

INTERIM REPORT TO THE COMMISSION, November 1983

Supplementary information as to the Application No. 10486/83

In the absence of any request from the Commission for further written observations, the applicant wish to inform the Secretary and the Rapporteur of recent development, as to the applicant's circumstances and the appeal proceedings during the period from the 1 June until 1 November 1983.

The various complaints and information has been referred to according to the previously submitted application; A, B, C, D and E. However, caution is necessary in considering the relevant merits of the complaints in question and their compatibility. Nevertheless the applicant wish to draw the attention to all mentioned below in a short summary form.

COMPLAINT A.

Visit by a psychologist

After several applications to the Ministry of Justice, the Prison Directorate and the various courts, since 1980, the Prison Directorate with letter of the 14 June 1983 gave MH permission to consult an "outside" psychologist. In view that certain restriction on such a consultation was made; it has not been possible for MH to speak in confidence (private) to a psychologist from outside the prison. See letter to Folmer Reindel dated the 9 October, from Mr Mogens Jacobsen

Incarceration in the High Court

Prior to the commencement of the appeal trial at the High Court, MH asked the defence, to make the authorities aware of that MH suffers from claustrophobia, as a result of the last 4 years' incarceration and the solitary confinement. This claustrophobia would create considerable problem for MH, since he before and after the court hearings in the High Court would be locked into a small box.

Although, that doctors confirmed MH's conditions and his suffering, and this was pointed out to the High Court and the Ministry of Justice, (see letter to the High Court dated 16 August 1983 from Folmer Reindel) nothing has been done. Therefore MH is subjected to incarceration 3 times a week, on trial days, in a small box with very bad lighting; where he must remain for periods which on most days exceed the time spend in the court room itself. On average each trial day, 2, 5 to 4,5 hour a day.

Normally, the trials at the High Court are restricted to a day or two, however in this case, it is a matter of months and possible years, where MH is subjected to being locked into a very small box in the cellar of the High Court, without consideration to his illness and suffering, the size of the case and its length.

This incarceration can only be considered as a direct harassment, since MH get headache and other pains from this special incarceration on trial days. This result in a substantial reduction in MH's ability to take part in the proceedings and his defence. See further MH's letters to Doctor Christian Ott, the prison medical officer, dated the 4 and 24 October 1983.

Eyes and spine problems

Particularly due to the long solitary confinement, being closed into a small space 24 hours a day and no proper lighting, MH's suffers from problems with his spine and disturbance on both eyes. These pains may have psychological parentage, nevertheless MH with a height of 196 cm, very often pains with his back. Until now nothing has effectively been done to see to these sicknesses and MH will most likely suffer from such effects the rest of his life. `

Visit by the family

Quite apart from considerations, as to the very long time involved, MH's wife and children, and his mother, has been subjected to considerable harassment connected to the visit of MH. All has had to accept the restriction and interference associated with such visits.

In fact, it is the contention by the applicant, that MH and indeed his family's rights according to Article 8 have been violated. It has been impossible for MH to continue his conjugal life. Furthermore since his wife has regular been subjected to harassment by members of the prison staff in connection with the visit of her husband, this has caused her so much mental strain, that she, with her husband's understanding have stayed away in longer periods from visiting her husband.

In connection with visits etc. MH has been ordered to undress more than a 1000 times in total. Although nothing irregular ever has been found on his person, MH must regular be subjected to nakedness after every visit. In view that MH is a somewhat known person, many members of the staff particularly new ones, will harass MH, unduly with progressive reactions.

During the years of incarceration, a considerable amount of correspondence as to MH's treatment has been collected. However, all these papers and letters has for practical reason not been included in the initial application to the Commission.

The above mentioned and the Complaint A, should be seen in the light of the progressing standards of penal policy in general. Furthermore the concept of degrading and inhuman treatment should be interpreted with the social and political attitudes and development in mind.

COMPLAINT B.

Unreasonable delays and planning

The appeal proceedings at the High Court commenced on the 15 August 1983, 9,5 months after the judgment at the Lower Court. The Court has set aside 47 days for hearings this year, with 2-3 days a week. As to the length of the proceedings, it depends entirely on the decisions by the court as to MH's right's to have examined all the witnesses included in the indictment the prosecution, see below, further the letter dated 27 October to the President of the High Court, a so the letter from Folmer Reindel of the 26 October to the Ministry of Justice.

Neither the Ministry of Justice nor the courts have taken any consideration to the greater sacrifice put upon MH with the very long incarceration. The authorities has not given his case priority and conducted the proceedings with particular expedition. Consequently, MH has complained many times to the courts also as to the bad planning which conspicuously dominate the proceedings overall, latest with letter to the members of the High Court, 16 October 1983.

There can be no doubt as to the Danish authorities unreasonably prolongation of the proceedings, as to their time and content. It is not the accused himself who contributes to these delays and bad planning. The case was started by the authorities, who included more than 830 persons in their indictment, since a very large amount of these people do not believe that any wrongdoing has taken place, as to their dealings with the accused, it is the accused right to have these people examined either in Court or outside Court. As evidence for that MH do not delays the trial at the High Court can be seen from the first day of the trial. Judge Brink gave MH's permission to delay the trial, until the Supreme Court had considered MH's complaint of possible misconduct by Judge Brink; this could delay the proceedings with many weeks since the

Supreme Court was closed for the holiday period. However MH did not wish such undue delay.

Appeals to the Supreme Court

On several occasions, including on the 15 August Judge Brink told the court, the defence and the accused, that permission by the Ministry of Justice was not required in order to appeal decisions by the Court to the Supreme Court. Therefore, neither the defence nor MH made such application to the Ministry of Justice, as to the decisions made by the High Court on the 15 August. This in effect resulted in, that the Supreme Court simply dismissed the appeals on grounds that the Ministry of Justice had not granted permission for such appeals. In other words, due to Judge Brink, as the head of the High Court trial and his statement to the defence and the accused, appeals were ignored by the Supreme Court.

Grounds for incarceration

Until now, neither the prosecution nor the court have specified the grounds as to keeping MH incarcerated seen in connection with the various offers put forward in the spring, as to release MH if he withdrew the appeal to the High Court. That such offers were made can be confirmed from the letter to the Ministry of Justice from Folmer Reindel, dated 26. October 1983.

A historic decision

On the 22 August, the defence spoke for several hours to the court, as to the continued incarceration on remand. Before this hearing, the defence contacted Professor of Law Hans Gammeltoft-Hansen for his opinion as to the incarceration and the fact that for the first time in Danish judiciary history, that the lay-judge was included in the decisions by the Court to keep MH incarcerated. With regards to the last mentioned question, the lay-judges (3 persons) have every 4 weeks decided with the judiciary judges (also 3 persons) to keep MH locked up on remand. Until now the decision has been 5 to 1, because one judge (unknown) says that MH must be released. It is the contention of the applicant that this new procedure can be prejudicial, see below. Mr Gammeltoft-Hansen does not think the Court is right.

Professor Gammeltoft-Hansen refer to the Commission's seven point criterion and the decision by the Court of Human Right, as to Article 6 (1) and Article 5 (3). Undue delays may prejudice the possibility of a fair trial.

With regards to MH present incarceration, the Danish Code of Criminal Procedure, whereby the execution of a penalty cannot commence until the conviction acquires the force of *res judicata*, the incarceration on remand during the appeal, must be considered as detention on remand under Article 5 (3)

The factual situation in Denmark is this, that the prisoners, during the period they are incarcerated on remand, before final judgment, are subject to a far more restrictive and repressive form for imprisonment than when they have been convicted. So called experienced prisoners compare the pre-trial incarceration, as a "hard labour penitentiary" with a holiday camp, when they have been convicted.

It is such conditions that MH has been subjected for nearly 4 years in addition to the very special solitary confinement for 309 days.

In view that the above mentioned restriction and condition will contain so much space, the applicant have until this time decided to await the Commission's work, before providing all the details.

COMPLAINT D.

The principle of equality of the parties has regular been ignored by the authorities. According to the press has the case against MH until now cost between 20 - 30 million Danish Kroner. The defence has cost less than 5% of this amount and been very restricted. Where the prosecution can use any amount without any consideration, the defence cannot even travel abroad. Furthermore, MH has more or less been forced to use the present defence, although that MH had wished to change the two defence lawyers out before the appeal proceedings. Due to money and various delays created by the censorship on MH's correspondence, it was not possible to find other defence counsellors in time.

The seizure of assets

From the first days of this case, the Danish authorities has in every way prevented MH the right to select a proper defence, in fact since all MH's assets was seized in the days after his arrest, he was prevented from getting a defence of his own choosing and had no lawyers to represent him in all the civil proceedings at the Commercial Court.

Even when MH's father died the 1 March 1983, the prosecution seized the inheritance to pay for the prosecutions costs, despite that such action must be considered prejudicial, since MH is to be presumed innocent to final judgment. The main point, MH has been

placed in a worse position to defend himself and it is the contention of the applicant that these assets was taken first of all to prevent MH to defend himself through lawyers of his own choice.

The judge alleged misconduct

On the 2 August 1983, MH wrote a letter to the President of the High Court making reference to the letter from the President to MH, dated the 26 May 1983, as to various complaints, including the alleged misconduct by judge Brink, the head of the court.

The President of the High Court reply to MH on the 10 August, setting out the statement by judge Brink, who reserves his right's not to answer the charges. At the opening of the trial on the 15 August, MH brings his objection as to the judge misconduct and asks the judge to withdraw. After nearly 40 minutes of voting, the 3 judiciary judges with judge Brink residing as head, decided that judge Brink should remain in charge of the trial. When Judge Brink told the court of the decision, he said that MH could appeal directly to the Supreme Court without the Ministry of Justice permission.

The way that this whole question has been handled by the authorities, where Judge Brink himself is responsible for that the appeal never goes to the Supreme Court, where Judge Brink never answers to the alleged charges of misconduct, can only be viewed with scepticism.

Judge Brink, as the head of the Court, conduct the examination of witnesses and has on several occasion shown considerable bias and even nearly assumed the robe of the prosecutor. Furthermore Judge Brink has made some very curious and controversial decisions which must be a violation of principle of a fair trial.

A new interpretation of the law

Until now, it has been the practice by the courts, to interpret the Danish Code of Criminal Procedure (Retsplejeloven) in such a way, that it is only the judiciary judges who consider the question of an accused incarceration on remand. This has also been the practice with MH's incarceration; Judge Claus Larsen in the Lower Court never permitted the two lay-judges to take part in this decision. Already on the first day of the proceedings at the High Court, Judge Brink told the Court that his interpretation of the law was that all members of the Court should consider, if MH should remain in custody. Since this either must mean that Judge Claus Larsen at the Lower Court, has been wrong for nearly 3 years, when he every 4 weeks "rubber stamped" the prosecutions wish to keep MH

incarcerated or Judge Brink may be wrong in his rather special interpretation of something which ought to be quiet clear for the courts. Professor Gammeltoft-Hansen has told my defence, that Judge Brink is wrong.

In view that this new historic procedure is used regular every 4 weeks, where the 3 lay-judges also must show their views as to the accused and thereby indirectly give an indication as to the final judgment, since they permit MH to be incarcerated for so long time must be prejudicial. This monthly decision commits the individual member of the Court and interfered with a fair trial. That such argumentation is valid can be illustrated from the headlines of the newspapers. On the 26 August 1983, the major newspaper BT, wrote "For the 55th time: No, you do not get permission to get out, Hauschildt" In the article it conclude that the decision by the Court to keep MH in custody, reflect that the judges has already (on the first day of the proceedings) given an indication as to their judgment. As to the final judgment, the newspaper states, that MH will at least get a conviction of 7 years and possible more.

A further controversial decision made by Judge Brink, has been to permit witnesses to read their statement from the lower Court, prior to them testifying to the High Court, in addition to this, the prosecution start the examination with the reading of this statement from the Lower Court. This statement from the lower Court has all been dictated to the record of the court, by Judge Claus Larsen. During the proceedings at the Lower Court, MH and the defence objected regularly to the court, as to the very subjective form for dictation which took place where Judge Larsen was very bias. Therefore it was the contention MH of the defence, that the transcripts from the Lower Court do not reflect the truth or the correct statement made by the witnesses. Such statement nevertheless has now become the truth, since only very few witnesses at the High Court will start their testimony with a denial of something written down 2 years ago. See MH's letter to the High Court dated the 9 November.

Also on this issue, Professor of Law Gammeltoft-Hansen has told the defence (Folmer Reindel) that this procedure by the High Court is not in accordance with the law, since MH has asked for a complete new trial.

It is the contention of the applicant, that these procedural irregularities violate MH's rights to a fair trial at the High Court. One may ask the question, why? Has the High Court made such different interpretation of the law and indeed historic decision in this case?

The irregularities as to the court's transcript

In assessing whether the Court's transcript reflect the statement by witnesses, as to the High Court transcript trial, it is important to be aware that the defence have both orally and in writing told the Court, that several important statements and conclusion by witnesses, has not been recorded. Very important statements, which differ from those dictated to the records of the lower Court by Judge Larsen, has been ignored by the High Court, since they have not been included in the transcript.

The authorities' vested interest

An interesting point was made, when the liquidator told the High Court, as to the Customs and Excise, who according to the agreement MH's companies had, should refund the purchase tax (Moms) to the estate, purchase tax already paid on goods which has not been delivered, due to the action by the Danish authorities. The Customs and Excise will only refund the millions of Kroner, if MH's is not convicted for fraud. In other words, have the authorities a substantial interest in getting a conviction of fraud. Even this statement was not recorded in the transcript of the High Court.

A lay-judge visual protest

After a court hearing, in mid-October, one of the lay-judges, came up to MH and his defence Folmer Reindel and said that he now has "had enough of this injustice and will go right away to my member of parliament to ask for his help". Although such an action and the statement must be considered highly irregular, since he is a member of the panel of judges in the case, it was positive for MH to see.

Prejudicial publicity continue

The defence have protested to the Danish Press Council, as to various newspaper articles by BT, after the commencement of the High Court trial. Articles which all has been very prejudicial. See letter to the Press Council from Folmer Reindel dated 11 October 1983.

Mr Reindel himself was witness to the very critical behaviour by some of the judges, because they were speaking to the journalist from the BT newspaper, setting at the same table in the cafeteria of the High Court. A journalist which is subject to the complaint to the Press Council and acted as an instrument for the prosecution, with articles which has contained many false and incorrect statements and portrayed prejudice which can improperly influence the lay-judges. All this prejudicial publicity subject to adverse press and

television publicity before the end of the trial, with a one-sided influence from the prosecution and the authorities, should be seen in relation to the size of the country, the court may be swayed by such extensive press campaign.

COMPLAINT E.

Prior to the commencement of the High Court trial, MH asked the defence to point out to the authorities, that MH had improper facilities as to working with the defence. The condition under which MH is incarcerated in the High Court in the cellar box, do not permit him to work with his defence, beside his headache and the bad lighting prevent effectively this.

Most of all MH's papers and files in connection with his defence remain at the Lower Court, in the so called cell 27. In other words MH cannot work with his defence under conditions which should be considered as to the principle of equality of the law. See letter to the High Court from MH, dated the 16 October 1983.

Both defence lawyers Mr Korsø Jensen and Mr Folmer Reindel have told MH, that they cannot do any work outside the court with the case, because they do not get paid enough for the defence. Therefore practical no preparation prior to the individual court hearing can take place from the defence. Whereas the cost of each court hearing has been estimated to be in excess of D.Kr. 30.000,- with 6 judges and 2 substitutes, 2 court officials, the people from the prosecution etc., Mr Reindel was refused payment by the Supreme Court in June (see court hearing no. 201) for a relative small amount. These fees restriction do influence the quality of the defence adversely, although it may appear that MH has a proper defence.