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A P P E N D I X I

History of Proceedings

<u>Date</u>	<u>Item</u>
26 August 1980	Introduction of the application.
27 October 1982	Introduction of the issue examined in the present Report.
18 July 1983	Registration of the application
<u>Examination of admissibility</u>	
7 December 1983	Commission's deliberations and decision to adjourn the examination of the case.
7 March 1985	Commission's deliberations and decision to invite the Government to submit observations on the admissibility and merits of the application.
24 July 1985	Submission of Government's observations.
17 November 1985	Submission of applicant's observations.
9 October 1986	Hearing on the admissibility and merits of the application, the Commission's deliberations and decision to declare the application partly admissible, partly inadmissible.
	The applicant
	MM. Robertson Reindel Mrs. Hauschildt
	The Government
	MM. Lehmann Bernhard Vesterdorf Elmer Ms. Schydt

Examination on the merits

7 March 1987	Consideration of the state of proceedings.
9 March 1987	Submission of applicant's additional observations on the merits.
7 July 1987	Commission's deliberations on the merits and final votes.
16 July 1987	Adoption of the Report.

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A P P E N D I X   I I

AS TO THE ADMISSIBILITY OF

Application No. 10486/83  
by Mogens HAUSCHILDT  
against Denmark

The European Commission of Human Rights sitting in private on  
9 October 1986, the following members being present:

MM. G. SPERDUTI, Acting President  
C. A. NØRGAARD  
J. A. FROWEIN  
F. ERMACORA  
G. JÖRUNDSSON  
G. TENEKIDES  
S. TRECHSEL  
B. KIERNAN  
A. S. GÖZÜBÜYÜK  
A. WEITZEL  
H. G. SCHERMERS  
H. DANIELIUS  
G. BATLINER  
H. VANDENBERGHE  
Mrs G. H. THUNE  
Mr. F. MARTINEZ

Mr. H. C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the  
Protection of Human Rights and Fundamental Freedoms;

Having regard to the application first introduced on 26 August  
1980 by Mogens Hauschildt against Denmark and registered on 18 July  
1983 under file No. 10486/83;

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Having regard to

- the first report of 14 November 1983 provided for by Rule 40 of the Rules of Procedure of the Commission;
- the Commission's decision of 7 December 1983 to adjourn the examination of the case;
- the second report of 22 January 1985 provided for by Rule 40 of the Rules of Procedure of the Commission;
- the Commission's decision of 7 March 1985 to bring the application to the notice of the respondent Government and invite them to submit written observations on its admissibility and merits;
- the observations submitted by the respondent Government on 24 July 1985 and the observations in reply submitted by the applicant on 17 November 1985;
- the third report of 9 December 1985 provided for by Rule 40 of the Rules of Procedure of the Commission;
- the Commission's decision of 4 March 1986 to invite the parties to a hearing on the admissibility and merits of the application;
- the submissions of the parties at the hearing on 9 October 1986;

Having deliberated;

Decides as follows:

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## THE FACTS

The facts of the case, as submitted by the parties, may be summarised as follows:

The applicant is a Danish citizen born in 1941. At the time of introducing his application he was detained in Vestre Faengsel, Copenhagen, Denmark. The applicant was released in March 1984 and is now living in Switzerland.

In 1974 the applicant established a company, Scandinavian Capital Exchange ApS (SCE), which acted as a bullion dealer and furthermore provided various financial services. SCE became the largest bullion dealer in Scandinavia with associated companies in Sweden, Norway, Holland, England and Switzerland.

Over the years, until the end of 1979, SCE and the applicant, who was the managing director, clashed on several occasions with the Danish National Bank, the Revenue Service and the Ministry of Trade concerning the flow of money to and from SCE and its associated companies abroad.

Eventually on 30 January 1980 this made the Internal Revenue Service forward a complaint to the police in which it was stated that the activities of the applicant and SCE seemed to involve violations of the Danish tax laws and the Penal Code. After obtaining a court order the police then arrested the applicant on 31 January 1980, seized all available documents in SCE and closed the company. The applicant was charged with tax evasion.

On the following day - 1 February 1980 - the applicant was brought before the Copenhagen City Court (Københavns byret) and charged with fraud and tax evasion. It was decided to keep the applicant under arrest for 3 x 24 hours. There were no objections. On 2 February 1980, the City Court heard the prosecution and the defence, found that the charges were not ill-founded and decided to detain the applicant on remand and in solitary confinement according to the Administration of Justice Act (retsplejeloven), Sec. 762 and Sec. 770 para. 3.

The above-mentioned provisions of the Administration of Justice Act read (in translation):

### Sec. 762

"A suspect may be detained on remand when there is a justified reason to believe that he has committed an offence subject to public prosecution if, according to the law, the offence may result in imprisonment for 1 year and 6 months or more and if

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- 1) according to information received concerning the suspect's situation there is specific reason to believe that he will abscond or,
- 2) according to information received concerning the suspect's situation there is specific reason to fear that once at large, he will commit a new similar offence or,
- 3) in view of the circumstances of the case there is specific reason to believe that the suspect will impede the investigation in particular by removing evidence or by warning or influencing others.

A suspect may furthermore be detained on remand when a particularly strong suspicion indicates that he has committed an offence subject to public prosecution and this may result in imprisonment for 6 years or more and when respect for the public interest according to the information received about the gravity of the case requires that the suspect is not at large.

Detention on remand may not be imposed if the offence is expected to result in a fine or imprisonment not exceeding 6 months (hæfte) or if the deprivation of liberty will be disproportionate to the interference with the suspect's situation, the importance of the case and the outcome expected if the suspect is found guilty."

Sec. 770 para. 3\*

"On request of the police the court may decide that the detainee shall be totally or partially isolated if the purpose of the detention on remand so requires."

The applicant was kept in detention on remand without interruption until the trial and during the trial which started before the City Court on 27 April 1981. On 1 November 1982 the City Court convicted him of fraud and embezzlement involving approximately 40 million Danish crowns and sentenced him to seven years' imprisonment.

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\* Sec. 770 para. 3 of the Danish Administration of Justice Act was amended on 6 June 1984. However, the text quoted above is the one which was in force before that amendment.

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He appealed against this judgment to the Court of Appeal (Østre Landsret) which on 2 March 1984 upheld the judgment except on two counts and reduced the sentence to a total of 5 years' imprisonment. The applicant was also detained on remand during the appeal proceedings. He was released immediately after the Court of Appeal had pronounced judgment and left for Switzerland. He subsequently applied to the Ministry of Justice for leave to appeal to the Supreme Court but this was refused by the Ministry on 4 May 1984.

Parallel to the criminal case against the applicant other cases were brought before the Probate Court for Business Affairs (Sø- og Handelsrettens skifteafdeling) in order to dissolve one of the firms the applicant controlled and in order to institute bankruptcy proceedings against the applicant himself. The applicant challenged the decisions taken to that effect but the Supreme Court upheld the lower court's decisions on 14 May 1980.

#### Detention on remand

With regard to the applicant's criminal case the applicant was, as mentioned above, arrested on 31 January 1980.

In the first decision (Kendelse) concerning the detention of 2 February 1980 the City Court indicated the following elements as a justification for the detention:

- 1) the applicant had lived outside Denmark until 1976 and by the time of his arrest he had plans to move to Sweden
- 2) the applicant's economical interests abroad
- 3) the importance of the case
- 4) the possibilities of impeding the investigation by influencing persons in Denmark and abroad.

In pursuance of Sec. 762 para. 1 No. 1 and 3 of the Administration of Justice Act the City Court therefore decided to detain the applicant since the Court found reason to believe that the applicant, if at large, would abscond and impede the investigation.

The above elements remained, until 10 April 1980, the reasons for the applicant's continuing detention which according to Sec. 767 is under constant judicial control with maximum intervals of four weeks. During this period the applicant secretly asked his wife to remove money from certain bank accounts and to remove certain personal property. On 10 April 1980 the City Court therefore also invoked Sec. 762 para. 1 No. 2 as a reason for the continued detention of the applicant. Finally the Court of Appeal on 5 September 1980 also

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referred to Sec. 762 para. 2 since the investigations carried out by the police at that time indicated a possible loss for the injured parties of approximately 19,5 million Danish crowns. The detention on remand continued with reference to Sec. 762 para. 1 No. 1, 2 and 3 and para. 2 until 17 August 1982 when Sec. 762 para. 1 No. 3 was no longer invoked.

At the time of the applicant's conviction by the City Court on 1 November 1982 the Court had decided 39 times to keep the applicant detained. Many of these decisions had been taken by the judge who subsequently presided over the trial against the applicant. While the trial was going on, the presiding judge also decided at regular intervals to prolong the applicant's detention on remand. The decisions of the City Court were upheld on appeal in at least 17 different decisions of the Court of Appeal. In these decisions a substantial number of different judges participated. In at least one instance a judge who participated in one of these decisions subsequently also participated in the examination of the applicant's appeal against the judgment.

After the applicant had appealed against the judgment to the Court of Appeal, he was still under Danish law considered to be detained on remand and the Court of Appeal accordingly had to decide on the detention question at least every four weeks. By the time judgment was pronounced the Court of Appeal had taken 18 decisions to that effect. The Supreme Court upheld these decisions on two occasions and four appeals were declared inadmissible since leave to appeal had not been granted by the Ministry of Justice. As reason for detaining the applicant during the appeal proceedings, the courts referred to Sec. 762 para. 1 No. 1 and 2 and para. 2 of the Administration of Justice Act. After 9 December 1983, however (last decision of the Supreme Court), reference was made only to Sec. 762 para. 1 No. 1 and 2 of the Administration of Justice Act.

#### Solitary confinement

During his detention on remand the applicant was kept in solitary confinement from 2 February 1980 until 27 August 1980 and from 2 July 1981 until 7 October 1981. Whenever the applicant appealed against his detention on remand to the Court of Appeal this included the question of solitary confinement. Throughout the periods in question the applicant was allowed to exercise in the open air twice a day. In his cell he was allowed to listen to the radio, to watch television and to read books supplied by the prison library. He was in contact with prison staff in connection with the handing out of food, during walks in the prison yard and in connection with a number of court hearings. The applicant submits that he was not allowed to receive visits from his family during the first 3 months of isolation and during the following 5 months only once a week. Hereafter the visits were extended to twice a week for 30 minutes. All visits were surveyed by the police, except visits by his counsel.

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Due to his situation in general but in particular because of his detention on remand and the solitary confinement the applicant went on a hunger strike on 12 August 1980 which he submits lasted for 55 days. The first period of solitary confinement ended, as mentioned above, on 27 August 1980 when the City Court found that the circumstances of the case no longer made this measure necessary. On 2 July 1981 the City Court, at the request of the prosecution, again imposed solitary confinement on the applicant since he had attempted to impede the investigations in such a way that the prosecution considered the possibility of extending the charges. During the investigation of these particular facts it was found necessary to isolate the applicant. The solitary confinement, which was imposed in conditions similar to those of the previous confinement, ended on 7 October 1981.

#### Investigation and trial

The applicant's arrest on 31 January 1980 was based in particular on a report of the Internal Revenue Service of 30 January 1980 indicating possible violations of the Danish tax laws and the Penal Code. Besides arresting the applicant, the police also closed SCE and seized a substantial number of documents, not only from SCE's offices, but also from various persons involved. During the initial period of the investigation, the police seized further documents and property and also carried out investigations in England, Holland, Belgium, Switzerland, Liechtenstein and the U.S.A. From 30 January 1980 until the trial started on 27 April 1981 the City Court decided on several occasions to request the co-operation of other countries in securing documents and in other matters. Insofar as this co-operation concerned European countries the request was made in accordance with the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. After an initial court session on 30 January 1980, which preceded the applicant's arrest, 48 further court sessions were held in the Copenhagen City Court during the period before the trial started.

