AS TO THE ADMISSIBILITY OF

Application No. 30402/96
by Dawn BARRETT
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 13 December 1995 by Dawn BARRETT against the United Kingdom and registered on 7 March 1996 under file No. 30402/96;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen and the wife of Terence Barrett, a Naval Airman, who on the night of the 22/23 January 1988 died from aspiration of vomit consequent on intoxication whilst serving with the Royal Navy at Bardufoss naval base in Northern Norway. The applicant is represented before the Commission Ms. N. Mole and Ms. N. Rogers, both lawyers working for the Centre for Advice on Individual Rights in Europe ("the AIRE Centre") in London.

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

A. Particular circumstances of the case

No onshore leisure facilities were available within the immediate vicinity of the Bardufoss naval base ("the base"). Various leisure facilities were provided on the base, including two bars for use by junior and senior ratings.

Consumption of alcohol on the base was governed by Queen's Regulations and standing orders. It was the responsibility of the senior naval officer at the base, Lieutenant Commander L., to ensure

that regulations and standing orders were actively enforced.

In the course of the evening of 22 January 1988 the deceased consumed 10 units of alcohol at the junior ratings bar before being invited to the senior ratings bar where he consumed a further 12 units of alcohol.

Shortly before midnight the deceased collapsed into a state of apparent unconsciousness. He was taken to his cabin. On route he was seen by Lieutenant Commander P. P. assessed the deceased to be insensible through drink and advised that he be put in the recovery position and watched.

The deceased was observed continuously for the first hour and thereafter on 3 occasions by the duty watch until about 2.40 a.m. when the deceased's cabin mate returned. He discovered the deceased was no longer breathing, nor could he discern a pulse. Norwegian medical officers were called from the nearby Hegglia Sickbay. Attempts to resuscitate the deceased were unsuccessful and he was pronounced dead at or about 3.30 a.m. on the morning of the 23 January 1988.

Following the death of the deceased a Board of Inquiry was convened to investigate the circumstances of his death. The Board's report was completed on the 12 February 1988. The Board of Inquiry found, inter alia, that :

1) there was general laxity in the control of alcohol consumption at the base. Whilst alcohol was very cheap and consumption at the base was high, the problem lay not so much in its availability but in its control and the attitude taken to drunkenness. No record of individual consumption was kept. Disciplinary measures relating to drunkenness were not enforced. Stricter control of alcohol consumption at the base was necessary. The administration at the base should be subjected to regular standards and practice checks;

2) had a continuous watch on the deceased been maintained he would not have died. The guidance given within standing orders for the treatment of drunken men was substandard and inadequate. The deceased ought to have been seen by a trained medical assistant before being left in his cabin. Medical cover at the base would need to be reviewed.

Following a separate Ship's Inquiry into the internal affairs and administration at the base, Lieutenant Commander L. was charged with a breach of article 1810 of the Queen's Regulations which, inter alia, requires all officers "actively to discourage drunkenness <and> over-indulgence in alcohol by naval personnel both on board and ashore." Lieutenant Commander L. pleaded guilty to the charge before a Court Martial on 21 March 1988.

The applicant brought civil proceedings against the Ministry of Defence under the Fatal Accidents Act 1976 and the Law Reform (Miscellaneous Provisions) Act 1934, alleging negligence on the part of the Ministry of Defence in 1) failing to take reasonable care to prevent drunkenness/drinking to a level which endangered the safety of the deceased or was such as to render him unconscious; and 2) failing to exercise reasonable care for his safety once he had collapsed.

Giving judgment on 12 May 1993, the trial judge, who considered the evidence disclosed "a perfectly deplorable situation", found the Ministry of Defence, through its personnel at the base, negligent in failing to implement and enforce standards which itself set in matters of discipline and intended to control the level of alcohol consumption, and in subsequently caring for the deceased once he had collapsed. The trial judge awarded the applicant damages of £160,651.16 reduced by 25% to reflect contributory negligence on the part of the deceased.

The Ministry of Defence appealed against the judge's findings 1) that in law it owed any duty of care to the deceased with respect to the consumption of alcohol so as to found a claim for damages in negligence; and 2) as to the apportionment of responsibility between the Ministry and the deceased for his death. The Ministry of Defence did not dispute that it owed a duty of care to the deceased in caring for him once he had collapsed.

