

II. STATEMENT OF THE FACTS, 14.0.1, INTRODUCTION

Page 1.

The raid, seizure and arrest

On the morning of the 31st January 1980, The Special Public Prosecutor for Particular Economical

Crimes in Denmark (Statsadvokaten for Særlig Økonomisk Kriminalitet, hereafter referred to as SØK or the Special Prosecution) together with officers of the Revenue carried out a military style operation against a private Danish company, Scandinavian Capital Exchange (SCE) and its Directors.

More than 35 persons from the Special Prosecution, the Revenue, Customs and Excise and an auditing firm were involved with the operation.

The raid took place on 4 office addresses belonging to SCE in Copenhagen and the private homes of Mogens Hauschildt (MH) and Carl Erik Rasmussen (CER).

In addition to the search on the addresses permitted by the warrant, search and seizure of documentation was conducted on several other location, such as SCE's legal advisor's offices: advocate Kristian Madsen and the company's legal counsel: H. J. Utzon-Sørensen's offices, SCE's outside auditors and with SCE's and its subsidiaries banking connection in Copenhagen.

MH and CER were both arrested at home and taken to the offices of the Special Prosecution and interrogated all day and night. Both persons refused to have committed any violation or wrongdoing.

The Special Prosecution and the revenue seized all papers (correspondence, ledgers and account books, files) in addition to personal belongings (private correspondence etc.) all cash, cheques, bullion and precious metals, gold coins, various art antiques. SCE banking premises were closed and the staff told to leave.

The Warrant

The day before the raid, the Special Prosecution had a warrant issued by the Copenhagen Municipal/City Court (Københavns Byret) contesting that Mogens Hauschildt (Managing Director of SCE and several other companies in Denmark and outside) had violated the Danish law with tax evasion during 1976/1977.

The alleged violation was in connection with a Swiss company: M. Hauschildt & Cie, Zurich (M.H & C) an unlimited partnership, established in 1975 by MH and Bryan Jeeves the British Consul in Liechtenstein. During 1976/77 MH received a loan from M.H. & C., for the amount of Sfr.450.000, which the Danish Revenue later (without MH knowledge) contested, was income, and not a loan repayable.

The warrant gave the Special Prosecution and the officers from the revenue, the right to search and seize documents related to the above mentioned alleged tax offence which alone related to MH personally.

The Media Coverage

Although everything was highly secret and the warrant was issued "in camera", it is evident that the Special Prosecution wanted to create maximum media coverage of the event, in order to obtain an avalanche effect.

SCE was a financial service company, which foremost had to operate on the basis of trust and faith from its customers, any type of "official" investigation into the company, could only be very serious and possibly detrimental.

Despite this, the Danish state-run television and broadcasting company was forewarned of the event, when SCE's banking premises were raided, the television was recording everything. Not only was the radio broadcasting every hour on its news, as to the raid and arrest, but it was also shown on the main television news program that evening, when practically all people in the country were watching. The result was inevitable.

The major newspapers and news services in Denmark was likewise informed, as to the event and provided with various misinformation.

The day after the raid, all the Danish newspapers mentioned the event with large headlines, including interviews with the senior officers from the Special Prosecution.

Nearly all the headlines were very scandalous and detrimental for SCE, its customers and owners. The major financial newspaper Børsen used a whole page on the event, with the following heading: "Bullion dealer accused of the tax evasion- the police close Scandinavian Capital Exchange". The Police Commissioner Mogens Kanding from the Special Prosecution stated to the newspapers: "*We will go through all the material seized and especially concentrate our efforts on the companies' invoices to its customers,*

in order to check those customers' personal tax declarations to the Revenue".

The two largest newspapers Berlingske Tidende" and Politiken, included interview with the person in charge of the Special Prosecution: Prosecutor Finn Meilby, who said: "*We have found material and documentation which confirm our previous knowledge about the companies. We have searched this case for a month and also due to the substantial speculation in precious metals, our attention was made to examine and investigate SCE and with information received from the Revenue and the Customs and Excise, we have found grounds for the accusation of tax evasion*".

Jyllands-Posten, another major daily, referred to an interview with Mogens Kanding, who stated: "*We have investigated SCE since its start (1974/75) just to see what the company did. From around 3 weeks ago, our work was intensified by our own initiative. We have not received any request from others or any complaints of wrongdoing*". Despite this statement, asked by the journalist: If the only matter is tax evasion? Mr Kanding answered: "*Yes as yet*".

SCE Closure

Since SCE was established in 1974/75, it had circa 0,2% of the nation's population as customers, 10% of these customers were directly affected by the event.

In view that the Special Prosecution had closed SCE's offices and told the staff to stay away, anxious customers were forced to telephone the Special Prosecution, as to any information on the companies. Already on the day of the raid, customers who telephoned the Special Prosecution were told: that they should not expect to have their contracts with SCE fulfilled, since the companies had no money — it was all fraud. Such a statement was slanderous, prejudicial and truly incorrect. The only objective with such lies could be to enhance the interest of the Special Prosecution, to justify the "public" raid and the action already taken, without any consideration to the truth and the customers' financial interest. When the Special Prosecution knowingly deceived the customers and the media from the start it must be seen in relationship to, that it was the Special Prosecution who according to their own statement had instigated the "case", that MH was subject to intensive questioning and thereafter in solitary confinement. Neither he nor anyone else could provide any alternative statement to the media; MH was prevented from making any contact with SCE's legal advisors or any senior executives.

The warrant mentioned expressly that it was MH alone, who personally was suspected for tax evasion and the seizure was related to documentation related to such offences. However the seizure was not limited to those things authorised by the warrant, but the raid and seizure effectively closed the companies. The means adopted by the Special Prosecution and other authorities were such that they offended against the personal freedom and privacy of the individual, and the elemental rights of property.

The Special Prosecution

The Special Prosecution in Denmark is a rather special authority established in 1972/73 with the intention to deal with more "special" violations which were not directly included in the present law, but could be considered politically unacceptable. By bringing cases to the courts and thereby providing precedence for the future, the true purpose was pursued by this very special authority, which according to the statement by its chief Finn Meilby "is the only kind in the world". The Special Prosecution embody both the Police and Prosecution, whereas the police in Denmark (as in most other countries) are segregated from the prosecution. They can in effect control a "case" from start to finish, by instigating, investigating; prosecuting an "alleged violation".

SCE and its activities

SCE was the largest bullion dealer in Scandinavia with associated companies in Sweden, Norway, Holland, England and Switzerland. SCE ApS was formed in 1974, however due to the Danish Ministry of Trade and the National Bank did not permit the company to import capital from its Swiss parent company and the urgency for this, since the company lost large amounts on dealings during the autumn of 1979, another company was formed.

SCE A/S

This company: Scandinavian Capital Exchange A/S (SCE A/S) was established on the 15th of November 1979 with one million in Danish Kroner in paid up capital, however at the time of the event, the Company Register had not yet registered the company, because the Special Prosecution and other authority had given instruction to hold back such registration, thereby holding the initial promoters responsible with all their assets. During the ten weeks this company was in operation, it was very profitable and received investments of more than 55 million and 22 million cash, in Danish Kroner.

The old company SCE ApS was still in operation; however it did not enter into any contractual obligations, but received income from the new company.

In addition to the acting as a bullion dealer, SCE had other subsidiaries and provided a comprehensive financial service. The companies' sale of precious metal in Denmark in form of bars and coins amounted to over 85 million Danish Kroner (US \$ 16 million) in 1979.

The background

The roots of the event which took place on the 31st of January 1980 were established well before this action and were based upon the Danish authorities concern for the relative large amount of money, which was invested by investors in precious metal and other tangible assets. Such investment was opposed to financial assets. The authorities concern was rooted in the belief that investors not only could "white wash" their money, but also, due to non-registration of their investment, avoid paying income tax on their respective profits.

The Danish authorities, through the Revenue, the National Bank, Customs & Excise and the Ministry of Trade, had since the start of the companies, tried to quash the companies, its management, and its customers by harassment and restrictions. Despite of this, the companies had budget a sale in 1980 of 360 million in D.Kr. in Denmark.

The deferred delivery

In 1978 the companies started to sell precious metal on a deferred delivery basis (margin), with an initial contract for a period of 12 months, but extendible up to 60 months. The customers paid only 1/10 – 1/3 of the contract value; thereafter they have various option and rights. Danish residents are not permitted to speculate on the terminal markets in London and New York, however the company could as a dealer and merchant from time to time hedge its obligation, although the National Bank made various restriction.

The silver price

SCE sold mostly silver of the precious metals, the silver price rose from less than \$10 per troy ounce in August 1979 to a peak of \$52 in the spot market, on the 17th of January, 1980. The subsequent fall in the price of silver reached a low of \$10.80. At the time of the raid on SCE, the price had fallen to \$30.

