AS TO THE ADMISSIBILITY OF

Application No. 22939/93
by Jan HEFTYE BLEHR
against Norway

The European Commission of Human Rights (Second Chamber) sitting in private on 11 April 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 7 June 1993 by Jan Heftye Blehr against Norway and registered on 17 November 1993 under file No. 22939/93;

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 16 March 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 1940. He is a lawyer by profession and resides at Nesøya, Norway. Before the Commission he is represented by Mr. Johan Hjort, a lawyer practising in Oslo.

A. The particular circumstances of the case

In 1979 the applicant joined an important shipping group which was known in Norway as the Balder group. The group consisted of a great number of companies based in Norway and abroad 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 60 vessels. The assets of the parent company, Balder Invest A/S, as per 31 December 1983, totalled more than two thousand million NOK.

The applicant was first appointed manager of one of the companies and later financial director of the group. In addition he was on the

boards of directors in some of the companies in the group and held a number of shares.

Due to subsequent financial difficulties, however, the parent company 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.

On 19 February 1986 the administrators of the estate (bostyret) 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 subsist 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 with a view to obtaining information about the management routines of the Balder group. In this respect the applicant was interrogated by the police for the first time on 8 December 1986. Two additional interrogations followed on 15 and 17 December 1986. Due to the complexity of the case the police requested, and obtained, the assistance of court-appointed accounting experts in March 1987. The applicant was interrogated again on 15 July 1987.

In August 1987 the interrogation of employees in key positions in the Balder group continued and extensive interrogations of the group's directors were carried out as from October 1988. On 9 February 1989 preliminary charges (foreløbige siktelser) were made against five persons in the management of the Balder group, including the applicant who was interrogated again on 28 February and 14 March 1989.

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 29 May, 1 June and 12 June 1989.

On 23 April 1990 new charges were brought against the applicant and he was interrogated again on 26 July and 13 August 1990.

On 7 September 1990 the indictment was served on the applicant. He was charged with having contravened sections 275 and 276 of the Penal Code by having been involved in illegal financial transactions in particular within the Balder group companies, and section 12 of the Taxation Act by having given false or incomplete information to the tax assessment authorities.

The indictment and the evidence involved were transmitted to the Asker and Bærum District Court (herredsretten) on 21 November 1990

following which the public prosecutor requested that the hearing in the case be fixed to commence after the case against the Balder group's top manager had been examined by the Court. The applicant had no objection to this request. The case against the group's top manager was heard by the Court in November 1991.

In the meantime, on 2 October 1991, the dates for the main hearing in the applicant's case were fixed for 16 March until 3 April 1992.

The hearing commenced on 16 March 1992 and lasted ten court days. The applicant requested that the Court dismiss the case because of its duration which in his opinion entailed an infringement of section 226 subsection 4 of the Criminal Procedure Act (straffeprosessloven) and Article 6 para. 1 of the Convention.

The judgment was delivered on 27 May 1992. The Court decided not to dismiss the case for the following reasons:

(Translation)

> "When evaluating the amount of time spent on the investigation, the Court must take a number of considerations into account. On the one hand, it is clear ... that the long time which passed has been a great personal strain on the persons charged and has to varying degrees created difficulties for them in their careers. On the other hand, the present case is by no means run-of-the-mill even by the standards of financial crimes. The Balder group had between 100 and 200 companies, which were hard to distinguish from one another both financially and in terms of organisational structure. The accounts were not up-to-date and sometimes were non-existent, so the task of finding out what had actually happened was extremely demanding. For example, the 1983 accounts were not presented until 18 December 1984, and then with considerable assistance from the external auditor. The fact that the documents came to fill 500 metres of shelves as the investigation proceeded indicates the magnitude of the case. The very fact that the companies were organised in such an unusual way made it particularly difficult to find out where the liability should be assigned. In this connection, however, it is important that Mr. O and (the applicant) were part of the management of the group and thus were responsible for the companies' situation.
>
> When an investigation is started, the police/prosecuting authority is obliged to look for any indication that an indictment should be preferred, but also for any indication that it should not. If the legality of all the circumstances that could be called in question on the basis of the report of the administrators of the estate were to be considered in a satisfactory manner, this would have required resources that far exceed what is possible from a practical and financial point of view. The circumstances to which the indictments against Mr. O and (the applicant) apply are only briefly mentioned in the report, which includes no assessment of the conditions for criminal liability either. Thus, it required some time for the police to obtain a sufficient overview to be able to begin - and continue - the investigation against them. It should also be noted here that the expert report on the circumstances dealt with in count I of the indictments was not finished until April 1989. In the Court's view there may be some danger in dismissing such cases pursuant to section 226 subsection 4 of the Criminal Procedure Act or Article 6 para. 1 of the Convention. The more complex the

organisational structure of the companies and the more deficient and complicated the accounts, the more time the investigation will require. This means that in the case of companies like these, the courts may dismiss the case and those responsible may thus escape prosecution.

When an investigation takes as long as in the present case, the consequences of the time factor for the evidence must be considered. After some time, both the persons charged and the witnesses generally have difficulty remembering the details of what happened and how. In Mr. O's case, account must also be taken of the fact that he was deliberately trying to put this period behind him and forget it. In this case, however, unlike the persons charged, several of the key witnesses had a clear recollection of the course of events. Moreover, it is significant that the documentary evidence plays such a central role. Here, too, of course the time factor is of some significance, because the circumstances surrounding the documents may easily be forgotten. Therefore, there is a certain risk that the documentary evidence may be misinterpreted. However, the Court does not consider that this is the case here. On the contrary, the documentary evidence is to some extent self-explanatory and also provides subjective information with regard to the persons charged.

The Court agrees with the persons charged that the investigation has been too protracted and has thus been a strain on them. The Court would also point out that it is the responsibility of the prosecuting authority to ensure the efficiency, continuity and adequacy of the level of expertise of the investigation. It is difficult, however, to determine how much time could have been saved if the investigation had been organised differently. In this connection the Court considers it important to emphasise that it is precisely the form of organisation of the Balder group and the lack of proper accounting that has helped complicate the investigation. Since the persons charged occupied responsible positions in the management of the group, the time factor cannot in this context be construed in their favour.

Even though the Court presumes that time could have been saved, it does not consider that the circumstances are such that an application of section 226 subsection 4 of the Criminal Procedure Act or Article 6 para. 1 of the Convention on Human Rights would lead to dismissal. Thus, the cases should be allowed."

After an evaluation of the available evidence the applicant was found guilty of all the charges brought against him except one. He was sentenced to twelve months' imprisonment, of which ten months were suspended and he was furthermore ordered to pay a fine of 50,000 NOK and costs amounting to 20,000 NOK. When meting out the sentence the Court stated inter alia:

(Translation)

"... Also the fact that seven years have elapsed since the criminal activities took place concerns (the applicant). Having regard to the reasons given for the refusal to dismiss the case, the Court finds that this element must, to some extent, be taken into consideration as a mitigating factor. However, this will have a limited effect as regards the meting out of the sentence because it was mainly the very organisation of the Balder group and its lack of accounting as well as (the applicant's) responsibility

therefor which complicated and delayed the investigation.

In this kind of cases it is first and foremost from the point of view of general prevention (allmenpreventive hensyn) that a severe reaction is called for. Having regard to this the Court has found that (the applicant), as requested by the prosecution, must be sentenced to imprisonment."

The applicant appealed against the judgment to the Supreme Court (Høyesterett). He requested the Supreme Court to dismiss the District Court judgment or, in the alternative, to reduce the sentence. On 13 November 1992 the Appeals Committee of the Supreme Court (Høyesteretts Kjæremålsutvalg) decided to allow the appeal on certain points. On 4 May 1993 the Supreme Court pronounced its judgment. The Court quashed the District Court judgment in respect of two charges and upheld it in respect of the remaining charges brought against the applicant. As regards the sanction the sentence imposed by the District Court was upheld. In this respect the Supreme Court stated inter alia:

(Translation)

"The District Court has emphasised when meting out the sentence that (the applicant) has seriously violated the special confidence which follows from the positions (he) held ... (The Court) agrees with this and had the case been determined fairly quickly these violations would have resulted in an unconditional term of imprisonment of a considerable length. However, now the case has become very old - the criminal transactions took place more than eight years ago. The District Court has emphasised that the investigations were too lengthy. It states nevertheless that even if this is taken into consideration as a mitigating factor it has only a limited effect since basically it was the way in which the Balder group was organised and the lack of accounting which made the investigations difficult and caused the delays. (The Court) accepts this and refers to the fact that (the applicant) had a leading position within the group. The time element cannot in these circumstances be as important as it would have been in more ordinary cases. Even though a further period of time has elapsed since the District Court judgment (the Court) finds that the sentence imposed shall stand."

The applicant served his prison sentence from 21 July to 9 September 1993.

B. Relevant domestic law

In Norway, the investigation of criminal offences is the responsibility of the police and the prosecuting authorities. This appears from the Criminal Procedure Act 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 by 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 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 investigations 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 of 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 7 June 1993 and registered on 17 November 1993.

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.

The applicant submitted his observations in reply to those of the Government on 16 March 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 19 February 1986 when the preliminary report from the estate administrator was submitted to the Asker and Bærum Probate Court. The Government maintain, however, that the period commenced on 9 February 1989 when the first preliminary indictment was issued.

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 8 December 1986 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 8 December 1986, the applicant may in the circumstances be considered as having been substantially affected by the criminal investigation proceedings. 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 4 May 1993 when the Supreme Court pronounced judgment in the case. Thus, the total length of the proceedings which the Commission must assess under Article 6 para. 1 (Art. 6-1) of the Convention was six years and five 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. Eur. Court H.R., Boddaert judgment of 12 October 1992, Series A no. 235-D, p. 82, para. 36).

As regards the complexity the applicant maintains that his involvement in the Balder group bankruptcy and the charges against him which followed therefrom were not complex and played only a minor role in the entire case.

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 interrogations of the applicant commenced fairly soon after the criminal investigations into the Balder group commenced. Nevertheless, preliminary charges were not brought against the applicant until 9 February 1989, i.e. approximately two years and two months after the applicant's first interrogation. Furthermore, the investigations did not end until 21 November 1990 when the case was sent to the District Court for adjudication. A period of investigation of approximately four years, from 8 December 1986 until 21 November 1990, may at first sight appear excessive. 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 two years and five 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 and the Supreme 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)