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

FIRST SECTION

CASE OF PEDERSEN AND PEDERSEN v. DENMARK

(Application no. 68693/01)

JUDGMENT

STRASBOURG

14 October 2004

FINAL

14/01/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Pedersen and Pedersen v. Denmark,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 23 September 2004,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 68693/01) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Danish nationals, Mr Karl Gustav Pedersen (the first applicant) and Jens Otto Pedersen (the second applicant), respectively born in 1958 and 1938, and living in Løgstør and Hobro.

2. The first applicant was represented by Mr Uffe Baller, a lawyer practising in Århus. The second applicant was represented by Mr Tyge Trier a lawyer practising in Copenhagen. The Government are represented by their Agent, Ms Nina Holst-Christensen of the Ministry of Justice.

3. The applicants alleged, in particular, that the criminal charges against them had not been determined within a reasonable time within the meaning of Article 6 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 12 June 2003 the Court declared the application partly admissible.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I

7. On 20 October 1992 the first applicant, as the owner of 3 freshwater fish farms, was charged with offences against the Act on freshwater fish farms of 5 April 1989 (*bekendtgørelse nr. 224*), henceforth also called the 1989 Act, as allegedly he had intentionally exceeded the fixed feed quotas with danger or risk thereof to the environment, and with enrichment for himself.

8. On 13 September 1993 an indictment was submitted to the City Court in Fjerritslev (*retten i Fjerritslev*) before which the trial was scheduled for 9 December 1993. However, the trial was adjourned awaiting the outcome of a corresponding pending criminal case, considered to be a "test-case", in which the defendant had alleged *inter alia* that the 1989 Act had no legal authority as it contravened articles of the Penal Code and provisions of the Environmental Protection Act *(Miljøbeskyttelsesloven*). The Government claimed that the adjournment was initiated by the first applicant's counsel. The applicant contested this. It is undisputed, however, that the parties agreed to the adjournment and that no objections were raised against it. The proceedings in the test-case were finally determined on appeal by a High Court judgment of 21 September 1995.

9. Subsequent to a preliminary hearing held in the applicant's case on 18 December 1995 it was decided to adjourn his case anew awaiting another corresponding pending criminal case, considered to be a test-case, in which the defendant had alleged that the 1989 Act had no legal authority as the European Commission had not been notified of it as allegedly prescribed by the 83/189/EEC Council Directive of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, amended by the 88/182/EEC Council Directive of 22 March 1988. The proceedings in the corresponding case were finally determined on appeal in the autumn of 1996 when a High Court delivered its judgment.

10. The applicant's trial commenced on 8 April 1997. Since a witness on the applicant's behalf was prevented from appearing on that day, the trial continued and ended on 14 May 1997. By judgment of 28 May 1997 the City Court in Fjerritslev convicted the applicant and sentenced him to pay a fine of 68,000 Danish kroner (DKK). In addition a profit estimated to DKK 275,000 was confiscated.

11. On 9 June 1997 the applicant appealed against the judgment to the High Court of Western Denmark *(Vestre Landsret*) before which he was granted permission to procure an expert witness, who during the preparation of the case was requested to reply in writing to specific questions formulated by counsel, and approved by the prosecutor.

12. By judgment of 29 June 1998 the High Court of Western Denmark upheld the applicant's conviction, but increased the fine to DKK 95,000 and the amount to be confiscated to DKK 384,000.

13. The applicant's request of 7 July 1998 for leave to appeal against the High Court's judgment to the Supreme Court (*Højesteret*) was granted by the Leave to Appeal Board (*Procesbevillingsnævnet*) on 23 November 1998.

14. The case was brought before the Supreme Court on 15 January 1999, where it was joined with the second applicant's appeal (see below).

II

15. On 26 October 1993, the second applicant, as manager of two limited companies which each owned a freshwater fish farm, was charged with offences against the amended Act of 31 September 1994 on freshwater fish farms partly in conjunction with the former Act of 5 April 1989 (*bekendtgørelse nr. 900 jfr. tildels bekendtgørelse nr. 224*), as allegedly he had intentionally exceeded the fixed feed quotas with danger or risk thereof to the environment, and with enrichment for the companies.

16. The case was brought before the City Court in Mariager (*retten i Mariager)* by the prosecution's submission of an indictment of 8 March 1994, which was later extended by supplementary indictments.

17. In the period between September 1994 and October 1995 the case was adjourned awaiting the outcome of a corresponding pending criminal case, which was considered to be a test-case.

18. On 3 November 1995 the proceedings were adjourned at the request of the applicant's counsel, who wished to submit a written pleading. On 21 November 1995 counsel requested an extension of the time-limit for submitting his pleading. On 12 February 1996 he stated that his pleading was approaching. On 21 March 1996 he was granted yet another extension of the time-limit, and on 17 April 1996 the pleading was submitted.

19. Further pleadings were submitted and additional preliminary issues were dealt with, *inter alia* with regard to counsel's request that the applicant's case be joined with another corresponding pending case.

20. On 4 October 1996 counsel was granted an extension of the time-limit to submit his rejoinder within eight weeks.

21. A hearing was held on 24 February 1997 and the case was scheduled to commence on 8 September 1997 as counsel had stated that he was unable to appear before that date.

22. On 16 September 1997 the City Court in Mariager convicted the applicant and sentenced him to pay a fine of DKK 275,000. In addition profits estimated to DKK 900,000 and DKK 200,000, respectively, were confiscated in the companies.

23. On 23 September 1997 the applicant appealed against the judgment to the High Court of Western Denmark, before which the case was ready to be listed for trial on 27 November 1997. As counsel was unable to appear

on the proposed dates in January, February and May 1998, the case was scheduled for trial on 27 August 1998.

24. By judgment of 3 September 1998 the High Court of Western Denmark upheld the applicant's conviction, but increased the fine to DKK 345,000 and the amounts to be confiscated to DKK 1,158,000 and DKK 240,000 respectively.

25. The applicant's request of 11 September 1998 for leave to appeal against the High Court's judgment to the Supreme Court was granted by the Leave to Appeal Board on 23 November 1998.

26. The case was brought before the Supreme Court on 15 January 1999, where it was joined with the first applicant's appeal. The applicants jointly argued that the Act of 1989 had no legal authority as the European Commission had not been notified of it as allegedly prescribed by the 83/189/EEC Council Directive of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, amended by the 88/182/EEC Council Directive of 22 March 1988, and that accordingly they should be acquitted. Moreover, they requested that the Supreme Court referred the question of the legal consequences of the non-notification to the European Court of Justice pursuant to the former Article 177 of the EC Treaty.

27. As to the latter the Prosecutor General procured an opinion from the Ministry of Justice of 29 January 1999, finding no basis for a preliminary reference, an opinion he endorsed. On 4 February 1999 the Supreme Court requested counsel's comment on this issue.

28. On 17 February 1999 the applicants requested that an additional counsel be assigned to plead on the EU-law issues of the case. This was refused by the Supreme Court on 24 February 1999. The following day, the applicants requested that a named attorney substitute their counsel as to the EU-law issues. This request was granted on 18 April 1999 and the proceedings were adjourned for eight weeks pending comments from the substituting counsel.

29. It appears that the substituting counsel three times was granted an extension of the time-limit to submit his comments, thus his first written pleading was submitted on 5 October 1999.

30. The Prosecutor General stated definitively on 3 November 1999 that he found no basis for referring the case to the Court of Justice for a preliminary ruling.

31. The exchange of pleadings on this question continued until 7 April 2000, as the substitute counsel three times requested that the Prosecutor General submit written replies to various questions put by counsel on the issue. Each time the replies were followed by a comprehensive pleading by the substitute counsel.

32. On 22 August 2000 the Supreme Court decided not to refer the case to the Court of Justice for a preliminary ruling, as it found that there was no

obligation to notify the European Commission of the specific section of the Act on freshwater fish farms of 5 April 1989, with which the applicants were charged, and that there was no reasonable doubt that the section in question was in accordance with European Community legislation.

33. By judgment of 16 February 2001 the Supreme Court upheld the High Court's judgment in respect of the first applicant, but reduced the amount to be confiscated to DKK 240,000, and by judgment of the same date the Supreme Court upheld the High Court's judgment in its entirety in respect of the second applicant.

THE LAW

34. The applicants complained that the proceedings in their cases had exceeded a reasonable time, within the meaning of Article 6 § 1 of the Convention, which provides, in so far as relevant:

> "In the determination of ...any criminal charge against him, everyone is entitled to a fair ...hearing within a reasonable time by [a] tribunal..."

1. The parties' submissions

35. The Government maintained that based on an overall assessment and in the light of the specific circumstances of the cases, the criminal charges against the applicants were determined within a reasonable time as prescribed by Article 6 of the Convention. They agreed that the cases were uncomplicated as concerned the facts, but found that they were to some extent complex due to problems in law as well as procure. In this respect the Government referred *inter alia* to the involvement of EU-law issues, notably the question whether the relevant provision of the 1989 Act should have been notified to the European Commission and the question whether the cases should have been referred to the European Court of Justice for a preliminary ruling. Moreover, the Government found that the applicants to a very considerable extent had been a contributory cause to the length of the proceedings. Finally, the Government maintained that it could not give rise to criticism that the city courts decided to adjourn the criminal proceedings pending the outcome of the "test-cases" as these decisions were reasonably motivated. All in all the Government found it inappropriate that the applicants on the one hand requested adjournments of the proceedings; extensions of time-limits for submission of pleadings; were unable to appear before court hearings before certain dates; raised questions of principles, including a request for a preliminary reference to the European Court of Justice; requested an expert witness; and a special counsel assigned, and on the other hand claimed that the length of the proceedings were excessive.

