 24 April, 10 May, 17 May, 22 May, 27 May, 31 May, 11 June, 20 June, 2 July, 17 July and 1 August 1995. The army notes also record a further fit on 2 August 1995 and the applicant claims that he had two further fits and numerous nose bleeds at the MCTC.

The military authorities submitted the following before the High Court. The applicant was taken to hospital, in connection with his epilepsy, on 22 April, 24 April, from 24 April to 4 May, 24 May, 27 May and 26 June. He was certified fit by the regimental medical officer for detention or interview by the SIB on 5 May, 1 June, 16 June, 23 June, 3 July, 19 July and 23 October 1995. He was otherwise seen by army medical personnel on 24 April, 25 April, 10 May, 27 May, 31 May, 7 June, 11 June, 1, 2, 3, 7-15 July and 18 July 1995. The regimental medical officer personally briefed the regimental police about the applicant's condition and on 30 June 1995 those manning the guardroom were ordered to inspect the applicant at 15 minute intervals, which regime continued throughout the period of his close arrest (including when he was transferred to Victoria barracks). There was a warder in attendance full-time in the MCTC. It was accepted by the military authorities in the High Court proceedings that the applicant was left without medication for 6 days ending on 14 June 1995 - the battalion

applied for further tablets on 7 June 1995 and neither the military hospital nor the medical equipment depot had any in stock. During this period the regimental medical officer assessed the position and felt that there was no medical reason to release him from detention. On 11 June 1995 the applicant suffered an epileptic fit during which he banged his nose. The medication was received on 13 June 1995 and was immediately passed to the applicant. The authorisation to purchase drugs from a civilian outlet had been previously withdrawn.

The applicant's solicitor wrote two letters on 16 June 1995 to the army authorities protesting about the applicant's medical treatment, including one break of six days in the supply of his medication and the cancellation of the applicant's out-patient visits to hospital. The army authorities in its response (dated 20 June 1995) pointed out, inter alia, that the appointments had been postponed in consultation with the general physician at the military hospital and that these visits related to the suitability of the applicant for discharge from the army on medical grounds and not pressing needs related to his epilepsy. That letter also pointed out that the applicant was visited each day and asked whether he had any complaints or requirements and that those visits were recorded in the guardroom.

On 12 October 1995 the applicant was assaulted by a member of his battalion responsible for his custody, the latter of whom admitted in a statement dated 2 February 1996 to having grabbed the applicant briefly by the throat. That officer was charged with assault, convicted and sentenced by the Commanding Officer to pay a fine of £75.

B. Relevant domestic law and practice

The main provisions governing the arrest and detention of persons subject to military law are contained in sections 74-75 and 186-190 of the Army Act 1955 ("the 1955 Act"), in Rules 5, 6 and Schedule 1 of the Rules of Procedure (Army) 1972 ("the 1972 Rules") and in paragraphs 6.004-6.008 and 6.047 of the Queen's Regulations for the Army 1975.

Obtaining property by deception contrary to the Theft Act 1968, when tried by a district court-martial, carries a potential punishment of 2 years imprisonment.

1. Arrest

In general, once there is reasonable cause to suspect that a person subject to military law has deserted or gone absent without leave, the civilian police, an officer, warrant officer, non-commissioned officer or soldier of the regular forces may arrest that person. A person so arrested must, as soon as is practicable, be brought before a civilian court of summary jurisdiction (section 186 of the 1955 Act). In addition, a warrant for the arrest of a person subject to military law and considered to have deserted or to be absent without leave may be issued by his/her Commanding Officer and any such warrant must be addressed to the civilian police. A person arrested in pursuance of such a warrant must be handed over as soon as is practicable to the military authorities together with a certificate which records the fact, date and time of the arrest (section 190A of the 1955 Act).

