AS TO THE ADMISSIBILITY OF

Application No. 27739/95
by Peter BAUNGAARD
against Denmark

The European Commission of Human Rights (Second Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

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 22 May 1995 by Peter BAUNGAARD against Denmark and registered on 28 June 1995 under file No. 27739/95;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Danish citizen, born in 1970. He is at present serving a 16 year prison sentence at Horsens State Prison. Before the Commission the applicant is represented by Mr Morten L. Wagner, a lawyer practising in Viborg.

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

From October 1992 until his arrest on 2 October 1993 the applicant was involved in substantial criminal activity. By indictment of 18 April 1994 the applicant was charged with theft, burglary, drug trafficking, illegal possession of arms and ammunition, robbery and attempted robbery, and murder in a total of 25 cases. Parts 1 and 7 of the indictment concerned burglary where the items stolen allegedly represented a value of approximately 900,000 DKK, and 220,000 DKK respectively. Part 5 of the indictment concerned drug trafficking allegedly involving 30 grammes of heroin. Part 18 of the indictment concerned burglary allegedly involving various items of silver worth approximately 80,000 DKK. Parts 16 and 19 of the indictment concerned attempted robbery in two cases and part 20 concerned robbery and murder.

The criminal case against the applicant was heard by the High

Court of Western Denmark (Vestre Landsret) sitting with a jury. During the proceedings which commenced on 6 September 1994 the applicant, who was assisted by counsel, pleaded guilty in respect of parts 1-15, 17-18 and 21-25 of the indictment. As regards part 1 he could only accept, however, a value of 100,000 - 200,000 DKK and, as regards part 5, only 15 grammes of heroin. As regards part 18 the applicant maintained that the items stolen were of stainless steel and therefore worth less than indicated. The applicant finally pleaded not guilty in respect of parts 16 and 19 but pleaded guilty to attempted burglary. As regards part 20 of the indictment the applicant pleaded not guilty but pleaded guilty to burglary and assault causing death.

The court heard six witnesses and one expert following which the defence, the prosecution and the professional judges agreed on the formulation of the questions to be put to the jury. One of the questions (no. 26) referred to parts 1 and 7 of the indictment and requested the jury to decide whether the offences committed were of an aggravated nature due to the value of the stolen items involved.

Following the jury's deliberations the applicant was, by judgment of 9 September 1994, found guilty as charged in respect of parts 1-15, 17-18 and 21-25 of the indictment. As regards parts 16 and 19 he was found guilty of attempted burglary in accordance with his own admissions. Finally, he was found guilty of aggravated robbery and murder cf. part 20 of the indictment. He was sentenced to 16 years' imprisonment.

The applicant appealed against the judgment to the Supreme Court (Højesteret). He maintained that such procedural errors had been committed that the conviction was questionable. Furthermore, he maintained that the sentence was too severe. In support of his allegations the applicant submitted that part 20 of the indictment (charge of aggravated robbery and murder) ought to have been presented to the jury under two separate questions, that question no. 26 ought not to have involved both parts 1 and 7 of the indictment, and that the High Court had wrongly convicted him of burglary in respect of parts 1 and 18 as he had not pleaded guilty in respect of the value of the stolen items involved.

By judgment of 27 April 1995 the Supreme Court upheld the judgment in its entirety. In its judgment the court stated inter alia:

(Translation)

"Question no. 20 which had been formulated in accordance with (part 20 of) the indictment concerned both robbery pursuant to section 288 ... and murder pursuant to section 237 of the Penal Code. Pursuant to section 887 of the Administration of Justice Act each question to the jury ought as far as possible to concern one criminal offence. It has not been explained for what reason question 20 was nevertheless formulated as it was. The court finds that it had been more in accordance with section 887, subsection 2 of the Administration of Justice Act that two questions concerning part 20 had been put to the jury but finds that the failure to do so does not make the correctness of the conviction for robbery and murder questionable.

