CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 76573/01
by Lizette DENNIS and Others
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 2 July 2002 as a Chamber composed of

Mr M. PELLONPÄÄ, *President*,
Sir Nicolas BRATZA,
Mr A. PASTOR RIDRUEJO,
Mrs E. PALM,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 20 September 2001,

Having deliberated, decides as follows:

THE FACTS

The applicants are

1. Lizette Dennis, a British citizen born in 1943 and resident in Cologne, Germany;

2. Margaret Lockwood-Croft, a British citizen born in 1940 and resident in Aldershot, England;

3. John Clarke, an Australian citizen born in 1936 and resident in Green Valley, Australia;

4. Jean Clarke, an Australian citizen also resident in Green Valley, Australia.

They are represented by Irwin Mitchell Solicitors, Sheffield.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

At about 01.46 hours on 20 August 1989, the dredger "Bowbelle" collided with the passenger launch "Marchioness" on the River Thames, London. Fifty-one people, including the first applicant's son Howard Dennis, the second applicant's son Shaun Lockwood-Croft and the third and fourth applicants' son John Clarke, lost their lives. Some bodies were recovered from the wreck of the "Marchioness" while twenty-seven were recovered from the river. The last body was not found until 1 September 1989.

Due to the lapse of time in recovering some of the bodies from the river, the Coroner decided that the bodies recovered on or after 22 August were to be considered, due to the degree of decomposition, as unsuitable for visual identification. He gave express authority for the removal of hands from bodies (to enable fingerprints to be taken at the police laboratory) where this was considered necessary. He did not address the question of whether the removal of hands was necessary even if dental records or other means of identification were either available or in the course of being obtained. The police were left with the impression that the Coroner required fingerprints to be taken in every case and that if it was necessary to remove the hands in order for fingerprints to be taken, this should be done. After the police fingerprinting experts advised that it was necessary to remove the hands to obtain the fingerprints, the police proceeded on 24 and 25 August to remove the hands from the victims' bodies on a blanket basis without any consideration as to whether identification purposes required the measure in each case. This meant that hands were removed from bodies notwithstanding the fact that some had already been positively identified by dental records and dental records for others were in the process of being obtained.

In respect of Howard Dennis, his body was found at about 10.45 a.m. on 23 August. A national insurance card and student card with his name were found on the body. At about 2.30 p.m., following police enquiries, his dentist provided details to the Coroner's Office. At some time on 25 August, he was positively identified by his dental records. However the same day his hands were removed, possibly after the dental identification was made.

In respect of Shaun Lockwood-Croft, his body was found early on 23 August. A signet ring bearing the initials "SLC" was on the body. The second applicant delivered his dental records to the police the same morning. At about 2.30 p.m., following police enquiries, his dentist provided dental records to the Coroner's Office. At some time on 25 August his hands were removed.

In respect of John Clarke, the family provided details of identifying tattoos and body jewellery on 20 August. His body was found early on 22 August and the tattoos noted. On the morning of 23 August, his body was positively identified. At some time on 24 August, his hands were removed. At 10 a.m. on 25 August the police were informed that his dental records had been received by the Australian High Commission.

No relatives of the victims were informed that there was to be a removal of hands. Many did not become aware that the bodies had had parts removed until during the inquiry proceedings. The relatives were also denied access to the bodies to say their last farewell.

A number of inquiries were held into the collision and its tragic consequences. Three reports from the Thames Safety Inquiry were published on 2 December 1999 and 19 February 2000. A report on the formal investigation issued shortly thereafter.

In the Thames Safety Inquiry Final Report dated 22 December 1999 and published in Parliament on 19 February 2000, Lord Justice Clark found that the hands of 25 of the 27 victims found in the river were removed for the purposes of obtaining fingerprints and it was not until two years later that the families discovered what had happened. He made primary findings of fact that were undisputed by those participating in the inquiry, namely, that the Coroner gave authorisation for the hands to be removed from any bodies where it was not possible to take good fingerprints without doing so and that decisions were taken to remove hands on a purely technical basis without addressing the question of whether the deceased could be identified without his or her fingerprints being taken. He did not consider that any further primary facts would emerge if further evidence was called, noted that changes to and a tightening up of procedures had occurred and therefore reached the conclusion that the public interest did not require a public inquiry into this aspect.

Meanwhile, on 14 February 2000, the Deputy Prime Minister nonetheless requested Lord Justice Clarke to conduct a further non-statutory inquiry

concerning the identification of victims. This inquiry was conducted in November and December 2000. The report on the Public Inquiry into the Identification of Victims following Major Transport Accidents was published on 23 March 2001. The report, set out in two volumes, reached findings of fact and made recommendations as to desirable and appropriate practice.

Concerning the removal of the hands, Lord Justice Clark found that at the relevant time the hands ought not to have been removed for the purposes of identification unless, having regard to the absence of other sufficient means of identification, it was necessary to do so. The Coroner had failed to give proper consideration to the question in what circumstances the hands of particular deceased should be removed and had instead authorised, and in effect instructed, the police to remove the hands if it was necessary to obtain fingerprints, though in fact it had not been necessary to obtain fingerprints. He recommended, *inter alia*, that the methods used for establishing the identity of a deceased should, wherever possible, avoid any unnecessary invasive procedures or disfigurement or mutilation and that body parts should not be removed for purposes of identification except where necessary as a last resort.

As regarded the failure to inform the relatives of the removal of hands, he found that it was not the practice in 1989 to provide such information and he did not criticise the Coroner for failing to provide it. He observed that the current practice was different as an open and honest approach was now recognised to be right in principle and relatives were now informed as soon as possible.

As regarded the alleged refusal to allow the relatives to view the bodies, he found that the Coroner had not given instructions that relatives were not to view the bodies. It was however likely that the Coroners' officers or police liaison officers, acting from the best of motives, namely to avoid distress to relatives, sought to dissuade them from viewing the body. It was possible that some officers used language suggesting that viewing was prohibited rather than ill-advised. He did not find that it would be fair to blame the Coroner in that respect having regard to the standards of 1989. He observed however that as matters were perceived today, a coroner ought to consider how requests to view the body should be dealt with and give appropriate directions since the body was in his possession. Though there would be a need for sensitive and careful handling of the relatives' feelings and for appropriate counselling before viewing took place, in principle the request of a relative to view the body, if maintained after appropriate counselling, should be respected.

B. Relevant domestic law and practice

Under English law, there is no "property" in a body. Neither a corpse nor parts of a corpse are capable of being property protected by legal rights (R. v. Kelly [1999] QB 621). No cause of action lies in tort in relation to the mutilation of the body of a family member.

COMPLAINTS

1. The applicants complain under Article 8 of the Convention of the unnecessary removal of parts of the bodies of their children as infringing the right of the family to possession of the body for funeral, burial or cremation in an unmutilated form.

They also submitted that they should have been entitled to view and touch the body of their loved one, as a vital part of the grieving process.

They argued that the failure of the authorities to inform them of the removal of hands and the way in which the information emerged over a long period of time exacerbated the distress and suffering of the families. There was a failure to give sufficient consideration to the feelings of the families by informing them in a timely and sensitive manner of the standard procedures likely to be followed with regard to identification.

Finally, the second applicant complains that at a meeting before members of the press the Coroner referred to her as "unhinged".

2. The applicants complain that insofar as the applicants' religious or other beliefs dictated that the body of their loved one should be buried or cremated as a whole and/or intact the Coroner's decision and conduct with respect to the removal of hands constituted a breach of Article 9 of the Convention.

THE LAW

The applicants complain that they were denied the opportunity to see the bodies of their deceased children, that the hands of their children were removed unnecessarily, that they were not informed until some time later that this mutilation had occurred and, in the case of the second applicant, that the Coroner had made disparaging remarks about her. They invoke Articles 8 and 9 of the Convention which protect the right to respect for private and family life and the freedom of thought, conscience and religion respectively.

Article 35 § 1 of the Convention requires however that the Court may only deal with a matter where it has been introduced within six months from date of the final decision in the process of exhaustion of domestic remedies.

The Court recalls that the object of the six month time limit under Article 35 § 1 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with in a reasonable time and that past decisions are not continually open to challenge. The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see, for example, the Worm v. Austria judgment of 29 August 1997, *Reports* 1997–V, at p. 1547, §§ 32-33).

Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect or prejudice on the applicant (see e.g. Hilton v. the United Kingdom, no. 12015/86, Commission decision of 6 July 1988, DR 57, p. 108). Article 35 § 1 cannot be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level (see *Paul and Aubrey Edwards v. the United Kingdom*, no. 46477/99, dec. 4.6.01).

In the present case, the applicants were aware that they had been prevented from seeing the bodies of their children at the time, namely in August 1989. It is also apparent that they became aware of the removal of the hands during the course of the inquiries into the disaster. Lord Justice Clarke in his final report in the Thames Safety Inquiry referred to the relatives learning of this aspect of the procedure two years after the events. The applicants were therefore made aware of the circumstances in which the removal occurred and the fact that the Coroner had given authorisation without individual consideration of the needs of identification in each case at the latest by 19 February 2000 when Lord Justice Clarke's findings and recommendations on the issues in the Thames Safety Inquiry Final Report were published before Parliament.

The Court notes that the applicants submit that the six month time-limit should run from the date of publication of the later report given by Lord Justice Clarke specifically on the issues of identification of victims in major transport accidents which was made public on 23 March 2001. It was only then, they say, that they were able to appreciate the full nature and extent of the events which took place in August 1989 and the breaches of the Convention which had occurred.

The Court is not persuaded however that the applicants' position as regarded any potential claim under the Convention was in any way unclear by the time of Lord Justice Clarke's report of 19 February 2001. The

primary facts had already been established at that point. Nor can the inquiry be regarded as part of the process of exhaustion of domestic remedies. The later inquiry was not able to award compensation or make any findings of violations of the Convention and, indeed, the applicants submit that for those reasons it was not capable of constituting an effective remedy for their complaints. This case may be distinguished from that of the Edwards case (cited above) where the Court found that it was reasonable for the applicants to await the outcome of the inquiry into the death of their son as the findings of fact would be of relevance to the existence of remedies in tort. The present applicants were not dependent on the findings of the later inquiry in determining whether they had any available remedies in domestic law. They have submitted that no action in tort was available to them, which position was known to them prior to the later inquiry.

The Court concludes that as the application was introduced on 20 September 2001 and the applicants were aware in August 1989 of their lack of access to view the bodies and, at the latest, from 19 February 2000 had knowledge of the primary facts concerning the removal of the hands from the victims found in the water, the applicants' complaints must be rejected as having been introduced outside the six month time-limit.

As regards the second applicant's complaint about the Coroner's derogatory remarks to the press, no date for this has been given which would enable any assessment to be made of compliance with the six month rule nor has any indication been given of whether, if the remark was alleged to be defamatory, any steps were taken to exhaust domestic remedies.

The application must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President