

### **III. STATEMENT OF ALLEGED VIOLATIONS OF THE CONVENTION, 15.3. Violation C.**

The Convention

The International Covenant on Civil and Political Rights of 16th December 1966, Article 11.

"No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation".

Alleged Violation

The warrant which resulted in MH's arrest and the raid on the companies was based on alleged tax evasion. This event alone together with the prosecution's seizure of the companies' assets and files caused an effective destruction of the companies. Since the event was subject to extensive media coverage on the state-run television and in the newspapers, coverage created by the Special Prosecution, it was impossible for a financial service company to continue. All its assets and files were seized, staffs was requested to stay away and various disinformation, including false and slanderous statements appeared throughout the press, mostly originating from the Special Prosecution, which instigated the event.

In addition to the above, MH was incarcerated in solitary confinement, prevented from instructing any of the companies advisors, his staff or legal representative.

The Special Prosecution directly incited customers to complain of possible wrong-doings. This took place by direct contact, telephone and through the media. Furthermore customers were urged by other authorities, such as the Revenue, to report of possible criminal intent, in connection with the company's contractual obligations. Despite that more than 800 customers, did become involved in the closure, only very few have later made such complaint to the Special Prosecution.

Although the warrant was based on alleged tax evasion, and effectively used to close the companies with, MH has never been indicted for such an alleged offence, but was kept incarcerated because of the companies inabilities to fulfil the contractual obligations to their customers and MH was sentenced for fraud at the Lower Court. Neither MH nor the companies were in a position to fulfil the contractual obligation, after the raid and arrest, a *non possumus* situation.

The effect of the raid seen on a television screen was obvious and predictable, but detrimental to the companies' customers and owners.

Considerable facts were concealed to the public and the customers. Furthermore, since all the material, files and accounting records were seized and not available to MH during the Commercial Court proceedings, the bankruptcy and compulsory liquidation was predictable prior to the event.

According to reports from the Special Prosecution a delay was created with the Company registration office, which not only helped the negative situation created by the event, but also made it possible for a large group of customers to claim their money back, despite the money being lost on speculation, which they themselves had by their own instigation.

During the proceedings the defence contested that no violation had been committed by MH and the companies, and furthermore, that it was legal opinion that not even the civil and commercial law was offended in any way by MH and the companies.

The last mentioned fact was also the conclusion of the legal counsel engaged by the Swedish Prosecution, after the Lower Court in Malmø, Sweden, had acquitted SCE's associated company's Directors in Sweden. Two highly respected Professors of Law considered the standard conditions of SCE's Deferred Delivery Contracts and their content, as to the companies' obligation of purchase, and concluded that MH as the companies Director had acted in accordance with the contractual agreement with the customers.

The applicant maintains that the documentation in hand clearly proves that the Article 11 of the Convention has been violated by the Danish authorities against Mogens Hauschildt. The violation has taken place since MH has already been subjected to pre-trial imprisonment on the grounds which in effect first became evident, when a sentence was past at the Lower Court. These grounds relates to the company's inability to fulfil a contractual obligation with their customers.

Although that this Lower Court sentence has been appealed MH has de facto been imprisoned on grounds originating in the company's inability to fulfil contractual obligations.

During the proceedings, it were evident that a few of the companies customers had not only been enticed, after the event (raid, arrest

and seizure) to make complaints to the prosecution, but that such complaint solely were connected with the non-fulfilment of contract. There is not any documentation involved, which could possibly be misleading to the companies customers, in other words, the so called fraud do not manifest itself in fraudulent material from the companies, such as contracts, marketing material or advertisement.

This non-fulfilment of contract, was extensively used by the prosecution during the proceedings, because it was "proof" of criminal intend – de facto where the customers had not received fulfilment by cash or goods. As can be seen from the Court's records, the prosecutor asked each customer testifying: *"Have you received fulfilment of your order/contract with SCE?"* and thereafter *"Do you feel that you have been defrauded by the companies since they have not fulfilled their obligations?"* When the Special Prosecution was contesting fraud by non-fulfilment, it was rather obvious that some customers (20-30%) of those testifying answered positive to this, most of these also had direct cash benefits if SCE was seen to have any criminal intend. That the truth was that the companies had been closed by the prosecution and as a result of this it was impossible for the companies (or MH) to continue to fulfil obligations was another matter. The responsibility for the non-fulfilment was alone contested to be MH's.

The business procedure within the companies was the same as other bullion dealers outside Denmark. Most contractual agreements were entered into as principal where SCE as a dealer/merchant should undertake the delivery within a certain period, delivery of bullion, silver and platinum or various other commodities. The company's Standard Business Conditions provided details of all the facts. In this connection it is of interest that the Swedish prosecution's counsel opinion confirmed that MH and the companies had fulfilled its obligation according to contracts undertaken prior to the arrest.

Various court decisions in Denmark has already made a clear precedents of law, which normally would be to the benefit of the companies and MH 's contention, however in this case the courts have in fact made just the opposite decisions. The Lower Court has directly ignored the normal precedents of judgment, as to the basis on which the companies entered into agreement with its customers and the common procedure within the trade and business. As late as in June 1982, the Eastern High Court (case no 103/1981) made a decision which in effect is contrary to the grounds on which MH has been convicted. Neither MH nor the companies would have been

convicted of any wrong doing or offence, if this High Court decision applied to MH and SCE.