AS TO THE ADMISSIBILITY OF

Application No. 28009/95
by Marcus Paul SMART
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 3 July 1995 by Marcus Paul Smart against the United Kingdom and registered on 25 July 1995 under file No. 28009/95;

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 1968 and resident in Northampton. 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 May 1994 the applicant, who was a non-commissioned officer in the army stationed in Turkey, was charged (pursuant to section 70 of the Army Act 1955) with indecent assault and common assault contrary to the Sexual Offences Act 1956 and the Criminal Justice Act 1988, respectively. He was also charged with disgraceful conduct of an indecent kind contrary to section 66 of the Army Act 1955

The Convening Officer, by order dated 15 August 1994, convened a district court-martial to try the applicant on the charges. On 14 September 1994 the court-martial found the applicant guilty of disgraceful conduct and he was dismissed from the army with disgrace

and reduced to the ranks.

The Confirming Officer subsequently confirmed the conviction and sentence.

On 11 February 1995 the applicant petitioned the Defence Council against conviction. The applicant submitted that his conviction was unsafe and unsatisfactory because the Judge Advocate had erred and misdirected the court-martial that certain listed matters of evidence would amount to corroboration of the third charge against the applicant. By letter dated 24 March 1995 the applicant's representative was informed of the decision, taken by the Army Board, not to vary the conviction.

On 29 March 1995 the applicant applied to a single judge of the Courts-Martial Appeal Court for leave to appeal to that court against conviction. The applicant raised the same matters before the single judge as had been raised by him before the Defence Council. On 24 May 1995 this application was rejected. The single judge found that, even assuming the relevant offence required corroboration, there was no misdirection in the Judge Advocate's instructions to the court-martial. Each of the listed matters of evidence was capable of corroborating an important aspect (albeit not the whole) of the victim's evidence -such matters are to be regarded as to their cumulative effect and not as separate items. The single judge also found that the fingerprint evidence was of exceptional force.

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 3 July 1995 and was registered on 25 July 1995.

On 28 February 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