COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF STUBBINGS AND OTHERS v. THE UNITED KINGDOM

(Application no. 22083/93; 22095/93)

JUDGMENT

STRASBOURG

22 October 1996

In the case of Stubbings and Others v. the United Kingdom[1],

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr F. GÖLCÜKLÜ,
Mr R. MACDONALD,
Mr N. VALTICOS,
Mr I. FOIGHEL,
Mr R. PEKKANEN,
Mr J.M. MORENILLA,
Sir John FREELAND,
Mr J. MAKARCZYK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 24 April and 24 September 1996,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court as two separate cases (Stubbings and Others v. the United Kingdom and D.S. v. the United Kingdom) on 12 April 1995 by the European Commission of Human Rights ("the Commission") and on 3 May 1995 by the Government of the United Kingdom of Great Britain and Northern Ireland ("the Government"), within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). The case of Stubbings and Others originated in an application (no. 22083/93) against the United Kingdom lodged with

[1] The case is numbered 36-37/1995/542-543/628-629. The first two numbers are the positions of the cases Stubbings and Others v. the United Kingdom and D.S. v. the United Kingdom (as they were at the time of the referral to the Court: see paragraph 1 above) on the list of the cases referred to the Court in the relevant year (third number). The last four numbers indicate the cases' positions on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

[2] Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

the Commission under Article 25 (art. 25) on 14 May 1993, by three British nationals, Ms Leslie Stubbings, Ms J.L. and Ms J.P. and the case of D.S. originated in an application (no. 22095/93) against the United Kingdom lodged on 14 June 1993 by Ms D.S., also a British national.

The Commission's request and the application of the Government referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request and of the application was to obtain a decision as to whether the facts of the cases disclosed a breach by the respondent State of its obligations under Articles 6, 8 and 14 of the Convention (art. 6, art. 8, art. 14).

2. In response to the enquiries made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30).

3. The President of the Court, Mr R. Ryssdal, decided that, in the interests of the proper administration of justice, the two cases should be heard by the same Chamber (Rule 21 para. 6).

4. The Chamber to be constituted included ex officio Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On 9 May 1995, in the presence of the Registrar, Mr Ryssdal drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr R. Macdonald, Mr N. Valticos, Mr I. Foighel, Mr R. Pekkanen, Mr J.M. Morenilla and Mr J. Makarczyk (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

5. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 3 January 1996 (a single memorial dealing with both cases: Rule 37 para. 3 in fine) and the applicants' memorials on 4 January 1996.

6. In accordance with the President's decision (Rules 37 para. 3 in fine and 39), a joint hearing of both cases took place in public in the Human Rights Building, Strasbourg, on 23 April 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr I. CHRISTIE, Foreign and Commonwealth Office, *Agent*,
Mr D. ANDERSON, *Counsel*,
Mr M. COLLON, Lord Chancellor's Department, *Adviser*;

(b) for the Commission

Mr N. BRATZA, *Delegate*;

(c) for the applicants Ms Stubbings, J.L. and J.P.
Mr K. BOYLE, *Counsel*,
Mr T. FISHER, *Solicitor*;
(d) for the applicant D.S.
Mr M. WYNNE-JONES, *Counsel*,
Mr P. SYKES, *Solicitor*.

The Court heard addresses by Mr Bratza, Mr Boyle, Mr Fisher, Mr Wynne-Jones and Mr Anderson.

7. On 23 April 1996 the Chamber ordered the joinder of the two cases (Rule 37 para. 3 in fine).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

(1) Ms Stubbings

8. Ms Leslie Stubbings was born on 29 January 1957. She was placed by a local authority in the care of Mr and Mrs Webb when she was nearly two years old and adopted by them when she was three. The Webbs had two children, of whom the elder, Stephen, was born on 21 July 1952.

9. Ms Stubbings alleges that she was sexually assaulted by Mr Webb and committed acts of indecency at his instigation on a number of occasions between December 1959 (before her adoption) and December 1971 (when she was fourteen years old). These were of a serious nature, although they did not involve full sexual intercourse.

In addition, she alleges that Stephen Webb forced her to have sexual intercourse with him on two occasions in 1969 when she was twelve and he was seventeen.

10. Since 1976 Ms Stubbings has experienced severe psychological problems, which have led to her admission to hospital on three occasions. She has been variously diagnosed as suffering from schizophrenia, emotional instability, paranoia, depression and agoraphobia, and she has once attempted suicide.

11. In September 1984, following treatment by a consultant child and family psychiatrist, she allegedly realised for the first time that there might be a connection between the childhood abuse and her mental health problems.

12. On 18 August 1987 she commenced proceedings against her adoptive parents and brother, seeking damages for the alleged assaults. The

defendants applied to have the claim dismissed as time-barred under the Limitation Act 1980 ("the 1980 Act": see paragraph 35 below).

13. Both the High Court and the Court of Appeal which considered the case were bound by earlier authority (Letang v. Cooper: see paragraph 32 below) to hold that Ms Stubbings' claim was based on a "breach of duty" within the meaning of section 11 of the 1980 Act (see paragraph 35 below).

The limitation period for such actions was three years, either from the date on which the cause accrued or from the date on which the plaintiff first knew the injury in question was both significant and attributable to the defendants. Section 33 of the 1980 Act provided that the court could allow such an action to proceed even if commenced after the expiry of the three-year period where it would be equitable to do so (see paragraph 35 below).

14. The High Court found in favour of the defendants, ruling that Ms Stubbings' "date of knowledge" was more than three years before the commencement of proceedings.

The Court of Appeal, however, accepted Ms Stubbings' argument that although she had always remembered that she had been abused by Mr Webb and Stephen, she did not realise that she had suffered sufficiently serious injury as to justify bringing a claim until September 1984, when she came to understand the causal link between the assaults and her mental health problems.

15. The defendants appealed to the House of Lords (Stubbings v. Webb [1993] Appeal Cases, p. 498). Lord Griffiths, with whom the other four law lords agreed, doubted that the "date of knowledge" was as late as September 1984, since "I have the greatest difficulty in accepting that a woman who has been raped does not know that she has suffered a significant injury".

Furthermore, after considering the report of the Tucker Committee (see paragraph 31 below), he held that the words "breach of duty" in section 11 (1) of the 1980 Act did not embrace actions based on intentionally inflicted injuries, such as rape and indecent assault. Instead, these types of claim were subject to the six-year limitation period provided for in section 2 of the 1980 Act. This limit, which could not be disapplied by the court, started to run from the plaintiff's eighteenth birthday (section 28: see paragraph 35 below). The claim was therefore out of time.

(2) Ms J.L.

16. Ms J.L. was born in 1962.

She alleges that between 1968 and September 1979 she was frequently abused by her father, who took pornographic photographs of her and subjected her to serious assaults of a sexual nature.

17. Between 1981 and 1991, she suffered from bouts of depression and found it difficult to form relationships. In 1990 she began to have nightmares about her childhood abuse.

Finally, in October 1990, she asked her doctor for help and he referred her to a psychologist. At this time, she allegedly gained insight into the connection between the abuse and her mental health problems for the first time. Initially this worsened her condition, causing her to attempt suicide in December 1990.

18. In January 1991 she consulted solicitors with a view to commencing proceedings for damages against her father. Legal aid was granted and a writ was issued on 26 March 1991.

A medical report prepared in May 1991 for the purposes of the litigation described her as suffering from severe psychological damage, which manifested itself in an inability to trust others, constant mood swings, insomnia and anxiety. According to the report, she was likely to remain damaged for the rest of her life and would have an increased risk of developing a mental illness.

19. Ms J.L. also reported the alleged abuse to the police. They interviewed her and her father, but in September 1991 decided not to bring charges. When she was informed of this decision she made another attempt at suicide.

20. Following the decision of the House of Lords in Stubbings v. Webb (see paragraph 15 above), her civil claim against her father was discontinued on the advice of counsel that it had become time-barred in 1986, six years after her eighteenth birthday.

(3) Ms J.P.

21. Ms J.P. was born in 1958.

Between the ages of five and seven she attended a state primary school in Highgate, London, but her parents withdrew her in 1966 because she had become depressed and withdrawn and was suffering from nightmares. It appeared that the Deputy Headmaster, a Mr P., had been removing her from lessons, purportedly to look after his two-year-old daughter.

22. From that time onwards, Ms J.P. had difficulty in sustaining relationships and felt "different" and lonely. Following her father’s death in 1985 she suffered extreme feelings of bereavement, which eventually drove her to seek psychiatric help.

She underwent a course of therapy which, in February 1989, prompted her to experience a violent recall of being subjected to sexual abuse by Mr P. She subsequently recovered memories of other assaults by him, including incidents of rape.

23. In October 1991 she instructed solicitors to commence proceedings for damages against Mr P. and a writ was issued on 10 February 1992.

However, legal aid was withdrawn and the action was discontinued following the decision of the House of Lords in Stubbings v. Webb (see paragraph 15 above), because her claim had become time-barred in January 1982.

(4) Ms D.S.

24. Ms D.S. was born in 1962.

Between 1968 and 1977 she was allegedly subjected to repeated sexual assaults by her father, including acts of rape.

She asserted that, as a result of the abuse, she suffered from feelings of despair, depression, fear and guilt and found it difficult to sustain relationships.

25. On 15 March 1991 D.S.'s father pleaded guilty to a charge of indecent assault based on his abuse of her. He was sentenced to one year's probation.

26. The applicant considered that this was insufficient punishment and she therefore instituted civil proceedings against her father on 14 August 1992. A report from a psychologist stated that it would have been impossible for her to have taken this step earlier, because she had largely blocked out memories of the abuse as a means of survival.

27. Her action was discontinued on 24 May 1993 following the House of Lords' judgment in Stubbings v. Webb (see paragraph 15 above), since her claim had been brought outside the six-year time-limit held in that case to apply.

II. RELEVANT DOMESTIC LAW AND PRACTICE

(1) Background to the Limitation Act 1980

28. Between 1936 and 1974 no fewer than six official bodies reviewed the English law of limitation and reported their findings to Parliament.

29. The first of these, the Law Revision Committee on Statutes of Limitation, recommended in December 1936 that there should be a fixed six-year period for all actions founded in tort, except in cases where the defendant was a public authority, where the period should be one year only. In both cases time should start to run from the date on which the cause of action accrued.

These recommendations were implemented in the Limitation Act 1939.

30. The first suggestion that there should be a shorter limitation period in personal injury cases was made in July 1946 in the Final Report of the Departmental Committee on Alternative Remedies ("the Monckton Committee"), which was asked to review the right to damages for personal

injury in the light of recently-created social security legislation. The Committee considered that the six-year period was too long for personal injury claims, and recommended that it should be reduced to three years.

31. In July 1949 the Committee on the Limitation of Actions ("the Tucker Committee") recommended that the same limitation period should apply irrespective of whether the defendant was a public authority or a private person, and that a two-year time bar, extendible to six years in exceptional cases, should be imposed in personal injury actions. The limitation period for other actions founded on tort, including inter alia trespass against the person and false imprisonment, should continue to be six years.

The Committee's proposals were followed in the Law Reform (Limitation of Actions) Act 1954, except that, instead of the suggested extendible two-year bar, a fixed three-year period was applied to all "actions for damages for negligence, nuisance or breach of duty ... where the damages claimed ... consist of or include damages in respect of personal injury to any person". In cases where the plaintiff was under a legal disability, time would only start to run from the date the disability ceased: thus, in the case of a child, from the date he attained his majority (twenty-one at the time the Act was passed, and eighteen after 1 January 1970).

32. The words "actions for damages for negligence, nuisance or breach of duty" which appeared in the 1954 Act (and which were also used in section 11 (1) of the 1980 Act: see paragraph 35 below) were considered by the Court of Appeal in Letang v. Cooper [1965] 1 Queen's Bench Reports, p. 232. The plaintiff had been sunbathing in the car park of a hotel when the defendant drove his car over her legs. She did not commence proceedings until over three years after the accident. The Court of Appeal held that the appropriate cause of action lay in negligence and that the claim was therefore time-barred. The three judges expressed the opinion that the words "breach of duty" in the 1954 Act should be construed as applying to any cause of action giving rise to a claim for damages for personal injury.

33. In the early 1960s it became apparent that the fixed three-year bar to personal injury actions was causing injustice to some plaintiffs, notably workers who were caused to contract slow-working industrial diseases which it was not possible to detect until after the expiry of the limitation period.

The Limitation Act 1963 was therefore passed, to enable the court to extend the time-limit in cases where the plaintiff could not reasonably have been expected to discover earlier the existence or cause of his injury. However, the provisions enacted proved to be over-complicated and difficult to operate.

34. In May 1974 the Interim Report of the Law Reform Committee on Limitation of Actions in Personal Injury Claims was published. It considered the purpose of having a limitation period, and observed:

> "In the first place, it is intended to protect defendants from being vexed by stale claims relating to long-past incidents about which their records may no longer be in existence and as to which their witnesses, even if they are still available, may well have no accurate recollection. Secondly, we apprehend that the law of limitation is designed to encourage plaintiffs not to go to sleep on their rights, but to institute proceedings as soon as it is reasonably possible for them to do so ... Thirdly, the law is intended to ensure that a person may with confidence feel that after a given time he may treat as being finally closed an incident which may have led to a claim against him ... But if the law of limitation is principally designed for the benefit of defendants, it would nevertheless be a mistake to lose sight of the interests of injured persons. A plaintiff who has lost the right to claim damages before he can know of the existence of that right must, in our view, inevitably feel that he has suffered injustice."

In an attempt to balance these interests, the Committee recommended the retention of the three-year period for personal injury actions, but proposed that time should only start to run when the injured person knew, or could reasonably have ascertained, the nature of the injury and its attributability to an act or omission on the part of the defendant. Furthermore, the court should have the power to override the time bar at its discretion.

These proposals were enacted in the Limitation Act 1975, and were retained in the Limitation Act 1980, which was a consolidating statute.

(2) The Limitation Act 1980

35. The current law as to limitation of civil actions in England and Wales is set out in the Limitation Act 1980 ("the 1980 Act"). The relevant sections are as follows:

> "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 or exclusion of ordinary time-limit: 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.

...

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 2;

(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 ...

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."

(3) The House of Lords' decision in Stubbings v. Webb

36. In Stubbings v. Webb [1993] Appeal Cases, p. 498, the House of Lords held that actions for damages for deliberately inflicted personal injury fell within section 2 of the 1980 Act, in contrast to actions for negligently inflicted injury to which section 11 (1) of the same Act applied (see paragraph 15 above for a more detailed account of this case).

(4) Possible changes to the law

37. In June 1995, the Law Commission, the statutory law reform body for England and Wales, announced that it intended to undertake a comprehensive review of the law of limitation (Sixth Programme of Law Reform, Law Commission Report no. 234, item 3).

(5) Criminal law sanctions

38. It is an offence punishable by life imprisonment to have sexual intercourse with a woman or girl without her consent or attempt to do so, or to have sexual intercourse with a girl under the age of thirteen or attempt to do so. Indecent assault on a woman or girl is also an offence, with a maximum penalty of ten years' imprisonment (see sections 1, 5, 14 and Schedule II, Part I of the Sexual Offences Act 1956 and section 1 of the Sexual Offences Act 1976).

39. Prosecutions for serious offences are not subject to any time bar under English law. The principal prosecuting authority in England and Wales is the Crown Prosecution Service ("the CPS"), headed by the Director of Public Prosecutions ("the DPP"). The CPS will only institute criminal proceedings if there is sufficient evidence and if it is in the public interest to do so (see the Prosecution of Offenders Act 1985 and the Code for Crown Prosecutors).

Private individuals may also institute criminal proceedings (section 6 of the Prosecution of Offenders Act 1985). However, the DPP may take over the conduct of these proceedings and then discontinue them if the evidence is insufficient, if the proceedings would be contrary to the public interest or for any other good reason (R. v. Bow Street Stipendiary Magistrate, ex parte South Coast Shipping Co. Ltd [1993] Queen's Bench Reports, p. 650F-G).

40. The standard of proof in England and Wales for a criminal conviction is beyond reasonable doubt, whereas to succeed in a civil claim the material facts must be shown to exist only on the balance of probabilities.

