



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

FIFTH SECTION

CASE OF MOESGAARD PETERSEN v. DENMARK

(Application no. 32848/06)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Moesgaard Petersen v. Denmark,

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

Rait Maruste, *President*,

Peer Lorenzen,

Karel Jungwiert,

Volodymyr Butkevych,

Renate Jaeger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 October 2007 and on 18 November 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 32848/06) 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 a Danish national, Mr Torben Moesgaard Petersen (“the applicant”), on 1 August 2006.

2. The applicant was represented by Ms Sysette Vinding Kruse, a lawyer practising in Copenhagen. The Danish Government (“the Government”) were represented by their Agent, Ms Nina Holst-Christensen of the Ministry of Justice.

3. By a decision of 9 October 2007 the Court declared the application admissible.

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

5. The applicant submitted his claims for just satisfaction and the Government made their comments on that matter.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1958 and lives in Charlottenlund.

7. At the beginning of the 1990s a new concept called “tax asset stripping cases” (*selskabstømmersager*) came into existence in Denmark. It covered a criminal activity by which the persons involved committed aggravated debtor fraud by buying up and selling numerous inactive solvent private limited companies within a short period and, for the sake of their own profit, “stripping” the companies of assets, including deposits earmarked for payment of corporation tax. The persons involved were usually intricately interconnected and collaborated in their economic criminal activities, which concerned very large amounts of money. According to surveys made by the customs and tax authorities, approximately one thousand six hundred companies with a total tax debt exceeding two billion Danish kroner (DKK) were stripped in the period from the late 1980s until 1994. Following a number of legislative amendments, the trade in inactive, solvent companies largely ceased in the summer of 1993.

8. At the relevant time the applicant was part owner of a private limited stockbrokers company (*[B]* & *[the applicant] A/S*) - hereafter “the company”).

9. On 18 January 1994 he learnt that the tax authorities were about to check the company’s accounts for the years 1989 to 1992. On 6 May 1994 the tax authorities informed the applicant that the question of whether any criminal liability had occurred would be decided on later. The tax authorities also reported various potential co-offenders to the police.

10. During 1994, 1995 and at the beginning of 1996 the police carried out an investigation comprising, among other things, discovery orders against banks, international letters of request, search warrants and numerous interviews of witnesses.

11. On 17 June 1996, the Copenhagen City Court (*Københavns Byret* – hereafter “the City Court”), sitting in camera, granted the police a warrant to search the premises of the applicant’s business and those of the company.

12. On 2 July 1996 the search was carried out by the police.

13. From July 1996 to February 1998 various investigative steps were taken, also relating to five co-accused in the case, for example searches in Denmark, Switzerland and Sweden, numerous interviews in Denmark and abroad, international letters of request, a request to Interpol, fifteen discovery orders and an order prohibiting the disclosure of the applicant’s name. Moreover, on 19 March 1997 a request for an accountant’s report was

made and material for that purpose was obtained, including statements of account, cheque vouchers and so on.

14. On 12 February 1998 the applicant was officially charged and interrogated by the police.

15. On 25 June 1998 an indictment was submitted to the City Court, according to which the applicant (and five co-accused, A, B, H, N and R) were charged with “tax asset stripping” committed jointly. The applicant was charged on forty-four counts out of a total of fifty-nine, committed between 26 June and 3 November 1992. His responsibility related to an amount of DKK 87,000,000, equal to approximately 11,600,000 euros (EUR) out of the total tax amount evaded in the case which came to approximately EUR 19,000,000. The indictment related to eighty different companies and six banks in Denmark and abroad.

16. Between July 1998 and 10 March 1999, fifteen pre-trial hearings were held and the draft of the accountant’s reports was submitted. On the former date, the case was set down for trial on 15 March 1999.

17. Between 15 March 1999 and 31 January 2001, a total of 119 hearings were held. The applicant, the five co-accused and more than seventy witnesses were heard, including state-registered public accountants. Statements of accounts and a considerable amount of other documentary evidence were also produced. The court records comprised 1,330 pages. The closing speeches were held over ten days in November 2000 and January 2001.

