AS TO THE ADMISSIBILITY OF

Application No. 30276/96
by Nicholas John POTTER
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 14 February 1996 by Nicholas John Potter against the United Kingdom and registered on 23 February 1996 under file No. 30276/96;

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 1970 and resident in Cambridgeshire. 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 April 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 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 May 1995, convened a district court-martial to try the applicant on the charge. On 7 June 1995 the court-martial found the applicant guilty. He was sentenced to 84 days detention and to pay £50 compensation.

The Confirming Officer confirmed the applicant's conviction and

sentence.

On 4 August 1995 the applicant petitioned the Defence Council against conviction and sentence. The applicant argued that, since the police had not released primary jurisdiction to the air force authorities, the court-martial did not have jurisdiction in the matter. The applicant also submitted that, in light of several factors, the sentence was manifestly excessive. By letter dated 22 September 1995 the applicant's representative was informed of the decision (taken by the Air Force Board) to reject this petition.

On 26 September 1995 the applicant applied to a single judge of the Courts-Martial Appeal Court for leave to appeal to that court against conviction again claiming a lack of jurisdiction on the part of the court-martial. On 21 December 1995 this application was rejected, the single judge pointing out that this point should have been raised by the applicant 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).

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 14 February 1996 and was registered on 23 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
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber