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# Denmark

## A Briefing for the Committee against Torture

### Introduction

In May 2007, the Committee against Torture (hereafter the Committee) is scheduled to examine Denmark's fifth periodic report on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture). This briefing summarizes Amnesty International's views about Denmark's implementation of the Convention against Torture; while welcoming some positive measures which have been taken, the organization considers that additional steps must be taken by Denmark to ensure the full implementation of the Convention against Torture.

Amnesty International notes that Denmark ratified the Convention against Torture in 1987, and in 2004 it ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment authorizing independent international experts (the Subcommittee on Prevention) to conduct regular visits to places of detention and requiring the establishment of a national mechanism to conduct visits to places of detention and to cooperate with the international experts.

Amnesty International notes that Denmark has played an active role in global efforts to eradicate torture. Within the United Nations (UN) Denmark has, for several years, tabled and negotiated a resolution against torture in the UN Human Rights Commission (now the UN Human Rights Council) and in the UN Third Committee of the General Assembly. Issues related to the eradication of torture have also been supported by Denmark at the UN Security Council. One of the pledges that Denmark has made about its key priorities in conjunction with its candidature to the UN Human Rights Council for the period 2007-2010, is to intensify its efforts to combat and eradicate torture everywhere.

Amnesty International also welcomes the decision in November 2005 by the Minister of Justice to request that the Criminal Law Council assess the need to include a distinct crime of torture in the Danish Criminal Code, as a step in addressing this lacuna.

The present briefing focuses on the following concerns:

- Failure of the Danish Government to incorporate the Convention against Torture into Danish law.
- Lack of a distinct crime of torture, defined in a manner consistent with Article 1 of the Convention, in the Danish Criminal Code.
- Disadvantaging persons suffering from posttraumatic stress disorder in obtaining citizenship.

- Redress for Afghans captured and handed over by Danish troops to US custody, where they were allegedly ill-treated, in Afghanistan.
- The need to investigate allegations of the possible use of Danish airspace and airports in the context of the US rendition program.
- Prolonged pre-trial solitary confinement.
- Lack of judicial review of decisions imposing solitary confinement as a disciplinary measure for convicted prisoners.
- The need to ensure independent, impartial and thorough investigation of alleged human rights violations by police and the failure to ensure an effective remedy after a death in police custody.

## **1. Incorporation of the Convention and criminalization of torture as a distinct offence in Danish law (Articles 1, 2 and 4)**

*Amnesty International is concerned that the Danish Government has yet to ensure that the Convention against Torture and a distinct offence criminalizing torture in a manner consistent with Article 1 of the Convention are incorporated into Danish law.*

### **Incorporation of the Convention against Torture into Danish law**

In 2001, the Committee on Incorporation of Human Rights Conventions into Danish Law (the Incorporation Committee), appointed by the former Minister of Justice, recommended that the Convention against Torture should be incorporated into Danish law. The Committee made the following recommendations:

#### General recommendations:

“UN treaty bodies have several times encouraged the Government of Denmark to incorporate certain human rights conventions, and incorporation may serve as a signal of the importance attached to such conventions.

Incorporation can be seen as a strengthening of the citizens’ legal position in that it emphasises that the citizens may invoke the provisions of the convention directly before the courts and other law-applying authorities regardless of whether specific implementing measures have been adopted or not. In this way, incorporation can be seen as a supplement to the assessment made by the government and Parliament in

connection with adoption of bills and by administrative authorities in connection with the administration of legislation.

Even if a statute is considered compatible with Denmark's international obligations at the time when the statute was adopted, this does not ensure that the statute will remain so, as international case law concerning the relevant convention may develop after the adoption of the statute. Even when it appears clearly from the explanatory memorandum to a bill that it is presumed that the statute will be administered in accordance with Denmark's international obligations, it is not certain that the decisions made by administrative authorities do in fact always comply with human rights conventions. Against this background it will be a further safeguard against unintended violations if courts and other law-applying authorities during individual legal proceedings can assess whether the state of law, including the way in which the legislation is administered, complies with Denmark's international obligations. Incorporation would make this task clearer.

Incorporation will create a statutory basis for the application of the incorporated conventions by the courts and the law-applying authorities.

Furthermore, incorporation will increase attention and consciousness about the incorporated conventions.

In the opinion of the Incorporation Committee there are no substantial disadvantages making incorporation unfeasible or unadvisable in general.”<sup>1</sup>

#### Special recommendations as regards the Convention against Torture:

“On the basis of an overall assessment, the Incorporation Committee recommends incorporation of CAT [Convention against Torture] into Danish law.

Although the convention is a “special convention”, the Incorporation Committee finds that it must be considered “central” to the protection of human rights as it relates to one of the most fundamental rights, viz., the prohibition against torture and other forms of cruel, inhuman or degrading treatment or punishment.

The Incorporation Committee finds that the convention is also “suitable” for application as a legal basis for the determination of disputes pending before the courts or administrative authorities. The provisions of the convention are to a large extent worded clearly and accurately.

The Committee emphasises that an individual complaints procedure has been established. The comprehensive and detailed case law of the Committee against Torture in individual cases means that the convention provisions will be suitable for application as a legal basis for the resolution of concrete disputes before the courts or

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<sup>1</sup> On the Incorporation of Human Rights Conventions in Danish Law (Betænkning nr. 1407 København 2001), pp 324 -325.

administrative authorities. In the opinion of the Incorporation Committee, the case law of the Committee against Torture contributes to clarifying the content and scope of the convention provisions.

The Incorporation Committee has further attached importance to the fact that it cannot be excluded that on certain points the CAT offers better protection than the ECHR – possibly in respect of the evidence required to prove that an alien risks being exposed to torture, if returned.”<sup>2</sup>

In 2004, the present Danish Government rejected the recommendations of the Incorporation Committee, as well as the recommendation made by the Committee against Torture in May 2002 about the incorporation of the Convention against Torture into Danish law.<sup>3</sup> In its fifth periodic report about its implementation of the Convention against Torture, dated 5 April 2005, the government gave the reasons for its rejections. In sum, stating its view that Danish law is consistent with the Convention, and the Convention has been invoked by Danish Courts, the government concluded that incorporation, which is not required by the Convention, was unnecessary and would only be symbolic.<sup>4</sup>

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<sup>2</sup> On the Incorporation of Human Rights Conventions in Danish Law (Betænkning nr. 1407 København 2001), p. 330.

<sup>3</sup> Conclusions and recommendations of the Committee against Torture, CAT/C/CR/28/1 of 28 May 2002, para 7(a).

<sup>4</sup> CAT/C/81/Add.2 5 April 2005

“147. The Government has taken note of the recommendation of the Incorporation Committee to incorporate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into the domestic law. However, in January 2004 the Government decided not to incorporate that Convention into Danish law. This decision was based on several considerations. 148. Firstly, the Convention itself does not place any obligations on States parties to incorporate the Convention into the domestic law. When ratifying the Convention, the Danish Government followed the standard procedure and assessed whether the domestic law and practice were in conformity with the provisions of the Convention, or whether any changes of the domestic law and practice were necessary prior to the ratification. After ratifying the Convention, the Government has also continuously taken steps to ensure that Danish law and practice is in conformity with the Convention, for instance when drafting proposals for new legislation. Hence, the Government is of the opinion that even though the Convention has not been incorporated into Danish law, Denmark fully respects the provisions of the Convention.

149. Secondly, the human rights conventions that Denmark has ratified are relevant sources of law regardless of the method of implementation, as emphasized by the Incorporation Committee.

Conventions that have not been specifically implemented, because harmony of norms has been ascertained, can be and are in fact invoked before and applied by the Danish courts and other law-applying authorities. For example, the High Court of Eastern Denmark recently applied the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (cf. the High Court’s judgement printed in Danish Law Reports 2004, p. 715). The subject of the case was whether the Public Prosecutor, during the investigation of a case concerning alleged torture committed abroad,

## **Torture as a distinct offence punishable in Danish law**

In its fifth periodic report to the Committee against Torture on its implementation of the Convention against Torture, dated 5 April 2005, the government reiterated its rejection of the recommendation to add a distinct offence of torture, defined in a manner consistent with Article 1 of the Convention, as a punishable offence to Danish criminal law.<sup>5</sup>

However, in November 2005, the Minister of Justice decided to refer this issue to the Standing Committee on Criminal Matters (the Standing Committee) for discussion. The reasons for this decision were given in a speech by the Minister to the Legal Affairs

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could divulge confidential information to a foreign authority with details from the charged person's application for asylum, including his photographs and fingerprints. The High Court stated that according to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Denmark was obliged to carry out an eventual legal proceeding concerning acts of torture committed by persons who are not extradited for legal proceedings in another country. Since the confidential information was passed on during an investigation of alleged violence and torture (cf. sections 246 and 245 of the Criminal Code), the High Court stated that this was a legal divulgement. 150. Considering that the existing state of law in Denmark ensures that the Convention and other ratified - but unincorporated - United Nations human rights conventions are relevant sources of law and may be applied by the courts and other law-applying authorities, the Government finds that it is neither legally necessary nor politically appropriate to incorporate the Convention into Danish law. Incorporation would only be of a symbolic character, since it would not change anything with regard to the existing state of law in Denmark, and the Government finds that laws should not be passed if they only are of a symbolic character. For these reasons, the Government has also decided not to incorporate any of the other United Nations conventions on human rights."

5 CAT/C/81/Add.2 5 April 2005 "Incorporation of the definition of torture of the Convention - article 1 151. When the Committee concluded its examination of Denmark's fourth periodic report, the Committee recommended that Denmark establish adequate penal provisions to make torture, as defined in article 1 of the Convention, a punishable offence in accordance with article 4, paragraph 2, of the Convention.

152. Reference is made to paragraphs 30-36 of Denmark's third periodic report (CAT/C/34/Add.3), which describe the Government's position on this issue.

153. In addition, the Government can inform the Committee that in 2002, the maximum penalties for violation of sections 244, 245 and 246 of the Criminal Code were increased to 3, 6 and 10 years of imprisonment, respectively. Further, by way of a 2004 amendment, it has now been explicitly spelt out that, in determining the penalty, it must generally be considered an aggravating circumstance, *inter alia* if the offence has been committed while executing a public office or function, or while abusing a position or another relationship of trust.

154. The above-mentioned case from the High Court of Eastern Denmark (cf. Danish Law Reports 2004, p. 715) also illustrates that torture is included in the provisions in the Criminal Code even though the act does not have a specific provision about torture.

155. As appears from the comments on the considerations concerning incorporation, the Government has decided not to incorporate the Convention into Danish law. Given the fact that, in the opinion of the Government, the Criminal Code is presumed to provide the requisite authority for imposing a suitably severe penalty in case of torture, this decision has not brought about a change in the Government's position on the issue of establishing a separate Criminal Code provision on torture."

Committee of the Parliament on 24 November 2005.<sup>6</sup> The Minister referred inter alia to the fact that Norway recently had established a separate provision on torture, that the UN Committee against Torture had recommended the establishment of a separate provision, that other national and international organizations have recommended the same thing, that a petition initiated by Amnesty International showed that there was a certain popular support for this legal reform, and finally that questions recently have been raised as to whether the statute of limitations in the Criminal Code might be a problem in this regard.<sup>7</sup> On 23 June 2006, the Ministry of Justice officially referred the matter to the Standing Committee, requesting it to consider whether there is a need to establish a separate Criminal Code provision on torture and whether a special provision concerning a statute of limitation is required in connection with such a provision. The Committee is reportedly still meeting and will submit its recommendations to the government.

Amnesty International continues to urge the Danish Government to ensure the addition of a distinct offence of torture, defined in a manner consistent with Article 1 of the Convention against Torture to Danish criminal law.

## **2. Non-refoulement and the right to redress (Articles 3, 12, 13 and 14)**

### **Torture victims' possibility of acquiring Danish citizenship**

*Amnesty International is concerned that, in the future, torture victims residing in Denmark may be at risk of being excluded from obtaining Danish citizenship.*

In December 2005, a majority of parliament agreed on a Circular which governs the administration of Danish citizenship<sup>8</sup>. According to this Circular, persons seeking Danish citizenship must fulfil various criteria, including possession of permanent residence permit, and ability to support themselves. In addition, the applicant is required to prove his or her competency in the Danish language and to pass an examination testing his or her knowledge of Danish culture, history and society. Persons suffering from Post-Traumatic Stress Disorder (PTSD) are no longer exempt from the requirements.

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<sup>6</sup> <http://www.ft.dk/?/samling/20061/MENU/00000004.htm>

<sup>7</sup> Actions of torture are punishable under Danish Criminal Law pursuant to the provisions on assault, coercion, unlawful deprivation of liberty etc. Therefore the statute of limitations applicable to these crimes are also applicable to the crime of torture. The maximum penalty for these crimes is found in Sections 245 and 246(10 years) and the statute of limitation for crimes committed in pursuance to Sections 245 and 246 is 10 years (cf. Section 93 (1) no. 3 of the Criminal Code).

<sup>8</sup> Circular on naturalisation CIS nr.9, 12 January 2006

Various organizations, including Amnesty International, have expressed concern that the new guidelines may diminish the possibility of traumatized refugees with chronic PTSD from obtaining Danish citizenship. Persons suffering from PTSD have a wide range of symptoms, which often include concentration difficulties and learning impairment. These and other effects of PTSD can impede a person's ability to learn a new language and pass the examination testing knowledge of Danish society. Amnesty International has therefore recommended the re-introduction of an exemption for people suffering from PTSD from meeting all of the criteria under the guidelines when seeking Danish citizenship.

### **Danish Special Forces' capture and handover of 31 men to US custody near Kandahar in Afghanistan on 17 March 2002**

*Amnesty International is concerned that there has been no thorough, independent and impartial investigation into allegations that 31 Afghan men were transferred from Danish to US custody in Afghanistan, and that they were reportedly subsequently ill-treated. To date, the 31 men have not had access to effective redress or reparation.*

It has come to light that 31 people, who have alleged ill-treatment while in US custody in Afghanistan, had initially been arrested and handed over to the US by Danish forces in the context of Operation Enduring Freedom in Afghanistan. A TV- documentary "The Secret War", shown on Danish television (DR2) on 7 December 2006 raised this case. It indicated that the 31 men captured by the Danish Special Forces on 17 March 2002 near Kandahar and handed over to US authorities at the Kandahar base are the same 31 men whose reports of ill-treatment while in US custody, had been raised by Amnesty International on several occasions.<sup>9</sup>

This conclusion was drawn on the basis that the alleged incident took place on the same date, at the same place, and involving the same number of men. Furthermore, the spokesperson whom Amnesty International interviewed was the same spokesperson who appeared in the TV documentary.

A review of the incident by the Danish Ministry of Defence was made public on 13 December 2006 (less than a week after the broadcast of the TV program). The Danish Government concluded, on the basis of official statements from the US authorities and undisclosed sources, that there was no documentation of the alleged ill-treatment of the 31 men while in US custody. However, it is significant that the authorities have not conducted interviews of the alleged victims of ill-treatment as part of the review, nor does it seem, that

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<sup>9</sup> AI Index: AMR 51/053/2002, 15 April 2002 <http://web.amnesty.org/library/index/engamr510532002> ; AMR 51/114/2003, 19 August 2003 <http://web.amnesty.org/library/index/engamr511142003> ; Annual Report 2003 <http://web.amnesty.org/report2003/Afg-summary-eng> ; AMR 51/145/2004; 27 October 2004 <http://web.amnesty.org/library/index/engamr511452004>

they have taken into consideration reports of the alleged ill-treatment published by Amnesty International.<sup>10</sup>

Amnesty International has written to the government and the parliament urging them to initiate an independent inquiry whose mandate would include conducting interviews of the alleged victims of ill-treatment and, if appropriate, making recommendations for reparations, and to consider recommendations for any necessary adjustments to the rules of engagement, guidelines, training and control and reporting systems for Danish soldiers and police involved in international operations, so as to ensure compliance with the Geneva Conventions and relevant international human rights standards, as a guarantee of non-repetition. The recommendation was turned down by the government based on the conclusions of the December 2006 review by the Ministry of Defence.

### **Allegations of the use of Danish airspace and airports in the course of the US led program of renditions**

*Amnesty International is concerned about allegations that Danish airspace and airports have been used by planes reportedly used by the CIA, including for renditions, in the course of the renditions program, raising the need for a thorough investigation.*

The Danish Government has, in a letter to the European Parliament's Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (TPID), reported over 100 flights through Danish airspace and 45 stopovers in Danish airports by planes allegedly used by the CIA, including for renditions.

The European Parliament adopted the final report of the TPID on 14 February 2007. The report condemns extraordinary rendition as an illegal practice used by the USA in the fight against terrorism; and condemns the acceptance and concealment of the practice by the secret services and governmental authorities of certain European countries.

The report included the following recommendations:

- Considers that all European countries that have not done so should initiate independent investigations into all stopovers made by civilian aircraft carried out by

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<sup>10</sup> See footnote 9 and Amnesty International's Annual Report 2003, AI Index: POL 10/003/2003, which states that Amnesty International's Annual Report of 2003: "On 17 March, at least 31 men were arbitrarily arrested and detained when US soldiers raided a compound near Kandahar. They were subsequently released when it was established that they were civilians. The detainees alleged they were ill-treated by US soldiers. They said that they were punched and kicked while their hands were tied behind their backs and hoods placed over their heads, and that US soldiers walked on their backs as the detainees lay on their stomachs. It was alleged that the detainees had their body hair shaved by US military officers. For the next few days between 10 and 18 detainees were held in cages measuring 5m by 10m, with buckets for toilets." available at: <http://web.amnesty.org/report2003/index-eng>

the CIA, at least since 2001, including those cases already analysed by the Temporary Committee;

- Calls on European countries to compensate the innocent victims of extraordinary rendition and to ensure that they have access to effective and speedy compensation, including access to rehabilitation programmes, guarantees that there will be no repetition of what happened as well as appropriate financial compensation;
- Urges the Member States to ensure that Article 3 of the Chicago Convention, which excludes state aircraft from the scope of the Convention, is properly implemented in order that all military and/or police aircraft fly over or land on another State's territory only if they have prior authorisation;
- Calls on Member States to take adequate measures to ensure that over flight clearances for military and/or police aircraft should be granted only if accompanied by guarantees that human rights will be respected and monitored;
- Considers it necessary to enforce effectively, both at EU and national level, the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft so that the exercise of jurisdiction is used to ensure the observance of any obligation under a multilateral international agreement, in particular concerning the protection of human rights, and that, when appropriate, inspections on board should be undertaken;
- Calls on Member States to provide adequate and effective parliamentary monitoring (by establishing oversight committees with appropriate powers to access documents and budgetary information) and legal supervision over their secret and intelligence services and the formal and informal networks of which they are part.<sup>11</sup>

Amnesty International has recommended that the Danish government ensure the initiation of an independent investigation, in line with the recommendations of the TPID, into the alleged use of Danish airspace and Danish airports, by planes allegedly used by the CIA, including for renditions, during the renditions program. In late 2005, the Danish government announced that unauthorized CIA flights would not be allowed into its airspace, which Amnesty International welcomes. However, the government rejected the recommendation to investigate and refutes the need to look into related legislation.

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<sup>11</sup> European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)) paragraphs 190, 192, 207, 208, 209 and 202, adopted on 14 February 2007, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0032+0+DOC+XML+V0//EN>

### **3. Treatment of persons under any form of arrest, detention or imprisonment and prohibition of cruel, inhuman or degrading treatment (Articles 11 and 16)**

#### **Pre-trial long term solitary confinement**

*Amnesty International continues to be concerned about the placement of persons in prolonged solitary confinement during the pre-trial phase of criminal proceedings. In particular Amnesty International is concerned about the length of time a person suspected of terrorism related offences may be held in solitary confinement during pre-trial stages of criminal proceedings under Danish law. The organization is concerned that application of the law creates a risk that persons suspected of terrorism related offences, including persons under the age of 18, may be subjected to prolonged periods of pre-trial solitary confinement.*

Five men from Odense, Denmark, charged with attempted violation of section of 114 of the Criminal Code (the primary provision criminalizing act of terrorism), who are suspected of having purchased chemicals to build explosive devices with a view to committing an act of terrorism at an unknown location in Denmark, were held in solitary confinement from 5 September 2006 to 16 January 2007, pending the completion of investigation and issuance of the indictment.

Statistics for 2005 procured by the Ministry of Justice showed that the terms of pre-trial solitary confinement of 532 persons ended during the year.<sup>12</sup> On average these individuals were held in solitary confinement for 33 days, pending the completion of police investigations and the prosecution's preparations to bring the cases to trial.

A committee under the Ministry of Justice, the Committee on the Administration of Justice, prepared a report on pre-trial solitary confinement.<sup>13</sup> In the report the Committee on the Administration of Justice recommended that the time limits on solitary confinement be shortened to put pressure on the public prosecution to speed up pre-trial investigations. In 2006, following the report of the Committee on the Administration of Justice, the government and parliament adopted a law shortening the permissible time periods of solitary confinement. The new provisions introduced stricter limitations of the length of pre-trial solitary confinement and require courts to specify explicitly in their decisions remanding a person to solitary confinement (or extending such solitary confinement) the reasons for the determination that regular (pre-trial) custody (without solitary confinement) is not sufficient.

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<sup>12</sup> The Ministry of Justice has stated that the statistics cover all cases of solitary confinement, which were terminated during 2005

<sup>13</sup> Report no. 1469 on pre-trial detention in solitary confinement pursuant to the Act of 2000, issued by the Ministry of Justice.

In accordance with the Act on the Administration of Justice, as of 1 January 2007, absent exceptional circumstances, pre-trial solitary confinement of persons over the age of 18 cannot exceed:

- two weeks, in cases where the person is charged with an offence carrying a punishment of up to four years of imprisonment;
- four weeks, where the individual is charged with an offence carrying a maximum punishment of up to six years' imprisonment;
- eight weeks, if the individual is charged with an offence punishable by more than six years' imprisonment.

However, in exceptional circumstances, in cases where the individual detained may, if convicted, be sentenced to more than two years of imprisonment, the prosecutor may request that the term of solitary confinement be prolonged, during the pre-trial phases of the proceedings. In such cases, solitary confinement may not exceed a duration of six months, unless the individual is charged with a crime against the state or a terrorism offence under Chapters 12 and 13 of the Criminal Code (crime against the state/terrorism) or drug trafficking or homicide.

With respect to persons under the age of 18, as of 1 January 2007, under the law solitary confinement may only be initiated or prolonged if most exceptional circumstances make it necessary. Uninterrupted solitary confinement may not exceed a period of four weeks, unless the individual is charged with an intentional violation of a provision of Chapter 12 or 13 of the Criminal Code (crime against the state/terrorism).

Amnesty International is concerned that there is no limit on the duration of solitary confinement of persons charged with for a crime under Chapters 12 or 13 of the Criminal Code, including persons under the age of 18.

### **Administrative solitary confinement during imprisonment**

*Amnesty International is concerned about powers of prison authorities to place convicted prisoners in solitary confinement as an administrative sanction without due process and judicial review or independent supervision.*

In 2002, the Danish Parliament passed a law, the Act on Imprisonment, that authorizes prison authorities to place convicted prisoners in solitary confinement for a number of reasons including, to prevent escape, crime, violent behaviour, or out of concerns for security and order of the prison. The government justified this law by stating that prison authorities were having increasing difficulties with so-called "strong inmates", who could control drug trafficking and other illegal activities in the prisons. The government contended that the prison authorities needed to have powers to decide to place prisoners in solitary confinement who obstruct law and order in prison, disobey instructions, threaten other inmates or staff, etc.

Amnesty International is concerned that, pursuant to the Act on Imprisonment, there is no recourse to judicial review of a decision by prison authorities to place a prisoner in solitary confinement and there is no judicial supervision of such cases during the duration of the solitary confinement. In 2004, members of parliament presented a bill, which would require that a decision to hold a prisoner in solitary confinement for more than three months to be authorized by a judge. The bill was, however, rejected by a large majority of the parliament.

In November 2006, Amnesty International spoke to a prisoner who stated that he had, at that time, been in administrative solitary confinement for two and a half years. He was reportedly unable to challenge the ground underlying his placement in solitary confinement, nor was there any independent judicial supervision of the decision or its implementation.

#### **4. The right to effective remedy – prompt and impartial investigation of death in police custody: the Ørskov case (Articles 12 and 13)**

*Amnesty International remains concerned that the system for investigating human rights abuses committed by the police does not meet the required standards of independence, impartiality and thoroughness. The case of the death in police custody of Jens Arne Ørskov highlights these concerns.*

Amnesty International remains concerned that to date the Danish authorities have failed to ensure an independent, impartial and thorough investigation into the death in police custody of Jens Arne Ørskov in June 2002. To date no one has been held accountable for his treatment or death in police custody.

On 14 June 2002, 21-year-old Jens Arne Ørskov Mathiasen (hereafter Jens Arne Ørskov) died while in the custody of Løgstør Police in Denmark. To date no one has been found responsible or held accountable for his treatment and death in police custody. Independent medical experts, journalists and lawyers have pointed out errors, inaccuracies and inconsistencies in the official investigations which have taken place.

According to the police officers, following his arrest for disorderly conduct, Jens Arne Ørskov went amok in the back of the police car, throwing himself around so they decided to take him out of the car at a lay-by. There, they say that they tried to calm him down by holding him on the ground face down, while he was handcuffed behind his back. At some point, the police officers reported, Jens Arne Ørskov fell unconscious. They placed him in recovery position and removed the handcuffs. The paramedics who arrived at the scene

approximately five minutes after they had been called found that Jens Arne Ørskov did not have any pulse. Resuscitation attempts had no effect. Jens Arne Ørskov was taken to Aalborg Hospital where he was formally pronounced dead.

The conclusion of the medical examiner in the autopsy report of 17 June 2002 the post-mortem examiner concluded that the cause of death was not established with certainty, but found that the most likely cause of death was an acute heart failure as a result of intense physical activity – "a state of hyper excitation - possibly in conjunction with an intake of ecstasy and alcohol." This conclusion has since been disputed by Danish as well as international medical experts.

The conclusion of the post-mortem examiner about the cause of death was used as the basis for the decision of the state prosecutor of Northern Jutland on 4 September 2004 not to bring criminal charges or to criticize the conduct of the police or recommend revision of the guidelines for such situations.

In April 2003 the Director of Public Prosecutions upheld the decision of the state prosecutor of Northern Jutland.

Two TV-documentaries, one in February 2004 and one in November 2005, raised a series of serious questions as to the impartiality and thoroughness investigation and the decisions of the state prosecution authorities as well as the cause of death of Jens Arne Ørskov.

In the light of the revelations broadcast in the first documentary the state prosecutor of Northern Jutland decided to reopen the case. The case was presented to the Medico-Legal Council for an assessment. The Medico-Legal Council's ensuing report was subsequently shown to be flawed and failed to answer more than half of the 60 questions put by the state prosecutor and the lawyers representing Jens Arne Ørskov's mother.

On 17 March 2005 the state prosecutor of Northern Jutland upheld her original decision.

The second documentary, broadcast on Danish television on 9 November 2005, presented the views of several respected forensic experts who had been asked to review the case. They all stated that, having read the autopsy report and seen the photographs of Jens Arne Ørskov's body, they found that there was no reasonable doubt that Jens Arne Ørskov had died from asphyxiation.

In January 2006, the Director of Public Prosecutions reported to the Danish Parliament that the findings of the TV-documentary had not given him grounds to reconsider the case. The Director of Public Prosecutions, however, did not provide an explanation of how he arrived at this decision in the light of the discrepancies between the findings of the independent expert and the original findings.

With the decision of the Director of Public Prosecutions, the question of the authorities taking criminal action or pronouncing criticisms against the police officers or against the police force for inadequate training of the police officers has been closed.

However, in May 2006 Jonna Ørskov, Jens Arne Ørskov's mother, was granted free legal aid to file a civil law suit against Løgstør Police and the Ministry of Justice with reference to

article 2 of the European Convention on Human Rights -- on the right to life -- for not undertaking their responsibility to ensure that the police officers are properly trained in handling such incidents adequately, and for not investigating the death of Jens Arne Ørskov thoroughly and impartially.

On 15 June 2006 Amnesty International issued a statement on the failure of the Danish authorities to ensure effective remedy to the family of Jens Arne Ørskov, who died in June 2002, while he was in the custody of the police.<sup>14</sup> The statement is attached to this briefing.

Amnesty International has been informed that the mother of Jens Arne Ørskov filed a civil lawsuit against the Ministry of Justice and the Løgstør Police in September 2006, and that the case is scheduled for trial in October 2007.

Amnesty International is concerned that, far from conducting a prompt, thorough, independent, and impartial investigation into the cause of Jens Arne Ørskov's death- the actions of state officials have given new impetus to discussion about the independence, impartiality and objectivity of investigations into and the general handling of allegations of human rights violations by police officers.

In Amnesty International's view, this case highlights anew the need for the establishment of a new mechanism for the investigation of human rights violations by law enforcement officials that would comply with the government's obligations under international standards, including the Convention against Torture, to ensure that such investigations are carried out promptly, independently, impartially and thoroughly. Amnesty International urges the government to establish such a new mechanism, which would be completely independent of the police.

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<sup>14</sup> See statement of Amnesty International's concerns, *Denmark: Jens Arne Ørskov's death in custody: A mother's quest for justice*, AI Index: EUR 18/001/2006, 15 June 2006 a copy of the statement is attached to this briefing as appendix A.

## Appendix A

AI Index: EUR 18/001/2006

15 June 2006

# Denmark

## Jens Arne Ørskov's death in custody: A mother's quest for justice

On 14 June 2002, 21-year-old Jens Arne Ørskov Mathiasen (hereafter Jens Arne Ørskov) died while in the custody of Løgstør Police in Denmark. Jens Arne Ørskov was arrested for disorderly conduct at a town celebration in northern Jutland. He was handcuffed and two police officers from Løgstør Police meant to take him to Aalborg Prison. But on the way something went badly wrong and Jens Arne Ørskov never reached Aalborg alive. To date no one has been found responsible and held accountable for his treatment and death in police custody.

Four years later his mother, Jonna Ørskov, is still fighting to obtain justice and the truth about her son's tragic death. So far, the system for investigating such cases has rendered her little help in that respect. Independent medical experts, journalists and lawyers have assisted her by pointing out errors, inaccuracies and inconsistencies in the case, but the result has so far remained the same: justice has not been served. Amnesty International is concerned that far from conducting a thorough, independent, impartial and effective investigation into the cause of Jens Arne Ørskov's death, the state prosecutor responsible for the case and the Director of Public Prosecutions' actions have given new impetus to the discussion about the current system's inability to act with impartiality and objectivity in cases involving allegations of serious human rights violations by police officers.

According to the police officers from Løgstør Police, on the way to Aalborg Prison Jens Arne Ørskov went amok in the back of the police car, throwing himself around so they decided to take him out of the car at a lay-by. There, they say that they tried to calm him down by holding him on the ground face down, while still handcuffed behind his back. At some point, the police officers reported, Jens Arne Ørskov fell unconscious. They placed him in recovery position and removed the handcuffs. According to the state prosecutor they have said that they believed that they could feel his pulse, so they did not attempt to give him artificial respiration, but still decided to call an ambulance. The paramedics who arrived at the scene approximately five minutes after they had been called found that Jens Arne Ørskov did not have any pulse. Resuscitation attempts had no effect. Jens Arne Ørskov was taken to Aalborg Hospital where he was formally pronounced dead.

### **The state post-mortem examiner's autopsy report on the cause of death**

In the autopsy report of 17 June 2002 the post-mortem examiner concluded that the cause of death was not established with certainty, but found that the report on Jens Arne Ørskov's fierce physical resistance and struggling indicated that the most likely cause of death was an acute heart failure as a result of intense physical activity – "a state of hyper excitation - possibly in conjunction with an intake of ecstasy and alcohol."

However, subsequent tests revealed that Jens Arne Ørskov had not taken ecstasy or speed or similar drugs. Only alcohol and cannabis were detected. Nevertheless the conclusion was adjusted only slightly so that in stead the state prosecutor concluded that, Jens Arne Ørskov was found to have died from the combined effects of intense physical activity with an intake of alcohol and cannabis.

The cause of death given as "hyper excitation leading to cardiac arrest" has since been disputed by Danish as well as international medical experts. They state that there are no records of this ever occurring to human beings other than in exceptional cases when induced by speed, amphetamines and similar drugs.

Nevertheless the conclusion about the cause of death was used as the basis for the decision of the state prosecutor. On 4 September 2002 the state prosecutor of Northern Jutland decided that the police officers involved in the arrest and subsequent death of Jens Arne Ørskov had not committed any criminal offence, nor had they made any mistakes in their handling of the situation. So, the state prosecutor concluded that the events did not give rise to criminal action, criticism or revising of the general guidelines for such situations.

In April 2003 the Director of Public Prosecutions upheld the decision of the state prosecutor of Northern Jutland.

In the words of Jens Arne Ørskov's mother, the authorities concluded that "Jens Arne was found to have killed himself".

### **"The Image of Power" – a TV documentary.**

On 4 February 2004 a TV-documentary, entitled "The Image of Power", raised a series of serious questions as to the impartiality and thoroughness of the state prosecutor's investigation and decision in the case.

The diagnosis – hyper excitation - was disputed as being highly unlikely. Three Danish medical experts pointed to the cause of death being "asphyxiation" – which is a well known and well reported cause of death in cases of people who are forced to lie face down on the ground with their hands restrained in handcuffs behind their back by someone leaning on their back.

The documentary further highlighted the fact that the paramedics had not been interviewed about their findings, when their report contains relevant information pertaining to the time and cause of death. The programme also questioned why the police officers were not held responsible for not rendering first aid to Jens Arne Ørskov when he fell unconscious.

### **The state prosecutor reopens the case following "The Image of Power"**

In the light of the revelations broadcast on Danish TV the state prosecutor of Northern Jutland decided to reopen the case. The case was presented to the Medico-Legal Council for an assessment. However, the Council's statement was subsequently shown to be flawed and failed to answer more than half of the 60 questions put by the state prosecutor and the lawyers representing Jens Arne Ørskov's mother.

The Council's conclusion was that the cause of death was still uncertain, but that Jens Arne Ørskov had most likely died from a series of contributory factors: intense physical activity in conjunction with an intake of alcohol and cannabis, and restricted respiration as a result of being forced to lie face down on the ground.

On 17 March 2005 the state prosecutor of Northern Jutland upheld her original decision. The state prosecutor's decision concluded that the police officers had not used violence or excessive force. Furthermore, the state prosecutor found that the two police officers had rendered adequate first aid to "a lifeless person", who – according to the police officers involved – "had respiration and pulse".

Amnesty International finds that the fact that the state prosecutor of Northern Jutland has previously worked as a police lawyer with the Løgstør Police gives rise to concerns that the state prosecutor has not acted with the necessary degree of impartiality and objectivity, and that the result of the investigation could, therefore, be perceived by the public and the family of Jens Arne Ørskov to be a result of the death of Jens Arne Ørskov not being subjected to a thorough and impartial investigation.

Joan Ørskov appealed this decision to the Director of Public Prosecutions.

### **"Beyond Suspicion" – second TV-documentary on the case**

On 9 November 2005 an additional documentary on the case – "Beyond Suspicion", created by the same journalists as "The Image of Power", was broadcast on Danish TV. In this second documentary, the journalists presented the views of several respected forensic experts who had been asked to review the case – Derrick Pounder, Professor of Forensic Medicine, University of Dundee; Bernard Knight, former Professor of Forensic Pathology at the University of Wales College of Medicine and pathologist for the Home Office of the UK, and Dr. Charles Hirsch, New York City's chief medical examiner.

They all stated that, having read the autopsy report and seen the photographs of Jens Arne Ørskov's body, they found that there was no reasonable doubt that Jens Arne Ørskov had died from asphyxiation after he was placed on the ground on his stomach, with his hands cuffed behind his back, and that pressure had been applied by someone's knee on his back. They all indicated that the cause of death was not some rare obscure one, but rather a commonly known one – restraint asphyxiation. Positional asphyxia is another common term.

The independent foreign experts concurred that the autopsy report and the Medico-Legal Council "have not assessed the medical evidence within the context of the circumstances."

In January 2006, the Director of Public Prosecutions reported to the Danish Parliament that the findings of the TV-documentary did not give him grounds to reconsider the case. In this report the Director of Public Prosecutions failed to provide an explanation of how he arrived at a final decision without addressing the discrepancies between the findings of the 6 independent experts and the original evidence.

### **Failure to conduct thorough and impartial investigations.**

Amnesty International is concerned that the failure to conduct a thorough, effective, independent and impartial investigation into the death of Jens Arne Ørskov has resulted in a series of unresolved issues, not only in relation to the cause of death, but also in relation to his treatment by police.

The state prosecutor wrote in her decision that the police officers had rendered adequate first aid to a person, who had respiration and a pulse (emphasis added), but there is no evidence that Jens Arne Ørskov was in fact breathing or that he still had a pulse except for the report of the police officers involved indicating their belief that he did.

On the contrary, there are many indications that Jens Arne Ørskov was not breathing and did not have a pulse:

- he was dead when the paramedics arrived at the scene approximately five minutes after they had been called;
- according to the written report of the paramedics he was blue, cold and damp; and,
- the police officers' own account for their actions shows that they did not follow the official instructions for checking the pulse and respiration of an unconscious person as stipulated in the Police Academy training material.

Another issue that remains unresolved is why other factual information has been ignored. In the documentation of the case there is a recording of a conversation taking place minutes after the incident between the two police officers and police headquarters, in which the police officers stated that they had applied a leg-lock on Jens Arne Ørskov. Yet the findings and decisions by the various authorities in the case are premised on an assumption that a leg-lock had not been applied.

Three Danish and three foreign medical experts – four of them specialists in forensic medicine - have stated that in their opinions there is reason to believe that Jens Arne Ørskov died from restraint asphyxiation – that he died from a lack of oxygen due to him being placed on his stomach with his hands cuffed behind his back and pressure applied to keep him down. In contrast to the statements of these six independent medical experts stands the statement of the Medico-Legal Council, which leaves a number of crucial questions unanswered. Moreover, as revealed in the second documentary, the three members of the Medico-Legal Council could not confirm with a reasonable degree of certainty that they had indeed seen the photographs of Jens Arne Ørskov's body and their statement did not refer either to the leg-lock or to pressure applied to his back despite the forensic evidence in the autopsy report and the photographs of his back which showed that pressure had indeed been applied.

With the latest decision from the Director of Public Prosecutions, in which it is stated that there are no grounds to believe that the police officers applied excessive force initially or that they neglected to render Jens Arne Ørskov first aid after he had fallen unconscious, serious questions as to the ability and willingness of the public prosecution service to act with the necessary independence, impartiality and objectivity in cases involving police officers have once again been raised.

Amnesty International is concerned that it would appear that the final decision of the Director of Public Prosecutions not to bring criminal prosecutions – or even to criticize the conduct of the police officers – to say nothing of opening a discussion of whether the training of police officers is adequate – could only have been reached by ignoring the findings of the six independent medical experts.

### **Jens Arne Ørskov's mother has been granted free legal aid to take civil action against the police and the Danish state**

With the decision of the Director of Public Prosecutions, the question of the authorities' taking criminal action or pronouncing criticisms against the police officers or against the police force for inadequate training of the police officers has been closed.

However, in May 2006 Jonna Ørskov was granted free legal aid to file a civil law suit against Løgstør Police and the Ministry of Justice with reference to article 2 of the European Convention on Human Rights and Fundamental Freedoms – on the right to life - for not undertaking their responsibility to ensure that the police officers are properly trained in handling such incidents adequately, and for not investigating the death of Jens Arne Ørskov thoroughly and impartially.

This outcome has only been achieved through the resourcefulness, tenacity and endurance of Jonna Ørskov. This provides her and the public with the opportunity to have the full circumstances of the death of her son, Jens Arne Ørskov, examined publicly and transparently in a court of law.

In Amnesty International's view, this case highlights anew the need for the establishment of a new mechanism for the investigation of human rights violations by law enforcement officials that would comply with the government's obligations under the European Convention on Human Rights to ensure that such investigations are carried out thoroughly, independently, impartially and effectively. Amnesty International urges the government to establish such a new mechanism, which would be completely independent of the police.