2. Detention

The relevant rules governing the detention of the accused use the word "arrest" when referring to detention. An accused's detention can be in the form of "open arrest" or "close arrest" and the type of "arrest" must be specified in the order for arrest. Open arrest confines the accused to barracks and can involve additional reporting or residence conditions. Close arrest means confinement to a cell in the unit guardroom under the supervision of the guard.

Section 75 of the 1955 Act provides that the allegations against a person subject to military law who is under arrest shall be duly investigated without unnecessary delay and as soon as may be either proceedings shall be taken for punishing his offence or he shall be released from arrest. In addition, should that detention last longer than 8 days without a court-martial being convened, a report (a "delay report") on the necessity for further delay shall be made by the person's Commanding Officer to the prescribed authority in the prescribed manner and a similar report shall be made to the same authority and in the same manner every eight days until a court-martial is assembled or the offence is dealt with summarily or the accused is released from detention.

Section 76 of the 1955 Act provides that any allegation that the person subject to military law has committed an offence under the 1955 Act must be reported in the form of a charge to that person's Commanding Officer and before any action is taken the Commanding Officer must investigate the charge. According to section 77, where in the course of his investigations it appears to the Commanding Officer that proceedings in respect of the charges could, in the interests of the best administration of justice, be dealt with other than under the relevant Act under which they were preferred, the Commanding Officer may stay the charges. (This allows the charges to be dealt with under the other service Acts or by the civilian authorities). This section also allows the Commanding Officer to dismiss the charge if he is of the opinion that it ought not to be proceeded with.

If the Commanding Officer has not stayed or dismissed the charge, and the charge is one that can be dealt with summarily by him and he considers that it is one to be so dealt with, he must deal summarily with the charge, taking evidence, reducing it to writing, deciding as to the guilt or innocence of the accused and rendering sentence (section 78 of the 1955 Act). Otherwise the Commanding Officer must take the prescribed steps to have the case tried by court-martial.

Rule 4 of the 1972 Rules provides that when a person is detained by a military authority, his Commanding Officer shall, unless it is impracticable, within 48 hours of becoming aware that he is so detained have such person brought before him, inform him of the charge against him and begin to investigate it.

Rule 5 of the 1972 Rules provides that the report to which Article 75 of the 1955 Act refers shall be in the form set out in Schedule 1 to the 1972 Rules, shall be signed by the Commanding Officer of the person detained and shall be sent to the person who would be responsible for convening the court-martial. According to Schedule 1 of the 1972 Rules the report must, inter alia, specify whether the accused is in close or open arrest; the reasons for his detention; whether an abstract of evidence has been taken and when; whether an application for trial has been made and, if not, why not; whether Army Legal Services' advice has been sought, received and followed; whether a date for trial has been fixed; and the reasons for the delay since the last report. Rule 6 of the 1972 Rules provides that the accused shall not be held in arrest for more than 72 consecutive days without a court-martial having been convened unless the Convening Officer directs in writing, citing reasons, that the accused shall not be released from detention.

Paragraph 6.005 of the Queen's Regulations states that the mere allegation that a person subject to military law has committed an offence does not of itself necessarily call for or warrant placing that person under arrest of any description. If the offence is trivial, the offender is to be informed of the charge and required to report to the unit orderly room at a specific date and time. If arrest is necessary, the category of arrest is to be determined in the interests of the service and by the nature of the alleged offence. Generally, a person is to be placed under close arrest only when confinement is necessary

to ensure his safe custody or to maintain discipline.

The circumstances which would warrant placing an "offender" under "close" arrest include those where the accused is deliberately trying to undermine discipline, is likely to injure himself or others or is likely to suborn witnesses; where he has not surrendered but has been apprehended as an illegal absentee or has habitually absented himself; and where, having regard to the nature or prevalence of the alleged offence which is under investigation, it is undesirable in the interests of discipline that he should be at large or allowed to consort with his comrades.

Paragraph 6.007 of the Queen's Regulations provides that (subject to, inter alia, the general principle that the accused is not to be unnecessarily held under arrest) Commanding Officers are responsible for ensuring that the need to keep an accused under arrest, together with the form of that arrest, is kept under constant review. As necessary, the form of arrest may be changed or the accused released.

Paragraph 6.047 provides that a charge preferred against an officer or soldier is to be dealt with at the earliest opportunity. Accordingly, it is provided, inter alia, that on the receipt of every delay report the Convening Officer is to satisfy himself (if the accused in is detention) as to the necessity of the ongoing detention (sub-section (a) and (b)). On receipt of the fourth delay report, or, in any event, after 40 days detention, the Convening Officer is to make a special report to his/her superior officer outlining the reasons for the delay, when it is expected the accused will be brought to trial and the reasons for the continued detention (sub-section (c)). If an accused is not brought to trial by the 72nd day, the latter superior officer must, in turn, make a special report to the Commander in Chief by that day (sub-section (d)). On receipt of such special reports, the superior officer and Commander in Chief mentioned are to take all practical steps to expedite the trial of the accused (subsection (e)).

Where an accused has been in detention for 72 consecutive days without a court-martial being convened, a direction in accordance with Rule 6 of the 1972 Rules not to release the accused can only be given with the prior approval of the Commander in Chief, who is required to make a special report to the Ministry of Defence for the information of the Defence Council. This report is to contain the reasons for the delay, when it is expected the accused will be brought to trial and the reasons for the continued detention (sub-section (f)).

3. Legal Aid

The provision of legal aid from the military legal aid scheme is regulated by paragraphs 6.094-6.095 of the Queen's Regulations together with Chapter 6, Annex D to those Regulations. Annex D provides, inter alia, that legal aid is available to those who "are to be tried by court-martial". The information booklet issued by the army and entitled "The rights of a soldier charged with an offence under the Army Act 1955" provides that a soldier can apply for legal aid with a view to being defended by a civilian lawyer once his Commanding Officer has remanded him for trial by court-martial.

4. Habeas Corpus

The Commission refers to the outline of the habeas corpus proceedings in the judgment of the Court in the X v. the United Kingdom case (Eur. Court HR, X v. the United Kingdom judgment of 5 November 1981, Series A no. 46, pp. 9-11, paras. 17-19). Habeas corpus is available to persons in military custody (R v Royal Army Service Corp. Colchester ex p Elliott (1949) 1 All E 373). In that context, the court will enquire into the period of time which has elapsed before the court-martial and will, if necessary, order release (Re Mackle, reported in The Independent of 26.2.1993).

5. District army courts-martial

The relevant domestic law and practice are outlined in the Findlay and Coyne judgments (Eur. Court HR, Findlay v. the United Kingdom judgment of 25 February 1997 and Coyne v. the United Kingdom judgment of 24 September 1997, both to be published in the Reports of Judgments and Decisions for 1997). On 1 April 1997 the Armed Services Act 1996 came into force. This Act substantially amends, in particular, the role of the Convening Officer in court-martial proceedings.

COMPLAINTS

The applicant complains under Article 5 para. 2 about the delay in informing him of the charges in respect of which he was detained and alleges that the actual basis for his close arrest was other matters which were the subject of on-going SIB investigations (abuse of travel warrants) and with which he was eventually charged in mid-1997.

The applicant also complains under Article 5 para. 3 in that there were breaches of all the principles laid down in the De Jong and Schiesser judgments (Eur. Court HR, De Jong, Baljet and Van Den Brink v. the Netherlands judgment of 22 May 1984, Series A no. 77 and Schiesser v. Switzerland judgment of 4 December 1979, Series A no. 34).

He further complains under Article 5 para. 4 about the lack of an effective procedure to challenge the decision to detain him. Since the basis for the court's decision in the habeas corpus proceedings was the length of his pre-trial detention, those proceedings were not available to him until he had been in detention for a long time.

