Written Comments by Mogens Hauschildt

In relation to the Danish Government's Observations submitted in July 1985 re: Application No. 10486/63 Mogens Hauschildt v. Denmark

1. By letter of 30 July 1985 the Commission of Human Rights invited the applicant to comment on the Government of Denmark's written Observations on the admissibility and merits of the application with regard to four specific questions.

The applicant wishes to refer to all the previously submitted documentation, including the Statement of Facts, Interim Report and the correspondence with the Commission with regard to the Observations by the Danish Government and the merits of the application.

In view of the fact that the Government of Denmark's written observation for the largest part contained exclusive reference to the provisions of Danish law, the applicant wishes to inform the Commission that he has not received any legal advice in preparing his comments. As a consequence of this it has not been possible to comment on these aspects of the Danish Government's observation. The applicant would have preferred to be able to take legal counsel in submitting his comments.

The lawyers who acted as counsel to the applicant during the case confirmed various facts referred to in the app1icant's comments. Moreover, they are prepared to testify to the Commission about the questions included in the Danish Government's observation.

<u>Re complaints (a) and (b)</u>

2. The principle questions affecting the applicant's case and his rights to a fair trial are:

- it was the Danish authorities themselves who instigated the case
- the length of the detention and the trials
- the many decisions taken during the years by the City Court and the Court of Appeal
- the trial by the newspapers

It is not the Danish system of justice in general which should be subject to the applicant's complaint, but this specific case which was very unusual. The applicant's case differs in many ways from the general outline set in the Danish Government's observations.

As stated in the Danish national media the day after the applicant's arrest, the Danish Special Prosecutor instigated the arrest cf. statements by Chief Prosecutor Finn Meilby and Police Commissioner Mogens Kanding to newspapers Børsen, Berlingske Tidende, Politiken and Jyllands-Posten on the 1st February 1980. Since the applicant was totally unaware of this investigation, the right to choose a counsel had no importance.

Judges in the City Court should be impartial. However, the record clearly shows partiality since all judges are appointed by the Ministry of Justice and most of the appointed judges previously worked in the Ministry of Justice. There is nothing unusual about individuals showing loyalty to an employer or to the place where they used to work.

The presiding judge in the Copenhagen City Court made 39 decisions on detention and 9 on solitary confinement of the applicant during the 3 years.

Judges in the Court of Appeal made 18 decisions on detention of which ten were taken before the appeal proceedings. The applicant did indeed feel unease about being sentenced by judges who had previously wade so many decisions before, as well as during, the trial and appeal proceedings.

Moreover, the applicant felt he was a hostage to these decisions and in effect blackmailed into not having a committed defence, since such defence would prolong the detention of the applicant. Any extended defence e.g. further witness testimony would automatically result in a longer incarceration for the applicant. Both the presiding judge in the City Court and the presiding judge at the Court of Appeal never missed a chance of pointing this out to the applicant as often as possible.

3. The Danish Government claimed that it was not up to the judge to take a stand on the question of guilt during the investigation phase prior to the trial. This is incorrect since a request for detention had to be considered in light of a number of criteria, including possible guilt and the principles of proportionality. Furthermore, when the same judge presided in the trial with two lay judges, these previously made decisions influenced the lay judges a great deal.

The presiding judge in the City Court, unlike his two lay judge colleagues, had already acquired detailed knowledge of the files of the case before the hearing started. This fact did, of course, influence the lay judges who were guided by the presiding judge. The large amount of interlocutory decisions, made by the presiding

judge alone, clearly showed prejudice towards the applicant and also made a considerable impression on the lay judges prior to judgment.

The presiding judge at the trial in the City Court before, as well as during, the trial instigated measures such as search, seizure and other serious measures without the knowledge of the applicant and without hearing any counter-arguments. From the applicant's point of view there was not any distinction between the status of the City Court judge during the investigation phase and during the proceedings. The fact that the judge always followed the prosecution's requests in effect made no difference to the applicant as to the judge being "an examining judge." Even on decisions which only indirectly concerned the applicant, such as the question of fees and expenses to the counsel for the defence, the partiality of the judge was apparent to everyone present including the media.

On the first days of the trial at the City Court, the lay judges were witness to a confrontation between the presiding judge and the counsel for the defence. The judge refused to grant the two counsels permission to defend the case and expressed views which were prejudiced. Moreover, when the Court of Appeal reversed his decisions as to this question, he became even more negative towards the applicant and his defence.

4. The Danish Government explained the Danish system of justice and referred to the fact that "grave offences are decided by a jury of 12 persons without participation by the juridical judges" it should be noted that in the applicant's case, the Special Public Prosecutor pleaded to the Court to sentence the applicant according to a special section of the Danish Criminal Code (section 88) which could have meant a sentence of up to 12 years for the applicant. Such a sentence must under all circumstances be considered relevant to a "grave offence" and sentences of 12 years are very rare in Denmark. Against the background of a possible sentence of 12 years, the applicant was to be judged by one juridical judge who was not only extensively involved prior to the indictment but had made 39 decisions to detain the applicant. The influence of the two lay judges was negligible.

Re complaint (a)

5. The presiding judge at the trial in Copenhagen City Court became judge in the preliminary hearings 13 months before the commencement of the proceedings. During half of this period the applicant was in solitary confinement. In 1980, the judge made 11 decisions on detention and 6 on solitary confinement.

In 1981, the presiding judge made 5 decisions on detention prior to the trial and a total of l6 decisions on detention in 1981 with 3 decisions on solitary confinement of the applicant.

In 1982, a further 12 decisions on detention were made prior to the judgment on the l November 1982. All the 39 decisions on detention were made by this judge during the 3 years.

Each decision on detention or solitary confinement involved taking a position on the question of guilt and on the principles of proportionality to a "possible" sentence. Since guilt is an integral part of justification for detention, it became unavoidable that decisions on detention would contain some prejudice. However, after making 39 such decisions prior to pronouncing judgment, these decisions became prejudiced and an important liability to the presiding judge.

It was impossible for the presiding judge to forget his previous 39 decisions on detention and 9 on solitary confinement when preparing for judgment. Furthermore, these decisions and more than 30 others (against the applicant) did influence the lay judges who did not participate in those decisions.

Time was the prime factor in relation to the influence of the lay judges and the use of the same presiding judge before and during the trial. If the proceedings only lasted one or two days which is normal, the use of the same judge both before and during the trial might not affect the partiality of the court.

However, in the applicant's case it became quite clear to the authorities ahead of the trial that the proceedings would go on over a much longer period, possibly years. Therefore, it was apparent that another presiding judge should take over the case.

6. Over the years the decisions by the presiding judge in the City Court and the juridical judges in the Court of Appeal greatly influenced their later decisions. Furthermore, the same judges had to consider their own previous decisions and the justification of these decisions. For example, the presiding judge in the Court of Appeal, who pronounced judgment in March 1984, had already in July 1981, nearly 3 years before, confirmed that the applicant should remain in solitary confinement. The judge was taking part in an appeal decision from the City Court.

The juridical judges taking part in the Court of Appeal proceedings made 10 decisions on detention prior to the trial during 1982 and 1983. After the commencement of the appeal trial these judges

made 8 decisions on detention together with the 3 lay judges. These decisions did indicate prejudice and it was clear to the media that by holding the applicant incarcerated the judges showed that also the Court of Appeal found the applicant guilty. Ten days after the commencement of the appeal proceedings, the newspaper BT wrote on the 26 August 1983: "The decision by the High Court to keep the applicant in detention indicates that the court already considers the judgment by the City Court to be right. If the High Court expected to reduce the judgment, it is most likely that the applicant would have been freed after so long a detention on remand."

The article (in BT) argues further that if the Supreme Court confirmed that the applicant should remain incarcerated, a further confirmation should be given to the City Court's sentence of 7 years and its justification.

7. Unreasonable delays were evident throughout the two trials and the period in between. The applicant made many complaints to the court concerning this. In the letter to the City Court on 1 June 1982, the applicant complained about the unreasonable misuse of time. It became apparent that the authorities prolonged the applicant's detention by an ineffective use of time. The hearings in the City Court lasted, on average, 2 hours and 40 minutes a day and in the Court of Appeal 2 hours and 45 minutes. In the letter to the Court of Appeal dated 16 October 1983 the applicant set out his complaint in relation to the proceedings at the Court.

Moreover, the Court waited 9,5 months after the City Court judgment before commencing the trial. The Danish authorities did not give the case priority and conducted the proceedings particularly slowly. Therefore, there can be no doubt as to the Danish authorities' unreasonable prolongation of the applicant's detention.

The fact that the judges prolonged the applicant's detention and at the same time expressed in court that any extended defence by the applicant automatically would result in a longer incarceration of the applicant did not offer a situation for a fair trial. The pressure on the applicant was on one hand that he wanted a committed defence with the hearing of all the persons included in the indictment and on the other hand that such a, defence would result in a detention lasting possibly many years. Therefore, the decisions as to detention month after month by the court did affect the applicant's objectivity to his own defence.

8. With regard to Article 26 of the Convention on local redress, it is not correct that the applicant did not request a ruling on whether

the judge in the City Court was incompetent. As the counsel for the defence can confirm, the applicant did try to have this judge removed before the trial, but without success. Indeed, the court refused to rule on this.

When the applicant, during two preliminary hearings in the City Court in February 1981, when the indictment was read out, expressed his wish to change the judge and have a new judge preside at the trial, it was ignored by the Court. Furthermore, the counsel for the defence informed the applicant that according to his experience it was impossible to remove the judge. Therefore, on the 2 April 1981 the applicant wrote to the judge Claus Larsen and requested a meeting about this and the defence's requirements in general. However, on the 8 April the judge refused to meet without having the prosecution and counsel present. When it appeared from the Statement of Facts to the Commission that the applicant did not at any time during the trial request to have a court ruling about the possible incompetence of the judge in the City Court it is correct that a ruling was not made. It was, however, requested by the applicant but totally ignored by the judge. It was not possible for the counsel for the defence to bring this question to a ruling during the trial at the City Court.

When the application for an appeal was made on the 15 November 1982, the defence asked the court to move the appeal proceedings to another court. The 1st Chamber of the Court of Appeal (Eastern Division) had made 9 previous decisions in the case.

All these 9 decisions had gone against the defence. The Court of Appeal did move the proceedings to another chamber of the court with different judges.

When the applicant on the 15 August 1983 asked the Court of Appeal to consider the competence of the presiding Judge Brink and Judge Reisz, the counsel for the defence recommended to the applicant to withdraw the objection to Judge Reisz, since it was more important to focus on the prejudice by Judge Brink who after all presided over the appeal. The applicant also wanted to remove Judge Reisz, but conceded to the advice of his counsel. Judge Reisz had indeed been involved in a very important decision in the City Court 3,5 years earlier. Four days after the applicant's arrest Judge Reisz made a decision to seize all the applicant's assets. When Judge Reisz made this decision at the City Court, neither the applicant nor his companies were bankrupt. Because of this decision of seizure of assets, a bankruptcy situation was created.

A further motive for the applicant's decision only to ask the Court to rule on Judge Brink's incompetence was that the applicant did not want to offend the Court of Appeal on the first day of the appeal proceedings where 3 new lay judges were present.

That the applicant was concerned as to the competence of the juridical judges at the Court of Appeal can also be seen from various drafts made on the 20 and 26 April 1983 and 14 December 1983.

After the court refuted the applicant's request to remove Judge Brink the applicant did try to bring this question to the Supreme Court. However, the Ministry of Justice did not grant this permission. Therefore, the domestic remedies were exhausted.

Re Complaint (b)

9. According to the Danish Government, the judge's sole task during the preliminary hearings is to take a position on questions of dispute between police (it was not the police in the applicant's case but the prosecution) and the counsel for the defence. If a judge in ascertaining whether legal conditions exist for applying certain serious enforcement measures 60-70 times favours one of the parties, namely the prosecution, impartiality must be questioned.

The presiding judge at the City Court was instrumental in instigating serious measures before and during the trail including the seizure of assets belonging to the applicant's companies in several countries and permitting the prosecution to travel to U.S.A., Switzerland, Austria and Lichtenstein. In addition to these decisions the judge decided on many other measures including visits outside the court, the taking of evidence and the hearing of witnesses. In real terms there was no apparent distinction between the status of the City Court judge during the instigation and during the trial.

When the judge decided on questions about investigation by the prosecutor in various countries, the judge's refusal to permit the defence to travel and restrict the expenses of the defence must be considered.

Whereas the prosecution apparently had unlimited resources to hand in the case, without asking the courts, the defence was bound hand and foot on expenses and had to ask the courts for every cost. When the judges always decided against the counsel on such questions of costs and expenses partiality must be considered.

10. One of the most serious complaints by the applicant as to the impartiality of the court during the trial in the City Court must be the question of the judges fraternizing with the prosecutor. As can be

seen from the applicant's letter to the City Court on 1 June 1982, the lay judges together with the presiding judge often fraternized with the prosecutor and his assistant. The judges and the prosecutor frequently had coffee together during the 100 days of proceedings without once being joined by the counsel for the defence.

In most civilized countries, jury and lay judges are not allowed to come into contact outside the court room with any of the parties in a case. It is not difficult to understand what happens when people work together month after month as the judges did with the same prosecutor. In addition to these regular coffee meetings it is known to the applicant and his counsel that on one occasion (6 April 1982) during a visit to the Danish National Television head office by the court the judges had lunch with the prosecutor and his assistant. Even worse, the Chief Public Prosecutor Finn Meilby who initially started the case was at this lunch with the two lay judges, the presiding judge and a lay judge substitute. This lunch was also not attended by the counsel for the defence.

Impartiality must be questioned when it was clear to the applicant and others present in the court room that the judges and the court secretary frequently and openly during intermissions went into a room together with the prosecutor to drink coffee. Impartiality did not appear to be evident since the counsel for the defence was never invited to join them.

In view of the fact that the presiding judge at the City Court had been involved in many decisions during the investigation phase he was in a position to judge those previous decisions and their validity and legal justification himself. When a judge has to consider his previous decisions prior to a trial over which he presides impartiality cannot be evident.

The applicant did indeed feel uneasy as to being sentenced by the same judge who had made 39 decisions on detention and more than 20 other serious decisions through a 3-year period.

Finally, in considering the question of fairness of the proceedings one should note the devastating length of the trial and the enormous resources available to the Danish authorities in relation to the applicant and the size of the Danish society. It is not the Danish system of justice in general which the applicant wishes to complain about, but the specific case of the applicant which was unusual by Danish standards.

Re Complaint C.

11. When the Danish Government's observations referred to "the fact that media coverage of the case is probably based on information brought to light during the court hearings" there appeared to be some doubt even for the Danish Government. There cannot be any doubt that the statements made to the Danish media on the day of the applicant's arrest came from people in charge - at the Special Prosecutor's office. Furthermore, nearly all the newspaper articles during the years which contained prejudice and in effect "trial by newspapers" contained information which would not be generally available form just attending the court hearings.

Moreover, these planted stories in the media never came into the case in court nor were they subjected to any questioning during either the preliminary hearings or the trial. Such stories included headline allegations that the applicant had prepared to leave Denmark before his arrest, had committed purchase tax fraud amounting to millions, that the applicant's companies were the biggest importers of fake gold bars and that the applicant's fraud had caused a man to kill his wife and child. Investigations by the media itself concluded that most of the media coverage was instigated by the prosecuting authorities, cf. Editorial comments in Information 24 September 1982.

12. The gravity of informing the Danish National Television on 30 January 1980 that the applicant would be arrested and his companies closed the next day had a devastating effect on the case. Furthermore, statements made by a member of the Special Public Prosecutor to the media the day after the applicant was arrested and the radio news every hour created circumstances which did not allow any "way back" for the authorities.

It is totally untrue when the Danish authorities claimed that the National Television had an appointment with the applicant on the morning of the day of his arrest. It is a proven fact that there was no appointment and this can be confirmed by witnesses. Moreover, the applicant was arrested in his country home at 10 am. At the same time the television recorded events in Copenhagen where members of the Special Public Prosecution, people from the Revenue Services and accountants entered the applicant's companies' head office. The applicant had told his office the previous day that he had to do some work at home in the country and had no plans to come to the head office until after lunch.

Both the applicant and his secretary had clearly informed the journalist (Jørgen Flindt Petersen) that no interview could take place on 31 January 1980. The applicant's personal secretary had arranged

a meeting on 1st February with a journalist from the National Television in relation to an interview made a week before. The National Television's video recording of the event clearly shows that the Public Prosecutor and the Revenue Inspectors had knowledge of the television cameras being present.

When the Danish Government set out the various codes under which the authorities have access to impart information the applicant wishes to point out that the complaint concerns the trial by the media which did take place. The fact that the authorities might be within the rules of the Danish law does not alter the question. It is a known fact that these laws are very loose in comparison to other countries.

13. Since the sources of a journalist normally remain secret in such cases unless specifically obtained from a press release it is indeed very difficult to prove where information came from. However, the various monstrous allegations in the newspapers, often accompanied by interviews of officials involved in the case, could not have come to light during court hearings. A detailed scrutiny of each newspaper article will, in most cases, show that they in some way originated from the prosecution.

The applicant's possibilities of making statements to the press were not only restricted during the applicant's solitary confinement but also later since journalists could not obtain permission to visit the applicant. It is a proven fact that many journalists were refused permission to see the applicant for an interview.

The Copenhagen City Court on the 13 August 1980 refused to allow the counsel for the defence to publish the first complaint to the Commission of Human Rights in a press release. Surely such a release could not prejudice any investigation?

The applicant was held in solitary confinement for many months before making any attempts to send out letters to business connections. Furthermore, the instructions to his wife to remove valuable personal effects were given in the court. It is a known fact that the applicant's mental health during the torture of solitary confinement did suffer and that he committed acts such as trying to smuggle letters out of his solitary confinement. None of the press releases which were stopped by the courts bore any relation to this.

The decision by the City Court on the 25 July 1980 to deny the applicant permission to publish a counter statement, written iv by the applicant's counsel, as to the false allegations in the media which the counsel wished to comment on is another example.

What is specifically noticeable is that most newspaper allegations were made at the time of the applicant's incarceration in solitary confinement. Even officials from the Public Prosecutor‘s office, people involved in the case, could write articles in professional journals, which caused newspapers to drum up further false allegations at a time when the applicant had not even been indicted. Furthermore, such articles contained allegations which never resulted in indictment or examination during the investigation phase. Cf. letter to Jørgen Jacobsen dated 2 December 1980 from SØK.

In the light of these facts, the applicant's rights to a fair hearing was ignored and influenced unfairly by the media. The applicant was subjected to trial by newspapers and television, the prosecuting authorities did prevent the applicant access to the media and did impart with information which caused considerable prejustice in the media.

Re Complaint (d)

14. There are two distinct aspects of the Danish Government's observations and this complaint:

- the witnesses permitted to be heard in both the City Court and Court of Appeal ("obtain the attendance of witnesses on his behalf")
- the examination of witnesses in the Court of Appeal ("to examine or have witnesses against him examined")

Both questions should be considered in light of the fact that the appeal was based upon a specific request for "a complete new trial/re-trial" of the case from the City Court.

Not only was the so-called "procedural economizing" claimed by the Danish Government reducing the amount of witnesses heard in both courts but also subjecting the witnesses to a highly subjective examination in the Court of Appeal which had nothing to do with the applicant's request of appeal.

No new trial took place according to the wording of the appeal and indeed the Danish Administration of Justice Act. The Court of Appeal only conducted an examination of the lower court's proceedings and judgment.

As set out in the Danish Administration of Justice Act and confirmed in the Danish Government's observations, it is the principle "that the adjudicating judges should have the opportunity to form their own

impression of the witnesses." It was therefore of vital importance that each witness should either solely testify without any reference to the City Court's transcripts or at least be questioned prior to making the witness aware of the written testimony from the City Court.

The written testimony from the City Court was not a verbatim dictation, but a subjective impression of what the presiding judge wanted to hear.

Taking into consideration the reading of the witness's statement from the City Court and the prosecution's examination of this testimony, most of the actual time the witness was in the court room was spent on these two points. On average 80-90% of the witness time had relation to the statement made several years before in the City Court.

Very few new examinations took place in the Court of Appeal and it was impossible to move away from or change the recorded statement of the City Court - it was always this statement which dominated the examination.

Normally, a witness is a little nervous when entering the court room, where the press might be present and all the attention focused on the witness. Therefore, it was of some comfort to the witnesses to be greeted by the prosecutor's assistant prior to entering the court room and handed a copy of a statement which contained the witnesses' testimony of several years before. It was never pointed out to the witnesses that the statements of what he had said in the City Court were not a true verbatim record.

The case at the Court of Appeal was conducted in a very small court room and the witness sat only a few meters from the 6 judges. Therefore, after hearing many pages read out from a statement to the City Court it was hardly likely that the witness would object to this statement's correctness. In the event of a witness objecting or making any major suggestions of correction to this statement, the possibility that the judges would question his integrity or truthfulness could not be ignored. The prosecutor would automatically attack any witness who questioned the statement read out which did happen a few times. When a witness was asked whether he would stand by his statement from the City Court he would verify this as a matter of course. Thus, although the witness did have access to correcting his statement, such access was in reality only theoretical under the very special circumstances that prevailed.

After a witness had verified the statement from the City Court, it became impossible for the counsel for the defence to refer to any other understanding of what was actually said in the City Court or to get the witness to change any such statement. If the counsel questioned the witness too much on this point we witness became uncooperative.

15. As to the Danish Government's claims concerning this complaint, it is totally incorrect that:

- the procedure adopted in the Court of Appeal of reading the statements from the City Court had the approval of the counsel for the defence
- the applicant did not protest until 9 November 1983 to the Court of Appeal as to the methods used in hearing the witnesses
- the applicant did not request to have a ruling on this point by the Court of Appeal
- the applicant did not request the question to be brought before the Supreme Court

Practically all complaints about this issue were set out in the applicant's letter to the Court of Appeal (dated 9 November 1983).

When the Danish Government confirmed that "the statement of witnesses was read out in the presence of the witness concerned, and. . ." it is only partly correct insofar as most witnesses, as mentioned previously, prior to entering the court room, were handed a copy of their statement from the City Court to read and to become acquainted with. This specific aspect was also clearly stated in the letter to the Court on 9 November 1983.

16. On 15 November 1982 the counsel for the defence requested a complete new trial at the Court of Appeal, including having all the customers examined who were mentioned in the judgment from Copenhagen City Court.

According to the Administration of Justice Act section 965 (a) a complete new trial must take place at the High Court (Court of Appeal).

On 24 March 1983 the counsel for the defence (Folmer Reindel) wrote to the Court of Appeal and confirmed the position of the defence that all customers included in the indictment and judgment from the City Court must be examined in the Court of Appeal.

The applicant wrote to the President of the Court of Appeal on 12 May 1983 and among other items confirmed "that all customers included in the indictment should testify in the Court of Appeal."

After discussing this specific issue in August/September 1983 with the counsel for the defence, the counsel wrote to the applicant to verify the request for witnesses. On the 14 October 1983, the applicant set out the view of the defence and confirmed the above-mentioned request.

Moreover, the presiding judge at the Court of Appeal, Judge Brink, clearly did know the defence's intention to hear all these witnesses. In a letter to the President of the Court of Appeal, Judge Brink indicated on 27 October 1983 that the appointed defence had expressed that a considerable amount of persons would be asked to witness in the case.

On 21 November 1983 the counsel for the defence affirmed (cf. page 129 of the transcript from the Court of Appeal) that the defence wished to have all persons mentioned in the indictment under alleged offence no.1., and a further amount of investors who had had their contracts fulfilled, examined at the Court of Appeal.

The defence referred to the original appeal made during the trial at the City Court and submitted this to the Court of Appeal on 21 December 1981. This appeal was rejected by the Court of Appeal in 1981 since the decision could not be appealed. On page 130 of the transcript from the Court of Appeal in 1983 the defence stated: "that it was incorrect when the City Court based its decisions on an agreement with the previous counsel for the defence. At no time had the counsel agreed to a limitation of witnesses' called."

The decision by the Court of Appeal on 23 November 1983, a ruling, could not be taken to the Supreme Court. The applicant was told by the counsel for the defence that such a decision could not be appealed according to the Danish Administration of Justice Act. The decision by the Court of Appeal was irrevocable.

The decision prompted the applicant to write to the Court of Appeal on 23 November and, in effect, surrender any further defence. The applicant had given up all hopes of a fair trial.

The applicant informed the Commission as to this position in a letter postmarked 19 November 1983. Furthermore, in a letter to the Commission on 28 March 1983 (cf. page 3) the question concerning the request from the counsel for the defence was stated.

The applicant submits that the decision of the Court of Appeal concerning the amount of witnesses heard was not in reality appeal able. According to the Danish Administration of Justice Act, section 968 and 969, such procedural questions are decided by the judges and it is not possible to seek permission from the Ministry of Justice to bring the decision to the Supreme Court — a further confirmation that it was impossible to appeal such decisions to a higher court. The appeal made on 21 December 1981 as to a decision by the presiding judge in the City Court on requested witnesses by the counsel for the defence was rejected by the Court of Appeal in January 1982 since such a decision was not appeal able.

17. When the first witness was examined in the Court of Appeal on 25 August 1983 the applicant protested as to the procedure of using the testimony from the City Court. The protest was not recorded in the transcripts of the trial. However, the counsel for the defence, with Korsø-Jensen, did confirm to the Court on 9 November 1983 that the applicant had asked the defence to look into the matter in August (cf. notes dated 9 November, no. 31)

The applicant had made several protests as to the way all witnesses were examined. However, it was a question which the defence wanted expert legal advice on. Furthermore, during the initial two months of the trial only semi-professional witnesses were heard. In the first 4 days of trial proceedings, no witnesses were called and the following 5 days of the trial only lawyers and government officials testified. The next 8 days of the trial were devoted to the testimony of staff from the applicant's businesses and professional advisors. Most of these witnesses were clearly very involved in the case and had prepared themselves well for the trial. Without any reservations it must be considered whether these witnesses were also prejudiced as to their testimony since the transcripts from the City Court did make a considerable impression on the witness.

Until 17 October 1983, only one "outside" witness testified at the trial. However, on 17 October investors were heard and it became quite clear that the judges accepted the very special method of examination of the witnesses adopted previously by the Court.

On 3 October 1983, the applicant forwarded a memo to the counsel for the defence setting out various points related to the examination of witnesses.

As clearly stated in the applicant's letter to the Court of Appeal dated 9 November 1983, the counsel for the defence had objected to the methods used by the Court in examining witnesses. It was very evident to the Court that the counsel for the defence did not

agree with the decision by the Court to examine witnesses in this way.

18. The counsel for the defence and the applicant regularly made objections and protests as to the recordings in the transcripts of the Court of Appeal which did not always reflect what took place.

As pointed out in the letter to the Commission on 2 April 1984, there were several versions of "what had been said at the trial" at the Court of Appeal.

In the memorandum to the counsel for the defence on 3 October 1983, the applicant clearly confirmed the observations about the highly subjective recordings in the transcript.

The applicant and indeed the counsel for the defence practically always received these transcripts with considerable delays. Many were received up to 4 weeks after the actual day of the trial. Therefore, when the counsel for the defence and the applicant made objections to the Court, the events recorded were "old" to the judges.

On 11 October 1983 the counsel for the defence wrote to the Court of Appeal and asked for several corrections to be made to the transcript of the proceedings.

On 29 November 1983 the counsel for the defence again asked the Court of Appeal to "alter" the wording of decisions since the counsel claimed that what was alleged to have been said by the counsel for the defence bore no relation to what was actually said.

