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# Denmark
## Police Accountability Mechanisms in Denmark

*"A well-trained and well-functioning police is of vital importance for a democratic society. It is equally important that the public has confidence that the police, with the powers with which the police has been invested, performs its tasks in a correct and proper fashion. Trust in the police requires inter alia that complaints against police personnel receive proper consideration and that the complaints system is perceived to be trustworthy."*

Report on the handling of complaints against police personnel, 1994, submitted by the committee established by the Danish Ministry of Justice and mandated to make recommendations for a new complaints system

*"In the opinion of the majority, the present system raises issues both in relation to fundamental considerations of the prosecuting authority's independence and its assertiveness when dealing with the police and consequently due process of law and control of the lawfulness of the police work…*

*…As stated above, the particular Danish system in which the administration of the police and the public prosecution are merged at the local level raises concerns regarding the principle of the rule of law."*

The Danish government's Vision Committee in its report of May 2005 on the future structure of the police and the public prosecution

*"But Jens Arne was made responsible for his own death and I believe that they have been working their way down that path all along, because right from the start the regional public prosecutor decided that the police officers should not be blamed for anything."*

Jonna Ørskov, mother of Jens Arne Ørskov in interview with Amnesty International in 2006

# Introduction

Amnesty International is concerned that the mechanisms in Denmark for addressing alleged human rights violations by police officers fail to respect victims' rights to redress and reparation. The current system fails to ensure that such allegations are investigated promptly, thoroughly, independently and impartially, that persons responsible for such violations are brought to justice, and that victims receive adequate reparation, including compensation. The five cases in this report highlight a range of alleged human rights violations, from excessive use of force, physical ill-treatment, to a death in custody. In these five cases, alleged victims or relatives to alleged victims have sought redress through the appropriate channels available to them, and claim that their complaints have not been dealt with effectively. Many others, however, have told Amnesty International that they have not submitted their complaints to the appropriate bodies, because they have no confidence that their rights to redress and reparation will be addressed independently and effectively.

Amnesty International is aware that the government has commissioned a committee to conduct an assessment of the current police complaints system and that the committee expects to publish its findings and possible suggestions to adjustments of the system in 2008. This report, with its recommendations, is Amnesty International's contribution to the assessment of the current system, in the context of international human rights standards, for an effective and impartial police complaints system.

Amnesty International has had long-standing concerns about the mechanisms for investigating alleged human rights violations by police officers in Denmark.

The organization first voiced concerns in 1994, in its report entitled *Denmark: Police Ill-treatment* (AI Index: EUR 18/01/94). The report highlighted a series of cases of alleged police ill-treatment and excessive use of force, including during the 18-19 May 1993 demonstrations in Norrebro when 11 people were shot and wounded, and in policing operations in Christiania in 1992-93.

In connection with the operations in Christiania, Amnesty International focused on the widespread use of the fixed leg-lock as a method of restraint and urged the authorities to ban this practice. This practice was subsequently banned.

Lastly, Amnesty International highlighted the case of Benjamin Christian Schou, who at some point between his arrest and his transport to the police station, asphyxiated and suffered cardiac arrest and severe brain damage - a case which had given rise to debate as to the effectiveness and impartiality of the police complaints system in Denmark.

One of the key areas of focus for recommendations was the procedures for investigating and acting on complaints against the police[1]. Amnesty International called on the government to ensure that, in future, all bodies responsible for handling complaints against police practice and decisions to be completely impartial and independent.

[1] Amnesty International acknowledged that by the time of the report, the government had begun a review of this process. This process is mentioned more elaborately below.

Amnesty International further recommended that:

- The complaints body should consist of people of acknowledged independence and probity, who are not members of the police force, and that the complaints body should have at its disposal its own corps of independent investigators to look into complaints.
- The body should be afforded all necessary powers and authority to conduct investigations into complaints against the police, including the power to summons witnesses and to subpoena evidence and documents.
- The body should, at a minimum, be given the power to: decide whether a case should be concluded or if an apology should be issued; recommend to appropriate authorities that adequate compensation be paid to the victim; and recommend whether criminal or disciplinary proceedings should be brought against the perpetrator.

- Amnesty International further recommended that in order to maintain the independence and impartiality of the police complaints process, no police authorities should sit on the complaints body, and that all possible steps be taken to ensure the independence and impartiality of the investigation of complaints against police.

At that time the Minister of Justice had already commissioned a committee with the task of making recommendations for a new complaints system. As a result of the recommendations of the committee, the Danish Parliament adopted provisions for a new complaints system, which came into force on 1 January 1996.

The current police complaints system has been in force for over 11 years. This report examines -- in the context of five illustrative cases of complaints of police misconduct -- the current system, in light of Amnesty International's recommendations made in 1994 and international human rights standards.

The current system replaced the much-criticized system of local boards. Under the previous system, the police sat on the boards and participated in handling police complaints cases and subsequently decided on the complaints as well. Local boards were perceived as rarely ruling in favour of the complainant. In comparison to the previous system, the present system, with the six regional Police Complaints Boards, has removed the most glaring inadequacies. The Police Complaints Boards do not have police officials on them. However, lawyers have indicated to Amnesty International that in practice any improvements in relation to the former system have been modest. Some advise their clients against wasting time and effort on a complaint because in their estimation there is little chance of a favourable ruling. Some indicate that the Police Complaints Boards – as an independent watchdog – represent an improvement, but at the same time state that in their opinion the Boards should be given more powers in order to have any significant impact.

Complaints against the police are investigated and decided in the first instance by the regional public prosecutors. Before issuing a decision on the case, the regional public prosecutor must present the case to the region's Police Complaints Board along with the draft

decision. The Board can then agree or disagree with the regional public prosecutor's proposed decision, but the Board's opinion has no binding legal power. Although the Board can lodge an appeal with the Director of Public Prosecutions, this happens extremely rarely. When the Board disagrees with the intended decision of the regional public prosecutor, the prosecutor makes explicit note of this disagreement in the written decision to the complainant. The complainant as well as the police officer in question can appeal the decision to the Director of Public Prosecutions, notwithstanding the point of view of the Board.

In the course of the debate in the Danish parliament prior to the passage of the bill on the present complaints system, concern was expressed that this system would not constitute any major change or improvement of the old system. The critics were concerned that given the lack of separation between the police and prosecution at the lower levels of the justice system the regional public prosecutors would not exercise the necessary impartiality and objectivity in their investigations and decision-making.

Even the government's own Vision Committee (mandated by the Government to make recommendations for a new structure for the police and public prosecution) states in its report of May 2005 that the present system of merging the police and the public prosecution at the local level, which is unique to Denmark and Norway, in principle is not conducive to the independence of the prosecuting authority in supervising the lawfulness of police conduct.

The Director of Public Prosecutions' Annual Reports show statistically how very few cases result in the complainants winning a ruling in their favour.[2] The authorities have stated that this should be seen as a general indication of the quality - the unfounded nature - of the complaints. Defence lawyers on the other hand have expressed concern that so few complaints have been successful, and view the main cause for this as the lack of independence and impartiality with which complaints against the police are handled.

In the present report Amnesty International highlights five cases in which individuals (or their relatives) have made complaints alleging that they were subjected to human rights violations by the police. The cases raise questions about the thoroughness and impartiality of investigations, the lack of separation between the police and the prosecution authorities, and lack of transparency in decision-making.

Generally the Danish police force is perceived by the public to exercise its powers with restraint and discretion.[3] Furthermore, every police official has to go through training at the Police Academy (43 months including trainee service) aimed at enabling him or her to meet the challenges of the job in a professional and lawful manner. However, in a force of approximately 11,000 police officers, and given the conflict-prone nature of the job, mistakes or misconduct take place. It is crucial that the way these mistakes or misconduct are dealt with is transparent, impartial, independent and effective, in conformity with Danish law and international human rights standards.

[2] In 2004 and 2005, grounds for criticism were found in 6 and 9 cases respectively.
[3] IFKA 1999, Ministry of Finance 1981-198, Vision Committee May 2005, Eurobarometer 2006, National Police Survey 2007.

In this report Amnesty International has made a number of recommendations to the Danish government, which, if implemented, could lead to strengthening respect and protection of human rights and the rule of law and increase the confidence of the public and the police in a fair, independent and effective system for handling complaints against the police. The recommendations include: the separation of the police and the public prosecution; to carry out a thorough review of the current practices; and to establish a new complaints system.

In particular, the organization recommends that the regional public prosecutors should be replaced with an independent complaints body empowered to investigate and decide on police complaints that should have no ties or connections, institutional, structural or otherwise, with the police or the public prosecution.

The complaints body should be given the powers to make legally binding decisions that apologies be should issued or criticisms should be stated. Furthermore, the complaints body should be given the powers to make recommendations that disciplinary actions be taken, and the disciplinary body should be obliged to report back to the complaints body on the outcome of the disciplinary proceedings.

Furthermore, the complaints body should be empowered to make recommendations to the regional public prosecutors on whether to close a complaints case or to bring prosecutions or other measures. Decisions made by the regional public prosecutor should be appealable by the complaints body to a court.

Lastly, Amnesty International recommends that the protection of the rights of the victims of police misconduct be strengthened so as to enable victims to exercise their right to reparation, including compensation. This includes the right for the complainant to free legal aid; the right to seek independent medical expertise for a second examination; and the right for relatives of a person who died in police custody to have their doctor present at the autopsy or an independent post-mortem examination, at state expense. The strengthened protection of the victims' rights further includes the right to appeal any decision to discontinue or close a complaints case to a court.

Amnesty International based this report on court records in complaints cases and other criminal proceedings; official documents; media reports and documentaries; and on interviews with lawyers, victims or their relatives, and meetings with representatives of the Ministry of Justice, the Director of Public Prosecutions and Police Complaints Boards.

## Relevant international human rights standards

The quality of the work and performance of the police in Denmark is decisive for ensuring respect for the rule of law and human rights and the quality of life in this country.

In monitoring and reporting on respect for human rights, Amnesty International analyzes domestic law and practices in the light of international human rights standards. Such standards require police to respect and protect the human rights of individuals; independent,

impartial, prompt and thorough investigations of allegations of human rights violations and other police misconduct; the authorities to bring those responsible for violations to justice; and the authorities to ensure reparation to the victim. The international human rights standards of particular relevance for an analysis of the systems for handling cases of alleged police misconduct in Denmark include binding international human rights treaties, and non-treaty standards which provide more detailed guidelines on the implementation of the treaties. Among the key relevant international human rights treaties are: the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Among the key non-treaty standards are: the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the UN Code of Conduct for Law Enforcement Officials, and the European Code of Police Ethics.[4]

## The right to an effective remedy

The International Covenant on Civil and Political Rights, Article 2, para. 3(a), obliges State Parties to undertake to ensure that any person, whose rights or freedoms under this convention have been violated, has access to an effective remedy, notwithstanding that the violation has been committed by a person acting in an official capacity. The Human Rights Committee, set up under the Covenant, has issued General Comment No. 7 (on effective investigations and remedies for victims of torture or other ill-treatment).

The European Convention on Human Rights, Article 13, obliges the State Parties to ensure everyone whose rights and freedoms as set forth in the convention are violated the right to an effective remedy before a national authority, notwithstanding that the violation has been committed by persons acting in an official capacity. The European Court of Human Rights has held that Articles 2 (the right to life) and 3 (prohibition of torture or other ill-treatment) of the Convention incorporate the duty of states to ensure prompt, independent and effective investigations.

The UN Convention against Torture, Articles 12, 13 and16, require state parties to ensure that their competent authorities proceed to a prompt and impartial investigation of allegations of torture or other ill-treatment; and to ensure the right of a complainant to have his or her case examined promptly and impartially by a competent authority.

UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 22 and 23, oblige governments and law enforcement agencies to establish effective reporting and review procedures, and to ensure that persons affected by the use of force or firearms, or their legal representatives, shall have access to an independent process, including a judicial process. In the event of the death of such persons, the same rights to effective remedy apply to their dependants.

[4] For a longer list of relevant international standards, see *Amnesty International, 10 Basic Human Rights Standards for Law Enforcement Officials*, 1998, AI Index: POL 30/04/98.

The European Code of Police Ethics, section VI, principles 59-62, states inter alia, that the police shall be accountable to the state, the citizens and their representatives, and that they shall be subject to efficient external control. Furthermore, it states that state control shall be divided between the legislative, the executive and judicial powers. Lastly, public authorities shall ensure effective and impartial procedures for complaints against the police.

## *Standards on the right to life and the prohibition of torture or other ill-treatment*

### The right to life

The European Convention on Human Rights, Article 2, and the International Covenant on Civil and Political Rights, Article 6, require states to respect and protect everyone's right to life.

The European Code of Police Ethics, principle 35, states that the police and all police organizations must respect everyone's right to life.

### Prohibition of torture, inhuman or degrading treatment or punishment

The UN Convention against Torture, Article 2, requires each State Party to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Article 1 of the Convention against Torture defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Furthermore, Article 16, para. 1, requires each state party to undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The International Covenant on Civil and Political Rights, Article 7, and The European Convention on Human Rights, Article 3, require states to protect and respect the right of all persons not to be subjected to torture or other ill-treatment.

The European Code of Police Ethics, principle 36, states that the police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances.

The UN Code of Conduct for Law Enforcement Officials, Article 5, states that no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment

## On the use of force or firearms

In view of the requirement of states to respect and protect the right to life, international standards strictly limit the circumstances and manner in which law enforcement officials may use force against persons.

The UN Code of Conduct for Law Enforcement Officials, Article 3, states that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 4, states that law enforcement officials may use force or firearms only if other (non-violent) means remain ineffective or without any promise of achieving the intended result.

Principle 5 of the Basic Principles states that when the lawful use of force and firearms is unavoidable, law enforcement officials shall a) exercise restraint in such use, and act in proportion to the seriousness of the offence and legitimate objective to be achieved, and b) minimize damage and injury, and respect and preserve human life, and c) ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.

Principle 7 of the Basic Principles requires governments to ensure that arbitrary use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

The European Code of Police Ethics, principle 37, states that the police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective.

## The rights of victims

International human rights standards also guarantee the right of victims of human rights violations to redress, including to reparation which includes, among other things, just and adequate compensation and measures for complete rehabilitation. (See, among others, the UN

Convention against Torture, Article 14; and the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in 1985.)

## Danish law implementing the international human rights treaties and standards on policing

International human rights treaties require States Parties to take the necessary legislative, administrative and other measures to ensure that law and practice conform with the state's obligations under international human rights law. The State Party is obliged to ensure that there is a formal legal basis for protecting and enforcing the human rights in question. Furthermore, the above-cited non-treaty standards, which provide more detailed guidelines on the implementation of the treaties, should be taken into account and respected by governments within the framework of their legislation and practice.

The right to life is guaranteed in the Danish Penal Code which applies to everyone, including police officers and which penalizes homicide/involuntary manslaughter and death as a result of violence.

There is no provision in the Penal Code which expressly defines torture, as laid down in the UN Convention against Torture. The Danish government's stance has been that torture (and inhuman and cruel and degrading treatment or punishment) is already penalized in that the various elements of torture are penalized in the Penal Code (violence, maltreatment, molestation etc.), but in autumn 2007 the government announced that it expected to present a bill on adopting a specific provision of torture in 2008. At present degrading treatment is covered by the provisions on violence in the Penal Code.[5]

In its concluding observations on the government's implementation of provisions in the Convention against Torture, the Committee against Torture recommended in May 2007:

*"Definition of torture*

*The Committee notes that the Ministry of Justice has recently requested the Standing Committee on Criminal Matters to consider the possibility of inserting a special provision on torture in the Criminal Code. Notwithstanding the State party's ongoing efforts to review this issue and the existing provisions of the Criminal Code, the Committee reiterates the concern expressed in its previous conclusions and recommendations (CAT/C/CR/28/1) with regard to the absence of a specific offence of torture, consistent with articles 1 and 4, paragraph 2, of the Convention. While noting the introduction of a Defense Command*

[5] Amnesty International has recommended that an independent provision covering the definition of "torture" as laid down in the Convention against Torture be adopted and added to the Penal Code. In the spring of 2006 the Minister of Justice announced that she was considering a shift concerning the need for adopting a specific provision of "torture" in the Penal Code. In autumn of 2007 the government announced that it expected to present a bill on a specific provision of "torture" in the Penal Code in 2008. (As for the military penal code, the government has not announced any initiatives).