41. A court may make a compensation order in respect of a person convicted of an offence, requiring him to pay compensation for any personal injury, loss or damage resulting from that offence (Powers of Criminal

Courts Act 1973, section 35, as amended by section 104 of the Criminal Justice Act 1988). This procedure should only be used for dealing with claims in straightforward cases and courts should refrain from making compensation orders where these would involve the making of a weekly payment over a period of years (R. v. Daly [1974] 1 All England Reports, p. 290).

42. In addition, a person who can show on the balance of probabilities that he or she has suffered personal injury caused by conduct constituting a criminal offence such as rape or assault may claim compensation from an administrative body, the Criminal Injuries Compensation Authority (Criminal Justice Act 1988, sections 110-111). However, the Authority will not award compensation in respect of any injury inflicted before October 1979 by a family member living under the same roof as the alleged victim.

PROCEEDINGS BEFORE THE COMMISSION

43. In their applications of 14 May 1993 (no. 22083/93) and 14 June 1993 (no. 22095/93) to the Commission, all of the applicants complained that they were denied access to a court in respect of their claims for compensation for psychological injury caused by childhood sexual abuse because of the operation of the Limitation Act 1980, in violation of Article 6 para. 1 of the Convention (art. 6-1), and that the difference in the rules applied to themselves and other types of claimants was discriminatory, contrary to Article 14 of the Convention (art. 14). In addition, the applicants Ms Stubbings, J.L. and J.P. complained that the State had failed in its positive obligation to protect their right to respect for their private lives, by failing to provide them with a civil remedy for the childhood abuse, contrary to Article 8 of the Convention taken alone and also in combination with Article 14 (art. 8, art. 14+8).

44. The Commission declared the applications admissible on 6 September 1994. In its reports of 22 February 1995 (Article 31) (art. 31), it expressed the unanimous opinions that there had been violations of Article 14 of the Convention in conjunction with Article 6 para. 1 (art. 14+6-1), and that it was not necessary to examine the complaints under Article 6 para. 1 alone (art. 6-1) or under Article 8, alone or in combination with Article 14 (art. 8, art. 14+8). The full texts of the Commission's opinions are reproduced as annexes to this judgment[3].

[3] For practical reasons these annexes will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-IV), but copies of the Commission's reports are obtainable from the registry.

FINAL SUBMISSIONS MADE TO THE COURT

45. At the hearing, the Government invited the Court to conclude that there had been no breach of the Convention.

The applicants, for their part, asked the Court to uphold their complaints and to award them just satisfaction.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 OF THE CONVENTION TAKEN ALONE (art. 6-1)

46. All of the applicants complained that they had been denied access to a court, contrary to Article 6 para. 1 of the Convention (art. 6-1), which states (so far as is relevant):

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by [a] ... tribunal ..."

The Government and the Commission were both of the opinion that there had been no violation of this provision (art. 6-1) taken alone.

47. The applicants submitted that the very essence of their right of access to court had been impaired by the limitation period of six years from the age of majority applied in their cases. One of the effects of the sexual abuse each applicant suffered was to prevent her from appreciating that it was the cause of her psychological problems until after the expiry of the limitation period; in the case of Ms J.P., she did not recover any memories of the assaults upon her until, aged thirty-one, she started a course of therapy (see paragraphs 11, 17, 22 and 26 above). Expert evidence showed that the victims of child sexual abuse might commonly be unable to perceive the causal connection between the abuse and their psychological problems without medical assistance. Thus, each applicant's claim for damages for the injuries caused by the abuse became time-barred before she had even realised she had a cause of action.

Whilst the applicants accepted the validity of limitation periods in general, they asserted that the inflexible six-year period applied in their cases could not be said to pursue a legitimate aim or be proportionate to any such aim in view of the fact that, prior to the House of Lords' decision in Stubbings v. Webb (see paragraph 15 above), a period of three years commencing from the plaintiff's date of knowledge had been considered to apply in all personal injury cases, whether the harm in question was caused intentionally or unintentionally.

48. The Government denied that the very essence of the applicants' right of access to court was impaired, because they had each had six years from their eighteenth birthdays in which to commence proceedings.

The six-year limitation period pursued a legitimate aim, namely to provide finality and legal certainty and to prevent stale claims from coming to court.

It was also proportionate and generous, taking into account that in personal injury cases the recollection of witnesses, rather than for example documentary evidence, was likely to be decisive. Furthermore, the period in question was longer than that included in many international conventions concerned with personal injury in transport, such as the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air 1929 (as amended by the Hague Protocol) and the Athens Convention relating to the Carriage of Passengers and their Luggage on Board Ships 1974, which allowed two years from the date of disembarkation in which to bring a claim for personal injury sustained during international carriage by air and sea respectively.

49. The Commission agreed with the Government that limitation periods pursued a legitimate aim. It observed that the applicants' central objection was that the inflexible time bar applied in their cases was unreasonable and disproportionate when compared with the position of victims of unintentionally caused injury. For this reason, it found it more appropriate to examine the complaint under Article 6 para. 1 in conjunction with Article 14 of the Convention (art. 14+6-1) (see paragraph 71 below).

50. The Court recalls that Article 6 para. 1 (art. 6-1) embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect.

However, this right is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do 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 the Ashingdane v. the United Kingdom judgment of 28 May 1985, Series A no. 93, p. 24, para. 57 and, more recently, the Bellet v. France judgment of 4 December 1995, Series A no. 333-B, p. 41, para. 31).

51. It is noteworthy that limitation periods in personal injury cases are a common feature of the domestic legal systems of the Contracting States. They serve several important purposes, namely to ensure legal certainty and

finality, protect potential defendants from stale claims which might be difficult to counter and prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time.

52. In the instant case, the English law of limitation allowed the applicants six years from their eighteenth birthdays in which to initiate civil proceedings. In addition, subject to the need for sufficient evidence, a criminal prosecution could be brought at any time and, if successful, a compensation order could be made (see paragraphs 38-42 above). Thus, the very essence of the applicants' right of access to a court was not impaired.

53. The time-limit in question was not unduly short; indeed it was longer than the extinction periods for personal injury claims set by some international treaties (see paragraph 48 above). Moreover, it becomes clear that the rules applied were proportionate to the aims sought to be achieved (see paragraph 50 above) when it is considered that if the applicants had commenced actions shortly before the expiry of the period, the courts would have been required to adjudicate on events which had taken place approximately twenty years earlier.

54. The time bar in the applicants' cases commenced from the age of majority and could not be waived or extended (see paragraph 15 above). It appears from the material available to the Court that there is no uniformity amongst the member States of the Council of Europe with regard either to the length of civil limitation periods or the date from which such periods are reckoned. In many States, the period is calculated from the date of the accrual of the cause of action, while in other jurisdictions time only starts to run from the date when the material facts in the case were known, or ought to have been known, to the plaintiff. This second principle applies in England and Wales to civil claims based on negligence (sections 11 (4) (b) and 14 of the 1980 Act: see paragraph 35 above). However, it cannot be said at the present time that this principle is commonly accepted in European States in cases such as that in issue.

55. The Contracting States properly enjoy a margin of appreciation in deciding how the right of access to court should be circumscribed. It is clear that the United Kingdom legislature has devoted a substantial amount of time and study to the consideration of these questions. Since 1936, there have been four statutes to amend and reform the law of limitation and six official bodies have reviewed aspects of it (see paragraphs 28-34 above). The decision of the House of Lords, of which the applicants complain (see paragraphs 15 and 47 above), that a fixed six-year period should apply in cases of intentionally caused personal injury, was not taken arbitrarily, but rather followed from the interpretation of the Limitation Act 1980 in the light of the report of the Tucker Committee upon which the Act had been based (see paragraph 31 above).

56. There has been a developing awareness in recent years of the range of problems caused by child abuse and its psychological effects on victims, and it is possible that the rules on limitation of actions applying in member States of the Council of Europe may have to be amended to make special provision for this group of claimants in the near future.

However, since the very essence of the applicants' right of access was not impaired and the restrictions in question pursued a legitimate aim and were proportionate, it is not for the Court to substitute its own view for that of the State authorities as to what would be the most appropriate policy in this regard.

57. Accordingly, taking into account in particular the legitimate aims served by the rules of limitation in question and the margin of appreciation afforded to States in regulating the right of access to a court (see paragraphs 50-51 above), the Court finds that there has been no violation of Article 6 para. 1 of the Convention taken alone (art. 6-1).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION TAKEN ALONE (art. 8)

58. The applicants Ms Stubbings, J.L. and J.P. asserted that there had been an interference with their right to respect for their private lives, contrary to Article 8 of the Convention (art. 8), which states:

> "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."

The Government challenged this assertion. The Commission decided that it was not necessary to consider it, given its finding of a violation of Articles 6 para. 1 and 14 taken together (art. 14+6-1) (see paragraph 71 below).

59. The applicants contended that the widespread problem of child sexual abuse, which had only begun to be comprehended over the course of the preceding decade, demanded new measures for the protection of minors. The interpretation of the Limitation Act 1980 given by the House of Lords in Ms Stubbings' case (see paragraph 15 above) had not satisfied this demand and had deprived the applicants of an effective civil remedy against their alleged abusers. The State had therefore failed in its positive obligation to protect their right to respect for their private lives.

They argued, further, that the 1980 Act, in so far as it discriminated between victims of intentional and unintentional injury (see paragraph 35

above), followed no legitimate aim, was not proportionate and could not be regarded as necessary in a democratic society.

60. The Commission, with whom the Government agreed, found that no separate issue arose under Article 8 (art. 8) which was not already covered by Article 6 para. 1 (art. 6-1), in view of the fact that the alleged sexual abuse was prohibited by the criminal law.

61. The Court observes, first, that Article 8 (art. 8) is clearly applicable to these complaints, which concern a matter of "private life", a concept which covers the physical and moral integrity of the person (see the X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, para. 22).

62. It is to be recalled that although the object of Article 8 (art. 8) is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: there may, in addition to this primary negative undertaking, be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (ibid., para. 23).

63. There are different ways of ensuring respect for private life and the nature of the State's obligation will depend on the particular aspect of private life that is in issue. It follows that the choice of means calculated to secure compliance with this positive obligation in principle falls within the Contracting States' margin of appreciation (ibid., p. 12, para. 24).

64. Sexual abuse is unquestionably an abhorrent type of wrongdoing, with debilitating effects on its victims. Children and other vulnerable individuals are entitled to State protection, in the form of effective deterrence, from such grave types of interference with essential aspects of their private lives (see, mutatis mutandis, the above-mentioned X and Y judgment, p. 13, para. 27).

65. In the instant case, however, such protection was afforded. The abuse of which the applicants complained is regarded most seriously by the English criminal law and subject to severe maximum penalties (see paragraph 38 above). Provided sufficient evidence could be secured, a criminal prosecution could have been brought at any time and could still be brought (see paragraphs 39-40 above). Indeed, the Court notes that a charge of indecent assault was brought against the applicant D.S.'s father, to which he pleaded guilty in March 1991 (see paragraph 25 above).

66. In principle, civil remedies are also available provided they are sought within the statutory time-limit. It is nonetheless true that under the domestic law it was impossible for the applicants to commence civil proceedings against their alleged assailants after their twenty-fourth birthdays (see paragraph 15 above). However, as noted above (paragraph 62), Article 8 (art. 8) does not necessarily require that States fulfil their

positive obligation to secure respect for private life by the provision of unlimited civil remedies in circumstances where criminal law sanctions are in operation.

67. Accordingly, in view of the protection afforded by the domestic law against the sexual abuse of children and the margin of appreciation allowed to States in these matters, the Court concludes that there has been no violation of Article 8 of the Convention (art. 8).

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 6 PARA. 1 AND/OR 8 (art. 14+6-1, art. 14+8)

68. In addition, all of the applicants alleged that they had been treated in a discriminatory manner, contrary to Article 14 of the Convention taken in conjunction with Article 6 para. 1 (art. 14+6-1). Ms Stubbings, J.L. and J.P. also complained of a violation of Articles 14 and 8 taken together (art. 14+8). Article 14 (art. 14) declares:

> "The enjoyment of the rights and freedoms set forth in [the] 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."

The Government disputed this claim, but the Commission found violations of Article 14 taken together with Article 6 para. 1 (art. 14+6-1).

69. The applicants pointed to the difference in the rules of limitation applied in cases of intentionally caused injury, such as their own, and injury caused by an unintentional breach of duty. In the latter cases, a three-year time bar applied, but this did not start to run until the date on which the plaintiff first knew the injury in question was both significant and attributable to the defendant. Furthermore, the judge had discretion to allow such an action to proceed even if commenced after the expiry of the three-year period, where it would be equitable to do so (see paragraph 35).

The applicants argued that both the mental state of those who injured them and the particular nature of the harm inflicted, which prevented them from realising they had a litigable cause of action until it was too late (see paragraph 47 above), were relevant, defining characteristics for the purposes of Article 14 (art. 14). Thus, they were not only discriminated against in comparison with the victims of negligently inflicted harm, but also in contrast to individuals who suffered other forms of intentionally caused injury which did not lead to similar psychological ramifications.

Finally, they submitted that the discrimination they suffered could not be justified since the considerations of legal certainty and prevention of stale claims applied with equal force to unintentionally and intentionally caused injury.

70. The Government asserted that to accept the applicants' arguments would be to distort the proper meaning of Article 14 (art. 14), which did not prohibit all differences in treatment in the exercise of rights and freedoms under the Convention, but only certain distinctions between groups in relevantly similar positions. The applicants, however, were not in an analogous situation to the victims of unintentionally inflicted injury.

The Government suggested a number of factors to help decide whether any two groups were comparable for the purposes of Article 14 (art. 14). First, they argued that the discrimination had to be based on a personal characteristic particular to each group. However, in contrast to such attributes as race, sex, colour or language, the varying mental states of those allegedly responsible for harming different groups of victims was not relevant to the latters' personal status. Secondly, the discrimination had to have as its consequence the advantaging of one group in society at the expense of another; this criterion did not apply in the instant case. Finally, it was necessary to look at the national legislation in its entirety. By asking that they be compared with the victims of negligently inflicted injury, rather than the victims of most other torts or breaches of contract, the applicants had selected a purely notional comparator.

In the alternative, the Government advanced the view that if there had been any discrimination, it had been reasonably and objectively justified in that it pursued a legitimate aim and had been proportionate.

71. The Commission agreed with the applicants that they were in an analogous situation to the victims of unintentionally inflicted harm. It observed that there might be cases in which it was unclear whether harm was caused deliberately or negligently and that the two categories could not be said to be exclusive. There was thus no basis for drawing a distinction based on the intention or culpability of the wrongdoer which would exclude comparison under Article 14 of the Convention (art. 14).

At the hearing before the Court, the Delegate emphasised that it was appropriate to compare the positions of the victims of intentionally caused injury on the one hand and those of negligently inflicted harm on the other, since these two groups had been treated in exactly the same way as regards the rules of limitation before the House of Lords' decision in Stubbings v. Webb (see paragraphs 13 and 15 above).

72. The Court reiterates that Article 14 (art. 14) affords protection against discrimination in the enjoyment of the rights and freedoms safeguarded by the other substantive provisions of the Convention (see the Van der Mussele v. Belgium judgment of 23 November 1983, Series A no. 70, p. 22, para. 43). However, not every difference in treatment will amount to a violation of this Article (art. 14). Instead, it must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment, and that there is no reasonable or objective

justification for this distinction (see the Fredin v. Sweden (no. 1) judgment of 18 February 1991, Series A no. 192, p. 19, para. 60).

Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (see the Rasmussen v. Denmark judgment of 28 November 1984, Series A no. 87, p. 15, para. 40).

73. It is to be recalled that the applicants complained that they were treated less favourably than both the victims of negligently inflicted harm and the victims of other forms of intentional injury which did not lead to psychological damage preventing them from understanding its causes (see paragraph 69 above).

The Court observes, first, that as between the applicants and victims of other forms of deliberate wrongdoing with different psychological after-effects, there was no disparity in treatment, because the same rules of limitation are applied to each group.