He also makes detailed submissions concerning the lack of information given to a detainee by the army authorities as regards the decision-making process relating to his continuing detention, about the lack of provisions dealing with non-compliance with the relevant legal requirements and about the consequences of this on the control of the lawfulness of his detention. He also claims that certain of these legal requirements were not complied with in his case and that he was never given the opportunity to present reasons for his release. He also challenges the independence and qualifications of the persons who decided on his initial and continuing pre-trial detention together with the adequacy of the army legal aid scheme.

The applicant also complains under Article 6 para. 1 as regards the decision-making process relating to his pre-trial detention; about the fact that a court-martial is not a standing court; about being threatened by an officer because he had briefed a civilian solicitor; and about delay in furnishing him with his medical records for the court-martial. He further complains under Article 6 para. 3(a) about the delay in informing him of the charges against him and under Article 6 para. 3(c) that legal aid under the army legal aid scheme is not available until one is remanded for court-martial.

The applicant also invokes Article 13 in conjunction with Articles 5 and 6, referring to the failure to incorporate the Convention into domestic law.

Finally, the applicant makes a number of submissions as regards the conditions of his detention, his medical treatment in detention and in relation to an assault on him while he was in detention.

THE LAW

1. Article 26 (Art. 26) of the Convention

(a) Detention between 20 April to 27 May 1995

The Commission notes that the applicant makes certain submissions in relation to the period of detention from 20 April to 27 May 1995. However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision as under Article 26 (Art. 26) of the Convention the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken. When no domestic remedy is available, the six month period mentioned in Article 26 (Art. 26) runs from the act, decision or event which is itself alleged to be in violation of the Convention (No. 7379/76, Dec. 10.12.76, D.R. 8, pp. 211, 213; No. 14807/89, Dec. 12.2.92, D.R. 72, p. 148; No. 19601/92, Dec. 19.1.95, D.R. 80, p. 46).

The Commission notes that, even assuming that the applicant had no domestic remedy to exhaust in respect of this period of detention, his application was introduced before the Commission on 19 February 1996 which is more than six months after the final date (27 May 1995) of that period of detention. It follows that, insofar as the applicant complains about his detention between 20 April and 27 May 1995, any such complaints must be rejected pursuant to Article 27 para. 3 (Art. 27-3) of the Convention.

(b) Complaints under Article 6 alone and in conjunction with Article 13 (Art. 6+13) of the Convention

Article 6 (Art. 6) of the Convention, insofar as relevant, reads as follows:

> "1. In the determination ... 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. ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> > a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; ...
> >
> > c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;"

He also invokes Article 13 in conjunction with Article 6 (Art. 13+6), the former Article reading as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

The applicant makes a number of complaints, and submissions to be considered, under Article 6 (Art. 6) of the Convention. However, the Commission notes that the substantive court-martial proceedings to which the applicant's complaints relate have not, as yet, taken place. Accordingly, the Commission considers that the applicant cannot, at this stage, claim to be a victim of a violation (within the meaning of Article 25 (Art. 25) of the Convention) as regards the complaints he has introduced under, and those submissions which fall to be considered under, Articles 6 and 13 (Art. 6, 13) of the Convention. These complaints are, accordingly, inadmissible within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. Articles 5 and 13 (Art. 5, 13) of the Convention and detention between 27 May 1995 and 11 December 1995

Article 5 (Art. 5) of the Convention, insofar as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> > c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c. of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The applicant complains under Article 5 para. 2 (Art. 5-2) that it was 16 June 1995 before he was informed of one charge against him and 19 August 1995 before he was informed of an additional 8 similar charges against him. He also claims that the real basis for his continued detention was the similar and more serious offences which were under investigation during his detention and with which he was charged in mid-1997 (in relation to abuse of travel warrants). The applicant also submits that the reason he was eventually charged on 16 June 1995 was because he had just instructed a solicitor.

