AS TO THE ADMISSIBILITY OF

Application No. 12957/87
by Frede SCHMIDT
against Denmark

The European Commission of Human Rights sitting in private on 6 July 1989, the following members being present:

MM. J. A. FROWEIN, Acting President
C. A. NØRGAARD
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A. S. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

Mr. H. C. KRÜGER, Secretary to the Commission.

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 January 1987 by Frede SCHMIDT against Denmark and registered on 19 June 1987 under file No. 12957/87;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Danish citizen, born in 1949. He resides at Sønderborg, Denmark.

The applicant's previous case before the Commission (No. 11295/84) concerned the length of the proceedings in a civil case which commenced on 28 June 1979 and ended with a judgment of the Supreme Court (Højesteret) on 5 April 1984. This complaint was declared admissible by the Commission on 13 October 1986 and the case was subsequently settled in accordance with Article 28 (b) and Article 30 of the Convention (Comm. Report 3.3.87).

A. Particular facts of the case

The applicant's present case concerns the proceedings in

another civil case which is related to his previous case as they both have their origin in the applicant's decision in 1975 to have the roof of his house treated with a substance called polyurethanfoam and the damage to the house as a consequence thereof.

On 25 February 1983 the applicant filed a writ of summons with the High Court of Western Denmark (Vestre Landsret) in order to obtain damages from three different persons who had been involved, in one way or the other, in the proceedings related to his house repairs. The applicant maintained that the three persons in question had acted in a way making them responsible for the damage to his house and the losses he had suffered thereby and thus claimed a total of more than 600,000 Danish crowns in compensation.

On 29 March and 19 April 1983 the written observations of the defendants were submitted to the High Court and the applicant's observations in reply were submittted on 3 May 1983. Supplementary observations were submitted by the defendants on 10 August and 18 August 1983.

The applicant requested the making of a new estimate (syn og skøn) in order to substantiate his claim for damages. A previous estimate, made for the purpose of establishing the damage to his house and used in his earlier civil suit, he found insufficient. The defendants' observations on this request were submitted to the High Court on 11 and 15 November 1983 and the applicant's observations in reply were submitted on 19 November 1983. In these observations the applicant also requested the Court to refrain from fixing a date for the court hearing as the issues to be determined were not yet, in his view, sufficiently clarified.

On 13 December 1983 the High Court rejected the applicant's request for a new estimate and adjourned the case. As the applicant had, in the meantime, submitted a complaint to the Bar Association against two of the defendants who were lawyers, the Court furthermore stated that it had no objections to the applicant's complaints against the two lawyers being considered by the Bar Association.

The applicant appealed to the Supreme Court (Højesteret) against the High Court's rejection of his request for a new estimate. However, on 2 March 1984 the Supreme Court upheld the decision.

During the summer of 1984 the applicant was called to a meeting with the local branch of the Bar Association where his complaints were discussed. He was informed that his complaints against one of the lawyers would be rejected as this person was no longer practising law, whereas his complaints against the other lawyer would be examined. Eventually, on 30 January 1985, the Bar Association rejected the applicant's complaints as it found no reason to criticise the treatment the applicant had received from the lawyer in question.

The applicant then contacted various authorities in order to collect evidence for the forthcoming court hearing. By letter of 29 March 1985 he informed the High Court that he maintained his claims against the defendants and that he maintained his request for a new estimate. He furthermore requested the Court to hold a preliminary court session in order to clarify the scope of the case, what kind of evidence should be produced and whether it would be possible to reach a friendly settlement.

On 10 April 1985 the High Court decided, with reference to its decision of 13 December 1983, to reject the applicant's request for a new estimate. The Court furthermore decided that the preparatory stage of the case had come to an end and that there was no reason to hold a preliminary court session. The case was then adjourned for the fixing of a hearing.

On 17 April 1985 the applicant informed the High Court that he expected the hearing to last one and a half to two days. He informed the Court that he requested the hearing of 21 witnesses, including 13 members of the Bar Association. On 30 April 1985 the High Court rejected the applicant's request to hear the 13 members of the Bar Association as witnesses. The applicant appealed against this decision to the Supreme Court which, on 6 September 1985, upheld the decision of the High Court on the ground that these witnesses could not add anything of relevance to the case.

On 10 October 1985 the High Court informed the applicant that the hearing of his case was fixed for 4 December 1985. On 13 November 1985 the applicant submitted a request to the High Court for the hearing of 9 witnesses. By letter of 15 November 1985 the High Court informed the applicant that in these circumstances it had decided to hold the hearing on 4 December 1985 as a preliminary court session in order to determine how the case should proceed and to consider to what extent it would be necessary to hear the witnesses requested by the applicant.

On 4 December 1985 the applicant and the defendants met in the High Court where they all had the opportunity to state their claims and to explain their views on these claims. After having deliberated the Court expressed the view that the applicant's case had very little prospects of success. Nevertheless the applicant maintained that he wanted to proceed with the case. The Court then ordered the applicant to present his case through a lawyer in accordance with section 259 of the Administration of Justice Act (Retsplejeloven). The case was hereafter adjourned for a period of three months in order to allow the applicant to find a lawyer.

The applicant submits that he subsequently contacted between 30 and 40 lawyers and he also tried through a newspaper to find a lawyer to assist him. However, all his efforts were in vain as no lawyer wanted to deal with the case. The applicant also submitted complaints to the Parliamentary Ombudsman and to the Ministry of Justice. However, both informed him that they had no competence to intervene in such matters.

On 3 March 1986 the applicant asked for an extension of the time-limit fixed for the purpose of finding a lawyer and this was granted by the High Court. The applicant's attempts, however, were unsuccessful and on 23 July 1986 he asked the High Court to appoint a lawyer for him in accordance with section 259, sub-section 3 and section 260, sub-section 6 of the Administration of Justice Act.

On 29 July 1986 the High Court refused to appoint a lawyer for the applicant as the Court did not find that the special circumstances mentioned in section 259, sub-section 3 were at hand. Furthermore the Court did not find section 260, sub-section 6 applicable. It does not appear that the applicant appealed against this decision to the Supreme Court, a possibility open to him under section 389, sub-section 2 of the Administration of Justice Act.

Thus the applicant appeared in person at the following court session held on 8 August 1986. Again he asked the Court to appoint a lawyer for him but this was rejected. Furthermore the applicant refused to withdraw his claims. In these circumstances the High Court dismissed the case (afvisning), as the applicant, not being represented by a lawyer, was considered as having failed to appear. Costs were awarded against him.

The applicant complained to the President of the Supreme Court as the decision of the High Court to dismiss the case was not accompanied by reasons. By letter of 2 October 1986 the President of the Supreme Court informed the applicant that, since his case was

dismissed in pursuance of section 259, sub-section 3 read in conjunction with section 354, sub-section 1 of the Administration of Justice Act, it followed from section 218, sub-section 1 of the said Act that it was not necessary to state any reasons for such a decision.

B. Relevant domestic law

The relevant parts of the sections of the Administration of Justice Act referred to in this case read as follows:

(Translation)

"Chapter 20 ...
...

Section 218, sub-section 1: Judgments and orders of the Court must be accompanied by reasons. Other decisions of the Court or the presiding judge need not be accompanied by reasons unless this is specifically prescribed ... ."

"Chapter 24 ...
...

Section 259, sub-section 2: The Court may order a party to present his case through a lawyer, if it does not find it possible to examine the case in a proper way unless the party gets such assistance. Such an order is not subject to appeal.

Sub-section 3: If the order under sub-section 2 is not complied with, written observations submitted by the party subsequent to the order shall be considered as not submitted, just as the party shall be considered as having failed to appear in court during court sessions held subsequent to the order. Where special circumstances speak for it the Court may, however, appoint a lawyer. As regards the lawyer's fees and expenses the same rules apply as in cases where legal aid has been granted pursuant to Chapter 31."

"Chapter 25 ...
...

Section 260, sub-section 6: If a party substantiates that he has been unable to engage a lawyer to plead his case the Court may appoint a lawyer. The appointment is made on the condition that the party accepts to reimburse the State the expenses incurred and, if the Court so decides, to provide security for these expenses. As regards the lawyer's fees and expenses the same rules apply as in cases where legal aid has been granted pursuant to Chapter 31 ... ."

"Chapter 33 ...
...

Section 354, sub-section 1: Where the plaintiff fails to appear in court when duly summoned to do so, pursuant to Section 351, sub-section 1, or where he fails to produce in court the necessary documents, pursuant to Section 351, sub-section 2, the Court dismisses the case by decision of which the parties are informed."

"Chapter 37 ...
...

Section 389, sub-section 2: Court orders and decisions taken by a High Court ... may be appealed against unless otherwise

provided by law.

Section 392, sub-section 1: High Court decisions in the following cases cannot be appealed against:

1. ******
2. ******
3. Unanimous court orders or decisions pronounced during the preparatory stage or during the court hearing, pursuant to Chapters 33-34 ... .

Sub-section 2: When special circumstances speak for it the Minister of Justice may grant leave to appeal against the orders and decisions mentioned in sub-section 1. Requests for leave to appeal must be submitted to the Ministry of Justice within 2 weeks from the date of the decision. The Minister of Justice may, by way of exception, grant leave to appeal if the request has been submitted later, but within 6 months from the date of the decision."

COMPLAINTS

Under Article 3 of the Convention the applicant complains that the treatment he has received by the authorities amounts to inhuman treatment within the meaning of this provision.

The applicant also invokes Article 6 para. 1 of the Convention. He is of the opinion that he has been denied access to court in that his case was dismissed without the determination of its merits and in that the High Court refused to appoint a lawyer.

Under Article 6 of the Convention the applicant furthermore complains of the fact that he was refused permission to call 13 witnesses, members of the Bar Association, as well as 9 other witnesses as requested by him.

Under Article 6 of the Convention the applicant finally complains of the fact that it took the High Court approximately three and a half years only to reach the conclusion that his case should be dismissed.

Finally the applicant invokes Article 17 of the Convention maintaining that the High Court judges applied the rules of the Administration of Justice Act contrary to the rights set out in the Convention.

THE LAW

1. The applicant has complained that the treatment he has received from the authorities amounted to inhuman treatment within the meaning of Article 3 (Art. 3) of the Convention which reads:

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

The Commission recalls its own jurisprudence and that of the European Court of Human Rights according to which treatment will be considered inhuman only if this treatment reaches a certain stage of gravity, causing considerable mental or physical suffering (cf. Eur. Court H.R., Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25). In the present case, however, the Commission has found no indication in the information submitted by the applicant which could lead to the conclusion that the treatment the applicant has received from the authorities could be considered to be of such severity as that envisaged by Article 3 (Art. 3) of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the

Convention.

2. The applicant has also complained, under Article 6 (Art. 6) of the Convention, of a denial of access to court and of the High Court's refusal to hear a certain number of witnesses.

Article 6 (Art. 6) of the Convention secures to everyone who seeks the determination of his civil rights the right to access to a court. The Commission recalls, however, that the applicant had in fact access to a court and he did indeed institute proceedings in the High Court of Western Denmark on 25 February 1983. It was not until 4 December 1985 that the question of access to court and the hearing of the 9 witnesses in question arose when the High Court refused to consider the applicant's case unless he was represented by counsel. The Commission is not, however, required to decide whether or not these circumstances disclose any appearance of a violation of the applicant's Convention rights as, under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

It is true that the applicant requested the High Court to appoint a lawyer to represent him after having failed to find one himself and that the High Court in its decision of 29 July 1986 refused to do so. The applicant did not, however, appeal against this decision to the Supreme Court, a possibility open to him under Section 389, sub-section 2 of the Administration of Justice Act. Consequently he did not exhaust the remedies available to him under Danish law. Moreover, an examination of the case does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedy at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and this part of the application must therefore be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

3. Under Article 6 (Art. 6) of the Convention the applicant has also raised a question of the length of the proceedings referring to the fact that it took the High Court approximately three and a half years merely to dismiss his case.

Article 6 para. 1 (Art. 6-1) of the Convention secures inter alia a right to a hearing within a reasonable time in the determination of a person's civil rights and obligations. On this point the Commission notes that there has in fact never been a determination of the applicant's civil right in question because the High Court dismissed his case as he did not comply with the formal requirements imposed. The Commission does not consider it necessary to consider whether Article 6 (Art. 6) of the Convention applies to the proceedings in such circumstances because even assuming this to be the case, the applicant's complaint is in any event manifestly ill-founded for the following reasons.

The court proceedings instituted by the applicant commenced on 25 February 1983 and lasted until 8 August 1986 when the High Court dismissed the case. Consequently the total length of proceedings was approximately three years and six months. The reason of the length of these proceedings must be assessed in each instance, according to the particular circumstances of the case. Regard must be had, among other things, to the complexity of the case, the conduct of the parties and the conduct of the judicial authorities.

Having regard to the facts as submitted by the applicant the Commission finds that the length of the proceedings is mainly to be attributed to the applicant's behaviour. In particular the Commission recalls that the applicant on several occasions requested the High Court to consider various procedural matters and that he also requested the Court at a certain point to refrain from fixing a date forthe main hearing. Furthermore the applicant submitted complaints

to the Bar Association where the case remained for almost one year. Although the applicant cannot be blamed for using the possibilities open to him under Danish law, by requesting a court to determine various procedural matters, he must accept that this inevitably causes delays. The Commission also recalls that the applicant asked for and was granted an extension of the time-limit fixed in order to find a lawyer.

When examining the length of proceedings in the light of these circumstances the Commission finds no indication of negligence or dilatoriness on the part of the High Court and considers therefore that the case fails to disclose any appearance of a violation of Article 6 (Art. 6) of the Convention.

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

4. The Commission has finally considered the applicant's complaint under Article 17 (Art. 17) of the Convention. However it has not found any substantiated facts which could justify a further examination of this complaint. It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — Acting President of the Commission

(H. C. KRÜGER) — (J.A. FROWEIN)