Secondly, the victims of intentionally and negligently inflicted harm cannot be said to be in analogous situations for the purposes of Article 14 (art. 14). In any domestic judicial system there may be a number of separate categories of claimant, classified by reference to the type of harm suffered, the legal basis of the claim or other factors, who are subject to varying rules and procedures. In the instant case, different rules have evolved within the English law of limitation in respect of the victims of intentionally and negligently inflicted injury, as the House of Lords observed with reference to the report of the Tucker Committee (see paragraph 15 above). Different considerations may apply to each of these groups; for example, it may be more readily apparent to the victims of deliberate wrongdoing that they have a cause of action. It would be artificial to emphasise the similarities between these groups of claimants and to ignore the distinctions between them for the purposes of Article 14 (art. 14) (see, mutatis mutandis, the above-mentioned Van der Mussele judgment, pp. 22-23, para. 46).

74. Furthermore, even if a comparison could properly be drawn between the two groups of claimants in question, the difference in treatment may be reasonably and objectively justified, again by reference to their distinctive characteristics. It is quite reasonable, and falls within the margin of appreciation afforded to the Contracting States in these matters (see paragraph 72 above), to create separate regimes for the limitation of actions based on deliberately inflicted harm and negligence, since, for example, the existence of a civil claim might be less obvious to victims of the latter type of injury.

75. Accordingly, the Court finds no violation of Article 14 of the Convention taken in conjunction with Articles 6 para. 1 or 8 (art. 14+6-1, art. 14+8).

FOR THESE REASONS, THE COURT

1. Holds by seven votes to two that there has been no violation of Article 6 para. 1 of the Convention (art. 6-1) in respect of any of the applicants;

2. Holds unanimously that there has been no violation of Article 8 of the Convention (art. 8);

3. Holds by eight votes to one that there has been no violation of Article 14 taken in conjunction with either Article 6 para. 1 or Article 8 (art. 14+6-1, art. 14+8).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 October 1996.

Rudolf BERNHARDT
President

Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 53 para. 2 of Rules of Court A, the separate opinions of Mr Foighel and Mr MacDonald are annexed to this judgment.

R.B.
H.P.

PARTLY DISSENTING OPINION OF JUDGE FOIGHEL

1. In this case I find a violation of Article 6 para. 1 (art. 6-1) which "secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal" (see the Golder v. the United Kingdom judgment of 21 February 1975, Series A no. 18, p. 18, para. 36).

2. For the understanding of this very important and basic rule of the Convention, it is irrelevant whether English law distinguishes between intentional and unintentional injuries for the purpose of limitation. The problem in this case is how to interpret the Convention.

The case-law of the Court was for the first time formulated in the Ashingdane v. the United Kingdom case (judgment of 28 May 1985, Series A no. 93, p. 24, para. 57) where it is stated:

> "Certainly, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access 'by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals' ... In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field ...
>
> Nonetheless, the limitations applied must 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 ..."

3. This formulation of the law raises two questions. First, did the victims in this case, who had a claim relating to their civil rights, have access to the courts? Second, for how long a period did they have access?

4. The second of these two questions is the easier: the victims were allowed six years from the date of their eighteenth birthdays, a period which is not unreasonable and which is well within the State's margin of appreciation. Neither is the imposition of a fixed limitation period in itself enough to constitute a violation.

5. But the crucial questions are: when should the limitation period start? Did the applicants have effective access to the courts? If the period starts and ends before the person concerned has knowledge of the facts that the alleged injury was both substantial and attributable to the defendant, the victim has no chance ever to go to court.

6. The psychological reports submitted in these cases demonstrate that the victims of sexual abuse suffer from a split personality. They belong to a restricted, well-definable group of persons which only recently has come to the fore, the so-called Child Sexual Abuse Survivors. One of the applicants was born in 1962, but it was not until 1987 that she first mentioned the

abuse to her doctor. She did not realise before that it was relevant or would be interesting to the doctor, although she had suffered many psychological problems due to it. Until she mentioned it to the doctor, she was not aware of any causal link between her suffering and the abuse; in other words, in the years during which she could go to the courts she was not aware that she had a case, and when she became aware that she had a case, she had no possibility to bring a claim.

7. The purpose of the rules of limitation, which is to strike a proportional balance between the prevention of stale claims and protecting the interests of the claimants, have no meaning when the victim is not aware that she even has a claim.

8. The suggestion by the majority (see paragraph 52) that a "criminal prosecution could be brought at any time and, if successful, a compensation order could be made", is not a reasonable alternative to the right stated in Article 6 (art. 6) to bring a civil claim to a court. In this sensitive area, where the conflict exists between daughters and their fathers, there is a major difference between claiming compensation and claiming that the father should be punished by a lengthy stay in prison.

9. In many countries in Europe the limitation period only starts to run when the victims have discovered or ought to have discovered the material facts on which an action can be based. This principle of discoverability was also accepted by the British legislature as early as 1963.

10. The Court normally recognises a margin of appreciation when evaluating whether a member State has observed an individual’s right protected by the Convention (in this case, the right of access to court). However, the margin of appreciation can never justify a State in depriving the individual altogether of the right in question.

Accordingly, I find the margin of appreciation recognised by the majority far too wide, since the English legislation denies the very essence of the right of access to court, in a situation where the applicants had no realistic opportunity to go to court at any earlier stage.

11. It follows that I find a violation of Article 6 para. 1 (art. 6-1).

PARTLY DISSENTING OPINION OF JUDGE MACDONALD

Contrary to the majority of the Court, I have reached the conclusion that there has been a violation of the applicants' rights under Article 6 para. 1 standing alone (art. 6-1) and also Article 6 para. 1 in conjunction with Article 14 of the Convention (art. 14+6-1) in the present case. Article 6 para. 1 (art. 6-1)

1. The general purposes of statutes of limitation are beyond doubt legitimate, but in the present case there was not, in my opinion, a reasonable relationship of proportionality between the means employed by the State and the objects sought to be achieved.

2. Having regard to the nature of the injury involved and the fact that victims of childhood sexual abuse are frequently and for various periods of time unaware of the causal link between the damage suffered and the acts responsible, the imposition of a fixed statutory time-limit which expires six years after the date of the act or after the date on which the victim attains his or her majority (eighteen), regardless of the circumstances of an individual case and without the availability of a procedure to mitigate against the consequences of the applicable period, is, in my view, disproportionate in that it unreasonably deprives the applicants of a right of access to court and thus lies beyond the margin of appreciation enjoyed by States in establishing time-limits for the introduction of proceedings.

3. It is clear from the jurisprudence of the Court that limitations on the right of access to national courts "must 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" (see the Ashingdane v. the United Kingdom judgment of 28 May 1985, Series A no. 93, p. 24, para. 57). The Convention "is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective", (see the Airey v. Ireland judgment of 9 October 1979, Series A no. 32, p. 12, para. 24). In the present case, the psychological harm suffered by the applicants caused them to be unable to bring proceedings within the statutory time period. When they did become aware of the link between their present psychological conditions and the earlier abuse, they found that the "very essence" of their right of access to court had not only been restricted or reduced but had indeed become illusory.

4. Among the interests to be considered in reaching a conclusion on the question of proportionality, one can readily identify the need for legal certainty, the need to extinguish stale claims, and the need to avoid or reduce the risk that the alleged wrongdoer might be unfairly treated as a result of making findings of fact that go back many years. There are also, however, important interests represented by the need to recognise and make possible the vindication of the rights of child victims who were not even

aware of the existence of their rights before those rights became statute-barred, and the overall security, health, and well-being of society at large.

5. While the legislation clearly serves the traditional aims of statutes of limitation relating to the control and prevention of injustice, it does not (unfortunately) reflect a satisfactory recognition and accommodation of other outstanding interests involved in the increasing effort to meet the challenges which the problem of child sexual abuse presents to legislators, draughtsmen, and judges. The traditional aims of the statute are sought to be realised specifically at the expense of the applicants' rights under the Convention and, more generally speaking, the struggle to recognise that sexual abuse of children is a gross violation of children's and human rights and to promote fundamental change in the nature of social reactions and attitudes to the depressingly prevalent phenomenon of child sexual abuse. Article 14 (art. 14)

6. I am also of the opinion that the difference of treatment between those persons whose injury was intentionally inflicted and those who suffered injury resulting from an unintentional breach of duty was not based on any objective and reasonable justification within the meaning of Article 14 of the Convention (art. 14). The Court of Appeal in its judgment in Stubbings v. Webb of 27 March 1991 (see paragraph 14 of the judgment) concluded that the limitation period started to run only when the applicant realised that her symptoms were attributable to the abuse suffered as a child. Alternatively, the Court of Appeal was prepared to exercise its discretion under the Limitation Act 1980, section 33, to allow the action to proceed. Pursuant to the Limitation Act 1980, section 11, this discretion is only available in cases relating to personal injury arising from negligence, nuisance or breach of duty. Relying on Letang v. Cooper [1965] 1 Queen's Bench Reports p. 232, the Court of Appeal found that section 11 did not distinguish between claims based on unintentional and intentional trespass to the person. This finding was overturned by the House of Lords which held that cases of deliberate assault did not fall within the definition in section 11 but were more properly the subject of an action founded on tort; there was no discretionary power to extend the limitation period.

7. When compared to the position of claimants who have sustained unintentional injury, the result of this measure is, in my view, unreasonable and disproportionate. In the light of evidence to the contrary, it cannot reasonably be contended that all victims of intentionally inflicted injury are more likely to be aware of the facts on which to found a claim than victims of unintentional injury. Especially in the case of a child sexual abuse victim, it is not reasonable to make the victim's access to a court depend on whether the perpetrator inflicted the injury intentionally or negligently. The legitimate purposes pursued by the State in imposing a limitation period on actions are equally applicable to both types of claimant. I see no reasonable

justification for distinguishing between these types of injury or classes of claimant.

8. It is apparent then that persons in an analogous position to the applicants enjoy preferential treatment without reasonable or objective justification for the distinction (see the Fredin v. Sweden (no. 1) judgment of 18 February 1991, Series A no. 192, p. 19, para. 60). This difference of treatment, based on seemingly artificial distinctions, due perhaps to the difficulty of adapting the concept of limitations to these new factual patterns, produces inequality of treatment which cannot be regarded as compatible with the Convention (see the above-mentioned Airey judgment, p. 16, para. 30).

9. I conclude that there has been a violation of Article 6 para. 1 of the Convention standing alone (art. 6-1) and also of Article 6 para. 1 taken in conjunction with Article 14 (art. 14+6-1)[1].

[1] For the contextual background against which the problem should be viewed, see in particular the conclusions of the Fourth UN Conference on Women (Beijing, September 1995); the Stockholm World Congress on Sexual Exploitation of Children (Stockholm, 1996); the Report of the European consultation for the World Congress against Commercial Exploitation of Children (Strasbourg, 1996), referring at p. 10 to the United Kingdom report calling for "more child friendly and child sensitive procedures in the criminal justice system"; and the helpful scholarly studies by Edward H. Hondius ("Extinctive Prescription on the Limitation of Actions", 1994) and Nathalie Des Rosiers ("Limitation Periods and Civil Remedies for Childhood Sexual Abuse", Canadian Family Law Quarterly, vol. 9, 1992-1993, p. 43), both of which emphasise the need for a range of flexible remedies.