The applicant complains under Article 5 para. 3 (Art. 5-3) that there were breaches of all the principles laid down in the De Jong, Baljet and Van Den Brink and the Schiesser judgments (Eur. Court HR, De Jong, Baljet and Van Den Brink v. the Netherlands judgment of 22 May 1984, Series A no. 77 and Schiesser v. Switzerland judgment of 4 December 1979, Series A no. 34). He submits that he was not told who had made the decision to retain him in close arrest, that the Commanding Officer who carries out the role described in Rule 4 of the 1972 Rules is not independent of the prosecution and that the Rule 4 hearing did not take place within the required 48 hours or at any time until 16 June 1995.

He also complains under Article 5 para. 4 (Art. 5-4) about the lack of a procedure to challenge the decision to detain him. In the habeas corpus proceedings the decision of the High Court was made on the basis that the applicant had already been in custody for half of the maximum potential sentence - accordingly, no such judgment could have been rendered until he had already been in detention for a long period.

He also submits that during the entire period of his detention he had never been informed that he was to be detained in close arrest or given the reasons for his detention or told who had made any of the decisions in that regard. He claims that there is no requirement to be informed in relation to the on-going reviews of his detention (including no requirement to be provided with copies of the relevant documentation), that he never received the delay reports, that he therefore had no way of knowing whether the relevant rules were being complied with in his case and that the delay reporting procedure was not complied with. He further claims that he was never given the opportunity to present reasons for his release. He points out that there is no provision in the relevant army rules for a detainee's release when those rules have been breached or for a sanction for non-compliance and no requirement for an assessment of the need for continued detention against specific criteria.

He further submits that the persons deciding on his continued detention are connected with the prosecution of the case and, therefore, lack independence. Not one of the officers involved in making decisions on his detention had legal training and it is not usual to seek legal advice on the question of detention. As regards legal aid, he points out that, since one cannot obtain legal aid under the army legal aid scheme until one is remanded for trial, he was six and a half months in detention before he got legal aid from the military authorities and that legal aid does not cover habeas corpus proceedings.

The Commission finds that these complaints raise complex issues of fact and law under the Convention. It considers however that it cannot, on the basis of the file, determine the admissibility of the applicant's complaints under Article 5 and 13 (Art. 5, 13) of the Convention and considers that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Commission's Rules of Procedure, to give notice of the application to the respondent Government.

3. Conditions of detention, medical treatment and care and assault

The applicant complains that the conditions of detention and his medical treatment were wholly inadequate. He submits that on two occasions in June 1995 (each lasting approximately one week) he was not provided with his epilepsy medication, during one of which periods he had an epileptic fit and which meant that he had to re-commence his treatment plan each time. He claims that the military authorities failed to allow him to have a Magnetic Resonance Imaging scan (MRI scan) which had been recommended on 18 May 1995 by his doctor. The applicant submits a letter dated February 1996 from the Senior Registrar in Neuropsychiatry at Maudsley Hospital to the applicant's solicitors confirming the necessity of this test. He also submits that a number of out-patient visits were cancelled by the army authorities.

He further argues that the facilities and supervision in the guardroom were not adequate for an epileptic - during one fit in Victoria Barracks he claims that he stopped breathing and was revived by a fellow prisoner and that on another occasion he injured himself when he fell on the concrete floor and stairs. It was only after the applicant's solicitor complained that he was monitored every 15 minutes. He claims that the MCTC showed little interest in his fits and related nose bleeds. In any event, the cells in the guardroom do not have the facilities nor the trained staff for detaining persons for long periods of time. As regards the assault, he submits that the sentence was so light (a fine of £75) that he continued to feel intimidated by that officer.

The Commission considers that these complaints fall to be considered under Article 3 (Art. 3) of the Convention which Article reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The case-law of the Convention organs establishes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3) of the Convention. The assessment of that minimum is relative and depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects (Eur. Court HR, Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162). The Commission also recalls that illness does not exclude detention but there is an obligation to provide adequate medical treatment for persons in detention (Eur. Court HR, Hurtado v. Switzerland judgment of 28 February 1994, Series A no. 280-A, Comm. Report 8.7.93, p. 10 and No. 8224/78, Comm. Report 5.12.79, D.R. 18, p. 100).