In allowing the appeal the Court of Appeal, giving judgment on 20 December 1994, found 1) that the Ministry of Defence owed no duty of care at common law to the deceased to prevent him abusing alcohol to the extent he had so as to found a claim in damages for negligence. In the course of its reasoning the Court of Appeal noted that the relevant regulations and standing orders were a disciplinary code. They were not to be equated with the guidance given in pamphlets relating to safety in factories, as an incident of the existence of any duty of care; and 2) that whilst the Ministry of Defence had been negligent in failing to take adequate care of the deceased once he had collapsed, damages should be reduced by two thirds to reflect contributory negligence on the part of the deceased. The applicant was refused leave to appeal to the House of Lords on 22 June 1995.

B. Relevant domestic law and practice

Naval affairs and the conduct of naval personnel are governed, inter alia, by statute ; Queen's Regulations, provided for through exercise of the Royal Prerogative ; and standing orders issued at a local and administrative level to secure, inter alia, the efficient and proper control and management of naval affairs and naval personnel consistent with statute and the Queen's Regulations.

S. 28 of the Naval Discipline Act 1957 provides :

> "(1) A person is drunk within the meaning of this section if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty he might reasonably expect to be called on to perform, or behaves in a disorderly manner or in a manner likely to bring discredit on Her Majesty's service.
>
> (2) Every person subject to this Act who is drunk, whether on duty or not, shall be liable to imprisonment for a term not exceeding two years or any less punishment authorised by this Act."

Article 1810 of the Queen's Regulations provides :

> "It is a particular duty of all officers, Fleet Chief Petty Officers, Chief Petty Officers and leading ratings actively to discourage drunkenness, over-indulgence in alcohol and drug abuse by naval personnel both on board and ashore. Should a man appear to be suffering from any of these abuses, they are immediately to take appropriate action to prevent any likely breaches of discipline, possible injury or fatality, including obtaining medical assistance if it is available. Action taken is to be reported to the OOW/OOD, naval provost unit or other naval authority as appropriate."

Yeovilton Standing Orders, applicable to naval personnel at the base, provided, inter alia , by order 0307 :

> "Dealing with Drunks ... should he be in a state of collapse make sure he does not lie on his back so that he cannot suffocate if he vomits. See that he is sighted every few minutes. When in doubt send for the Duty Medical

Assistant."

COMPLAINTS

1. The applicant invokes Article 2 of the Convention. The applicant complains that her husband's right to life was violated in that there was inadequate control and supervision of the supply and consumption of alcohol on the base. The applicant complains that this fostered a culture of heavy drinking and over-indulgence without restraint which resulted in her husband's death. The applicant also complains that her husband's right to life was violated in that he received inadequate care and attention following his collapse. In this context the applicant points to the finding of negligence before the domestic courts in respect of the treatment received by the deceased following his collapse.

2. The applicant complains that the issues arising under Article 2 also constituted a failure to protect her husband's right to respect for his private life, namely the physical and moral integrity of his person, in violation of Article 8 of the Convention.

3. The applicant complains under Article 13 of the Convention that she did not have an effective remedy before a national authority. The applicant submits that neither the Board of Inquiry nor the Court Martial provided the applicant with an affective remedy, and that the domestic courts declined to recognised the existence of any duty of care on the part of the State to control or prevent the consumption of alcohol to a level which endangered the life of the deceased.

THE LAW

1. The applicant complains that the control and supervision of the supply and consumption of alcohol at the base and the care and attention the deceased received following his collapse were inadequate and such as to endanger his life in breach of Article 2 (Art. 2) of the Convention which, insofar as relevant, provides :

> "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally ..."

The Commission recalls that the first sentence of Article 2 (Art. 2) requires the State not merely to refrain from "intentionally" causing death, but also imposes a positive obligation to take adequate measures to protect life (see No. 7154/74, Dec. 12.7.78, D.R. 14, p. 31; and No. 20948/92, Dec. 22.5.95, D.R. 81, p. 35). The Commission considers that the taking of adequate measures to protect life engages the responsibility of the State at two levels: first, in the formulation of measures designed to secure the protection of life, including an effective procedure for investigating the circumstances of any loss of life, and second, in the implementation of those measures (cf Eur. Court HR, McCann v. the United Kingdom judgment of 27 September 1995, Series A no. 324, p. 49, para. 161).

The Commission recognises that the Contracting States are ordinarily best placed to assess the measures appropriate in any given context to secure the protection of life. The Commission will not, as a general rule, gainsay their assessment as to the measures appropriate unless it is apparent that the measures taken were manifestly inadequate. Nor will a State ordinarily incur any liability under Article 2 (Art. 2) in the event of a failure by those responsible for the implementation of the relevant measures unless there is evidence that the State has condoned the failure, or that after the event there was not in fact a proper or adequate investigation or inquiry into the circumstances of the loss of life.