The indictment of 86 pages was served upon the applicant on 4 February 1981. The applicant was charged with fraud and embezzlement on eight counts involving approximately 45 million Danish crowns. The trial commenced before the Copenhagen City Court sitting with one professional judge and two lay judges on 27 April 1981. During approximately 136 court sessions the City Court heard about 151 witnesses as well as the applicant and considered a substantial number of documents. Furthermore, opinions from appointed experts, in particular accountants, were taken into consideration. The trial before the City Court ended on 1 November 1982 when the City Court gave judgment in the case, finding the applicant guilty on all counts. He was sentenced to a total of 7 years' imprisonment.

The applicant appealed against the judgment to the Court of Appeal of Eastern Denmark (Østre Landsret). It was a full appeal during which the Court would consider both points of fact and law. The trial was scheduled to commence on 9 May 1983 but at the request of the defence it was postponed until 15 August 1983.

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During approximately 64 court sessions before the Court of Appeal all witnesses except 12 were heard again. In addition, 8 new witnesses were heard. Furthermore, in addition to the documents already available, the prosecution produced more material for the Court to evaluate.

On 2 March 1984 the Court of Appeal found the applicant guilty on 6 of the 8 counts in question. As reason for the 5 year prison sentence imposed, the Court considered as an aggravating circumstance the extensive character of the fraud committed. On the other hand the Court found extenuating circumstances in the fact that the applicant had been detained on remand since 31 January 1980, a detention that was considered more straining than regular imprisonment.

The applicant's subsequent application for leave to appeal was, as mentioned above, rejected by the Ministry of Justice on 4 May 1984.

#### The defence

In accordance with Sec. 731 of the Administration of Justice Act a defence counsel was appointed for the applicant when he was brought before the Copenhagen City Court less than 24 hours after his arrest on 31 January 1980. In accordance with Sec. 745 of the same Act the defence counsel has a right to make himself acquainted with the records produced by the police and insofar as these records can be reproduced without any particular inconvenience, he will receive copies. Counsel may not hand over the material to the accused or others without permission from the police.

The applicant complained on several occasions that the investigating police and the prosecution violated his right to equality of arms in that inter alia the tremendous press coverage allegedly instigated by the police created a distorted picture of the situation against which he was unable to defend himself. In this respect the Court of Appeal on 3 March and on 25 July 1980 refused permission to make certain articles prepared by the applicant and his defence available to the press. On 13 August 1980 the City Court also refused permission to forward an article to the press since it could not be ruled out that the information could prejudice the investigations under way.

Furthermore, the applicant complained that the police were deliberately unwilling or even refused to hand over documents important for his defence. On 13 February 1980, however, the City Court decided that the applicant's defence was entitled to receive documents in accordance with Sec. 745 of the Administration of Justice Act but could not receive internal police documents and correspondence. On 20 October 1980 the Attorney General (Rigsadvokaten) dismissed a complaint from the applicant concerning equality of arms since the investigation carried out to that effect failed to disclose any misconduct. This decision was upheld by the Ministry of Justice on 22 December 1980. Finally, on 23 October 1980 the prosecution in a

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letter to the applicant's counsel stated that copies of all documents would not be made available to the applicant but that, together with the applicant, counsel was welcome to examine the documents in the offices of the prosecution and to receive copies of those documents which he and the applicant considered of importance for the defence. From the applicant's submissions it is not clear whether such a meeting took place. However, it appears from a letter of 9 April 1981 from the applicant's counsel that the applicant himself had at that time received copies of the major part of the documents in question.

The applicant's own possibilities of preparing his defence were to a great extent limited to the work he could carry out in his cell. Here he kept most of the documents he had received. Due to the substantial amount of material involved, a special cell at Nytorv prison was placed at his disposal where he could work provided he was accompanied there by his counsel. It appears, however, that for some time the applicant was also allowed to remain in that cell alone.

As mentioned above, a defence counsel was appointed by the Court on 31 January 1980. This counsel resigned on 4 February 1981 due to health problems and a new defence counsel was appointed. When the trial started before the City Court on 27 April 1981 the applicant complained to the Court that the circumstances of the case required defence counsel with special knowledge in the particular field of law which the case concerned and requested the appointment of two new defence lawyers. The request was rejected by the City Court but on appeal and after intervention by the Danish Bar Association the Court of Appeal on 30 April 1981 appointed two new defence lawyers, who then remained the applicant's counsel throughout the trials before the City Court and the Court of Appeal.

#### Proceedings before the Copenhagen City Court and the Court of Appeal

During the trial before the City Court, the Court took, as mentioned above, numerous decisions as to the detention and solitary confinement of the applicant. Moreover, in addition to the commissions rogatory already mentioned, other procedural matters arose which required a decision by the Court. On 3 August 1981 the defence requested payment of travel expenses for a planned trip to Switzerland and Liechtenstein. Such payment was rejected by the Court whose decision was upheld by the Court of Appeal. On 21 December 1981 the defence requested the hearing of all the 804 witnesses mentioned in the indictment. The Court refused this request since the witnesses to be heard had been agreed after negotiations between the defence and the prosecution. Furthermore the Court found that the hearing of the additional witnesses would not at present be necessary since the facts which could be established thereby would be presented by other means. The hearing of further witnesses, however, might later become necessary if the circumstances of the case so required. It appears

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that the applicant did not appeal against this decision. On 2 June 1982 the defence requested the hearing of an additional 15 witnesses. The Court allowed the hearing of 3 witnesses and refused the hearing of the rest, at least for the time being. There was no appeal against this decision. Finally it appears that the defence, during the trial, tried in vain to obtain an auditor's report which would counterbalance the report produced by the prosecution. The applicant alleges that the prosecution obstructed his attempts to receive a new report but no court decisions to that effect appear to be present in the case-file.

After the judgment of the City Court of 1 November 1982 the case was on appeal brought before the Court of Appeal for Eastern Denmark. From a procedural point of view the first matter to be settled was the date on which the hearings were to commence. They were initially intended to commence on 9 May 1983 but on 16 March 1983 the defence requested a postponement. This was granted. The trial thus commenced on 15 August 1983 when the applicant complained that the presiding judge had shown bias against him. He should therefore be removed from the case. The Court of Appeal, however, found no appearance of any fact which could cast doubt on the judge's impartiality and therefore rejected the complaint. The applicant appealed against this decision to the Supreme Court which on 31 August 1983 refused to hear the case since leave to appeal had not been granted by the Ministry of Justice.

On 7 November 1983 the applicant complained to the Court of Appeal about the manner in which the Court heard the witnesses. The Court used to start by reading aloud the statements made by the witnesses before the City Court and would then if necessary add questions. The applicant found the method unfair since the City Court transcript was not verbatim and therefore did not reflect the true picture of what had been said. The Court of Appeal decided on 9 November 1983 to continue with the same method.

On 23 November 1983 before the Court of Appeal the applicant requested the hearing of all persons mentioned in the indictment. Like the City Court the Court of Appeal refused to hear all the 804 persons in question. The applicant hereafter asked the Court to finish the trial since he no longer considered the proceedings to be fair.

On 7 December 1983 the presiding judge died in court of a heart attack which, however, did not cause delays since a substitute judge who had participated in the case succeeded him immediately. The applicant submits that the proceedings became more favourable from his point of view after this date. In particular, he was allowed to speak for four days before the final summing up of the case in February 1984. The judgment was pronounced on 2 March 1984.