As to the alleged periods during which the applicant was without medication, the Commission considers that the applicant's submissions as regards a second such period are unsubstantiated but notes that the army authorities accepted before the High Court that they were not in a position to supply the applicant with his epilepsy medication for six days in June 1995. In this latter respect, the applicant does not dispute that this was unintentional and resulted from a temporary shortage of the army supplier's stocks (it being contrary to orders to obtain such supplies from a civilian outlet). In addition, the specific precautions taken by the army authorities during the relevant period are noted and the applicant has not submitted that he attempted and was unable to obtain on a temporary basis the required medication through family or friends. In any event, the applicant has submitted no evidence, medical or otherwise, that the lack of medication for six days and the consequent need to re-commence his course of treatment caused suffering or harm of a level falling within the scope of Article 3 (Art. 3) of the Convention. Similarly, the MRI scan was referred to as an investigative procedure in the consultant's letter of February 1996 and, even assuming that the army authorities prevented it being carried out, no evidence has been submitted that the failure to carry out that scan caused suffering or harm of a level falling within the scope of Article 3 (Art. 3). As to the cancellation of certain out-patient visits, the Commission notes that this was done in consultation with the applicant's physician and that those visits related to his suitability for discharge from the army on medical grounds and not to the treatment of his epilepsy.

As to the suitability of those cells for an epileptic, the Commission finds the applicant's submissions as to the consequent effect on his health, to be vague and unsubstantiated. In submitting that another prisoner had to give him mouth-to-mouth resuscitation, he does not specify the date, time, the name of the prisoner or the circumstances and he does not submit any substantiating material in that respect. His claim that he injured himself when he fell on the "concrete floor and stairs" implies that he was not even in his cell at the relevant time. No medical evidence as to any consequent injury to his health as a result of his detention in those cells is submitted. His submissions about the MCTC are equally general and vague. As to the applicant's allegations as regards the alleged unsuitability of the guardroom for long-term detainees, the Commission does not consider that the description submitted by the applicant of the cells and facilities in the guardhouse in Wellington barracks demonstrates detention in conditions such as to constitute treatment of such severity as would amount to a violation of Article 3 (Art. 3).

The applicant also claims that he felt intimidated after the relevant officer's prosecution for assault. The Commission notes the relevant officer's conviction and sentence for assault, the relatively minor nature of the assault and the absence of any claims by the applicant as to any further incidents. In such circumstances, the

Commission does not consider that the alleged state of mind of the applicant (even assuming that the responsibility of the State is engaged) amounts to treatment sufficiently severe as to constitute a violation of Article 3 (Art. 3) of the Convention.

Finally, the Commission has also considered the circumstances of the applicant's detention as a whole. It notes that it was during the applicant's detention that his epilepsy was diagnosed (early June 1995) and that fresh supplies of epilepsy medication were ordered as early as 7 June 1995. It also notes the applicant's treatment in hospital on an in-patient and out-patient basis, his regular review by army medical personnel for suitability for detention and questioning, the briefing by the regimental medical officer of the regimental police (who were on duty in the guardhouse), the daily visits at least from 20 June 1995, the supervision procedures (every fifteen minutes) which were in place at least from 30 June 1995 and the provision of required medication (with the exception of 6 days). In such circumstances, the Commission does not consider that the cumulative effect of the conditions of his detention can be said to disclose a violation of Article 3 (Art. 3) of the Convention (No. 8317/78, Dec. 15.5.80, D.R. 20, p. 44).

For the these reasons, the Commission

DECIDES TO ADJOURN the examination of the applicant's complaints under Articles 5 and 13 as regards his detention from 27 May 1995 to 11 December 1995;

by a majority
DECLARES INADMISSIBLE the remainder of the application.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber