

**III. STATEMENT OF ALLEGED VIOLATIONS OF THE CONVENTION,
15.2. Violation B.**

The Conventions

Without prejudice, any other contention as to other Convention, it is the applicant's contention that the following articles have been violated by the Danish Authorities:

- A. The International Covenant on Civil and Political Rights, 16th December 1966, (New York).

Article 9.3.

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."

Article 14.3.

"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(c) "to be tried without undue delay".

- B. The Convention for the Protection of Human Rights and Fundamental Freedom, 4th November 1950, (Rome).

Article 5.3.

"Everyone arrested or detained in accordance with the provisions of §1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial".

The violations MH were not tried without undue delay, nor were he released when such delays became evident to the Court.

Not only was MH subjected to a historic length of incarceration before sentence, but he was also on a day by day basis deprived of the equality and fairness of Law. The incarceration prevented him from a proper and fair defence, and the same time reduced the Court's and the authority's objectivity. They became committed by their previous decisions taken and MH's incarceration itself became a constant reminder that results had to be obtain by any means.

The Court constantly ignored the defence's argumentation and contentions as the length of the proceedings at the Lower Court.

The defence was partly responsible for some delays, since the considerable amount of evidence against the prosecution's contention together with all the witnesses which the defence requested to testify, should have been presented to the Court. However this surely cannot be blamed on MH, the accused, he must be entitled to a proper defence. The main issue is that the Special Prosecution insisted on keeping MH incarcerated and at the same time deliberately misinformed the Court and indeed the public through the media, as to the correct time involved with the trial. In addition to this, the prosecution and the Court appeared to have deliberately missed planned the proceedings; many court hearings were cancelled and badly arranged, without any consideration to MH's incarceration.

With regards to the defence requirements, surely the defence cannot be forced to reduce its defence due to the fact that a client is incarcerated? It had indeed been a point which the defence in this case was forced to consider, where MH was kept incarcerated as a hostage for the authorities past action. It also appears that the Court slowly became a hostage of its previously made decisions, because the various delays and decisions were pleaded by the prosecution for various reasons each time. Prior to the judgment the judge Claus Larsen had made 40 decisions of keeping MH incarcerated, thereby committing him and somewhat bound/ obligated by his previous made decisions. This must be soon in connection with the considerable media attention focused on the case and the considerable costs to the Danish taxpayers.

The main contention by the prosecution as to MH's incarceration relates to a rather special Danish phenomenon of Law and included in the Danish Administration of Justice Act, it is called "Retshåndhævelsesarrest" enforcement of law arrest - in effect a punishment prior to sentence. When the High Court considered the

defence notice of appeal in September 1980, as to keeping MH incarcerated in pre-trial detention, the High Court brought this enforcement of law arrest into the decision. At that time nearly a thousand newspaper articles had effectly stamped MH as a big criminal and convicted him. Many of these articles were created by the Special Prosecution and with MH in solitary confinement; neither he nor the defence could do anything. In other words, after that the prosecution had created an image as to MH, the High Court 8 months after the arrest decided to use this section of the Judiciary Law, which normally relates to the opinions of the public. Although the applicant has not at this time made any contentions as to this specific point, according to various politicians' view this section of the Danish Law is directly against Resolutions of the Council of Europe.

The other contention by the prosecution has been that MH will leave Denmark or escape. Since MH had been in solitary confinement in 1980, MH has shown no interest in making any escape, just the opposite. In view that MH was subject to inhuman treatment imposed month after month, and plead innocence which is also the defence contention, it is hardly difficult to understand, that he made some theoretical plans of escape, however MH did not in any way carry out such plans and never made attempt to escape. Such escape is not uncommon to succeed at the prison where MH is incarcerated.

The defence had evidence that MH had absolutely no intention of escape; the evidence consisted of various letters written by MH and smuggled out from the prison.

These letters were written on an IBM typewriter which was seized in June 1981 from MH's cell, by the Special Prosecution. In view that it is possible to see all the letters written on this typewriter, due to the ribbon used, the defence asked the prosecution and the Court for a transcript of the letters, the previous year, such transcript was used as evidence by the prosecution, however now the Court was told "that the typewriter ribbons/ cassette were lost at the prosecution's technical department." In other words, the Special Prosecution had instigated a raid on MH's cell at the prison, and then found evidence which did not benefit the prosecution's contention, which resulted in that this evidence just got lost.

At the outset of the proceedings, it were clear that the trial could take a long time, however the Court did not consider this and chose to ignore this an follow the argumentation of the prosecution,

thereby MH 's rights to be tried without undue delay or be released, were violated.

It is the contention, that the use of incarceration has been deliberately enforced and requested by the prosecution to enhance their case and step by step, legitimate the enormous use of resources and the actions taken. The result was evident beforehand.

In view that the defence succeeded at the High Court in April 1981, to get two defence counsellors appointed it became possible to hold many more court hearings, then the average 5-6 a month, which in effect were held. In other cases, where the accused not even were incarcerated, it has been possible to hold up to 4 hearings a week. It is the applicant contention that the prosecution had planned from the start of the case to drag the trial and at the same time keep MH incarcerated - thereby enforcing arbitrarily justice and pre-trial punishment.