*Directive on the prohibition of torture and other cruel, inhumane or degrading treatment or punishment in the Armed Forces, the Committee regrets the State party's decision to exclude a special provision of torture from the new Military Criminal Code. (Articles 1 and 4)*

*The Committee calls upon the State party to enact a specific offence of torture, as defined in article 1 of the Convention, in its Criminal Code as well as in the Military Criminal Code making it a punishable offence as set out in article 4, paragraph 2, of the Convention."*[6]

## Arbitrary or disproportionate use of force or firearms

Depending on the seriousness of the force applied or the use of firearms, such actions are criminalized in the Penal Code, in Chapter 25 crimes against life and body ranging from homicide to various degrees of violence/mistreatment/abuse/assault/aggravated assault. These provisions apply to everyone including the police.

The Danish Act on Police Activities, general provision on the use of force, Chapter 4, section 16, is worded as follows:

*"The police may use force only if necessary*[7] *and justified and only by such means and to such extent that are reasonable relative to the interest which the police seek to protect. Any assessment of the justifiability of such force must also take into account whether the use of force involves any risk of bodily harm to third parties." Section 16, subsection 2, states: "Force must be used as considerately as possible under the circumstances and so as to minimize any bodily harm."*

In the Order on the police's use of certain forcible means, of 21 September 2004, further detailed provisions for the use of force, firearms, truncheons, police dogs and tear gas are laid down.

The Order contains four chapters – one for each of the following means of force – firearms, truncheons, dogs and tear gas. They all specify the concrete situations (threats/dangers) in which the means can be applied, and all require an assessment of the proportionality of the measure to be taken so as to prevent disproportionate use of force, minimize injuries, etc.

[6] In its submission to CAT in April 2007 (AI Index: EUR 18/001/2007) Amnesty International urged 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. In January 2008 the Standing Committee on Criminal Law issued its report with recommendations on the wording of such a provision.

[7] "Necessary" means that the objective cannot be achieved without the use of force.

### *The obligation for the State to ensure the right to an effective remedy before a national authority*

Act on Administration of Justice chapters 93b, 93c and 93d

Chapter 93b lays down the legal framework for the treatment of complaints about police personnel misconduct (misconduct as opposed to complaints regarding alleged criminal offences).

Chapter 93c lays down the legal framework for the treatment of criminal cases against police personnel.

Chapter 93d lays down the legal framework for the regional Police Complaint Boards, their constitution, their function and their powers.

### *Initial observations on the incorporation of international human rights standards in Danish law*

Apart from the lack of an independent provision on and full definition of "torture" in the Penal Code, the formal incorporation of international human rights standards on policing into domestic law appears to be in place. It should be noted that the wording of the Danish provisions on the police's use of force in the Act on Police Activities, and the Order on the Police's use of certain forcible means follow the wording of international human rights standards rather closely. However, Amnesty International continues to have concerns about their implementation.

As for the obligation to ensure an effective remedy for human rights violations by the police, the objective of this report has been to ascertain whether the complaints system is in fact impartial and independent on the practical level.

To maintain high standards in police work it is crucial that the complaints system is – and is perceived and experienced to be – effective by the public as well as by the police.

## Historical overview of the complaints procedures

Until 1996 complaints against the police were handled by bodies called Local Boards and by the police chief constable of the district involved in the complaint case. The Local Boards decided whether a complaint should be investigated in substance or whether an investigation should be rejected, because the complaint was unfounded. In either case, the chief constable (or chief commissioner in Copenhagen) decided on the complaint case.

The local police sat on the board, which was comprised of the police chief constable, two members appointed by and among the police personnel in the police district, and the mayors of the municipalities covered by the police district. For every 100,000 extra inhabitants exceeding 30,000 inhabitants, municipalities were entitled to appoint one more

representative in addition to the mayor. In Copenhagen the Local Board was comprised of the chief commissioner of police, two members chosen by and among the police personnel in the police district, one mayor (Copenhagen has seven mayors) and four members chosen by and among the members of the Copenhagen City Council. When deciding on police complaints the Local Boards would be joined by an additional member appointed by the Danish Bar Association. Thus any decision on a complaint about police conduct would be taken by three members of the Copenhagen Police, a mayor, four members of the City Council and one defence barrister.

The Board had the powers either to reject the request for an investigation on grounds that the case was unfounded or to decide that an investigation should be initiated. If the Board considered a complaint case to be unfounded the case was submitted to the police chief constable (in Copenhagen the police chief commissioner) for further action and a decision.

In cases where the Board found that an investigation was needed, the Board could also decide whether the investigation of the complaint should be conducted in a court of law or by a regional public prosecutor. The results of the investigation were presented to the Board, and the Board would decide whether the case was now fully investigated or needed further investigation. If fully investigated, the case would be submitted to the police chief constable (in Copenhagen the police chief commissioner) for further action and a decision. If the Local Board decided that even further investigation was needed, this decision was also furthered to the police chief constable for action and decision.

Thus the local police participated at all levels of the decision-making in cases involving its own personnel. It was perceived to be unreasonably difficult for members of the public to be successful in obtaining redress when lodging a police complaint.

Amnesty International's June 1994 report on alleged ill-treatment by police in Denmark, among other things, raised concern about the system for handling complaints against the police. The concern about the system highlighted by Amnesty International and others[8] contributed to the decision to establish a different complaints system.

## *The 1994 Committee*

In 1994 Bjorn Westh, the then Minister of Justice, appointed a committee comprising representatives of the judiciary, the police and the prosecuting authorities, professors of law and the Danish Bar and Law Association, which was mandated to make recommendations for changes to the police complaints system[9]. This committee (hereafter referred to as the 1994

[8] Danish Association on Legal Affairs, defence barristers, legal scientists, media.

[9] The 1994 Committee was mandated to make recommendations for legislative change on the treatment of complaints against police officials for their conduct while on duty. It was mentioned explicitly in the mandate that the future complaints system should exclude the Local Boards from participating in deciding on police complaints. The Committee was to pay particular attention to the question of who should investigate complaints of misconduct and complaints over alleged criminal offences, when these

Committee) stated the following in its report (Report No. 1278 of 1994 on handling complaints against police personnel), p. 12:

*"A well trained and well functioning police is of vital importance for a democratic society. It is equally important that the public has confidence that the police, with the powers with which the police have been invested, perform its tasks in a correct and proper fashion. Trust in the police requires inter alia that complaints against police personnel receive proper consideration and that the complaints system is perceived to be trustworthy."*

*"It is essential that the citizen, if he believes himself to be aggrieved by the police, can feel confident that his complaints will be treated fairly. It is therefore necessary to ensure an effective, rapid and impartial handling of all complaints of abuse of power, misuse of authority or other misconduct on the part of the police in the exercise of its powers." (p. 12)*

*"Furthermore, it is also in the general interests of the police that the investigations should be made as impartial as possible. Any suspicion, which, rightly or wrongly, is cast on the investigation conducted by the police itself, renders it extremely difficult for the police to clear itself of even the most manifestly ill-founded accusations." (p. 13)*

The 1994 Committee recognized that it is vital not only to have a reliable and well-trained police force and an effective complaints system, but also that the public experience the complaints system as effective, prompt, impartial, and fair.

On the basis of the 1994 Committee's report, the government and Parliament decided to establish a new complaints handling system in which the regional public prosecutors investigate complaints against the police, and make the final decision after consideration of the case by the Regional Police Complaints Board. The new system came into force in 1996.

In the course of the debate in the Danish parliament prior to the passage of the bill on the present complaints system, concern was expressed that this system would not constitute any major change or improvement of the old system. The critics were concerned that given the lack of separation between the police and prosecution at the lower levels of the justice system the regional public prosecutors would not exercise the necessary impartiality in their investigations and decision-making. In Denmark the prosecuting authority of first instance (i.e. the lower courts) and the police are merged into one at the local level; the chief constable (since the reform of January 2007: the chief police commissioner)[10] has a dual role as head of

acts are committed while on duty, and make recommendations for the wording of new legislation, (p.12 of the Report no. 1278 of 1994).

[10] On the basis of the report of Vision Committee, the government and the Parliament adopted provisions on a reform of the police and the public prosecution. The previous 54 police districts have been reorganized into twelve large police districts. The reform came into force in January 2007.

the police and head of the public prosecution authority in his or her district. Throughout the first 10 years of their careers police lawyers (prosecutors) rotate between the police, the regional public prosecutor's office, the Director of Public Prosecutions, and (for some) the Ministry of Justice. Critics of the system claim that this creates a sense of collegiality between the police and the public prosecution that is not conducive to impartiality and objectivity in dealing with complaints against the police.

## *The current police complaints system*

Under the current system it is the regional public prosecutor (in each of the six regions of Denmark) that receives, registers and is charged with investigating complaints against police officers from the particular region. The regional public prosecutor is responsible for interviewing the complainant, the officer against whom a complaint has been lodged (and his colleagues) and (other) witnesses. In practice the regional public prosecutor often has police officers from the Danish National Police flying squad interview the implicated parties, particularly in cases involving large numbers of complainants and witnesses. Local police are not supposed to be involved in the investigations, except for situations where immediate action has to be taken to avoid loss of evidence, or when the prosecutor refers minor misconduct cases to be settled at the local level.

If the testimony (statement) is given in a court of law, the complainant as well as the police officer against whom the complaint has been lodged may be granted legal aid. Apart from this, the court can grant legal aid upon a request from the complainant or the police officer if the complexity and course of the case so warrant. The legal aid is free, notwithstanding the complainant's or the police officer's income.

A complaint about a forcible arrest can simultaneously be a complaint about irregular conduct (misconduct) and a complaint about a criminal offence. If criminal charges against the police officer cannot be ruled out immediately, the police officer will be interrogated with the legal rights and privileges of a suspect.

## Regional Police Complaints Boards

For each of the six regional public prosecutors there is a regional Police Complaints Board consisting of three members, an attorney (defence barrister), who is the chairman of the board, and two lay judges.

The regional public prosecutor informs the Police Complaints Board about complaints and reports of incidents concerning police officers' alleged misconduct or criminal offences. The Board can then indicate to the regional public prosecutor that an investigation is needed. But the regional public prosecutor can always investigate complaints on his or her own initiative notwithstanding the position of the Board.

The Board receives copies of the evidence that is obtained by the regional public prosecutor in the course of the investigation. The regional public prosecutor must inform the Board of any major decisions made in the course of the investigation. The Board can make binding requests of the regional public prosecutor that specific investigatory steps be taken. If in a criminal investigation, the regional public prosecutor does not act in accordance with a request from the Board, the question will be decided on by a court of law.

When the regional public prosecutor has completed investigations into the case, he or she will produce a report on the result of the investigation. This report must contain information on the course of the investigation and the factual circumstances of importance to the decision on the case and an assessment of the weight of the evidence gathered. In the report the regional public prosecutor must indicate which decision he or she proposes to take. This report is then forwarded to the Board.

The regional Police Complaints Board may state that it agrees with the regional public prosecutor's proposed decision – or disagrees. If the Board expresses its disagreement, the regional public prosecutor has the discretion either to concur with the opinion of the Board or to proceed with the originally proposed decision. The statement of the Board is a recommendation; the Board does not hold any legal power to overturn the decision of the regional public prosecutor.

If the regional Police Complaints Board disagrees with the regional public prosecutor's proposed decision, and if the regional public prosecutor executes the decision notwithstanding the Board's opinion, the Board has the option of appealing against the decision to the Director of Public Prosecutions. This, however, happens extremely rarely. In 2004, 2005 and 2006 the Police Complaints Boards only appealed regional public prosecutors' decisions in three cases each year out of 975, 966 and 906 decisions respectively[11]. Moreover, if the Board disagrees with the intended decision of the regional public prosecutor, the prosecutor makes explicit note of this disagreement in the written decision to the complainant. The complainant as well as the police officer in question can appeal the decision to the Director of Public Prosecutions, notwithstanding the point of view of the Board. On average the Director of Public Prosecutions alters the decision of the regional public prosecutor in one to three per cent of the cases that are appealed to him – by the complainants, the police officers or the Complaints Boards. The Director of Public Prosecutions' decision is final and not subject to review by the Board, the Minister of Justice or any other body.

The chairman of the regional Police Complaints Board of Copenhagen has stated to Amnesty International that the small number of appeals is due partly to the fact that in the vast majority of cases the Police Complaints Boards concur with the assessments and recommendations made by the regional public prosecutors, and partly to the fact that the Police Complaints Boards do not appeal all cases of dissent to the Director of Public Prosecutions, but only those deemed to be a matter of principle.

[11] See the Annual report for 2006, p. 115 and 122, fig. 1 and 4.

The Boards can also make recommendations (requests) on individual incidents of their own accord and make general recommendations as to the treatment of certain types of cases. However, the regional public prosecutors and the police are not obliged to follow these general recommendations.

The Police Complaints Board does not itself interview the complainant, the police officer against whom a complaint is filed, or any witnesses, but reaches a decision on the basis of the regional public prosecutor's written recommendation along with the evidence procured in the course of the investigation. The Police Complaints Board may, however, request that the regional public prosecutor appear before the Board and present the case.

### Amnesty International's concerns

Amnesty International is concerned that while organizationally independent of the police, the Police Complaints Boards, as currently mandated, cannot be considered to ensure an effective oversight of investigations. Lacking the authority to conduct their own interviews and investigation, the Boards are not granted sufficient powers to ensure effective independent review or oversight of the investigation of complaints against the police.

Moreover, while the Police Complaints Board can appeal the regional public prosecutor's decision to the Director of Public Prosecutions, if it does not concur with the decisions reached by the Director of Public Prosecutions it has no further recourse.

Amnesty International would, therefore, recommend that the Police Complaints Boards be maintained as an independent oversight body and be given the powers to reinvestigate cases thoroughly and the right to appeal any decision it disagrees with to a judicial authority.

## Minor misconduct cases

In minor misconduct cases the regional public prosecutor does not conduct investigations and decide on the matter, but refers the case to be resolved locally. This means that the complainant meets with a senior officer at the place of duty of the police officer against whom the complaint is lodged, to discuss with a view to reaching some common understanding of the incident. At the meeting, or consultation, a note on the proceedings and a report of the meeting is drawn up and sent to the regional public prosecutor. The regional public prosecutor in turn sends a copy of the note to the Police Complaints Board for its information. Amnesty International recognizes that it is desirable to avoid overburdening the complaints system with minor cases and takes note of the fact that the complainants, whose cases are referred to this procedure, are informed that they can insist on having their complaint handled by the regional public prosecutor and the Police Complaints Board.

## Complaints about police conduct and complaints about criminal offences

According to the Director of Public Prosecutions' annual reports of 2005 and 2006, 367 and 405 complaints were lodged against police conduct respectively and 567 and 584 complaints pertaining to criminal offences by police were lodged respectively. Out of the 567 and 584 criminal cases, 252 and 277 complaints respectively pertained to traffic offences. Nine and 20 cases under section 1020a, subsection 2, of the Administration of Justice Act (involving death or serious injury while in police custody) were registered in 2005 and 2006 respectively.

In the same period, 2005 and 2006, the Police Complaints Boards handled 387 and 379 police conduct complaints, 579 and 527 criminal offence complaints (including 259 and 246 traffic complaints) and 10 and 11 cases under section 1020a, subsection 2, of the Administration of Justice Act.

Complaints about conduct – or misconduct – range from the excessive use of force in connection with arrest, to abuse of authority during an arrest or search, other forms of incorrect procedure while on duty, impolite or improper language or other forms of improper behavior. Cases of misconduct concerning disproportionate use of force may – depending on the concrete circumstances – amount to a violation of the Penal Code. In some instances the alleged abuse of authority or disproportionate use of force is so blatant that it is evident that the complaint relates to a criminal offence right from the outset. In other cases the subsequent investigation into a complaint about police conduct may give rise to considerations as to whether the misconduct constituted a criminal offence. In a later section of this report Amnesty International describes a case from Kalundborg that touches on the question of the interface between misconduct and criminal offences in a police complaints case.

A complaint case on police misconduct (e.g. disproportionate use of force) is halted, if during the investigation it appears that there may be a reason for pressing criminal charges against a police officer for violence/assault under sections 244-246 of the Penal Code. If the criminal procedures are closed, the complaints case is reopened. Depending on the seriousness of the misconduct, the same incident can give rise to two decisions: one on the alleged criminal offence and subsequently a decision on the alleged misconduct.

The regional public prosecutor's decision to waive pressing charges against a police officer must also be brought before the Police Complaints Board before entering into effect. The Board and the complainant can appeal the decision not to press charges to the Director of Public Prosecutions. However, as stated above, the Police Complaints Board has no decision-making powers.

### Sanctions other than criminal charges

If the regional public prosecutor waives criminal charges thereby closing the criminal case, the complaint case once again becomes a conduct complaint and is handled by the regional public prosecutor and the Police Complaints Board.

In conduct complaints not resulting in criminal charges the regional public prosecutor can choose between the following reactions:

- Case rejected – no misconduct has taken place
- Regret expressed to the complainant - no criticism pronounced of police personnel or of the organization
- Criticism of individual police officers' conduct (three degrees of criticism: criticisable/very criticisable/highly criticisable)
- Criticism of the place of duty/management/organization/structural flaws – no criticism of the individual police officer.

## The restricted scope of the Police Complaints Board

*Disciplinary cases,* the decision on whether a given case of misconduct or conviction of a (minor) (traffic) felony should have disciplinary consequences, i.e. dismissal from the force, or a formal warning fall outside the scope of the Police Complaints Board. If disciplinary sanctions cannot be ruled out, the regional public prosecutor will submit the case to the officer's place of duty where the commissioner of police (before the restructuring of the police districts in January 2006: the chief constable) will decide whether to initiate a disciplinary case.

Amnesty International considers that any police complaints mechanism should also cover the question of disciplinary measures against a police officer in consequence of a case of misconduct or abuse of power or criminal offences. It is crucial for the effectiveness of the complaints system that cases of misconduct or of criminal offences are invariably followed by disciplinary proceedings. To obtain the necessary transparency in the process the disciplinary body which decides on the disciplinary matters should be obliged to report back to the complaints mechanism which disciplinary actions have been taken as a consequence of the case.

*Complaints about police decisions*, i.e. police decisions to discontinue an investigation, not to press charges, or to bring police dogs to demonstrations or riots, also fall outside the scope of the Police Complaints Boards. The interface between complaints about conduct or criminal offences on the one hand and complaints about decision-making by the police on the other is blurred. For example, the decision to bring police dogs to demonstrations or riots is an operational decision, which can be addressed by lodging a complaint to the commissioner of police or ultimately challenged in a court of law, whereas the extent to which the dogs are used against people, "how much" the dogs are allowed to bite people, is a matter of police conduct and as such falls within the scope of the Police Complaints Boards. For the person involved, however, the sequence of events will be experienced as one incident that should be considered together.

However, Amnesty International finds that the distinction between conduct complaints and police operational decision complaints is impractical in a number of situations and recommends that the Police Complaints Boards should be empowered to handle complaints cases even when a complaint touches on the justification of a police operational decision. The chairman of the Police Complaints Board for Copenhagen, Frederiksberg, and Tårnby has informed Amnesty International that he would support extending the Boards' scope so as to enable the Boards to handle complaints involving police operational decisions.

According to the Director of Public Prosecutions' annual reports of 2005 of 2006, the 387 and 379 conduct complaints for 2005 and 2006 respectively were decided as follows:

| **Statistical information on the outcome of police "conduct" complaints** | **2005** | **2006** |
|---|---|---|
| Complaints settled in police district ("minor cases") | 120 | 129 |
| Complaints withdrawn | 12 | 12 |
| Complaints rejected as statute barred (time barred) | 14 | 5 |
| Complaints rejected as groundless (incl. cases where there are conflicting accounts of the incident ("2004 a draw") | 210 | 210 |
| Regrets but no criticism (cases where the regional public prosecutor offered regrets to the complainant although no basis was found for criticising the police officer) | 7 | 7 |
| Grounds for criticism (criticism of the police officer's conduct)<br>(2005/06 6/6 criticisable, 2/1 very criticisable, 1/1 highly criticisable) | 9 | 8 |
| Organisational criticism (including criticism of general organizational procedures) | 1 | 0 |
| Other (includes cases that were closed due to complainant's lack of response | 14 | 8 |
| Total | 387 | 379 |

The regional public prosecutors' decisions on allegations of criminal conduct against police personnel, including cases under the Administration of Justice Act section 1020a, subsection 2, in 2005/2006 were as follows:

| | **2005** | **2006** |
|---|---|---|
| Complaints rejected | 97 (10 traffic cases) | 74 (4 traffic cases) |
| Investigation cancelled or criminal charges dropped | 268 (68 traffic cases) | 262 (72 traffic cases) |
| Grounds found for pressing charges | 189 (176 traffic | 173 (162 traffic |

| | | |
|---|---|---|
| | cases) | cases) |
| Incidents regretted/criticised, but no grounds found for pressing charges | 10 (1 traffic cases) | 7 (0 traffic case) |
| Others | 15 (3 traffic cases) | 11 (8 traffic cases) |
| Total | 579 (259 traffic cases) | 527 (246 traffic cases) |

It appears from the above that out of 387 police conduct complaints in 2005 and 379 in 2006, 210/210 were rejected as groundless (unfounded), while nine and eight cases respectively resulted in criticism of the police officer in question.

As for the statistics regarding the 579 criminal cases in 2005 and 527 criminal cases in 2006 (including 259/246 traffic cases), it appears that 97/74 complaints were rejected, 268/262 cases were subsequently dropped (discontinued) after initial investigation and no charges brought. 13 non-traffic cases in 2005 and 11 non-traffic cases in 2006 gave rise to pressing charges and resulted in charges pressed/fines/warnings/withdrawal of charges in 2005 and 2006 respectively. All these diverse results are listed under one heading – grounds for pressing charges (see note 15).

To enhance the possibilities for public scrutiny of the practices of the regional public prosecutors the category "grounds found for pressing charges" should be subdivided into its separate components. A category that treats withdrawing charges and pressing charges together provides little useful information about the regional public prosecutors' practices.

Amnesty International therefore welcomes the introduction in the Annual Report 2005 of statistics covering the outcome of the 13 cases listed under "grounds for pressing charges" and hopes that future Annual Reports will provide similar information on the outcome of the cases.[12]

## Assessment of evidence/burden of proof

The present system was introduced in 1996 to replace the severely criticized system of local boards. In comparison to the previous system, the present system has removed the most glaring inadequacies. However, lawyers have indicated to Amnesty International that in

[12] In the report of the Director for Public Prosecutions for 2005, (see table 5a, p. 136) it appears that of the 13 cases that gave rise to pressing charges, charges were pressed for abuse of confidential information in three cases, fines were issued in two cases of abuse of confidential information, a fine was issued in one case of forgery (documents), charges were pressed in one case of embezzlement with regard to confiscated objects, and charges were pressed in one case of maltreatment/exposing others to serious danger, and a fine was issued in one case of vandalism. According the report of 2006, charges were pressed for misuse of confidential information in one case; a fine was issued in one case of misuse of confidential information. Furthermore, charges were pressed in two cases of forgery, in one case of violence, in one case of negligent grievous bodily harm, in one case of threats and in one case of fraud.

practice any improvements in relation to the former system have been modest. Some have told Amnesty International that they generally advise their clients against wasting time and effort on a complaint because in their estimation the chance of a favourable ruling is too slim.

The fact that the Police Complaints Boards concur with the regional public prosecutors' recommendation in the vast majority of complaints cases should not necessarily be taken as statistical proof that the complaints are unfounded or unfair.

The chairman of the Police Complaints Board of Copenhagen, Frederiksberg and Tårnby has stated to Amnesty International that in cases, where there are (only) two conflicting accounts of the incident - the complainant claiming one thing and the police officer claiming the opposite - and no other evidence significantly supports the citizen against the police, the Boards invariably find themselves obliged to concur with the regional public prosecutor's recommendation that "in view of the conflicting testimonies we have no grounds for ruling that a felony or misconduct has taken place."[13]

Rejecting the complaint (or a criminal charge) with reference to conflicting statements and the absence of evidence that misconduct has taken place is the norm when there is no conclusive corroborating evidence supporting the complaint. Therefore, a rejection does not always mean that the honesty or trustworthiness of the complainant has been questioned, or that there is doubt that this is the complainant's sincere perception of the incident. What it fundamentally means is that there is insufficient evidence to support the complainant's version of the incident against the denial of the police officer. Conflicting statements in police complaints cases will be the rule, the norm, rather than the exception. Furthermore, the relative weight of authority of a member of the public and a police officer is unequal.

Amnesty International considers that the answer is to ensure that the authorities assigned the task of investigating and deciding on complaints are uncompromisingly impartial and objective and thorough in their investigations and decision-making.

In *Mikheyev v. Russia*[14] the European Court of Human Rights stated that these standards (effectiveness, impartiality, fairness) do not constitute an obligation of result, (i.e. in terms of a decision that upholds the claim of the complainant against that of the State), but an obligation of means, i.e. an obligation concerning the standard of investigations. What should be tested in order to determine whether a national complaints system meets the requirements of "effective remedy" under Article 13 of the European Convention on Human Rights is not

[13] In the 2004 annual report the Director of Public Prosecutions referred to these cases as "a draw" in the above statistics, but a draw suggests that both parties have won a point. In cases that are dismissed because there is no evidence to support that a felony or misconduct has taken place, it is not "a draw" for the complainant.

[14] *Mikheyev v. Russia*, Application j7761/01 (Eng.) 26 January 2006, para. 106.

the result of the case, but the means. In *Mikheyev v. Russia*, the Court further stated that an "effective investigation" requires it to be thorough, expedient and independent.[15]

The European Court of Human Rights has also stated that for an investigation under Article 2 to be effective, it is "necessary for the persons responsible for it and carrying it out to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence."[16] Moreover, it has also stated that effective investigation "means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions … they must take all reasonable steps available to them to secure the evidence concerning the incident, including inter alia eye witness testimony, forensic evidence …" (*Mikheyev v Russia*, para.108) and the prosecuting authority must place a priority on finding potential supplementary evidence or other witnesses who are not themselves parties to the case.

The UN Committee against Torture, in its concluding recommendations after examining Denmark's fifth periodic report on its implementation of the Convention against Torture, recommended that "all allegations of violations committed by law enforcement officials … are investigated promptly, independently and impartially". It urged the government to expedite its ongoing review process, and to provide to the Committee detailed information on the results of this process.[17]

The basic question to be addressed is whether the current system of investigation by regional public prosecutors fulfils the requirement under international standards for prompt, independent, effective and impartial investigations.

## *The regional public prosecutors' role in the police complaints system in Denmark*

### Organization of the police and the public prosecution

*"The structure of the Danish judicial system is unusual in that the prosecuting authority of first instance lies with the police, i.e. the police commissioner and the police lawyers. The police commissioner is consequently the head of police in the relevant police district and head prosecuting authority of first instance in the relevant judicial circuit. The prosecuting authority of second instance lies with the regional public prosecutors."*

[15] *Mikheyev v. Russia*, paras. 107-110.
[16] *Tahsin Acar v. Turkey*, no. 26307/95, para. 223, ECHR 2004-III.
[17] CAT/C/DNK/CO/5, 16 May 2007.

### The 1994 Committee's view on the regional public prosecutors' role

The problems arising from the lack of a clear-cut division between the police and the public prosecution at the local level are illustrated in the 1994 Committee Report (p. 148):

> *"The starting point for the investigation of complaints cases and criminal cases must be that this is the province of the regional public prosecutor's legally trained staff consisting of a very small permanent staff and additionally of persons,* ***who as part of their legal training are stationed with the regional public prosecutor and who after a two-year stint will return to the police.****" [emphasis added]. Admittedly, lawyers do not have any formal education or training as far as police investigation is concerned, but through their work as police lawyers they obtain considerable experience with and knowledge of the rules that apply to police investigation, just as they gain experience conducting interrogations from their work as regional public prosecutors."*

Thus, currently, many of the lawyers working in the regional public prosecutor's office are explicitly police lawyers, who after a two-year rota stint will return to the police.

The chairman of the Police Complaints Board for Copenhagen, Frederiksberg, and Tårnby, and the chairman of the Police Complaints Board for Fyn, Sydøstsjælland, Lolland, Falster, and Bornholm, have pointed out to Amnesty International that formally there are a certain number of built-in safeguards, in the sense that only the permanent staff of the regional public prosecutor's office have the power to handle complaints against police officers[18]. In practice, however, Amnesty International finds that the elaborate system of "rotation" within the Ministry of Justice undermines the safeguards[19].

The rota system, a requirement for all police lawyers as part of their training, is described on the Ministry of Justice's website homepage. It appears from the homepage that all lawyers can look forward to working for three years in a police district as a police lawyer (prosecutor) and then "rotate" to the regional public prosecutor's office for a two-year stint. (This external rotation may also entail placement at the Danish National Police, the Director of Public Prosecutions or the Ministry of Justice). After two years with the regional public prosecutor, the police lawyer returns to work as a prosecutor/police lawyer in a police district. All employees are summoned to a consultation with the Ministry of Justice after five and 10 years of employment. In the end the permanent legal staff of the regional public prosecutor, including the regional public prosecutor, the deputy regional public prosecutor, and the

[18] The Minister of Justice in answer to question 126 (2005) to the Parliamentary Committee on Legal Affairs has informed that some modifications have taken place, so that other than the permanent staff can now deal with conduct complaints.

[19] Within a period of 10 years every legally trained employee at the police/regional public prosecutor will have worked in at least three different posts for periods of two to three years within the police, the regional public prosecutors, the Director of Public Prosecution and/or the Ministry of Justice.

assistant regional public prosecutors have all at some point in their working lives worked as police lawyers.[20]

Amnesty International is concerned that the career path of all prosecutors – rotating between police districts and the regional public prosecutors' offices – makes it hard for the regional public prosecutors to act with the required impartiality when investigating and deciding on police complaints and, even more so, difficult for the general public to perceive the regional public prosecutors as genuinely independent in their dealing with police complaints.

## Deliberations of the government's Vision Committee on separation of police and public prosecution (2005)

The Vision Committee (which included representatives of the Danish National Police, the Director of Public Prosecutions, police chief constables, the Police Federation, the Ministry of Justice and a broad range of representatives of other branches of societal life) was appointed by the government in 2003 and mandated to present recommendations for "the police of the future" on restructuring the police and the public prosecution. In its report of May 2005, the Vision Committee pointed out that the system whereby the local prosecuting authority forms an integral part of the police district is unknown in other Western European countries with the exception of Norway. In the other countries the police and the public prosecution are completely separate entities for reasons of principle.

The Vision Committee further states:

*"In the opinion of the majority, the present system raises issues both in relation to fundamental considerations of the prosecuting authority's independence and its assertiveness* ***when dealing with the police, and consequently due process of law and supervision of the lawfulness of police practices*** *[emphasis added], and in relation to the very principles of governance regarding the link between accountability and authority which form the basis for the committee's proposal for a reform of police administration."*

The following are some excerpts from the Vision Committee's report:

*"Concerns regarding the principle of due process of law in relation to the prosecuting authority's independence and legal control of the police have caused democratic states based on the rule of law to adopt as their customary practice that system whereby the prosecuting authority is organized as an independent authority that is absolutely separate from the police.*

*In Denmark, however, for historic reasons the system is organized in such a way that the chief police officer has a dual function in that he is head of both the local police and the*

[20] For example, the regional public prosecutor who handled the Ørskov-case (Løgstør Police) had previously worked as a police lawyer with Løgstør Police (see below for case description).

