AS TO THE ADMISSIBILITY OF

Application No. 30236/96
by Gareth Edward 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 2 February 1996 by Gareth Edward Smith against the United Kingdom and registered on 16 February 1996 under file No. 30236/96;

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 Lincolnshire. 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 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 contrary to the Criminal Justice Act 1988. He was also charged with disobeying an order and with drunkenness, both contrary to the Air Force Act 1955.

The Convening Officer, by order dated 28 June 1995, convened a district court-martial to try the applicant on the charges. On 4 July 1995 the court-martial found the applicant guilty as charged. He was sentenced to 112 days detention and to be dismissed from the air force.

Subsequently, the Confirming Officer did not confirm that part of the applicant's sentence relating to his dismissal but confirmed the sentence insofar as it related to the applicant's detention.

On 14 August 1995 the applicant petitioned the Defence Council against conviction. The applicant argued that the findings were unsafe and unsatisfactory because of a lack of reliable identification of the applicant, the use of unreliable evidence of two policemen, the lack of supporting evidence from the guardroom and numerous contradictions and discrepancies in the prosecution's case. He also argued that the findings were against the weight of the evidence and were perverse. By letter dated 1 November 1995 the applicant's representative was informed of the decision, taken by the Air Force Board, to reject this petition.

On 1 November 1995 the applicant applied to a single judge of the Courts-Martial Appeal Court for leave to appeal to that court against conviction and for an extension of time in which to do so. The applicant raised the same grounds as before the Defence Council. While the extension of time was granted, on 11 January 1996 this application was rejected. The single judge found that the decision was neither unsafe or unsatisfactory there being evidence upon which the findings could be justifiably based.

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, 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 2 February 1996 and was registered on 16 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