AS TO THE ADMISSIBILITY OF

Application No. 32714/96
by James Stephen TRAYNOR
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 27 August 1996 by James Stephen TRAYNOR against the United Kingdom and registered on 30 August 1996 under file No. 32714/96;

Having regard to the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1971 and resident in the United Kingdom. He is represented before the Commission by Mr. John MacKenzie, a solicitor practising in London. The facts as represented by the applicant may be summarised as follows.

A. Particular facts of the case

On 22 October 1994 the applicant, a Lance Corporal in the British army, was arrested by the military authorities and he was told that he was suspected of committing an offence under the Misuse of Drugs Act 1971. Having given a urine sample, he was released without charge. On 29 November 1994 the applicant was again interviewed by the arresting officer and told that he was suspected of having supplied drugs to a particular person, at a particular time and in a particular place contrary to the 1971 Act.

The applicant's trial by district court-martial took place between 25 and 28 September 1995. The applicant was found guilty and he was sentenced to 8 months imprisonment, to dismissal from the army and to be reduced to the rank of guardsman.

On 30 January 1996 the applicant's petition against conviction and sentence was presented to the Defence Council. The applicant submitted, inter alia, that the order convening the court-martial had not been correctly completed and that the Judge Advocate had erred in law in several respects. By letter dated 2 May 1996 the applicant's representatives were informed of the decision, taken by the Army Board, to reject the petition.

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).

The Commission also notes the following as regards the Courts-Martial Appeal Court ("CMAC"). The CMAC has the same status and, in essence, the same procedure as the Court of Appeal, Criminal Division. The judges of this court include ordinary and ex officio judges of the Court of Appeal and such judges of the High Court as are nominated by the Lord Chief Justice. If an appeal petition is rejected by the Army Board an appellant may apply to a single judge of the CMAC (and, if necessary, also to the full court) for leave to appeal against conviction to that court.

The CMAC must allow the appeal against conviction if it considers that the finding of the court-martial is, under all the circumstances of the case, unsafe or unsatisfactory or involves a wrong decision on a question of law. The appeal must also be allowed if there was a material irregularity in the course of the trial. In any other case the CMAC must dismiss the appeal. If the CMAC allows an appeal against conviction it must quash the conviction, although, on the quashing of a conviction, the CMAC's power to authorise a new trial may come into operation.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention that he did not receive a fair and public hearing by an independent and impartial tribunal established by law.

The applicant further complains that he was not informed of the specific charges against him until 29 November 1994 and he invokes Article 6 para. 3(a) of the Convention in this respect.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 27 August 1996 and was registered on 30 August 1996. On 27 November 1996 the Commission decided to communicate the application and request the parties' observations. In their letter received on 7 March 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 hearing by an independent and impartial tribunal established by law. He also complains, invoking Article 6 para. 3 (a) (Art. 6-3-a) of the Convention, that he was not informed of the specific charges against him until 29 November 1994. The Government have no observations on the admissibility of the applicant's complaints.

The Commission recalls that, pursuant to Article 26 (Art. 26) of the Convention, it is only competent to consider complaints after all domestic remedies have been exhausted according to the generally recognised rules of international law. In this respect, the Commission notes that after the rejection of the applicant's petition to the Defence Council the applicant did not then proceed to apply for leave to appeal to the CMAC. In this respect, the Commission considers that the grounds, upon which the applicant's petition to the Defence Council was based, constituted grounds of appeal which the CMAC is competent to consider. It further notes that the CMAC can, if it finds in the appellant's favour on such grounds, quash the conviction. In addition, the Commission recalls that similar applications were declared inadmissible where the applicant failed to make any application for leave to appeal to the CMAC (No. 32821/96, Dec. 17.1.97, unpublished and No. 26165/95, Dec. 9.4.97, unpublished). In such circumstances, the Commission considers that, by failing to apply to the CMAC for leave to appeal to that court, the applicant failed to exhaust domestic remedies within the meaning of Article 26 (Art. 26) of the Convention and the Commission must therefore declare the application inadmissible pursuant to Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber