

**III. STATEMENT OF ALLEGED VIOLATIONS OF THE CONVENTION,
15.4. Violation D.**

The Convention

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 of 16th December 1966.

Article 14.1.

"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law

Article 14.2.

"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law"

Article 14.3. (e).

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

- (e) To examine, or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

- B. The Convention for the Protection of Human Rights and Fundamental Freedoms, 4th November 1950.

Article 6.1.

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law

Article 6.2.

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

Article 6.3. (d).

"to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

Article 10.1.

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers "

Trial by newspapers

As to the extensive media coverage Denmark give considerable freedom to the press and have very liberal laws of libel and of contempt of court. This fact in itself does not constitute a violation of the Convention. However, these very liberal press laws were deliberately used by the Danish authorities, as a tool and thus used to conduct a trial by newspapers. The television programmes, the broadcasting programmes and the thousands of newspaper articles prior to the sentence at the Lower Court, effectively convicted MH together with the fact that he had remain incarcerated for so long that the public thought "that he must have committed something, otherwise why incarcerated for years?".

The media was one of the most important factors in the "success" of the initial action taken i.e. the raid, seizure and arrest. Unless it was possible to get the press involved in such a way that customers would be anguished and anxious as to their investments and purchases, it would not have been possible to keep MH incarcerated, or, to justify the "heavy" action taken with the companies closure.

It is very clear that the considerable large amount of press coverage during the period where MH was in solitary confinement was not

only for most large in quantity but exceptionally striking in the content.

In view that MH was confined and prevented from commenting to the media about the many numerous allegations and that the Courts restricted the defence and that statements and interviews with officials from the Special Prosecution were applied in such a way, that all of these points collectively created a "trial by newspaper" with real and substantial prejudice. No counterbalances as to MH's interests were evident.

Falsification of bankruptcies

In view of the evidence available it appears that it was imperative for the Authorities and the Special Prosecution to get the Danish companies wound up, this action constitutes a prejudice in that such irregularities took place:

- The formal registration of the new company (SCE A/S) was deliberately delayed by unnecessary actions according to reports by the Special Prosecution, therefore making MH personally responsible.
- During the proceedings at the Commercial Court MH was directly prevented from proving the factual situation of the companies, by not having access to the seized material.
- The very important auditing report produced by the Special Prosecution during February and March 1980, which clearly confirms MH's claims to the Court, were never made available to MH and the Commercial Court at the time. Neither was the Supreme Court given this data when the Court considered the appeal in May 1980. This resulted in the Supreme Court having insufficient and incorrect data at their disposal during the hearing.
- MH was prevented from a fair representation at the Commercial Court by not having any civil defence during the first seven weeks and actively prevented from any contact with the companies advisors, thereby causing considerable losses. Furthermore MH was prevented from participating in some hearings at the Commercial Court despite his right to attend.

Although several of the above mentioned alleged violations are subject to appeal and proceedings at the High Court, which will commence in August 1983, it is the contention of the applicant that serious violations has taken place which can't be corrected by the proceedings at the High Court. MH and the defence have pursued many of the above mentioned facts and claims before national authorities, however, without any results.

Suppression of information to the public

As to the question of the enormous amount of newspaper articles which were prejudiced and slanderous it is the contention that MH's rights according to the Article 10 of the European Convention (Freedom of expression) was violated. MH's previous defence (Jørgen Jacobsen) asked the Court for permission to publish his and MH's comments to the press in answer to their numerous allegations, lies and "stories". The Lower Court however constantly decided against this. When MH and his defence did not get permission in July 1980 by the Lower Court to make MH's statement and letter to the European Commission of Human Rights made available to the public, this was appealed to the High Court which confirmed the Lower Courts decision. Both these questions and others related were taken to the Ministry of Justice and refused consideration at the Supreme Court.

In view that MH's and his defences rights were deprived, the rights to impart with information and ideas made indifferent by the Public Authority, MH's freedom of expression was violated. In a case such as this there must be a balance of relevant consideration, the weightiest consideration is the accused - MH, thereafter the public.

Where officials from the Special Prosecution freely could make regular statements to the press, MH and his defence were prevented from this. On the very few occasions where the defence took upon itself to make statements to the media, it were restricted to comments on MH's general treatment as to the incarceration and not convent related to the many slanderous allegations published.

The Judge

In the contention that MH's did not have a fair trial, the judiciary judge Claus Larsen, at the Lower Court plays an important role. He was responsible for all decisions at the Lower Court from April 1980 until the judgment in November 1982. All decisions were in the favour of the prosecution and there were more than 70 decisions against the defence, even the decision not to permit MH's two defence counsellors. It was the High Court, after the intervention of

the Law Society, which decided in favour of the defence and against the prosecution and judge Claus Larsen's decision.

The fact that the trial was preceded by the same judge, who was responsible for MH's long pre-trial incarceration, prevented a fair trial.

The lay judges

As to the two lay judges who took part in the trial, after 14 months of proceedings, one of the lay judges left the case and Denmark and a housewife, who had acted as a lay judge substitute/alternate, replaced the other person. During the more than 100 court hearings, these lay judges and indeed the judiciary judge were in close contact with members of the Special Prosecution. On one occasion these judges were several hours alone with the Chief of the Special Prosecution and the trial prosecutor, without the presence of the defence. In view that these lay judges were not professional people, but housewives and a bookkeeper (who left), such fraternisation must be considered serious violations. In the very pursuit of justice the conduct of the judges must be so that they do not appear to favour one side or the other - this was not the conduct which the judges at the Lower Court in this proceeding pursued, thus not independent and impartial.

It is the contention of the applicant that the judges, either due to ignorance, incompetence or bias or even malice did not provide MH with a fair hearing.