AS TO THE ADMISSIBILITY OF

Application No. 25941/94
by Roger Michael SMITH
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 25 November 1994 by Roger Michael Smith against the United Kingdom and registered on 14 December 1994 under file No. 25941/94;

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 1958 and resident in Southampton. 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 19 and 20 October 1992 the applicant (who was at the time a flight lieutenant in the Royal Air Force stationed in Germany) was informed by his superior officers that there had been complaints made about certain incidents involving his behaviour towards some aircraftwomen.

By letter dated 21 October 1992 the applicant was given a written warning which detailed the complaints made and stated that the applicant was developing a reputation as a man who was a nuisance to females and went on to point out that:

"This foolish behaviour will not be tolerated and you are to ensure that no further occurrences take place. If you fail to heed this advice you are warned that the consequences of your actions may be either investigation of these and any future incidents by HQ P&SS <Provost and Security Services> staff and or raising of a special report under QR 1021 for consideration by a higher authority. ... This written warning will be placed on your personal file and will be reviewed, providing no further incidents occur, in six months time."

The applicant submits that the during the discussions with his superior, who gave him the warning letter, the applicant was told that there would be no further action in relation to these matters (including court-martial proceedings) provided there were no further such occurrences. The applicant was then invited to make a statement in response to the warning. The applicant then made a statement to his superior giving his version of the incidents as he saw them.

Subsequently, the mother of one of the aircraftwomen (who had made a number of complaints) contacted a Member of Parliament about the incidents and a parliamentary inquiry ensued. The aircraftwoman in question made a statement to that inquiry on 20 November 1992 to the effect that, although she had previously stated to the air force authorities on three occasions that she was satisfied that there should be no police involvement in this matter, she had changed her mind.

Police investigations were then initiated including interviews with the aircraftwomen who had already complained and other female members of the air force where the applicant was stationed.

As a result, complaints by an additional two female members of the air force were made to the police against the applicant. The applicant submits that the police had access to the statement made by the applicant in response to the warning letter and used this statement to subsequently question the applicant.

In May 1993 the applicant was charged on five counts of conduct to the prejudice of good order and air force discipline contrary to section 69 of the Air Force Act 1955 in relation to his having allegedly behaved with "undue familiarity" towards certain aircraftwomen (which offence carries a potential penalty of two years imprisonment).

He was also charged on three counts of indecent assault (a civilian criminal offence) of one of the above-mentioned aircraftwomen and another aircraftwoman. All charges related to a period of time before the written warning.

The Convening Officer, by order dated 1 June 1993, convened a general court-martial to be held in Rheindahlen, Germany. The court martial took place on 14 - 17 June 1993. The Judge Advocate found, inter alia, that no promise was made to the applicant that proceedings would not issue against him.

On 17 June 1993 the applicant was found guilty on four of the charges of conduct to the prejudice of good order and discipline and not guilty on all remaining charges. He was sentenced to dismissal from the air force.

The applicant petitioned the Confirming Officer and, by letter dated 9 September 1993, the applicant's representative was informed that the Confirming Officer had confirmed the applicant's conviction and sentence.

On 14 September 1993 the applicant petitioned the Defence Council. By letter dated 10 January 1994 the applicant's representative was informed of the decision, taken by the Air Force Board, to reject

this petition.

The applicant was subsequently granted leave by a single judge of the Courts-Martial Appeal Court for leave to appeal to that court.

On 15 November 1994 the full Courts-Martial Appeal Court rejected the applicant's appeal.

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 25 November 1994 and was registered on 14 December 1994.

On 28 February 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