THE MINISTER FOR
FOREIGN AFFAIRS

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Enclosure
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**Explanation from the Danish Government in accordance with Article 52 of the European Convention on Human Rights**

Dear Secretary General,

In response to your letter dated 21 November 2006 in which you request an explanation in accordance with Article 52 of the European Convention on Human Rights, I hereby forward explanations of the manner in which Danish Law ensures the effective implementation of the relevant provisions of the European Convention on Human Rights.

Yours Sincerely,

Per Stig Møller
Minister for Foreign Affairs

Mr. Terry Davis,
Secretary-General of the Council of Europe

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## *I. Introduction*

Response to the request of 21 November 2005 from the Secretary General of the Council of Europe, regarding the effective implementation in Danish law of certain provisions of the European Convention on Human Rights.

By letter of 21 November 2005 the Secretary General of the Council of Europe has (in accordance with Article 52 of the European Convention of Human Rights) requested an explanation of the manner in which Danish law ensures the effective implementation of the provisions of the European Convention on Human Rights. In the request reference is made to recent reports suggesting that individuals, notably persons suspected of involvement in acts of terrorism, may have been apprehended and detained, or transported while deprived of their liberty, by or at the instigation of foreign agencies, with the active or passive cooperation of High Contracting Parties to the convention or by High Contracting Parties themselves at their own initiative, without such deprivation of liberty having been acknowledged.

First of all, it should be noted that pursuant to generally recognized principles of international law deprivation of liberty of persons in Denmark may only be made by Danish public authorities. No foreign authorities can perform such acts in Denmark except where international law would contain specific provisions to that effect. This fundamental rule of international law is also reflected in Danish constitutional principles. Any international agreement providing exception to this principle would require a fundamental constitutional scrutiny to determine if it would be in conformity with the Danish Constitution and would – if it exceptionally would be considered constitutionally possible – in any case require approval by the Danish Parliament (Folketinget).

Furthermore, it should be noted that the wording of the request is very broad and that Danish legislation contains numerous rules concerning

deprivation of liberty that appear not to be relevant in the context of the request (for instance rules governing when psychiatric patients can be deprived of their liberty). For this reason the Danish Government has tried to identify areas of the Danish legislation that appear to be relevant when answering the part of the request that concerns Danish legislation. In this connection the Danish Government has identified the rules relating to deprivation of liberty under Danish criminal procedural law, the rules relating to extradition, the rules relating to unlawful deprivation of liberty, the rules relating to acts of violence and torture and the rules relating to complicity as relevant. Furthermore, the Danish Government has identified the Danish rules on complaints against the police in connection with criminal acts committed by police personnel on duty and the general rules on investigation, indictment and trial in connection with criminal offences as relevant. Finally, the Danish Government has identified the Danish rules concerning compensation in consequence of criminal proceedings and the rules relating to crime victims' right to compensation as relevant.

In cases where a person within the Danish territory is charged with a crime, whether this crime is committed abroad or within the Danish territory, Danish authorities must adhere to the rules on deprivation of liberty under Danish criminal procedural law. The rules that are contained in the Administration of Justice Act can be summed up as follows:

## II. *Arrest*

Under Danish criminal procedural law, coercive measures may only be taken in case of an offence or a suspected offence. Certain coercive measures may be taken even though charges has not yet been preferred, whereas other coercive measures, such as pre-trial detention, imply that the police has preferred a charge against the person against whom the measure is aimed.

Pursuant to Section 755 (1) of the Administration of Justice Act, any person who is reasonably suspected of a criminal offence subject to public prosecution may be arrested by the police if arrest is deemed necessary to prevent further criminal offences, to secure the person's presence for the time being or to prevent his association with others. However, no arrest may be made if, in the nature of the case or the circumstances in general, deprivation of liberty would be a disproportionate measure, cf. section 755 (4).

The phrase 'reasonably suspected' implies that the suspicion must be better founded than the certainty required to prefer a charge. The suspi-

cion must normally be based on certain specific grounds, such as possession of items originating from a crime or identification by a witness.

An arrest shall be made as leniently as allowed by the circumstances, cf. Section 758 of the Administration of Justice Act, and a detainee shall not be subjected to other restrictions of his liberty than those required by the purpose of the detention and considerations of order.

Pursuant to Section 760 of the Administration of Justice Act, any person who is arrested shall be released as soon as the grounds for the arrest have ceased to apply. An arrested person shall be brought before a judge within 24 hours of the arrest if he has not been released before.

Section 760 of the Administration of Justice Act is worded as follows:

Section 760

"Any person who is arrested shall be released as soon as the grounds for the arrest have ceased to apply. The hour of his release shall appear from the report.

*(2)* An arrested person shall be brought before a judge within 24 hours of the arrest if he has not been released before. The hour of the arrest and arraignment shall be recorded in the court records.

*(3)* If an arrest has been made concerning a criminal offence for which custody is not applicable, the prisoner shall be released before the closing of the court hearing.

*(4)* If an arrest has been made for a criminal offence for which custody is applicable, or in pursuance of section 756 hereof, and the court finds that the prisoner shall not be released forthwith, the court, if it finds that on the basis of the insufficiency of the information available, or if for some other reason it finds that it cannot immediately decide on the question of custody, may decide that he shall remain under arrest until further notice. The order of the court shall contain the circumstances resulting in the remand. During the remand, section 765 hereof shall apply correspondingly. The accused shall have an opportunity to state any information that he wishes to be provided.

*(5)* If he has not been released before, the accused shall be brought before a judge again, who within 3 x 24 hours after the end of the first court hearing shall decide whether the accused shall be released or detained in custody or be subjected to measures in accordance with section 765 hereof.

## *III. Remand in custody*

The Danish rules on remand in custody are laid down in Part 70 of the Administration of Justice Act.

According to the provisions of Part 70 of the Administrations of Justice Act (Sections 762-779), a person charged may only be held in pre-trial detention by court order. No one may be held in pre-trial detention for a period exceeding four weeks at a time. Furthermore, the measure of pre-trial detention may not be applied if the deprivation of liberty would be disproportionate to the disturbance so caused to the life of the person charged, the importance of the case and the sanction to be expected if the person charged is found guilty (the principle of proportionality)."

Sections 762-779 of the Administration of Justice Act are worded as follows:

Section 762

"A person charged can be remanded in custody where there is a reasonable suspicion that he has committed an offence subject to public prosecution if, under the law, the offence may result in imprisonment for one year and six months or more, and where:

(i) according to the information obtained on the person charged, there are definite grounds to presume that he will evade prosecution or enforcement; or

(ii) according to the information obtained on the person charged, there are definite grounds to fear that, if at large, he will commit new crime of the nature mentioned above; or

(iii) due to the circumstances of the case, there are definite grounds to presume that the person charged will obstruct prosecution, in particular by removing clues or warning or influencing other persons.

*(2)* A person charged may also be remanded in custody when there are strong grounds for suspecting that he has committed:

(i) an offence subject to public prosecution which, under the law, may result in imprisonment for six years or more, and it is deemed necessary for law enforcement reasons, according to the information obtained on the gravity of the offence, that the person charged is not at large; or

(ii) a violation of section 119(1), section 123, section 134 a, sections 244 to 246, section 250 or section 252 of the Criminal Code if, according to the information obtained on the gravity of the offence, the offence can be expected to result in a sentence of imprisonment for not less than 60 days, and it is deemed necessary for law enforcement reasons that the person charged is not at large.

*(3)* Custody cannot be applied if the offence can be expected to result in a sentence of a fine or imprisonment for a period not exceeding 30 days, or if the deprivation of liberty would be disproportionate to the inconvenience so caused to the life of the person charged, the importance of the case and the legal consequence to be expected if the person charged is found guilty."

Section 763

"Where there is reasonable suspicion that a person has violated terms fixed in a suspended sentence in accordance with Part 7 or Part 8 of the Danish Criminal Code, in a conditional pardon, or release on parole, he may be detained in custody, if the court finds that the violation is of such a nature that there is a question of enforcement of a prison sentence or commitment to an institution; and

(i) if on the basis of the information available about the person there are definite grounds to assume that he will evade the consequences of the violation of the terms; or

(ii) if on the basis of the information available about the circumstances of the accused there are definite grounds to believe that, if set free, he will continue to violate the terms, and considering the nature of the violations, it is deemed necessary to detain him in custody to prevent such violations.

*(2)* This shall apply also if there is reasonable suspicion that a person has violated provisions fixed in a judgment or in an order in accordance with sections 68, 69, 70, or 72 of the Danish Criminal Code."

Section 764

"Upon the request of the police, the court shall decide whether an accused shall be taken into custody.

*(2)* An accused who is present in this country shall be questioned in court about the charge against him and shall have an opportunity to argue his case before the decision is made, unless the court finds that for special reasons the arraignment must be considered useless or harmful to the accused. If an order about custody has been made without the accused having had an opportunity to argue his case in court, he shall be brought before the court within 24 hours after he has set foot in this country, or the obstacle for his arraignment has ceased.

*(3)* In the court hearing held to decide on the question of custody, the accused shall have access to assistance from a defence attorney. If the accused is present in court, he shall be given an opportunity to consult with the defence attorney before he is questioned.

*(4)* The ruling of the court is made by way of an order. If the accused in taken into custody, the order shall contain the specific circumstances that form the basis for the court's decision that the requirements of custody have been met. If the accused is present in court, he shall be notified immediately about the provisions on custody that the court has applied, and about the grounds for custody mentioned in the order, and about his right to appeal. A transcript of an order under which an accused is taken into custody shall be handed over to him upon request."

Section 765

"Where the conditions to apply custody are met, but if the purpose of custody may be obtained by less radical measures, the court makes an

order about such measures in lieu thereof subject to the consent of the accused.
*(2)* The court may thus decide that the accused shall
(i) subject to supervision fixed by the court;
(ii) comply with specific conditions concerning his place of dwelling, work, spending of leisure time, and association with specific persons.
(iii) placing at an appropriate home or institution;
(iv) subject to psychiatric treatment or treatment against addiction to alcohol, drugs, etc., if necessary in a hospital or in a special institution;
(v) report at the police station at fixed intervals;
(vi) deposit his passport or other identification documents;
(vii) provide financial security by way of a money-bond to be determined by the court to secure his presence at court hearings and enforcement of a judgment, if applicable.
*(3)* In case of decisions in pursuance of subsection (1) and (2) hereof, the provisions of section 764 hereof shall apply correspondingly.
*(4)* If the accused evades appearance in court or enforcement of the judgment, the court, after those whom the decision concerns have, as far as possible, been given an opportunity to speak, may by an order decide that a money-bond provided in pursuance of subsection (2)(vii) has been forfeited. Forfeited money under a bond shall fall to the Treasury, provided always that the victim's claim for damages shall be covered from the amount. Under special circumstances, the court may for up to six months after the order decide that forfeited money under a bond that has fallen to the Treasury, shall be repaid in part or in whole.
*(5)* After negotiation with the Minister for Social Affairs and the Minister of Health, the Minister of Justice may lay down rules about granting permission for leave, etc., to persons who are placed in an institution or a hospital, etc., in pursuance of subsection (2)(iii) or (iv), if no decision is made on this subject otherwise. In this connection, the Minister of Justice may determine that decisions made in pursuance of these rules may not be brought before a higher administrative authority."

Section 766
"The court may at any time undo orders made by it about custody or measures in lieu of custody."

Section 767
"Apart from cases where the person charged is not present in this country, the order shall fix a term for the length of custody or measure. The term must be as short as possible and may not exceed four weeks. The term can be extended, but not by more than four weeks at a time. The extension shall be made by order, unless the person charged consents to extension. Until a judgment is delivered by the court of first instance, the rules of section 764 shall apply correspondingly to court hearings and orders about extension of the term of custody. If a person charged who

has been remanded in custody or subjected to another detention measure waives his right to be present in court, or if the court finds that his presence in court will involve disproportionate difficulties, his presence may be dispensed with.
*(2)* If the term fixed under subsection (1) hereof expires after commencement of the trial, the custody or measure shall continue without any further extensions until judgment is delivered in the case. Upon expiry of the term fixed prior to commencement of the trial, the accused may request the court to terminate custody or any measure in lieu according to section 766 or 768. If, upon expiry of the term, the accused requests the court to terminate custody or any measure in lieu, the court shall decide such request within seven days. If the court does not grant the request, the accused can only make a new request after 14 days following the court's decision. Any question of a possible termination of custody imposed under section 762(2) must be decided by a judge or a division not involved in the trial, cf. section 60(3), unless one of the conditions in the second sentence of section 60(3) is satisfied. By court decision, a request from the accused can be considered in writing if the decision is made by a judge or division not involved in the trial.
*(3)* If an extension order extending the term of custody or other detention measure beyond three months is appealed, the appeal shall be heard orally upon request. When an appeal has been heard orally once, the superior court shall decide whether a subsequent request for an oral hearing shall be granted. The provision in the last sentence of subsection (1) hereof shall apply correspondingly."

Section 768
"Detention in custody or measures in lieu hereof, shall if necessary be terminated by a court order if prosecution is dropped or the conditions for instituting proceedings no longer exist. If the court finds that the necessary speed has not been used to proceed with the matter and that custody or other measures are not reasonable, the court shall terminate the custody or measure."

Section 769
"An order about custody or other measures shall have effect only until the matter is decided in a trial. Upon request, the court shall after the decision make an order about whether the defendant awaiting an appeal, if applicable, or until enforcement can be implemented, shall be taken into custody or remain in custody or be subjected to measures in lieu hereof. In the decision on this, the provisions of sections 762, 764-766, and 768 shall apply correspondingly, unless the defendant accepts to remain in custody or to be subjected other measures. If the accused has been detained in custody or been subjected to other measures before the trial, but the court does not find that there is any basis to continue custody or other measures, the court may upon request of the prosecution

decide that detention in custody or other measures shall be in force until a decision on the question of custody is made by the superior court before which the case or the question of custody has been brought.
*(2)* If the decision made in the case is brought before a higher court, or if in pursuance of subsection (1) hereof, a decision is made to apply custody or other measures after the decision, the question about the continued application hereof shall as soon as possible be submitted to the superior court before which the decision is brought. The rules of section 762, 764(1), (3), and (4), 765, 766, 767(1)(i-iv), and section 768 shall apply correspondingly to the superior's court decision on the question of custody or other measures."

Section 770
"A remand prisoner is subject to the restrictions only that are necessary to secure the purpose of the custody or to maintain order and security in the remand prison.
*(2)* Remand prisoners shall be placed in remand prisons (local prisons), to the extent possible at the place where the criminal proceedings are pending. Placing outside a remand prison may take place for health reasons or in pursuance of section 777 hereof."

Section 770a
"Upon request of the police, the court may decide that a remand prisoner shall be excluded in whole or in part from association with other inmates (solitary confinement), where:
(i) custody was decided pursuant to section 762(1)(iii); and
(ii) there are definite grounds to presume that custody is not in itself sufficient to prevent the detainee from obstructing prosecution, including by influencing other persons charged through other inmates or by influencing others by threats or in another similar way."

Section 770b
"Solitary confinement may only be implemented or continued if:
(i) the purpose cannot be obtained by less radical measures, including by placing the detainee in a local prison other than that in which specific other inmates are placed, or in any other way preventing the detainee from associating with such inmates, or by imposing check of letters and visits or a visit ban;
(ii) the measure, including the particular burden that it may cause because of the detainee's young age, physical or mental infirmity or other personal circumstances, is not disproportionate to the importance of the case and the legal consequence to be expected if the detainee is found guilty; and
(iii) the investigation is carried out at the particular speed required at custody in solitary confinement, including by making use of the possibilities of securing evidence under section 747."

Section 770c

"If the provisional charge concerns an offence which, under the law, cannot result in imprisonment for four years, solitary confinement may not occur for a continuous period of more than four weeks.

*(2)* If the provisional charge concerns an offence which, under the law, can result in imprisonment for four years or more, but not imprisonment for six years, solitary confinement may not occur for a continuous period of more than eight weeks.

*(3)* If the provisional charge concerns an offence which, under the law, can result in imprisonment for six years or more, solitary confinement may not occur for a continuous period of more than three months. The court may decide in exceptional cases that solitary confinement shall be extended beyond three months if continued solitary confinement is required for essential considerations of investigation, irrespective of the length of the period of solitary confinement.

*(4)* If the detainee is under 18 years of age, solitary confinement may not in any case occur for a continuous period of more than eight weeks."

Section 770d

"Court decisions on solitary confinement shall be made by separate order. If the court makes a decision on solitary confinement, the court must state in its order the specific circumstances supporting its finding that the conditions of section 770a to 770c on solitary confinement or continued solitary confinement are satisfied.

*(2)* In court decisions on solitary confinement, the rules of section 764(2) to (4), section 766, section 767(1) and sections 768 and 769 shall otherwise apply correspondingly. At implementation of solitary confinement, the first term of the measure may not exceed two weeks. If the detainee is under 18 years of age, the term of solitary confinement may not be extended by more than two weeks at a time."

Section 770e

"If solitary confinement is extended beyond eight weeks, the appeal shall be heard orally upon request. If the decision on solitary confinement is upheld, subsequent appeals of continued solitary confinement shall also be heard orally upon request if, by the order appealed, the solitary confinement is extended beyond eight weeks since the last oral hearing of an appeal of extended solitary confinement. In other cases the appellate court shall decide whether a request for an oral hearing shall be granted. The provision in the last sentence of section 767(1) shall apply correspondingly."

Section 771

"A remand prisoner is allowed to receive visits to the extent allowed by the rules governing order and security in the remand prison. The police

may, considering the purpose of the detention in custody, oppose to visits paid to the remand prisoner or may demand that visits shall be supervised. If the police deny visits, the remand prisoner shall be notified of this, unless the judge makes an order otherwise for the purpose of the investigation. The remand prisoner may demand that the police's refusal of visits or demands for supervision be brought before the court for a decision. The remand prisoner shall always have the right to unsupervised visits from his defence attorney.
*(2)* When special circumstances speak in favour thereof, the management of the institution may with the consent of the police grant remand prisoners leave with escort for a short period."

Section 772
"A remand prisoner has a right to receive and send letters. The police can look through letters before receipt or mailing. The police shall hand over or send the letters as soon as possible, unless the contents could be damaging to the investigation or maintenance of order and security in the remand prison. If a letter is detained, the question of whether the detention should be maintained shall be brought before the court immediately. If the detention of mail is upheld the sender shall be notified immediately unless, for the purpose of the investigation, the judge makes a decision otherwise.
*(2)* A remand prisoner has the right to unsupervised exchange of correspondence with his defence attorney, the Minister of Justice, the Director of the Prison Service and the Parliamentary Ombudsman. The Minister of Justice may lay down rules about remand prisoners' right to send sealed letters to other public authorities or individuals."

Section 773
"If the police decide that out of regard to the purpose of the custody detention, other restrictions shall be made with regard to a remand prisoner's rights, the remand prisoner may demand that the question of maintenance of the restrictions be brought before the court for a decision."

Section 774
"Neither the staff of the institution or others are not allowed to carry out any kind of investigation concerning remand prisoners."

Section 775
"Disciplinary punishment can be imposed on remand prisoners in the form of confinement in a special cell for up to two weeks or seizure of wage payments. The said disciplinary punishments may be used together.
*(2)* The provisions of sections 65 and 66 of the Act on Enforcement of Sentences, etc., on the use of handcuffs and security cell shall apply correspondingly to remand prisoners."

