AS TO THE ADMISSIBILITY OF

Application No. 13674/88
by Cyril Albert WARNER
against the United Kingdom

The European Commission of Human Rights sitting in private on 14 April 1989, the following members being present:

MM. S. TRECHSEL, Acting President
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
J. CAMPINOS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

Mr. J. RAYMOND, Deputy Secretary to the Commission

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

Having regard to the application introduced on 28 January 1988 by Cyril Albert WARNER against the United Kingdom and registered on 18 March 1988 under file No. 13674/88;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1917 and resident in Bognor Regis. He is represented by Mr. Stanton, a solicitor practising in Bognor Regis. The facts as submitted by the applicant may be summarised as follows:

On 26 February 1948, the applicant began work as a maintenance fitter for Williams (Hounslow) Limited, a company manufacturing dyestuffs. The applicant left this employment on 28 August 1952. In or about 1970, the applicant first began to develop symptoms of carcinoma of the bladder. In 1980, the applicant first became aware that it was likely that the carcinoma was connected with his exposure to certain chemical raw materials between 1948 and 1952. On 23 October 1980 he was diagnosed by the Department of Health and Social Security as suffering from a prescribed industrial disease.

On 4 September 1985, the applicant's bladder was removed. In 1986, the applicant consulted his solicitors with a view to commencing proceedings against Williams (Hounslow) Ltd (hereafter the company) for the damage to his health on grounds of negligence and/or breach of statutory duty. A writ was served on 25 February 1987. The company

served a defence on 5 November 1987 denying liability and pleading that the claim was in any case statute barred because of the Limitation Acts. In March 1987 the applicant's counsel had advised that the current limitation period (i.e. three years for personal injuries) in relation to the applicant's claim had begun to run when he first had knowledge of the cause of his disease, i.e. in 1980. While the three years period had accordingly expired in 1983-84, several years before the applicant sought legal advice, counsel advised that pursuant to section 33 of Limitation Act 1980 the court had the discretion to waive the operation of the limitation period if certain criteria were fulfilled.

The company served a request for further and better particulars of the statement of claim on 5 November 1987.

On 30 November 1987, counsel however advised the applicant that the recent House of Lords judgment in Arnold v. Central Electricity Generating Board (<1987> 3 WLR 1009) indicated that the applicant had no prospect of success. In the Arnold case, the House of Lords held that the Limitation Act 1963 did not deprive any defendant of a time bar which had accrued on the expiry of the six years limitation period prescribed by section 2(1) of the 1939 Limitation Act which, by virtue of section 7 of the Act of 1954, continued to govern any cause of action. Since the applicant's cause of action accrued not later than 28 August 1952, counsel advised the limitation period (at that time six years) expired on 28 August 1958 and his action was therefore out of time.

The company had made an offer of £5000 to settle the case. In light of the House of Lords judgment, the applicant's solicitors accepted the offer with payment of their costs and the action was settled.

COMPLAINTS

The applicant complains that the provisions of the United Kingdom limitations legislation have prevented him from obtaining a determination of his civil rights at a fair and public hearing within a reasonable time as required by Article 6 para. 1 of the Convention. He submits that as a result of these provisions the limitation period laid down had expired before he even realised his rights had been interfered with.

THE LAW

The applicant complains that he has been deprived of a fair hearing in the determination of his civil rights as a result of the limitations legislation.

Article 6 para. 1 (Art. 6-1) first sentence of the Convention provides, inter alia:

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

The Commission recalls that, in general, the right to compensation for negligence constitutes a "civil right" and that therefore the right to bring a civil action for negligence is guaranteed by Article 6 para. 1 (Art. 6-1) (see e.g. No. 10475/83, Dec. 9.10.84, D.R. 39 p. 246).

The Commission notes that while the applicant may indeed bring proceedings for negligence and breach of statutory duty, the House of Lords' judgment in the Arnold case (loc. cit.) makes it clear that the provisions of the 1939 Limitation Act still apply to the applicant's claim. By this Act, the

applicant's cause of action, which accrued at the latest in 1952 when he left the company's employment, is subject to a six years limitation period which expired in 1958.

The Commission recalls that the right of access to court is not absolute but may be subject to limitations. In the Ashingdane case (Eur. Court H.R., Ashingdane judgment of 28 May 1985, Series A no. 93, pp. 24 and 25, para. 57), the European Court of Human Rights held:

> "... 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 (see the above-mentioned Golder judgment, p. 19, para. 38, quoting the 'Belgian Linguistic' judgment of 23 July 1968, Series A no. 6, p. 32, para. 5). 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 (see, mutatis mutandis, the Klass and Others judgment of 6 September 1978, Series A no. 28, p. 23, para. 49).
> 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 (see the above-mentioned Golder and 'Belgian Linguistic' judgments, ibid., and also the above-mentioned Winterwerp judgment, Series A no. 33, pp. 24, 29, paras. 60, 75). 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."

In the opinion of the Commission, it must generally be accepted in the interest of the good administration of justice that there are time limits within which proceedings must be instituted. In its previous case-law, the Commission has found it acceptable in the interests of legal certainty that such time limits may be final and that there may be no possibility to institute proceedings even when new facts have arisen after the expiry of the time limit (No. 9707/82, Dec. 6.10.82, D.R. 31 p. 223).

The Commission finds in the present case that the restriction imposed on the applicant in respect of bringing proceedings in relation to events which occurred over 30 years before is not unreasonable and does not infringe the principle of proportionality. The Commission accordingly finds no appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that 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

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission Acting President of the Commission

(J. RAYMOND) (S. TRECHSEL)