36. The applicants contested that the proceedings were complex. On the contrary, it was very simple cases and the only unusual initiative was the request to the European Court of Justice for a preliminary ruling. The latter, however, had been of crucial relevance and the applicants could not be blamed for making use of remedies available under Danish law. Furthermore, the applicants found that there were several periods of unacceptable inactivity during the proceedings for which only the Government were to blame, including the delay caused by the applicants' claim that the 1989 Act had had no legal authority. In any event the applicants found that the duration of the proceedings before the Supreme Court had been excessive. Two other factors had caused an unreasonable delay of the proceedings in the applicants' opinion; the adjournment of their cases pending the outcome of corresponding cases and the lack of resources in the Danish court system. Finally, the applicants pointed out that they had not in any way been compensated for the lengthy proceedings e.g. by having been imposed a more mitigating sentence.

2. The Court's assessment

37. As regards the alleged breach of Article 6 § 1 of the Convention it is undisputed that the proceedings as to the first applicant commenced on 20 October 1992, and as to the second applicant on 26 October 1993. The proceedings ended on 16 February 2001 when the Supreme Court delivered its judgment. Thus, the total length of the proceedings, which the Court must assess under Article 6 § 1, was eight years, three months and twenty-seven days; and seven years, three months and twenty-two days; respectively.

38. According to the Court's case-law, the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and that of the authorities before which the case was brought (cf. *Pélissier and Sassi v. France* [GC] no.25444/94, § 67, ECHR 1999-II).

(a) Complexity of the case

39. The Court notes that it was not in dispute that the proceedings were uncomplicated as concerned the facts. Reiterating that the first applicant before the High Court requested that an expert witness be heard; that both applicants before the Supreme Court requested that an additional counsel be assigned to plead on the EU-law issues of the case; and that the substitute counsel three times requested that the Prosecutor General submit written replies to various questions put by counsel as regards EU issues, the Court considers that certain features as to law and procedure were to some extent complex and time-consuming.

(b) Conduct of the applicants

40. The Court reiterates that only delays attributable to the State may justify a finding of failure to comply with the “reasonable time” requirement (e.g. *Humen v. Poland,* no. 26614/95, § 66, 15 October 1999). It notes that the applicants do not appear to have been very much involved in the procedural disputes during the proceedings concerned. However, it follows from the case-law that they are nevertheless to be held responsible for the possible delays caused by their representatives (see amongst others *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, § 28; *A. and Others v. Denmark*, judgment of 8 February 1996, *Reports of Judgments and Decisions* 1996-I, § 74); and mutatis mutandis *Stanford v. the United Kingdom* judgment of 23 February 1994, Series A no. 282-A, § 28).

41. The Court observes that the first applicant, being represented by counsel, agreed to an adjournment of his trial before the City Court from December 1993 until September 1995, in order to await the outcome of a pending corresponding case, in which a defendant had alleged that the 1989 Act had had no legal authority as it contravened articles of the Penal Code and provisions of the Environmental Protection Act. The first applicant agreed to a second adjournment of his trial from December 1995 until the autumn of 1996, in order to await the outcome of another pending corresponding case, in which the defendant had alleged that the 1989 Act had had no legal authority as the European Commission had not been notified of it as allegedly prescribed by the 83/189/EEC. Accordingly, the first applicant did not at any time during the proceedings before the City Court object to the fact that his trial was adjourned with almost three years in order to await the outcome of so-called “test-cases”.

42. As regards the second applicant, the Court reiterates that, being represented by counsel, he agreed to an adjournment of his trial before the City Court with approximately one year from September 1994 until October 1995 in order to await the outcome of a pending corresponding test-case. Thereafter, his trial was adjourned on counsel’s request with five months from November 1995 until April 1996, and with two months from October until December 1996. Finally, at a hearing held in February 1997 counsel stated that he was unable to appear until September 1997, accordingly seven months later. Before the High Court, counsel for the second applicant stated that he was unable to appear on the proposed dates in January, February and May 1998, and the case was accordingly scheduled for trial on 27 August 1998.

43. Before the Supreme Court, in the beginning of 1999 the applicants requested that the case be referred to the European Court of Justice for a preliminary ruling; that an additional counsel be assigned; or in the alternative that a substitute counsel could plead on the EU-issues. The latter being granted, the proceeding were adjourned until October 1999, when the

substitute counsel was able to submit his first written pleading. Subsequently, the exchange of pleadings on EU-issues continued until April 2000 because the substitute counsel three times requested that the Prosecutor General submitted written replies to various questions put by the substitute counsel.

