COMPLAINTS

The applicant's initial defence counsel submitted a complaint on 26 August 1980 in which he alleged on behalf of the applicant a violation of Article 3 and Article 5 para. 3 of the Convention. He maintained that the solitary confinement to which the applicant had been subjected at that time for a period of approximately 7 months amounted to inhuman or degrading treatment. As regards Article 5 para. 3 it was alleged that the applicant had not been brought to trial within a reasonable time.

In a letter of 27 October 1982 the applicant alleged violations of Articles 3, 5, 6 and 7 of the Convention. With a covering letter of 9 June 1983 the applicant submitted his application form in which he referred to Articles 3, 5, 6 and 10 of the Convention and Article 1 of Protocol No. 4 to the Convention.

As regards Article 6 the applicant complains generally that he did not get a fair hearing by an impartial tribunal within a reasonable time. In particular the applicant points out

- that his rights under Article 6 were violated during the proceedings before the Probate Court;

- that the enormous press coverage had been instigated by the prosecution and thus violated his right to be presumed innocent until found guilty according to law;

- that the defence was refused permission to obtain the attendance and examination of a large number of witnesses;

- that the defence was denied resources to conduct a proper defence, since it had considerable difficulties in obtaining information and data from the prosecution and was not given effective access to the seized material;

- that the court records did not show the true picture of the facts of the case since no verbatim records were available and since the courts made incorrect dictations;

- that his own statements and comments were often ignored and thus not included in the court records;

- that the presiding judge at the City Court and the full Court of Appeal had taken more than 50 decisions to keep the applicant in detention on remand both before and during the trials as well as a number of other decisions during the investigation of the applicant's case (commissions rogatory) and the courts could not therefore be considered impartial when deciding on his guilt and when pronouncing the sentence against him.

As regards Article 10, the applicant complains that during his detention on remand he was refused permission to forward certain information to the press. This information would, in his view, have been important to correct the distorted picture which the press had given of him and his activities and which impaired his defence.

In addition to these complaints, the applicant also complains that he was arrested on account of his inability to fulfil a contractual obligation which was considered to constitute fraud. The applicant states, however, that if he had been allowed to continue his business activities, he would also have been able to fulfil his contractual obligations. He invokes on this point Article 1 of the Fourth Protocol to the Convention.

PROCEDURE

The application was introduced on 26 August 1980 regarding the complaints under Article 3 and Article 5 of the Convention. Most of the applicant's complaints under Article 6 were introduced on 27 October 1982 and finally his complaints under Article 10 of the Convention and Article 1 of Protocol No. 4 on 9 June 1983. On that date he also added certain complaints relating to Article 6, in particular those relating to the proceedings before the Probate Court. The application was registered on 18 July 1983.

The Commission considered the application on 7 December 1983 and decided, after having deliberated, that the examination of the case should be adjourned until the applicant's trial before the Court of Appeal had come to an end. The Court of Appeal pronounced judgment on 2 March 1984. A copy of the judgment was received by the Commission on 7 September 1984.

The Commission considered the application again on 7 March 1985 and decided that the Government of Denmark should be invited to submit before 24 May 1985 written observations on the admissibility and merits of the application.

On 11 May 1985 the Commission refused a request from the respondent Government for an extension of the time-limit until 24 September 1985 but granted the extension until 24 July 1985.

The Government's observations were submitted on 24 July 1985.

On 30 July 1985 the Government's observations were sent to the applicant, who was invited to submit his comments in reply before 11 October 1985. Having been granted an extension of that time-limit until 18 November 1985 the applicant submitted his observations on 17 November 1985.

On 4 March 1986 the Commission decided to invite the parties to hearing on the admissibility and merits of the application.

At the hearing, which was held on 9 October 1986, the parties were represented as follows:

The Government

Mr. Tyge Lehmann, Ministry of Foreign Affairs, agent
Mr. John Bernhard, Ministry of Foreign Affairs, adviser
Mr. Bo Vesterdorf, Ministry of Justice, counsel
Mr. Michael Elmer, Ministry of Justice, adviser
Ms. Charlotte Schydt, Ministry of Justice, adviser

The applicant

Mr. Geoffrey Robertson, barrister, counsel of the applicant
Mr. Folmer Reindel, Attorney-at-law, adviser
Mrs. Mary Hauschildt, assistant
The applicant, Mr. Mogens Hauschildt, was also present

SUMMARY OF THE SUBMISSIONS OF THE PARTIES

The Government

As a result of tradition, Danish courts of first instance operate in relatively small jurisdictions. This helps to create confidence between the court and the local population. Another result of tradition is that the local court is empowered to deal with all kinds of cases, criminal and civil. This judicial system means that normally the judge in charge is one and the same person both during the preliminary stage and the concluding trial. However, the division found in a number of European countries into so-called investigating judges and so-called trial judges is unknown in Denmark. In small rural jurisdictions the fact that one and the same judge handles the case in the initial stage as well as during the trial is the inevitable consequence of having only one judge in the respective jurisdiction. However, this set-up for the courts in Denmark should be seen in connection with the function of Danish courts in the criminal procedure.

The preliminary investigations conducted in Denmark serve a dual purpose, that is to provide all the information required to determine whether the accused should be indicted, and, if so, to collect material to clarify the choice of penalty. Investigation in criminal cases is conducted by the police under the supervision of the prosecuting authorities. Ordinarily, courts do not enter a criminal case in the investigative phase.

If, however, in the course of the investigations, a dispute arises between police and counsel over the powers etc. of the police or counsel, the matter shall be taken to court for its decision. The services of the court may also be needed in the investigative phase if either the prosecuting authority or the defence requests that evidence should be taken in camera at the initial stage if it is feared that the evidence otherwise will be lost in trial.

Furthermore certain investigative measures are deemed to involve such severe interference with citizens rights that they can only be instituted by court order. This implies that, as a general rule, measures such as search, telephone tapping, seizure and detention on remand can be instituted only if a court, after hearing the arguments and counter-arguments of the parties, finds the contemplated measure justifiable. Also decisions concerning commissions rogatory under the European Convention on Mutual Assistance in Criminal Matters are usually taken by the court at the request of the police.

Reference to court of such questions is motivated by the wish to have an impartial authority appraise whether the police should be permitted to take enforcement measures as suggested. In this manner the court ensures that the relevant provisions of the Administration of Justice Act are observed.

While investigations are under way the court plays a completely neutral, supervisory role. It takes no initiatives on its own and acts only at the request of the police or counsel, and only if there is disagreement between the two or if the police contemplates applying such onerous measures as mentioned above.

It is in particular on this point that the Danish system differs from other well-known systems of law under which the investigations are conducted by an examining judge. A fairly similar system was found in Denmark up to 1978. According to that system the procedure, usually applied prior to institution of criminal proceedings, was a combination of police investigations and preliminary investigations in court. The aim of the change of system introduced in 1978 was precisely to establish that investigations by an examining judge while police investigations were being carried out, were at variance with the position of a judge in the administration of justice. For that reason, the functions of the judge are now confined to acting as supervisor.

In this context it should be emphasised that the questions on which the court takes decisions in the course of investigations differ essentially from the theme before the judge during trial. In the investigation phase the judge's sole task is to take a decision on questions in dispute between police and counsel and to ascertain whether legal conditions exist for applying certain serious enforcement measures. Hence, it is not up to the judge to take a decision on the question of guilt in connection with the deliberations of the police as to what line of approach should be adopted with regard to the investigation. Neither shall the judge take a decision on whether or not the accused should be indicted, or in any way be involved in deliberations thereon.

Regarding the question of detention on remand the judge must naturally take account of any information available at the current stage of the proceedings which may suggest the guilt of the defendant when determining whether the requisite suspicion for detention on remand is at hand. However, a judge's deliberation prior to a decision on remand in custody is of a nature very different from his deliberation prior to the sentencing in a trial. To sentence a person for a crime requires certainty of the defendant's guilt. Hence, there has to be proof of guilt. To remand in custody, on the other hand, it

is sufficient that there is a well-founded suspicion. It is consistent with this line of thought that it has not been written into the Danish rules governing compensation from the State for unwarranted remand in custody, that compensation shall be given only if the authorities have committed an error by remanding in custody. If the defendant is acquitted, he is entitled to compensation no matter how well founded his imprisonment was according to the information available at that time.

Furthermore the Government point out that the knowledge of the case which the judge acquires during the investigation of bulky and long-winded cases may assist in a more efficient planning of proceedings to the advantage of both defendant and prosecution. This is both appropriate and desirable and may best be likened to those situations in which a judge prior to the proceedings prepares himself carefully for a case.

Once the investigation is completed the second stage of the trial is the preferment of charges. In Denmark the decision to bring charges is that of the prosecuting authority alone. In no way are the courts involved.

When charges have been preferred the trial itself is held before the sentencing court, usually with the assistance of lay judges. The trial may run into procedural difficulties and disputes requiring a decision, for instance, with respect to the production of evidence. It goes without saying that such questions must be settled by the sentencing court. It may also become necessary to decide whether to proceed with the remand in custody. It would indeed be wholly unacceptable if another court, while the case is pending before the sentencing court, were to have rivalling competence to rule on a question of remand in custody. It cannot be assumed that the sentencing court, by ruling on the question of remand in custody while the trial is in process, disqualifies itself from passing sentence in that case.

In the Government's view there is accordingly under the present system, during investigation as well as during trial, a clear line of distinction between, on the one hand, the functions of the police and the prosecuting authority and, on the other hand, the functions of the court. This distinction entails that throughout the investigation process the court exercises only supervisory functions. Furthermore it plays an entirely neutral role. That the same judge sits in matters before the court during the investigation phase and during the trial should therefore not, in the Government's opinion, give rise to any problems of competence.

In the questions raised by the Commission reference is made to the judgments of the European Court of Human Rights in the Piersack case (Eur. Court H.R. Piersack judgment of 1 October 1982, Series A No. 53) and the De Cubber case (Eur. Court H.R. De Cubber judgment of 26 October 1984, Series A No. 86). Furthermore reference is made to the Commission's Report in the case of Ben Yaacoub v. Belgium (Comm. Report 7.5.85). The instant case differs, on decisive points, from these cases. First, as mentioned above, there is in Denmark no concurrence of the functions of the prosecuting authority and the judge. Pursuant to the Constitution and the Administration of Justice

Act as well as in practice, the judge who makes the order for detention on remand and the judge who delivers judgment are independent of the prosecuting authority and of any other authorities.

Second, the judge who makes decisions on legal steps to be taken in the course of investigation plays an unobtrusive and neutral role. He acts only on request of either the prosecuting authority or the accused and his counsel. He does not take part in the deliberations of the prosecuting authority as to whether or not the accused should be indicted. The judge's tasks are only to take a decision on questions in dispute between police and counsel and to ensure that the conditions laid down in the Administration of Justice Act have been satisfied. Hence, the judge's role is solely to guarantee that the accused is protected by the rule of law. In particular regarding the Ben Yaacoub case and the powers of the Belgian Court in chambers the Government stress the significant difference that a Danish court has no comparable powers in the preliminary stages of a trial, nor should it be ignored that the proceedings before the Court in Chambers were secret, whereas hearings before Danish courts are, in principle, always public.

Against this background, the Government of Denmark is of the opinion that the fact that the judges who made decisions during the investigation process were the same as those who delivered judgment was not in violation of the applicant's right under Article 6 to have a fair hearing. This system applied in Denmark is furthermore applied by a number of other Contracting States, parties to the European Convention on Human Rights. According to the information available to the Government of Denmark, there is nothing in the systems of law of these States which prevents a judge who takes part in trial and adjudication from having sat on previous occasions when the prosecuting authority demanded detention on remand or requested permission to carry out investigation measures involving severe interference with the accused's rights.

Regarding the commissions rogatory the Government point out that in no instance did the trial judge take any part in these proceedings abroad. The involvement of the judge in this aspect comprised the function of controlling the gathering of comprehensive and well-founded information on all relevant aspects of the case in question. The letters rogatory first of all have the aim of providing the necessary factual basis for the legal proceedings. Furthermore, it is difficult to maintain that generally the decision to send letters rogatory is in itself a potential harm to the legal position of the applicant. This is also corroborated by the fact that the prosecuting authority, as well as the defence, have access to the judge in matters of sending out letters rogatory. The court's assistance in letters rogatory was due to the fact that the international conventions providing for legal assistance prescribe that the petition must be issued by a judicial authority. So, even though in Denmark it is not a court but rather the police and the prosecuting authority who are charged with gathering information during the investigation, Denmark has opted to submit letters rogatory to the courts in their capacity of judicial authorities in order to comply with the formalities prescribed by the international conventions.

Normally, however, the courts will not examine the substance of such letters rogatory from the prosecuting authority. For this reason alone it is obvious that one cannot question the fairness of

the proceedings at the City Court and the impartiality of the Court on the ground that the Court had taken a number of decisions requesting the co-operation of other countries in obtaining material relevant to the case.

The foregoing observations reflect the wish of the Government to account in substance for the fundamental principles of the Danish system governing criminal proceedings. In the Government's opinion these principles are in complete accord with the requirements of a fair trial. The Government, however, consider it of decisive importance that the Danish authorities, courts as well as legislative authorities, should be afforded the opportunity, in accordance with the tenet of international law on local redress as embodied also in Article 26 of the Convention, themselves to take a position on the doubt which the applicant has sought to raise about the fairness of this system.

The applicant did not at any time during the trial ask to have a court ruling as to whether the judges who took part in the criminal proceedings and delivery of judgment were incompetent because they had previously in the same case made decisions on single legal steps such as the taking of evidence abroad and the detention on remand of the applicant.

In the light of the above observations, the Government of Denmark submit that the complaint on this point be declared inadmissible, either because all domestic remedies have not been exhausted or because the complaint is manifestly ill-founded.

Regarding the question concerning the press coverage of the case against the applicant as well as the latter's access to contact with the press the Government submit that openness is one of the basic concepts of Danish society.

People and press are at liberty, under subsequent liability, to voice their opinions just as decisions made by the administration and the courts are, to a very large degree, open to the public. This openness, without which democracy cannot exist, should, however, be restricted somewhat in order to protect the privacy of the individual and where consideration for public interest makes such restrictions necessary. These principles have led to legislation which, only to a very limited degree, curbs the freedom of expression and which does not permit censorship.

It should be noted that the criminal case against the applicant, because of the immense sums involved, was unusual by Danish standards. Therefore, it attracted considerable public interest right from the start and was given wide coverage in the news media. In assuring the role of the mass media in this case in relation to the Convention's concept of a fair trial, the Government does not contest that a strong press campaign against an accused person may prejudice the fairness of a trial by influencing public opinion and thereby even the court or courts concerned. However, the Government totally reject the allegation that the press campaign was instigated or in any way approved by the prosecuting authority.

In a democratic society one must accept that the press exercises considerable power which cannot be restricted either in the

interests of the State or in the interests of the parties in a pending trial without further justification. There is, however, no reason to presume that judges and laymen are not capable of exercising the necessary caution when confronted with information made public in the press. It may even be assumed that an experienced judge or lay judge naturally harbours a certain scepticism in relation to information obtained on a fragmentary basis.

As regards the applicant's possibilities of making statements to the press, it appears from the files of the case that the applicant was three times denied permission to make announcements to the press. Thus, by decisions of 3 March 1980 and 25 July 1980 respectively, the Court of Appeal upheld decisions of the Copenhagen City Court according to which the applicant was denied permission to give information to the press because it was found that the information concerned could prejudice the investigations under way. On the same grounds, the Copenhagen City Court, by decision of 13 August 1980, denied the applicant permission to publish a post scriptum to a press release.

The Government fail to see how such relatively insignificant restrictions can jeopardise the fairness of the trial. In this connection it should also be noted that pursuant to a court decision the applicant was at that juncture debarred from contact with other inmates in order not to obstruct the investigation process. However, when the applicant was no longer being held in custody in solitary confinement on account of the investigation, he was not denied permission to be interviewed by the press and did in fact hold a press conference on 30 October 1980 which was broadcast by the Danish television network on 2 November of the same year.

In the light of these facts, the Government are of the opinion that the restrictions which were imposed on the applicant's contact with the press were insignificant but necessary because of the nature of the case and the applicant's general behaviour. Hence, the Government are of the opinion that the applicant's right to a fair hearing was influenced neither by the information about the case which the police and the prosecuting authority imparted to the press, nor by the restrictions which were imposed on the applicant's contact with the press. The applicant's complaint on this point is therefore to be declared inadmissible as being manifestly ill-founded.

Regarding the applicant's complaint of the manner in which witnesses were heard by the Court of Appeal the Government submit that the point of departure is that the hearing of witnesses shall take place during the trial, cf. Sec. 340 para. 1 of the Administration of Justice Act, before the court dealing with the case, cf. Sec. 174 of the Administration of Justice Act, and before the judges who are to deliver judgment in the case. These provisions are based on the principle that the adjudicating judges should have the opportunity to form their own impression of the credibility of the witnesses and the content of the judicial proceedings.

In the Court of Appeal the hearing of witnesses took place according to the following procedure: the statements of the witnesses were read out in the presence of the witness concerned, and the witness was expressly asked whether he could stand by his statement. The witness thus had the opportunity of correcting his statement. Then followed a further hearing of the witness during which counsel as well as the prosecutor and the judge could put supplementary questions

to the witness and have him repeat previous parts of his statement and, possibly, clarify the points of the statement previously made. In the opinion of the Government this questioning procedure is entirely appropriate.

In the case at hand the witnesses examined included customers of the applicant's company who had all bought precious metal from the applicant on contracts of essentially the same tenor. The case against the applicant was quite comprehensive and it was therefore necessary for the Court of Appeal to forestall unnecessary dragging out of the case. Given the careful procedure employed and having regard to the facts of the present case the Government sees no ground for misgivings as to the form in which the hearing of witnesses was conducted by the Court of Appeal. The applicant's complaint on this point should therefore be declared inadmissible as being manifestly ill-founded.

The Applicant

In regard to the question whether the involvement of the trial judges in deciding certain preliminary issues affected their impartiality, when participating in the trial itself, the facts of the present case show that the presiding judge at the applicant's trial in the City Court decided on a substantial number of occasions both prior to the trial and during the trial to prolong the applicant's detention on remand. In addition he decided on the question of solitary confinement, on issues concerning commissions rogatory and the question of cooperation of a number of other countries in obtaining material alleged to help the Government of Denmark prove the guilt of the applicant. Furthermore he made orders before the trial began stopping correspondence by the applicant, approving the censorship of his letters, ordering his wife to be taken into custody and ordering the seizure of papers and documents. It is contended by the applicant that these prior judicial involvements affected the fairness of the proceedings and the impartiality of the City Court and subsequently of the Court of Appeal.

Article 6 para. 1 of the Convention provides that everyone shall be entitled to a fair and public hearing by an independent and impartial tribunal. From the case-law of the European Court of Human Rights it is clear that the guarantee of an impartial and unbiased tribunal is absolutely basic. It is not to be whittled down or avoided by technical arguments.

The test for determining the impartiality of the tribunal was laid down by the Court of Human Rights in the case of Piersack v. Belgium (Eur. Court H.R., Piersack judgment of 1 October 1982, Series A No. 53). The Court stated that impartiality under Article 6 could be tested in two ways. One way was the subjective approach, whether the particular judge was, in fact, really biased. Secondly, by the objective approach, namely whether there was any appearance of bias or any possible doubt as to whether bias existed. This approach has subsequently been adopted by the Court in the case of De Cubber v. Belgium (Eur. Court H.R., De Cubber judgment of 26 October 1984, Series A No. 86) and by the majority of the Commission in the case of

Ben Yaacoub v. Belgium (Commission report 7.5.85). The question to be asked, therefore, is not simply whether the tribunal was in fact biased but whether there were any factors present which could legitimately give rise to a suspicion that the tribunal was biased.

There is no doubt that in this case the applicant did in fact fear that the presiding judge at the City Court was biased against him and that the appeal judges were biased. The record shows that he made his fears known at the time and he made them known to the Commission very early in his application. The question is not whether his fears were entirely justified, the question is whether they may have had some basis. The test in this respect is whether the applicant's fears were comprehensible.

The reasonableness of the fears is related to the part which the judge plays in the trial according to domestic law. In the present case it is a very important factor that the presiding judge of the City Court was the person who had the largest influence on the verdict. He did not sum up the case and leave it to a jury to decide on the question of guilt. Nor was he one of a number of judges in the Court. He was the chairman of the tribunal with only two lay assessors neither of whom had any legal or financial experience.

It is also important to focus on the implications of the decisions to deny bail and to grant the commission rogatory. The decisions to deny a man liberty for 16 months before trial and for over another year during the trial is a very serious judicial step and one which requires weighty justification in view of both the Convention's guarantee in Article 6 para. 2 and the general record of liberality shown by the Danish courts towards the applications for bail.

According to Sec. 762 of the Danish Administration of Justice Act custody pending trial may be ordered only if there is reasonable suspicion that the person concerned has committed the alleged offence and if there are substantial reasons for believing that there is either a danger of his absconding, or of his interfering with the course of justice, or committing a serious offence. It can only be justified in exceptionally serious offences.

In considering whether custody should be ordered, the judicial authority shall have regard to the circumstances, in particular the nature and seriousness of the offence, the strength of the evidence, the penalty likely, the character and personal and social circumstances of the person concerned as well as his conduct. All these matters were raised in the course of the many bail applications.

In the applicant's case the presiding judge of the City Court repeatedly decided that the applicant should be detained in custody because of the danger of his committing further criminal offences, the substantial weight of the evidence against him, the likelihood that he would run away and the danger of his interfering with the witnesses. The judge was in effect concluding, long before his trial, that the applicant was a person of deep dyed criminal proclivities, a character of unreliable and irresponsible behaviour, and a person against whom the evidence of guilt was, in the words of Sec. 762, "particular" and "confirmed".

These decisions all added to the reasonable observer saying that the presiding judge could no longer begin the trial with an open mind because he believed that the applicant was likely to be guilty, that the applicant was a person who would commit other crimes, that the applicant was a person of dreadful criminal propensity.

Turning to the questions concerning rogatory commissions the judge does not merely rubberstamp a police request but considers the weight and the validity of the reasons for that request and may be apprised of information which is not relevant or admissible at the criminal trial. The decision to issue the commission is a significant step in the investigative process insofar as it involves a formal request to another sovereign state for assistance, and it implies a determination both that the prosecution's case is weighty and that there is every reason to believe that further evidence of the defendant's guilt is to be found abroad.

The presiding judge's decision to make the request inevitably brings him into the prosecution and the investigative process and detracts him from approaching the case at trial with an unprejudiced mind. On the basis of the above mentioned facts it is clear that the applicant had legitimate grounds to apprehend judicial bias. The applicant had reason to suspect that the judge would be biased in relation to considering the verdict at the trial, and that the bias would influence the inexperienced lay persons who were the other members of the tribunal. It gave him understandable misgivings as to whether the judge could put out of his mind those devastatingly serious allegations he had already found to be proved, and approach the question of guilt or innocence with an entirely open mind.

Regarding the question of impartiality in the Court of Appeal the applicant points out that the professional judges taking part in the Court of Appeal proceedings made a number of decisions on detention prior to the trial and during the trial 1982/83. After the commencement of the appeal trial these judges made several decisions on detention together with the three lay judges. The basis upon which the Court of Appeal judges should take their decisions as to the detention on remand was, as in the City Court, Sec. 762 of the Administration of Justice Act, and accordingly for similar reasons their decisions did indicate prejudice and, by holding the applicant incarcerated, the judges showed that also the Court of Appeal found the applicant guilty prior to the verdict.

The Government have contended that the applicant has not exhausted his domestic remedies. This is refuted by the simple fact that there are no remedies to exhaust. The applicant did try to have the presiding judge removed before the trial, but without success. Indeed, the Court refused to rule on this. Furthermore, counsel for the defence informed the applicant that according to his experience it was impossible to remove the judge. When it does appear from the submissions that the applicant did not at any time and during the trial ask to have a court ruling about the possible incompetence of the judge in the City Court, it is correct that the ruling was not made. It was, however, requested by the applicant but totally ignored by the judge. It was not possible for counsel for the defence to bring this question to a ruling during the trial in the City Court. This is supported by the rules of the Administration of Justice Act, in particular Sec. 60, which expressly says that the fact that the

judge has previously dealt with the case is not a ground for objecting to him where there is no evidence that he has any personal interest in the result of the case.

Furthermore the applicant also tried unsuccessfully to have the presiding judge of the Court of Appeal removed. The Ministry of Justice did not grant leave to appeal and therefore the Supreme Court rejected the appeal against the decision to that effect of the Court of Appeal. Accordingly, the domestic remedies have been exhausted in accordance with Article 26 of the Convention.

Regarding the second aspect of this application, that is the issue of trial by media, there cannot be any doubt that nearly all the newspaper articles published during the years were prejudiced and there was in effect trial by newspapers since they contained information which would not be generally available from just attending the court hearings. These 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, that he 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. In addition the applicant's possibilities of making statements to the press were restricted not only during his solitary confinement but also later.

The applicant refutes and rejects the Government's statements that nobody was affected by this press campaign. The degree of any prejudice suffered by the applicant through this campaign should be considered in the round. In this case, therefore, the Commission should look at the combined effect of the massive media exposure, the subsequent articles prejudicial to the applicant and the decision to muzzle the applicant and prevent him from dissipating it.

As above the question which should be asked concerning this particular complaint is whether in the light of the prejudice which accrued from the media the applicant had legitimate grounds for suspecting that the tribunal would be influenced against him. It is well-established that regard should be had to the trial as a whole and the complaints about a lack of impartiality, fear of bias, strengthen the fear of trial by media. The contention by the Government that the restrictions on the applicant's access to the media were necessary to protect the investigative process is clearly a suggestion made in bad faith without evidence. It is impossible for any reasonable person to believe that the censorship the Danish Courts imposed, preventing the applicant from dissipating the prejudice that had been whipped up against him, was justified by any need to protect the investigation process. This censorship ensured that the applicant was unable to counterbalance the prejudice by telling anything of his side of the story.

It is therefore submitted that the matters referred to above also amount to a breach of Article 6 because they violate the equality of arms principle. This violation lies in the fact that the applicant was specifically restrained from giving information to the media whereas the prosecuting authorities were free to do so, and it is an inevitable interference that they did do that on a substantial number of occasions.

Finally, regarding the hearing of witnesses in the Court of Appeal, the substance of the applicant's complaint is that the manner of hearing them affected his right to a fair hearing and an effective defence because the summaries obtained from the lower court were inaccurate and subjective summaries of the testimony given at the trial and dictated by a judge whom he believed was biased.

As set out in the Administration of Justice Act it is a principle that 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 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.

However, in the present case each witness was greeted by the prosecutor's assistant prior to entering the court room and handed a copy of a statement which contained a testimony of the witness of several years before. After hearing the many pages read out from the statement to the City Court it was unlikely that the witness would object to the correctness of this statement. If so, the prosecutor would automatically attack the witness. Thus, although the witness did have the opportunity of correcting his statement this was in reality only theoretical under the very special circumstances that prevailed.

It is submitted that this method of proceeding provided no real and effective guarantee to the applicant against the possibility of incorrect or subjective summaries of the evidence. The applicant contends that the summaries which were heard by the Court of Appeal were inaccurate and that as a result he was denied a fair hearing.

THE LAW

1. The applicant has complained that he was held in solitary confinement from 2 February 1980 to 27 August 1980 and further from 2 July 1981 to 7 October 1981. He submits that this treatment was inhuman and degrading and in violation of Article 3 of the Convention which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission recalls that it has examined a number of complaints from applicants contending that isolation of detainees on remand or of prisoners serving sentences was in contravention of Article 3 of the Convention.

The Commission has held that the segregation of a prisoner from the prison community does not in itself constitute a form of inhuman treatment (cf. Nos. 7572/76, 7586/76 and 7587/76, Dec. 8.7.78, D.R. 14 p. 64). The Commission has also been confronted with a number of solitary confinement cases (cf. No. 1392/62, Dec. 14.7.65, Collection 17 p. 1, No. 5006/71, Dec. 9.2.72, Collection 39 p. 91, No. 2749/66, Dec. 16.12.66, Yearbook 10 p. 382, No. 6038/73, Dec. 11.7.77, Collection 44 p. 115, No. 4448/70, Dec. 16.7.70, Collection 34 p. 70, No. 8395/78, Dec. 16.12.81, unpublished). It has stated that prolonged solitary confinement is undesirable, especially where