Different customers' interest

Until the raid, SCE had fulfilled its entire interest obligation, either by making a cash settlement or delivery of goods, alone depending on customer's requirement.

All customers who had made purchases in SCE A/S had paid a price for the silver, which was much in excess of the price on the 31st January 1980. These customers therefore owed money to the company, since they had paid only 1/10 - 1/3 of the value of the contract. SCE had alone planned to make margin calls for 10 million Danish Kroner plus, the day after the raid; however this did not take place due to the event.

Customers in the old SCE ApS had made purchases when the silver price was much lower and had a direct interest in that the company continued by receiving an income from due new SCE.

With nearly all people in Denmark an audience to the event, viewing the affair on television, and the press uncritical adopting all information given by the Special Prosecution, there was in affect - no way back for the authorities. It was important to entice SCE's customers in order to have some making complaints to the police. Furthermore it was very advantageous for the large group of SCE's customers who owed the companies considerable money, to exploit the situation, they could only gain by any disfavour able development - if it could be made out that the companies had any criminal intent, their contracts could be cancelled, thereby saving these customers many millions.

There can be no doubt as to the public and customers coming to a false conclusion about the event, whereas some had a direct interest in a down fall for the companies, others were truly misled by the media. This cannot be blamed because of such newspaper headlines as Jyllands-Posten's "Danish firm accused of fraud with precious metals" could only be misunderstood. Furthermore during the days following the event, practically all newspapers in Denmark printed all types of "wild stories", including that MH had planned to leave for South America just before the raid. Five days after the event a 40 minute television programme featured SCE. A programme which was very prejudiced since the companies' management could not take part to comment. In the weeks following the event, front page headlines such as "The Biggest Fraud of the Century, a Milliard Danish Kroner Swindle" were normal and did not provide a fair picture of the truth. Neither did the Special Prosecution permit MH to comment on his defence to these accusations made by the media from his solitary confinement.

The day after the raid, MH was accused of fraud in connection with alleged criminal insolvency of SCE ApS, the other director was released. MH was incarcerated in solitary confinement, where he was to remain for a very long time despite MH and all lawyers associated with the defence contesting that no violation had been committed. The events which followed, including many features, reflected an illegal and excessive use of power.

- MH was incarcerated in solitary confinement for 309 days and nights. He was subjected to considerable harassment and mental torture.
- MH was first charged and indicted more than 12 months after the arrest and raid.
- MH was the person who has been longest incarcerated before sentence for the last 320 years in Denmark.
- First, after nearly 175 court hearings and nearly 3 years, a sentence was passed by the Lower Court. Prior to this the head of the Court had 40 times rubber stamped MH the decision of incarceration on remand.
- MH was never indicted for tax evasion, but sentenced for fraud in connection with not fulfilling the companies' contractual obligations with its customers.
- MH and his defence were prevented from working under proper conditions with the defence and refused permission to have 90% of the people, whom are included in the case, examined and present to testify during the proceedings.
- Prior to the judgement at the lower Court many thousands of newspaper articles have been published, television and radio programmes have been broadcast — nearly all prejudiced and containing slanderous information.
- Out of Denmark's 300 judges, nearly 1/3 has been directly or indirectly involved in the case and has made decisions and judgement. Before proceedings at the High Court had commenced 35 judges had been directly involved with decisions as to MH.
- Many hundreds of SCE customers have been subject to proceedings by the Revenue, based on material seized from SCE. SCE had 0.2% of the Danish population as

customers, of these; 10-15% became involved directly with the event.

- MH and his defence did not know the content of the main charge and the Prosecution refused to provide a classification and definition of the alleged violation. Three of the charges related to attempted violations during the period of solitary confinement.

- The Special Prosecution ignored the law and was responsible for - destruction of seized materials and papers - circulation of these and false allegations, - concealment of important information and evidence, - harassment and menace.

- The Courts likewise ignored the law and were responsible for - manipulation with witnesses and court records, - fraternisation with the Special Prosecution, - not giving the defence and MH proper working conditions or resources, - permitted the Prosecution to use mental torture, extortion and harassment causing tragedy and suffering.

- MH and all legal counsel involved with the defence consistently claimed that no doing or illegality had taken place within SCE before the event. However MH remained incarcerated for the fourth year after appealing against the lower Court sentence.

As an example of the factual situation MH was in after 1000 days incarceration the following proclamation should speak for itself:

A PROCLAMATION OF FLAGRANT INJUSTICE IN THE STATE OF DENMARK' — OCTOBER 27th 1982.