18. By a judgment of 6 April 2001, which ran to 220 pages, the City Court convicted the applicant in accordance with the indictment. The co-accused were also convicted. The applicant was sentenced to three years’ imprisonment. In addition, the sum of DKK 3,600,000 was seized, and he was deprived for an indefinite period of the right to establish a private limited company or a company or an association requiring public approval, or to become a manager and/or member of a director’s board of such companies.

19. The City Court dismissed the applicant’s claim that the length of the proceedings had been at variance with Article 6 of the Convention stating the following:

“The City Court finds no reason to criticise the prosecution’s decision to join the criminal proceedings against the [applicant and the five co-accused]. Accordingly, and having regard to the mutual connection between the cases and their character, the City Court finds no violation of Article 6 of the Convention, although there were longer periods of inactivity during one part of the case, while investigation was going on in another part of the case. In this connection [the City Court] notes that the complexity of the acts carried out by [the applicant and the five co-accused] partly when buying and “stripping” the companies for assets, partly when writing off projects abroad, necessitated an investigation of an extraordinary scope. In the City Court’s opinion there were no longer periods, whether before the police, the prosecution or the City Court, during which no part of the case proceeded. It must be emphasised that due to the nature and scope of the charges, the cases against [the

applicant] and [the co-accused B and R] could not proceed before the cases against [H, N and A] [had been heard]. [Finally], in view of the character and complexity of the case, [the City Court] considers that the total length of the proceedings did not in itself constitute a breach of the said provision of the Convention.”

20. On 15 May 2001 the applicant and the five co-accused appealed against the judgment to the High Court of Eastern Denmark (*Østre Landsret* - “the High Court”).

21. After that date, twelve preparatory hearings were held, including one on 13 September 2001 during which the trial was scheduled with numerous fixed dates to commence on 24 September 2002. Counsel for the applicant and the co-defendants jointly replied that they only had very limited possibilities to appear during the autumn of 2002.

22. Thus, although the trial commenced on 24 September 2002, most of the hearings took place in 2003 and 2004. A total of about 90 hearings were held in the case. In February and March 2004 the appeal hearings had to be postponed because a co-defendant fell ill. For the same reason the High Court changed the order of some of the hearings. The Court records comprised 861 pages. The closing speeches were held over ten days in April, May, and June 2004.

23. On 28 September 2004 the High Court upheld the City Court’s judgment. As regards the length of the proceedings, it stated:

“In the assessment of whether the proceedings have been concluded within a reasonable time, the starting point ... concerning the [applicant] was on 12 February 1998, when he was charged ...

[The High Court] upholds the City Court’s judgment and its reasoning with regard to the question of whether Article 6 of the Convention has been violated ...

The appeal proceedings were scheduled and carried out without any unreasonable delay. On 13 September 2001 the trial was scheduled to take place on fixed dates as from 12 August 2002. A number of hearing dates in the autumn 2002 and the beginning of 2003 had to be cancelled because some counsel were occupied [with other cases], for which reason the [present] case was delayed. To avoid any further delay caused by impossibilities to appear, the trial, which commenced on 24 September 2002, proceeded in a proper, but not completely suitable order.”

24. In the period from 7 to 12 October 2004, the applicant and the co-defendants requested that the Leave to Appeal Board (*Procesbevillingsnævnet*) grant them leave to appeal to the Supreme Court (*Højesteret*). Three of the defendants stated in their petitions that they would submit supplementary comments, which were received on 17 December 2004. In January 2005 the cases were sent to the prosecution, which gave its opinion on 29 March 2005. The applicant and the co-defendants gave their comments in reply and at a meeting on 5 August 2005 the Leave to Appeal Board decided to refuse the requests. Letters of refusal were not sent out, however, as on 9 August 2005 counsel

for one of the co-defendants stated that he wanted to submit supplementary comments in the light of a recent judgment in a similar case.

25. Thereafter, due to an error, nothing happened in the case until 2 May 2006, when the police telephoned the Leave to Appeal Board and drew attention to the case. Subsequently, on his request, counsel for the relevant co-defendant who had wanted to submit supplementary comments did so on 2 and 13 June 2006. The applicant and the co-defendant were informed on 21 June 2006 that their requests for leave to appeal to the Supreme Court had been refused. At the same time the Leave to Appeal Board apologised for the length of the proceedings before it.

