AS TO THE ADMISSIBILITY OF

Application No. 21041/92
by Parley Albert AUGUSTSSON
against Norway

The European Commission of Human Rights (Second Chamber) sitting in private on 28 February 1996, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

Ms. M.-T. SCHOEPFER, 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 30 August 1992 by Parley Albert Augustsson against Norway and registered on 8 December 1992 under file No. 21041/92;

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

Having regard to the observations submitted by the respondent Government on 27 January 1995 and the observations in reply submitted by the applicant on 20 April 1995;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Norwegian citizen, born in 1939. He is a ship owner by profession and resides in Espona, Spain. Before the Commission he is represented by Mr. Tore Thomassen, a lawyer practising at Stavanger, Norway.

A. The particular circumstances of the case

In 1974 the applicant began building up his own shipping business which became known in Norway as the Balder group. As from 1983 the applicant managed the various activities from his headquarters in London. The group consisted of a number of companies, of which the applicant was considered to be the de facto owner and manager, as well as a number of other companies which, one way or the other, were related to or controlled by the Balder group. During its most prosperous period the Balder group had 1100 employees and managed some 60 vessels. The assets of the parent company, Balder Invest A/S, as per 31 December 1983 totalled more than two thousand million NOK.

Due to subsequent financial difficulties, however, the parent company, Balder Invest A/S, was dissolved in early 1985 and bankruptcy proceedings concerning the entire Balder group were opened on 14 May 1985. Due to the financial implications, the collapse of the Balder group attracted substantial media attention in Norway. Furthermore, the applicant maintains that the local police contacted the administrators of the estate in bankruptcy (bostyret) in June 1985 with a request to be kept informed of the developments in the case and that he, the applicant, was informed hereof in June 1985 as well. The Government maintain, on the other hand, that it has not been possible to ascertain whether there was any contact between the administrators and the police before March 1986, and that it is clear that no investigations were ordered before April 1986.

On 19 February 1986 the administrators of the estate submitted a preliminary report to the Asker and Bærum Probate Court (skifteretten). The report concerned approximately 200 companies and partnerships involved in the collapse of the Balder group. As regards possible criminal activities the report contained the following:

(Translation)

> "At present we have not examined in detail whether the acts described in this report fall within the scope of the Penal Code.
>
> So far, the administrators of the estate consider that the conditions for absolute criminal liability as set out in chapter 27 of the Penal Code in part subsists and the report shall therefore be forwarded to the prosecution authority in accordance with section 31 of the Bankruptcy Act of 1863."

This was done on 14 March 1986 following which the Eidsivating public prosecutor's office (Eidsivating statsadvokatembetet) ordered an investigation of the Balder group bankruptcy in April 1986. The investigation first concentrated on collecting information. Because of the volume of documents special premises and office equipment were hired and the interrogation of persons involved in the case commenced in the beginning of 1987 with a view to obtaining information about the management routines of the Balder group. Due to the complexity of the case the police requested, and obtained, the assistance of court-appointed accounting experts in March 1987. In August 1987 the interrogation of employees in key positions in the Balder group commenced and extensive interrogations of the group's directors were carried out as from October 1988.

The applicant was interrogated for the first time on 5 December 1988 followed by 13 interrogations until 14 March 1989. On 9 February 1989 preliminary charges (foreløbige siktelser) were made against five persons in the management of the Balder group, including the applicant. On 29 March 1989 defence counsel was appointed for the applicant.

On 7 April 1989 the accounting experts submitted their report which led to further investigations by the police. In this connection the applicant was interrogated again on 2 May 1989.

On 3 November 1989 and 23 April 1990 new charges were brought against the applicant and during the months of May and June 1990 he was interrogated again four times.

On 7 September 1990 the indictment was served on the applicant. He was charged with having contravened section 274 of the Penal Code by having given incorrect or misleading information to investors, sections 275 and 276 by having been involved in illegal financial

transactions in particular within the Balder group companies, and section 286 by having wilfully or negligently disregarded provisions relating to bookkeeping and accounting.

The indictment and the evidence involved were transmitted to the Asker and Bærum District Court (herredsretten) on 1 November 1990. It appears that it was tentatively agreed to commence the court hearings on 12 August 1991. On 24 May 1991, however, counsel for the applicant informed the Court that, in their opinion, the hearing could not take place in 1991. Having obtained the prosecution's view the Court met with the parties on 5 July 1991 following which the hearing was fixed to commence on 5 November 1991.

The hearing commenced on 5 November 1991 and lasted fourteen court days. Judgment was pronounced on 30 January 1992. The applicant was found guilty of some of the charges brought against him and acquitted of other charges. As regards the sentence the Court stated inter alia:

(Translation)

> "The acts in question were committed 6 to 7 years ago and the investigations took a very long time. The Court finds that this was due to the applicant's behaviour which means that the time element should have some mitigating effect. However, the Court notes that cases of this kind normally require substantial investigation and thus often become old. It is from the point of view of general prevention (allmenpreventive hensyn) that this case requires a severe reaction."

The applicant was sentenced to two years' imprisonment of which 20 months were suspended. He was furthermore sentenced to pay a fine of 100,000 NOK.

The applicant appealed against the judgment to the Supreme Court (Høyesterett). He requested the Court to dismiss (avvise) the case due to its duration which in his opinion was exorbitant and referred to Article 6 para. 1 of the Convention. In the alternative he requested the sentence to be reduced.

On 14 May 1992 the Appeals Committee of the Supreme Court (Høyesteretts Kjæremålsutvalg) refused leave to appeal. The applicant was informed thereof on 19 May 1992.

B. Relevant domestic law

In Norway, the investigation of crimes is the responsibility of the police and the prosecuting authorities. This appears from the Criminal Procedure Act (straffeprosessloven) of 26 May 1981, the relevant parts of which read as follows:

(Translation)

> "Chapter 18. Criminal investigation.
>
> Section 224. A criminal investigation shall be carried out when as a result of a report or other circumstances there is reasonable ground to inquire whether there is some criminal matter which is to be prosecuted by the public authorities.
> ...
>
> Section 225. A criminal investigation is instituted and carried out by the police. Without a decision from a superior any police officer may take such steps as cannot be postponed without detriment.

The Director General of Public Prosecutions and the public prosecutor concerned may order an investigation to be instituted and decide how it is to be carried out, and may also order it to be stopped.
...

Section 226. The purpose of the investigation is to obtain the necessary information for deciding whether an indictment should be preferred, and to serve as preparation for the trial of the case.
...

If a specific person is under suspicion, the investigation shall seek to clarify both the evidence against him and the evidence in his favour.

The investigation shall be carried out as rapidly as possible and in such a way that no one is unnecessarily exposed to suspicion or inconvenience.

Section 230. The police may record statements by suspected persons, witnesses and experts but may not order any person to make a statement. Public officials and other persons acting on behalf of the State or a municipality are nevertheless obliged to make a statement concerning matters with which they have become acquainted in their position or office if this can be done without breaching any duty of secrecy imposed on them by any statute, regulation or directive.
...

Section 232. Before the suspect is examined, he shall be informed of the nature of the case, and be told that he is not obliged to make a statement.

If he is willing to make a statement, he shall be encouraged to make a true statement. The provisions of section 92 shall apply correspondingly.

Section 237. The prosecuting authority may apply for a judicial examination, a judicial inquiry or the appointment of experts for use in the criminal investigation. The court is bound to grant the application unless it finds that the matter to which the investigation relates is not criminal, or that the criminal liability has lapsed, or that there is no legal power to grant the application. ...

Section 242. The suspect, his defence counsel, and the aggrieved party shall on application be permitted to acquaint themselves with the documents relating to the case in so far as this can be done without detriment or risk to the purpose of the investigation or to a third party. ...

If the suspect or his defence counsel is denied access to the said documents, the issue may be required to be decided by an order of the court.
..."

According to section 249 in the Criminal Procedure Act, the question of preferring an indictment shall be decided as soon as the case is sufficiently prepared for this purpose.

COMPLAINTS

The applicant complains, under Article 6 para. 1 of the Convention, that the criminal case against him was not determined

within a reasonable time.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 30 August 1992 and registered on 8 December 1992.

On 2 September 1994 the Commission (Second Chamber) decided that notice of the application should be given to the respondent Government and invited them to submit written observations on the admissibility and merits thereof.

Following two extensions of the time-limit fixed for this purpose the Government submitted their observations on 27 January 1995.

Following one extension of the time-limit the applicant submitted his observations in reply to those of the Government on 20 April 1995.

THE LAW

The applicant complains that the criminal case against him was not determined within a reasonable time. He invokes Article 6 para. 1 (Art. 6-1) of the Convention which in so far as relevant reads as follows:

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

As regards the period to be considered the applicant maintains that it commenced on 14 May 1985, i.e. at the same time as the bankruptcy proceedings concerning the Balder group opened. The Government maintain, however, that the period commenced in December 1988 when the applicant was interrogated by the police for the first time.

The Commission recalls that according to the case-law of the Convention organs the period to be taken into consideration under Article 6 para. 1 (Art. 6-1) of the Convention must be determined autonomously. It begins at the time when formal charges are brought against a person or when that person has otherwise been substantially affected by actions taken by the prosecuting authorities as a result of a suspicion against him (cf. for example Eur. Court H.R., Eckle judgment of 15 July 1982, Series A no. 51, p. 33, para. 73).

In the present case the Commission recalls that the bankruptcy proceedings concerning the Balder group opened on 14 May 1985. In the light of the fact that this was one of the biggest bankruptcies in Norwegian history involving many companies and hundreds of investors it is obvious that the applicant was affected thereby, in particular having regard to his prominent position in the Balder group. However, although the bankruptcy proceedings may have led to serious implications for the applicant the Commission does not consider that he thereby can be considered as having been "charged" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

In April 1986 the public prosecutor's office opened an investigation in order to clarify whether the collapse of the Balder group was caused by, or otherwise involved, any criminal activity. However, at that moment in time no charges were made against the applicant, or any other person of the Balder group, nor was any other measure taken which could lead to the conclusion that the applicant, or anybody else, had committed a criminal offence or had been charged with having done so. It is clear from the facts of the case that the preliminary investigations were more of a fact-finding nature due to the complexity of the case and the amount of documentary evidence involved. In these circumstances the Commission does not consider that

the opening of the criminal investigation into the collapse of the Balder group as such would lead to the applicant being "charged" within the meaning of Article 6 (Art. 6) of the Convention, nor that this measure carried the implication of such an allegation and thereby substantially affected his situation.

The applicant's direct involvement in the police investigation commenced on 5 December 1988 when he was interrogated by the police for the first time about his activities in the Balder group. Although preliminary charges were not brought against him until 9 February 1989 the Commission considers that, as from 5 December 1988, the applicant was in the circumstances substantially affected by the criminal investigation proceedings for the first time. Consequently, from that date the applicant was "charged" for the purposes of Article 6 para. 1 (Art. 6-1) of the Convention and the "reasonable time" referred to in this provision began to run from that moment.

The Commission considers that the proceedings should be regarded as having been terminated on 19 May 1992 when the applicant was informed of the decision of the Appeals Selection Committee of the Supreme Court not to grant him leave to appeal. Thus, the total length of the proceedings which the Commission must assess under Article 6 para. 1 (Art. 6-1) of the Convention was 3 years and 51/2 months.

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 (cf. the above-mentioned Eckle judgment, p. 35, para. 80).

As regards the complexity the applicant maintains that the Balder group in fact consisted of very few companies and that the whole set-up was fairly simple. Accordingly, he maintains that any investigations beyond one year as from their commencement were mainly due to inadequate structuring of the investigators' procedures.

The Government maintain that the case was very complex and the investigation extremely difficult in view of the many companies involved, the vast number of financial transactions and the inadequate bookkeeping requiring comprehensive examinations in order to disclose whether criminal activities were involved.

The Commission recalls that the basis for the charges brought against the applicant lay in a bankruptcy of major dimensions in Norway, involving companies in Norway and abroad. Having regard to the facts as submitted the Commission finds it clear that the investigations were very time-consuming and difficult. Thus, for the purposes of Article 6 (Art. 6) of the Convention the case was of a very complex nature.

As regards the applicant's conduct the Commission has not, however, found it established that he acted in a way which inappropriately prolonged the proceedings against him.

As regards the conduct of the authorities and courts the Commission recalls that the charges were filed against the applicant approximately two months after his initial interrogation and that the investigations concerning the applicant were concluded and the case sent to the court of first instance for adjudication within a period of two years. A period of investigation of approximately two years, from 5 December 1988 until 1 November 1990, may at first sight appear excessive, in particular in the light of the fact that investigations covering the entire Balder group had commenced much earlier. Nevertheless, the Commission does not consider that the facts of the case, in the circumstances, disclose that the investigating authorities acted inappropriately or otherwise failed to conclude their investigations with due diligence as from the moment of the applicant's

involvement.

Furthermore, the proceedings before the Asker and Bærum District Court and the Supreme Court, lasting a total of 1 year and 61/2 months do not disclose to the Commission unacceptable periods of inactivity which could bring the proceedings at variance with Article 6 (Art. 6) of the Convention.

Therefore, making an overall assessment of the length of the proceedings and noting that the District Court did take this into consideration in respect of the sentence imposed, they did not, in the Commission's view go beyond what may be considered reasonable in the particular circumstances of the case. The applicant's complaint does not, therefore, disclose any 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, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)