1000 DAYS INCARCERATED WITHOUT CONVICTION OR JUDGEMENT

I, the undersigned hereby accuse the two former Ministers of Justice, Henning Rasmussen and Ole Espersen and the present Minister, Erik Ninn-Hansen, for the responsibility of blatant miscarriage of justice, by direct participation or passive acceptance.

During the last 1000 days (and nights) I have been incarcerated 23-24 hours per day in a cell (8m²); I have neither been convicted nor received any judgement. Furthermore the alleged offence I was arrested for - tax evasion - has I neither been charged nor indicted for. There is absolutely no evidence that I have committed any

offence, and I am blameless of the Prosecutions intrigues and innocent of all charges.

I was locked-up in solitary confinement during more than 300 days and was subjected to mental torture and considerable suffering. All the methods used are against the Convention of Human Rights.

On the 31st January 1980, the Special Danish Public Prosecution for Particular Economic Crimes (SØK), arrested me, and at the same time raided my companies' offices, without having received any complaints.

All this was seen on the state-run television the very same day. The raid was pre-planned by the fiscal authorities, months ahead, because the aim was to create embarrassment and disarray with mistrust among investors in precious metals and other tangible investments. Therefore it was important to cause maximum losses for the investors and companies, by the use of the media, providing false allegations, lies and general cover-ups of the truth e.g. that Mogens Hauschildt being incarcerated in solitary confinement.

The allegation for tax evasion, which was "used" to arrest me with, was manufactured by the Authorities in order to legitimate their illegal action and abuse of power. The allegation was fictitious and never resulted in any indictment.

From the first day of this miscarriage of justice, there has been a closed conspiracy between the Prosecution, which have themselves "created" and thus instigated the case, the fiscal and financial authorities in Denmark, the Courts and the Ministry of Justice, The Prosecution (SØK) have been in full control and I have, as the Professor of Law, Ole Krarup, has said: "*played chess blindfolded*". The Special Public Prosecution (SØK) has regularly ignored the law and is responsible for:

- Manipulation of witnesses.
- Destruction of seized materials and papers etc.
- Execution of mental torture.
- Circulation of lies and false allegations to the media.
- Falsification of accounts and reports.
- Concealment of important information and evidence.
- The raid itself which closed the companies and created considerable losses

- Blackmail, extortion, harassment and menace.

I have been prevented from any defence and the Copenhagen Municipal Court has, with its Judiciary Judges, been regularly able to ignore the law. Judge Claus Larsen has been directly responsible for:-

- Manipulation with witnesses and court records.

- Rubber stamped the Prosecutions use of mental torture, extortion and harassment.

- That the accused and the defence have not received reasonable working conditions, means and general fair treatment.

- To refuse the examination of more than 90% of the people who are included in the manufactured case and whom the defence wished to be brought to the trial hearing.

- Fraternisation with the Prosecution during the trial.

- To permit that the prosecution never provided the accused and defence with a clarification and definition of the allegation and the indictment.

- To refuse the accused the possibility to rectify the enormous amount of lies and false allegations made by the media.

- To permit that the Prosecution be able to create millions of Kroner in losses, causing tragedy and suffering to many people.

There exists no concrete evidence that I have committed any violations or any wrong doings prior to my long incarceration. Although I have participated in 170 Court Hearings, I, nor my experienced defence, have even to this day any knowledge of what I possibly could have done wrong. The Special Prosecution have used 100 Court Hearings during the trial itself, to justify and substantiate their conspiracy and their abuse of power. My previous defence said in the Court: *"That the prosecution could as well hold their "Court hearings" at their own offices without the Judges, defence and the accused - the result would be the same."*

My present defence has said to the Court - *"I feel I have been reduced to a defence counsel in a Russian Military Court"*.

How can such things happen in Denmark? It is only possible because the Special Prosecution is a combination of Public Prosecution and Police, without any control and placed under the Ministry of Justice. This Ministry of Justice appoints the Judges from its own ranks and

they must give permission to the defence if they wish to appeal to the Supreme Court which, in turn, considers all complaints about the Prosecution and indeed the Court proceedings. Hence their power is total and complete.

Irrespective of what conclusion the Judges at Copenhagen Municipal Courts & Department will reach, sooner or later a miscarriage of justice is an irreparable factor, a factor which reflects the law and order in Denmark today. A country's reputation stands or falls on its law and order.

Mogens Hauschildt (signed)