

# Denmark

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

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

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

According to the police officers from Løgstør Police, on the way to Aalborg Prison Jens Arne Ørskov went amok in the back of the police car, throwing himself around so they decided to take him out of the car at a lay-by. There, they say that they tried to calm him down by holding him on the ground face down, while still handcuffed behind his back.

At some point, the police officers reported, Jens Arne Ørskov fell unconscious. They placed him in recovery position and removed the handcuffs. According to the state prosecutor they have said that they believed that they could feel his pulse, so they did not attempt to give him artificial respiration, but still decided to call an ambulance. The paramedics who arrived at the scene approximately five minutes after they had been called found that Jens Arne Ørskov did not have any pulse. Resuscitation attempts had no effect. Jens Arne Ørskov was taken to Aalborg Hospital where he was formally pronounced dead.

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

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

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

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

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

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

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

### **“The Image of Power” – a TV documentary.**

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

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

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

**The state prosecutor reopens the case following “The Image of Power”**

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

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

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

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

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

**“Beyond Suspicion” – second TV-documentary on the case**

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

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

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

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

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

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

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

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

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

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

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

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

Amnesty International is concerned that it would appear that the final decision of the Director of Public Prosecutions not to bring criminal prosecutions – or even to

criticize the conduct of the police officers – to say nothing of opening a discussion of whether the training of police officers is adequate – could only have been reached by ignoring the findings of the six independent medical experts.

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

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

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

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

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