

## II. STATEMENT OF ALLEGED VIOLATION, 14.4. COMPLAINT D.

This complaint entails several alleged violations which all relate to the question of fair trial, and include many aspects of the whole case, where MH has the normal rights to be:

- presumed innocent until proven guilty,
- entitled to a fair trial with independent and impartial judges,
- given the right to examine witnesses against him and obtain the attendance and examination of witnesses on his behalf.

The whole background and the nature of the case deprived MH from these rights. From the day of the issue of the warrant to seize document, abuse of power was evident. It was not the warrant itself but how it was used. After years' of pre-trial incarceration MH had the burden of proof, as to being not guilty, however the authorities prevented MH from a proper defence and his rights and proofs as to his innocence.

The trouble is that the legislation is drawn so widely that in some hands it might be an instrument of oppression; this is the essence of the Danish Special Prosecution and the Revenue. Once great power is granted, there is a danger of it being abused. There can be no doubt that this was the situation when MH and his companies (and indeed the companies' customers) became "a case" for the authorities.

The whole question of a fair trial must be seen on a background of:

- Denmark being a very small society with very effective communication and one state-run television station and broadcasting corporation.
- Denmark has a very liberal press law
- That 0.2% of the Danish population were customers with the companies (SCE) and of this 10-15% (800 plus) became directly involved with the closure. All these people have friends, family and neighbours.
- That it were the authorities who instigated the "case" which was very committal in itself especially when so much money were used by the authorities.
- That 1/3 of all Judges in Denmark became involved (both directly and indirectly) before the case came to the High Court and that 10-15% of all lawyers has had involvement in the case and its civil and fiscal aspects.

- That the Danish Ministry of Justice not only control and appoint the members of the Courts and Prosecution but that nearly all judges are appointed from their own ranks. As an example several judges of the High Court which will deal with the case, have, since the start of this case, been appointed from the Office of the Special Prosecution.
- That the Special Prosecution could not only instigate the case but control the investigations and conduct the prosecution with sovereign powers. The very large resources used by the Special Prosecution which included a two digit amount in million Kroner made obligations to obtain a conviction.

With this background one must look at the other elements and claims which are closely associated with a fair trial and MH being presumed innocent.

Presumed Innocent/Prejudicial factors:

- a. The enormous media coverage was partly due to information provided by the Special Prosecution.
- b. The companies' liquidation and the collapse resulted in considerable losses.
- c. The vested interest of several groups of people - including customers who owed money to the companies - the Authorities who were "committed" after the initial action and the various commercial competitors in Denmark who directly benefited by the event.
- d. The very long isolation in solitary confinement and incarceration before the first sentence were committing to the responsible.
- e. The trial itself with the many procedural irregularities and defects (see Complaint E and Alleged Violation E).
- f. The incorrect and highly slanderous and prejudiced information and reports given by the Special Prosecution to the Authorities outside of Denmark, in order to seize documentation and assets.

Factors concerned - a fair trial:

- a. The Judges: The judicial Judge Claus Larsen in charge of the proceedings had, prior to the judgement, made more than 40 decisions as to keeping MH incarcerated and more than

30 other decisions in favour of the Prosecution. Of the Lay-Judges the two house-wives remained throughout the trial, but, the only person with some professional insight, left the trial after 14 months and immigrated to France.

- b. The most concerning factor was the constant fraternisation between the judges including the Lay-Judges and the Special Prosecution during the trial. Although it was unavoidable as such during the more than 100 hearings, that some social intercourse should have taken place, it was rather remarkable how much, especially, when the defence was not present at such gatherings.

#### Procedural irregularities and defects

- a. The applicant and the defence contest that the judicial Judge, Head of trial, deliberately, and on many occasions, made incorrect dictations to the Courts records.
- b. MH and the defence were refused permission to obtain attendance and examination of witnesses on MH's behalf to meet with the same conditions as the witnesses against him.
- c. MH was refused permission to examine witnesses against him. Of the approximate 800 customers, who were included in the indictment and in the lower Court Sentence, only 10% were permitted to testify during the trial.
- d. Neither the defence nor MH were aware as to the content of the prosecutions main charge, despite requests by the defence. The Prosecution and the Court refused to disclose the nature of the offence. Neither MH nor the defence had the slightest idea what offence or offences they had in mind at any time before the prosecutions summing up after 18 month's trial.
- e. Despite that MH was having severe headache and migraine attacks, which rendered him unable to think and listen. He was several times dragged into the Court by force and although his condition was obvious the proceedings continued with witnesses testifying for hours.
- f. MH and the defence were denied resources to conduct an independent audit, whereas the prosecution

instigated an audit which cost in excess of 4 million Kroner. The defence was restricted and as such used less than 2% of that amount to the defence audit.

- g. MH was directly ignored as to many comments which were not taken into the Courts records. Furthermore he was refused the right according to the Danish Judicial Law §870 part 2, which gave him the right to comment to the Courts records after each witness, had been examined.
- h. Three of the charges, which resulted in a sentence, related to attempted offences committed during MH's long period in solitary confinement. The offences consisted of various statements and plans made in writing, plans which were totally unrealistic and reflected MH's state of mind at the time - in isolation.
- i. The defence itself felt many times during the proceedings that it was treated as an accomplice and accessory party to the alleged offences by the judicial Judge in charge of the proceedings.
- j. The accusation of alleged tax evasion, which was the reason for MH's arrest and the whole event, never resulted in any charge or indictment and no question as to this was ever asked by the Court.
- k. The defence and MH had considerable difficulties to receive information and data from the prosecution during the trial. Very important data required, took up to a year to be received, and, indeed some data came too late to be of use for the defence. Neither MH nor the defence were given proper resources and facilities with access to the seized material (see Complaint E.)