THE LAW

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

26. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Period to be taken into consideration

27. The Government contested that argument and maintained that the proceedings began on 2 July 1996, when the police had carried out a search at the applicant’s premises.

28. The applicant was of the view that the proceedings had begun on 6 May 1994, but agreed with the Government that he had certainly been substantially affected as from 2 July 1996. The applicant also pointed out that the High Court had mistakenly found that the proceedings had begun only on 12 February 1998, which was part of the applicant’s argument for bringing the case before the Supreme Court.

29. The Court considers that the applicant was not substantially affected by the proceedings until 2 July 1996, when the police carried out a search at the applicant’s premises. The proceedings ended on 21 June 2006, when the Leave to Appeal Board refused the applicant’s request for leave to appeal to the Supreme Court against the High Court’s judgment. Thus, the criminal proceedings lasted almost ten years.

B. Reasonableness of the length of the proceedings

30. From a general point of view the reasonableness of the length of the proceedings must be assessed with reference to the complexity of the case, the conduct of the applicant and that of the authorities before which the case was brought (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

1. Complexity of the case

31. The Government submitted that the criminal proceedings were extraordinarily complex as concerns the facts, law and procedural issues.

32. The applicant disputed that the case was highly complex and emphasised, among other things, that in his case very few foreign company structures were used and almost all the banks were based in Denmark, thus a very limited part of the investigation had to be carried out abroad.

33. The Court reiterates that the scale and complexity of a criminal case concerning fraud, which is often compounded further by the involvement of several suspects, may justify the extensive length of proceedings (see, among other authorities, *C.P. and Others v. France*, no. 36009/97, § 30, 1 August 2000; *Hozee v. the Netherlands*, judgment of 22 May 1998, *Reports of Judgments and Decisions* 1998-III, p. 1102, § 52; *Wejrup v. Denmark* (dec.), no. 49126/99, ECHR 2002-IV, *Petersen v. Denmark* (dec.), no. 6315/02, 13 May 2004; and *Frederiksen v. Denmark* (dec.), 23012/02, 16 September 2004).

34. In the present case the applicant and five co-accused were convicted of tax asset stripping of numerous private limited companies and corporate groups. The applicant and the co-accused were intricately interconnected and had collaborated in the economic crime.

35. The applicant was found guilty on forty-four counts out of a total of fifty-nine and his responsibility related to an amount of approximately EUR 11,600,000 of the total amount of tax evaded in the case, which came to approximately EUR 19,000,000.

36. The court records before the City Court and the High Court ran to 1,330 pages and 861 pages respectively, and the City Court judgment ran to 220 pages.

37. The Court points out that the City Court, in its judgment of 6 April 2001, noted that the complexity of the acts carried out by the applicant and the five co-accused partly when buying and “stripping” the companies of assets, partly when writing off projects abroad, necessitated an investigation of an extraordinary scope. It found no reason to criticise the prosecution’s decision to join the criminal proceedings against the applicant and the five co-accused and it emphasised that due to the nature and scope of the charges, the cases against applicant and the co-accused B and R could not proceed before the cases against H, N and A had been heard.

38. Furthermore, the Court observes that the investigation was carried out in Denmark and abroad and necessitated the issuing of numerous search warrants and discovery orders.

39. Having regard to these circumstances, the Court finds that the investigations and the court proceedings were relevant, time-consuming and difficult. Thus, for the purposes of Article 6 of the Convention the case was particularly complex.

2. The applicant's conduct

40. In the Government's opinion the applicant's conduct contributed to some extent to the length of the proceedings, firstly because the crimes that he had committed rendered it necessary to carry out comprehensive and time-consuming investigations in Denmark and abroad, in addition to thorough reviews of large quantities of accounting material, secondly because the applicant's counsel was unable to appear before the High Court in the autumn of 2002, and thirdly because one of the co-defendants fell ill in the spring of 2004.

41. The applicant disagreed and contended that his conduct had not given rise to any significant delay.

42. It is true that the use by the applicant and the co-accused in the present case of intricate corporate structures, several of which were domiciled in or connected with foreign countries, obviously had the purpose of concealing the tax asset stripping, but this has already been taken into account in the assessment of the complexity of the case. Moreover, the Court finds that the applicant, during the criminal proceedings against him, did not act in a way that inappropriately prolonged those proceedings (see, for example, *Petersen v. Denmark* (dec.), no. 6315/02, 12 May 2004).

3. Conduct of the national authorities

43. The Government found, taking into consideration the nature, scope and complexity of the case, that no criticism could be made of the time spent on the investigation, and that the proceedings before the courts were accomplished within a reasonable time and without any periods of inactivity. The only "inactive" period in the case occurred before the Leave to Appeal Board due to a regrettable error and lasted for approximately eight months. In the Government's view, however, that period could not be considered so grave in proceedings lasting a total of ten years in such a highly complex case that a violation of Article 6 § 1 should be found on that ground.

44. The applicant contended that throughout the investigation and the court proceedings there were several periods of inactivity or almost no activity, in particular from March 1995 until June 1998; from May 2001 until September 2002; and from May 2005 until June 2006. Moreover,

although not formally objecting to his case having been heard together with the co-defendants' cases, having regard to the overall period and what was at stake for him, the applicant maintained that the length of the proceedings exceeded the reasonable time requirement within Article 6 of the Convention.

45. At the outset, the Court observes that due to the mutual connection between the cases and their character the investigations and subsequently the criminal trials of the applicant and the five co-accused were joined. The City Court found no reason to criticise this decision although admittedly it caused longer periods of inactivity during one part of the case, while investigation was going on in another part of the case. Noting that the accuseds' roles were closely interconnected and that a substantial part of the evidence procured was relevant to all of the accused, the Court can agree that the decision to join the investigations and the trials was appropriate.

46. Moreover, the facts of the case do not disclose failure on the part of the investigating authorities or the prosecution to perform their duties with due diligence in the period from 2 July 1996, when the police carried out a search at the applicant's premises, until 25 June 1998 when the indictment was submitted to the City Court.

47. Likewise, as to the proceedings before the City Court, which lasted from 25 June 1998 to 6 April 2001, thus almost two years and ten months, and those before the High Court, which lasted from 15 May 2001 to 28 September 2004, thus almost three years and five months, in the light of the complexity of the case and the unavoidable difficulties which have to be taken into consideration in a trial of that size involving six co-accused the Court finds that the length of those proceedings cannot be criticised (see, *inter alia*, *Petersen*, cited above, *Frederiksen v. Denmark*, (dec.), application no. 23012/02, 16 September 2004; and *Wallin Karlsen v. Denmark* (dec.), 23523/02), 1 February 2005).

48. The Court cannot ignore, however, that after more than eight years of criminal proceedings, it took the Leave to Appeal Board approximately one year and eight months to decide whether the applicant and the co-defendants should be granted leave to appeal to the Supreme Court, and that it is not in dispute that the main reason for that was that the case lay dormant by mistake for approximately eight months from 5 August 2005 to 2 May 2006.

4. Overall assessment

49. In the light of the above, notably the above-mentioned period of inactivity before the Leave to Appeal Board and the overall length of the proceedings, the Court concludes that the requirement of a "reasonable time" laid down in Article 6 § 1 of the Convention was not complied with in the present case. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

51. The applicant claimed DKK 100,000, equal to approximately EUR¹ 13,410 in compensation for the violation of his right to a fair trial within a reasonable time.

52. Subject to the Court finding a violation, the Government agreed that generally compensation should be awarded. They found, however, that the applicant's claim was excessive and disproportionate.

53. The Court considers that the applicant must have sustained non-pecuniary damage. Having regard to its finding above, notably as to the main reason for its finding a violation, and ruling on an equitable basis, it awards him EUR 2,000.

B. Costs and expenses

54. The applicant did not make any claims as regards the costs and expenses, accordingly no award is made under this head.

C. Default interest

55. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Held* that there has been a violation of Article 6 § 1 of the Convention;

2. *Held*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

¹ On 6 December 2007, when the applicant submitted his claim.

Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable on this amount, which is to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President