

EUROPEAN COMMISSION OF HUMAN RIGHTS

FIRST CHAMBER

Application No. 22083/93

Leslie Stubbings, J.L. and J.P.

against

the United Kingdom

REPORT OF THE COMMISSION

(adopted on 22 February 1995)

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- I. INTRODUCTION
1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.
- A. The application
2. The first applicant is Leslie Stubbings born in 1957 and resident in Wivenhoe. The second applicant, J.L., was born in 1962 and is resident in Lincoln. The third applicant, J.P., was born in 1958 and is resident in Horsley. The applicants are all British citizens. They are represented by Ms. Françoise Hampson and Professor Kevin Boyle, university lecturers.
3. The application is directed against the United Kingdom. The respondent Government are represented by Mr. Martin Eaton, Foreign and Commonwealth Office, as Agent.
4. The case concerns the complaints of the applicants that they are denied access to court in respect of their claims for compensation for psychological injury caused by abuse suffered in their childhood as a result of the operation of the applicable rules of prescription and that the difference in the rules as applied to themselves and other categories of claimants discloses discrimination. It raises issues under Articles 6 para. 1, 8 and 14 of the Convention.
- B. The proceedings
5. The application was introduced on 14 May 1993 and registered on 17 June 1993.
6. On 1 December 1993, the Commission (First Chamber) decided to communicate the application to the respondent Government for their written observations on the admissibility and merits of the application.
7. The Government submitted their written observations on 21 March 1994. The applicants submitted their written observations in reply on 10 May 1994.
8. On 6 September 1994, the Commission (First Chamber) declared the application admissible.
9. The parties were then invited to submit any additional observations on the merits of the application.
10. On 23 November 1994, the Government submitted further observations.
11. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the case. In light of the parties' reactions, the

Commission now finds that there is no basis on which a friendly settlement can be effected.

C. The present Report

12. The present Report has been drawn up by the Commission (First Chamber) in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

Mr. C.L. ROZAKIS, President
 Mrs. J. LIDDY
 MM. A.S. GÖZÜBÜYÜK
 A. WEITZEL
 B. MARXER
 B. CONFORTI
 N. BRATZA
 I. BÉKÉS
 E. KONSTANTINOV
 G. RESS

13. The text of the Report was adopted by the Commission on 22 February 1995 and is now transmitted to the Committee of Ministers in accordance with Article 31 para. 2 of the Convention.

14. The purpose of the Report, pursuant to Article 31 para. 1 of the Convention, is

- 1) to establish the facts, and
- 2) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

15. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application as Appendix II.

16. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

A. Particular circumstances of the case

The first applicant

17. The first applicant was born on 29 January 1957. She was placed by a local authority with Mr. and Mrs. W. when she was nearly two years' old and was adopted by them when she was three. Mr. and Mrs. W. had two older children, both sons, of whom the elder was S., born on 21 July 1952.

18. The first applicant alleges that she was sexually assaulted by Mr. W. and committed acts of indecency at his instigation on a number of occasions during her minority, beginning in December 1959 before her adoption. She alleges that these assaults and acts continued until the end of 1971 when she was 14. They were of a serious nature although falling short of full sexual intercourse.

19. The first applicant also alleges that in 1972 when she was aged 15 Mr. W. punched her about the face and body, causing her nose to bleed more than once.

20. The first applicant further alleges that S. forced her to have sexual intercourse with him. She places the first incident in 1969 when she was about 12 and he 17. She says that this act was repeated on a later occasion in 1969.

21. Since 1976 the first applicant has suffered from severe mental problems. She has been variously diagnosed as suffering from schizophrenia, emotional instability, paranoia, depression, and agoraphobia. She was admitted three times to hospital and received out patient treatment. On one occasion she attempted to commit suicide. It was, however, not until September 1984 that she first became aware of the possibility of a connection between her psychological problems and the alleged abuse. This was the advice given to her by a Dr. Baker, a consultant child and family psychiatrist.

22. On 18 August 1987, she commenced proceedings against her adoptive parents and their son, S., seeking damages for the alleged sexual and other assault. Her claim was framed in trespass.