44. Having regard to the above, the Court considers that the first applicant and his counsel were responsible or co-responsible for prolonging the proceedings with at least four years and three months, and that the second applicant and his counsel were responsible or co-responsible for prolonging the proceedings with at least four years and four months. Therefore the applicants were to a considerable extent responsible for the protracted nature of the proceedings.

(c) Conduct of the national authorities

45. The Court notes that the investigation period in the proceedings against the first and the second applicant lasted respectively eleven months and four months. In the Court's view the length of those periods cannot be criticised.

46. The trial against the first applicant before the City Court lasted from 13 September 1993, when the indictment was submitted, until 28 May 1997, when the judgment was pronounced, thus almost three years and nine months, which do appear excessive for such a case. Of this period, almost three years passed in order to await the outcome of two test-cases on the 1989 Act, which were pending before other judicial instances. In the Court's view, when assessing the relevance and reasonableness of an adjournment of a criminal trial pending the outcome of another case, be it a test-case or not, it must be taken into account what is at stake for the persons involved (see *inter alia Boddaert v. Belgium*, judgment of 12 October 1992, Series A no. 235-D, § 38). Also, since adjournment of criminal proceedings in general have a serious impact to the detriment of the indicted, the progress of the case which outcome is awaited, should be monitored thoroughly by the court which decides to adjourn the criminal trial. Finally, as to test-cases which are considered to be of significant importance to pending criminal proceedings, the Court finds it incumbent on the responsible authorities to proceed with such as diligently as possible.

47. Turning to the facts of the present case, the Court reiterates that the test-cases concerned the legal authority of the 1989 Act pursuant to which the first applicant had been charged. Thus, had the outcome of any of the test-cases turned out in favour of the relevant indicted freshwater fish farmer, it would most likely have had significant influence on the charges against the first applicant, and maybe to the extent that he should have been acquitted. Also, the Court reiterates that no coercive measures were imposed on the first applicant while his trial was adjourned. In addition, the Court notes that the parties and the City Court agreed to the extended

prolongation. In these specific circumstances, the Court is satisfied that the adjournment was relevant and reasonable.

48. The trial against the second applicant before the City Court was terminated by a judgment of 16 September 1997, thus three years and six months after its commencement. Of this period thirteen months passed in order to await the outcome of a pending test-case on the 1989 Act. Referring to its finding above, the Court is satisfied that this adjournment was relevant and reasonable. Moreover, on counsel's request, the trial was adjourned with five months from November 1995 until April 1996, and with two months from October until December 1996. Also, at a hearing held in February 1997 counsel stated that he was unable to appear until September 1997, thus seven months later. In these circumstances the Court finds that the proceedings before the City Court as to the second applicant did not disclose any periods of unacceptable inactivity for which the national authorities can be blamed.

49. The proceedings before the High Court as regards respectively the first and the second applicant lasted from 9 June 1997 until 29 June 1998; and from 23 September 1997 until 3 September 1998. In the Court's view the length of those proceedings cannot be criticised. It observes in addition that the latter case was ready to be listed for trial on 27 November 1997, but that the applicant's counsel was unable to appear on the proposed dates in January, February and May 1998.

50. The proceedings before the Leave to Appeal Board as regards respectively the first and the second applicant lasted from 7 July 1998 until 23 November 1998; and from 11 September 1998 until 23 November 1998, which cannot be criticised.

51. On 15 January 1999, the applicants' joined cases were brought before the Supreme Court, which pronounced judgment on 16 February 2001. Accordingly, those proceedings lasted two years and one month. Of this period approximately one year and seven months was spent on EU-law issues until on 22 August 2000 the Supreme Court refused the applicants' request to refer the case to the European Court of Justice for a preliminary ruling, as the Supreme Court found that there was no obligation to notify the European Commission of the specific section of the Act on freshwater fish farms of 5 April 1989 and there was no reasonable doubt that the section in question was in accordance with European Community legislation. Reiterating, that the applicants' substitute counsel was unable to submit his first written pleading until October 1999, and that subsequently the exchange of pleadings on the EU-issues continued until April 2000 because the substitute counsel three times requested that the Prosecutor General submitted written replies to various questions, the Court finds that the period spend on EU-issues cannot be considered unreasonable. The remainder of proceedings before the Supreme Court, namely from

22 August 2000 until 16 February 2001 did not, in the Court's view disclose any periods of unacceptable inactivity.

(d) Conclusion

52. Therefore, making an overall assessment of the complexity of the case, the conduct of all concerned as well as the total length of the proceedings before three court instances, these proceedings did not, in the Court's view, go beyond what may be considered reasonable in this particular case. Accordingly, there has been no violation of Article 6 § 1 of the Convention in respect of the length of the proceedings.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 § 1 of the Convention;

Done in English, and notified in writing on 14 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President