AS TO THE ADMISSIBILITY OF

Application No. 25737/94
by Eirik LINDKVIST
against Denmark

The European Commission of Human Rights (Second Chamber) sitting in private on 9 September 1998, the following members being present:

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

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 16 June 1994 by Eirik LINDKVIST against Denmark and registered on 21 November 1994 under file No. 25737/94;

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 14 November 1996 and the observations in reply submitted by the applicant on 7 January 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Norwegian citizen, born in 1932. He resides at Kilchberg, Switzerland.

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

a. Particular circumstances of the case

The preliminary court proceedings

On 3 January 1991 the police in Gentofte, Denmark, drew up an internal report, according to which certain circumstances indicated that the applicant was permanently residing at a specific address in Copenhagen. Presumably, he was running two companies from which he collected revenue liable to taxation in Denmark. However, he was not registered as a taxpayer in Denmark. On 7 January 1991 the Chief of Police in Gentofte (Politimesteren i Gentofte) requested the Criminal Court in Gentofte (Gentofte Kriminalret) to issue a search warrant against the applicant.

On 9 January 1991 the Criminal Court issued an order for a search of inter alia the applicant's two cars and his residence. On 21 January 1991 the applicant was arrested at Charlottenlund, Denmark, and charged inter alia with evasion of tax and customs duties.

On 22 January 1991 the Criminal Court issued an order for seizure of the applicant's two cars and the balances on seven bank accounts. The amounts on the bank accounts totalled approximately 2 million Danish Crowns (DKK). At the same time, the court decided to detain the applicant on remand as there were "justified reasons" (begrundet mistanke) to believe that he was guilty of evasion of tax and customs duties and as, furthermore, there were reasons to fear that he would impede the investigation by removing evidence.

The applicant appealed against the decision to detain him. On 25 January 1991 the High Court of Eastern Denmark (Østre Landsret) quashed the appealed decision and released the applicant, as it found that he could not be expected to receive a penalty more severe than a fine or a light prison sentence.

Later the same day the applicant was again arrested by the police and detained by the Criminal Court on the basis of new information. However, on appeal to the High Court, the applicant was released the next day (i.e. on 26 January 1991), as the High Court found that the evidence presented did not justify the applicant's detention. Following his release, the applicant left Denmark for Switzerland.

On 9 April 1991, following a request from the applicant, the Criminal Court refused to release the property seized. However, taking into account the applicant's

financial situation, the court terminated the seizure of the interest on the assets in question. This decision was upheld on appeal by the High Court on 19 April 1991.

The proceedings before the tax authorities

On 20 February 1991 the Local Tax Directorate of Gentofte (Gentofte Kommunes Skattedirektorat) prepared an audit report on the applicant's residence and his further connections to Denmark, in which it was concluded that he must be considered liable to taxation in Denmark. Documents supporting this conclusion were made available on 22 March 1991.

On 15 April 1991 the Regional Customs and Tax Administration of Copenhagen (Told- og Skatteregion København) requested the Chief of Police in Gentofte to initiate criminal proceedings against the applicant. Thereafter, on 6 June 1991, the Chief of Police requested the Regional Customs and Tax Administration in Nærum (hereinafter "the Nærum Tax Administration") to make the required tax assessments concerning the applicant.

On 29 June 1992 an audit report on the applicant was finalised by the Tax Directorate of Gentofte.

On 27 July 1992 the Nærum Tax Administration issued a letter of intent announcing taxation of the applicant for the years 1985-1990. The applicant made objections and requested access to the tax file. On 21 September 1992 the Tax Administration replied to the objections. Further, stating that the basis for the taxation was the audit report of 29 June 1992 which was available to the applicant, it refused access to other documents in its file.

On 17 November 1992, following a meeting between the Nærum Tax Administration and the applicant's counsel, the applicant was informed that the Tax Administration and the Chief of Police in Gentofte had agreed to grant access to the file. On 26 November 1992 the Chief of Police specified which documents would be made available to the applicant.