*local prosecuting authority…The Danish system consequently deviates from the countries with which we usually compare ourselves." (p. 143)*

*"In the practical everyday life of the police districts there is an integral cooperation between the two authorities." (p. 145)*

*"…As stated above, the particular Danish system in which the administration of the district police and the district public prosecution are merged raises concerns regarding the rule of law." (p. 147)*

*"In addition to the* ***general issue of the independence of the prosecuting authority and control of the lawfulness of police practices that it is the duty of the regional public prosecutor to exercise*** *[emphasis added], the present system is not in accordance with the fundamental administrative principles that form the basis of the Vision Committee's proposal for a coherent police reform…" (p.147)*

*"An obvious way of ensuring such a balance would be to separate the prosecuting authority in accordance with a scheme very like the Swedish one, for example. Such a separation of the prosecuting authority would constitute a major re-organization, and the costs, including efficiency loss, would largely outweigh the advantages gained when compared to the advantages that could be derived from a simpler organizational solution that does not entail absolute separation of the prosecuting authority." (p.148)*

Despite the majority of the Vision Committee appearing to fundamentally believe that the police and the prosecution authority should be absolutely separate on the institutional as well as the personal level based on concerns for the rule of law, the Committee seemed to settle, on cost-effectiveness grounds, for less than absolute separation[21].

Amnesty International recommends that regardless of any short-term practical operational advantages, the police and the structures and functions of the public prosecution should be separated on the organizational level. Such separation could go a long way to ensuring -- in perception as well as in practice -- the impartial and independent exercise of the public prosecution's function to control the lawfulness of the police's work. The organization also notes that the European Code of Police Ethics, in III.6, states: "There shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system; the police shall not have any controlling functions over these bodies." Amnesty International considers that such separation would likely increase public confidence in the independence and fairness of the complaints system, particularly when coupled with implementation of the organization's other recommendations.

[21] Regardless of the repeatedly stated concern for the lack of independence and separation, both institutionally and personally, the Vision Committee writes in its recommendation, p. 149: "It is worth noting that the majority consider it natural that the employing body should continue to be the Ministry of Justice ('place of employment until further notice at…') and that the recruitment, supplementary education, and promotion of police and prosecution lawyers should continue to be coordinated jointly."

# Part two – case studies

The following five illustrative cases demonstrate different aspects of Amnesty International's concerns regarding the lack of access for victims of police misconduct to an effective remedy so that they can exercise their rights to redress and reparation. The cases highlight the lack of separation between police and public prosecution; the perceived lack of transparency, impartiality and independence in the investigations carried out and in the decisions made by regional prosecutors.

## *Case No. 1. Randers*

The following account and assessment of the case is based on the written judgment of Randers Municipal Court, the Court's record of the testimonies of the involved parties, the regional public prosecutor's presentation of the case, and on the police reports of the case. Furthermore, Amnesty International has interviewed the defence barrister who represented his clients in the criminal case as well as in the cases for compensation for unwarranted arrest and in the complaints case against a member of Randers Police. The information provided by the lawyer pertains to questions of the sequence of the incidents. Furthermore, Amnesty International had the opportunity to read the decisions of the regional prosecutor on the complaints cases.

In February 2003 a young man (A.) stepped outside a pub in Randers and shouted some degrading words. A. subsequently claimed that his words were directed at a friend (F), who was standing on the opposite side of the street by a shop.

A plain-clothes police officer (P), who was off-duty and out taking a walk with his girlfriend, came down the same street. He claimed that he thought that A.'s shouting was directed at him. So he walked up to A. and asked him to repeat what he had just said.

A. talked back and refused to repeat his words stating that the policeman had probably already heard him. The two quarrelled for a period of time, pushing and shoving. P claims that he showed A. his police badge at this moment. However, A. claims that he was not aware that P was a policeman until P made a telephone call and two police cars arrived to arrest him. A. was handcuffed and taken to the police station.

A. was remanded at the police station until the next day and subsequently charged with addressing an officer in a degrading or demeaning fashion under section 121 of the Penal Code.

It appears from the police reports that during the subsequent interrogation, A. claimed that he had been pushed around and struck by P. (A. subsequently submitted photographs showing minor bruises to his face and forehead and on the top of his head to substantiate his complaint. The uniformed police officers who were called all testified that they did not see P hit A. One of the officers stated that he heard a sound like a clenched fist hitting skin, but he had not seen anything, because he had his back turned to the place where P was holding A. What can be ascertained is that A. had soiled his trousers.)

After A. was placed in the police car, another guest at the pub, his friend B, came out of the pub to see what was going on, in time to see A. being driven away. B scowled at P. P yelled at B that he would remember his face in the future, and B talked back stating that he would also remember P's face. P, who was about to resume his walk with his girlfriend, turned around and walked over to B because B called his girlfriend a prostitute.

The accounts of B and P contradict each other on the following incident.

According to B, P walked up to B, stepped on B's toes on both feet and took a firm grip around B's wrists. B repeatedly asked P to step off his toes and let go of his arms. At last B got his feet loose and stepped on P's toes. The next thing he knew was that P gave him a forceful blow in the stomach causing him to lose his breath and bend over. B then straightened himself up and struck P hard across the face. This caused P to let go of B who then walked away. B subsequently claimed that it was not until after the exchange of blows that he was made aware by a bystander that P was a police officer.

P testified in Randers court in December 2003 that B struck P in the face; but P denied having stepped on B's toes, holding his wrists or hitting him in the stomach.

Apart from A., B, and P, Randers Court also heard testimony from the police officers called in by P, P's girlfriend, A.'s friend F who had been on the other side of the street, and the bartender of the pub.

P's girlfriend confirmed P's account of the incident. The police officers testified that P had entered the police station with a big red mark on his cheek and jaw and down one side of his neck, and that P had asked some of his colleagues to come with him to find and arrest B, stating that B had hit him in the face. (P and his colleagues did not succeed in finding B that day, but he was arrested at a later date and charged with interference (violence) with an officer in the performance of his duties and verbal assault, under sections 119 and 121 of the Penal Code, respectively.)

A.'s friend F had witnessed the entire incident and supported B's testimony stating that he saw P hit B in the stomach, and that B retaliated by hitting P in the face. It further appears that F gave testimony supporting A.'s account of the initial incident, when A. yelled at him and called him names from outside the pub, and how P responded to A.'s yelling.

The case went to court in December 2003 approximately 10 months after the incident. When the trial began the case took a surprising turn in that A.'s and B's defence lawyer lodged a complaint in court against P for violence/unnecessary force, i.e. using excessive force against A. during his arrest, and hitting B in the stomach after A.'s arrest in violation of section 244 of the Penal Code.

It appears from the case file that during the criminal investigation against them both A. and B testified to Randers Police that P struck them, but in its consideration of the case the district public prosecution failed to question P about the allegation that he had hit them, with the rights and privileges of a suspect. It was not until the defence lawyer lodged the formal complaint about the alleged incident in Randers Court during the criminal action against A and B that anything happened.

The court was then adjourned because some of the police witnesses had not been notified to appear in court to give evidence. In a court session in May 2004 the case was further postponed with a view to interrogating the police officers, the friend F, and others.

When the case was resumed in August 2004, the prosecutor (from Randers Police) claimed that, in view of new information (reasonable doubt as to A.'s and B's guilt and reasonable doubt as to whether officer P had been guilty of misconduct), A. and B should be acquitted of all charges. The Randers Court gave judgment in accordance with the prosecution's plea. (In doing so, the written judgment merely contains the testimonies given in court; the judge does not state his assessment of the accounts of the incident; nor does the public prosecution indicate the nature of the new information.)

A. and B's lawyer then filed a complaint with the Director of Public Prosecutions under the Administration of Justice Act for unjustified arrest, for the fact that the case had been unreasonably lengthy for his clients, and that the police and the prosecution had not at any time between February 2003 and the court hearing in December 2003 taken any measures to investigate A.'s and B's claims of ill-treatment by P, but instead completely ignored A.'s and B's claims (during the initial interrogation at Randers Police) until the complaint was filed in court in December 2003.

The Director of Public Prosecutions rejected the compensation claim for unwarranted arrest, stating that A. and B had caused the arrests themselves and furthermore that P had committed no errors which could give rise to questions of compensation. Lastly the Director of Public Prosecutions stated that neither A. nor B had lodged formal complaints against P until the court session in December 2003.

A's and B's lawyer then lodged a complaint against P with the regional public prosecutor of Northern Jutland for unwarranted and excessive use of force (ill-treatment) against A. and B.

In March 2005 the regional public prosecutor of Northern Jutland rejected both complaints. As for A., the regional public prosecutor stated that in view of P's statements and that of his girlfriend and the bartender, the regional public prosecutor did not find sufficient grounds to reject P's allegation that A. had yelled at him and called him names. As to whether P had struck A. and attempted to kick him, the regional public prosecutor found no evidence that such actions had taken place. In doing so, the regional public prosecutor attached particular importance to the fact the P had denied striking or kicking A. The regional public prosecutor made specific reference to the fact that one of the police officers who had been called in by P had been unable to ascertain whether a certain movement by P was an act of self-defence or a blow, just as the police officer who thought he heard the sound of a clenched fist against skin had not seen anything because he had had his back turned to the incident. On this basis the regional public prosecutor concluded that P had not applied disproportionate force and that A. had attempted to escape.

As to whether P had struck B in the stomach, the regional public prosecutor rejected the complaint stating that in view of the many conflicting statements about the incident she had not found evidence to support the allegation.

Thus, A. and B were acquitted, but no errors were found to have been committed during their arrest. No criticism of P's action was pronounced, nor did the regional public prosecutor offer an apology to A. and B.

Amnesty International considers that the decisions and the reasoning on B's criminal and complaints case raise questions about the investigation and decision-making of the prosecution authorities. The regional public prosecutor rejected the complaint against P on the grounds of insufficient evidence that P had struck B in the stomach. But at the same time the Randers municipal Court judgment acquitted B of violence against a police officer despite B testifying in court that he did so after P had struck him in the stomach. F's testimony was in accordance with B's account of the incident. P's colleagues have all testified that P entered the police station with a large red mark on his face. Nevertheless the public prosecution requested that B be acquitted of the charge.

Amnesty International considers that the case of A. and B raises the question of whether the district public prosecution at first instance (formally the police chief constable of Randers Police) handled it in a thorough and impartial manner. It illustrates the fundamental issue highlighted in the government's Vision Committee's report: the absence of a clear division between the police and the public prosecuting authority on the local level, the chief constables' (now: the police commissioners') dual role as head of the police district and head of the local prosecuting authority. The decisions of the district public prosecution and of the regional public prosecutor for Northern Jutland respectively appear to be contradictory, and the case further raises concern about the perceived lack of impartiality and objectivity in the public prosecutors' investigation of the complaints.

## *Case No. 2. Glostrup*

The following case demonstrates a concern about statements made by prosecution authorities before an investigation is completed, thereby casting doubt on the impartiality and independence of the ongoing investigation.

On 9 January 2006, the papers quoted the regional public prosecutor for Zealand as stating that the Glostrup police had acted correctly when deciding to shoot a mentally disturbed man making threats with a knife on 8 January 2006.

The newspaper *Politiken* quoted the regional public prosecutor of Zealand as saying:

*"Everything indicates that the man caused his own death. He had stabbed himself in the abdomen, as well as in the chest and throat. The police shot at him to stop him from inflicting injuries on himself."* Similar accounts of the incident were given *in Urban, Berlingske Tidende, Ritzau's Bureau* and other newspapers*."*

*Politiken* continues:

*"Regional public prosecutor XX does not know whether the man was known to the police, but he does know that the man had a psychiatric record. In the opinion of the regional public prosecutor this is more a case of personal tragedy than of the police force's use of*

*force; 'While I am unable to say anything definite, this case looks like yet another example of the mentally ill being the cause of unfortunate situations often harming themselves in the process, another example of how the mentally ill are treated in our society,' XX says. Today central police officers will be interrogated about the course of events, and there will a post-mortem on the deceased to determine the cause of death."*

Amnesty International is concerned that the reported statement of the regional public prosecutor, made before the investigation was concluded was premature and may have prejudiced the course of the investigation and handling of this case. It appears that an autopsy on the deceased had not yet been performed. In the perception of the public, the regional public prosecutor had already indicated the outcome of the future investigation into the case.

On 18 January 2006 an article in *Politiken* stated that the post-mortem had shown that the victim had bled to death as a result of gunshots fired by the police. He had been shot in main arteries in both legs.

The *Politiken* article stated: "The mentally ill man was shot in the legs when a female officer tried to prevent him from committing suicide by using her gun. 'This tragic case may have consequences. But you have to ask yourself if his own action would have resulted in death, too, had shots not been fired,' states regional public prosecutor XX ."

It further appeared from the article that the Director of Public Prosecutions would become involved in the case with a view to studying what could generally be learned from the situation. *Politiken* quoted the regional public prosecutor as stating:

*"The course of events gives rise to several questions as to how mentally ill persons should be treated when they attempt to inflict injuries on themselves or others. He may have been under the influence of drugs, pills, or alcohol. He did not react when the police officers beat him with a truncheon, nor did he pay any attention when a dog bit him in the arm."*

Compared with the regional public prosecutor's initial statement, in which on the whole he concluded that the man had presumably died of injuries that he had inflicted on himself, the later statement indicated that the case was far less obvious and straightforward. But even after the regional public prosecutor must have realized that his presentation of the course of events on 9 January was premature and insufficiently substantiated, he maintained his original position that no errors had been committed, presenting the hypothesis that the man might have stabbed himself to death had he not been shot.

Amnesty International is concerned that the statement of the regional public prosecutor before the conclusion of the investigation may have undermined the perception of an impartial investigation and public confidence in the fairness and effectiveness of the police complaints system with regard to the prosecuting authority's role in investigating the lawfulness of police actions.

## Case No. 3. Kalundborg

The following case illustrates Amnesty International's concerns that the police complaints system in Denmark has not provided an effective remedy against human rights violations, including an independent, impartial and thorough investigation.

The case also illustrated an apparent gap between the international human rights treaties and guidelines on the use of force and the practices of the Danish prosecuting authorities.

In Kalundborg in December 2004 a police officer held a man down by stepping on his neck while the man in question lay face down on his stomach with his hands handcuffed behind his back. A man passing by witnessed the incident and recorded the scene with his mobile phone. The recording was placed on the newspaper *Ekstrabladet's* website homepage where it gave rise to alarm and indignation.

In the 12-second recording the officer can be seen treading on the man's neck, while he is lying on the ground, thrashing his legs and crying out hoarsely (as if struggling to breathe). "Have you had enough yet? Have you? Have you finished?" the officer yells in the recording. When the young man cries out for help to the persons standing around watching the incident, the police officer can be seen to step on the young man's neck again, yelling, "I said shut up!"

In November 2005 the regional public prosecutor's office decided the case and the assistant regional public prosecutor (assessor) with the regional public prosecutor's office was quoted in the press as saying "We find this to be a humiliating and potentially dangerous act." The regional public prosecutor stated that the police officer's conduct was "very criticizable". However, he did not find grounds for pressing charges against the police officer since he found there was doubt as to how hard the police officer had stepped on the man's neck.

Amnesty International considers that it should be a court of law that assesses the evidence and reaches a verdict so that the aggrieved party, the police officer against whom the complaint was lodged, and the public may all feel confident that the decision is fair and impartial. The exercise of discretion by a regional public prosecutor does not take place with the same transparency as when such decisions are made by a judge in a court of law. As a consequence, the public is denied access to the regional public prosecutor's information and is unable to subject the evidence that was the basis for the decision to scrutiny.

Moreover, it should be for the courts to establish the minimum requirement for when section 244 of the Penal Code on violence is applicable[22]. In this case the regional public

[20] Section 244 of the Danish Penal Code is applicable to acts of violence where the perpetrator does not intend to inflict "injury" and covers slapping (once, with open hand), hitting (with fist), pushing, arm lock, tripping, throwing objects at someone. According to general practice and interpretation of the provision, the application of section 244 does not require that the physical aggression leave marks in the form of scratches, bruises or more serious injuries. See Knud Waaben, strafferettens specielle del, pp. 41-42. See also the report of the Director of Public Prosecutions, January 2004, on sentencing practices in violence cases pursuant to sections 244-246 of the Penal Code, p. 6.

prosecutor's reasons for not bringing the case before a judge - that there was doubt as to how hard the police officer stepped on the man's neck - appeared unconvincing. There have been numerous criminal cases of assault or physical violence where the judge has had to determine the course of events between a perpetrator and a victim and decide how hard the kicking or beatings in a fight or a mugging actually were.

Amnesty International considers that the regional public prosecutor's decision not to press charges against the police officer was not conducive to inspiring public confidence in the independence, impartiality, thoroughness and fairness of the system for handling police complaints.

Secondly, the organization is concerned that the prosecuting authority's argument did not appear consistent with international standards on the police's power to use force: that it must be proportionate with the situation (threat) at hand and necessary in the sense that a lesser means would not have achieved the objective. The most important international standards are listed on pages 5 to 8 of this report. Pursuant to these standards the crucial question is whether the police officer's actions were necessary to prevent the arrested and handcuffed man from posing a threat to persons or property.

By virtue of domestic law -- and in accordance with international standards for police conduct -- police officers are entitled to apply physical force, when necessary, and as much as the situation at hand warrants in order to maintain law and order and prevent crime. This means a continuous assessment of proportionality for every police officer. The police must not apply force randomly or arbitrarily and certainly not more force than the situation specifically calls for. What determines whether a police officer's use of force can be considered lawful (legal) is whether it is necessary and proportionate, i.e. whether it is reasonably justified by the situation at hand, by the threat or resistance that the police officer is faced with.

The man restrained lying face down on the ground handcuffed behind his back did not appear to have posed a threat to the officer or others. Stepping on his neck could not be justified to enforce law and order, but in effect resembled an unauthorized punitive action against the man on the ground. The fact that he was yelling did not justify the force used against him.

The assistant regional public prosecutor was quoted as saying that the use of force, or physical violence in this case, was potentially dangerous, and the regional public prosecutor consequently decided that the conduct of the police officer was very criticizable[23]. On this basis the decision that there were no grounds for trying the case in a court of law did not appear well-founded.

The complainant appealed the decision not to press charges to the Director of Public Prosecutions. In January 2006 the Director of Public Prosecutions subsequently upheld the regional public prosecutor's decision.

[23] See the Director of Public Prosecutions' annual report on police complaints for 2005.

## Case No. 4. Jens Arne Ørskov Mathiasen

The case of Jens Arne Ørskov Mathiasen (hereafter referred to as Jens Arne Ørskov) highlights Amnesty International's concerns that the current system does not fulfill the state's obligation to provide an effective remedy to victims and their relatives of alleged police misconduct through a prompt, thorough, impartial and independent investigation.

The following report is based on the written material of the case, i.e. interview reports and decisions of the regional public prosecutor, the report of the Falck-paramedics, the autopsy report, the statement of the Medico-Legal Council, the Director of Public Prosecutions' decisions in the case and his reports to the Parliamentary Committee on Legal Affairs.[24] Furthermore, the statements of the medical experts in the two TV-documentaries, "The Image of Power" and "Beyond Suspicion", have been used. Lastly, Amnesty International has drawn on information provided in a lecture by Dr. Hans Reich and has spoken to Jens Arne Ørskov's mother, Jonna Ørskov, and her lawyer, Tyge Trier.

Twenty-one-year-old Jens Arne Ørskov died on 15 June 2002 while in the custody of Løgstør Police. He had been arrested for disorderly conduct and handcuffed at a town celebration. It appears from the testimonies of the police officers involved that he had resisted arrest rather violently but ultimately he was handcuffed and placed in a police car and was going to be taken to prison in Aalborg. On the way to Aalborg Jens Arne Ørskov allegedly became very violent, and the police officers were ordered by the station to stop at a lay-by and wait for a transport van.

According to the report of the two police officers, Jens Arne Ørskov went amok and thrashed around the car, broke a window and smashed his face against the elbow of one of the police officers, which was why Jens Arne Ørskov's blood was smeared on the back seat in several places. The two police officers later reported that they had decided to take him out of the car to protect him from cutting himself on the scattered glass of the broken window. Out of the car Jens Arne Ørskov went wild again, and the two officers tried to calm him down by laying him on the ground face down. One of the officers tried to hold the upper part of his body on the ground by holding his right arm – he stated that he did not at any point sit on Jens Arne Ørskov's back - while the other officer tried to apply a leg lock, but failed to do so, because of Jens Arne Ørskov's violent resistance.

At some point, the police officers reported, Jens Arne Ørskov suddenly calmed down, and they thought that he was pretending to be unconscious in order to take them by surprise and attack them again. However, when Jens Arne Ørskov did not respond to having his ear twisted they realized that he was not pretending.

[24] The case has given rise to repeated debate in the Parliamentary Committee on Legal Affairs, particularly after the TV-documentaries mentioned below, and the Amnesty International statement in June 2006 on the case (see AI Index: EUR 18/001/2006).

Thereafter the two police officers placed him in recovery position and removed his handcuffs. They both believed that they could feel his pulse, so they were not alarmed, and did not attempt to give him artificial respiration, but still decided to call an ambulance. Moments later the Aalborg Police arrived, and shortly thereafter the ambulance and the paramedics.

The paramedics discovered that Jens Arne Ørskov had no pulse and attempts were made to resuscitate him by electric shock. These did not have any effect, and Jens Arne Ørskov was taken by ambulance to Aalborg Hospital where he was formally declared dead.[25]

## The state post-mortem examiner's autopsy report on the cause of death, 17 June 2002

In the autopsy report of 17 June 2002 the post-mortem examiner concluded that the cause of death was *"not established with certainty, but the available information together with the findings of the post-mortem indicated that the most likely cause of death was acute cardiac arrest as a result of intense physical activity (a state of hyper-excitation) on the part of the sturdy, over-weight man, possibly in conjunction with an intake of ecstasy and alcohol,"*

The report went on to state:

*"Prior to his death, the deceased was partially restrained on his stomach, and attempts had been made to place him in a leg lock, which may have contributed to triggering cardiac arrest."*

*"The information on the behavior of the deceased when arrested and when in the police car, including intense physical activity, violent acts of resistance and information on perspiration, strongly suggests a condition of hyper-excitation. Such a condition may have been caused by intake of cocaine, amphetamine and similar drugs, and is a condition that may lead to sudden death. In the medical literature several cases are described in connection with arrest and restraint while lying on the stomach, most often in what is called a fixed leg-lock (ankles fixed to hands or handcuffs while tied behind the back of the person lying face down). A condition of this nature often results in increased body temperature, which may account for the early decay."*

*"The petechiae [petechiae are tiny broken capillary blood vessels – haemorrhages] in the conjunctiva [membrane under the eyes], … the blue color of the head, neck, and shoulders may also be a result of cardiac arrest with heavy clogging of blood"*

*"No indications of a hold or other forms of force applied to the neck to explain the petechiae have been identified, and there are no visible marks of pressure or the like on the back. All lesions are fresh and the result of blunt traumas. They are in themselves*

[25] It appears from the interview report with the paramedics that they believed Jens Arne Ørskov to be dead upon their initial examination before taking him to the hospital.

*insignificant. The lesions on the forehead and the nose and on the knees are skin abrasions."*

In other words, the post-mortem examiner stated that the cause of death – as based on the findings of the autopsy - was uncertain, but based on the information he was given by the police officers involved, he indicated that Jens Arne Ørskov most likely died from hyper-excitation leading to acute cardiac arrest as a result of intense physical activity of the sturdy overweight man, possibly in conjunction with an intake of cocaine and amphetamine.

## The assistant regional public prosecutor's report of 18 June 2002 on the result of the autopsy

In his report of 18 June 2002 on the result of the autopsy the assistant regional public prosecutor of Northern Jutland stated the following:

*"The cause of death was not established with certainty at the post-mortem, but the state post-mortem examiner assumed on the basis of the information available on the deceased's agitated state and violent physical activities taken in conjunction with the deceased's physical appearance that the most likely cause of death was acute cardiac arrest in consequence thereof. If the deceased had been under the influence of ecstasy, amphetamine, or cocaine, possibly in conjunction with alcohol, this might be a contributory cause. Furthermore the fact that the deceased had been restrained in a prone position on his stomach, depending on the circumstances and the duration, might be a contributory cause. In this connection the state post-mortem examiner made reference to an American study in which a number of deaths during detention had been examined."*

## The regional public prosecutor's report of 4 September 2002 on the investigation into the death of Jens Arne Ørskov, under the Administration of Justice Act

In the report of 4 September 2002[26] the regional public prosecutor quoted the autopsy conclusions of 17 June 2002 and added that subsequent tests showed that Jens Arne Ørskov had not taken ecstasy, amphetamine, or cocaine. Furthermore, tests showed he had consumed alcohol and there were traces of cannabis in his blood.

The prosecutor also referred to the state post-mortem examiner's supplementary report of 3 July 2002, which concluded as follows:

*"The cause of death has still not been established with certainty, but the information available together with the post-mortem findings and the results of the supplementary tests*

[26] Pursuant to section 1020 a, subsection 2, Administration of Justice Act on mandatory investigations into deaths or injuries sustained while in police custody.

*indicate that the most likely cause of death was acute cardiac arrest as a result of intense, physical activity (hyper- excitation (delirium)) performed by the sturdy, overweight man, possibly in conjunction with an intake of alcohol and cannabis."*

The regional public prosecutor's report was based on assumptions in accordance with the testimony of the Løgstør police officers, for example, that the transport of Jens Arne Ørskov began at 10.40pm and that he became unconscious shortly before 11.06pm and was declared dead by the paramedic at 11.16pm. The report of the paramedics was not included in the assessment. Nor were the paramedics interviewed about the incident.

The regional public prosecutor further concluded that the post-mortem findings supported the police officers' testimony because the injuries described were found to be consistent with the use of force as reported by the police.

The prosecutor also stated that in her opinion the injuries to his face were the result of Jens Arne Ørskov banging his head against the side window of the car and the elbow of one of the officers. She concluded that in view of the post-mortem findings the lesions or injuries sustained by Jens Arne Ørskov were all insignificant in relation to his death.

On the cause of death, the prosecutor repeated the findings of the 3 July post-mortem. She then added:

*"According to the assistant state post-mortem examiner's statement of 13 August 2002, hyper- excitation can occur or develop during a battle/fight with no other known cause. According to the autopsy report, laying and restraining Jens Arne Ørskov on his stomach at the lay-by at Sebbersund could have been a contributory factor in triggering cardiac arrest.*

*I therefore found it warranted to investigate whether restraining a person in such a position [on his stomach, hands behind his back] can be considered to be in accordance with police techniques."*

The prosecutor referred to the relevant passage, in the teaching materials issued and used by the police academy on methods of restraint, on restraining the arrested person face down with the application of a leg-lock:

*"It should be born in mind that a forceful, slightly prolonged pressure on the chest can be dangerous when the person in question is laid on his stomach, just as it is advised that in any form of pacification that involves laying a person on his abdomen strict observation of pulse and breathing should be performed, and that the person should not be left alone."*

*And further, on laying someone face down with his hands cuffed behind his back:*

*"Fig. 172. If the situation renders it necessary that the detainee should remain lying on the ground, the weather should be taken into consideration so that he will remain on the ground as briefly as possible especially at low temperatures."*

On the basis of these passages the regional public prosecutor concluded:

*"As it appears from fig. 172 situations may occur when the detainee remains on his stomach with his hands handcuffed behind his back for a not quite brief period.*

*As for the warning under fig. 158 and fig. 161, it should be noted that in my opinion a leg-lock was not applied on Jens Arne Ørskov and that Jens Arne Ørskov was restrained by police officer xx applying pressure to Jens Arne Ørskov's upper arm/shoulder. This is supported by the lesion referred to as no. 13 in the autopsy report. Consequently this is not a case of heavy pressure applied to the chest."*

## Regional public prosecutor's decision [of 4 September 2002]

*"I consequently find that the force applied during Jens Arne Ørskov's arrest did not exceed what may be deemed necessary and there is no basis for assuming that Jens Arne Ørskov was subjected to physical violence or unwarranted use of force during transportation or at the lay-by at Sebbersund.*

*As for the circumstances which according to the autopsy report were most likely to have resulted in the death of Jens Arne Ørskov, I find no basis for assuming that the conduct of police officers A and B was criminal or criticizable.*

*Regardless of whether forcibly restraining Jens Arne Ørskov on his stomach and the attempt to apply a leg-lock as indicated in the autopsy report may have contributed to cardiac arrest, I find that the above information gives no grounds for criticizing the police officers' use of these techniques.*

*These are techniques that are presumably used everyday by police officers all over the country and which do not result in injuries to the persons to whom the techniques are applied. Lastly I do not find grounds for criticizing the actions of the police officers when Jens Arne Ørskov suddenly fell unconscious as the officers released him from the handcuffs, placed him in a recovery position, and tried to find a pulse. In addition, an ambulance was immediately called."*

Amnesty International finds that the regional public prosecutor's decision of 4 September 2002 as well as a number of other practical points relating to the way in which the regional public prosecutor of Northern Jutland handled the case give rise to concern as to the thoroughness and impartiality of the investigation in the case.

Initial statements and findings were made by the authorities, which were based on reports on the incident from the chief constable of Logstor Police and in the absence of a full investigation. Thus the initial findings that he might have died from hyper-excitation because of intense physical activity combined with a possible intake of ecstasy and alcohol were proved to be incorrect, and were then changed to an intake of alcohol and cannabis.

However, in the autopsy report of 17 June 2002, the state post-mortem examiner explicitly stated that an intake of "cocaine, amphetamine and similar drugs" has been known to cause conditions of hyper-excitation. The absence of such drugs in Jens Arne Ørskov's blood suggested that steps should have been taken to re-examine the theory of "hyper-

excitation", but this did not take place. Moreover questions remained unanswered about the report of the paramedics, and the disputed statements on whether a leg-lock was applied. The explanation for the injuries, provided by the prosecutor, also seemed to be based on the police officers' statements. Given previous controversies about the dangers of some methods of restraint, it is not explained why this possible cause of death was not explored further from the very beginning.

On 11 April 2003 the Director of Public Prosecutions upheld the decision of the regional public prosecutor of Northern Jutland.

## "The Image of Power" – a TV-documentary, 4 February 2004

After the regional public prosecutor's and the Director of Public Prosecutions' decisions were made, a TV-documentary on the case, "The Image of Power", was broadcast on 4 February 2004[27] raising a number of questions about the way the case had been handled and decided.

First, the TV-documentary raised the question as to why the regional public prosecutor had not presented the case and the autopsy report to the Medico-Legal Council, given the alleged uncertainties as to the cause of death. Why had the regional public prosecutor acted as a medical expert and drawn the final conclusions herself?

Secondly, the journalists submitted the case to Hans Reich, chief physician at Hvidovre Hospital, Lars Herslet, chief physician at Copenhagen University Hospital (Rigshospitalet), and to Jørn Simonsen, a professor of forensic medicine, (former chairman of the Medico-Legal Council), who stated that in their opinion the cause of death was not uncertain, and not "hyper-excitation", but rather asphyxiation as a result of restricted breathing due to restraining Jens Arne Ørskov on his stomach.

The three specialists all stated that the autopsy report and the photographs of Jens Arne Ørskov contained several objective findings that indicated that the cause of death was asphyxiation as a consequence of Jens Arne Ørskov lying face down on the ground in conjunction with considerable downwards pressure applied to his back. Among these indications were excessive accumulation of fluid in the lungs, petechial haemorrhage (small pin-point blotches in the membranes around the eyes), cyanosis (blue discoloration of the skin), urination, and ejaculation. Furthermore, they pointed to the fact that photographs of the petechiae, the bruises on Jens Arne Ørskov's forehead and a large bruise located below the right shoulder supported this analysis of cause of death.

The three experts stated that young men do not die from hyper-excitation by themselves. They further stated that cocaine and amphetamine have been known to induce a state of hyper-excitation leading to cardiac fibrillation resulting in cardiac arrest whereas

[27] *Danmarks Radio*, (a national broadcasting company); the two journalists Christian Andersen and Michael Klint were later awarded with the Cavling Award for 2005, the most prestigious prize for journalists in Denmark, in recognition of their outstanding journalistic achievements with their next documentary on the case, "Beyond Suspicion".

alcohol, cannabis, and physical exhaustion have not. They stated that hyper-excitation leading to cardiac arrest does not result in urination, ejaculation, or cyanosis, whereas asphyxiation does.

They stated that the paramedics' report on their findings at the lay-by stating that Jens Arne Ørskov had been blue in the face and the chest, that he had no pulse, had a low body temperature, had cold/damp skin, suggested that he had suffered from lack of oxygen for a considerable period of time, about 10 minutes. They therefore suggested that the two police officers had had ample opportunity and reason to initiate first aid instead of passively awaiting the ambulance. They found that the regional public prosecutor/post-mortem examiner had decided on the most improbable cause of death.

Third, the documentary questioned why the regional public prosecutor had relied entirely on the testimonies of the two Løgstør police officers and the two Aalborg police officers who arrived at the lay-by shortly before the ambulance and who were all directly involved in the case. The journalists pointed to the fact that the regional public prosecutor had ruled on the case without interrogating the paramedics who had examined Jens Arne Ørskov and tried to resuscitate him. Among other things it was alleged that the paramedics' report on his skin discoloration and various other details, as outlined above, indicated a different version of events than that presented by the police officers, and which would have had a bearing on judging whether the police officers had responded adequately to the situation.

The documentary concluded with the following questions:

- Why did the regional public prosecutor base her decision on the most improbable analysis of the cause of death?
- Why was the Medico-Legal Council not requested to assess the medical evidence?
- Why were the paramedics not interviewed about their findings?
- Why were the police officers not held responsible for not rendering first aid?

In the documentary Jens Arne Ørskov's mother, Jonna Ørskov, stated that in her opinion some of the answers to the above questions had to do with lack of impartiality and objectivity. She believed some of the answers lay in the fact that the regional public prosecutor for Northern Jutland had previously worked as a police lawyer with Løgstør Police, that the Chief Constable of Løgstør Police had previously worked as an assistant regional public prosecutor under the present regional public prosecutor and the present assistant regional public prosecutor, who prepared the case and drafted the decision, had previously worked under the Chief Constable of Løgstør Police.

Jonna Ørskov stated:

*"What this is about for them is to have the two police officers cleared completely. It is not to do justice to my son; that is totally insignificant for them, because Jens Arne is gone, he is dead."*

On 5 February 2004 Jonna Ørskov lodged a complaint against the four police officers alleging they committed a criminal offence by not having rendered Jens Arne Ørskov first aid (abandoning a person under their care in a state of helplessness, under section 250 of the Penal Code).

## The regional public prosecutor reopens the case following "The Image of Power"

On 13 February 2004 the regional public prosecutor decided to reopen the case in order to further investigate the cause of death, including the question of whether there were signs that Jens Arne Ørskov had been subjected to violence, whether the police officers had rendered adequate first aid, and whether there was cause for modifying police training and techniques.

This time the regional public prosecutor submitted the case to the Medico-Legal Council for a medical opinion. On 15 February 2005 the Medico-Legal Council issued a statement in response to questions submitted by the regional public prosecutor, the police officers' lawyer, and the lawyers representing Jens Arne Ørskov's mother, Jonna Ørskov.

## The regional public prosecutor's decision of 17 March 2005

After renewed questioning of the police and now also the paramedics and after studying the Medico-Legal Council's response to the questions raised by the regional public prosecutor and the lawyers, the regional public prosecutor for Northern Jutland ruled that there were no grounds for reversing the original decision of 4 September 2002.

The regional public prosecutor stated:

*"The Medico-Legal Council concurs with the post mortem examiner's conclusion according to which the cause of death has not been definitely established. The Medico-Legal Council further concurs with the post-mortem examiner's opinion that the most likely cause of death was cardiac arrest as a consequence of the conditions described in the autopsy report. In its response the Medico-Legal Council does not, however, seem to have found any basis for assuming that Jens Arne Ørskov was in a state of hyper-excitation.*

*Nor does the Medico-Legal Council find any grounds for believing that Jens Arne Ørskov died as a consequence of asphyxiation although this does not exclude the possibility that oxygen deprivation may have contributed to triggering cardiac arrest.*

*The cause of death may still be considered uncertain.*

*It may be assumed that the likeliest cause of death was cardiac arrest as a consequence of a combination of intense physical activity in conjunction with the consumption of alcohol and cannabis, and oxygen deprivation caused by restricted breathing due to Jens Arne Ørskov's position on his stomach with his arms tied behind his back."*

The regional public prosecutor further emphasized that the Medico-Legal Council had not been able to determine whether attempts had been made to leg-lock Jens Arne Ørskov, that the Medico-Legal Council had been unable to provide an answer to the question of how long a time a person in the condition in which Jens Arne Ørskov was found would have ceased to breathe and would have had no pulse. Finally the regional public prosecutor underlined that the Medico-Legal Council had stated that finding the pulse can be difficult and that it is not unusual for non-specialists to mistake the pulse in their own fingers for what might be the lack of pulse in the person under examination and that it can be difficult for non-professionals to determine whether the chest of an overweight person lying on the ground is moving.

## The Police Complaints Board's view

On 16 March 2005 the Police Complaints Board for Northern Jutland pronounced agreement with the draft decision of the regional public prosecutor of Northern Jutland.

## Amnesty International's concerns regarding the Medico-Legal Council's response

Amnesty International is concerned about the quality of the Medico-Legal Council's response, and believes that the statement of the Medico-Legal Council gives cause for considering a new system under which the aggrieved party or, as in this case, relatives of the deceased, could seek independent forensic pathology expertise.

The Medico-Legal Council answers 14 out of 60 questions by referring to its answers to questions 1a and 1b. Nine questions are declared impossible to answer. Six questions are answered with references to answers other than 1a and 1b. Approximately half the questions are left unanswered. Including questions of importance to the entire case.

The two main questions/answers - 1a and 1b - were as follows:

**Question 1a** (the regional public prosecutor): Could the cause of death be acute cardiac arrest as a result of a condition of hyper-excitation, as stated in the autopsy report?

**Medico-Legal Council:** *In the opinion of the Medico-Legal Council it is not possible to ascertain the final cause of death on the basis of the available medical documentation. There is, however, some basis for assuming that Jens Arne Ørskov's unexpected cardiac arrest was due to a combination of extreme physical activity in conjunction with intake of alcohol and cannabis and lack of oxygen caused by restricted respiration that was a result of Jens Arne Ørskov's position on his stomach with his arms tied behind his back. The Medico-Legal Council bases this on the information and findings of the autopsy report and supplementary chemical tests.*

**Question 1b** (regional public prosecutor): Could the cause of death be asphyxiation as a result of lack of oxygen?

**Medico-Legal Council:** *In the autopsy report there is no basis for assuming that Jens Arne Ørskov died of asphyxiation, but it cannot be ruled out that lack of oxygen was a contributing factor causing cardiac arrest. The Medico-Legal Council bases this assumption on the information that Jens Arne Ørskov was adipose, a highly overweight person, who was restrained for a while on his abdomen with his hands tied behind his back. This position restricts respiration and at the same time abdominal fat is pushed upwards into the abdominal cavity which can reduce the flow of blood to the heart thereby reducing the volume and function of the lungs. In addition it should be noted that restricted respiration is particularly dangerous for a hyperactive person in a state of increased consumption of oxygen and exhausted musculature. At the same time Jens Arne Ørskov's circulation was affected by alcohol and cannabis. Alcohol results in expansion of the blood vessels and increases the flow of urine. Cannabis lowers the blood pressure and increases the heart rate.*

Apart from 1a and 1b, the Medico-Legal Council failed to answer a series of questions of importance to the case. In this connection Amnesty International wishes to draw attention to three of the most important questions that it considers were not answered adequately.

**Question 8** (Jens Arne Ørskov's first lawyer, Klaus Bonnez:) In the Easter High Court case, Benjamin Christian Schou versus the Copenhagen Police Commissioner, the Medico-Legal Council stated the following on 3 August 1995:

"The Medico-Legal Council finds no grounds for assuming that acute intake of alcohol by a non-alcoholic, healthy person can trigger heart arrhythmia leading to cardiac arrest. Furthermore, there are no grounds for assuming that physical activity plays any role in this connection."

I understand this statement to mean that the Council finds that the occurrence of death cannot be accounted for solely as a consequence of physical activity in combination with intake of alcohol. I kindly request the Council to state if the same considerations apply in the case of Jens Arne Ørskov?

**Medico-Legal Council:** *Reference is made to the answer to question 1 submitted by the regional public prosecutor.*

In the TV-documentary "The Image of Power", the chief physician at Hvidovre Hospital, Dr. Hans Reich, carried out an experiment to demonstrate what happens when an overweight person is laid on the ground on his abdomen and restrained by someone leaning or sitting on his back. The experiment showed that respiratory volume fell to 87 per cent of normal volume within a few seconds and continued falling (at which point the person on the floor visibly feeling uneasy called for the experiment to be stopped), a loss of respiratory volume which is critical if the person in question is struggling to free himself from someone sitting on his back.

**Question III** (Jens Arne Ørskov's second lawyer, Tyge Trier): Can the Medico-Legal Council confirm that lung capacity and consequently air turnover will be significantly

affected when laying a highly overweight person on his stomach with his hands tied behind his back in that the contents of his abdominal cavity are pressed up into his chest.

***The Medico-Legal Council:*** *The question is of a general nature. The problem is touched upon in sections of the answer to question 1b submitted by the regional public prosecutor.*

In "The Image of Power" the three medical experts state very clearly and explicitly that petechial haemorrhages can be seen on the photographs of Jens Arne Ørskov, and that they are clear indications of asphyxiation.

Jens Arne Ørskov's lawyer put the following question VII: Can the Medico-Legal Council confirm that petechiae in the conjunctiva are probably the result of asphyxiation?

***The Medico-Legal Council:*** *In the autopsy report there are no grounds for assuming that Jens Arne Ørskov died as a result of asphyxiation. Reference is made to the answer to question 1b submitted by the regional public prosecutor.*

## The regional public prosecutor's second decision of 17 March 2005

On 17 March 2005 the regional public prosecutor formally decided to discontinue any further investigation of the case. The regional public prosecutor stated that there were no reasonable grounds for assuming that the Løgstør and Aalborg police officers had committed a criminal offence punishable by law. Furthermore, the regional public prosecutor found no grounds for criticizing the conduct or decisions of the police officers.

It further appears from the regional public prosecutor's decision that she did not find that the police officers had resorted to violence or excessive force. Furthermore, the regional public prosecutor found that the two police officers had rendered adequate first aid to a person whom they *believed to be exhibiting respiration and pulse* [emphasis added] and the regional public prosecutor found that there were no grounds for criticizing them for not rendering further first aid.

The regional public prosecutor based this on the fact that the two police officers had called an ambulance, had placed Jens Arne Ørskov in recovery position and removed the handcuffs, which they deemed to be adequate and appropriate measures.

Finally, the regional public prosecutor stated that she had informed the Director of Public Prosecutions of the case and of the Medico-Legal Council's response with a view to determining whether there was any basis for revising police training methods.

In a letter of 12 April 2005, the Jens Arne Ørskov family lawyer appealed against the regional public prosecutor's decision of 17 March 2005 to the Director of Public Prosecutions who upheld the regional public prosecutor's decision in 2006.

Amnesty International is concerned that the Medico-Legal Council failed to answer a series of crucial questions for the assessment as to whether the police officers did or did not accidentally cause the death of Jens Arne Ørskov, and as to whether they responded adequately to the situation, when Jens Arne Ørskov fell unconscious.

The regional public prosecutor did not ask the Medico-Legal Council for additional answers in the many instances, where the Council did not answer the questions put to it, but simply based her decision of 17 March 2005 on the fact that the Medico-Legal Council did not point to asphyxiation as the most likely cause of death, but rather to a series of contributory factors eventually leading to cardiac arrest.

The fact that three recognized Danish medical experts had come to a very different conclusion from that of the Medico-Legal Council raises questions as to how the regional prosecutor was able to reach a definite conclusion in the face of conflicting medical expertise.

Amnesty International therefore recommends that complainants who were injured while in the custody of the police be given the right to seek independent medical expertise for a second examination; and that relatives of a person who died in police custody be given the right to have their doctor present at the autopsy or an independent post-mortem examination, at state expense.

### First aid and resuscitation

Regardless of the fact that the statements by the Medico-Legal Council left a series of questions unanswered, the regional public prosecutor did not address those issues that arose from the Medico-Legal Council's response.

The question as to whether the two police officers rendered adequate first aid to Jens Arne Ørskov after he fell unconscious still remained.

The regional public prosecutor wrote in her decision of 17 March 2005 that she took the premise that it can be very hard for laypersons to determine whether a lifeless person has a pulse rate, and therefore found that the two police officers had rendered adequate first aid to a person whom they believed to have respiration and pulse.

However, there is only the testimony of the police officers that they believed that Jens Arne Ørskov was breathing.

There are several indications that Jens Arne Ørskov was not breathing and did not have a pulse. First, the paramedics believed him to be dead when they arrived. Secondly, according to the paramedics' written report of 15 June 2002, he was blue, cold, and damp. Thirdly and most importantly, it appears from the Medico-Legal Council's response and from the Police Academy's written training manual, "Training in emergency treatment and first aid" that checking the pulse is not the correct way of ascertaining that someone is still alive. Nor is it the correct way to check that Jens Arne Ørskov was still alive to rely on the impression that Jens Arne Ørskov's chest was moving. It is stated very clearly in the training manual that respiration should be ascertained by placing the ear close to the victim's mouth and nose. The two police officers explained that they never attempted to do so.

The issue to be decided is not whether the two officers should be excused or criticized for believing that they could feel Jens Arne Ørskov's pulse and see his chest rise and fall. The issue is whether, as police officers, they should be criticized for not following the prescribed

procedures for determining such phenomena. The Medico-Legal Council gave a very precise description of adequate first aid, emphasizing that it can be performed by laypersons and anyone who has received training in how to react in cases of cardiac arrest. Per se police officers must be expected to have the formal training to deal adequately with such situations. In international standards on police conduct as well as Danish legislation the provisions on the police use of force all state that there is a constant obligation for police officers to minimize injuries and damage caused by the force applied[28]. As part of the obligation to minimize injuries and damage caused by the use of force, police officers must be required to be able to follow the adequate and proscribed procedures for ascertaining whether lifeless persons are still breathing or not with a view to determining the correct and timely treatment of such persons.

It appears from the explanations of the police officers themselves that they did not follow the prescribed procedures as laid down by the Medico-Legal Council in its statement or as laid down in the Police Academy training manual.

Police officers should at all times have the formal training to act relevantly and adequately in such situations and should not be compared with lay persons who have not received special training by virtue of their profession. Therefore, the question is not whether the police officers rendered adequate first aid. The question is whether they should be held responsible for not rendering appropriate first aid.

However, the regional public prosecutor based herself on the premise that the police officers – even if they had received training in first aid – could not be expected to have the same experience in and knowledge of first aid as a doctor or a paramedic. The prosecutor further attached importance to the fact that the two police officers were in the process of carrying out a common and frequently experienced police business, which consisted of arresting a 21-year-old, apparently healthy young man.

In other words in her decision of 17 March 2005 the regional public prosecutor decided that the police officers should be excused for failing to follow the prescribed procedures and, thus, handle the situation appropriately, because they were not prepared for Jens Arne Ørskov to fall unconscious and subsequently die.

Amnesty International is concerned that this decision does not meet the requirements of Principle 5 of the Basic Principles which lays down that *"when the lawful use of force and firearms is unavoidable, law enforcement officials shall a) exercise restraint in such use, and act in proportion to the seriousness of the offence and legitimate objective to be achieved, and b) minimize damage and injury, and respect and preserve human life. Furthermore, they shall c) ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment."*

[28] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 5, a to c, and the Danish Act on Police, section 16, subsection 2, and Order on the police's use of certain forcible means, section 2, subsection 2.

Amnesty International considers that the decision of the regional public prosecutor fails this obligation, when allowing unpreparedness to justify inadequate conduct.

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

On 9 November 2005 Danish TV[29] broadcast a second documentary on the case, "Beyond Suspicion," prepared by the same journalists who made the documentary "The Image of Power". In this documentary the journalists submitted the case to several respected forensic experts from abroad: Derrick Pounder, professor of forensic medicine, University of Dundee, Bernard Knight, professor of forensic medicine at Cardiff University, and Dr. Charles Hirsch, New York City's chief medical examiner.

These internationally reputed experts all stated that having read the autopsy report and studied the photographs of Jens Arne Ørskov they found that there was no reasonable doubt that Jens Arne Ørskov had died from asphyxiation as a result of being laid on his stomach, his hands handcuffed behind his back, and being restrained in that position by someone placing a knee on his back. They all stated that the diagnosis was neither rare nor obscure, but commonly known as "restraint asphyxiation" or "positional asphyxiation".

Unlike the Danish autopsy report they found that the lesions on Jens Arne Ørskov's forehead were likely to be a result of the police officers forcing Jens Arne Ørskov's head down onto the asphalt, as opposed to Jens Arne Ørskov hitting his head against the police officer's elbow and against the window of the police car.

Professor Derrick Pounder specifically stated that in his opinion Jens Arne Ørskov would not have died if someone had not exerted considerable pressure to his back/chest. Unlike the autopsy report and the Medico-Legal Council response the foreign experts found that the bruise below Jens Arne Ørskov's shoulder was so wide and so deep that it could only be the result of very forcible pressure.

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

In the documentary, a New York Police training video was presented. It is shown to all new police officers in New York. The clip shown, contained a serious warning that forcing a person down onto his stomach and leaning on him can prove fatal in that he cannot breathe freely and therefore struggles even harder to get free. If the struggle is mistaken for resisting arrest, thereby triggering even greater pressure to calm the person on the ground, the ultimate outcome could be that the person dies from asphyxiation. ("The price of tranquility can be death," said New York City's chief medical examiner.)

[29] *Danmarks Radio*, by journalists Christian Andersen and Michael Klint, who were awarded the Cavling Award for the documentary.

### Recorded conversation on the leg-lock

In addition to the opinions of the three foreign experts, the documentary presented a tape-recording of the conversation between one of the Løgstør police officers and the Headquarters at Løgstør police station. It appeared from this conversation that the police officer told Headquarters that they had in fact applied a leg-lock on Jens Arne Ørskov at the lay-by even though they later maintained that they attempted to do so but failed due to his violent resistance. This recording has reportedly been included in the file since 2002, but was reportedly never used as evidence in the case. There was no mention of the recording in any of the reports or decisions by the regional public prosecutor and the Director of Public Prosecutions. According to the interview reports, the regional public prosecutor has not at any time asked the police officers to account for the contents of the tape, but only made reference to and relied entirely on the testimony of the police officers in her decisions.[30]

### Inadequate response of the Medico-Legal Council

In the second documentary Dr Hans Reich, of the Hvidovre Hospital, who was interviewed in the first documentary, stated that he found it remarkable and inappropriate that the Medico-Legal Council had neglected to answer a number of questions, in particular the one dealing with the consequences of lying an overweight man face down on the ground with his hands tied behind his back.

### Photographs of Jens Arne Ørskov

Another crucial element presented in the second documentary was that according to recorded phone calls to members of the Medico-Legal Council, none of the members recalled having seen the photographs of Jens Arne Ørskov. Most notably the Medico-Legal Council's forensic expert (three experts participated in the Medico-Legal Council's statement on the case) stated that he had not seen the photographs. This would appear to imply that the foreign forensic experts who were interviewed for the documentary were provided with better documentation than were the members of the Medico-Legal Council and, thus, relied on fuller documentation when making their statement.

In a report of 9 December 2005 to the Danish Parliament, answering questions from Parliament following the second documentary, however, the Director of Public Prosecutions stated that there was no evidence indicating that the members of the Medico-Legal Council had not received a copy of the photographs. The Director of Public Prosecutions further stated to the Parliament that the information in "Beyond Suspicion" did not give rise to renewed considerations or to submitting the case to the Medico-Legal Council anew.

In short, the documentary "Beyond Suspicion" posed the following questions:

[30] It was not until 2006 that the regional public prosecutor was compelled to make an explicit statement about the contents of the tape. In doing so, she stated that she understood that tape as indicating that the two police officers had *attempted* to apply a leg-lock, but unsuccessfully.

- Why do the regional public prosecutor and the Medico-Legal Council persist in claiming that Jens Arne Ørskov died from a combination of violent physical activity in conjunction with an intake of alcohol and cannabis leading to cardiac arrest when several experts find that the diagnosis is unfounded?
- Why does the regional public prosecutor attempt to explain away the information that the police officers applied a leg-lock to Jens Arne Ørskov?
- Why haven't the members of the Medico-Legal Council seen the photographs of Jens Arne Ørskov?
- Why didn't the Medico-Legal Council answer the question pertaining to the effect on lung capacity when an overweight person is laid on his stomach with his hands cuffed behind his back?
- Why didn't the Danish authorities request the advice of experts from the USA or the UK, who appear to have more experience in tragic incidents of this nature?
- Why didn't the police officers attempt to resuscitate Jens Arne Ørskov during the 8-10 minutes they were waiting for the ambulance?

### Decision by the Director of Public Prosecutions, 17 January 2006

In a letter of 17 January 2006 the Director of Public Prosecutions upheld the decision of the regional public prosecutor for Northern Jutland, stating that there were no grounds for assuming that the police officers had used excessive force or violence or in any other way exhibited criticizable conduct either before or after Jens Arne Ørskov fell unconscious. In doing so, the Director of Public Prosecution attached importance to the fact that the two police officers had perceived themselves to be rendering adequate first aid to a person who had respiration and pulse. The Director of Public Prosecutions thereby took the premise that the two police officers had been under very difficult circumstances in terms of determining the state of Jens Arne Ørskov. Lastly the Director of Public Prosecutions upheld the argument of the regional public prosecutor that the two police officers had not been prepared for the unforeseen nature of developments.

Three Danish and three foreign medical experts, four of them specialists in forensic medicine, have stated that in their opinion there is reason to believe that Jens Arne Ørskov died from restraint asphyxiation, i.e. that he died from lack of oxygen which was the result of his being restrained on his stomach with his hands cuffed behind his back and pressure being applied to hold him down.

These experts' views appear to have been ignored by the Director of Public Prosecutions. The decisions of the prosecution authorities give rise to concerns about the ability and willingness of the public prosecution to act with the necessary thoroughness, impartiality and independence.

It appears from the Director of Public Prosecutions' response to the Parliamentary Legal Affairs Committee (question 71) that the future training of police officers will be revised so as to emphasize that greater caution should be exercised when forcing overweight people to lie on their stomachs during restraint, and further, that the Police Academy has acquired a copy of the New York Police training video to see if it should be included in the training of Danish police officers. Accountability by the police as an institution for the outcome of this tragic case is not being considered, however.

The Jens Arne Ørskov case resembles the Benjamin Schou case in many ways.[31] The entire complaints handling system has been revised since the Benjamin Schou case. Nevertheless the outcome is very much the same in the present case, in that the police complaints system has proven to be unwilling or unable to conduct a thorough, prompt, independent, and impartial investigation of the case.

## Civil Action

The only viable solution for Jens Arne Ørskov's family to have the case brought before a judge in a court of law has been to file a civil action against the police officers for not rendering first aid to Jens Arne Ørskov and against the Løgstør Police and the Ministry of Justice for not ensuring that its police officers were properly trained for such situations. Originally, the case was scheduled to be proceeded before the Western High Court in October 2007. In December 2007, the lawyer representing the Ørskov family informed Amnesty International that the case had been postponed because that the defendants, the Løgstør Police and the Ministry of Justice, had insisted that additional questions be put to the Medico-Legal Council.

Amnesty International is concerned that the Ørskov family has found itself compelled, after several years, to take civil action in order to have the case investigated and assessed in an independent and impartial manner. This indicates that the present police complaints system does not constitute an effective remedy against abuse of power by the police.

[31] 18-year-old Benjamin Christian Schou. Benjamin Schou was picked out of a crowd and arrested for allegedly throwing a bottle at some police officers during the New Year's eve celebration of 1991-1992 at the Town Hall Square in Copenhagen. While in the custody of police, he fell unconscious and suffered cardiac arrest as a result of asphyxiation. The police officers did not call the ambulance that was present at the Town Hall Square to attend to him or take him directly to the nearby hospital, but proceeded to the police station calling for an ambulance to meet them there. When Benjamin Schou received medical treatment and had his heart and respiration restarted, he had suffered irreparable brain damage. Copenhagen Police, the regional public prosecutor, the Director of Public Prosecutions and the Minister of Justice all found no grounds for bringing criminal charges or disciplinary sanctions against any of the police officers. Benjamin Schou's parents filed a civil suit against the Copenhagen Police claiming compensation for not having dealt adequately with the situation when Benjamin Schou became unconscious. The court granted compensation for the police's dereliction of duty due to the police officers' failure to discover that Benjamin Schou had suffered cardiac arrest and for their failure to respond adequately to his condition since they did not render him first aid.

*"I want them to be presented before a judge, I want them in a court of law, so that my lawyer can put questions to them…*

*… I want the police to recognize that errors were made the night Jens Arne died,"*

Jonna Ørskov, mother of Jens Arne Ørskov, in "Beyond Suspicion".

## *Case No. 5. Copenhagen*

The following report is based on the written material of the complaints case, i.e. interview reports, the statements of the complainants, the police officer complained against and some of his colleagues, and bystanders. Apart from the written material Amnesty International has also interviewed the two complainants.

In August 1999 two girls T and M, aged 16 and 17, left Det frie Gymnasium (a progressive secondary school) after a party. On the street they found a number of police officers quarrelling with a group of young people who had also left the party. The girls did not know why the police had come.

T and M told Amnesty International that at one point it looked as if the police were about to withdraw from the area outside the school. But this caused some of the young people assembled there to applaud the police ironically, which in turn appeared to provoke the police officers into returning and making arrests.

T noticed that two police officers were making what she found to be a very forcible arrest of one of her friends. She was standing across the street from where her friend was lying with two police officers on top on him. She realized that she had her camera in her bag, so she crossed the street to take photographs of this arrest. She also took a photograph of M after M was bitten by a police dog.

At some point a police officer ordered her to return to the other side of the street, which she did. But before reaching the opposite pavement she was bitten from behind by a police dog, in the lumbar area. The dog was leashed and it was her distinct impression that she was bitten because the police officer handling the dog was not in control of it. Her friends called an ambulance for her. T was in bed for two days with her injuries.

M told Amnesty International that she was very surprised to find the police outside the school and that they appeared very tense and very confrontational. M said that some of the teachers tried to calm the police officers down. The police ordered everyone to leave the area. She did not immediately obey the order because she wanted her friends to come with her. The original idea was to go somewhere else after the party at the school.

M told Amnesty International that during the incident when the crowd appeared to applaud the police officers it was particularly the police dog officers who turned back towards the young people, their dogs ahead of them straining at their leashes.

M saw the police making what she thought to be an excessively forcible arrest of a youth she knew and she shouted at the police to take it easy. She was standing with some

friends discussing the entire incident when she realized she was being bitten by a dog in the thigh from behind. The bite was deep and she collapsed and fell to the ground. She was escorted to an ambulance and taken to hospital.

M was ill in bed for a week and her doctor ordered her to rest. It appears from the case files that the injury that M sustained was a complicated one and that she subsequently had to undergo surgery. The wound took more than six months to heal properly, and it took her even longer to begin walking normally again.

Neither M nor T had at any point heard the police officers warn the crowd that the dogs would be used if the young people did not leave the area.

In the decision of 12 December 2002 the regional public prosecutor wrote that police officer X, who was one of four police officers handling the police dogs, had stated that he had been on patrol with a colleague and overheard on the radio that there was trouble at Det frie Gymnasium and that he knew from experience that there would probably be some "autonomous"[32] there after such a party, so he and his colleague decided to go there as back-up.

X stated that at some point police officers in plain clothes, who had made an arrest, were now being threatened by a group of young people. X and another colleague, both handling a dog, therefore inserted themselves between the plainclothes officers and the young people to protect the plainclothes officers. X testified that at a later point he pushed a girl and at the same time his dog bit her in the leg. X did not recall in detail where the girl was bitten, but believed it was between the ankle and the knee. X stated that he kept his dog on a "quarter-length leash". The dog only bit once and then withdrew, and the girl fell backwards, probably partly because of the push that X gave her, and then she turned around and ran over to the other side of Møllegade and the corner of Guldbergsgade. X further testified to the regional public prosecutor that he believed that the dog bit the girl because it was under the impression that the girl was attacking him. When presented with M's medical record in which it was stated that she was bitten seven centimetres above the knee, X did not rule out the possibility that M might have been the girl who was bitten by his dog.

Some time later when a young man who had been arrested was about to be taken away a girl holding a camera walked up to X intending to photograph the young man. X told her to go away, and that if she insisted on taking a photograph she would have to go to the other side of the road. The girl answered that she had a right to be where she was and continued towards X. The girl consequently ended up standing quite close to X who then pushed her backwards. Because of the push the girl spun around and was immediately bitten by X's dog. X believed that the girl was bitten in one buttock although when presented with T's medical report he did not rule out that T might be the young woman with the camera. X was certain that his dog only bit T once, but did not rule out that one bite could produce three wounds as described in T's medical report.

[32] Squatters, young people representing underground culture, punk rock, etc.

In the regional public prosecutor's decision of 12 December 2002, it was reported that witness JK testified that he remembered a police officer yelling at them that they should vacate the area, and at that very instant he saw M partially turn towards the police officer just as the dog bit her. The police dog was on a leash, and the police officer was moving forward when the dog bit M. JK believed that M was bitten in the thigh.

Witness DØ testified that he heard M shout at some police officers when she was standing at a distance of approximately two to three metres from the police officers standing in front of her and several other young people. Some of the police officers had dogs. He heard the police officer order people away from the area several times. Suddenly, after M had shouted at the police, an officer handling a dog took a few steps forward and the dog jumped on M and bit her in the thigh. M fell over backwards screaming. Immediately the police officer pulled his dog away and remained standing. DØ did not see anyone else being bitten.

HT, who lived just across the street, stated that he saw the officer handling the dog walk directly into the group of young people standing in front. The dog was barking and he saw that the dog was straining at the leash. He had heard the police order the young people to leave the area, but he had not heard any warnings that the dogs would be used. He suggested that the police officer in question had been provoked by the young people clapping and yelling.

DJ, who lives with HT, testified that she and HT looked down on the area from their apartment. At some point one of the police dog officers turned and headed straight towards the group of young people, his dog in front of him. Immediately afterwards he was followed by two other officers handling dogs, one on each side of him thereby forming a triangle and they went straight into the crowd. At that moment DJ heard a scream from among the young people and saw that the girl previously talking to the police officers was the one who had screamed. When the police officers entered the crowd, the latter did not have any immediate means of dispersing and there was a certain amount of panic among the young people. DJ had not heard the police officers issue any warning that the dogs would be used.

The regional public prosecutor accepted as proven that M and T had been bitten by police officer X's dog and stated the following:

*"M has testified that all of a sudden there was a police dog on a leash which bit her on the leg and that she does not know why. Police officer X has testified that at some point he pushed M and that his dog simultaneously bit M. X believes that the dog bit the girl because its perception of the situation was that X was being attacked and it therefore wished to protect him.*

*Three of the witnesses testified that they saw M being bitten. Two of the witnesses testified that X was advancing with his dog when it happened. One of the witnesses testified that M had shouted at the police before it happened. However, none of the testimonies provide a more detailed description of what preceded the dog's bite.*

*On this basis I find no reason to assume that X commanded his dog to bite M, but that the event occurred because the dog misjudged the situation. In my opinion there are no grounds to support the assumption that X committed a criminal offence.*

*It is difficult to determine on the basis of the available information whether X ought to have been in better control of his dog so that in the given situation the dog would have had no opportunity to bite M. According to X's testimony, he was in a difficult position in which he had to come to the rescue of police officer Y, rendering it necessary to push and shove persons who were in intimidating proximity of his colleague. The persons in question, including M, who were in close proximity to police officer Y, had been urged to leave the area and must therefore have realized that they would be forcibly removed should they not obey the order to clear the area and consequently chose to run a risk by staying.*

*Under the present circumstances I do not find any basis for pronouncing criticism of the fact that X's dog bit M.*

*As far as T is concerned, both she and police officer X have stated that she refused to follow the police order to leave the area, but insisted on taking photographs of what was happening. I find no basis in any of the statements to assume that X commanded the dog to bite T or that he in any way wished the dog to do so. I therefore find no basis for assuming that X has committed any criminal offence.*

*None of the witnesses saw T being bitten.*

*According to X's testimony T had been told to leave the area when attempting to take photographs of a person under arrest. She refused to do so, but on the contrary advanced towards X. The fact that in this situation he tried to push her away, and that in this situation the dog bit her because it misjudged the situation cannot in my opinion be blamed on X. I therefore do not find any basis for criticizing X in connection with this dog bite either.*

*The case was submitted by me to the Police Complaints Board of Copenhagen, Frederiksberg, and Tårnby. Its report, which is solely consultative, concurred with my decision.*

*However, the Board also stated that even though the police officers involved may not be criticized for their dogs' bites, they could, in the opinion of the Board, have acted more appropriately when attempting to protect their colleagues who were in the process of making an arrest, that is, they could have refrained from walking into the assembled group of young people."*

In a decision of 11 July 2003 the Director of Public Prosecutions stated that there were no grounds for assuming that any of the police officers handling dogs had committed a criminal offence. Furthermore, the Director of Public Prosecutions did not find that the use of dogs as stated above constituted a disproportionate use of force or that the police officers ought to have acted more appropriately. The Director of Public Prosecution stated that he based his decision on the premise that the young people had all received a loud and clear warning that dogs were about to be used.

Amnesty International considers that this case gave rise to concern that the complaints system did not render the complainants an effective remedy against police

misconduct, in that the investigation of the case was not carried out impartially, independently and thoroughly.

According to a drawing that T and M made of the scenario they were not standing between X and the colleagues that X said he was trying to protect by charging into the group of young people. The testimony of X was contrary to this; X maintained that they posed an obstacle, a threat. T and M's drawing would be in conformity with the reservation stated by the regional Police Complaints Boards: that the police officers with dogs, when attempting to protect their colleagues, "could have refrained from walking into the assembled group of young people."

Amnesty International believes that the fact that both girls were bitten from behind would seem to raise concern as to officer X's credibility. The police officer's statement was problematic. X maintained that the reason why T was bitten in the lumbar region was that he pushed her while trying to get past her, a push that did not cause her to fall but turned her round 180 degrees. According to X the dog bit T and M after he had pushed them. This seems to presuppose that he was running a few paces ahead of his dog. Otherwise the dog would have already passed the girls by the time he pushed them. The witness HT specifically stated that he saw that the dog was straining at the leash. Amnesty International believes that this raises reasonable doubt about the officer's account as to when the dog bit the girls and whether the officers have been made properly accountable for their actions and the action of the dogs. Neither of the girls was fined or charged with disorderly conduct or criminal offences at any point after the incident.

This incident also raises concerns about whether the way the dogs were used amounts to proportionate and justifiable use of force, as required by international standards as well as Danish law.

The Danish Act on Police Activities, section 19,[33] on the use of police dogs, states that dogs may be used only

- to avert an ongoing or imminent assault on a person;
- to avert other imminent danger to the lives or health of persons;
- to avert an ongoing or imminent attack on institutions, enterprises or facilities that are essential to society;
- to avert an ongoing or imminent attack on property;
- to ensure the apprehension of persons;

[33] The Act of Police Activities was adopted in 2004, but according to the explanatory comments to the bill – L 59 on the draft Act on Police Activities - the provisions on the police's use of police dogs are meant to be a precise continuation of the provisions on the use of police dogs in The National Police Commissioner's Regulation II, no. 40 of 6 May 1998 – and to maintain the practices pursuant to the regulation. The only amendment in substance was under section 19, subsection 1, no. 7, in which the use of police dogs against *passive* resistance against an act of duty requires the completion of the act of duty to be considered urgent.

- to ensure the performance of official duties, encountering active resistance; or
- to ensure the performance of official duties, encountering passive resistance, if performance of the duty is deemed urgent and other and less interfering use of force is deemed obviously unsuitable.

Section 19, subsection 2, states that before using a dog against a person, the person in question must be informed, as far as possible, that the police intends to use a dog, if the order/instruction is not complied with. If possible it must be ensured that the person has a possibility to comply with the order.

The Order on the Police's Use of certain forcible means, section 17, obliges the police to use dogs with calm, caution and the greatest possible care. Section 20 of the Order states that a decision on possible use of dogs for the clearing of streets, buildings etc. of a large number of persons must be presented to the management of the police district before carrying out the decision. Section 20, subsection 2, obliges the police to announce over a megaphone, if possible several times, that dogs will be used, if the instructions of the police are not complied with. If dogs are used thereafter, it must be announced clearly immediately prior to the action that dogs will now be used.

It appears from these provisions that there are very strict requirements as to necessity and proportionality of the force used, the seriousness of the threat/danger, and the formal decision to use dogs to clear people off a street.

It appears from the regional public prosecutor's decision of 12 December 2002, however, that the police officer, whose dog bit two girls, was not present at the school as a result of a decision by police district management to use dogs to clear the area, but because while on patrol he and his colleague decided that they would go to the scene and provide back–up to their colleagues. This would seem to imply that the police officer X was not present because the overall course of events constituted an emergency or a riot, but because he chose to go there along with his partner and their dogs. It has been claimed that this decision of X and his colleague could in itself have contributed to an escalation of the already tense situation.

Amnesty International considers that using police dogs against two schoolgirls aged 16 and 17, who were not using or threatening to use violence or otherwise posing a threat to persons or property, may have constituted disproportionate use of forcible means.

Furthermore, Amnesty International is concerned that the account by the police officer X lacks credibility. Either police officer X allowed his dog to bite M and T deliberately, which should have given rise to considering taking criminal action and possible disciplinary actions, or he was not in sufficient control of his dog, which should have given rise to criticism. The Act on Dogs section 6 states that "the possessor of a dog is obliged to take the precautions necessary under the circumstances to prevent the dog from causing harm to others". This means that it is the obligation of the handling officer to keep his dog under control at all times. Any harm or damage caused by a dog falls back on its handler.

The Police Complaints Board found sufficient reason to state that in their opinion the police officers with dogs could have handled the situation more appropriately.

Lastly, in the light of the elaborate legal requirements concerning the obligation of the police to give a clear, formal warning to the crowd that dogs will be used immediately if the crowd fails to comply with the order to leave the area, Amnesty International considers that the Director of Public Prosecutions' decision - that a proper, loud and clear warning had been given, when none of the victims or witnesses makes reference to having heard any such warning – and HT and DJ who witnessed the entire incident from their flat specifically stated that they had not heard any warning that dogs would be used – gives rise to concerns about the impartiality of the investigations and decision making.

# Part three – Conclusions and Recommendations

## *Conclusions*

The majority of the 1994 Committee concluded their deliberations by recommending a system whereby the regional public prosecutors would investigate police complaints cases with the possibility of appeal against a decision to the Director of Public Prosecutions. A minority of the members also suggested that there be a regulatory agency, which later became the District Police Complaints Boards. The Committee stated that the regional public prosecutors would have sufficient independence and impartiality to undertake the task efficiently and effectively. In recommending that the regional public prosecutors undertake the task of deciding on police complaints, the 1994 Committee at the same time rejected a number of other possible schemes, including an independent police auditor, a police ombudsman etc.

On the basis of its research, including the five cases highlighted in this report, Amnesty International believes that the current system for investigating police misconduct is not prompt, thorough, independent, and impartial as required by international human rights standards. Most notably, when comparing the proceedings in the cases of the Benjamin Schou and Jens Arne Ørskov, it appears that the current system represents little improvement in terms of constituting an effective remedy. Overall the five cases described in this report give rise to concern that members of the public who lodge complaints against police officers will not be able to exercise their right to an effective remedy, i.e. to an effective and independent investigation or an objective assessment of the results of the investigation. Amnesty International therefore recommends that the police complaints system be revised. The organization recommends that there should be an independent body empowered to investigate complaints and make legally binding decisions to issue apologies or criticism, and further, to make recommendations regarding criminal action to an independent, separate authority with the powers to make a decision on whether to close the case or to bring prosecutions or other measures. Decisions made by this authority should be appealable either by the complaints body or the complainant to a court**.** The complaints body should be institutionally, structurally, personally, and financially independent of the police and the public prosecution. Furthermore, the complaints body should be empowered to make recommendations that disciplinary action should be taken in consequence of a complaints case, and the disciplinary

body should be obliged to report back to the complaints body on the outcome of the disciplinary proceedings.

The 1994 Committee's primary reason for rejecting other schemes was that the nature and number of the cases would not provide an adequate foundation for establishing an independent mechanism and that sufficiently qualified applicants were unlikely to be attracted to such a small field of work. At the same time the 1994 Committee also stated that the staff of such a central agency would have to travel a great deal and that extensive travelling would have a negative impact on efficiency, leading to delayed and overly lengthy investigations. The Committee further found it a cause for concern that the cases would be removed from the ordinary channels of criminal justice and consequently from persons who, as the Committee put it, keep up with developments and generally have a realistic approach to crime and criminality.[34]

According to the Director of Public Prosecutions' Annual Report of 2004 on the handling of police complaints, the District Police Complaints Boards received a total of 971 cases, including 400 complaints of police misconduct and 569 complaint cases pertaining to criminal offences by police officers, of which 251 were traffic cases.[35] The corresponding figures for 2005 are 367 complaints of police misconduct, and 571 complaints pertaining to criminal offences, including 252 traffic offences. Although a number of these are likely to be cases of minor incidents it is not evident why this caseload would not provide a reasonable basis for establishing a mechanism with its own secretariat to register, investigate, and handle these cases. It appears from the Annual Reports that many complaints cases run for more than a year (including cases pending criminal proceedings against the complainant) and that an important cause of lengthy procedure is the fact that the regional public prosecutors lack sufficient resources to handle police complaints cases.

The Government's Vision Committee repeatedly stated in its May 2005 report that the current merger of the district police and the district public prosecution is uncommon in the countries that Denmark usually compares itself to, and "raises concerns regarding the rule of law." [36] Thus for the police, investigations which ensure organizational and personal independence of the system, that is the target of the complaints, would reduce these concerns.

## *Amnesty International's recommendations*

Amnesty International is aware of the fact that in October 2006 the Danish government set up a committee tasked with reviewing and evaluating the current system for dealing with complaints against the police and processing criminal cases against police officers. The government informed the UN Committee against Torture at the thirty-eighth session on 30 April 2007 - 18 May 2007, that the Danish committee plans to publish its findings before the summer of 2008. With this report Amnesty International wishes to contribute to the

[34] The 1994 Committee report p. 139.
[35] P. 20, the statistics on cases that were decided on by the regional public prosecutors in 2004.
[36] See pp. 24-25

evaluation of the current police complaints system and recommendations which would lead to a more effective complaints system.

With a view to strengthening respect and the protection of human rights and the rule of law, by ensuring a fair and effective system for handling complaints against the police, Amnesty International calls on the Danish government to:

- Revise the procedures for investigating and acting on cases of alleged police abuse based on complaints filed or on their own initiative.
- Base the establishment of a new mechanism on a thorough and impartial review of the practices of the present complaints system.[37]
- Ensure that, in future, all bodies responsible for investigating and making decisions on cases of alleged human rights violations by the police are completely impartial and independent.

Specifically, Amnesty International urges the Danish government to:

- Separate the police and the public prosecution at all levels
- Establish a new complaints mechanism – empowered to conduct investigation of complaints - to replace the role now played by the regional public prosecutors - that will guarantee that complaints against the police will be independently, impartially, and effectively investigated in a fair and prompt manner. To ensure the independence and impartiality of the new system, Amnesty International further recommends that the new complaints mechanism should not have any structural, organizational or financial connection with the police or the public prosecution.

As for its investigative powers the complaints body should:

[37] Originally, the Ministry of Justice invited Amnesty International to sit on the committee. Amnesty International suggested to the Minister of Justice that the work of the committee should be based on a preceding independent evaluation of the practices of the current complaints mechanism, i.e. that independent legal scientists should go through a number of individual complaints cases of recent years – re-examine the assessment of evidence and interpretation of law exercised in the cases - with a view to forming a concrete basis of common understanding, and a starting point for the considerations of the committee as to the possible need for amendments to the current system. In a letter of 24 October 2006 to Amnesty International the Minister of Justice answered that she disagreed with the idea of having an independent committee do an assessment of the system and that she strongly objected to the idea of going through a series of individual cases. In the light of the composition of the committee (half of the members represent the public prosecution or the police) and of the fact that the committee would not be taking as its point of departure a detailed assessment of the practices of recent years, Amnesty International found itself compelled to decline the invitation.

- Consist of people of acknowledged expertise, independence and probity, who are not members of the police force, or the public prosecution. This body should have at its disposal its own corps of independent expert investigators to look into complaints.
- Be afforded all necessary powers, authority and resources to conduct investigations into alleged human rights violations by the police, including resources to immediately examine the scene of the incident; the power to summons witnesses and to subpoena evidence and documents. Furthermore, the body should have the powers to monitor the police investigations in the course of any criminal investigation relating to the police complaints case.
- Have the powers to make binding decisions that apologies should be granted or criticisms should be stated.
- Have the powers to make recommendations on bringing a prosecution to an independent, separate prosecuting authority.
- Have the powers to appeal any decision made by the prosecution authorities to a court.
- Have the powers to make recommendations to the disciplinary body on taking disciplinary action in consequence of a police complaint case, and the powers to require the disciplinary body to report back to the complaints body on the result of the disciplinary proceedings.
- Have the powers to recommend that adequate compensation be paid to the victim.
- Have the powers to handle the complaint in its entirety, in cases in which the complaint relates to both police conduct and police operational issues, but in which the conduct complaint constitutes the major part.
- Have the powers to carry out, including on its own initiative, investigations into emerging patterns of violations, with a view to making relevant recommendations.

## Victims rights

Amnesty International recommends that the authorities ensure that all victims of human rights violations are able to exercise their right to reparation, including compensation.

Amnesty International recommends that complainants who were injured while in the custody of the police be given the right to seek independent medical expertise for a second examination; and that relatives of a person who died in police custody be given the right to have their doctor present at the autopsy or an independent post-mortem examination, at state expense.

Complainants should have the right to be informed of any disciplinary proceedings being brought and of the outcome of such proceedings.

Complainants should have the right to appeal any decision made by the prosecuting authority in police complaints cases to a court.