The Commission recognises that the excessive consumption of alcohol may pose a risk to life. Where a State provides facilities for

drinking in circumstances where there is an obvious and substantial risk of excessive consumption the absence of any measures designed to discourage drinking to excess and, in the event, to secure adequate care and treatment, is likely to raise issues under Article 2 (Art. 2) of the Convention.

In the present case, the Commission recalls that the provision and consumption of alcohol at the base, and the care and treatment of drunks were governed by the Queen's Regulations and standing orders. The Commission notes that under s. 28 of the Naval Discipline Act 1957 drunkenness is an offence whether a serviceman is on duty or not, and that under article 1810 of the Queen's Regulations all officers of the fleet and leading ratings are required to actively discourage drunkenness and over-indulgence in alcohol. The Commission further notes that article 1810 requires all officers in the event of over-indulgence "to take appropriate action to prevent ... possible injury or fatality, including medical assistance if it is available", and that Yeovilton standing order 0307 required a drunk in the state of collapse to be placed in the recovery position and sighted every few minutes, and in the event of doubt to be examined by a medical assistant. The Commission also notes that there was in place a procedure, in the form of a Board of Inquiry, for investigating the circumstances of the deceased's death.

The Commission finds that the measures which were in place, which in the view of the Commission included an effective procedure for inquiring into the circumstances of the deceased's death, were not, in the circumstances of the present case, in themselves inadequate.

The Commission recalls however the finding at first instance that the relevant personnel at the base failed "to enforce the standards which <the Ministry of Defence> themselves set in matters of discipline", and the acknowledged failure of the senior naval officer at the base, Lieutenant Commander L, to actively to discourage drunkenness and over-indulgence in alcohol in breach of article 1810 of the Queen's Regulations. The Commission also recalls the finding of the Board of Inquiry and the domestic courts that the level of care administered to the deceased following his collapse was also sub-standard.

The Commission, however, finds no evidence that the State condoned any failure in the implementation of the relevant measures. In this regard the Commission notes that Lieutenant Commander L. was prosecuted and convicted before a Court Martial of a breach of article 1810 of the Queen's Regulations. Nor does the Commission find any evidence that the Board of Inquiry did not, after the event, conduct a proper and adequate investigation into the circumstances of the deceased's death. There is no material before the Commission to suggest that there were any circumstances which should have alerted the authorities to any necessity to take any additional preventive or investigatory measures.

Consequently, the Commission finds that that the applicant's complaints disclose no failure on the part of the United Kingdom to comply with its obligation to protect the right to life of her husband as required by Article 2 para. 1 (Art. 2-1) of the Convention. This part of the application must therefore be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains that the issues arising under para. 1 of Article 2 (Art. 2) constituted a failure to protect her husband's right to respect for his private life, namely the physical and moral integrity of his person, contrary to Article 8 (Art. 8) of the Convention which, insofar as relevant, provides :

"Everyone has the right to respect for his private and

family life ..."

The Commission recalls that private life extends to the physical and moral integrity of the person (see Eur. Court HR, Costello-Roberts v. the United Kingdom judgment of 25 March 1993, Series A no. 247-C, p. 60, para. 34). The Commission further recalls that although the primary object of Article 8 (Art. 8) is to protect the individual against arbitrary interference by public authorities, there may be positive obligations inherent in an effective respect for private life which may involve the State in the adoption of positive measures designed to secure the protection of an individual's physical and moral integrity (see Eur. Court HR, Marckx v. Belgium judgment of 13 June 1979, Series A no 31, p. 14, para. 31 and X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, para. 23).

Without deciding whether or not the obligations of the State were positively engaged under Article 8 (Art. 8), the Commission does not consider this Article apt, in the circumstances of the present case, to enlarge the obligations of the State beyond those arising under the first paragraph of Article 2 (Art. 2) of the Convention. Accordingly, the Commission finds no appearance of a violation of Article 8 (Art. 8) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also invokes Article 13 (Art. 13) of the Convention, which provides that :

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission recalls that whilst the actual breach of another provision of the Convention is not a prerequisite for the Application of this Article (see Eur. Court HR, Klass and Others v. Germany judgment of 6 September 1978, Series A no. 28, p. 29, para. 64), Article 13 (Art. 13) only applies if the individual can be said to have an "arguable claim" of a violation of the Convention. A finding that a claim is manifestly ill-founded is ordinarily decisive of this issue (see Eur. Court HR, Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, para. 52 and Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, pp. 14-15, paras. 31-33).

The Commission finds that the applicant cannot be said, in light of its findings in respect of the applicant's complaints under Articles 2 and 8 (Art. 2, 8) of the Convention, to have an "arguable claim" of a violation of his Convention rights.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO	J. LIDDY
Secretary	President
to the First Chamber	of the First Chamber