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**Response to the conclusions and recommendations of the Committee against Torture with regard to the fifth periodic report of Denmark**

**Re. paras. 15 and 16**

As mentioned in the conclusions and recommendations of the Committee against Torture, the Danish Government has set up a broad-based committee to review and evaluate the current system for handling complaints against the police and processing criminal cases against police officers.

This includes a review of the existing framework to handle allegations of excessive use of force, including the use of weapons, by law enforcement officials.

The committee is expected to publish a report on its findings later this year.

In addition, in May 2007, the National Commissioner of Police appointed a multidisciplinary analysis group to review the Danish police officers' use of firearms between 1996 and 2006 with focus on the period 2002-2006. The group was tasked to collect all aspects of the incidents with a view to extracting knowledge to be used proactively in future police operations and police training.

The recommendations set out in the report of the analysis group were approved by the National Commissioner, and three working groups have been appointed to ensure that the recommendations are implemented.

**Re. para. 19**

Providing the requested statistical material has not been possible for two main reasons.

Slotsholmsgade 10  
1216 København K.

Telefon 7226 8400  
Telefax 3393 3510

[www.justitsministeriet.dk](http://www.justitsministeriet.dk)  
[jm@jm.dk](mailto:jm@jm.dk)

First of all, the Danish Criminal Code did not until very recently contain a specific provision concerning torture and ill-treatment. The crime of torture and ill-treatment was covered by the general provisions in the Danish Criminal Code prohibiting violent acts, threats, unlawful deprivation of liberty, unlawful coercion etc. It has therefore been difficult to draw statistics on complaints and cases against law enforcement officials for torture, since such complaints would involve a large number of provisions in the Danish Criminal Code and since these provisions are not limited to cover crimes committed by law enforcement officials. In the same way, the statistics on cases concerning complaints against police officers do not allow to draw exact figures of the specific cases of interest to the committee.

In March 2008, the Government submitted a Bill to Parliament seeking to introduce a specific provision on torture to the Danish Criminal Code, making it an aggravating circumstance when an act is committed with a torturous intent. The Bill was adopted by Parliament in June 2008, and the new provision entered into force on 1 July 2008. The new specific provision on torture will ease the collection of statistical material.

Secondly, the statistic material that is accessible to the Director of Public Prosecutions and the Prison and Probation Service is not disaggregated by crime, ethnicity, age and sex. Providing such information would presuppose a manual examination of all complaints filed.

The Director of Public Prosecutions and the Prison and Probation Service will consider developing and improving the statistics regarding complaints against police officers and prison staff, respectively.

In May 2008, the United Nations Special Rapporteur on Torture visited Denmark. The Special Rapporteur was interested in further information about criminal proceedings and complaints against the police. In a letter of 8 May 2008 from the Director of Public Prosecutions to the Special Rapporteur, the Danish police complaint system was explained in detail. A copy of the letter is attached.

Professor Manfred Novak

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BEDES ANFØRT VED SVAREKNIVELSEN

SAGSBEHANDLER: AG

RIGSADVOKATEN

FREDERIKSHOLMS KANAL 16  
1220 KØBENHAVN K

TELEFON 33 12 72 00  
FAX 33 43 67 10

1. At the meeting in the Ministry of Justice on May 5<sup>th</sup> 200, the representative from the Director of Public Prosecutions stated that we would provide information about criminal proceedings and complaints against the police within the last 5 years concerning violence, the use of force, imprisonment, threats etc.

2. By law no. 393 on June 14<sup>th</sup> 1995 regarding the amendment of the Danish Administration of Justice Act, which entered into force January 1<sup>st</sup> 1996, the Danish Parliament (Folketinget) adopted the rules for dealing with Police Complaints. The body of rules consists of three parts in the Danish Administration of Justice Act. Part 93 b and Part 93 c regulate the processing of complaints against police officers' conduct and the processing of criminal proceedings against police officers' while Part 93 d concerns the Police Complaints Boards.

In pursuance of section 1021 h of the Danish Administration of Justice Act the Director of Public Prosecutors must to submit an annual report to the Danish Parliament and the Minister of Justice about the processing of the cases, which are mentioned in Part 93 b and 93 c.

Enclosed you will find a copy of the latest report concerning 2006. The report concerning 2007 is still in course of preparation. The reports are only available in Danish.

Enclosed you will also find a copy of "Police Complaints Board Cases in Denmark" which contains a description in English of the regulation regarding processing of complaints against the police officers. The publication was composed in 2002 and there have not been any essential amendments since.

A committee, which is set up by, the Ministry of Justice is at the moment deliberating the need for changes in the present police complaint system.

3. Since 1996 we have submitted an annual report concerning the processing of complaints to the Danish Parliament and the Ministry of Justice. The reports are also sent to the media and are available at the public libraries. Since 1998 the reports have also been available on the Internet.

RIGSADVOKATEN

SIDE 2

The reports discuss the general problems and questions of interpretation, which the police complaint system can cause. Furthermore the reports analyse many specific cases concerning Part 93 b and Part 93 of the Danish Administration of Justice Act. In addition the reports set out the initiatives of a general character for example regarding new education initiatives, change of procedures or revision of the body of rules, which specific cases give rise to.

The examination of the specific cases are meant to illustrate the typical or fundamental cases that the Regional Public Prosecutor has processed and completed in the year of the report, supplemented by any judgements, decisions made by the Director of Public Prosecutions or the Parliamentary Commissioner (Ombudsmanden) and possible disciplinary decisions from the public prosecutors etc.

Cases, which have resulted in criticism or charges, are typically also included in the reports in order to use the examples educationally in the progressing ensuring of the quality of police work and for the sake of the education at the police school.

As regards the investigations, undertaken by the Regional Public Prosecutors in pursuance of section 1020 a (2) of the Danish Administration of Justice Act (when a person has died or seriously been injured owing to the intervention of the police or while the person was in the custody of the police), the annual report includes an examination of all the reported cases in the year of the report regardless of whether the cases has been completed. The results of the uncompleted cases are published in the reports from the following years.

The cases in the annual report are chosen in collaboration with the Regional Public Prosecutors and the Police Complaint Boards Chairman. (landsformand).

Each of the Police Compliant Boards reports and the Chairman's report are included as permanent components in the annual report

Finally the report includes the set of rules, which regulates the system including the Danish Administration of Justice Acts rules concerning the processing of police complaints, ministerial regulations and statistics.

4. The reports include statistical information regarding filed and completed cases.

The statistic concerning the filed cases contains information about the total number of filed conduct cases and criminal proceedings including traffic cases and investigation cases in pursuance of section 1020 a (2) with comparable figures from earlier years, filed cases divided by the different Regional Public Prosecutors and filled cases at the Director of Public Prosecutions in the year of the report divided by type of case.

RIGSADVOKATEN

SIDE 3

The statistics regarding the investigation cases in pursuance of section 1020 a (2) is very detailed. The statistics show the different types of cases with comparable figures from earlier years (for example firearm cases, death in detention etc.) and the decision in these cases are divided by the different types of decisions with comparable figures from earlier years.

The statistics regarding the completed cases contain information about all the completed Police Complaint Boards cases divided by conduct cases, criminal proceeding and investigation cases in pursuance of section 1020 a (2). These different types of cases are divided by different types of decisions with comparable figures from earlier years.

The statistic regarding criminal proceedings, which are completed, contains information about cases where the Regional Public Prosecutor dismissed the case without it being heard on its merits and cases where the Regional Public Prosecutor has decided to discontinue the investigation or has dropped charges. Furthermore the statistic contains information about all the cases where the Regional Public Prosecutor has found that there were grounds for charges. This category contains cases where charges have been pressed, where charges have been withdrawn or where the police officer has been given a warning in pursuance of the Danish Administration of Justice Act. Finally the statistic contains information about the cases where the Regional Public Prosecutor regretted the incident to the complainant, although there were no grounds for charges in the case. The traffic cases are stated separately.

Statistic information about my proceeding of complaints is stated in a special section in the report about proceeding of complaints at the office of the Director of Public Prosecutors.



ries	4	1	0	2	2	4	3	2	2	4	4
Total	11	6	12	14	9	17	10	7	6	9	20

1) The case concerned 2 killed persons.

It appears from table 4b that 7 of the 379 decisions concerning complaints against police officers' conduct in 2006 resulted in criticism while 7 resulted in regretting the incident although there were not grounds for criticism.

Furthermore it appears from table 5b that there were grounds for charge in 173 of the 527 decisions regarding criminal proceedings against the police. 162 of the 173 cases were traffic cases.

RIGSADVOKATEN

SIDE 5

Since 2005 there has been produced a special statistic concerning cases where the Regional Public Prosecutors have found grounds for charges. I refer to table 5b.

This table shows that in one case in 2005 there was grounds for charge regarding a violation of sections 245 and 252 of the Danish Criminal Code. These sections treat assault of particularly heinous or brutal or dangerous character and exposure to danger.

In one case in 2006 there was grounds for charge regarding a violation of section 244 of the Danish Criminal Code, which treats acts of violence and one case concerning a violation of section 266 of the Danish Criminal Act, which treats threats.

6. There are no statistics that indicate the different types of complaints against police officers' conduct or different types of criminal proceedings against police officers. The statistic material therefore does not show the number of criminal proceedings that concerns violence and threats etc. or how many of the complaints against police officers' conduct that concerns the use of force etc.

It would call for a manual investigation of all the cases treated by the Regional Public Prosecutors in the last 5 years to work out the wanted statistics. This has not been possible within the existing timescale.

7. In the following I have briefly described some examples of cases in the last 3 years regarding criminal proceedings concerning violence etc.:

- a. The Regional Public Prosecutor brought charges against a police officer. The police officer had slapped an arrested person but was acquitted by the court. The court found that section 244 of the Danish Criminal Code includes such an act. The majority of the court found that the violent act was an immediate

reaction to the arrested person's spitting on the officer's face. Under these circumstances the act was not considered intentional. (The report 2004, p. 83.)

- b. A police officer had fired a shot at a driver of a stolen vehicle. The bullet hit the hand of the passenger before it hit the driver. The Regional Public Prosecutor charged the police officer with attempt of homicide alternatively with assault of particularly dangerous character. The police officer was also charged with having exposed the life and physical ability of the passenger to impending danger. The police officer lodged a complaint with the Director of Public Prosecutions. The Director of Public Prosecutions dropped the charge with attempt of homicide. The other charges were sustained. The District Court acquitted the police officer. The court found that there had not been enough time to call out a warning or fire a warning shot if the car was to be stopped before passing. The majority of the Court found that there would have been an immediate danger of people getting hit by the vehicle if the vehicle had not been stopped. The police officer had been obligated to act and the shot at driver of the vehicle had been necessary and justifiable in order to stop the vehicle. Therefore the officer had acted in within the limits of what is permissible in self-defence. (The report 2004, p. 111 and 2005, p. 146.)
- c. The Regional Public Prosecutor brought charges against two police officers for violation of section 244 of the Danish Criminal Code. The two officers had wrapped sticky tape around the heads of two arrested persons. The police officers were acquitted. The Court found that the act of wrapping sticky tape around a person's head was inside the scope of section 244 of the Danish Criminal Code but under the specific circumstances the Court did not find the act unlawful. The Court found it of importance that two arrested persons earlier in the day had spit and that they were making sounds as if they were about to spit and that three of the arrested persons and especially two of them had shouted and behaved aggressively. (The 2005 report, page 63)
- d. The Regional Public Prosecutor did not find, that there was sufficient proof to establish, that a police officer P had committed a punishable bodily attack when placing his foot on the neck of the arrested person A. Therefore the Regional Public Prosecutor decided to discontinue the investigations. However, the Regional Public Prosecutor strongly criticised P's behaviour. The Regional Public Prosecutor found that the placement of the foot around A's neck, while A was lying handcuffed on the ground, constituted a humiliating conduct, potentially dangerous for A. The Regional Public Prosecutor found, that the force used was unnecessary and reckless, cf. section 16 of politiloven (the law on the Police). Moreover, the Regional Public Prosecutor did not find such ex-

RIGSADVOKATEN

SIDE 6



traordinary circumstances to be present that the used unauthorized forcible means were justified. A lodged a complaint with the Director of Public Prosecutions, who concurred in the decision. The National Commissioner of Police imposed a disciplinary fine of 800 DKK on P. (The 2006 Report, page 57).

e. The Regional Public Prosecutor did not find that there was reasonable supposition that two police officers had committed a criminal offence when arresting the mentally ill person M. M was shot and killed, when the officers tried to arrest him. M's mother lodged a complaint of the decision with the Director of Public Prosecutions. The Director of Public Prosecutions decided to bring charges against the police officers for violation of the Danish Criminal Code section 246, cf. section 245 and section 252(1). The two police officers were acquitted by the District Court. At the same time The Court did not find any reason for setting aside their assessment that Ms reaction was aggressive, threatening and unexpected in the situation, and that one of the police officers were in impending danger due to the dog and the knife attack made by M. Accordingly, the Court held, by virtue of the Danish Criminal Code section 13(1), that the police officers were not liable to punishment, as they were under a duty to react and as they did not aim against vital parts of the body. (The 2006 Report, page 98)

f. A person was shot and killed during the escape from the police of a person charged with murder. The Regional Public Prosecutor decided to bring charges against two police officers P1 and P2 for violation of the Danish Criminal Code section 246, cf. section 245(1) and section 252(1). P1 and P2 were acquitted by the District Court. The Court held that P1 acted within the limits of permissible self-defence when firing his gun. Accordingly P1 was not liable to punishment, cf. the Danish Criminal Code section 13(1). Moreover, the Court held that the first five shots by P2 were within the limits of permissible self-defence. Thus, by virtue of the Danish Criminal Code section 13(1), he was not liable to punishment for these shots. Regarding the last to shots, the Court held that they were outside the scope of the Danish Criminal Code section 13(1), as they were neither necessary nor justifiable. The majority of the Court held, that P2 acted within the boundaries of section 13(1) when he fired the last shots in the direction of the rear end of the escape car and that he was therefore not liable to punishment. The case was appealed to the High Court. The High Court found, that the police officer who fired the 7 shots was in violation of the Danish Criminal Code section 246, cf. section 245, cf. section 21,

RIGSADVOKATEN

SIDE 7

and section 252 as regarded the last two shots. These shots were fired in direction of the escape car when it was leaving and the Court found that they could not be reasonably attributed to the fear or excitement produced by the attack. Hence these shots were not held to be within the scope of the Danish Criminal Code section 13, (2). The High Court held however, that these acts were covered by the Danish Criminal Code section 82, nr. 3, and that after the circumstances the penalty should be remitted in accordance with the Danish Criminal Code section 83. The remaining shots were found not be punishable as they were covered by the rules on lawful self-defence in the Danish Criminal Code section 13 (1) and (2). The other police officer was acquitted. (The 2006 Report, page 98)

RIGSADVOKATEN

SIDE 8

- g. A police officer reported that his colleague P had committed a violent attack against a person who was placed in the detention. The detainee had urinated all over a toilet and afterwards P had kicked the detainee in the rear end and by gripping his neck dragged him back to the cell, where he kicked the detainee once more. The Regional Public Prosecutor decided to bring charges against P for violation of the Danish Criminal Code section 245. The District Court found that P was guilty and sentenced him to 60 days of prison. The case was appealed to the High Court. A majority of the judges in the High Court acquitted P, since they did not find that there was sufficient evidence for punishable violence. Thus there were no grounds for disregarding P's testimony that he was under the impression that the detainee – who was very large and muscular – was going to attack him.
- h. The Regional Public Prosecutor decided to charge a police officer P for violating the Danish Criminal Code section 244 having kicked a person who had been arrested for speeding on his moped without a helmet. The Court acquitted P as the Court did not find that it was sufficiently proved that P had committed a violent act that was covered by section 244 in the Danish Criminal Code. As regards the count concerning threats, the Court held that the remarks made by P could only be seen as threatening in the context of the violent act described in the indictment. As P had been acquitted for the count concerning violence he was equally acquitted for the count concerning threats. (Will be contained in the 2007 Report)
- i. A police officer P shot a man S who was in a brawl with his father F in a shopping centre. The Regional Public Prosecutor charged P with violating section

245 (1) of the Danish Criminal Code. The District Court convicted P, but found that the penalty should be remitted. The Court found that P had not acted in lawful self-defence when he violated section 245(1) in the Danish Criminal Code by shooting S three times. The decision attached importance to the fact that P was aware that S was unarmed. Furthermore importance was attached to the fact that in spite of the threats made by S to kill F, P had only seen S hit F with his fists. In addition P had no reason to believe that F had suffered serious body harm. Three people were present by the stretcher when S attacked. One was P's experienced colleague. None of the police officers tried to use their batons, and thus there were no grounds for finding that it was necessary to shoot under the present circumstances – in spite of the reasonable margin of appreciation that must be given to a police officer in a stressful situation. The Court remarked that there were no grounds to eliminate beforehand the possibility that using the baton against S would have an effect. The penalty was however remitted, since the Court held that P's job gave him an obligation to respond to the situation at hand and that P acted to prevent an attack on F who was lying defenceless on the stretcher. Accordingly it was held that there were mitigating factors to the effect that the penalty should be remitted in accordance with section 83, 2. sentence and partly section 82, nr. 3.

RIGSADVOKATEN

SIDE 9

8. In connection with the current considerations of the Police Complaints Board system and the changes, which may be a result of the current debate in the committee, I will consider improving the statistics, which relate to the affected cases.

Apart from this it is my expectation that I will be able to publish more detailed information concerning the work of the public prosecutors in the future. In this relation I will i.e. consider to develop and improve the statistics regarding complaints against police officers and the different types of cases that are covered by the arrangement.

I enclose documents relating to other topics brought up at the meeting Monday 5 May 2008.

On behalf of the Director of Public Prosecutors

Jesper Hjortenberg