The applicant told the Court on 24 November 1983 (cf. page 132 of the transcript) of another mistake in a judgment made by the Court.

Since the presiding judge ignored many requests for changes in the transcript, to conform to what was really said by the witnesses, the counsel for the defence had to re-examine witnesses. Despite all this these objections were never mentioned in the transcripts.

A very important point related to the testimony of one member of the staff of the applicant's companies (Carl Erik Rasmussen) was confirmed after several attempts by the counsel or the defence who had to call the witness again. No large amount of text has been devoted to this event in the transcript, which on page 55, mentions the issue in two totally unrelated lines.

It was only possible to change the various faults and in corrections in the transcript as to the applicant's own testimony to the Court. On

15 February 1984, the Court recorded 34 different faults to the written transcript. These corrections were not changed in the transcript handed out to the public in March 1984. In fact the applicant never received a written confirmation of these changes before 1985 (cf. copy of transcript dated 15 February 1984).

In conclusion to the transcript, since the counsel for the defence and the applicant, time after time, had made the Court aware of the mistakes, faults and in correction of the transcript it became apparent that in reality it was a waste of time to complain. The transcripts did not record what actually took place in the Court of Appeal.

The transcript used by the City Court and read out to all witnesses at the Court of Appeal was faulty, inadequate and reflected a subjective dictation by the judge. During the trial at the City Court, the defence used most of its time to object to what was recorded in the transcripts of the Court.

The Judge Claus Larsen in the City Court made deliberate incorrect dictations to the transcripts of the Court. The City Court ignored all complaints about the falsehood in the transcripts. It is the applicant's contention that the transcripts from the City Court were distorted and non-representational as to what really took place.

The applicant's letter to the judges in the City Court dated 1 June 1982 was a complaint about the disinclination of the judge to record factual statements by witnesses, etc. during the trial.

This highly subjective transcript from the City Court became the "truth" in the Court of Appeal (cf. Interim Report to the Commission November 1983).

As a blatant example of the recordings of the City Court (in the judgment dated 1 November 1982) a reference to a witness (Piet Boeck) was made and indeed quoted despite the fact that he was never heard by the Court. Only testimony made 16 months before the trial was used- testimony which was subject to objections made by the counsel for the defence.

19. As previously stated, it was, in reality, impossible for the counsel for the defence to appeal against an interlocutory order taken during the proceedings on these two questions. The Danish Administration of Justice Act section 968 and 969 clearly set out this limitation. Furthermore, if the defence had tried to take such a decision further, an application would have had to be made to the Ministry of Justice which automatically would have refused such

permission. Moreover, all decisions taken cannot, as a rule, be postponed without the court agreeing to this.

To have any decision stayed requires the impossible by the counsel since the same judge who decides on a question also makes this decision. Therefore, it is normal if a decision on a procedural question has gone against the defence, the proceedings still go on and it could take weeks or even a month before the Court of Appeal will hear the appeal.

Despite considerable effort from the counsel for the defence, permission to appeal to the Supreme Court by the Ministry of Justice was in practice always refused.

How difficult it was to obtain this permission was expressed openly by the presiding Judge Brink on 26 September 1983. He said "that it was a waste of time to seek appeal permission from the Ministry of Justice."

The applicant did ask the Ministry of Justice for permission. to appeal, but without success (permission to appeal the claim made by Judge Brink, cf. request to the Ministry of Justice dated 6 September 1983 and later on 9 October 1983 to the Minister of Justice) .

After the judgment by the Court of Appeal, the counsel for the defence, in the application for appeal, stated a reference to the various misrepresentation and irregularities in the procedural application by the Court of Appeal (cf. letter to the Ministry of Justice dated 2 March 1984, item 5).

The Ministry of Justice refused to give the applicant permission to take his case to the Supreme Court, therefore the various misrepresentations and irregularities during the trial at the Court of Appeal were never subject to any questioning.

Against this background, the applicant submits that the complaint on these points be declared admissible. Further that all the domestic remedies have been exhausted by the fact that both the applicant and the counsel for the defence had done everything possible to bring these complaints to higher authority and to obtain rulings.