AS TO THE ADMISSIBILITY OF

Application No. 27389/95
by James MCDAID
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 12 May 1995 by James McDaid against the United Kingdom and registered on 24 May 1995 under file No. 27389/95;

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 1965 and resident in Germany. 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 22 July 1993 the applicant, then a Corporal in the army, was charged pursuant to section 70 of the Army Act 1955 with, inter alia, the civilian criminal offence of assault occasioning actual bodily harm contrary to the Offences Against the Person Act 1861.

The Convening Officer, by order dated 11 November 1993, convened a district court-martial to try the applicant on the charges. On 25 November 1993 the court-martial found the applicant guilty as charged and sentenced him to nine months detention and to be reduced to the ranks.

The applicant's conviction and sentence were subsequently confirmed by the Confirming Officer and his conviction was promulgated on 20 January 1994.

On 4 March 1994 the applicant petitioned the Defence Council against conviction and sentence. On 11 April 1994 the applicant was informed of the decision, taken by the Army Board, to reject the petition.

On 27 June 1994 the applicant applied to a single judge of the Courts-Martial Appeal Court for leave to appeal against conviction to that court and on 8 August 1994 this application was rejected.

On 13 September 1994 the applicant submitted a renewed application for leave to appeal against conviction before the full Courts-Martial Appeal Court and on 6 March 1995 this application was rejected by the full court.

The applicant has introduced a seperate application (No. 34822/97) to the Commission in relation to a subsequent court-martial.

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 12 May 1995 and was registered on 24 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 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