Pursuant to section 285, subsection 1 of the Penal Code burglary, among other things, carries a sentence of up to one year and six months' imprisonment. Pursuant to section 286, subsection 1 the sentence may, in the circumstances mentioned in the provision, increase to four years' imprisonment. The court does not find that procedural errors have been committed by accepting that question no. 26, which only concerned the issue of referring two counts of burglary to section 286,

subsection 1, involved both these counts.

[The applicant] has admitted having committed the offences set out in parts 1 and 18 but has disputed the value involved. The questions to the jury in respect of these offences have been drafted in close keeping with the indictment and the jury has found [the applicant] guilty accordingly. The fact that the judgment - contrary to the court transcript - wrongly indicates that [the applicant] has pleaded guilty to these two counts is not an error which could question the correctness of the conviction.
...

[The applicant's] request for repealing the judgment and returning it to the High Court for reconsideration is accordingly rejected ...

As the sentence is found to be appropriate the court upholds the judgment."

COMPLAINTS

The applicant complains that he did not have a fair trial by an impartial tribunal. He maintains that he has been wrongly convicted for having stolen goods, the value of which was determined without any evidence and contrary to what he was willing to accept. He also maintains that the formulation of the questions to the jury, in particular the question concerning the aggravated robbery and murder, made a fair determination of his guilt impossible.

The applicant furthermore maintains that the national courts' interpretation of the notion of criminal intent violated his right to a fair trial by an impartial tribunal.

The applicant invokes Article 6 para. 1 of the Convention.

THE LAW

The applicant complains that he did not have a fair trial by an impartial tribunal. 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 fair ... hearing ... by an ... impartial tribunal ... ."

The applicant maintains that in respect of certain charges he was wrongly convicted and in respect of others the courts' interpretation of domestic law was contrary to the notion of a fair trial. Having regard to this the Commission recalls, firstly, that with regard to Article 19 (Art. 19) of the Convention, is to ensure the observance of the obligations undertaken by the parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to the established case-law of the Convention organs (cf. e.g. Eur. Court HR, Schenk v. Switzerland judgment of 12 July 1988, Series A no. 140, p. 29, para. 45).

It is true that the applicant also complains that the proceedings were not fair and that the courts were not impartial. As regards the latter the Commission recalls that the existence of impartiality for the purposes of Article 6 para. 1 (Art. 6-1) of the Convention must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge or jury in a given case, and

also according to an objective test, that is ascertaining whether the judge or the jury offered guarantees sufficient to exclude any legitimate doubt in this respect (cf. e.g. Eur. Court HR, Fey v. Austria judgment of 24 February 1993, Series A no. 255, p. 12, para. 28).

In the present case the Commission finds that no evidence has been adduced to show that there could be any legitimate doubt as to the High Court's or the Supreme Court's subjective or objective impartiality.

As regards the fairness of the proceedings the Commission recalls that the question whether a trial conforms in this respect with the standard laid down by Article 6 (Art. 6) of the Convention must be assessed on the basis of the court proceedings as a whole. In the present case the Commission recalls that the applicant's case was examined by the High Court sitting with a jury during which the applicant, assisted by counsel, had the opportunity to submit everything which he found to be of importance to the case. Furthermore, no evidence was refused by the court and protests as to the proceedings were at no time lodged indicating that the proceedings progressed to the applicant's disadvantage. Indeed the applicant does not allege that any of the minimum rights set out in Article 6 paras. 2 and 3 (Art. 6-2, 6-3) of the Convention were infringed. He maintains, however, that procedural errors were committed in the presentation of the questions put to the jury, an issue which was thoroughly examined by the Supreme Court. However, having regard to the findings of the Supreme Court the Commission does not consider that this, in the circumstances, assumed such importance that the applicant's trial, seen as a whole, was unfair.

Thus, an examination of the different issues raised by the applicant does not 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.

M.-T. SCHOEPFER	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber