AS TO THE ADMISSIBILITY OF

Application No. 21555/93
by Svend SEITZBERG
against Denmark

The European Commission of Human Rights (Second Chamber) sitting in private on 16 October 1996, 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
L. LOUCAIDES
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 25 February 1993 by Svend SEITZBERG against Denmark and registered on 22 March 1993 under file No. 21555/93;

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

Having regard to the observations submitted by the respondent Government on 8 September 1995 and the observations in reply submitted by the applicant on 23 October 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Danish citizen, born in 1917. He is a civil engineer and resides at Skodsborg, Denmark. Before the Commission he is represented by Mr. Eskild Trolle, a lawyer practising in Copenhagen.

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

A. The particular circumstances of the case

The applicant became a member of the board (bestyrelsesmedlem) of the bank C & G Banken A/S in June 1986. It appears that at that moment in time the bank experienced financial difficulties which caused it to suspend payments as from 28 October 1987. On 17 May 1988 the bank was declared bankrupt and bankruptcy proceedings commenced, involving a number of official receivers. Police investigations into alleged criminal activities commenced as well and on 21 July 1988 the applicant, other board members and executive officers were charged

(sigtet) with violations of inter alia the Penal Code's provisions relating to the making of incorrect or misleading statements concerning the economic conditions of joint-stock companies.

While the police investigations were under way the official receivers of the C & G Banken A/S in bankruptcy instituted proceedings, on 18 April 1990, in the High Court of Eastern Denmark (Østre Landsret) against the applicant and ten other board members, executive officers and accountants claiming damages in the amount of 137,463,868 DKK, (approximately 120,000,000 FF) based on an allegation of negligence in the executive management of the bank which caused the bank to suffer substantial losses.

On 3 October 1990 the applicant filed his statement of defence in the civil action. Referring to the criminal investigations he also reserved his right to request an adjournment of the civil action pending the outcome of the criminal case.

On 4 October 1990 the High Court held its first preliminary hearing in the case during which the question of adjournment owing to the criminal case was discussed. On this point the case was adjourned until 3 June 1991.

In the criminal case the indictment was served on 4 October 1990. It comprised fourteen persons, including the persons already sued by the estate in bankruptcy before the High Court. Among other things, the charge concerned the directors' liability for ensuring a proper organisation of the bank's activities, including book-keeping, co-liability for write-downs on advance loan guarantees and circumstances concerning the role of the board. The alleged violations concerned various provisions of the Penal Code, the Bank and Savings Bank Act and the Companies Act.

Owing to the arraignment in the criminal case, eight of the defendants requested adjournment of the civil action pending the outcome of the criminal case, to which the plaintiff and the applicant objected.

On 12 March 1991 the applicant filed a pleading concerning the question of adjournment of the civil action pending the outcome of the criminal case. The applicant moved for separation of the case against him and for a separate judgment. He relied on his age, among other things, and on the expected length of the proceedings. In this respect he also referred to Article 6 of the Convention.

Following an oral hearing on the question of adjournment the High Court decided, on 19 June 1991, to adjourn the civil case pending the outcome of the criminal case. In its decision the Court stated inter alia:

(Translation)

> "Having regard to the fact that both cases are of considerable size and to a large extent concern the same factual circumstances and that, therefore, they might involve the same evidence, the High Court considers it to be the most appropriate solution - regardless of (the applicant's) submissions - to adjourn the present case cf. section 345 of the Administration of Justice Act (retsplejeloven). However, the question as to whether or not to proceed with the case ought to be examined again once the City Court has pronounced judgment in the criminal case."

Leave to appeal to the Supreme Court (Højesteret) against the above decision was refused on 19 October 1992.

On 28 December 1992 the applicant once more requested the High Court to proceed with the civil case in so far as it concerned him. He referred inter alia to his advanced age and to Article 6 of the Convention.

On 21 April 1993 the High Court rejected the applicant's request referring to its decision of 19 June 1991.

In the meantime the criminal case had commenced in the Copenhagen City Court (Københavns Byret). Hearings commenced in August 1991. Judgment was pronounced on 9 March 1994 after more than one hundred court sessions. The applicant and one of the co-accused were acquitted of all charges brought against them. The other persons involved were found guilty of violations of inter alia the Penal Code and the Bank and Savings Bank Act.

As no appeal was lodged against the judgment of the Copenhagen City Court in the criminal case, the civil case was resumed in the High Court of Eastern Denmark. On 10 May 1994 the Court fixed 11 August 1994 for the submission of further observations in the light of the outcome of the criminal case.

On 11 August 1994 the Court adjourned the case until 8 September 1994 pending the submission of further observations.

The applicant submitted his further observations on 22 August 1994.

On 8 September 1994 the High Court reserved 2 March 1995 for a preliminary court hearing and finally fixed that date for the preliminary hearing during a court session on 13 October 1994.

On 2 March 1995 the preliminary hearing was held. The case was, however, adjourned until 10 August 1995 due to the presiding judge's illness.

On 10 August 1995 the Court adjourned the case again. It requested the plaintiff to clarify its position by 16 November 1995. A new preliminary hearing was fixed for 1 December 1995.

During a court session on 20 march 1996 the plaintiff informed the High Court that the claims against the applicant would be dropped. Accordingly, on 21 March 1996 the High Court dismissed the case in so far as it concerned the applicant and ordered the plaintiff to pay to the applicant 1,200,000 DKK (approximately 1,000,000 FF) to cover his costs.

B. Relevant domestic law

In civil lawsuits the court acts at the request of the parties. Civil proceedings are instituted by one of the parties submitting a writ of summons to the court concerned (cf. section 348 of the Administration of Justice Act). Certain lawsuits, like the present one, are brought before the High Court as the court of first instance (cf. sections 224 to 226 of the Administration of Justice Act). Legal proceedings are considered to be instituted when the court receives the writ of summons. The court is responsible for the service of the writ of summons. The lawsuit then falls into two parts - a preparatory phase and a hearing phase.

Two procedures may be followed in respect of the preparation. Pursuant to section 351 of the Administration of Justice Act, the preparation of a case may be carried out by the parties appearing at preliminary hearings either personally or through a representative entitled to appear for the person concerned. This is called oral preparation. Pleadings are exchanged and formally submitted to the court during a session. Pursuant to section 352 of the Administration

of Justice Act the court may decide that the case is to be prepared without the parties appearing in court at preliminary hearings. This is called written preparation. In the case of written preparation the parties forward their pleadings to the court which records the documents and sees to it that the opponent receives a copy of them.

The purpose of preparing a case is to establish the facts and the legal issues of the case, to make sure that the case is elucidated in the best possible way, and to establish what the parties disagree on.

In addition to the normal preparatory court hearings during the preparation phase the court may hold preliminary hearings pursuant to section 355 of the Administration of Justice Act. The court may summon the parties to such preliminary hearings for the purpose of gaining sufficient clarity of the scope of the evidence and the points at issue when the court finds this expedient. During such preliminary hearings, the court may also decide on disputes between the parties relating to the preparation and actual organisation of the case.

According to the Administration of Justice Act, the parties in a civil lawsuit have competence as regards the substance of the case, i.e. the problems to be considered by the court. On the other hand the court decides finally on the judicial procedure. A stay of proceedings requires that there are reasonable grounds for such a stay. The relevant provision in section 345 of the Administration of Justice Act reads as follows:

(translation)

> "The court may adjourn proceedings, if this is found expedient, also in order to await an administrative or legal decision which may influence the outcome of the case. The court shall notify all parties concerned regarding the stay of proceedings as soon as possible."

Accordingly, a stay of proceedings requires that the court finds such a step expedient. Proceedings may for instance be stayed in order for the parties to produce evidence of relevance to the case, to conduct friendly settlement negotiations, to procure expert opinions, to clarify the positions of the parties etc. Moreover, proceedings will normally be adjourned if one of the parties submits a pleading in order to allow the other party to comment on it. Proceedings will usually also be adjourned when an expert opinion has been submitted, enabling the parties to review the result and decide whether the expert opinion necessitates further questions to the expert.

In civil lawsuits the case is elucidated by the parties and takes the form of a negotiation between them. The parties decide the questions to be considered by the court, and it is the parties who present the material to the court. As a starting point, the parties thus decide themselves how much or how little the court is to be provided with in order to consider the case. The court ensures that continuous progress is made in the case, and that the case is not allowed to be neglected. The court intervenes in situations where one of the parties professes misgivings concerning a stay of proceedings, or when the court feels that a stay does not serve any real purpose. Finalising the preparation of the case and fixing it for hearing involve a restriction on the new material to be presented by a party, cf. section 357 and section 363 of the Administration of Justice Act.

Following the finalisation of the preparation of the case it is for the court to fix the date for the hearing of the case, cf. section 356, subsection 2, of the Administration of Justice Act. The court may if necessary summon the parties for this purpose.

COMPLAINTS

The applicant complains, under Article 6 para. 1 of the Convention, that his civil rights and obligations have not been determined within a reasonable time.

Furthermore, he complains, under Article 1 of Protocol No. 1 to the Convention, that he was barred from peaceful enjoyment of his possessions as long as the civil suit against him was pending.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 25 February 1993 and registered on 22 March 1993. On 17 May 1995 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 an extension of the time-limit fixed for this purpose the Government submitted their observations on 8 September 1995.

The applicant's observations in reply were submitted on 23 October 1995.

THE LAW

1. The applicant complains that the civil action 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time ... ."

As regards the period to be considered the Commission finds that it started on 18 April 1990 when the writ of summons was entered with the High Court of Eastern Denmark. The proceedings came to an end on 21 March 1996 when the High Court closed the case as far as the applicant was concerned. Accordingly, the period to be taken into consideration lasted approximately five years and eleven months.

From a general point of view the Commission recalls that the reasonableness of the length of proceedings must be assessed with reference to the following criteria: the complexity of the case, the conduct of the parties and that of the authorities before which the case is brought. Furthermore, the special circumstances of the case, in particular what is at stake for the applicant in the litigation, must be taken into account and may call for an overall assessment (cf. Eur. Court HR, Vernillo v. France judgment of 20 February 1991, Series A no. 198, p. 12, para. 30 and X v. France judgment of 31 March 1992, Series A no. 234-C, p. 90, para. 32). The Commission also recalls that in civil cases the exercise of the right to a hearing within a reasonable time is subject to diligence being shown by the party concerned (cf. Eur. Court HR, Pretto and Others v. Italy judgment of 8 December 1983, Series A no. 71, pp. 14 et seq., paras. 33 et seq.). Nonetheless this principle cannot absolve the courts from securing that the case progresses within a reasonable time (cf. Eur. Court HR, Martins Moreira v. Portugal judgment of 26 October 1988, Series A no. 143, p. 17, para. 46).

As regards the complexity the applicant maintains that the majority of the plaintiff's claims against all defendants referred to events which took place before he joined the board of the C & G Banken A/S. Accordingly, the issues to be determined, as far as he was concerned, were not of any complexity. In any event the applicant maintains that the complexity of the case cannot justify the passing

of more than five years.

The Government maintain that the case was both comprehensive and very complex as it concerned technically difficult financial matters, involving a large number of defendants and a substantial amount of evidence.

The Commission recalls that the basis for the civil suit against the applicant and the other defendants lay in a bankruptcy of major dimensions in Denmark which had also caused the commencement of criminal investigations against a number of persons, including the applicant. Having regard to the facts as submitted the Commission finds it clear that the proceedings in question, due to their comprehensive nature, were time-consuming and difficult. Thus, for the purposes of Article 6 (Art. 6) of the Convention the case was of a 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.

As regards the conduct of the High Court of Eastern Denmark the applicant complains in particular of the fact that the Court refused to separate the case against him from that of the others and decided to adjourn the civil action pending the outcome of the criminal case.

The Government maintain in this respect that the High Court's decisions were legally motivated and necessary for a proper and efficient use of the resources of the legal system.

The Commission notes that it is not its task to express itself as to the appropriateness of the procedural decision taken by the High Court in the present case. As far as the Convention issue is concerned it considers that the adjournment of the proceedings which was provided for in Danish law and based on the reasons expressed by the High Court in its decision of 19 June 1991 cannot in itself be regarded as an unjustifiable delay. However, the Commission recalls that delays which in such circumstances occur in the criminal proceedings, and thereby prevent the civil proceedings from pursuing their course, may lead to the conclusion that the latter did not proceed with a reasonable speed (cf. Eur. Court HR, Motta v. Italy judgment of 19 February 1991, Series A no. 195-A, p. 10, para. 17).

In the present case the Commission recalls that the civil suit commenced in the High Court on 18 April 1990 and that it was adjourned on 19 June 1991 following a hearing on this point. The Commission does not consider that this period discloses unacceptable delays. The civil case remained adjourned until 9 March 1994 when judgment was pronounced in the criminal case. Although it involved a period of approximately two years and nine months it is undisputed that no delays occurred in the criminal case which could give rise to criticism.

Finally, as regards the remaining period until 21 March 1996 the Commission recalls that the applicant needed approximately five months to submit his observations following the judgment in the criminal case and that the case was adjourned for a certain time due to the presiding judge's illness.

In these circumstances, and making an overall assessment of the length of the proceedings in the light of all available information 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 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 also complains that he was barred from peaceful enjoyment of his possessions as long as the civil suit against him was pending and that it caused him a significant financial prejudice. He invokes in this respect Article 1 of Protocol No. 1 (P1-1) to the Convention which reads:

> "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 Commission considers that any negative repercussions an excessive length of the proceedings may have on an applicant's enjoyment of his or her property may be taken into consideration only for the purposes of the just satisfaction which an applicant may obtain following the establishment of an infringement of the right to a hearing within a reasonable time guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention by the organs upon which the Convention confers that responsibility.

In the present case the Commission recalls its finding above that the applicant's complaint of an excessive length of the proceedings does not disclose any appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention. Furthermore, the Commission has not found any other substantiated facts which could lead to the conclusion that the respondent Government has interfered with the applicant's rights under Article 1 of Protocol No. 1 (P1-1) to the Convention.

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, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

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