Following several letters from the applicant's counsel in which he complained, inter alia, of not having received all the material to which he had requested access, the Nærum Tax Administration replied on 15 March 1993 that the entire contents of the applicant's tax file had been made available. It further stated that no formal decision had yet been made concerning the applicant's tax liability on account of the objections filed by the applicant and his counsel. The Tax Administration also maintained that this decision ought to await the outcome of the forthcoming negotiations between the Danish and the Swiss tax authorities which had been requested by the applicant.

By decision of 18 August 1993, the Nærum Tax Administration fixed the applicant's taxable income and capital for the years 1985-1990.

On 12 November 1993 the applicant appealed against this decision to the National Taxation Board (Landsskatteretten), where the case was adjourned pending the outcome of the criminal case.

On 5 August 1994 the tax authorities made their final request to the prosecuting authorities to initiate prosecution. On 12 August 1994 the applicant was informed by the National Taxation Board that the tax appeal would be suspended with reference to the request for prosecution.

On 29 October 1996 the National Taxation Board made a final decision in the applicant's tax case. The decision of the Nærum Tax Administration of 18 August 1993 was partially upheld in that the applicant was found liable to taxation in Denmark for the years 1989 and 1990. However, he was found not liable to pay Danish taxes for the years 1985-1988. The taxable income for 1989 and 1990 was fixed at a total of 3,055,716 DKK and the taxable capital at 3,237,591 DKK for 1989 and 2,937,515 DKK for 1990.

The negotiations with the Swiss authorities

At the request of the applicant, the Central Customs and Tax Administration, on 1 April 1993, wrote to the Swiss tax authorities and invited them to initiate negotiations pursuant to the Danish-Swiss Double Taxation Treaty of 1973 concerning the applicant's tax liability. The Swiss authorities replied on 6 July 1993, claiming that the applicant should be considered resident in Switzerland during 1989 and 1990 and thus liable to pay taxes in that country. On 9 November 1993 the Central Customs and Tax Administration asked the Swiss authorities to produce further documentation and information. The Swiss authorities replied on 26 April 1994, asking the Danish tax authorities to reconsider the question of the applicant's liability to pay taxes in Denmark.

On 30 August 1994 the Central Customs and Tax Administration informed the Swiss authorities that it considered the negotiations under the Double Taxation Treaty to be concluded as it had not been possible to reach any agreement.

The proceedings before the Criminal Court

On 6 May 1994 the applicant's counsel requested a hearing in the Criminal Court, claiming that the criminal case should be dismissed as it had not been sufficiently expedited.

In early July 1994 the applicant was informed that the Criminal Court would not consider the claim for dismissal until after 1 September 1994 due to the summer holidays and as the judge in charge of the case had resigned. The new judge would not take up his duties before the latter date.

An indictment was served on the applicant on 31 August 1994 charging him with tax evasion in the amount of approximately 2.8 million DKK for the years 1985-90 as well as certain other offences related thereto.

On 14 October 1994 the claim for dismissal of the case was considered at a hearing, at which the applicant's counsel was present but not the applicant himself. The Criminal Court decided that the case was to continue. The hearing of the case was scheduled to commence on 9 February 1995 on account of the applicant's health. He had been involved in a car accident in June 1994.

On 9 February 1995 the hearing of the case commenced as scheduled. The applicant, having been duly notified, did not appear and the Criminal Court therefore decided to issue an arrest warrant against him. The case was then adjourned. Upon appeal against this decision, the High Court, on 13 February 1995, adjourned the case to allow the parties to file pleadings concerning the appeal before 27 February 1995. The High Court later decided that the appeal was to have suspensive effect as regards the arrest warrant. By decision of 20 April 1995, the High Court confirmed the warrant.

On 26 January 1996 the police informed the applicant's counsel that the State Prosecutor of Zealand (Statsadvokaten for Sjælland) had decided not to request the applicant's extradition from Switzerland, but that the applicant would be arrested if found in Denmark.

On 9 February 1996 the applicant was informed by his counsel that the Criminal Court would proceed with the case only if he returned to Denmark.

The proceedings before the Bailiff's Court

On 12 and 18 July 1994 the local Tax Directorate of Gentofte ordered the execution of the seized assets. The applicant appealed against this order to the Bailiff's Court in Gentofte (Gentofte Fogedret). However, the case was adjourned by the Bailiff's Court at the request of the applicant.

On 5 April 1995 the applicant was summoned to appear before the Bailiff's Court. On 22 May 1995 the applicant failed to appear at the hearing. The Bailiff's Court upheld the execution order.

On 8 May 1996 the High Court upheld the Bailiff's Court's decision, whereupon the latter court, on 21 June 1996, authorised the sale of the seized securities and bank balances against which execution had been levied.

b. Relevant domestic law and practice

Legislation on arrest and detention of remand

Arrest and detention on remand are dealt with in Sections 760 and 762 of the Administration of Justice Act (retsplejeloven):

(Translation)

Section 760:

"(1) Any person who is taken into custody shall be released as soon as the reason for the arrest is no longer present. ...

(2) Where the person taken into custody has not been released at an earlier stage he shall be brought before a judge within 24 hours after his arrest. ..."

Section 762:

"(1) A suspect may be detained on remand when there is a justified reason to believe that he has committed an offence which is subject to public prosecution, provided the offence, under the law, may result in imprisonment for 1 year and 6 months or more and if

1. according to information received concerning the suspect's situation there is a specific reason to believe that he will evade prosecution or execution of judgment, or

2. according to information received concerning the suspect's situation there is a specific reason to believe that, if at large, he will commit a new offence of the nature described above, or

3. in view of the circumstances of the case there is a specific reason to believe that the suspect will impede the investigation, in particular by removing evidence or by warning or influencing others.

...

(3) Detention on remand may not be imposed if the offence can be expected to result in a fine or a light prison sentence or if the deprivation of liberty will be disproportionate to the interference with the suspect's situation, the importance of the case and the outcome expected if the suspect is found guilty."

Compensation for arrests and detention of accused persons is dealt with in Sections 1018a and 1018e of the Administration of Justice Act:

(Translation)

Section 1018a, subsection 1:

"A person who has been arrested or detained in remand during a criminal prosecution has a right of compensation for the loss he has suffered if prosecution is relinquished or the accused is acquitted and this is not a consequence of the accused being declared non compos mentis. ..."

Section 1018e, subsection 1:

"The District Prosecutor is competent to decide on claims for compensation pursuant to sections 1018 a-d. ... Such claims from a person who has been accused must be put forward within two months after the accused has been notified that prosecution has been relinquished or from the final judgment. ..."

If an accused is finally convicted and sentenced to prison, the time he has spent in custody will be deducted from his prison sentence.

Legislation on seizure

Seizure of a suspect's assets is, inter alia, dealt with in Sections 804 and 806 of the Administration of Justice Act:

(Translation)

Section 804:

"The seizure of a suspect's assets in order to secure the costs of the case and claims for compensation can be ordered by decision of the court at the request of the competent authority or the victim of the offence at the location and to the extent the court may find necessary. ..."

Section 806:

"The seizure terminates when prosecution is relinquished or the accused is acquitted and an order for seizure must be annulled at the time when the grounds for the seizure, due to new objections put forward or to altered circumstances, cease to exist. ..."

Legislation and practice on the collection of debts owing to unpaid taxes

In Denmark the collection of debts owing to unpaid taxes falls to the local tax directorates (de kommunale myndigheder). Thus, an official employed by the municipality, the tax bailiff (pantefoged), is authorised under Section 2, subsection 1 of the Tax and Charges Execution Act (inddrivelsesloven) to order execution in a debtor's assets. If a debtor makes objections to the execution during the action or within four weeks from the action, the tax bailiff is obliged under Section 6, subsection 3 to forward the complaint to the Bailiff's Court (fogedretten) which will then hear the case.

The Bailiff's Court is only competent to examine the procedural aspects of the execution levied. It is not competent to review whether conditions for tax liability are fulfilled or the amounts are payable. However, the local tax authorities' assessment of these issues can be appealed against to higher administrative authorities, the National Taxation Board (Landsskatteretten) being the final one, or the tax assessments can, at any

stage, be brought before the civil courts. The Bailiff's Court may adjourn the proceedings before it pending the outcome of an administrative or judicial decision, cf. Section 502, subsection 1 of the Administration of Justice Act. Such an adjournment is normally dependent on a request from the interested party.

The decision of the Bailiff's Court may be appealed against to the High Court (landsretten) within four weeks of the decision or, in case the debtor was not informed of the date of the decision, within four weeks after he has been informed thereof, cf. section 6, subsection 3 of the Tax and Charges Execution Act and section 586, subsection 1 of the Administration of Justice Act.

COMPLAINTS

1. Under Article 5 of the Convention, the applicant complains that he was arrested and detained on remand on two occasions in January 1991.

2. Also under Article 5 of the Convention, he claims that, during his second detention, the prison authorities did not take into consideration that he suffered from diabetes by providing him with adequate food and medicine.

3. The applicant further complains, under Article 6 para. 1 of the Convention, that, as the indictment was not served until three years and eight months after he was first arrested and as the charges against him have not yet been determined, he has not had a fair trial within a reasonable time.

4. He also maintains that he has not been presumed innocent by the police authorities. He refers in this respect to Article 6 para. 2 of the Convention.

5. Under Article 6 para. 3 (c) of the Convention, the applicant asserts that his right to a proper defence has been infringed, inter alia, as, on account of the arrest warrant, he cannot visit Denmark to discuss the case with his counsel.

6. Finally, as regards the property seized, the applicant complains that the tax authorities have levied execution for alleged outstanding taxes although this question is still unresolved. He considers this to be a violation of Article 1 of Protocol No. 1 to the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 16 June 1994 and registered on 21 November 1994.

On 27 June 1996 the Commission decided to communicate to the respondent Government the applicant's complaints concerning the length of the criminal proceedings against him and the seizure of his property.

The Government's written observations were submitted on 14 November 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 7 January 1997.

On 3 December 1996 the Commission granted the applicant legal aid.

THE LAW

1. The applicant alleges that his arrests and detention in January 1991 amounted to a violation of Article 5 of the Convention. Article 5 reads, in so far as relevant, as follows:

"1. ... No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law;

...

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

..."

In support of his complaint the applicant submits that there were - and are - no reasonable grounds for suspecting him of the offences with which he has been charged since he is a Norwegian citizen and, at the material time, had no income in Denmark.

The Commission recalls its case-law according to which it falls first to the national authorities to redress any alleged violation of the Convention. As in many cases the violation itself can no longer be wiped out with retroactive effect, only reparation will be possible. Such a reparation may then constitute a means whereby a State can redress the alleged violation of the Convention (see inter alia No. 10668/83, Dec. 13.5.87, D.R. 52, p. 177).

In the present case, the Criminal Court's decisions to detain the applicant were quashed by the High Court on both occasions and the applicant was released shortly after his initial arrests and detention. Danish law appears to allow for compensation only after final acquittal or in case the prosecution decides to relinquish prosecution. In case the accused person is finally convicted and sentenced to prison the time already spent in detention will be deducted from his sentence.

The Commission need not examine whether all domestic remedies have been exhausted, pursuant to Article 26 of the Convention, by the applicant as his complaint is, in any event, inadmissible for the following reasons.

The Commission recalls that having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as "reasonable" will depend upon all the circumstances (cf. Eur. Court HR, Fox, Campbell and Hartley v. the United Kingdom judgment of 30 August 1990, Series A no. 182, p. 16, para. 32).

In the present case, it appears that the Criminal Court based its decision to detain the applicant on certain information indicating that the applicant did have a permanent residence in Denmark and did collect revenue subject to taxation in Denmark. This information included police observations as to his presence at a specific address in Copenhagen and as to the presence in Denmark of his two cars and seven bank accounts containing large amounts of Danish currency.

The Commission considers that these facts suffice to satisfy the requirement of a "reasonable suspicion" in the sense of Article 5 para. 1 (c) of the Convention. In this connection, the Commission stresses that there can be no question of regarding arrest or detention on remand as being justified only when the reality and nature of the offences charged have been proved, this being the purpose of the preliminary investigations and the trial which detention is intended to facilitate (cf. No. 8083/77, Dec. 13.3.80, D.R. 19, p. 223, and No. 9627/81, Dec. 14.3.84, D.R. 37, p. 15).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant further complains that the authorities did not take into consideration that he suffered from diabetes by providing him with adequate food or medicine during his second detention. The Commission considers that this complaint should be examined under Article 3 of the Convention which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission recalls that treatment may be termed inhuman if a detained person is not provided with adequate medical treatment (cf., inter alia, No 21915/93, Dec. 12.1.95, D.R. 80, p. 108).

However, again assuming compliance with Article 26 of the Convention and further recalling that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3, the Commission considers that the material submitted by the applicant does not disclose any appearance of a violation of this provision.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

3. The applicant claims that he has not had a fair trial within a reasonable time. He invokes in this respect Article 6 para. 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 within a reasonable time by [a] ... tribunal ..."

The respondent Government consider that the period to be taken into consideration started running on 9 January 1991, i.e. when the search warrant was issued. In the opinion of the Government, the period ended on 9 February 1995 when the applicant failed to appear at the trial of the criminal case, thus making it impossible to conclude the case.

The applicant agrees with the Government as regards the starting-point of the period to be considered. However, he appears to be of the opinion that the period has not yet ended.

The Commission recalls that the period to be taken into consideration when determining whether proceedings have been concluded within a "reasonable time" begins in criminal proceedings as soon as a person is "charged". This may be at a time preceding referral to the trial court, such as the date when preliminary investigations are initiated (cf. Eur. Court HR, Eckle v. Germany judgment of 15 July 1982, Series A no. 51, p. 33, para. 73). The charge within the meaning of Article 6 para. 1 may be defined as the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence, a definition that also corresponds to the test whether the situation of the suspect has been substantially affected (ibid.). In the present case, that date was the date on which the search warrant was issued, i.e. on 9 January 1991.

The Commission notes that from 9 February 1995 onwards only the applicant's refusal to go to Denmark to appear before the court has affected the length of the proceedings. However, no formal decision to discontinue the proceedings has been taken. In fact, the authorities appear to have considered whether to request the Swiss authorities to extradite the applicant until at least 26 January 1996. Thus, the Commission considers that the case must be regarded as being still pending.

The Government allege that the applicant has had a fair trial within a reasonable time as, on an overall assessment, the proceedings have not been too lengthy. The complexity of the case has provided a basis for a certain extension in time, as has the conduct of the applicant. In the present case it was necessary to make a very comprehensive audit of the applicant's fiscal situation from 1985 to 1990. In addition, the examination of the case has been rendered difficult by the fact that a great part of the information required had to be procured from Switzerland. The procurement of this information was also rendered difficult on account of the applicant's refusal to assist in providing it. The tax assessment of the applicant was of importance to the police investigation and the consideration whether to initiate prosecution, as was the outcome of the negotiations with the Swiss authorities.

The applicant alleges that the fact that the indictment was not served until three years and eight months after he was first arrested and the fact that the charges against him have not yet been determined amount to a violation of Article 6 para. 1. He submits that the case is not a particularly complex one.

The Commission recalls that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the case-law of the European Court of Human Rights, in particular the complexity of the case, the applicant's conduct and that of the competent authorities (cf., inter alia, Eur. Court HR, Kemmache v. France judgment (nos. 1 and 2) of 27 November 1991, Series A no. 218, p. 27, para. 60).

The present case involved the assessment of several difficult issues. One of these was the question of the applicant's residence from 1985 to 1990 in order to determine whether he was liable to pay taxes in Denmark or Switzerland. Another issue was the assessment of the applicant's income for the aforementioned years in order to calculate the possible amount evaded. In addition, the proceedings involved negotiations, initiated at the applicant's request, with the Swiss authorities for the purpose of reaching an agreement under the Danish-Swiss Double Taxation Treaty. The Commission considers that this suffices to show that the case was indeed a complex one.

The Commission considers that the Danish authorities cannot be blamed for the time passed after the hearing on 14 October 1994 as it is clear that from that time on the delay in the proceedings depended solely on circumstances peculiar to the applicant (cf. Eur. Court HR, Girolami v. Italy judgment of 19 February 1991, Series A 196-E, p. 55, para. 13 and No. 7438/76, Dec. 15.12.80, D.R. 23, p. 5). Also with regard to the time which elapsed before that date, the applicant's conduct affected the length of the proceedings. In this respect, the Commission refers to the repeated requests and appeals made by the applicant and his counsel. It is true that the applicant was entitled to use all the remedies available to him under Danish law. However, in using such remedies, he undoubtedly prolonged the proceedings.

As regards the conduct of the Danish authorities, the period of one year and six months between the arrests and detention of the applicant in January 1991 and the letter of intent issued on 27 July 1992 give cause for concern. However, as indicated above, the case involved very difficult and comprehensive investigations as to the applicant's residence and income in the preceding years. Furthermore, the period was not inactive as several reports concerning these matters were produced by the local tax authorities. The time which elapsed from the letter of intent until the applicant was informed of the final tax assessments on 18 August 1993 is reasonably justified by the authorities' processing of the requests and objections filed by the applicant and his counsel. The period between the final tax assessments and the tax authorities' final request, on 5 August 1994, to the prosecuting authorities to initiate prosecution and the latter's indictment of the applicant on 31 August 1994 was mainly due to the negotiations between the Danish and Swiss tax authorities, which were conducted at the applicant's request.

The Commission considers that these investigations and negotiations were necessary in order to determine whether there was a basis for the continued prosecution and, if so, which legal provisions and possible sanctions were applicable.

Furthermore, the Commission notes that the period between 6 May 1994, when the applicant's counsel requested a hearing in order to determine the claim for dismissal of the case, and 14 October 1994, when the Criminal Court held the hearing, only resulted in a limited delay in the proceedings following the conclusion of the negotiations between the Danish and Swiss tax authorities. The Commission moreover finds that, in itself, it cannot be regarded as an unjustifiable delay that a criminal case is adjourned pending the outcome of administrative proceedings or investigations.

Having regard to the above, and making an overall assessment of the length of the proceedings so far in the light of all available information, they have not, in the Commission's view, gone beyond what may be considered reasonable in the particular circumstances of the case.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

4. The applicant claims that he was not presumed innocent by the police authorities. He invokes in this respect Article 6 para. 2 of the Convention which reads as follows:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

In support of his allegation, the applicant submits that the Danish police authorities have referred to him as a "criminal" in public and that various persons and authorities have stated that he has committed tax fraud although he has never been convicted by a court. However, the Commission finds that the applicant's submissions fail to substantiate the present complaint.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

5. The applicant also complains that his right to a proper defence has been infringed. He invokes in this respect Article 6 para. 3 (c) of the Convention. Article 6 para. 3 reads, in so far as relevant, as follows:

"Everyone charged with a criminal offence has the following minimum rights:
...
(b) to have adequate time and facilities for the preparation of his defence;
(c) to defend himself in person or through legal assistance of his own choosing.
..."

In support of his claim, the applicant submits that he has not been able to travel to Denmark to discuss his case with his counsel due to the fact that an arrest warrant has been issued against him. In addition, he alleges that telephone conversations with his counsel have been interrupted and his mail opened.

The Commission recalls that Article 6 para. 3 (b) and (c) guarantees the accused's right to communicate with his lawyer during the pre-trial period, as well as later, to the extent necessary to prepare his defence (cf., inter alia, No. 11219/84, Dec. 10.7.85, D.R. 42, p. 287).

In the instant case, however, the applicant was not prevented by the Danish authorities from having access to his lawyers, neither in person nor in writing. It makes no difference in this respect that an arrest warrant has been issued against the applicant as the facts available to the Commission do not indicate that the applicant would not have been able to obtain a proper defence while detained prior to trial. In addition, the applicant has had the possibility of corresponding with his lawyers. Further, the allegation that the applicant has been subject to telephone tapping or examinations of his mail is wholly unsubstantiated.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

6. Finally, the applicant complains that his right to the peaceful enjoyment of his possessions has been violated. He invokes in this respect Article 1 of Protocol No. 1 of the Convention which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government contend that the case concerns the seizure of the applicant's assets and that the applicant has not been deprived of the title to the assets seized. The seizure, however, provisionally deprived the applicant of his possession of the assets. Thus, the measure effected must be assessed pursuant to Article 1 para. 2 of Protocol No. 1. The Government submit that the measure was necessary, inter alia, to secure payment of taxes or other contributions or penalties and that it was prescribed by law. Furthermore, in terms of value, the amount of the seized assets was proportional to the taxes and duties, the payment of which the applicant was suspected of having evaded. The seizure has been evaluated by the courts on a continuing basis and the courts have to

some extent taken into consideration the applicant's interests, inter alia by releasing the interest on the applicant's assets.

The applicant bases his allegation that his rights under Article 1 of Protocol No. 1 have been violated mainly on the fact that the tax authorities have now levied execution for alleged outstanding taxes although the taxation question is still unresolved.

The Commission considers that the seizure - and subsequent execution - of the applicant's assets in order to collect alleged tax debts constituted an "interference" with the applicant's right to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1. The purpose of the Tax and Charges Execution Act is to regulate the collection of direct taxes within Denmark and Section 804 of the Administration of Justice Act provides the authorities with a general tool with which they can, in a criminal case, order seizure of an accused's assets inter alia in order to secure his payment of taxes and other duties. It follows that the interference falls within the ambit of the second paragraph of Article 1 of Protocol No. 1 (cf. Eur. Court HR, Gasus Dosier- und Fördertechnik GmbH v. the Netherlands judgment of 23 February 1995, Series A no. 306-B, p. 47, para. 59).

The Commission recalls that the second paragraph of Article 1 of Protocol No. 1 must be construed in the light of the principle laid down in the first sentence of the Article (cf. the Gasus Dosier- und Fördertechnik GmbH judgment, op. cit., p. 49, para. 62). Thus, an interference must achieve a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, including the second paragraph. There must therefore be a reasonable relationship of proportionality between the means employed and the aim pursued (ibid).

In the present case the seizure of the applicant's two cars and his balances on seven bank accounts was effected under the authority of Section 804 of the Administration of Justice Act on the basis of the need to secure payment of taxes and duties. Furthermore, it appears that the value of the seized assets was proportional to the taxes and duties in question. The fact that the applicant left for Switzerland constituted a risk that he would also transfer his assets to Switzerland if the seizure was terminated. Thus, the Commission considers that the seizure of the applicant's assets in itself did not amount to a violation of Article 1 of Protocol No. 1.

As to the execution of the applicant's assets, it appears that the local authorities in Denmark can order execution in a tax payer's assets on the basis of their own assessment of his tax liability and the amount payable subject to review by the Bailiff's Court on the procedural aspects of the execution. The execution levied against the applicant on 12 and 18 July 1994, and upheld by the Bailiff's Court on 22 May 1995 and the High Court on 8 May 1996, resulted in the decision of 21 June 1996 to authorise the sale of the assets. Having regard to the considerable margin of appreciation left to the Contracting States inter alia to form their procedural systems of enforcement of tax debts (cf. Gasus

judgment, op. cit., p. 48, para. 60) and to the fact that the applicant had the opportunity to request an adjournment of the execution until the National Taxation Board had decided on the substantive matter, the Commission considers that the system of enforcement of tax debts challenged by the applicant did not result in a disproportionate or wrongful interference with the applicant's possessions amounting to a violation of Article 1 of Protocol No. 1.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber