

Amnesty International

SWEDEN

Osmo Vallo Commission: further action needed

Introduction

More than seven years after the disputed death in police custody of Osmo Vallo due to the lack of a prompt, thorough, impartial and independent investigation into the full circumstances of his death, no one has been held accountable for his treatment and subsequent death.¹

Osmo Vallo died shortly after his arrest on 30 May 1995 -- he was ill-treated by police officers and bitten by a police dog, and he was stamped on his back by a police officer as he lay face down on the ground. After he appeared to have collapsed, no attempts were made to assist or resuscitate him. Instead, the police officers transported him in the back seat of the car, still handcuffed and lying face downwards, to the hospital.

The police investigation into the death of Osmo Vallo was not carried out thoroughly and impartially. The scene of arrest was cleaned before detailed forensic testing was carried out, and some eyewitnesses were reportedly asked by police officers to keep quiet about what they had seen. The first post-mortem examination, a week after the death, was not carried out properly: it failed to take account of detailed eyewitness statements and thus examine the body thoroughly. A thorough examination would have discovered some broken ribs and whether or not a neck vertebra had been damaged. Pathologists carrying out subsequent post-mortem examinations disagreed on whether the police violence and/or positional asphyxia contributed to his death. The National Board of Forensic Medicine (Rättsmedicinalverket) failed to review properly the first post-mortem examination, and the Judicial Council (Rättsliga Rådet) of the National Board of Health and Welfare (Socialstyrelsen) failed to produce an authoritative and impartial report on the post-mortem examinations and on international concerns on positional asphyxia as a cause of death in police custody in certain circumstances. The prosecution authorities failed to question the results of the first post-mortem examination and why they did not correspond to eyewitness accounts; and failed to bring prosecutions based on the many

¹ For more information, see, *inter alia*, "Sweden – Osmo Vallo: action need to prevent more deaths in custody", AI Index: 42/01/1997, published by Amnesty International in October 1997, and available at [http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/EUR420011997ENGLISH/\\$File/EUR4200197.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/EUR420011997ENGLISH/$File/EUR4200197.pdf).

eyewitness statements concerning the police officers' treatment of Osmo Vallo, which were consistent with the 39 wounds and bruises found on his body, as well as with the noise heard by some of the eyewitnesses as if something inside Osmo Vallo's upper body had cracked. Instead, the two arresting police officers were convicted and fined in 1996 solely in connection with their failure to control the police dog during the incident.

The fact that the Prosecutor General acknowledged, almost five years after Osmo Vallo's death, that he may have died from being stamped on his back by a police officer remains a serious indictment of the whole investigation process. In closing the investigation into Osmo Vallo's death on 30 March 2000, the Prosecutor General acknowledged that there had been flaws in the investigation and urged that a further investigation be carried out into how the authorities had handled the different aspects of the case.

To date, Amnesty International is still concerned that the failures of all of the above-mentioned government agencies and authorities to carry out prompt, thorough, independent and impartial investigations have given rise to the perception that the authorities participated, wittingly or not, in a cover-up in order to prevent the full truth from emerging. Amnesty International also remains concerned that Osmo Vallo's death was not an isolated incident. There has been a pattern of similar deaths in custody in which the manner of restraint and/or excessive use of force by law enforcement officials may have caused asphyxia.

Under international human rights law, and *a fortiori* when there is *prima facie* evidence of state involvement in an unlawful killing, such as in the case of Osmo Vallo, states are obliged to conduct a prompt, thorough, independent and impartial investigation.² In particular, in "cases where complaints by relatives suggest unnatural death", international standards on investigation require that: "[i]n cases in which... [there is an] apparent existence of a pattern of abuse... governments shall pursue investigations through an independent commission of inquiry or similar procedure".³

In 2000, given the lack of impartiality of the various investigations in the case that had taken place up to then, Amnesty International strongly urged the Swedish authorities to establish a totally independent commission of inquiry to carry out an investigation. Among the features that such commission of inquiry should have, Amnesty International recommended that the Swedish authorities should consider appointing experts from other countries, including people with specific expertise on forensic medicine. In addition, the organization emphasized to the Swedish authorities the need for the inquiry's remit to include the handling of Osmo Vallo's case by the different authorities, as well as a more thorough investigation in the other cases of deaths in custody since 1992.

² See for example, Principle 9 of the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, and available at <http://www.unhchr.ch/html/menu3/b/54.htm>.

³ *Ibid*, Principle 11.

In June 2000, the Swedish Minister of Justice replied to Amnesty International. The Minister stated that the June 2000 report of the Chancellor of Justice (Justitiekanslern) had been critical of actions taken by various authorities involved in the handling of the Osmo Vallo's case and indicated flaws within the criminal justice system. The Chancellor of Justice's report called for further consideration of certain questions. The Minister of Justice stated that a commission of inquiry would be set up in the last quarter of 2000 to look into past deaths in custody in order to propose measures to prevent such deaths from happening. Furthermore, the Chancellor of Justice's report was almost immediately followed by a report by the Parliamentary Ombudsperson (J O, Justitieombudsmannen) who stated that the procedure for dealing with complaints against the police was inadequate and proposed the establishment of an independent system. The Ombudsperson was particularly critical of the local prosecutors' failure to initiate preliminary investigations into some cases of alleged police misconduct even though such investigations would have been justified.

The Osmo Vallo Commission

Following the June 2000 announcement of the Minister of Justice's intention to establish a commission of inquiry to look into past deaths in custody in order to propose measures to prevent such deaths from happening, on 14 December 2000 the Swedish authorities decided to establish a special commission of inquiry, the so-called Osmo Vallo Commission. However, in establishing such a commission, the Swedish authorities decided to charge it exclusively with conducting a comprehensive and overall review of the procedure of the crime investigation in connection with the death of Osmo Vallo, instead of ensuring that the Commission's remit would encompass other cases of custodial deaths that had taken place in previous years.⁴ To date, the Swedish authorities have failed to provide an explanation for this change.

No foreign experts were appointed to the Commission, nor was anyone with forensic medical expertise appointed.

Amnesty International gave evidence to the Osmo Vallo Commission in January 2001. In its submission to the Commission, among other things, Amnesty International emphasized the need for the Commission to consider other deaths in custody, including those possibly resulting from positional asphyxia. In particular, the organization stressed that it was important not to look at the case of Osmo Vallo in isolation as his death needed to be contextualized. A probe into other cases of disputed custodial deaths could

⁴ *Osmo Vallo - Investigation of an Investigation*, Statens Offentliga Utredningar, Stockholm April 2000, SOU 2002:37, Summary. On the day the Commission was established, Mats Svegfors, a County Governor, was appointed as Special Commissioner to head the review. The Commission also comprised of three expert advisers appointed to assist the Special Commissioner and two Secretaries. Associate Professor (law) Hans-Gunnar Axberger, Professor (sociology) Karin Johannisson and Eric Östberg (LL.D) were appointed as expert advisers on 8 March 2001. Katarina Persson and Maria Lockman, both Associate Judges of Appeals, were appointed Secretaries to the Commission on 18 December 2000 and 1 May 2001 respectively. The English Summary of the report was provided to Amnesty International by the Swedish Ministry of Justice in May 2002.

result in lessons that all relevant authorities and government agencies previously involved in the case of Osmo Vallo needed to learn. Amnesty International considered that, in order to be able to ascertain whether in the case of Osmo Vallo there had been failures due to systemic problems, it was imperative to look at other analogous cases to establish, for example, whether certain patterns had been emerging.⁵ By establishing whether there were such patterns would, in turn, enable the Commission to make recommendations capable of addressing the need for fundamental changes, if any, and, thus avoid the risk of recommending mere cosmetic changes. In particular, given the similarities with the case of Osmo Vallo, Amnesty International raised the case of Peter Andersson, a 35-year-old suspected burglar, who had died in November 2000 after being arrested and restrained by four police officers in Örebro.⁶

In addition, given the circumstances of a number of then recent deaths together with what had emerged already about Osmo Vallo's death, Amnesty International emphasized the need for the Commission to look at restraint methods, restraint techniques, and respective training therein that was being imparted to those charged with effecting arrests and to those in charge of restraining individuals already in the custody of the authorities, such as prison staff.

Amnesty International also drew the attention of the Osmo Vallo Commission to the procedural requirements of Article 2, enshrining the right to life, of the European Convention on Human Rights and Fundamental Freedoms (the European Convention), a treaty to which Sweden is a party. Since then, these obligations, which are part and parcel of the state's obligation to respect and protect the right to life, have been reaffirmed by the European Court of Human Rights in its judgments related to a number of disputed killings in Northern Ireland (e.g. Jordan; McKerr; Kelly and others; Shanaghan; and McShane, all brought against the United Kingdom).⁷ These judgments have emphasized that failure to conduct an effective investigation in an individual's death will give rise to a breach of Article 2 of the European Convention. In turn, an investigation's effectiveness hinges on its promptness, thoroughness and independence. In cases of disputed deaths Article 2 requires that there be public scrutiny of the authorities' actions and, in particular, an examination of the legality of law enforcement officials' actions. For example, in *Jordan v United Kingdom*, the European Court of Human Rights stated: "a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts". In

⁵ At the end of 1997, the Prosecutor General informed Amnesty International that he was reviewing prosecution decisions in the case of Osmo Vallo and 18 other cases, 12 of which had been deaths in the custody of law enforcement officials.

⁶ See the country entry on Sweden in the "Amnesty International report 2001", AI Index: POL 10/001/2001, available at <http://web.amnesty.org/web/ar2001.nsf/webeurcountries/SWEDEN?OpenDocument>.

⁷ See, *inter alia*, "United Kingdom: Landmark judgments on killings in Northern Ireland", AI Index EUR 45/010/2001, issued by Amnesty International on 4 May 2001, and available at <http://web.amnesty.org/ai.nsf/print/EUR450102001?OpenDocument>, as well as, "McShane v the United Kingdom: another landmark judgment", AI Index EUR 45/005/2002, issued by Amnesty International on 29 May 2002 and available at <http://web.amnesty.org/ai.nsf/print/EUR450052002?OpenDocument>.

this context, and in light of its concerns in the Osmo Vallo's case, Amnesty International urged the Commission to examine whether the procedures in place in Sweden complied with the requirements of Article 2. In particular, the organization raised the question of public scrutiny of the authorities' actions in the context of disputed deaths as a result of law enforcement officers' actions; the role of the police in the conduct of the investigation and the potential that a reasonable apprehension of bias might arise with respect to the investigation's independence, including with respect to the relationship between the prosecuting authorities and the police; and the extent to which the bereaved family has access to all the relevant information. Finally, Amnesty International addressed the Commission on the perception that the failings in the Osmo Vallo's case were the result of a cover-up.

The Osmo Vallo Commission reported on its findings in late April 2002.⁸ The Osmo Vallo Commission's report reiterates and confirms the many serious concerns that Amnesty International and others had previously identified in connection with Osmo Vallo's death and with the subsequent severely flawed investigation by the Swedish authorities into all the facts surrounding his death.⁹

In light of its findings, the Commission put forward, *inter alia*, the following proposals:

- mandatory investigations of deaths and/or serious injuries in connection with police intervention;
- a special investigation procedure, under the leadership of a prosecutor, should be introduced in cases of death and/or serious injuries in connection with police intervention;
- in any case where someone dies or is injured in connection with police intervention, all police officers should be questioned as soon as possible after the matter has been transferred to the prosecutor;
- the right of the aggrieved party, including the bereaved family in case of actual death, to have automatic legal counsel in cases of deaths or serious injury in connection with police intervention; and
- the establishment of a special commission to conduct a review of forensic operations, the purpose of which should be, in particular, to clarify the role of forensic pathologists as individuals and also the role of the National Board of Forensic Medicine.

⁸ The full report of the Commission is referenced as the Osmo Vallo Commission Official Government Report - SOU 2002:37 and is available at http://justitie.regeringen.se/propositionermm/sou/pdf/sou2002_37.pdf The complete report runs to 180 pages.

⁹ For the actual findings of the Commission, see "*Seven years on: no accountability for Osmo Vallo's death in police custody*", AI Index: EUR 42/002/2002, issued by Amnesty International on 30 May 2002, and available at <http://web.amnesty.org/ai.nsf/print/EUR420022002?OpenDocument>.

Amnesty International's conclusions and recommendations

Amnesty International has already welcomed the main thrust of the factual findings of the Osmo Vallo Commission.¹⁰ However, the organization notes that the Commission did not consider other cases of disputed deaths in police custody. The Commission's report makes a passing reference to having requested and having looked at the dossiers of 16 other cases. However, at no stage does the Commission's report imply that its findings arise from its full consideration of these other cases. Amnesty International believes that in this respect, the Osmo Vallo Commission missed an important opportunity to establish whether the failures in the Osmo Vallo's case were, in fact, systemic, especially in light of the fact that by the time the Commission had begun its work at least 16 deaths, in which the circumstances were disputed, had taken place. Missing such an opportunity to learn from other disputed deaths -- including in terms of being able to identify preventive measures to avoid further occurrences, such as abandoning a certain restraint technique -- has meant that the Osmo Vallo Commission has not been able to fully consider whether the case of Osmo Vallo and other disputed deaths in custody raised broader questions about the way in which the Swedish authorities address controversial deaths in custody.

While the report contains a chapter focussing on the risks inherent in some restraint methods and the urgent need for training therein, the Commission's final proposals make no reference to either restraint methods, techniques or training therein.

Amnesty International urges the Swedish authorities to carry out their own review of all restraint methods, techniques and training therein for all law enforcement officials and private security guards. In particular, such review should address the risks inherent in some of these restraint methods and techniques.

Despite the criticism that the Osmo Vallo Commission makes in its report about the National Board of Forensic Medicine's role in the case, it appears that its General Director, Kurt Roos, was never actually formally interviewed by the Commission. Nor was Prof. Lennart Rammer, to whom those who had been involved in two post-mortem examinations of Osmo Vallo's body reported. Amnesty International remains concerned that the Osmo Vallo Commission has not shed light on the exact cause of death, and has not been able to lay to rest a number of questions arising from the discrepancies in the findings of the various forensic pathologists involved in the case. In addition, the organization has received information which questions the adequacy of the Osmo Vallo Commission's scrutiny of the case from a medical forensic perspective. According to the information received, the Commission was rather timid in terms of its recommendations with respect to the role played by the forensic authorities. This, coupled with the fact that no one with forensic medical expertise was appointed to the Commission, reinforces the suspicion that another opportunity to lay to rest some of the most pressing issues raised by the Osmo Vallo's case -- and by the role played by the Swedish forensic authorities in the course of its investigation -- has been missed.

¹⁰ *Ibid.*

Amnesty International urges the Swedish authorities to establish an immediate and thorough review of the forensic operations and functions as recommended by the Osmo Vallo Commission.

In a statement to Amnesty International on the eve of the seventh anniversary of her son's death, Signe Modén, Osmo Vallo's mother, referring to the findings of Osmo Vallo Commission, said:

I have been partially vindicated by the authorities= admission that the police, the public prosecutors= and the medical examiners= actions were wrong. But I will never be fully compensated until those responsible for my son=s death have been punished, and proper changes in law are enacted so as to prevent other mothers= sons being killed and stop the authorities from obstructing justice.

Amnesty International considers that the recommendations of the Osmo Vallo Commission, if fully implemented, will partially address the organization's concerns about past systemic failures in relation to deaths in custody.

Therefore, Amnesty International urges the Swedish authorities to ensure that:

- a) **prompt, thorough, independent and impartial investigations are carried out into all such deaths;**
- b) **prompt, thorough, independent and impartial forensic examinations are conducted;**
- c) **family relatives are provided with legal counsel and are kept fully abreast of the progress of the investigation; and**
- d) **those allegedly responsible be brought to justice.**

In addition, Amnesty International recommends that the Swedish authorities establish a mechanism capable of ensuring full public scrutiny of the authorities' actions and, in particular, an examination of the legality of law enforcement officials' actions, in connection with any deaths in custody, as required by Article 2 of the European Convention.