AS TO THE ADMISSIBILITY OF

Application No. 32024/96
by Francisco Javier NASH
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 2 July 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. CONFORTI
N. BRATZA
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 June 1996 by Francisco Javier NASH against the United Kingdom and registered on 25 June 1996 under file No. 32024/96;

Having regard to the reports provided for in Rule 47 of the Rules of Procedure of the Commission and the respondent Government's letter dated 26 March 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1960 and resident in Manchester. He is represented before the Commission by Gilbert Blades, a solicitor practising in Lincoln. The facts of the case as submitted by the applicant may be summarised as follows.

A. Particular circumstances of the case

By charge sheet dated 16 September 1994 the applicant, then a non-commissioned officer in the British army stationed in Germany, was charged (pursuant to section 70(1) of the Army Act 1955) with assault occasioning actual bodily harm contrary to the Offences Against The Person Act 1861.

The Convening Officer, by order dated 1 December 1994, convened a district court-martial to try the applicant on the charges. On 5 January 1995 the applicant was found guilty as charged and was sentenced to 140 days detention and to be reduced to the ranks. He was also fined £400.00.

The Confirming Officer confirmed the applicant's conviction and sentence which were then promulgated on 20 February 1995. By letter dated 7 April 1995 the applicant's representative was informed of the decision, taken by the Army Board, to reject the applicant's subsequent petition to the Defence Council. On 30 May 1995 the application for leave to appeal against conviction to the Courts-Martial Appeal Court ("CMAC") was rejected by a single judge of that court. On 8 June 1995 the applicant lodged a renewed application for leave to appeal against conviction to the full CMAC which application was rejected by that court on 18 July 1995.

It is not disputed that the applicant was not notified of the date that the full CMAC was to hand down its decision and that no notification of that court's decision was sent to him until his solicitor commenced enquiries. The applicant's solicitor wrote to the Registrar of the CMAC on 25 April 1996 enquiring about the result of the application. On 14 May 1996 the Registrar of the CMAC informed the applicant's representative that the application had been rejected on 18 July 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, Reports 1997-I, No. 30) and in its report on the Coyne application (No. 25942/94, Comm. Report 25.6.96, unpublished).

COMPLAINTS

The applicant complains under Article 6 para. 1 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 June 1996 and was registered on 25 June 1996.

On 17 January 1997 the Commission decided to communicate the application and to request the parties' observations.

In their letter received on 2 April 1997 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 notes that, while he accepts that the decision of the full CMAC may have been handed down in open court, the applicant claims that neither he nor his solicitor was informed of the date that court would hand down its decision. He also submits that a copy of the order of the court is, in the normal course of events, sent to the appellant but that this was not done in his case. The Government have no observations, inter alia, on the applicant's submissions in this respect. In such circumstances, the Commission considers that the application was introduced within six months of the date when, it is not disputed, the applicant's solicitor was notified of the rejection

of the applicant's appeal to the full CMAC namely, in May 1996. Accordingly, the Commission considers that the application has been introduced within the time-limit set down by Article 26 (Art. 26) of the Convention (No. 14056/88, Dec. 28.5.91, D.R. 70 p. 208).

The Commission also 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 of the case.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber