



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

FIRST SECTION

CASE OF OHLEN v. DENMARK

(Application no. 63214/00)

JUDGMENT
(Striking out)

STRASBOURG

24 February 2005

FINAL

24/05/2005

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 Ohlen v. Denmark,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 February 2005,

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

PROCEDURE

1. The case originated in an application (no. 63214/00) against the Kingdom of Denmark lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a German national, Mr Hanno Ohlen (“the applicant”), on 15 October 1998.

2. The applicant was represented by Mr Tyge Trier, a lawyer practising in Copenhagen. The Danish Government (“the Government”) were represented by their Agent, Mrs Nina Holst-Christensen of the Ministry of Justice.

3. The applicant alleged that a criminal charge against him had not been determined within a reasonable time within the meaning of Article 6 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. 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.

6. By a decision of 6 March 2003 the Court declared the application partly admissible.

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

8. Having been informed of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court), the German

Government declared on 9 April 2003 that they would not submit any observations.

THE FACTS

9. The applicant, a German national, was born in 1939. He lives in Germany.

A. Facts established in the Court's admissibility decision

10. On 30 August 1995 he was arrested in Denmark, charged with aggravated tax fraud for an unknown amount, however exceeding 500,000 Danish kroner (DKK) and relating to the period 1990-1995. Having consented to the seizure of his car and having agreed that his real estate in Denmark be provided as security, the applicant was released the following day after a court hearing held before the City Court in Vordingborg (*Retten i Vordingborg*).

11. The tax authorities (*Told og Skat, Næstved*) alleged that since 1990 the applicant had lived in Denmark to such an extent that he was liable to pay taxes, and thus carried out an investigation of the applicant's tax assessment. The applicant disputed the assessments, notably on the grounds that he had paid tax in Germany, from where his business was run.

12. On 14 November 1995 the police requested that the City Court in Vordingborg issue an order for discovery to procure documents from the applicant's accountants, lawyer and bankers in Germany. However by request of the applicant's counsel, it was agreed that counsel together with the applicant procured the relevant documents. The documents were handed in on 7 October 1996 by the applicant, who in the meantime had changed counsel. The tax authorities changed their assessment on several occasions; once after it had been established on 10 March 1997 that the statements of accounts procured by the applicant (and his counsel) from a German bank were erroneous, and many times due to the applicant's objections. On 16 June 1998 a final assessment was made, which the applicant appealed against on 11 September 1998 to the National Taxation Board (*Landsskatteretten*), where the case is still pending.

13. On 19 April 1999 the prosecution submitted an indictment to the City Court in Vordingborg claiming that the applicant had evaded tax in the amount of DKK 57,252 as to the period 1990-1991, during which he had allegedly stayed illegally in Denmark. Hearings were scheduled to take place on 4 and 5 November 1999. The applicant was convicted in accordance with the indictment by judgment of 12 November 1999. He was sentenced to a fine of DKK 57,000.

As to legal costs the court stated:

“[The applicant] shall pay legal costs. In view of the fact that [the applicant] was arrested on 30 August 1995 and appeared before this court on 31 August 1995 charged with tax evasion of an unknown amount of not less than DKK 500,000, but now following a very lengthy investigation, is being charged with and convicted of tax evasion to an extent which is quite limited compared to the original charge, the court finds that the Treasury should pay the fees to the assigned counsel for the defence.”

Accordingly, the applicant was exempted from paying fees to counsel in the amount of DKK 117,500 including VAT.

14. On 24 November 1999 the applicant appealed against the judgment to the High Court of Eastern Denmark (*Østre Landsret*). The Regional Public Prosecutor claimed that the judgment be upheld, including the part exempting the applicant from defraying fees to counsel. The applicant's appeal was not received by the High Court until 1 February 2000 as pursuant to the Administration of Justice Act (*Retsplejeloven*) the notice of appeal and the indictment had to be served on the applicant through the German authorities.

15. In the meantime, on 8 January 2000, the applicant requested that the prosecution initiate additional investigation concerning some of his accounting material. He found that he was entitled to further deduction in the tax assessment than those on which the City Court judgment was based. For this purpose, having complied with his request, the prosecution sent the case-files back to the police. On 24 February 2000 a meeting was held between the applicant's counsel, the police and the Customs and Tax office. Counsel produced copies of the applicant's ledger from 1990 and 1991 and was granted permission to reconcile the accounts with the exhibits produced. On 17 May 2000, since the police had not received any reconciled accounts from counsel, the case-files were returned to the prosecution.

16. On 24 August and 25 October 2000 the prosecution informed the High Court of the expected duration of the trial, which was estimated to last one or two days. On 14 February 2001 the High Court scheduled the case for trial to commence on 30 May 2001.

17. On 23 May 2001, having received information from counsel that the National Taxation Board would reach its decision within a short time the Regional State Prosecutor requested that the High Court adjourn the trial. It appears that shortly thereafter the High Court adjourned the case awaiting the outcome of the case before the National Taxation Board as it was presumed that its decision could be of importance to the determination of the criminal proceedings.

18. On 28 August 2001 oral proceedings were conducted before the National Taxation Board, during which it was agreed that counsel should submit a new comprehensive pleading with exhibits, thereby replacing all previous pleadings with exhibits. On 13 November, by counsel's request,

the time-limit to submit his pleading with exhibits was extended until 1 December 2001 by the National Taxation Board. On 4 January 2002, not having received the said pleading with exhibits, the National Taxation Board stated that unless submitted by 1 February 2002 the case would be decided on the evidence available. It appears that no decision has been taken by the National Taxation Board.

B. Facts subsequent to the Court's admissibility decision

19. On 22 May 2003 the High Court passed judgment in the criminal trial. It acquitted the applicant as to the part of the indictment that concerned his alleged illegal stay in Denmark as the criminal liability was time-barred. It upheld the City Court judgment as to the tax evasion part, but amended the sentence to a fine of DKK 10,000 by stating as follows:

“The sentence is fixed pursuant to section 15 of the Tax Control Act cf. now Consolidation Act no. 726 of 13 August 2001.

Accordingly, the basis for fixing the fine justly due would be a fine of DKK 50,000.

The total length of the proceedings from the charge was made in connection with [the applicant's] arrest on 29 August 1995 and until judgment was passed by the City Court on 12 November 1999 was four years and two and a half month, and the length of the proceedings from the City Court's judgment until the present judgment has been about three and a half years.

When the proceedings started, the tax authorities believed that the evasion concerned taxable amounts of approximately DKK 2.5 millions. At the statutory hearing [before the City Court on 30 August 1995] the charge made concerned evasion of tax payment of not less than DKK 500,000, but during the City Court trial the indictment related to tax evasion of DKK 57,252 only. In the intermediate period, according to the information disclosed, there had been numerous contacts between the tax authorities and [the applicant] and his counsel concerning the computation of the allegedly evaded amount, and the proceedings had also been pending for a long time on [the applicant's] own possibility of procuring relevant evidence from Germany.

After the City Court judgment was passed, at the public prosecutor's request, since 25 May 2001 the proceedings [in the present case] awaited the proceedings that were pending before the National Taxation Board.

Upon an overall assessment of the length of the proceedings from the charge was made until the High Court trial, the High Court finds that [the applicant's] right to a trial within a reasonable time pursuant to Article 6 of the European Convention on Human Rights has been violated.

In view of this, the fine justly due to be paid by [the applicant] is fixed to DKK 10,000.

When determining the compensation to which [the applicant] is entitled according to the above, the court has taken into consideration that, although he was found guilty

by the City Court judgment almost to the extent stated in the indictment, he was exempted completely from paying costs ... ”

20. The applicant’s request for leave to appeal against the High Court judgment to the Supreme Court (*Højesteret*) was refused by the Leave to Appeal Board (*Procesbevillingsnævnet*) on 18 December 2003.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

21. The applicant complained that the criminal charge against him was not determined within a reasonable time as required by Article 6 § 1 of the Convention, which in so far as relevant reads:

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

22. The Government submitted that the applicant has ceased to be a victim of a violation since the High Court in its judgment of 22 May 2003 expressly acknowledged that the authorities had failed to observe the reasonable time requirement set out in the said provision and provided adequate redress, namely DKK 40,000 in the form of the reduction of the fine. Moreover, when the High Court fixed the applicant’s compensation, it took into account that the City Court in its judgment of 12 November 1999 had completely exempted the applicant from paying costs, which amounted to DKK 117,500. Accordingly, the Government invited the Court to strike the case out of its list of cases in accordance with Article 37 § 1 of the Convention.