23. The defendants in the domestic proceedings sought to strike out the first applicant's claim as being time-barred under the Limitation Act 1980 (the 1980 Act) which imposed a time-limit of three years from the date on which she had knowledge that she had grounds to bring a claim.

24. The High Court Master held on 14 December 1989 that on the facts of the case the first applicant's "date of knowledge" was more than three years prior to the date of commencement of proceedings and that there were no grounds for exercising the discretion in section 33 of the 1980 Act to waive the time-limit.

25. On appeal, the High Court judge and the Court of Appeal both took a different view, holding first that the proceedings had been commenced within three years of the relevant "date of knowledge" and secondly that, even if they had not been, it would be appropriate to exercise the section 33 discretion to allow the claim to continue.

26. In his judgment in the Court of Appeal dated 27 March 1991, Lord Justice Bingham, found that the first applicant could not reasonably have been expected to acquire knowledge at an earlier date of the causal link between her health problems and the childhood abuse from facts observable or ascertainable by her, since mental impairment, such as this allegedly was, almost necessarily produced a lack of insight. He agreed with the High Court judge that she was entitled to pursue her action as of right since it had been introduced within three years of her acquiring the knowledge that she had suffered significant injury. On considering whether, if applicable, the discretion to allow the claim should be exercised under section 33, he found that, notwithstanding the lapse of time (twenty years in respect of the latest of the acts complained of), the delay did not prejudice the defendants' ability to rebut the claims. In this context, he noted that the alleged acts took place in private without other witnesses and that, though the defendants' recollection of time and place might have deteriorated, as regarded the essential point in the case -whether the acts took place or not- there was no room for doubt or mistake and the case would turn, as it would at any point in time, on whether the judge could accept the plaintiff's evidence as honest and reliable.

27. Before the Court of Appeal the defendants also contested that the three year "date of knowledge " time-limit was applicable at all since the first applicant's claim was not a claim based on "negligence, nuisance or breach of duty" but was rather one "founded on tort" within the meaning of section 2 subject to section 28 of the 1980 Act. The defendants claimed that the date of the first applicant's knowledge was

accordingly irrelevant and that the Court had no discretion under section 33 to mitigate against the consequences of the limitation period applicable. In its judgment of 27 March 1991, the Court of Appeal rejected this argument. Lord Justice Bingham held, *inter alia*:

"On behalf of the <W.s> a submission was made to us, not made to the master and the judge, that sections 11, 14 and 33 of the Act do not apply to the plaintiff's claims, with the result that they are subject to a non-extendable 6 year limitation period which irretrievably expired in January 1981, 6 years after the plaintiff reached her majority. The grounds of this submission were

(1) that the plaintiff's claims were of battery, i.e. intentional trespass to the person;

(2) that such a cause of action does not fall within the reference in section 11 (1) of the Act to "any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person";
and

(3) that the claims are therefore subject to the six year time-limit prescribed by section 2 of the Act for claims in tort not covered by section 11.

At the risk of apparent discourtesy, I shall deal with this submission very briefly. In *Letang v. Cooper* [1965] 1 QB 232 the Court of Appeal (Lord Denning MR, Danckwerts and Diplock LJJ) construed the language here in question as embracing a claim based on unintentional and intentional trespass to the person. Cooke J so understood the judgments in *Long v Hepworth* [1968] 1 WLR 1299, and I consider the Court of Appeal's ruling to be binding upon us as he held it binding upon him. The Limitation Acts of 1975 and 1980 were enacted in the same terms against the background of this authority, which they must be taken to have endorsed. Even in the absence of authority I would, like Cooke J, reach that conclusion on construction of the statutory language alone, unless I could see some reason why Parliament should have intended to draw the suggested distinction, and I can see none. I am satisfied that this is an action falling within section 11 (1) of the Act."

28. The defendants successfully appealed on this point to the House of Lords and the first applicant's claim was dismissed on 16 December 1992. The House of Lords based their decision on what they held to be Parliament's intended meaning for the words in section 11. It was clear from the records of the parliamentary debate introducing the 1954 Limitation Act that the Government and consequently Parliament had not intended the words "negligence, nuisance or breach of duty" to extend to cases concerning intentional as opposed to accidental infliction of injury. Given the identical language carried over into the subsequent legislation, the House of Lords felt bound to accept the defendants' submissions that the first applicant's claim, framed as it was in terms of intentional infliction of injury, did not fall within the ambit of section 11 nor, consequently, sections 14 and 33 of the 1980 Act.

29. The result of this decision was that the standard and inflexible limitation period of six years provided by section 2 of the Limitation Act 1980 applied to the first applicant's claim, subject to the delayed starting point established by section 28 of the 1980 Act ie. the age of majority for injuries suffered in childhood. The House of Lords accordingly concluded that the first applicant's claim was time barred and should be dismissed.

The second applicant

30. The second applicant, born in 1962, is one of seven children in her family. She alleges that between 1968 and September 1979 she was seriously and frequently sexually abused by her father, including the taking of pornographic pictures of her and numerous assaults of a sexual nature.

31. The second applicant married her first husband in 1981 and was divorced from him in 1984. She re-married in 1985 and gave birth to a child in 1987. She was divorced from her second husband in 1990. She had a second child in 1993.

32. From 1981 to 1991, the second applicant suffered from bouts of depression and found relationships difficult to form. In 1990, she began to suffer nightmares regarding the abuse which she had suffered in childhood. In October 1990, the second applicant approached her doctor for help and he referred her to a psychologist. She realised the link then between her psychological problems and the abuse. Initially this worsened her condition. She made an attempt at suicide in December 1990.

33. In January 1991, the second applicant consulted solicitors with a view to taking civil proceedings to recover damages from her father for the alleged abuse which she had suffered.

34. She obtained legal aid and a writ was issued on 26 March 1991. A medical report dated May 1991 stated that the second applicant suffered severe psychological damage including an inability to trust others, constant mood swings, sleep difficulties and anxiety. It gave the opinion that she would be likely to remain psychologically damaged for the rest of her life and have an increased risk of developing psychiatric illness.

35. The second applicant also reported the alleged abuse to the police who interviewed her and her father. In September 1991, she was informed by the police that they did not intend to prosecute. She made another attempt at suicide.

36. The second applicant was advised by counsel that the effect of the House of Lords judgment in the case of *Stubbings* on 16 December 1992 was that her claim had become statute-barred on 23 August 1986, six years after her attainment of the age of 18. Her action was discontinued.

The third applicant

37. The applicant was born in 1958. From the age of five to seven, the third applicant attended a state primary school in Highgate, the deputy teacher of which was a Mr. P. In 1966, the applicant's parents removed her from the school after she had shown signs of being withdrawn and depressed and having suffered nightmares. Inquiries at the school revealed that Mr. P. was removing the third applicant from classes, purportedly to "babysit" his 2 year old daughter.

38. During her remaining time at school, the third applicant felt different and lonely and had difficulty in sustaining relationships. When she qualified as a teacher, she moved posts frequently unable to stay at one place for more than a year.

39. Following her father's death in 1985, the third applicant suffered extreme feelings of bereavement which did not subside and led her to seek psychiatric help. She underwent a course of psychotherapy. In February 1989, the third applicant had a violent recall of being subjected to sexual abuse by Mr. P. In subsequent therapy, she recovered memories of other incidents.

40. In October 1991 the third applicant instructed solicitors with a view to pursuing damages from Mr. P for the psychological injuries which she had suffered as a result of alleged assaults (including rape) and false imprisonment. Proceedings were issued on 10 February 1992.

41. Following the judgment of the House of Lords in the Stubbings case on 16 December 1992, her action was discontinued, her claims having become statute-barred on 28 January 1982 and legal aid no longer being available.

B. Relevant domestic law and practice

42. The Limitation Act 1939 imposed a six year time-limit from the date of the cause of action on claims founded on simple contract or tort. A two year time-limit was imposed on claims against local authorities. Since the vast majority of actions against public authorities were for personal injuries arising out of accidents, the question as to the fairness of a short time-limit arose. A report presented to Parliament by the Tucker committee in 1949 recommended that the period of limitations for actions in respect of personal injuries should be two years irrespective of the defendant but that courts should have discretion to grant leave for claims to be brought up to six years later. The committee excluded trespass to the person from their definition of personal injury. In the ensuing Law Reform (Limitation of Actions) Act 1954 a three year period with possible extension to six years was provided for actions of personal injuries which were formulated as actions for negligence, nuisance or breach of duty.

43. In the case of *Letang v. Cooper* (1965 1 Q.B. 232), where the plaintiff had been injured as she sunbathed on the grass by a car which ran over her legs, the plaintiff sought to evade the three year time-limit imposed on personal injury by invoking a claim in trespass to the person. In the Court of Appeal, Lord Denning found that for injury inflicted unintentionally the only cause of action was negligence not trespass but that, if he was wrong, he would hold that the phrase "breach of duty" covered a breach of any duty under the law of tort.

44. With the discovery of injuries to health resulting from exposure to noxious substances many years previously (eg. *Cartledge v. Jopling*, 1963 AC 758), the law on limitation periods was reformed further to confer a judicial discretion to extend the three year time limit (Limitation Act 1963 later replaced by the Limitation Act 1975). The legislation currently in force is the Limitation Act 1980.

45. The Limitation Act 1980 provides as relevant:

Actions founded on tort:

"2. An action founded on tort shall not be brought after the expiration of six years from the date on which the

cause of action accrued."

Actions in respect of wrongs causing personal injuries or death:

"11 (1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(2) None of the time limits given in the preceding provisions of this Act shall apply to an action to which this section applies.

(3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (4) or (5) below.

(4) Except where subsection (5) below applies, the period applicable is three years from -

- (a) the date on which the cause of action accrued; or
 - (b) the date of knowledge (if later) of the person injured.
- ...

14. (1) In sections 11 and 12 of this Act references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts -

- (a) that the injury in question was significant; and
- (b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and
- (c) the identity of the defendant; and
- (d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant;

and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

(2) For the purposes of this section an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(3) For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire -

- (a) from facts observable or ascertainable by him; or

(b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek;

but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice."

Extension in the time-limit where a person is under a disability:

"28. (1) Subject to the following provisions of this section, if on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when he ceased to be under a disability or died (whichever first occurred) notwithstanding that the period of limitation has expired.

38. ...

(2) For the purposes of this Act a person shall be treated as under a disability while he is an infant, or of unsound mind."

Discretionary exclusion of time limit for actions in respect of personal injuries or death:

33. (1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which-

(a) the provisions of section 11 or 12 of this Act prejudice the plaintiff or any person whom he represents; and

(b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents;

the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates.

...

(3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to-

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11 or (as the case may be) by section 12;

(c) the conduct of the defendant after the cause of action accrued...

(d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice which he may have received..."

III. OPINION OF THE COMMISSION

A. Complaints declared admissible

46. The Commission has declared admissible the applicants' complaints that they are denied access to court as a result of the limitation period applied in respect of their claims arising out of incidents of abuse which they suffered during their childhood.

B. Points at issue

47. The issues to be determined are:

- whether there has been a violation of Article 6 para. 1 (Art. 6-1) alone or taken in conjunction with Article 14 (Art. 6-1+14) of the Convention in that the applicants are denied access to court to obtain a determination of their civil rights as a result of the applicable limitation period;
- whether there has been a violation of Article 8 (Art. 8) alone or taken in conjunction with Article 14 (Art. 8+14) of the Convention in that the applicants have been denied practical and effective protection of their right to respect for their private life.

C. Article 6 para. 1 (Art. 6-1) of the Convention alone and taken in conjunction with Article 14 (Art. 6-1+14)

Article 6 para. 1 (Art. 6-1) of the Convention

48. Article 6 para. 1 (Art. 6-1) of the Convention provides in its first sentence:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

49. The applicants' claims relate to alleged psychological injury caused by sexual and other abuse during their childhood. The Commission finds, and the Government have not contested, that Article 6 para. 1 (Art. 6-1) is applicable, the applicants' complaints relating to the determination of rights of a civil character.

50. The applicants submit that the six year time-limit imposed on actions for injuries resulting from intentional injury (trespass, assault etc) effectively bars their access to court in the determination of their claims of psychological injury resulting from childhood abuse. It is submitted that the nature of this type of injury is such that the victims are rarely aware of the link between the damage suffered and the acts responsible and indeed may have suppressed the memories of the abuse. Consequently an inflexible time-limit which

expires six years from the date of the act or from the date when the victim attains his or her majority (18), regardless of the circumstances of an individual case, is arbitrary and disproportionate. Victims of intentional injury may, as shown in these case, be unaware of the grounds essential to make a claim until after the six year period has expired. It is possible, the applicants contend, for defendants to be protected from stale claims by providing, for example, as in cases of negligently inflicted injury, for the court to have a discretion to allow a case to proceed where it would equitable for it to do so (section 33 of the 1980 Act).

51. The respondent Government submit, inter alia, that the essence of the applicants' right of access to court is not extinguished as a result of the applicable limitation period, since an individual has six years in which to bring a claim. This period has a legitimate aim in providing finality, protecting others from stale claims and preventing injustice which might result from litigating matters which are difficult to establish due to lapse of time. The Government argue that a period of six years for this purpose is reasonably proportionate, pointing out that less generous time-limits are common in international conventions eg. a one year limitation period for claims under the Convention on the Contract for International Carriage of Goods by Road and two years under the Warsaw Convention on the Carriage of Goods by Air. The Government consider that it is extremely unlikely that the victim of an intentional injury will be unaware of the ingredients of his cause of action. In their submission, a line has to be drawn at some point, the right of access to court by its very nature calling for regulation, and Contracting States must enjoy a certain margin of appreciation in laying down such regulation.

52. The Commission recalls that the case-law of the Convention organs establishes that Article 6 para. 1 (Art. 6-1) secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal (eg. Eur. Court H.R. Golder judgment of 21 February 1975, Series A no. 18, p. 18, para. 36). The right of access to court guaranteed by Article 6 para. 1 (Art. 6-1) is however not absolute, but may be regulated by States, which have a certain margin of appreciation, provided that any limitation applied does not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 para. 1 (Art. 6-1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see Eur. Court H.R., Ashingdane judgment of 28 May 1985, Series A no. 93, pp. 24-25 paras. 55-57).

53. The Commission has in previous cases found that it must generally be accepted in the interests of good administration of justice that there are time-limits within which prospective proceedings must be introduced. It agrees with the Government that time-limits imposed on the introduction of claims pursue the legitimate aim of preventing stale claims and the possible injustice to defendants faced with evidential difficulties in contesting allegations relating to distant events and of promoting legal certainty.

54. The Commission's case-law has further established that the need for legal certainty may justify the imposition of time-limits which cannot be waived. In a case dealing with a three year time-limit on the introduction of claims by a father to challenge the paternity of a putative child, the Commission considered that, in the interests of the good administration of justice, it had to be accepted that the time-limit was final and that there was no possibility to institute proceedings even when new facts had arisen after the expiry of the

time-limit (No. 9707/82, Dec. 6.10.82, D.R. 33 p. 223).

55. The Commission notes that the applicants claim that in the circumstances of their cases an inflexible time-limit is disproportionate since it is not infrequent that knowledge of the factors necessary to bring a claim based on sexual abuse in childhood arises only after a considerable number of years. This is however a situation which may arise, for different reasons, in the context of other types of claims, e.g. the paternity case referred to above.

56. The applicants' principal argument is that the application of a rigid time-limit to claims brought by victims of intentional injury is unreasonable and disproportionate when compared with the position of victims of unintentional injury: in the latter case, the law provides for flexibility by treating the date of the victim's knowledge of the facts necessary to found a claim as the starting date for the limitation period and by conferring a discretion on the courts to set aside the time-limit in a particular case if it would be equitable to allow the action to proceed. Consequently, the Commission considers that the essence of the applicants' complaints is that they are, without good reason, subject to a time-limit which is final, whereas victims of other injuries, unintentionally inflicted, benefit from different and more favourable regulations. This raises issues of discrimination which the Commission finds appropriate to examine in conjunction with Article 14 (Art. 14) of the Convention which has also been raised by the applicants.

Article 6 para. 1 (Art. 6-1) of the Convention in conjunction with Article 14 (Art. 6-1+14)

57. Article 14 (Art. 14) of the Convention provides:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

58. The applicants contend that imposing a rigid time-limit on applicants who have suffered psychological damage amounts to discrimination in the right of access to court on the basis of their status which is not objectively or reasonably justified. They point out that a three year time-limit from the date of knowledge of the cause of action is given to victims of negligently inflicted injury and this time-limit may, in the court's discretion, be held not to apply where the court considers that it is equitable to allow the action to proceed. They dispute that there is any good reason for different rules to apply to their type of injury or that it is correct to state that the victims of intentional injury are inherently more likely to be aware of the facts necessary to make a claim than victims of unintentional injury. The vast majority of negligently injured persons are also aware of who caused their injury and the significance of the injury.

59. The Government submit that there is no discrimination since the applicants were treated the same as any other person claiming to be the victim of intentional injury. While victims of negligently inflicted harm are subject to different rules, they fall into a separate category. Even assuming there was a difference in treatment, it is not on a ground relating to the applicants' status. Further, even it did so relate to status, there is in the Government's view an objective and reasonable justification for any difference in treatment based on the consideration that a victim of an intentional injury is very likely to

be aware of the facts founding a claim, whereas the victim of negligently inflicted injury is often in a different position, being unaware that injury is attributable to an actionable lack of care.

60. The Commission recalls that Article 14 (Art. 14) of the Convention safeguards individuals placed in analogous situations from any discrimination in the enjoyment of the rights and freedoms set out in the Convention and Protocols (see eg. Eur. Court H.R. Van der Mussele judgment of 21 November 1982, Series A no. 70). The Government contend that the applicants, victims of intentionally inflicted harm, cannot seek to compare themselves to victims of unintentionally inflicted harm, who are in a separate and distinct category. The Commission does not accept this submission. It notes that there may be cases where it is unclear whether harm was inflicted deliberately or negligently and that the two categories cannot be said to be exclusive. Where a person suffers an injury in respect of which a civil claim for compensation may lie, the Commission finds no basis for drawing a distinction based on the intention or culpability of the wrongdoer which would exclude comparison under Article 14 (Art. 14) of the Convention.

61. The Commission finds therefore that the applicants may claim to be in an analogous position to victims of negligently inflicted injury for the purposes of Article 14 (Art. 14) of the Convention.

62. As regards the alleged discriminatory treatment, the Commission recalls that victims of trespass to the person, such as the present applicants, are subject to a six year time-limit with no discretion in the courts to allow the action to proceed in particular cases, while victims of negligently inflicted injury are subject to a three year time-limit which runs from the date of knowledge of the facts necessary to found the cause of action and may be held by the courts not to apply where it is equitable to do so in the circumstances of a particular case. The applicants may therefore, in the Commission's view, claim to be victims of a difference of treatment as regards the regulation of their access to court in the determination of their claims. The difference in treatment is based on the fact that the injuries of which they claim to be victims were intentionally inflicted and the Commission considers that this is a factor relating to personal status which falls within the scope of Article 14 (Art. 14) of the Convention.

63. However, the Commission recalls that whether a difference in treatment constitutes discrimination in the sense of Article 14 (Art. 14) of the Convention depends on whether or not there exists an objective and reasonable justification. This requires that the difference pursues a legitimate aim and that there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised. In this assessment of whether and to what extent differences in otherwise similar situations justify a different treatment, Contracting States enjoy a margin of appreciation which will vary according to the circumstances, subject-matter and background (see eg. Eur. Court H.R., Lithgow and Others judgment of 8 July 1986, Series A no. 102, pp. 66-67, para. 177).

64. Having regard to the above, the Commission recalls that the Government state that the justification for the difference in treatment is that victims of intentional injury are generally in the position that they are aware of the facts necessary to found a claim for compensation, whereas victims of negligently inflicted injury such as, for example, a patient who has been subject to an actionable lack of care in surgery may not be aware of either the injury or its cause for years afterwards.

65. The Commission finds that the Government's argument is convincing

but only up to a certain point. As the applicants state, victims of unintentional injury are also generally in a position where they are aware of the grounds for bringing a claim in the courts. The Commission is not satisfied that it is reasonable or proportionate to allow flexibility in the application of the time-limits in cases where a victim of unintentional injury lacks the knowledge required to bring an action but to exclude it entirely where a victim of intentional injury lacks the requisite knowledge. The arguments as to legal certainty, prevention of stale claims and injustice to defendants applies equally to both categories of victim. There is no apparent obstacle to allowing the courts to examine whether it is equitable to proceed in cases other than those of negligent injury.

66. The Commission notes also the case of *Letang v. Cooper* referred to in the judgments of the Court of Appeal and House of Lords in the *Stubblings* case where the plaintiff had been run over by a car while sunbathing on the grass and an issue arose as to whether the time-limit for unintentional or intentional injury should apply to the victim's claim. It seems to the Commission anomalous that a victim's access to court could turn on whether the alleged wrongdoer inflicted an injury accidentally or deliberately.

67. Consequently, the Commission finds that the application of the six year time-limit to the applicants' claims is not objectively or reasonably justified and discloses discriminatory treatment in the regulation of their access to court for the determination of their civil rights.

CONCLUSION

68. The Commission concludes, unanimously, that there has been a violation of Article 14 of the Convention in conjunction with Article 6 para. 1 (Art. 14+6-1) of the Convention.

D. Article 8 (Art. 8) of the Convention alone and taken in conjunction with Article 14 (Art. 8+14)

69. Article 8 (Art. 8) of the Convention provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14 (Art. 14) of the Convention (see above para. 57)

70. The applicants complain that their inability to pursue proceedings in the domestic courts constitutes a failure on the part of the legislative framework, and therefore of the United Kingdom, to provide practical and effective protection to their right to respect for private life. They also complain that they are subject to discrimination contrary to Article 14 (Art. 14) of the Convention read in conjunction with Article 8 (Art. 8) as a result of the restrictive and inflexible time limit imposed on claims of psychological damage from childhood abuse.

71. The Commission has found above that the applicants have been denied access to court in violation of Article 6 para. 1 of the

Convention taken in conjunction with Article 14 of the Convention. Article 6 para. 1 (Art. 6-1+14) is the *lex specialis* with reference to the availability of a judicial determination for civil claims. Since it is not in issue that the acts alleged by the applicants were prohibited by the criminal law, the Commission considers that no separate issue arises under Article 8 (Art. 8) of the Convention taken alone or in conjunction with Article 14 (Art. 8+14) (see eg. Eur. Court H.R. X. and Y. v. the Netherlands judgment of 26 May 1985, Series A no. 91).

CONCLUSION

72. The Commission concludes, unanimously, that it is not necessary to examine whether there had been a violation of Article 8 (Art. 8) of the Convention taken alone or in conjunction with Article 14 (Art. 8+14).

E. Recapitulation

73. The Commission concludes, unanimously, that there has been a violation of Article 14 of the Convention in conjunction with Article 6 para. 1 (Art. 14+6-1) of the Convention (para. 68);

74. The Commission concludes, unanimously, that it is not necessary to examine whether there has been a violation of Article 8 (Art. 8) of the Convention taken alone or in conjunction with Article 14 (Art. 8+14) (para. 72).

Secretary to the First Chamber

President of the First Chamber

(M.F. BUQUICCHIO)

(C.L. ROZAKIS)

APPENDIX I

HISTORY OF THE PROCEEDINGS

Date	Item
14.05.93	Introduction of the application
17.06.93	Registration of the application
Examination of admissibility	
01.12.93	Commission's decision to invite the parties to submit observations on the admissibility and merits
21.03.94	Government's observations
13.04.94	Commission's grant of legal aid to the first and second applicants
10.5.94	Applicants' reply
05.07.94	Commission's grant of legal aid to the third applicant
06.09.94	Commission's decision to declare the application admissible

Examination of the merits

06.09.94 Commission's deliberations
23.11.94 Government's observations
17.01.95 Examination of the state of proceedings
22.02.95 Commission's deliberations on the merits, final
votes and adoption of the Report