23. The applicant asked the Court to rule on the merits as he remained victim of a violation of Article 6 of the Convention. He claimed compensation for pecuniary damages in the amount of DKK 350,000 and non-pecuniary damage in the amount of DKK 110,000. Accordingly, the High Court judgment did not provide adequate redress for the violation of the Convention, rather it should be viewed as an attempt by the Government to correct the errors made by the tax authorities and the prosecution, which resulted in them having to reduce their estimation of the tax evasion from DKK 2,500,000 when the proceedings started to DKK 57,252 when the final indictment was procured during the trial. In any event, the applicant submitted, the so-called compensation failed to provide a proper and adequate redress for the length of the proceedings and the negative impact that the original criminal charge had imposed on the applicant as a bona fide business professional.

24. The Court must ascertain whether the new facts brought to its attention following its decision on the admissibility of the application – namely the High Court’s judgment of 22 May 2003 and the Leave-to-Appeal Board’s decision of 18 December 2003 – may lead it to conclude that the matter has now been resolved or that for any other reason, it is no longer justified to continue the examination of the application, and that the application may consequently be struck out of its list of cases in accordance with Article 37 § 1 of the Convention, which provides:

“The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

- (a) the applicant does not intend to pursue his application; or
- (b) the matter has been resolved; or
- (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

25. Since the applicant gave a clear indication that he intended to pursue his application, sub-paragraph (a) of Article 37 § 1 is not applicable. That does not, however, rule out the possibility of applying sub-paragraphs (b) and (c), the applicant’s consent not being a prerequisite for their application (see *Akman v. Turkey* (striking out), no. 37453/97, ECHR 2001-VI, and *Pisano v. Italy* [GC] (striking out), no. 36732/97, § 41, 24 October 2002).

26. In order to conclude that the matter has been resolved within the meaning of Article 37 § 1 (b) or that for any other reason established by the Court, it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c), and that there is therefore no longer any objective justification for the applicant to pursue his application, the Court considers that it must examine whether the circumstances complained of directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed.

27. In the present case this means that the Court must examine whether – subsequent to the High Court’s judgment of 22 May 2003 and the Leave-to-Appeal Board’s decision of 18 December 2003 - the applicant may continue to claim to be a victim of a violation of Article 6 § 1 of the Convention on the grounds of the length of criminal proceedings brought against him. In order to deprive the individual concerned of his status as a victim within the meaning of Article 34 of the Convention, the national authorities must have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and provided redress in relation thereto e.g. by reducing the sentence in an express and measurable manner (see the *Eckle v.*

Germany judgment of 15 July 1982, Series A no. 51, § 66, *Beck v. Norway*, no. 26390/95, 26 June 2001, § 27, *Graaskov Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X and *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001).

28. Applying these principles in the present case, the Court reiterates that the applicant, being convicted on 12 November 1999, was under an obligation to pay legal costs. However, the City Court exempted him therefrom in view of the fact that he was in 1995 originally charged with tax evasion of an unknown amount of not less than DKK 500,000, but that following a very lengthy investigation, he was finally charged with, and convicted of, tax evasion relating to an amount of DKK 57,252. Accordingly, the applicant was exempted from paying fees to counsel in the amount of DKK 117,500 including VAT. It is, however, unclear how much of the exemption from paying costs could be attributable alone to the referred length of the investigation period, which at that time had lasted three years, seven months and twenty days. Accordingly, both at the time when he lodged his application and at the time when the Court declared it admissible, the applicant was entitled to complain of the length of the criminal proceedings against him.

29. In its judgment of 22 May 2003 the High Court stated that upon an overall assessment of the length of the proceedings from the charge was made until passing of the High Court judgment the applicant's right to a trial within a reasonable time pursuant to Article 6 of the Convention had been violated. In addition, taking into account that the City Court completely had exempted the applicant from paying costs, the High Court found that DKK 40,000, in the form of a reduction of the fine constituted an adequate redress for the length of the proceedings, which at that time had lasted almost seven years and nine months, namely from 29 August 1995 until 22 May 2003. The proceedings ended on 18 December 2003, when the Leave-to-Appeal Board refused leave to appeal against the High Court judgment to the Supreme Court.

30. Since the High Court acknowledged the failure to observe the reasonable time requirement, the applicant's status as a victim depends on whether the redress afforded at domestic level on the basis of the facts about which he complains before the Court was adequate and sufficient having regard to just satisfaction as provided for under Article 41 of the Convention (see *Andersen v. Denmark*, no. 12860/87, and *Frederiksen and Others v. Denmark*, no. 12719/87, Commission decisions of 3 May 1988; *Normann v. Denmark* (cited above); and *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003).

31. Comparing the compensation granted for non-pecuniary damage in the present case with the sums awarded for comparable delays in the Court's case-law, the Court considers that the sum accorded to the applicant cannot be considered as unreasonable.

32. Moreover, even assuming that the applicant has exhausted domestic remedies as to his request for compensation for his alleged pecuniary damages in the amount of DKK 350,000, the Court considers this claim unsubstantiated.

33. In these circumstances, having regard to the facts subsequent to the Court's admissibility decision, and to the parties' observations, the Court considers that the matter has been resolved within the meaning of Article 37 § 1 (b), and that no particular reason relating to respect for human rights as defined in the Convention requires it to continue the examination of the application in accordance with Article 37 § 1 *in fine* of the Convention.

34. Consequently, the case should be struck out of the list.

II. APPLICATION OF RULE 43 § 4 OF THE RULES OF COURT

35. The applicant requested reimbursement of costs and expenses in the amount of DKK 7,000 for estimated expenditures related to the domestic proceedings including copying, and DKK 60,000 plus VAT for legal fees and expenses in the proceedings before the Court. He accepted that relevant deductions should be made for legal aid paid to him under the Danish Legal Aid Act (*Lov 1999-12-20 nr. 940 om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer i henhold til menneskerettighedskonventioner*).

36. The Government recalled that both the City Court and the High Court had exempted the applicant from paying fees to counsel. As regards costs and expenses related to the proceedings before the Court the Government submitted that the applicant had failed to provide itemised particulars as required by Rule 60 § 2 of the Rules of Court. Finally, they recalled that the applicant had provisionally been granted legal aid up to an amount of DKK 40,000 pursuant to the above Legal Aid Act, and that the final account of the applicant's right to legal aid under the Act has yet to be decided.

37. The Court reiterates that it has a discretion as to costs when striking an application out of the list (Rule 43 § 4). The costs must have been genuinely and necessarily incurred by the applicant and reasonable in amount.

38. In the present case the applicant has failed to provide itemised particulars of his claims made and to submit supporting documents or vouchers as required by Rule 60 § 2 of the Rules of Court, including as to hourly rate and hours spent by the lawyer in the proceedings before the Court. Nevertheless, the Court finds it unnecessary to determine whether or not to reject the claim in whole or in part, reiterating that the applicant has provisionally received an amount of DKK 40,000 due to the existence in Denmark of the Legal Aid Act according to which applicants may be

granted free legal aid as to their lodging of complaints and the procedure before international institutions under human rights conventions. It reiterates furthermore that the final account of the applicant's right to legal aid under the act has yet to be decided. In these circumstances the Court is satisfied that the applicant is sufficiently reimbursed under domestic law and it sees no reason to award the applicant further compensation for costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* unanimously to strike the case out of the list;
2. *Dismisses* unanimously the claim for reimbursement of costs and expenses.

Done in English, and notified in writing on 24 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President