Section 776

"The Minister of Justice shall lay down detailed rules on the treatment of remand prisoners. As regards detainees held in solitary confinement by court order, the Minister of Justice shall lay down specific rules on more staff contact, extended visiting rights, special right to individual tuition and certain types of work as well as offers of regular and long consultations with a priest, doctor, psychologist or a similar person. The Minister of Justice shall also lay down rules on other assistance granted to remand prisoners to limit the occupational, social and personal inconveniences caused by the custody."

Section 777

"A remand prisoner may, subject to court approval, be placed in an institution for persons serving a prison sentence or safe custody, or in a hospital, etc., cf. sections 68 and 69 of the Criminal Code, if the remand prisoner himself, the public prosecutor and the management of the institution consent thereto. If required for health reasons or considerations for the safety of others, such placement may exceptionally be effected without the remand prisoner's consent. In the institution, the remand prisoner must be treated according to the rules applicable to persons placed there by judgment. The remand prisoner may not leave the institution without court approval, except in the cases referred to in section 771(2)."

Section 778

"Remand prisoners' complaint of prison personnel's conduct shall be submitted to the prison governor in question (local prison governor) or to the Directorate of the Prison Service. If the complainant does not succeeded in his claim or if no final decision is made within two weeks of submission of the complaint, the complaint may be brought before the court at the venue of the remand prison (local prison).

*(2)* The court may reject to initiate an inquiry if the complaint is found obviously unfounded, if it concerns matters of insignificant importance, or if it is filed more than four weeks after the incident complained of took place. The court's inquiry shall be made in accordance with the rules of section 1019b, section 1019 e(1), and (3)-(5), section 1019f ((2), and section 1019 g. The judge shall make a decision on an interview with the complainant and witnesses and procurement of statements from experts and other evidence.

*(3)* When is inquiry is finished, the court shall submit a report on the findings which shall be sent to the complainant, to the party whom the complaint concerns, and to the prison governor (local prison governor), and to the Directorate of the Prison Service."

Section 779

"(repealed)"

## *IV. Extradition*

A foreign authority that wishes a person within the Danish territory, who abroad is charged with a crime, detained on remand with a view to extradition from Denmark, must present the Danish authorities with an extradition request. In such cases the Danish authorities must act according to the Danish Extradition Act (Consolidated Act No. 833 of 25 August 2005). The Danish authorities can only extradite the person concerned if the conditions in the Extradition Act are met.

According to Section 1 of the Danish Extradition Act a person, who abroad is charged with a crime or convicted for an offence, can be extradited from Denmark. However the Act does not apply to extraditions from Denmark when the special rules on extradition between the Nordic states are applicable.

The basic condition for extradition to states *outside* the European Union appears from sections 2-10. Section 2 and 2a has the following wording:

Section 2
"(1) The Minister of Justice, acting under an agreement with a state outside the European Union, may decide that a Danish national can be extradited for prosecution in that state,
if the person in question has in the two years preceding the criminal act resided in the state seeking his extradition and the act constituting the offence for which the extradition is sought is punishable under Danish law by a period of imprisonment of at least one year, or
if the act is punishable under Danish law by a period of imprisonment of longer than four years.
(2) If, in relation to a state outside the European Union, one of the agreements specified in paragraph 1 does not apply, the Minister of Justice may adopt a decision on the extradition of a Danish national for prosecution if the conditions in paragraph 1 are otherwise met and this is indicated by special law-enforcement reasons."

Section 2a
"An alien can be extradited for prosecution or execution of a judgment in a state outside the European Union if the act is punishable under Danish law by a period of imprisonment of at least one year. If the act is punishable under Danish law by a shorter period of imprisonment, the person can nevertheless be extradited if an agreement to that effect has been concluded with the state in question."

According to Section 3 extradition for prosecution may only be decided, if a decision on arrest or imprisonment has been made for the concerned act in the foreign state. Extradition for the execution of a judgment can, unless otherwise specified in the agreement with the foreign state, only take place, 1) if the judgement holds a term of imprisonment for minimum 4 months or 2) if the convicted person according to the judgement or a decision made under the provisions of the judgement, is to be placed in a institution for a period that can amount to 4 months.

The basic condition for extradition to *Member States of the European Union* appears from Section 10a, which has the following wording:

Section 10a

"(1) The extradition of persons for prosecution or execution of a judgment in a Member State of the European Union for an offence that, under the law of the Member State that has requested the extradition, is punishable by imprisonment or a detention order for a period of at least three years can be effected on the basis of a European arrest warrant although a corresponding act is not punishable in Danish law. In the case of the following acts:

(1) participation in a criminal organisation,
(2) terrorism,
(3) trafficking in human beings,
(4) sexual exploitation of children and child pornography,
(5) illicit trafficking in narcotic drugs and psychotropic substances,
(6) illicit trafficking in weapons, munitions and explosives,
(7) corruption,
(8) fraud, including that affecting the financial interests of the European Communities,
(9) laundering of the proceeds of crime,
(10) counterfeiting currency, including of the euro,
(11) computer-related crime,
(12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
(13) facilitation of unauthorised entry and residence,
(14) murder, grievous bodily injury,
(15) illicit trade in human organs and tissue,
(16) kidnapping, illegal restraint and hostage-taking,
(17) racism and xenophobia,
(18) organised or armed robbery,
(19) illicit trafficking in cultural goods, including antiques and works of art,
(20) swindling,
(21) racketeering and extortion,
(22) counterfeiting and piracy of products,
(23) forgery of administrative documents and trafficking therein,

(24) forgery of means of payment,
(25) illicit trafficking in hormonal substances and other growth promoters,
(26) illicit trafficking in nuclear or radioactive materials,
(27) trafficking in stolen vehicles,
(28) rape,
(29) arson,
(30) crimes within the jurisdiction of the International Criminal Court,
(31) unlawful seizure of aircraft/ships,
(32) sabotage.
(2) Persons can be extradited for prosecution in a Member State of the European Union for acts that are not covered by paragraph 1 under a European arrest warrant if the criminal act in the Member State renders the person liable to a period of imprisonment of at least one year and a corresponding act is punishable under Danish law.
(3) Persons can be extradited for execution of a judgment in a Member State in the European Union for acts that are not covered by Section 1 under a European arrest warrant if the judgment has sentenced the person to prison or a detention order of not less than four months and the corresponding act is punishable under Danish law.
(4) A person can be extradited for prosecution or execution of a judgment for a number of offences although the conditions in paragraphs 1-3 are met in the case of only one of those offences."

According to the Danish Extradition Act decisions on whether a person can be extradited from Denmark or not is made by the Danish Ministry of Justice. If the Ministry of Justice finds the conditions for extradition fulfilled and decides to extradite the person concerned, the latter can request the lawfulness of the Ministry's decision examined by the courts.

## *V. Unlawful acts of deprivation of liberty and complicity*

As it follows from the above within the Danish territory only the Danish Ministry of Justice is competent to decide on the extradition of a person with a view to prosecution in another country (the decision can be tried by the courts). Furthermore, within the Danish territory only the Danish police can arrest a person who on reasonable grounds is suspected of a criminal offence indictable by the state. In this context it should be noted that the Danish Security Intelligence Service (PET) is part of the Danish police and that PET in relation to arrest and detention on remand is subject to the same legislation as other parts of the Danish police.

There are a few exceptions to the aforementioned rule on the authority to arrest, one being section 755(2) of the Administration of Justice Act

according to which the same authority belongs to any person who comes upon someone during or with immediate connection to the perpetration of a criminal offence that is indictable by the State. In these cases the detainee must as soon as possible be handed over to the police with information about the time and grounds for the arrest. Finally, within the Danish territory only the Danish Courts can, when a number of conditions are met, decide to detain on remand an accused.

Thus, a deprivation of liberty (arrest, detention on remand) that takes place within the Danish territory with a view to prosecution abroad would be unlawful according to Danish law if it was unacknowledged by the Danish authorities and thus had taken place without the criminal procedural rules in the Administration of Justice Act being observed.

Unlawful deprivation of liberty is a criminal offence cf. Section 261 of the Danish Criminal Code whether the deprivation of liberty is conducted by a private person, police personnel or by an official of a foreign agency.

Section 261 of the Criminal Code is worded as follows:

Section 261
"Any person who deprives another person of liberty shall be liable to a fine or imprisonment for any term not exceeding 4 years.
*(2)* If the deprivation of liberty has been effected for the purpose of gain or if it has been of long duration or if it consisted any person being unlawfully kept in custody as insane or mentally deficient or being enlisted for foreign military service or being taken into captivity or any other state of dependence in any foreign country, the penalty shall be imprisonment for any term not exceeding 12 years."

## *VI. Acts of violence and torture*

Acts of violence and torture are also criminal offences cf. Sections 244-247 of the Criminal Code. The primary provisions in this context are worded as follows:

Section 244
"Any person who commits an act of violence against, or otherwise attacks the person of others, shall be liable to a fine or to imprisonment for any term not exceeding 3 years."

Section 245
"Any person who commits an assault of a particularly heinous or brutal or dangerous character or who is guilty of cruelty shall be liable to im-

prisonment for any term not exceeding 6 years. If such an assault has caused significant damage to another person, or to the health of another person, it shall be considered a particularly aggravating circumstance.
*(2)* Any person who, in circumstances other than those covered by Subsection *(1)* above causes damage to another person or to the health of another person shall be liable to imprisonment for any term not exceeding 6 years."

## *VII. Instigation, aiding and abetting*

According to Danish law complicity to a criminal offence, including unlawful deprivation of liberty and acts of violence is a criminal offence. This follows from section 23 of the Criminal Code which states that the penalty in respect of an offence shall apply to any person who has contributed to the execution of the wrongful act by instigation, advice or action. The punishment may be reduced in certain cases, but the accomplice can only avoid punishment altogether if he under certain conditions prevents the completion of the offence or takes steps which would have prevented its completion had it not, without his knowledge already been unsuccessful or averted in some other way.

## *VIII. Remedies in connection with unlawful deprivation of liberty committed by police-trained personnel while on duty*

The body of rules for processing complaints against police personnel etc. consists of three parts in the Danish Administration of Justice Act. Part 93 b and Part 93 c regulate processing of complaints against police officers' conduct and processing of criminal proceedings against police officers and Part 93 d concerns the Police Complaints Board. A copy of the relevant provisions in English is enclosed.

The scheme for processing complaints against police officers entered into force on 1 January 1996. The most important element of the scheme is that the Regional Public Prosecutors will deal with complaints regarding the conduct of police officers, investigate criminal cases involving police officers and decide which charge(s), if any, should be brought. The rules apply to police personnel with police authority, i.e. police-trained personnel and the police attorneys. The rules apply only to incidents that have occurred while a police officer is on duty. The decision of whether an incident has occurred while a police officer was on duty is based on a specific assessment. Basically, the Regional Public Prosecutor will handle all aspects of inquiries and investigation, so that police personnel will only be involved in the consideration of these cases

to a very limited extent. Another important element is the introduction of Police Complaints Boards. The Board consists of one lawyer and two laymen, and it supervises the Regional Public Prosecutor's processing of cases comprised by the scheme. The scheme is limited to complaints about conduct and criminal proceedings involving police personnel. A third element of the scheme is an extended access to assign a lawyer. This applies both to the complainant and to the officer complained against in cases of complaints about conduct, and to the injured party and the police officer in criminal cases involving police personnel.

Complaints about the conduct of police personnel, criminal proceedings involving police officers, and cases where the Regional Public Prosecutor initiates investigations if a person has died or has been seriously injured as a consequence of police interference, or while the subject was in police custody are comprised by the scheme.

The enclosed publication in English "Police Complaints Board Cases in Denmark" contains a thorough description of the rules for handling complaints concerning the police. It was drafted in 2002, but the rules have not been changed significantly since then. Furthermore the relevant parts of the Administration of Justice Act in English are enclosed.

## *IX. Remedies in connection with unlawful deprivation of liberty committed by police-trained personnel while off-duty, by officials of foreign agencies and by private persons*

Criminal offences, including unlawful deprivation of liberty, committed by police-trained personnel while off-duty, private persons and officials of foreign agencies are subject to the general rules on investigation, indictment and trial contained in the Administration of Justice Act. It follows from the said act that reports about criminal offences are submitted to the police and that the police upon report or by own virtue initiates investigation, when there is reasonable suspicion that a criminal offence indictable by the state has been committed. Furthermore, it follows from the act that the purpose of the investigation is to clarify if the conditions for imposing criminal liability or other criminal legal consequence exist and to procure information for the disposition of the case, as well as to prepare the case for trial proceedings. It is also stated that the police, as soon as possible prepares a report about the undertaken interrogations and about other investigative measures unless such information exists in another form. Apart from these and other general provisions the act contains detailed provisions on a number of different investigative measures, such as interrogation, invasions of the secrecy of communication etc., search, seizure and disclosure. The act also contains provisions

on the procedures in relation to indictment and on the procedures to be followed during the trial. Unfortunately, an English copy of these provisions does not exist, but a Danish copy of the provisions is enclosed (Consolidated Act No. 910 of 27 September 2005 and Act No. 1398 of 21 December 2005 amending the before mentioned consolidated act).

## *X. Compensation in consequence of criminal proceedings*

According to section 1018a of the Administration of Justice Act, a person, who has been arrested or detained on remand in the course of criminal proceedings and in accordance with criminal procedural law, has a right to compensation for the damage he has suffered in this connection, if charges are dropped or if he is acquitted, without this being due to him being irresponsible on account of mental illness. Compensation is awarded for economical damage and for damage for pain and suffering, disruption or destruction of profession and other circumstances. Even if the abovementioned conditions for awarding compensation are not met, compensation can be awarded if the deprivation of liberty that has taken place during the proceedings is not proportional to the result of the prosecution, or if it is deemed reasonable for other reasons. Compensation can be reduced or denied if the accused has caused the measures himself.

## *XI. Compensation to victims of violations of the Criminal Code*

The Danish state awards compensation and damages for personal injury inflicted by violations of the Criminal Code where any such violation is committed within the Danish territory. Please find enclosed in English a copy of the Consolidated Act No. 688 of 28 June 2004 on state compensation to victims of crime.

## *XII. Immunity*

The competence of a state to exercise jurisdiction within its own territory is limited by inter alia the rules of international law concerning immunity.

In Denmark the rules concerning immunity are not regulated by means of explicit legislation. Instead Section 12 of the Danish Criminal Act provides that the application of the provisions in the Criminal Act shall be subject to the applicable rules of international law. This implies, that Denmark in accordance with her international law obligations cannot

take legal proceedings against criminal activity committed by a person or an entity that enjoys immunity.

In accordance with the Vienna Convention of 1962 on Diplomatic Relations, diplomatic agents enjoy immunity from the criminal jurisdiction of the receiving state. Moreover, Heads of States and other persons holding special positions of trust within a State enjoys immunity in accordance with customary international law. As a consequence of her international law obligations, Denmark would not under the Danish Criminal Act be able to prosecute a person, which enjoys immunity.

If a person, who does not enjoy immunity, commits an offence within the territory of Denmark he would be subject to the rules of the Danish Criminal Act, which as explained above contains rules that *inter alia* makes it an offence to deprive others of their liberty.

## *XIII. Unlawful deprivation of liberty during the period from 1 January 2002 until the present*

The Secretary General has requested an explanation as to whether, in the period running from 1 January 2002 until the present, any public official or other person acting in an official capacity has been involved in any manner – whether by action or omission – in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency.

The Danish Government has no knowledge of any such cases of unlawful deprivation of liberty.

## *XIV. Official investigation*

Regarding the request for providing information on whether any official investigation is under way and/or any completed investigations, the Danish Government has not instigated an official investigation.

This decision should be seen in strict connection with the fact that all relevant information has already been offered by the Danish Government during several meetings in the Foreign Affairs Committee of the Parliament, Parliamentary debates and through the written answers to the large amount of Parliamentary questions that have been posed on this matter.

## Part 93b
## Consideration of complaints concerning police officers

**Section 1019.**-*(1)* Regional Public Prosecutors shall consider complaints of the conduct of police officers in service (complaints of conduct).

*(2)* The National Commissioner of Police shall provide assistance for the inquiry to the Regional Public Prosecutors upon request.

*(3)* The police may, on its own initiative, carry out urgent inquiry measures. The police shall notify the relevant Regional Public Prosecutor of such inquiry measures as soon as possible.

**Section 1019a.**-*(1)* Complaints must be filed with the relevant Regional Public Prosecutor. Any complaint of abuse of police authority during criminal proceedings can also be made orally to the court records during the criminal proceedings.

*(2)* The Regional Public Prosecutor may refuse to consider a complaint if filed more than six months after the occurrence of the matter complained of.

**Section 1019b.** The person complained of (the respondent) must receive a presentation of facts and have an opportunity to make a statement about such presentation. The respondent is not obliged to make a statement about the presentation.

**Section 1019c.** The respondent has the right to appear with a legal assistant. Section 23 of the Public Employees Act shall apply correspondingly to the reimbursement of fees payable by the respondent to his legal assistant.

**Section 1019d.**-*(1)* The respondent is not obliged to give evidence to the Regional Public Prosecutor if it is presumed that the respondent will incur criminal or disciplinary liability thereby.

*(2)* The Regional Public Prosecutor shall advise the respondent on the provision of subsection (1) hereof and on the provisions of section 1019b, section 1019c and section 1019i(1)(ii). Such advice must be given as soon as possible and prior to the first interrogation of the respondent. It must appear from the report that the respondent has received due advice.

**Section 1019e.**-*(1)* If evidence is given in court, cf. section 1019f, the court shall assign counsel to the complainant and the respondent.

*(2)* When deemed appropriate in other cases, the court may, at the request of the complainant or the respondent, assign counsel to the person in question. The Regional Public Prosecutor shall advise the person in question on his right to request assignment of counsel and see to it that such request is brought before the court. Section 1019f(2) shall apply correspondingly. Such advice must be given as soon as possible and prior to the first interrogation of the person in question. It must appear from the report that the person in question has received due advice.

*(3)* Counsel shall be assigned at no expense to the person in question.

*(4)* Copies of the material procured by the Regional Public Prosecutor in connection with the inquiry must be sent to counsel on a regular basis. Counsel may not hand over the material received to his client or to others without the consent of the Regional Public Prosecutor.

*(5)* Counsel is entitled to attend interrogations of his client both with the Regional Public Prosecutor and in court and has the right to ask additional questions of his client. Counsel must be notified of the time of interrogations and court hearings.

**Section 1019f.**-*(1)* The Regional Public Prosecutor may decide that evidence shall be given in court.

*(2)* If the complaint concerns abuse of police authority during the criminal proceedings, or during enforcement of a decision made under criminal law, evidence must be given before the district court before which the criminal proceedings are being or were being conducted or are expected to be brought. In other cases evidence must be given before the district court of the district in which the matter complained of occurred.

**Section 1019g.**-*(1)* The Regional Public Prosecutor shall appear in court hearings concerning the case.

*(2)* To the extent possible, the respondent must be notified of scheduled court hearings and have an opportunity to be present.

*(3)* The respondent is not obliged to give evidence if it is presumed that the respondent will incur criminal or disciplinary liability thereby. The court shall advise the respondent thereof.

*(4)* The case shall be tried under criminal procedure without the assistance of lay judges.

**Section 1019h.**-*(1)* The Director of Public Prosecutions shall hear appeals of decisions made by the Regional Public Prosecutors concerning complaints of conduct. The decision of the Director of Public Prosecutions on an appeal cannot be appealed to the Minister of Justice.

*(2)* The time limit for appealing decisions on complaints of conduct is four weeks after the complainant has received notification of the decision. If the appeal is lodged after expiry of this time limit, the appeal must be heard if the failure to observe the time limit may be considered excusable.

*(3)* The provisions of subsections (1) and (2) hereof shall apply correspondingly to decisions on access to documents under the Public Administration Act and the Freedom of Information Act.

**Section 1019i.**-*(1)* Any consideration of a complaint of conduct will be discontinued if:-

(i) there is a basis for bringing a provisional charge against the respondent;

(ii) the respondent is suspected of a criminal offence and demands a criminal trial of the complaint; or

(iii) it is decided to examine the complaint under the rules of the Commissions of Inquiry Act.

*(2)* In the cases referred to in subsection (1)(i) and (ii) hereof, the Regional Public Prosecutor shall conduct the criminal proceedings concerning the complaint, cf. Part 93c. Consideration of the complaint of conduct will be resumed if no charge is brought or no person is convicted.

**Section 1019j.**-*(1)* The Regional Public Prosecutor shall notify the relevant Chief Constable and the National Commissioner of Police when consideration of a complaint of conduct is commenced. The Regional Public Prosecutor shall also notify the relevant Chief Constable and the National Commissioner of Police of decisions on complaints of conduct.

*(2)* No disciplinary investigation shall be commenced before the complaint of conduct is closed.

*(3)* The provision of subsection (2) hereof does prevent the person in question from being suspended or temporarily transferred to other work under the general rules of the service.

**Section 1019k.** On his own initiative, the Regional Public Prosecutor may initiate an inquiry under the rules of this Part.

**Section 1019l.** The Minister of Justice may lay down detailed rules on the consideration of complaints of conduct.

**Section 1019m.** The Minister of Justice may decide that an inquiry is not to be carried out according to the rules of this Part if grounds of national security or foreign powers so require.

## Part 93c
## Criminal cases against police officers

**Section 1020.** Informations on criminal offences committed by police officers while on duty must be laid with the relevant Regional Public Prosecutor.

**Section 1020a.**-*(1)* The Regional Public Prosecutors shall institute investigations upon an information laid or on his own initiative when it may reasonably be presumed that police officers while on duty have committed a criminal offence subject to public prosecution.

*(2)* The Regional Public Prosecutors shall also initiate an investigation when a person has died or been seriously injured as a consequence of police intervention or while in police custody. The provisions of section 1019j shall apply correspondingly.

**Section 1020b.**-*(1)* When considering the cases referred to in sections 1020 and 1020a, the Regional Public Prosecutors may exercise the powers otherwise granted to the police.

*(2)* The National Commissioner of Police shall provide assistance for the investigation to the Regional Public Prosecutors upon request.

*(3)* The police may, on its own initiative, carry out urgent investigative measures. The police shall notify the relevant Regional Public Prosecutor of such investigative measures as soon as possible.

**Section 1020c.**-*(1)* The Regional Public Prosecutors are authorised to effect public prosecution in the cases referred to in sections 1020 and 1020a, unless under this Act or rules laid down pursuant to this Act such powers are granted to the Director of Public Prosecutions or the Minister of Justice. The prosecuting authority is granted power to withdraw charges.

*(2)* The Regional Public Prosecutors shall conduct the cases referred to in sections 1020 and 1020a before the district courts, the Maritime and Commercial Court and the High Courts.

**Section 1020d.** The court shall assign counsel for the defence when deemed appropriate, or when it follows from the provisions of Part 66.

**Section 1020e.** The court shall assign a victim advocate when deemed appropriate, or when it follows from the provisions of Part 66a.

*(2)* The victim advocate is entitled to inspect the material referred to in the second sentence of section 741c(2), irrespective of whether a charge has been brought.

*(3)* The provisions of Part 66a shall otherwise apply correspondingly.

**Section 1020f.** The Director of Public Prosecutions may decide that criminal proceedings comprising a plurality of counts or persons charged shall be conducted in their entirety by the Regional Public Prosecutor under the rules of this Part if such procedure is required due to one of the counts or one of the persons charged.

**Section 1020g.** The provisions of this Act governing criminal proceedings shall otherwise apply correspondingly.

**Section 1020h.** The Minister of Justice may lay down detailed rules on proceedings in the cases mentioned in sections 1020 and 1020a.

**Section 1020i.** The Minister of Justice may decide that a case is not to be considered according to the rules of this Part if grounds of national security or foreign powers so require.

## Part 93d
## Police complaints boards

**Section 1021.**-*(1)* A police complaints board consists of an attorney as chairman and two lay persons appointed by the Minister of Justice for a period of four years reckoned from the first day of a month of January. Members can be re-appointed once.

*(2)* Members of police complaints boards may continue the consideration of a pending case after their period of office, provided that it is deemed appropriate due to considerations of efficient exploitation of board resources and it is anticipated that the complaint will be decided within a short period.

*(3)* The attorney shall be appointed upon nomination by the Council of the Danish Bar and Law Society, four persons being nominated for each office, two of whom must be female and two male.

*(4)* The lay persons shall be appointed upon nomination by the county councils, Copenhagen City Council, Frederiksberg City Council and Bornholm Regional Council, each council nominating six persons residing in the relevant county or municipality, three of whom must be female and three male.

*(5)* The lay persons cannot be members of a local or county council or of Parliament while members of a police complaints board. The provision of section 70 shall otherwise apply correspondingly.

*(6)* The attorney shall carry on business and the lay persons shall reside in the district of the relevant police complaints board.

*(7)* A person turning 70 years of age within the period referred to in the first sentence of subsection (1) hereof cannot be appointed member.

*(8)* The Minister of Justice shall appoint a substitute for each member among the persons nominated pursuant to subsections (3) and (4) hereof and under the same rules as the member in question.

*(9)* The Minister of Justice shall lay down detailed rules on the number of police complaints boards and the distribution of complaints among them, and on the nomination of members and their remuneration.

**Section 1021a.**-*(1)* The Regional Public Prosecutor shall promptly notify the police complaints board of complaints and informations to be considered under Part 93b or Part 93c.

*(2)* The police complaints board may indicate to the Regional Public Prosecutor that, according to the board, an inquiry should be commenced under the rules of Part 93b or investigation under the rules of Part 93c.

**Section 1021b.**-*(1)* Copies of the material procured by the Regional Public Prosecutor in connection with the inquiry of the cases referred to in Part 93b and the investigation of cases referred to in Part 93c must be sent to the police complaints board on a regular basis. The police complaints board may not hand over the material received to anybody else without the consent of the Regional Public Prosecutor.

*(2)* The Regional Public Prosecutor shall otherwise inform the police complaints board on a regular basis of all material decisions made in connection with the inquiry or investigation.

**Section 1021c.**-*(1)* The police complaints board may request the Regional Public Prosecutor to make specific additional inquiry or investigative measures.

*(2)* If the person charged or the Regional Public Prosecutor in a case that is being considered under Part 93c objects to the board's request for additional investigative measures, such request must be submitted to the court for decision. Section 694(2) shall apply correspondingly. Upon request, court decisions shall be made by order.

**Section 1021d.** The Regional Public Prosecutor shall prepare a report to the police complaints board on the outcome of the inquiry under Part 93b or the investigation under Part 93c. The report must contain a review of the course of the inquiry or investigation and the actual circumstances of importance to the decision in the case as well as an assessment of the weight of the evidence brought forth. The report must state how the case should be decided according to the Regional Public Prosecutor.

**Section 1021e.**-*(1)* The police complaints board shall inform the Regional Public Prosecutor how cases conducted under Part 93b or Part 93c should be decided according to the Board.

*(2)* The decision must state whether it is in conformity with the opinion of the police complaints board.

*(3)* The decision must be forwarded to the person who filed the complaint or laid the information.

**Section 1021f.**-*(1)* The police complaints board can appeal the Regional Public Prosecutor's decision to the Director of Public Prosecutions. The decision of the Director of Public Prosecutions on an appeal cannot be appealed to the Minister of Justice.

*(2)* The time limit for appeals under subsection (1) hereof is four weeks after the police complaints board has received notification of the decision. If the appeal is lodged after expiry of this time limit, the appeal must be heard if the failure to observe the time limit may be considered excusable.

**Section 1021g.** The Minister of Justice may lay down detailed rules on the activities of the police complaints boards, including of the interaction between the Regional Public Prosecutors and the police complaints boards.

**Section 1021h.** The Director of Public Prosecutions shall prepare an annual report to Parliament and the Minister of Justice on the consideration of the cases referred to in Part 93b and Part 93c. This report must be made public.

# State Compensation to Victims of Crime (Consolidation) Act No. 688 of 28 June 2004

The following is a consolidation of the State Compensation to Victims of Crime Act, cf. Consolidation Act No. 470 of 1 November 1985 as amended by section 3 of Act No. 366 of 18 May 1994, section 16 of Act No. 980 of 17 December 1997, section 2 of Act No. 463 of 7 June 2001 and section 2 of Act No. 35 of 21 January 2003.

## Part 1

*Personal injury*

**1.** *(1)* The State awards compensation and damages for personal injury inflicted by violation of the Criminal Code where any such violation is committed within Danish territory. The same applies to personal injury that occurs in connection with assistance to the police during arrest or in connection with acts done for the purpose of lawful arrest by a private citizen or prevention of criminal offences.
*(2)* Compensation is further awarded for damage to clothing and other usual personal property, including minor amounts in cash that the victim was carrying when the personal injury was inflicted.
*(3)* In special situations, compensation may be awarded for injury inflicted by acts committed outside Danish territory if the victim is a Danish resident or a Danish national or at the time of the offence in the service of a Danish foreign mission abroad. Compensation may also be awarded where any such acts are committed against a victim residing in Denmark, but pursuing his trade or profession outside Danish territory.

**2.** If the victim dies, compensation is awarded under sections 12 to 14 a and section 26 a of the Liability in Damages Act.

## Part 2

*Property damage*

**3.** *(1)* The State awards compensation for property damage caused by violation of the Criminal Code within Danish territory where such violation is committed by persons:

(i) in preventive detention in an institution of the Prison and Probation Service;
(ii) arrested for the purpose of being imprisoned or in custody;
(iii) transferred to an institution outside the Prison and Probation Service pursuant to section 49(2) of the Criminal Code;
(iv) admitted to a residential institution for children and young people under the Act on Social Services;
(v) admitted to a prolonged stay at an accommodation facility suitable for long-term accommodation of persons with substantial and permanent impairment of their physical or mental function due to mental retardation, cf. section 92 of the Act on Social Services; or
(vi) hospitalised or detained against their own will at a hospital or another institution referred to in section 1 of the Act on Hospitalisation of Mentally Ill Persons.

*(2)* Compensation is awarded for damage caused within the bounds of the institution or during authorised stays outside the bounds, or in case a person fails to return from leave or escapes.
*(3)* The Minister of Justice may lay down rules stipulating that compensation is awarded for damage caused by persons who reside voluntarily at an institution of the Prison and Probation Service if any such damage is caused within the bounds of the institution or in its immediate vicinity.
*(4)* Upon negotiation with the relevant minister, the Minister of Justice may lay down rules stipulating that compensation is awarded for damage caused by persons in foster care.

**4.** The Minister of Justice may lay down rules stipulating that the State may pay compensation for any such damage as is mentioned in section 3(1) and caused by persons who have escaped from an institution in Finland, Iceland, Norway or Sweden corresponding to the institutions referred to in section 3(1).

**5.** No compensation is awarded to public authorities or institutions.

Part 3

*Common provisions, etc.*

**6.** Compensation is awarded even if the offender is:

(i) unknown or nowhere to be found;

(ii) under 15 years; or

(iii) of unsound mind.

**6 a.** Decisions on compensation under this Act are subject to the general rules of Danish law on the liability of offenders, including the rules on reduction or lapse of compensation due to the victim's or the deceased's contribution to the injury or damage or acceptance of the risk of injury or damage.

**7.** *(1)* No compensation is awarded where the injury or damage is compensated by the offender or covered by insurance moneys or any other payment in the nature of genuine damages.
*(2)* No compensation is awarded to cover any claims for indemnity against the offender.

**8.** Compensation under section 3 may be reduced or lapse if the victim has failed to take ordinary security measures, such as taking out insurance.

**9.** *(1)* The Minister of Justice may lay down rules to the effect that claims below a certain threshold will not be compensated.
*(2)* Upon negotiation with the relevant minister, the Minister of Justice may lay down rules stipulating that compensation is awarded under section 3(1) to (3) for damage caused in the immediate vicinity of an institution even though the damage caused amounts to less than the amount fixed under subsection (1) hereof.

**9 a.** Compensation for property damage, cf. sections 3 and 4, shall not exceed DKK 50,000. This amount is adjusted pursuant to the rules in section 15 of the Act on Liability in Damages.

**10.** *(1)* It is a condition for payment of compensation that the offence was reported to the police without undue delay and that the victim raises a claim for compensation during any criminal proceedings against the offender.
*(2)* The rules of subsection (1) hereof may be deviated from if circumstances make it appropriate.
*(3)* The police shall counsel the victim about his right to obtain compensation under this Act.

**11.** *(1)* Any decision on compensation is made by a Criminal Injuries Compensation Board to be set up by the Minister of Justice.
*(2)* The Board consists of a chairman, who must be a judge, and two other members, one of whom must be appointed upon nomination by the Minister for Social Affairs and the other upon nomination by the Council of the Danish Bar and Law Society. Members and their substitutes are appointed for a term of four years.
*(3)* The Minister of Justice shall lay down the rules of procedure for the Board and the rules on submission of applications.

**11 a.** *(1)* If the victim's claim for compensation and damages from the offender has been decided by judgment, the compensation to be paid under this Act is the amount fixed by the judgment, but cf. sections 7 to 10.
*(2)* Subsection (1) hereof does not apply in the event that the offender is deemed to have accepted the claim or the amount claimed during the trial.
*(3)* Notwithstanding subsection (1) hereof, the Board may award a larger compensation or higher damages than the amount fixed in the judgment if particular circumstances make it appropriate.

**11 b.** If the victim has submitted an application to the Board for compensation under this Act and the victim's claim for compensation and damages from the offender is pending before the court or has been decided by judgment, cf. clause 11 a (1), the Board may decide, if so authorised by the Minister of Justice, to intervene in the proceedings or to appeal the judgment to a superior court pursuant to the same rules as those applicable to the victim. The Board is allowed to appeal the judgment for a period of eight weeks reckoned from the date of with the Board was notified of the judgment.

**12.** Upon negotiation with the relevant minister, the Minister of Justice may lay down rules stipulating that a decision on compensation under section 3(1) to (3) for damage caused in the immediate vicinity of the institution, but amounting to less than a specific amount, may be made by the institution in question.
*(2)* Section 13, the first sentence of section 14(1) and section 14(3) shall apply correspondingly to applications considered by the institution.

*(3)* A decision made by the institution may be appealed to the Board by the victim and the offender.

**13.** The Board may not consider any applications submitted more than two years after the offence, except in exceptional circumstances.

**14.** *(1)* The Board may invite the applicant to provide further evidence, including to appear before the Board in person, to submit to medical examination in case of personal injury, and, if required, to submit to observation and treatment, possibly by hospitalisation. The Board may also request details deemed necessary from other persons with knowledge of such details. To this end the Board may procure case notes from hospitals.
*(2)* The Board may demand an examination in court.
*(3)* If the applicant fails to provide the evidence requested by the Board within a certain time-limit, the Board may decide on the application on the basis of the information available.

**15.** *(1)* Costs pertaining to Board proceedings, inclusive of costs pertaining to the examinations referred to in section 14(1), are payable by the State.
*(2)* In special cases, the Board may decide that costs defrayed by the applicant in connection with the case must be reimbursed in full or in part.

**16.** The Board makes the final administrative decision on cases referred to the Board.

**17.** The State will be subrogated to the victim's claim against the offender to the extent that it pays compensation.

**18.** *(1)* If the applicant has given incorrect information or failed to disclose particulars of relevance to the compensation, repayment of any amount wrongfully received may be claimed.
*(2)* Repayment may also be claimed if the offender subsequently compensates the injury or damage, or the injury or damage is covered by insurance moneys or any other payment in the nature of genuine damages.

## Part 4
*Entry into force*

**19.** *(1)* This Act enters into force on 1 October 1976.
*(2)* This Act does not extend to injury inflicted and damage caused by offences prior to its effective date.

**20.** This Act does not apply to the Faroe Islands and Greenland, but may, by Royal Decree, be extended to the Faroe Islands and Greenland, subject to such adaptation as may be required by circumstances particular to those parts of the Kingdom of Denmark.

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*Ministry of Justice, 28 June 2004*
Lene Espersen

/Anne Kristine Axelsson

Lov om ændring af retsplejeloven (Behandlingen af større straffesager om økonomisk kriminalitet, adgang til teleoplysning i visse børsstrafferetlige sager m.v.)

LOV nr 1398 af 21/12/2005 (Gældende)

Senere ændringer til forskriften

Forskriftens fulde tekst

# Lov om ændring af retsplejeloven [1)]

(Behandlingen af større straffesager om økonomisk kriminalitet, adgang til teleoplysning i visse børsstrafferetlige sager m.v.)

VI MARGRETHE DEN ANDEN, af Guds Nåde Danmarks Dronning, gør vitterligt:
Folketinget har vedtaget og Vi ved Vort samtykke stadfæstet følgende lov:

## § 1

I lov om rettens pleje, jf. lovbekendtgørelse nr. 910 af 27. september 2005, som ændret senest ved § 1 i lov nr. 554 af 24. juni 2005, foretages følgende ændringer:

**1.** I *§ 18* indsættes som *stk. 3:*

»*Stk. 3.* I byretssager om økonomisk kriminalitet, der forventes at have en længere varighed, kan landsrettens præsident efter indstilling fra dommeren bestemme, at retten sammensættes af 2 dommere og 3 domsmænd. For så vidt angår Københavns Byret og retterne i Århus, Odense, Ålborg og Roskilde, træffes bestemmelsen af rettens præsident. Såfremt byretten er en af de i § 17, stk. 1 eller 4, nævnte retter, beskikkes en af dommerne efter § 45. Som retsformand fungerer den dommer, der i øvrigt beklæder den pågældende ret, eller, hvis denne dommer ikke deltager i domsforhandlingen, den efter embedsalder ældste dommer, medmindre dommerne aftaler andet. Uden for domsforhandlingen kan en enkelt dommer handle på rettens vegne.«

**2.** I *§ 31 b, 1. pkt.,* indsættes efter »928 a, stk. 2 og 3,«: »eller er dokumenter undladt oplæst, jf. § 927 c,«.

**3.** I *§ 41 c* indsættes efter stk. 1 som nyt stykke:

»*Stk. 2.* Undlades oplæsning af dokumenter, der indgår i domsforhandlingen, jf. § 927 c, kan disse gennemses i retten den pågældende dag og en uge frem.«

Stk. 2 og 3 bliver herefter stk. 3 og 4.

**4.** I *§ 214, stk. 3,* ændres »Såfremt en dommer, en nævning eller en domsmand i en nævningesag eller i en domsmandssag ved landsret« til: »Såfremt en dommer, en nævning eller en domsmand i en nævningesag, i en domsmandssag ved landsret eller i en sag, der behandles efter § 18, stk. 3,«.

**5.** I *§ 781, stk. 3, 2. pkt.,* indsættes efter »telekommunikationstjeneste«: », eller såfremt mistanken angår en overtrædelse af lov om værdipapirhandel m.v. § 35, stk. 1, § 36 eller § 39, stk. 1«.

**6.** I *§ 840* indsættes efter stk. 1 som nyt stykke:

»*Stk. 2.* En part kan anmode retten om at beramme sagen, når anklageskrift er indleveret til retten.«

Stk. 2-4 bliver herefter stk. 3-5.

**7.** I *§ 877* indsættes som *stk. 4:*

»*Stk. 4.* Et vidnes forklaring til politirapport kan herudover efter rettens bestemmelse benyttes som bevismiddel, hvis parterne er enige herom og vidnet ville være forpligtet til at afgive forklaring, hvis

pågældende var blevet indkaldt som vidne i retten.«

**8.** Efter § 927 b indsættes:

»**§ 927 c.** Retten kan efter høring af parterne beslutte, at oplæsning af omfattende sagkyndige erklæringer eller andre dokumenter i sagen kan undlades. Retsformanden skal i så fald sikre, at rettens medlemmer gennemlæser disse dokumenter. Det skal fremgå af retsbogen, hvilke af de fremlagte bilag der er behandlet efter denne bestemmelse. Retten kan bestemme, at der helt eller delvis skal gives en mundtlig sammenfatning af dokumenter, hvor oplæsning er undladt, i retten.«

**9.** Efter § 928 b indsættes:

»**§ 928 c.** Ved afstemninger har hver dommer og hver domsmand én stemme. I sager, der behandles efter § 18, stk. 3, har, hvis undtagelsesvis kun 1 dommer medvirker, denne 2 stemmer. På samme måde har hver domsmand 1½ stemme, hvis der undtagelsesvis kun medvirker 2 domsmænd«.

**10.** I *§ 965 d* indsættes efter »927 b«: », 927 c«.

**11.** I *§ 968, stk. 2,* indsættes efter »når og for så vidt beslutningen«: »angår sagens berammelse eller«.

**§ 2**

*Stk. 1.* Loven træder i kraft den 1. januar 2006.

*Stk. 2.* Lovens § 1, nr. 1, har virkning for sager, hvor anklageskriftet indgives efter lovens ikrafttræden.

*Givet på Christiansborg Slot, den 21. december 2005*

Under Vor Kongelige Hånd og Segl

MARGRETHE R.

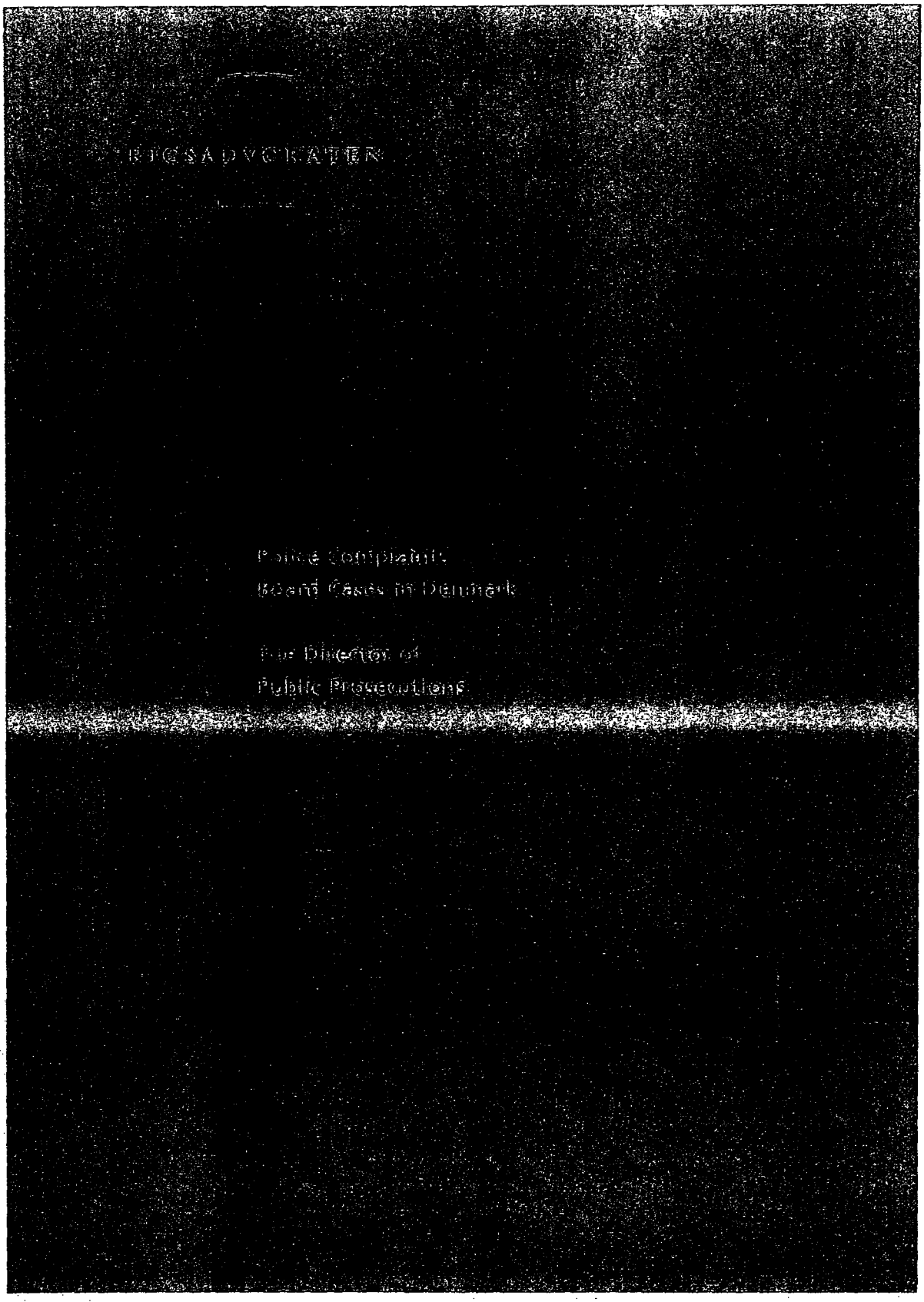
/Lene Espersen

Officielle noter

[1] Loven indeholder bestemmelser, der gennemfører dele af Europa-Parlamentets og Rådets direktiv 2003/6/EF af 28. januar 2003 om insiderhandel og kursmanipulation (markedsmisbrug) (EF-Tidende 2003 nr. L 96, side 16).

Links til EF direktiver, jf. note 1

Direktiv 2003/6/EF Celex no. 32003L0006


RIGSADVOKATEN
Police Complaints
Board Cases in Denmark
The Director of
Public Prosecutions

# Police Complaints Board Cases in Denmark

The Director of
Public Prosecutions

English summary of the annual report
to the Danish Parliament and
the Minister of Justice about
Police Complaints Board cases, 2002.

You can view the Danish version on the
Director of Public Prosecutions homepage
http://www.rigsadvokaten.dk

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## CONTENTS

# Section 1.
# The Tasks and Organization of the Police and Prosecution Service

## 1.1. The Police

In accordance with Section 108 of the Danish Administration of Justice Act, it is the responsibility of the police to maintain law and order, public safety and security, to ensure that national laws and regulations are upheld, and to do what is necessary to prevent, investigate and prosecute crime.



Denmark is divided into 54 police districts plus the districts in Greenland and the Faroe Islands. The Commissioner of the Copenhagen Police heads the district in the country's capital city, while Chiefs of Police command the other districts.

In accordance with Section 109(1) of the Danish Administration of Justice Act, the Minister of Justice is the highest-ranking superior of the police. The Minister exercises his powers through the National Commissioner of Police, the Commissioner of the Copenhagen Police and the Chiefs of Police.

In accordance with Section 110 of the Danish Administration of Justice Act, the administration of the police's human resources, finances etc. is under the auspices of the National Commissioner of Police. The National Commissioner of Police then supervises the usual way that the Chiefs of Police (the Commissioner of the Copenhagen Police) plan the work of the police and draws up general guidelines for such work.

## 1.2. The Prosecution Service

The tasks and organization of the Prosecution Service are set out in Part 10 (Sections 95-107) of the Danish Administration of Justice Act. The Prosecution Service is made up of the Director of Public Prosecutions, the Public Prosecutors and the Chiefs of Police.

It is the task of the Prosecution Service in collaboration with the po-

lice to prosecute crimes in pursuance of the rules of the Danish Administration of Justice Act. The overall objectives of this task are described in Section 96(2) of the Act, which states that the Prosecution Service shall proceed with every case at the speed permitted by the nature of the case. The Prosecution Service shall thereby ensure that those liable to punishment are prosecuted and that the innocent are not prosecuted ('the principle of objectivity').

The Prosecution Service is governed by the Minister of Justice, who supervises the prosecutors. The Minister of Justice may also make rules for how the prosecutors carry out their tasks, and the Minister may also instruct them to take on specific cases. The Minister of Justice also deals with complaints about decisions made by the Director of Public Prosecutions in the 1st instance.



## 1.3. The Director of Public Prosecutions

The tasks of the Director of Public Prosecutions are set out in Section 99 of the Danish Administration of Justice Act. In accordance with this provision, the Director of Public Prosecutions conducts criminal cases before the Supreme Court and takes part in the special court of final appeal. The Director of Public Prosecutions is superior to the other prosecutors and supervises them.

The Director of Public Prosecutions also decides how the prosecutors are to carry out their work. These general instructions are published in Instructions from the Director of Public Prosecutions [Rigsadvokatens Meddelser], among others. For example, in Instruction No. 3/2002, the Director of Public Prosecutions set detailed guidelines on the authority to prosecute and rules on submission of cases for approval etc. for the Prosecution Service.

The Director of Public Prosecutions may also instruct the prosecutors to take on specific cases.

The Director of Public Prosecutions also deals with complaints about decisions made by the Public Prosecutors in the 1st instance.

## 1.4. The Public Prosecutors

The tasks of the Public Prosecutors are laid out in Section 101 of the Danish Administration of Justice Act, which states that the Public Prosecutors conduct criminal cases before the high courts, including appeals and jury trials and decisions on the question of appealing city court decisions. The Public Prosecutors also supervise the handling of criminal cases by the Chiefs of Police (Commissioner of the Copenhagen Police) and handle complaints about decisions made by the Chiefs of Police (Commissioner of the Copenhagen Police) regarding prosecution.

The Public Prosecutors can furthermore make decisions on how the Chiefs of Police (Commissioner of the Copenhagen Police) are to carry out their duties as prosecutors. They may also give instructions on handling specific cases, including instructing the Chiefs of Police (Commissioner of the Copenhagen Police) to start, continue, abstain from or stop the prosecution in a specific case.



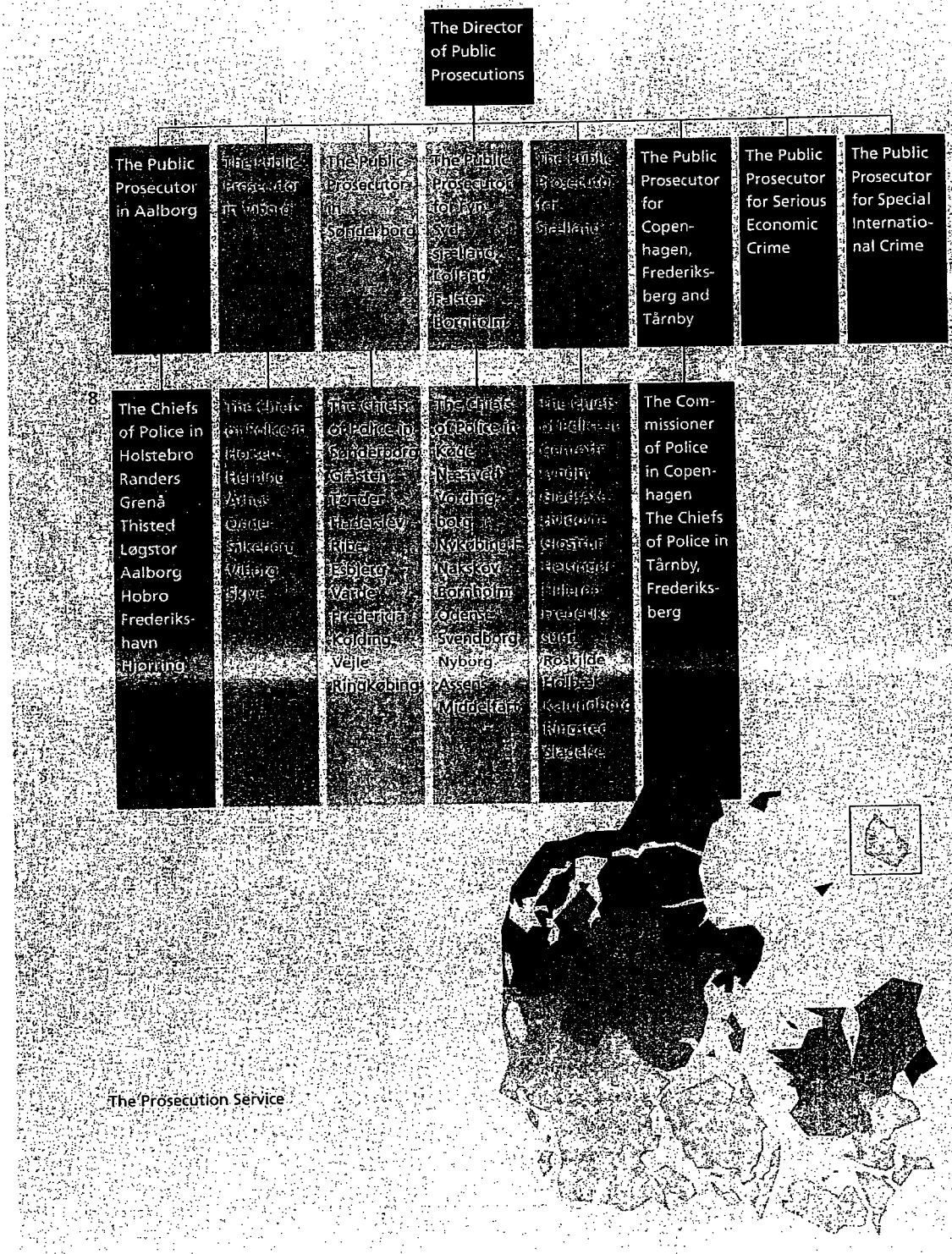
The Public Prosecutors also deal with cases involving compensation with regard to criminal prosecutions (Part 93a of the Danish Administration of Justice Act) and supervise the extent of criminal measures to which psychologically deviate criminals have been sentenced, and thus take a position on the issue of off-ground privileges etc. for persons placed in hospital or institution by criminal justice decisions, see Statutory Order no. 680 of 10 July 2000 from the Ministry of Justice.

Finally the Public Prosecutors handle complaints about the police in the 1st instance (Part 93b-93d of the Danish Administration of Justice Act) covered by this report.

The tasks of the Public Prosecutors are divided among six Regional Public Prosecutors, the Public Prosecutor for Serious Economic Crime and the Chief Prosecutor for Special International Crime.

## 1.5. The Chiefs of Police (the Commissioner of the Copenhagen Police)

The tasks of the Chiefs of Police and Commissioner of the Copenhagen Police as Public Prosecutors are set out in Section 104 of the Danish Administration of Justice Act. The Chiefs of Police and the prosecutors employed by them function as the Prosecution Service before the city






The Prosecution Service

courts. Thus in addition to heading up the police as described in Section 9.1.2., the Chiefs of Police are responsible for investigations in the police districts and the operations of the Prosecution Service.

The ordinary authority to prosecute in criminal cases was changed by the Act on the Structure of the Prosecution Service (L 385/1991). As a starting point, prosecution is now under the auspices of the Chiefs of Police.

However, in accordance with the provisions of the Danish Administration of Justice Act and the Prosecution Service rules on submission of cases for approval, including Instruction No. 3/2002 from the Director of Public Prosecutions, the Chief of Police must submit a number of cases to the Public Prosecutor for approval before charges are brought etc.



This could apply, for example, if there could be any question of whether the Chief of Police would be disqualified to act in such cases, or if members of the police force have been wronged while on duty, or if the accused has complained that the police have taken special investigative steps. Naturally, groundless complaints about investigative steps approved by the court are exempted, including cases against psychologically deviate criminals as well as certain ad hoc Acts, for example, cases where there is disagreement between the Chief of Police and the special authority concerning the formulation of the charges for the Public Prosecutor.

The change of competence to act was coupled with an expansion of the duty of the Public Prosecutor to exercise ordinary control and supervision of planning and case handling in the police districts. Giving the Public Prosecutors the option either on their own initiative or following a complaint to take up decisions for review thus helps ensure uniform case handling.

## 2. INTRODUCTION TO THE RULES FOR AND PROCEDURERS IN A POLICE COMPLAINTS BOARD CASE

The body of rules for processing complaints against police personnel, etc., consists of three parts in the Danish Administration of Justice Act. Part 93 b and Part 93 c regulate processing of complaints against police officers' conduct and processing of criminal proceedings against police officers, while Part 93 d concerns the Police Complaints Boards.

The scheme for processing complaints against police officers entered into force on 1 January 1996. A similar body of rules for processing com-
10 plaints and criminal cases regarding police personnel in Greenland entered into force on 1 January 2000. The body of rules does not for the time being extend to the Faroe Islands.

## 3. MOST IMPORTANT ELEMENTS OF THE SCHEME

The most important element of the scheme is that the Regional Public Prosecutors will deal with complaints regarding the conduct of police officers, investigate criminal cases involving police officers and decide which charge(s), if any, should be brought. The rules apply to police personnel with police authority, i.e. police-trained personnel and the police attorneys. Clerical staff and civilian employees are not comprised by the scheme.

The rules apply only to incidents that have occurred while a police officer is on duty. The decision of whether an incident has occurred while a police officer was on duty is based on a specific assessment. In the memorandum to the bill it is added that due to the special nature of police service, the concept would probably have to be interpreted very broadly.

Basically, the Regional Public Prosecutor will handle all aspects of inquiries and investigation, so that police personnel will only be involved in the consideration of these cases to a very limited extent. However, the police will handle any urgent matters concerning inquiries and investigation. In addition, the Regional Public Prosecutors may to certain extent request assistance with their investigation, etc., from the Serious Crime Squad under the National Commissioner of Police. Such external assistance in connection with an investigation may, however, only be

used as an exception and in accordance with strict instructions from the Regional Public Prosecutor.

Another important element is the introduction of Police Complaints Boards. A Police Complaints Board has been set up for each Regional Public Prosecutor.

The Board consists of one lawyer and two laymen, and it supervises the Regional Public Prosecutor's processing of cases comprised by the scheme. The Boards elect a national chairman and submit an annual report on their activities.

The scheme is limited to complaints about conduct and criminal proceedings involving police personnel. Not included in the scheme are thus complaints against decisions on merits and police action in connection with the processing of cases. Such complaints are not comprised by the jurisdiction of the Police Complaints Board.



A third element of the scheme is an extended access to assign a lawyer. This applies both to the complainant and the officer complained against in cases of complaints about conduct, and to the injured party and the police officer in criminal cases involving police personnel.

## 4. CASES COMPRISED BY THE POLICE COMPLAINTS BOARDS SCHEME

The following cases are comprised by the scheme: complaints about the conduct of police personnel, criminal proceedings involving police officers, and cases where the Regional Public Prosecutor initiates investigation if a person has died or has been seriously injured as a consequence of police interference, or while the subject was in police custody.

### 4.1. Complaints against conduct

The definition of a complaint against conduct as defined in the Ministry of Justice's guidelines of 18 January 1982 (concerning processing of complaint cases that are referred to the local boards concerning police activities) is maintained.

In the guidelines the Ministry of Justice describes the core area of processing of the local Boards as complaints against "violence and heavy-handed treatment in connection with arrest, disturbances, etc., abuse

of power, e.g. in connection with arrest and search, other incorrect procedures occurring in the line of duty, and impolite address or other incorrect conduct".

Cases regarding complaints against the conduct of police personnel are considered by the Regional Public Prosecutor following a complaint or at his own initiative, including on the basis of an opinion submitted by the Police Complaints Board. All involved parties shall be informed of the filing of the complaint.

It is, moreover, assumed in the memorandum to the bill "that the police's processing of minor complaints shall be maintained". In accor-
12 dance with this practice many minor complaints have been settled in a conversation between a superior police officer and the complainant. In this connection it is assumed that the police advise the complainant about the formal channel of complaint to the Regional Public Prosecutor and that a note is prepared about what has happened.

The note is submitted to the Regional Public Prosecutor, who, at his own initiative may institute a closer inquiry. The Regional Public Prosecutor shall, moreover, inform the Police Complaints Board about the note.

The Regional Public Prosecutor may dismiss a complaint against conduct without considering the merits of the case, for example, if the complaint is filed more that six months after the incident in question took place, or if the complaint is manifestly unfounded. The case shall be sub-mitted to Police Complaints Boards before the Regional Prosecutor makes his decision.

## 4.2. Criminal cases

The Regional Public Prosecutor shall initiate investigation acting on a complaint or at his own initiative, e.g. following an opinion submitted by the Police Complaints Board. An investigation shall be initiated if there is a reasonable assumption that while discharging his duties, a police officer has committed a criminal offence subject to public prosecution.

The purpose of the investigation is to clarify whether the conditions to impose criminal liability or other sanction under criminal law exist, to gather information for the purpose of making a decision in the case, and to prepare the case for court proceedings.

A case may be dismissed on its merits without instituting any proceedings if there is no reasonable assumption that a criminal offence subject to public prosecution has been committed. However, the case shall first be submitted to the Police Complaints Board.

### 4.3. Special rules concerning inquiries in pursuance of section 1020 a(2) of the Danish Administration of Justice Act

The Regional Public Prosecutor shall initiate an investigation if a person has died or has been seriously injured as a consequence of police interference, or while the subject was in police custody. Such investigations shall be initiated no matter whether any assumption exists that a criminal offence has been committed.



Although such an investigation is to be conducted in accordance with the rules of criminal procedure, the object is not merely to assess wheth-er there is a question of criminal or disciplinary liability, but to assess also if similar incidents can be prevented through changed procedures and rules, etc.

## 5. DESCRIPTION OF THE PROCEDURE IN A POLICE COMPLAINTS BOARD CASE

### 5.1. Start of a case

The Regional Public Prosecutor considers cases after a complaint or a report has been filed. The Regional Public Prosecutor may also consider a case at his own initiative, i.e. upon an advisory opinion from the Police Complaints Board. In certain situations an inquiry is mandatory.

The Police Complaints Board shall be notified of the case forthwith – i.a. without delay – and shall be kept informed about the progress of the inquiry or investigation.

The Regional Public Prosecutor shall besides notify the Chief of Police of a district, The National Commissioner, and in certain cases the Ministry of Justice as well. These authorities shall be kept up to date of all steps relevant to them.

If the Regional Public Prosecutor finds that the complaint is manifestly

unfounded or if it appears at the initial assessment that the complaint is not seriously meant, the Regional Public Prosecutor may decide not to initiate an inquiry or investigation. The Regional Public Prosecutor shall submit the question of dismissing the complaint to the Police Complaints Board before any decision is made.

## 5.2. The Inquiry/investigation

The Regional Public Prosecutor shall without delay inform the Police Complaints Board about complaints and reports filed in accordance with Part 93 b and 93 c of the Danish Administration of Justice Act.



When the processing form of a complaint is considered the complainant's wording of the complaint will generally be decisive for whether the case is to be processed as a complaint against conduct or as a criminal case. In case of doubt the Regional Public Prosecutor considers the set of rules to be applied in connection with the complaint.

It is not decisive for the Regional Public Prosecutor's decision on the set of rules that shall be applied that the Police Complaints Board had given an advisory opinion on this beforehand.

If, opposite the Regional Public Prosecutor, the Police Complaints Board finds that the case should be investigated as a criminal case, the Board may notify the Regional Public Prosecutor of this. It the Regional Public Prosecutor does not follow the opinion of the Police Complaints Board, the Board may appeal the decision to the Director of Public Prosecutions.

Usually, the parties will then be summoned for an interview at the Regional Public Prosecutor's office or in any other place deemed expedient by the Regional Public Prosecutor. It may e.g. be the town hall at the place where the incident complained against took place.

The Regional Public Prosecutor may also decide that instead statements shall be heard in court. As a point of departure, court hearings are held in public.

Where complaints against conduct and criminal cases are concerned, the Police Complaints Board may request the Regional Public Prosecutor to take certain additional inquiry and investigative steps.

In principle, the Police Complaints Board can at every stage of the case request the Regional Public Prosecutor to take certain additional inquiry and investigative steps.

If the Regional Public Prosecutor opposes to a request of the Police Complaints Board in a case regarding conduct, the Board can appeal the Regional Public Prosecutor's decision to the Director of Public Prosecutions. If in connection with the processing of a criminal case, the accused or the Regional Public Prosecutor opposes to the Police Complaints Board's request to take certain additional investigative steps, the issued is to be settled by the court.



## 5.3. The Regional Public Prosecutor's particulars of the case

In cases concerning complaints against police officers' conduct, the Regional Public Prosecutor shall prepare particulars on the basis of the information available. The respondent police officer shall receive a copy of the particulars before he or she is interviewed. The respondent police officer has no obligation to comment on the particulars.

Particulars will not be prepared in connection with criminal inquiries.

## 5.4. The case is submitted to the Board

The Regional Public Prosecutor shall prepare a report to the Police Complaints Board when the inquiry or the investigation is finished. The report shall include a review of the course of the case and the facts, an assessment of the evidence and an advisory opinion on the decision of the case. No report is made in cases that are found manifestly unfounded.

Furthermore, the Police Complaints Board shall be involved in the matter if after the Regional Public Prosecutor' decision, new information appears that may imply that the Regional Public Prosecutor's decision ought to be reassessed. This will be the case in particular if the information is of such essential importance to the case that there is a certain probability that the outcome of the case would have been different if the information had been available in connection with the

Regional Public Prosecutor's and the Police Complaints Board's original position on the case.

Where the new information is of such a nature that the Regional Public Prosecutor finds that there are grounds to reopen the processing of the case with submission of the matter to the Police Complaints Board, the Regional Public Prosecutor is to notify the Police Complaints Board only of the information.

## 5.5. The Police Complaints Board's Advisory Opinion

16 The Police Complaints Board then notifies the Regional Public Prosecutor on how it finds the case should be settled.

Where cases of complaints of conduct are concerned, the Police Complaints Board may indicate as its opinion that the Regional Public Prose-cutor should express regrets of the incident in question to the com-plainant, or that the complaint should be dismissed.

The complaint may be dismissed either after prior inquiry or based on the information available.

Where criminal cases are concerned, the Police Complaints Board may indicate as its opinion that an indictment should be issued or that charges should be dismissed. The Board may also indicate that prosecution should be withdrawn, that an initiated investigation should be closed, or that a complaint should be dismissed.

## 5.6. Settlement of a case

**5.6.1 Settlement of a case of complaint against conduct Dismissal**

The Regional Public Prosecutor dismisses the case if no information has been obtained to substantiate the complaint, or if the complaint is manifestly unfounded. The Regional Public Prosecutor notifies the parties of the case.

*The complainant succeeds in whole or in part in his claim*

The Regional Public Prosecutor's decision on a reasoned complaint or report filed may be to the effect that i.a. regrets of the incident are expressed to the complainant or that criticism is raised against the police officer(s) involved. This decision may be made in cases where an

inquiry was made into complaints of conduct as well as criminal cases where the Regional Public Prosecutor has found that there were no grounds for prosecution.

The respondent police officer will receive a copy of the Regional Public Prosecutor's decision, which may in certain cases form the basis for a disciplinary inquiry. The Regional Public Prosecutor does not make any recommendations on whether a disciplinary case should be instituted.

If there is any basis to bring charges or if there is a suspicion of a criminal offence and the officer in question demands criminal proceedings, the consideration of the complaint is terminated. A consideration of the complaint may be resumed if the police officer in question is not charged or is not convicted.



If the inquiry appears to be subject to faults of a general nature, the Regional Public Prosecutor will raise the question with the responsible authority.

*A complaint is withdrawn*

A case will normally be closed if the complaint is withdrawn. As an inquiry may also be initiated at the instance of the Regional Public Prosecutor, the processing of the complaint may, however, continue if the Regional Public Prosecutor deems that this is necessary.

*Other possibilities*

In certain cases the case may be transferred to be processed before a court of inquiry, etc.

**5.6.2. Settlement of criminal investigation Dismissal**

The Regional Public Prosecutor closes the investigation if no information has been obtained which gives reasonable grounds to assume that a criminal offence has been committed subject to public prosecution. A complaint will also be dismissed if it is manifestly unfounded.

If the Regional Public Prosecutor has made an inquiry in accordance with section 1020 a (2) of the Danish Administration of Justice Act, he will close the investigation in the same manner. This is done if the circumstances of the case have been fully clarified and if on the basis

of the information found there is no reasonable assumption that a criminal offence has been committed subject to public prosecution.

*Prosecution, etc.*

The Regional Public Prosecutor may settle criminal proceedings by issuing an indictment or bringing charges, by withdrawing charges or dismissing all charges, etc. The forms of decisions appear from the provisions of criminal procedure of the Danish Administration of Justice Act.

The Chief of Police and the National Commissioner will in all circumstance be notified of the decision. In certain cases the Ministry of Justice will also be notified.



When considering the question of prosecution, the Regional Public Prosecutor will also make a decision on whether other conduct subject to criticism is involved – including whether the case shall be dealt with as a complaint against conduct.

### 5.6.3. Withdrawn complaints

It happens that a complainant withdraws his complaint or report. There may be many reasons for this. A complainant's reason for withdrawing a complaint may be, for example, that after some time of deliberation, he has found no basis to maintain his complaint, or that the police officer involved has deplored his conduct. It happens, moreover, that a complainant does not respond to the Regional Public Prosecutor's summons for questioning or other communications. In such situations the Regional Public Prosecutor will generally close the inquiry into a complaint of a conduct case, unless the Regional Public Prosecutor at his own initiative finds that there is a basis to continue the inquiry into the matter.

Where an investigation in a criminal case is concerned, the Regional Public Prosecutor can to a certain extent close an investigation if the complaint is withdrawn.

## 5.7. Access to appeal to the Director of Public Prosecutions

The complainant and others as well may complain to the Regional Public Prosecutor about police officers' conduct while discharging their duties.

Nor are there basically any limits to the group of persons who are

entitled to file complaints about a criminal offence committed by the police.

However, it is only the parties to the case and the Police Complaints Board who may appeal the decision made by the Regional Public Prosecutor to the Director of Public Prosecutions.

In pursuance of the public administration law, a party is the one who has an essential, direct, individual and legal interest in the outcome of the case. This may be e.g. the person who has made a claim for compensation with respect to the case.

If a person, who is not a party to the case with regard to the merits of the case, files a complaint about the formal case processing, the complainant will be a party to that case only.



The deadline for filing complaints is four (4) weeks. The parties to the case shall be notified if an appeal is made in a case concerning conduct. If the Police Complaints Board appeals the Regional Public Prosecutor's decision, notification shall be given in criminal cases as well.

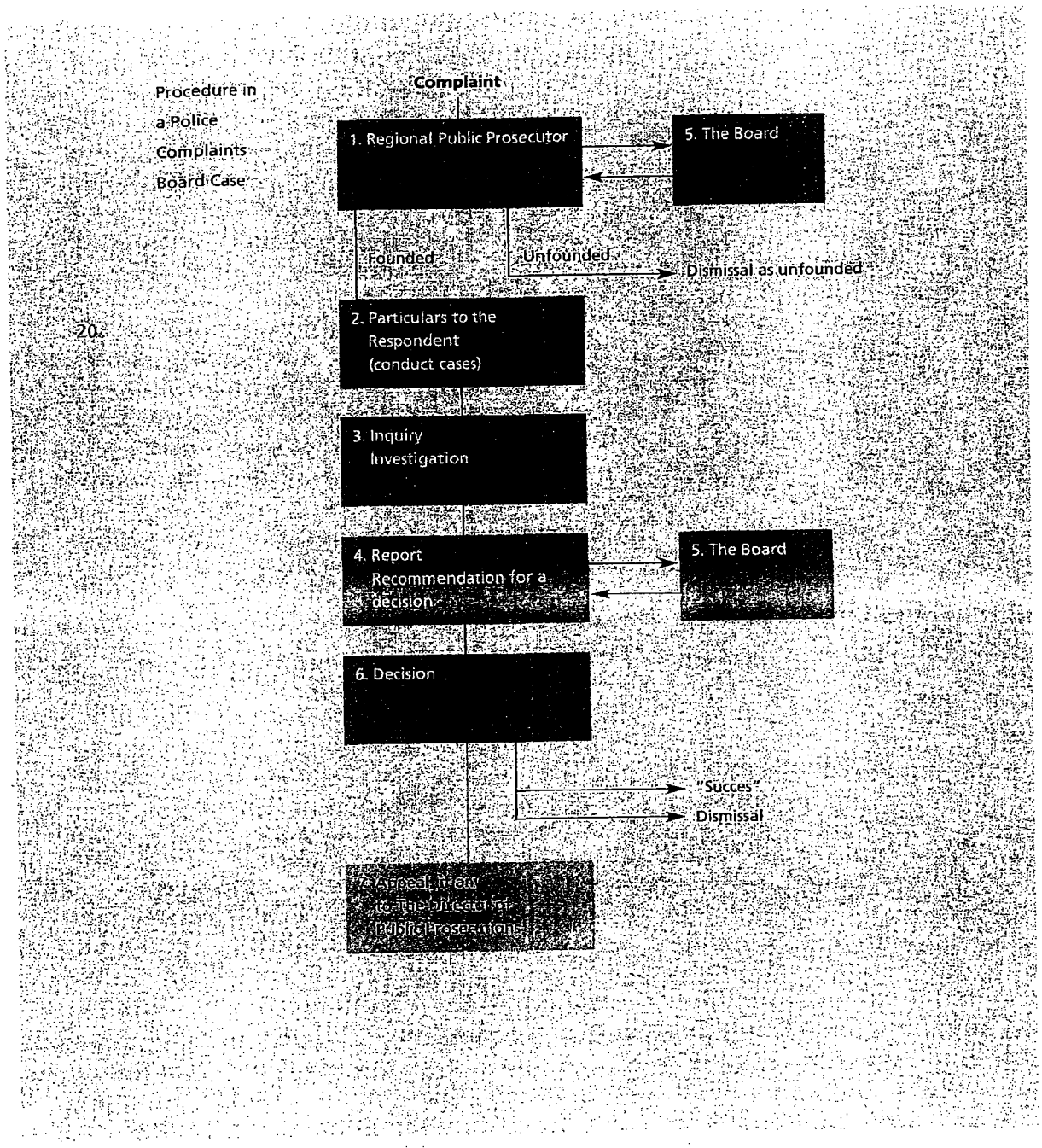
The complaint processing is subject to the general principle of two instances, which means that the decision made by the Director of Public Prosecutions on an appeal made by the Regional Public Prosecutor's decision is final. Accordingly, the decision cannot be appealed to the Ministry of Justice.

The Police Complaints Board and the parties to the case are subject to the same deadline for filing appeals. Accordingly, appeals must be sub-mitted within four (4) weeks of the Board's receipt of the decision. An appeal filed by a party shall be processed, however, if there are excusable grounds for not filing the appeal within the stipulated deadline.

If the Police Complaints Board appeals, the Director of Public Prosecutions will in practice consider such an appeal as an appeal from an authority. Handling errors by authorities, including police complaints boards, are not in general considered excusable.

The Regional Public Prosecutor shall notify the parties to a case if the Police Complaints Board appeals the decision. Furthermore, the Regional Public Prosecutor shall notify the parties to a case where a decision in a case regarding conduct is appealed.

The access to appeal entails a completely new processing of the merits of the case. Thus, a complete review of the merits of the case, of the


Procedure in a Police Complaints Board Case
Complaint
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5. The Board
Founded
Unfounded
Dismissal as unfounded
2. Particulars to the Respondent (conduct cases)
3. Inquiry Investigation
4. Report Recommendation for a decision
5. The Board
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"Succes"
Dismissal
Appeal, if any, to The Director of Public Prosecutions

**1. Start of a case**

The complaint or report has been filed.

– The complainant receives a written confirmation.

– The Board and the Chief of Police and the National Commissioner of Police are notified of the complaint.

– The person complained against (the respondent) is notified.

– The Board is currently informed of the progress of the inquiry.

The Regional Public Prosecutor submits the complaint to the Board before it may be dismissed as manifestly unfounded.

**2. Particulars** 21

The Regional Public Prosecutor prepares particulars if it is a founded complaint against conduct. The particulars are sent to the respondent.

**3. The inquiry/investigation**

The parties are interviewed and an attorney may be assigned to either or both of them. Witnesses, if any, are interviewed.

**4. The case is submitted to the Board**

The Regional Public Prosecutor prepares a report with a review of the course and the facts of the case, assesses the evidence and makes a recommendation of the how the case should be settled. No report is made in cases that are manifestly unfounded.

**5. The Board's Opinion (Section 1021 e)**

The Police Complaints Board notifies the Regional Public Prosecutor on how the Board finds the case should be settled.

**6. The decision**

The Regional Public Prosecutor makes a decision of the case.

*Cases regarding conduct* – complaint dismissed
– complainant succeeds in whole or in part

*Criminal proceedings* – the complaint or report is dismissed
– investigation is closed
– charges are withdrawn – regrets expressed, if appropriate
– indictment/charges/issued/indictment/charges dismissed

It shall appear from the decision whether the Board concurs in the decision. The parties of the case, the Board, the Chief of Police and the National Commissioner are notified of the decision of the case.

**7. Access to complaints**

The parties to the case and the Board may appeal the decision made by the Regional Public Prosecutor to the Director of Public Prosecutions.

assessment of the evidence, judicial issues and discretionary issues has to be made. In his processing of the case, the Director of Public Prosecutions can obtain new information, in order, for instance, to clarify circumstances pleaded in connection with the complaint. This may, for example, be by way of additional or supplementary interviews of witnesses, the complainant or the respondent, and by obtaining photos or sketches of the scene of the incident.

If in connection with the processing of the case by the Director of Public Prosecutions new information appears, this may result in remission of the case by the Director of Public Prosecutions for the purpose of re-newed processing by the Regional Public Prosecutor and the Police Complaints Board. However, the information must be of such essential importance to the case that there is a certain probability that the outcome of the case would have been different if the information had been available in connection with the Regional Public Prosecutor's and the Police Complaints Board's original position on the case.



In his processing of the case the Director of Public Prosecutions will oversee that the decision is correct with regard to the merits of the case and that the formal rules of the case processing have been observed.

In practice, this entails that the Director of Public Prosecutions is not, for example, bound by the fact that Regional Public Prosecutor and the Board have concurred in which matters of fact that can be made the basis of the decision of the case, the assessment of the evidence, or the subsumption.

## 6. ACCESS TO FILES

The Respondent and the other parties to the case have access to documents in a complaint of conduct case in accordance with the rules of the Danish Public Administration Act. The point of departure here is that there is full access to the documents of the case.

There is no access to documents for others than the parties in a complaint of conduct case, as police complaints board cases are not comprised by the Act on Public Access to Documents in Public Files (also known as the Open Administration Act).

The reported person, however, does not, as point of departure, have access to the documents of criminal proceedings while the case is

pending, and nor, often, when it is concluded. If the reported person has an assigned defence attorney he has a right of access to the documents of the criminal proceeding in accordance with the general rules of the Danish Administration of Justice Act.

If an attorney has been assigned to the victim, he has access to the documents of the case to a wide extent. Others do not have a right of access to the documents of criminal proceedings.

## 7. ASSIGNMENT OF AN ATTORNEY



### 7.1. Assignment of an attorney in complaint of conduct cases

In complaint of conduct cases the court will in any circumstance assign an attorney to the parties to the case, that is to say, to the respondent and to the complainant when questioning is conducted in court. The court will advise the respondent about his right not to make a statement if this may be assumed to expose the respondent to criminal liability or disciplinary liability.

In case of questioning out of court, when circumstances speak in favour of this, the court may, at the request of the respondent, assign an attorney to represent him. The Regional Public Prosecutor will advise the respondent about his right to have an attorney assigned.

### 7.2. Assignment of a defence attorney in criminal proceedings

In criminal proceedings the reported person is entitled to have a defence attorney assigned to represent him when it follows from the rules of Part 66 of the Danish Administration of Justice Act on "the accused and his defence attorney".

Furthermore, the reported person has a right to have a defence attorney assigned to him when circumstances speak in favour of this. This shall apply also if the reported person is not accused. The request can be made by the reported person or by the Regional Public Prosecutor.

The Regional Public Prosecutor advises the reported person about the

access to have a defence attorney assigned to represent him. The court makes the decision on assignment of a defence attorney.

The powers of a defence attorney follow from the general rules of the Danish Administration of Justice Act.

## 8. CASES OUTSIDE THE SCOPE OF THE POLICE COMPLAINTS BOARD SCHEME

### 8.1. Introduction

24 In a description of how complaints can be filed about the activity of the police, a distinction must be made between measures and decisions made by the Chiefs of Police (the Commissioner of the Copenhagen Police) or at their responsibility, and police personnel's conduct or punishable offences while on duty.

Complaints against measures and decisions are not comprised by the police complaints board scheme. The question of which is the appropriate authority depends on the nature of the case.

### 8.2. Police measures not covered by law of criminal justice

A decision can be appealed to the Ministry of Justice if it concerns purely police (operational) measures outside the scope of the law of criminal justice. These cases comprise measures as part of enforcement of law and order, e.g. barring an area as a consequence of a bicycle race or a traffic accident, ordering a person away from a locality, placement in detention, and the like.

Special rules of complaint apply to a number of the police's other tasks not covered by the law of criminal justice. For instance, road traffic legislation belongs under the Ministry of Justice and this Ministry is therefore the authority charged with complaints of the police's refusal to issue drivers' licences.

Furthermore, in various areas of special legislation, the police provide assistance to the special authority when control measures are carried out – also in cases where there is no suspicion of a criminal offence.

Besides, some special enactments contain provisions giving the police

an administrative supervisory authority not covered by the law of criminal justice, e.g. in the Animal Protection Act.

## 8.3. Measures and decisions under the law of criminal justice

Where, on the other hand, it concerns measures as part of a criminal investigation, the decision can be appealed to the Regional Public Prosecutor. It may be decisions on using certain investigative steps, including e.g. arresting, searching, seizing, etc. Similarly, it is possible to complain of certain investigative steps that have not been taken – e.g. a certain person was not questioned or a certain person was not questioned thoroughly enough. Only where it is matter of harassment or misuse of power on the part of the police can this type of case be comprised by the scheme with police complaints boards.



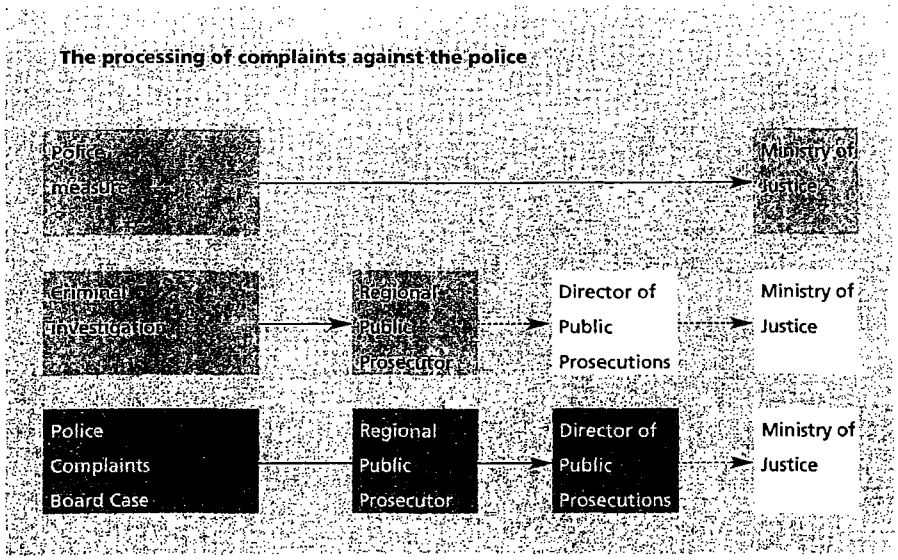
The question of the lawfulness of the police's investigative steps may, moreover, be brought before the court in pursuance of Section 746(1) of the Danish Administration of Justice Act.

Complaints can be filed also against the Chief of Police's decision on the issue of prosecution – for instance where the Chief of Police withdraws prosecution, dismisses a complaint filed, or closes the investigation.

Furthermore, complaints of the Chief of Police's rejection of a request for access to files.

# 9. DISCIPLINARY CASES

The Regional Public Prosecutors do not make decisions in disciplinary cases. Depending of their nature these cases are dealt with and decided by the Chief of Police, the Director of Public Prosecutions, or the Ministry of Justice. The question of when there are grounds to initiate a disciplinary case against a police officer is determined in accordance with the rules of Part 4 of the Civil Servants Act concerning suspension and disciplinary prosecution, etc., and the National Commissioner's Promulgation I No. 10 on the processing of disciplinary cases. The body of rules on processing of disciplinary cases is described in the Report for 1996 page 152 ff. This section describes in brief the interplay between




*the body of rules on disciplinary cases and police complaints board* cases.

The Regional Public Prosecutor shall notify the Chief of Police in question and the National Commissioner when a case concerning conduct or investigation in a criminal case is commenced. This follows from Section 1019 j and Section 1020 a(2), 2nd sentence of the Danish Administration of Justice Act.

The purpose of these rules is to ensure that the employing authority gets an opportunity to assess whether the case gives rise to disciplinary measures against the respondent or the reported police officer. It follows, furthermore, from the provisions that no disciplinary inquiry shall be commenced based on a complaint or report filed until the processing of the complaint of conduct case or the criminal case has been concluded. The reason for this provision is to avoid that inquiries are made in the case as a police complaints board case and a disciplinary case as well.

The provisions do not prevent that the respondent or reported officer be suspended or temporarily transferred to other work in accordance with the general rules applying to the service while the complaint case is pending. This decision is made by the Director of Public Prosecutions.

The Regional Public Prosecutor shall notify the Chief of Police in question and the National Commissioner (employing authority) when the inquiry or investigation of the complaint case is concluded. In this connection the Regional Public Prosecutor can draw attention to possible previous (conduct) cases against the same police officer. Such notification shall be made after the Regional Public Prosecutor has finished processing the case and made a decision.

This gives the Regional Public Prosecutor/National Commissioner an opportunity to decide whether disciplinary proceedings shall be instituted.

The Regional Public Prosecutor does not make any recommendation on whether disciplinary proceeding should be instituted.



The Chief of Police's or the National Commissioner's basis for instituting a disciplinary case will be the decision of the Regional Public Prosecutor, among other things. The Regional Public Prosecutor's decision does not necessarily lead to instituting a disciplinary inquiry with a disciplinary sanction as an outcome. If the Regional Public Prosecutor has expressed criticism or expressed regrets of the incident to the complainant, the Regional Public Prosecutor's decision should be followed up at the place of service in relation to the involved police officer(s) as part of a management and staff policy decision.

It appears from the guidelines to the National Commissioner's Promulgation on processing of disciplinary cases that it is the National Commissioner's opinion that any criticism or regrets expressed in relation to a police officer's conduct towards the citizens shall have service consequences, irrespective of whether it concerns a conduct complaint case, a criminal case (without prosecution) or a case comprised by Section 1020 a(2) of the Danish Administration of Justice Act. It is advised, furthermore, that it is the National Commissioner's opinion that this type of matters will generally lead to actual disciplinary cases.s

The Chief of Police – instead of instituting disciplinary proceedings – has the option of dealing with matter in the course of an official interview where the rules of correct conduct are impressed on the police officer in question and where he is warned of recurrence. If the Chief of Police elects this possibility, it follows from the National Commissioner's Promulgation I No. 10 that the Chief of Police shall notify the National Commissioner in writing of what were the official consequences of a

decision for the police officer(s) in question in a case where the Regional Public Prosecutor – or National Commissioner, if appropriate – has criticised or deplored the conduct of a police officer.

The National Commissioner forwards the notification to the Regional Public Prosecutor/Director of Public Prosecutions. The Regional Public Prosecutor/Director of Public Prosecutions will thus in any circumstance be informed of the official consequences for the police officer in question of the Regional Public Prosecutor's criticism or expression of regrets for a police officer's conduct.

# Appendix
# Statistics

## 1. STATISTICS ON CASES PROCESSED BY THE REGIONAL PUBLIC PROSECUTORS

**Statistics on new cases 1996-2002**

| New cases filed in | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 |
|---|---|---|---|---|---|---|---|
| Conduct cases | 539 | 333 | 286 | 583 | 367 | 392 | 365 |
| Criminal proceedings | 474 | 312 | 340 | 480 | 502 | 539 | 511 |
| - including traffic offences | 166 | 100 | 113 | 138 | 160 | 166 | 170 |
| - including cases governed by section 1020a | 11 | 6 | 12 | 14 | 9 | 17 | 9 |
| Total | 1013 | 645 | 626 | 838 | 869 | 931 | 876 |

**Statistics on cases completed 1996-2002**

| Cases completed in | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 |
|---|---|---|---|---|---|---|---|
| Conduct cases | 260 | 320 | 282 | 380 | 302 | 363 | 400 |
| Criminal proceedings[1)] | 258 (117) | 283 (106) | 323 (103) | 431 (106) | 413 (139) | 564 (174) | 474 (121) |
| – including cases governed by section 1020 a | 8 | 6 | 7 | 18 | 13 | 16 | 11 |
| Total | 518 | 603 | 605 | 811 | 715 | 927 | 874 |

Note:

1) Traffic cases in brackets

**Conduct cases completed 1996-2002**

| Cases completed in | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 |
|---|---|---|---|---|---|---|---|
| Cases settled in police district [1] | 39 | 45 | 48 | 52 | 44 | 52 | 73 |
| Complaint withdrawn | 2 | 24 | 11 | 18 | 11 | 18 | 8 |
| Complaint dismissed ("Time barred") [2] | 12 | 4 | 5 | 7 | 12 | 9 | 3 |
| *Complaint dismissed as* unfounded [3] | 145 | 206 | 162 | 255 | 197 | 241 | 289 |
| No criticism but incident regretted [4] | 15 | 10 | 22 | 17 | 12 | 12 | 12 |
| Criticism [5] | 4 | 6 | 11 | 12 | 16 | 9 | 7 |
| Criticism of "system errors" [6] | 1 | 0 | 0 | 0 | 1 | 1 | 0 |
| Other [7] | 12 | 25 | 23 | 19 | 9 | 21 | 8 |
| Total | 260 | 320 | 282 | 380 | 302 | 363 | 400 |

Notes:
1) Minor cases.
2) Administration of Justice Act section 1019 a (2).
3) Inter alia: unfounded cases, cases where the inquiry has not supported the complaint, cases where statements are contradictory ("inconclusive").
4) Cases where the Regional Public Prosecutor regretted the incident to the complainant, although there were no grounds to criticise the conduct of the police officer.
5) Criticism of the police officer's conduct.
6) Including criticism of the organisation of general procedures.
7) Inter alia: cases closed when the complainant did not respond to summons by the Regional Public Prosecutor.

**Criminal proceedings completed by the Regional Public Prosecutors 1996-2002, including cases governed by section 1020 a(2)**

| Cases completed in | 1996 | | 1997 | | 1998 | | 1999 | | 2000 | | 2001 | | 2002 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Dismissal[2] | 57 | (7) | 78 | (18) | 84 | (3) | 127 | (11) | 100 | (12) | 106 | (10) | 96 | (4) |
| Investigation discontinued/ charges withdrawn[3] | 112 | (47) | 150 | (47) | 161 | (48) | 216 | (40) | 228 | (66) | 320 | (65) | 282 | (62) |
| Charges[4] | 36 | (31) | 37 | (28) | 58 | (47) | 78 | (54) | 73 | (60) | 116 | (97) | 79 | (52) |
| Incident deplored but no charges[5] | 5 | (2) | 5 | (0) | 6 | (0) | 0 | (0) | 5 | (0) | 11 | (0) | 3 | (1) |
| Other[6] | 48 | (30) | 19 | (13) | 21 | (5) | 10 | (1) | 7 | (1) | 11 | (2) | 14 | (2) |
| Total | 258 | (117) | 289 | (105) | 330 | (103) | 431 | (106) | 413 | (139) | 564 | (174) | 474 | (121) |

Notes:
1) Traffic cases in brackets.
2) Dismissed according to the Administration of Justice Act section 749 (1).
3) Comprising cases dismissed according to the Administration of Justice Act section 749 (1) (non-charged individuals) and cases dismissed according to the Administration of Justice Act section 721 (1-1) (charged individuals).
4) Comprising cases where charges were made, fines imposed, or charges withdrawn or concluded with a formal caution.
5) Cases where the Regional Public Prosecutor regretted the incident to the complainant, although there were no grounds for charges etc.
6) Inter alia: cases withdrawn, minor traffic cases etc.

**New cases governed by section 1020 a (2) 1996-2002**

| Cases regarding | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | Total |
|---|---|---|---|---|---|---|---|---|
| Death in detention | 1 | 1 | 1 | 3 | 3 | 1 | 1 | 11 |
| Attempted suicide in detention etc. | 0 | 0 | 2 | 1 | 0 | 1 | 1 | 5 |
| Injuries caused by firearms | 6 | 3 | 3 | 3 | 2 | 6 | 4 | 27 |
| - including killed caused by firearms | 1 | 0 | 0 | 0 | 0 | 2[1] | 2 | 5 |
| Other deaths | 3 | 2 | 4 | 5 | 0 | 6 | 2 | 22 |
| Other injuries | 1 | 0 | 2 | 2 | 4 | 3[2] | 1 | 13 |
| Total | 11 | 6 | 12 | 14 | 9 | 17 | 9 | 78 |

1) One of the cases concerned 2 persons killed by firearms.
2) One case amended (2002).

**Cases completed governed by section 1020 a (2) 1996-2002**

| Decision | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | Total |
|---|---|---|---|---|---|---|---|---|
| Investigation discontinued/ charges withdrawn | 9 | 6 | 10 | 10 | 7 | 14 | 5 | 61 |
| Charges [1] | 0 | 0 | 0 | 1 | 0 | 2 | 1 | 4 |
| Criticism | 1 | 0 | 0 | 3 | 0 | 1 | 0 | 5 |
| Incident deplored but no criticism | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Criticism of "system errors" and recommendations [2] | 1 | 0 | 1 | 0 | 2 | 0 | 1 | 5 |
| Other [3] | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Cases pending | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 |
| Total | 11 | 6 | 12 | 14 | 9 | 17 | 9 | 78 |



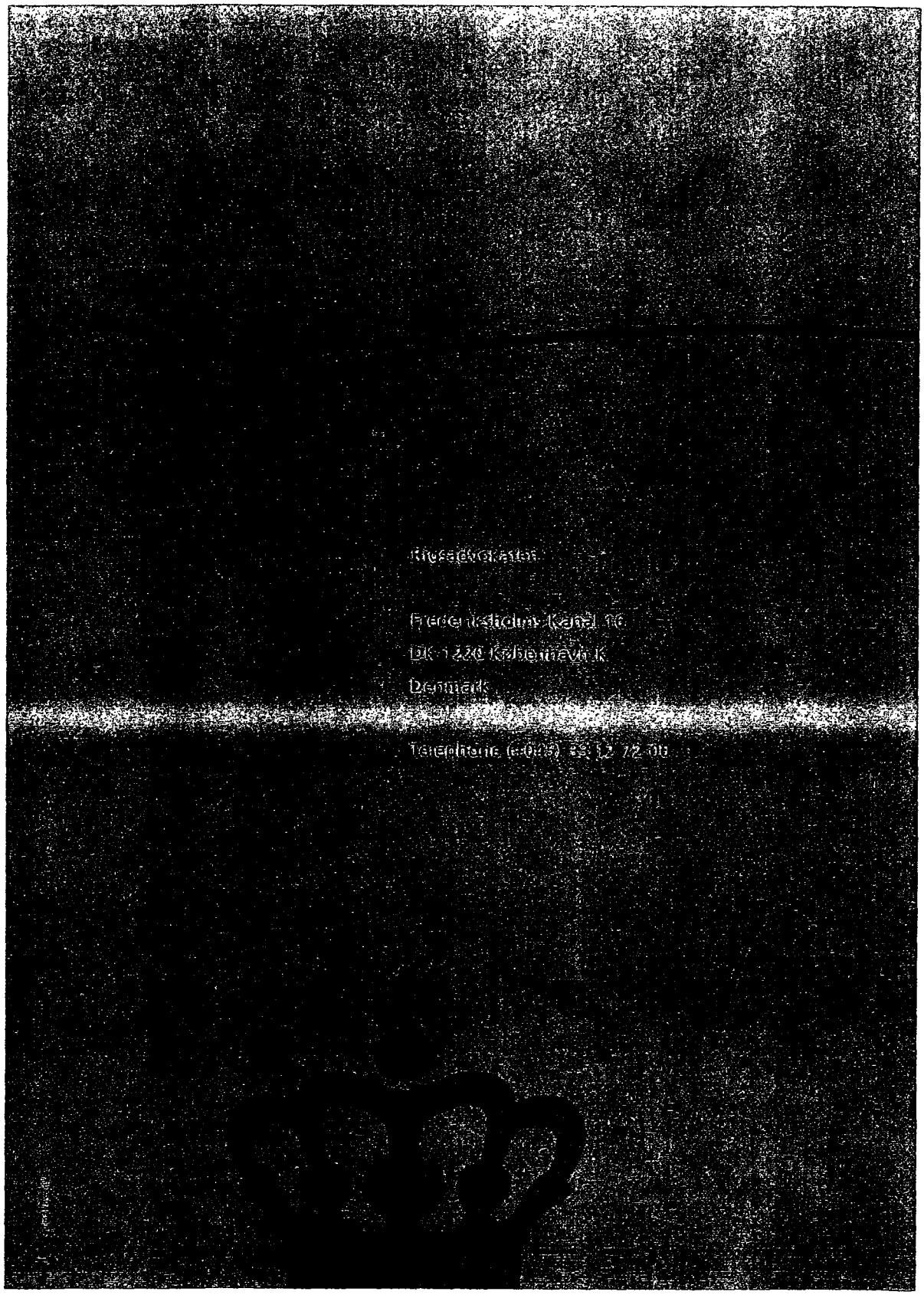
Noter:
1) Charges for manslaughter caused by traffic offences.
2) Recommendations on procedures connected to detention etc.
3) Incident deplored by the police officer in question.

## 2. STATISTICS ON CASES PROCESSED BY THE DIRECTOR OF PUBLIC PROSECUTIONS

**Statistics for cases processed by the Director of Public Prosecutions**

| Complaints filed in | 1998 | | 1999 | | 2000 | | 2001 | | 2002 | |
|---|---|---|---|---|---|---|---|---|---|---|
| Type of case | Conduct | Criminal | Conduct | Criminal | Conduct | Criminal | Conduct | Criminal | Conduct | Criminal |
| Complaint filed by | | | | | | | | | | |
| Police officer | 3 | 6 | 9 | 9 | 5 | 6 | 5 | 8 | 2 | 3 |
| Citizen [1] | 51 | 66 | 41 | 63 | 59 | 58 | 44 | 80 | 46 | 99 |
| Board | 6 | 14 | 2 | 12 | 4 | 11 | 3 | 8 | 0 | 1 |
| Total | 60 | 86 | 52 | 84 | 68 | 75 | 52 | 96 | 48 | 103 |
| Total number | 146 | | 136 | | 143 | | 148 | | 151 | |

1) Including complaints rejected.


Kromann Reumert
Amaliegade 7
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Administration of Justice Act
(Consolidated Act No 910 of 27.Sept.0

**Andet afsnit. Sagens forberedelse, inden tiltale rejses**

Kapitel 67

**Almindelige bestemmelser om efterforskning**

**§ 742.** Anmeldelser om strafbare forhold indgives til politiet.
*Stk. 2.* Politiet iværksætter efter anmeldelse eller af egen drift efterforskning, når der er rimelig formodning om, at et strafbart forhold, som forfølges af det offentlige, er begået.

**§ 743.** Efterforskningen har til formål at klarlægge, om betingelserne for at pålægge strafansvar eller anden strafferetlig retsfølge er til stede, og at tilvejebringe oplysninger til brug for sagens afgørelse samt forberede sagens behandling ved retten.

**§ 744.** Politiet udfærdiger snarest rapport om de afhøringer, der foretages, og om andre efterforskningsskridt, medmindre oplysning herom foreligger på anden måde.

**§§ 745-745 b.** (Ophævet)

**§ 745 c.** Forsvareren har adgang til at overvære politiets afhøringer af sigtede og ret til at stille yderligere spørgsmål. Efter begæring skal forsvareren underrettes om tidspunktet for afhøringerne. Er den sigtede varetægtsfængslet, og er der truffet bestemmelse om isolation, jf. § 770 a, må den sigtede ikke afhøres, uden at forsvareren er til stede, medmindre såvel den sigtede som forsvareren samtykker heri.

**§ 745 d.** Når en afhøring, en konfrontation, en fotoforevisning eller andet efterforskningsskridt af lignende betydning kan formodes at ville finde anvendelse som bevis under domsforhandlingen, giver politiet meddelelse til forsvareren inden foretagelsen, således at forsvareren kan få lejlighed til at være til stede. Forsvareren har adgang til at stille forslag med hensyn til gennemførelsen af det pågældende efterforskningsskridt. Forsvarerens bemærkninger i så henseende skal tilføres politirapporten. Har forsvareren ikke mulighed for at komme til stede, eller er det ikke muligt for politiet at give forsvareren meddelelse, kan der kun foretages efterforskningsskridt, som ikke kan opsættes. Har forsvareren ikke været til stede, skal forsvareren uden ophold underrettes om det foretagne.
*Stk. 2.* Reglerne i stk. 1 kan fraviges efter bestemmelsen i § 729 c.

**§ 745 e.** Kan politiets afhøring af et barn, når afhøringen optages på video (videoafhøring), formodes at ville finde anvendelse som bevis under domsforhandlingen, skal forsvareren være til stede under videoafhøringen.
*Stk. 2.* Den, der er mistænkt eller sigtet, har ikke adgang til at overvære videoafhøringen. Den pågældende skal snarest muligt have adgang til sammen med sin forsvarer at gennemse videooptagelsen hos politiet. En begæring fra den, der er mistænkt eller sigtet, eller dennes forsvarer om, at der foretages genafhøring af barnet, skal fremsættes snarest muligt herefter.

**§ 746.** Retten afgør tvistigheder om lovligheden af politiets efterforskningsskridt samt om sigtedes og forsvarerens beføjelser, herunder om begæringer fra forsvareren eller sigtede om foretagelsen af yderligere efterforskningsskridt. Afgørelsen træffes på begæring ved kendelse.
*Stk. 2.* Ved tvistigheder om lovligheden af politiets afgørelser efter § 729 a, stk. 3, 1. pkt., eller § 729 b, stk. 2, 1. pkt., skal politiet redegøre for grundene til den afgørelse, der er truffet. Retten kan endvidere pålægge politiet over for retten at fremlægge det materiale, som tvisten angår.
*Stk. 3.* Bliver dommeren bekendt med, at en foranstaltning, der er iværksat af politiet i medfør af denne lov, og som kræver rettens godkendelse, ikke er forelagt retten inden udløbet af den herfor fastsatte frist, bestemmer han efter at have afkrævet politiet en redegørelse, om foranstaltningen skal opretholdes eller ophæves.

**§ 747.** Retsmøde afholdes, når der fremsættes anmodning om foranstaltninger, som kræver rettens medvirken. Efter anmodning afholdes endvidere retsmøde, når det er påkrævet for at sikre bevis, som det ellers må frygtes vil gå tabt, eller som ikke uden væsentlig ulempe eller forsinkelse vil kunne føres umiddelbart for den dømmende ret, eller når det må antages at være af betydning for efterforskningen eller af hensyn til en offentlig interesse. Retsmøde med henblik på at sikre bevis kan endvidere afholdes efter anmodning, såfremt sigtede er varetægtsfængslet i isolation og sikringen af bevis vil kunne få betydning for spørgsmålet om ophævelse af isolationen.

**§ 748.** Sigtede underrettes så vidt muligt om alle retsmøder og er berettiget til at overvære dem. Dette gælder ikke retsmøder, der afholdes med henblik på at opnå rettens forudgående kendelse om foretagelse af foranstaltninger i henhold til kapitlerne 69-74. Er sigtede varetægtsfængslet, kan fremstilling af ham undlades, hvis den vil være forbundet med uforholdsmæssigt besvær.

*Stk. 2.* Forsvareren underrettes om alle retsmøder og er berettiget til at overvære dem. Er det ikke muligt at give forsvareren meddelelse, kan der kun afholdes retsmøder, som ikke kan opsættes. For så vidt angår de i stk. 1, 2. pkt., nævnte retsmøder kan reglen dog fraviges, hvis hensynet til fremmede magter, til statens sikkerhed eller til sagens opklaring eller tredjemand undtagelsesvis gør det påkrævet. Afgørelsen træffes af retten efter politiets begæring. Forsvareren må kun med rettens samtykke videregive oplysninger, han har modtaget i retsmødet.

*Stk. 3.* Forsvareren er berettiget til at fremsætte bemærkninger og kort at få disse tilført protokollen, men dommeren bestemmer, på hvilket tidspunkt af retsmødet dette kan ske.

*Stk. 4.* Retten kan pålægge sigtede at indfinde sig til et retsmøde. Er pålægget ikke givet i et tidligere retsmøde, meddeles det ved en skriftlig tilsigelse. Tilsigelse sker med mindst aftens varsel. Retten kan dog fastsætte andet varsel eller pålægge sigtede at møde straks. Tilsigelsen skal indeholde oplysning om sigtelsens genstand. Udeblivelse kan kun medføre retsvirkninger, hvis tilsigelsen er lovlig forkyndt og indeholder oplysning om virkningerne af udeblivelse.

*Stk. 5.* Retten kan på begæring bestemme, at der ikke skal gives sigtede underretning om et retsmødes afholdelse, eller at sigtede skal være udelukket fra at overvære et retsmøde helt eller delvis, hvis hensynet til fremmede magter, til statens sikkerhed eller til sagens opklaring eller tredjemand undtagelsesvis gør det påkrævet.

*Stk. 6.* Har sigtede været udelukket fra at overvære et retsmøde, skal retten, hvis sigtede er til stede, og ellers politiet snarest gøre ham bekendt med, hvad der er tilført retsbogen. Hvis de særlige hensyn, som har begrundet udelukkelsen, fortsat er til stede, kan sigtede dog af retten afskæres herfra, ligesom retten kan pålægge forsvareren ikke at give sigtede underretning om, hvad der er passeret i retsmødet. Pålægget kan udstrækkes, indtil tiltalte har afgivet forklaring under domsforhandlingen.

*Stk. 7.* Stk. 1-6 finder ikke anvendelse på retsmøder, der afholdes i henhold til § 729 c, eller hvor der fremlægges oplysninger, der efter § 729 c er undtaget fra forsvarerens adgang til aktindsigt, og hvor der efter § 784 beskikkes en advokat for den, som indgrebet vedrører.

**§ 749.** Politiet afviser en indgivet anmeldelse, hvis der ikke findes grundlag for at indlede efterforskning.

*Stk. 2.* Er der ikke grundlag for at fortsætte en påbegyndt efterforskning, kan beslutningen om at indstille efterforskningen træffes af politiet, såfremt der ikke har været rejst sigtelse. Er sigtelse rejst, finder bestemmelserne i § 721 og § 722 anvendelse.

*Stk. 3.* Afvises anmeldelsen, eller indstilles efterforskningen, underrettes de, der må antages at have rimelig interesse heri. Afgørelsen kan påklages til den overordnede anklagemyndighed efter reglerne i kapitel 10.

## Kapitel 68

## Afhøringer og særlige efterforskningsskridt

**§ 750.** Politiet kan foretage afhøringer, men kan ikke pålægge nogen at afgive forklaring, og ingen tvang må anvendes for at få nogen til at udtale sig. Enhver er dog pligtig på forlangende at opgive

navn, adresse og fødselsdato til politiet. Undladelse heraf straffes med bøde.

**§ 751.** Det væsentlige indhold af de afgivne forklaringer tilføres rapporterne, og særlig vigtige dele af forklaringerne gengives så vidt muligt med den afhørtes egne ord.

*Stk. 2.* Der skal gives den afhørte mulighed for at gøre sig bekendt med gengivelsen af forklaringen. Den afhørtes eventuelle rettelser og tilføjelser medtages. Den afhørte gøres bekendt med, at han ikke har pligt til at underskrive rapporten.

*Stk. 3.* Fonetisk optagelse af forklaringer må kun finde sted, når den afhørte er gjort bekendt hermed.

**§ 752.** Inden politiet afhører en sigtet, skal han udtrykkeligt gøres bekendt med sigtelsen og med, at han ikke er forpligtet til at udtale sig. Det skal af rapporten fremgå, at disse regler er iagttaget.

*Stk. 2.* Justitsministeren fastsætter regler om, i hvilke tilfælde kommunalbestyrelsen skal underrettes om og have adgang til at overvære afhøringen af sigtede under 18 år. For mistænkte personer under 15 år gælder bestemmelsen i § 821 d.

*Stk. 3.* Spørgsmål til en sigtet må ikke stilles således, at noget, der er benægtet eller ikke erkendt, forudsættes tilstået. Løfter, urigtige foregivender eller trusler må ikke anvendes.

*Stk. 4.* Afhøringen må ikke forlænges alene for at opnå en tilståelse. Ved afhøringer, der ikke er ganske kortvarige, anføres i rapporten tidspunkterne for afhøringens begyndelse og afslutning.

*Stk. 5.* Sigtede må ikke rådføre sig med sin forsvarer eller andre angående den umiddelbare besvarelse af et stillet spørgsmål.

**§ 753.** Ved politiets afhøring af en person, der ikke er sigtet, finder bestemmelserne i §§ 173, stk. 1, 182 og 184, stk. 1 og 2, tilsvarende anvendelse.

**§ 754.** Ved afhøringer i retten finder §§ 751 og 752 tilsvarende anvendelse.

*Stk. 2.* Om fremgangsmåden ved afhøring af sigtede gælder regler svarende til dem, der er fastsat om vidner i § 183, stk. 1 og 2.

**§ 754 a.** Politiet må ikke som led i efterforskningen af en lovovertrædelse foranledige, at der tilbydes bistand til eller træffes foranstaltninger med henblik på at tilskynde nogen til at udføre eller fortsætte lovovertrædelsen, medmindre:

1) der foreligger en begrundet mistanke om, at lovovertrædelsen er ved at blive begået eller forsøgt,
2) efterforskningsskridtet må antages at være af afgørende betydning for efterforskningen og
3) efterforskningen angår en lovovertrædelse, som efter loven kan straffes med fængsel i 6 år eller derover.

*Stk. 2.* Foranstaltninger, der træffes med henblik på at tilskynde nogen til at udføre eller fortsætte en lovovertrædelse, omfattes ikke af stk. 1, hvis politiet ikke herved påvirker væsentlige omstændigheder ved lovovertrædelsen.

**§ 754 b.** De foranstaltninger, som er nævnt i § 754 a, må ikke bevirke en forøgelse af lovovertrædelsens omfang eller grovhed.

*Stk. 2.* Foranstaltningerne må alene udføres af polititjenestemænd. Civile personer kan dog efter aftale med politiet yde bistand til at udføre eller fortsætte den lovovertrædelse, der efterforskes, når den bistand, der ydes, er yderst beskeden i forhold til lovovertrædelsen.

**§ 754 c.** Foranstaltninger efter § 754 a sker efter rettens kendelse. Spørgsmålet herom forelægges for retten på det sted, hvor tiltale er eller kan forventes rejst, eller i øvrigt hvor politiets beslutning om at søge foranstaltningerne gennemført er truffet.

*Stk. 2.* I rettens kendelse anføres de konkrete omstændigheder i sagen, hvorpå det støttes, at betingelserne for foranstaltningernes gennemførelse er opfyldt. Kendelsen kan til enhver tid omgøres.

*Stk. 3.* Såfremt foranstaltningernes øjemed ville forspildes, dersom retskendelse skulle afventes, kan politiet træffe beslutning om at gennemføre foranstaltningerne. I så fald skal politiet snarest muligt og senest inden 24 timer fra foranstaltningernes iværksættelse forelægge sagen for retten.

Retten afgør ved kendelse, om foranstaltningerne kan godkendes, samt om de kan opretholdes. Burde foranstaltningerne efter rettens opfattelse ikke være foretaget, skal retten give meddelelse herom til Justitsministeriet.

**§ 754 d.** Er der truffet foranstaltninger som nævnt i § 754 a, og rejses der tiltale for lovovertrædelsen, skal der gives forsvareren underretning om foranstaltningerne. Hvis hensynet til fremmede magter, til statens sikkerhed, til sagens opklaring eller til tredjemand undtagelsesvis gør det påkrævet, kan politiet give forsvareren pålæg om ikke at videregive oplysninger, som denne har modtaget i medfør af 1. pkt.

**§ 754 e.** Reglerne i §§ 754 a-754 d finder ikke anvendelse ved efterforskning af overtrædelser af straffelovens kapitel 12, §§ 111-115 og 118.

Kapitel 69

**Anholdelse**

**§ 755.** Politiet kan anholde en person, der med rimelig grund mistænkes for et strafbart forhold, der er undergivet offentlig påtale, såfremt anholdelse må anses for påkrævet for at hindre yderligere strafbart forhold, for at sikre hans foreløbige tilstedeværelse eller for at hindre hans samkvem med andre.

*Stk. 2.* Samme beføjelser har enhver, der træffer nogen under eller i umiddelbar tilknytning til udøvelsen af et strafbart forhold, der er undergivet offentlig påtale. Den anholdte skal snarest muligt overgives til politiet med oplysning om tidspunktet og grundlaget for anholdelsen.

*Stk. 3.* Finder opløb sted, hvorunder der øves eller trues med vold på person eller gods, eller er slagsmål, hvori flere har deltaget, resulteret i drab eller betydelig legemsbeskadigelse, og den eller de skyldige ikke med sikkerhed kan udpeges, kan politiet anholde enhver, der er til stede, og som kan mistænkes for strafbar deltagelse.

*Stk. 4.* Anholdelse må ikke foretages, hvis frihedsberøvelse efter sagens art eller omstændighederne i øvrigt ville være et uforholdsmæssigt indgreb.

*Stk. 5.* Efter politiets begæring kan beslutning om anholdelse træffes af retten.

**§ 756.** Den, der med rimelig grund mistænkes for overtrædelse af bestemmelser, som er fastsat i en betinget dom i henhold til straffelovens kapitel 7 eller 8, i dom eller kendelse efter straffelovens §§ 68, 69, 70 eller 72, ved betinget benådning, ved prøveløsladelse eller en foranstaltning, der er fastsat i medfør af § 765, kan anholdes af politiet, såfremt det er nødvendigt på den måde at sikre hans foreløbige tilstedeværelse.

**§ 757.** Når en sigtet, der er behørigt tilsagt til et retsmøde, udebliver uden oplyst lovligt forfald, kan retten beslutte, at han skal anholdes, såfremt det i tilsigelsen eller under møde for retten er tilkendegivet, at han skal møde personligt og i udeblivelsestilfælde må vente at blive anholdt.

**§ 758.** Anholdelsen skal foretages så skånsomt, som omstændighederne tillader. Politiet kan under iagttagelse af bestemmelserne i § 792 e foretage besigtigelse og undersøgelse af den anholdtes legeme og tøj med henblik på at fratage vedkommende genstande, som kan benyttes til vold eller undvigelse, eller som i øvrigt kan medføre fare for den anholdte eller andre. Politiet kan tage sådanne effekter samt penge, der findes hos den anholdte, i bevaring. Under anholdelsen er den pågældende i øvrigt ikke undergivet andre indskrænkninger i sin frihed, end anholdelsens øjemed og ordenshensyn nødvendiggør.

*Stk. 2.* Politiet skal snarest muligt gøre den anholdte bekendt med sigtelsen og tidspunktet for anholdelsen. Af rapporten skal fremgå, at denne regel er iagttaget.

**§ 759.** Ransagning af hus, andre lokaliteter eller genstande for at eftersøge en mistænkt, der skal anholdes, kan foretages, når der er grund til at antage, at den pågældende opholder sig der.

*Stk. 2.* Bestemmelserne i § 795, stk. 1, 1. pkt., og §§ 796-800 finder tilsvarende anvendelse.

§ 760. Enhver, der anholdes, skal løslades, så snart begrundelsen for anholdelse ikke længere er til stede. Tidspunktet for løsladelsen skal fremgå af rapporten.

*Stk. 2.* Inden 24 timer efter anholdelsen skal den anholdte, der ikke forinden er løsladt, fremstilles for en dommer. Tidspunktet for anholdelsen og for fremstillingen i retten anføres i retsbogen.

*Stk. 3.* Har anholdelse fundet sted for et strafbart forhold, for hvilket varetægtsfængsling er udelukket, skal den anholdte inden retsmødets afslutning sættes på fri fod.

*Stk. 4.* Har anholdelse fundet sted for et strafbart forhold, for hvilket varetægtsfængsling ikke er udelukket, eller i medfør af § 756, og findes anholdte ikke at kunne løslades straks, kan retten, når den på grund af de foreliggende oplysningers utilstrækkelighed eller af anden grund ikke finder straks at kunne tage stilling til spørgsmålet om varetægtsfængsling, beslutte, at han foreløbig skal forblive under anholdelse. I beslutningen anføres de omstændigheder, der bevirker, at anholdelse opretholdes. Under den opretholdte anholdelse finder § 765 tilsvarende anvendelse. Sigtede skal have lejlighed til at angive eventuelle oplysninger, som han ønsker tilvejebragt.

*Stk. 5.* Den, over hvem anholdelsen er opretholdt, skal, såfremt han ikke forinden er løsladt, på ny fremstilles for en dommer, der inden 3 x 24 timer efter afslutningen af det første retsmøde træffer bestemmelse om, hvorvidt anholdte skal løslades eller varetægtsfængsles eller undergives foranstaltninger efter § 765.

§ 761. Ved pågribelse af en person med henblik på fuldbyrdelse af en straffedom eller forvandlingsstraffen for bøde finder reglerne i §§ 758, stk. 1, og 759 anvendelse.

## Kapitel 70

## Varetægtsfængsling

§ 762. En sigtet kan varetægtsfængsles, når der er begrundet mistanke om, at han har begået en lovovertrædelse, som er undergivet offentlig påtale, såfremt lovovertrædelsen efter loven kan medføre fængsel i 1 år og 6 måneder eller derover, og

1) der efter det om sigtedes forhold oplyste er bestemte grunde til at antage, at han vil unddrage sig forfølgningen eller fuldbyrdelsen, eller
2) der efter det om sigtedes forhold oplyste er bestemte grunde til at frygte, at han på fri fod vil begå ny lovovertrædelse af den foran nævnte beskaffenhed, eller
3) der efter sagens omstændigheder er bestemte grunde til at antage, at sigtede vil vanskeliggøre forfølgningen i sagen, navnlig ved at fjerne spor eller advare eller påvirke andre.

*Stk. 2.* En sigtet kan endvidere varetægtsfængsles, når der foreligger en særligt bestyrket mistanke om, at han har begået

1) en lovovertrædelse, som er undergivet offentlig påtale, og som efter loven kan medføre fængsel i 6 år eller derover, og hensynet til retshåndhævelsen efter oplysningerne om forholdets grovhed skønnes at kræve, at sigtede ikke er på fri fod, eller
2) en overtrædelse af straffelovens § 119, stk. 1, § 123, § 134 a, §§ 244-246, § 250 eller § 252, såfremt lovovertrædelsen efter oplysningerne om forholdets grovhed kan ventes at ville medføre en ubetinget dom på fængsel i mindst 60 dage og hensynet til retshåndhævelsen skønnes at kræve, at sigtede ikke er på fri fod.

*Stk. 3.* Varetægtsfængsling kan ikke anvendes, hvis lovovertrædelsen kan ventes at ville medføre straf af bøde eller fængsel i højst 30 dage, eller hvis frihedsberøvelsen vil stå i misforhold til den herved forvoldte forstyrrelse af sigtedes forhold, sagens betydning og den retsfølge, som kan ventes, hvis sigtede findes skyldig.

§ 763. Er der begrundet mistanke om, at en person har overtrådt vilkår, som er fastsat i en betinget dom i henhold til straffelovens kapitel 7 eller 8, ved betinget benådning eller ved prøveløsladelse, kan han varetægtsfængsles, hvis retten finder, at overtrædelsen er af en sådan beskaffenhed, at der foreligger spørgsmål om fuldbyrdelse af fængselsstraf eller indsættelse i anstalt, og

1) der efter det om den pågældendes forhold oplyste er bestemte grunde til at antage, at han vil unddrage sig følgerne af vilkårsovertrædelsen, eller

2) der efter det om hans forhold oplyste er bestemte grunde til at frygte, at han på fri fod fortsat vil overtræde vilkårene, og det under hensyn til overtrædelsernes beskaffenhed skønnes påkrævet, at disse forhindres ved, at han varetægtsfængsles.

*Stk. 2.* Det samme gælder, hvis der er begrundet mistanke om, at en person har overtrådt bestemmelser, der er fastsat i dom eller kendelse efter straffelovens §§ 68, 69, 70 eller 72.

**§ 764.** Retten afgør på begæring af politiet, om sigtede skal varetægtsfængsles.

*Stk. 2.* En sigtet, der er til stede her i landet, afhøres i retten om sigtelsen og skal have lejlighed til at udtale sig, inden afgørelsen træffes, medmindre retten finder, at fremstillingen af særlige grunde må anses for nytteløs eller skadelig for sigtede. Er kendelse om varetægtsfængsling afsagt, uden at sigtede har haft lejlighed til at udtale sig i retten, skal han fremstilles i retten inden 24 timer efter, at han er indbragt her til landet, eller hindringen for hans fremstilling er ophørt.

*Stk. 3.* I det retsmøde, der afholdes til afgørelse af spørgsmålet om varetægtsfængsling, skal sigtede have adgang til bistand af en forsvarer. Er den sigtede til stede i retsmødet, skal der gives ham lejlighed til en samtale med forsvareren inden afhøringen.

*Stk. 4.* Rettens afgørelse træffes ved kendelse. Varetægtsfængsles sigtede, anføres i kendelsen de konkrete omstændigheder i sagen, hvorpå det støttes, at betingelserne for varetægtsfængsling er opfyldt. Er den sigtede til stede i retsmødet, skal han straks gøres bekendt med, hvilke bestemmelser om varetægtsfængsling retten har anvendt, og med de i kendelsen anførte grunde for varetægtsfængsling samt med sin adgang til at kære. Udskrift af en kendelse, hvorved nogen varetægtsfængsles, overgives på forlangende snarest muligt til den pågældende.

**§ 765.** Er betingelserne for anvendelse af varetægtsfængsling til stede, men kan varetægtsfængslingens øjemed opnås ved mindre indgribende foranstaltninger, træffer retten, hvis sigtede samtykker heri, i stedet for varetægtsfængsling bestemmelse derom.

*Stk. 2.* Retten kan således bestemme, at sigtede skal

1) undergive sig et af retten fastsat tilsyn,
2) overholde særlige bestemmelser vedrørende opholdssted, arbejde, anvendelse af fritid og samkvem med bestemte personer,
3) tage ophold i egnet hjem eller institution,
4) undergive sig psykiatrisk behandling eller afvænningsbehandling for misbrug af alkohol, narkotika eller lignende, om fornødent på hospital eller særlig institution,
5) give møde hos politiet på nærmere angivne tidspunkter,
6) hos politiet deponere pas eller andre legitimationspapirer,
7) stille en af retten fastsat økonomisk sikkerhed for sin tilstedeværelse ved retsmøde og ved fuldbyrdelsen af en eventuel dom.

*Stk. 3.* Ved afgørelser i medfør af stk. 1 og 2 finder bestemmelserne i § 764 tilsvarende anvendelse.

*Stk. 4.* Hvis sigtede unddrager sig møde i retten eller fuldbyrdelse af dommen, kan retten, efter at der så vidt muligt er givet dem, afgørelsen vedrører, lejlighed til at udtale sig, ved kendelse bestemme, at en sikkerhed, der er stillet i medfør af stk. 2, nr. 7, er forbrudt. En forbrudt sikkerhed tilfalder statskassen, dog således at den forurettedes erstatningskrav kan dækkes af beløbet. Retten kan under særlige omstændigheder i indtil 6 måneder efter kendelsen bestemme, at en forbrudt sikkerhed, der er tilfaldet statskassen, helt eller delvis skal tilbagebetales.

*Stk. 5.* Justitsministeren kan efter forhandling med socialministeren og sundhedsministeren fastsætte regler om meddelelse af tilladelse til udgang m.v. til personer, der er anbragt i institution eller hospital m.v. i medfør af stk. 2, nr. 3 eller 4, når der ikke i øvrigt er taget stilling hertil. Justitsministeren kan i den forbindelse fastsætte, at afgørelser, der træffes i medfør af disse regler, ikke kan indbringes for højere administrativ myndighed.

**§ 766.** Retten kan til enhver tid omgøre kendelser om varetægtsfængsling eller foranstaltninger, der træder i stedet herfor.

**§ 767.** Bortset fra tilfælde, hvor sigtede ikke er til stede her i landet, fastsættes der i kendelsen en frist for varetægtsfængslingens eller foranstaltningens længde. Fristen skal være så kort som muligt og må ikke overstige 4 uger. Fristen kan forlænges, men højst med 4 uger ad gangen. Forlængelsen

sker ved kendelse, medmindre sigtede erklærer sig indforstået med forlængelsen. Reglerne i § 764 finder, indtil dom er afsagt i 1. instans, tilsvarende anvendelse på retsmøder og kendelser om fristforlængelse. Fremstilling af en sigtet, der er varetægtsfængslet eller undergivet anden frihedsberøvende foranstaltning, kan dog undlades, når han giver afkald derpå eller retten finder, at fremstillingen vil være forbundet med uforholdsmæssige vanskeligheder.

*Stk. 2.* Når den frist, der er fastsat efter stk. 1, udløber, efter at domsforhandlingen er begyndt, fortsætter varetægtsfængslingen eller foranstaltningen uden yderligere forlængelser, indtil der er afsagt dom i sagen. Tiltalte kan efter udløbet af den før domsforhandlingen fastsatte frist anmode retten om at ophæve varetægtsfængslingen eller en foranstaltning, der træder i stedet herfor, efter § 766 eller § 768. Hvis tiltalte efter fristens udløb anmoder retten om at ophæve varetægtsfængslingen eller en foranstaltning, der træder i stedet herfor, skal retten inden 7 dage træffe afgørelse herom. Hvis retten ikke imødekommer anmodningen, kan tiltalte tidligst 14 dage efter rettens afgørelse fremsætte en ny anmodning. Hvis der er spørgsmål om varetægtsfængsling efter § 762, stk. 2, træffes afgørelsen om eventuel ophævelse af en dommer eller afdeling, som ikke deltager i domsforhandlingen, jf. § 60, stk. 3, medmindre en af betingelserne i § 60, stk. 3, 2. pkt., er opfyldt. Tiltaltes anmodning kan efter rettens bestemmelse behandles på skriftligt grundlag, hvis afgørelsen træffes af en dommer eller afdeling, som ikke deltager i domsforhandlingen.

*Stk. 3.* Kæres en kendelse om fristforlængelse, hvorved varetægtsfængsling eller anden frihedsberøvende foranstaltning udstrækkes ud over 3 måneder, skal kæremålet efter begæring behandles mundtligt. Når kæremål én gang er blevet behandlet mundtligt, afgør den overordnede ret, om en senere begæring om mundtlig behandling skal imødekommes. Bestemmelsen i stk. 1, sidste pkt., finder tilsvarende anvendelse.

**§ 768.** Varetægtsfængsling eller foranstaltninger, der træder i stedet herfor, skal om fornødent ved rettens kendelse ophæves, når forfølgning opgives eller betingelserne for iværksættelse ikke længere er til stede. Finder retten, at undersøgelsen ikke fremmes med tilstrækkelig hurtighed, og at fortsat varetægtsfængsling eller anden foranstaltning ikke er rimelig, skal retten ophæve den.

**§ 769.** Bestemmelse om varetægtsfængsling eller anden foranstaltning har kun virkning indtil sagens afgørelse i retten. På begæring træffer retten efter afgørelsen bestemmelse om, hvorvidt tiltalte under eventuel appel, eller indtil fuldbyrdelse kan iværksættes, skal varetægtsfængsles eller forblive varetægtsfængslet eller undergives foranstaltninger, der træder i stedet herfor. Ved bestemmelsen herom finder reglerne i §§ 762, 764-766 og 768 tilsvarende anvendelse, medmindre tiltalte erklærer sig indforstået med at forblive varetægtsfængslet eller undergivet anden foranstaltning. Har den pågældende inden sagens afgørelse i retten været varetægtsfængslet eller undergivet andre foranstaltninger, men finder retten ikke grundlag for fortsat anvendelse heraf, kan retten på anklagemyndighedens begæring bestemme, at varetægtsfængslingen eller foranstaltningen skal være i kraft, indtil afgørelse af varetægtsspørgsmålet foreligger fra den overordnede ret, hvortil sagen eller varetægtsspørgsmålet er indbragt.

*Stk. 2.* Indbringes den afgørelse, der er truffet i sagen, for højere ret, og er der i medfør af stk. 1 truffet bestemmelse om anvendelse af varetægtsfængsling eller andre foranstaltninger efter afgørelsen, skal spørgsmålet om den fortsatte anvendelse heraf snarest forelægges for den overordnede ret, hvortil afgørelsen er indbragt. Ved denne rets behandling af spørgsmålet om varetægtsfængsling eller andre foranstaltninger finder reglerne i §§ 762, 764, stk. 1, 3 og 4, 765, 766, 767, stk. 1, 1.-4. pkt., og 768 tilsvarende anvendelse.

**§ 770.** En varetægtsarrestant er alene undergivet de indskrænkninger, som er nødvendige til sikring af varetægtsfængslingens øjemed eller opretholdelse af orden og sikkerhed i varetægtsfængslet.

*Stk. 2.* Varetægtsarrestanter anbringes i varetægtsfængsel (arresthus), så vidt muligt på det sted, hvor straffesagen behandles. Anbringelse uden for varetægtsfængsel kan ske af helbredsmæssige grunde eller i medfør af § 777.

**§ 770 a.** Retten kan efter anmodning fra politiet bestemme, at en varetægtsarrestant skal udelukkes fra fællesskab med de øvrige indsatte (isolation), hvis
1) varetægtsfængslingen er besluttet i medfør af § 762, stk. 1, nr. 3, og

2) der er bestemte grunde til at antage, at varetægtsfængslingen i sig selv ikke er tilstrækkelig til at hindre arrestanten i at vanskeliggøre forfølgningen i sagen, herunder ved gennem andre indsatte at påvirke medsigtede eller ved trusler eller på anden lignende måde at påvirke andre.

**§ 770 b.** Isolation må kun iværksættes eller fortsættes, hvis
1) formålet hermed ikke kan tilgodeses ved mindre indgribende foranstaltninger, herunder ved at anbringe arrestanten i andet arresthus end bestemte andre indsatte eller på anden måde afskære arrestanten fra samvær med sådanne indsatte eller ved at etablere brevkontrol, besøgskontrol eller besøgsforbud,
2) indgrebet, herunder den særlige belastning, som indgrebet kan medføre på grund af arrestantens unge alder, fysiske eller psykiske svagelighed eller personlige forhold i øvrigt, ikke står i misforhold til sagens betydning og den retsfølge, som kan ventes, hvis arrestanten findes skyldig, og
3) efterforskningen fremmes med den særlige hurtighed, som er påkrævet ved varetægtsfængsling i isolation, herunder ved benyttelse af mulighederne for bevissikring efter § 747.

**§ 770 c.** Hvis sigtelsen angår en lovovertrædelse, som efter loven ikke kan medføre fængsel i 4 år, må isolation ikke finde sted i et sammenhængende tidsrum på mere end 4 uger.
*Stk. 2.* Hvis sigtelsen angår en lovovertrædelse, som efter loven kan medføre fængsel i 4 år eller derover, men ikke fængsel i 6 år, må isolation ikke finde sted i et sammenhængende tidsrum på mere end 8 uger.
*Stk. 3.* Hvis sigtelsen angår en lovovertrædelse, som efter loven kan medføre fængsel i 6 år eller derover, må isolation ikke finde sted i et sammenhængende tidsrum på mere end 3 måneder. Retten kan dog undtagelsesvis tillade, at en isolation udstrækkes ud over 3 måneder, hvis afgørende hensyn til forfølgningen gør fortsat isolation påkrævet, uanset den tid arrestanten hidtil har været isoleret.
*Stk. 4.* Hvis arrestanten er under 18 år, må isolation i ingen tilfælde finde sted i et sammenhængende tidsrum på mere end 8 uger.

**§ 770 d.** Rettens afgørelse om isolation træffes ved særskilt kendelse herom. Træffer retten bestemmelse om isolation, skal retten i kendelsen anføre de konkrete omstændigheder, hvorpå det støttes, at betingelserne i §§ 770 a-770 c for isolation eller fortsat isolation er opfyldt.
*Stk. 2.* Ved rettens afgørelse om isolation finder reglerne i § 764, stk. 2-4, § 766, § 767, stk. 1, og §§ 768-769 i øvrigt tilsvarende anvendelse. Ved iværksættelse af isolation må den første frist for indgrebets længde dog ikke overstige 2 uger. Hvis arrestanten er under 18 år, kan fristen for isolation højst forlænges med 2 uger ad gangen.

**§ 770 e.** Udstrækkes en isolation ud over 8 uger, skal kæremål herom efter anmodning behandles mundtligt. Stadfæstes afgørelsen om isolation, skal senere kæremål om fortsat isolation ligeledes behandles mundtligt efter anmodning, hvis isolationen ved den påkærede kendelse udstrækkes ud over 8 uger fra den seneste mundtlige behandling af kæremål om forlængelse af isolation. I andre tilfælde afgør kæreinstansen, om en anmodning om mundtlig behandling skal imødekommes. Bestemmelsen i § 767, stk. 1, sidste pkt., finder tilsvarende anvendelse.

**§ 771.** En varetægtsarrestant kan modtage besøg i det omfang, opretholdelse af orden og sikkerhed i varetægtsfængslet tillader det. Politiet kan af hensyn til varetægtsfængslingens øjemed modsætte sig, at varetægtsarrestanten modtager besøg, eller forlange, at besøg finder sted under kontrol. Nægter politiet besøg, skal varetægtsarrestanten underrettes herom, medmindre dommeren af hensyn til efterforskningen træffer anden bestemmelse. Varetægtsarrestanten kan kræve, at politiets afslag på besøg eller krav om kontrol forelægges retten til afgørelse. Arrestanten har altid ret til ukontrolleret besøg af sin forsvarer.
*Stk. 2.* Når særlige omstændigheder taler derfor, kan institutionens ledelse med politiets samtykke give en varetægtsarrestant udgangstilladelse med ledsager for et kortere tidsrum.

**§ 772.** En varetægtsarrestant har ret til at modtage og afsende breve. Politiet kan gennemse brevene inden modtagelsen eller afsendelsen. Politiet skal snarest muligt udlevere eller sende brevene,

medmindre indholdet vil kunne være til skade for efterforskningen eller opretholdelse af orden og sikkerhed i varetægtsfængslet. Tilbageholdes et brev, skal spørgsmålet, om tilbageholdelsen bør opretholdes, straks forelægges retten til afgørelse. Opretholdes tilbageholdelsen, skal afsenderen straks underrettes, medmindre dommeren af hensyn til efterforskningen træffer anden bestemmelse.

*Stk. 2.* En varetægtsarrestant har ret til ukontrolleret brevveksling med retten, forsvareren, justitsministeren, direktøren for kriminalforsorgen og Folketingets Ombudsmand. Justitsministeren kan fastsætte regler om varetægtsarrestanters ret til at afsende lukkede breve til andre offentlige myndigheder eller enkeltpersoner.

**§ 773.** Såfremt politiet bestemmer, at der af hensyn til varetægtsfængslingens øjemed skal foretages andre begrænsninger i en varetægtsarrestants rettigheder, kan arrestanten forlange spørgsmålet om opretholdelsen af begrænsningerne forelagt retten til afgørelse.

**§ 774.** Hverken institutionens personale eller andre må benyttes til at udforske varetægtsarrestanter.

**§ 775.** Der kan ikendes varetægtsarrestanter disciplinærstraf i form af strafcelle i indtil 2 uger eller inddragelse af arbejdspenge. De nævnte disciplinærstraffe kan anvendes i forening.

*Stk. 2.* Bestemmelserne i §§ 65 og 66 i lov om fuldbyrdelse af straf m.v. om anvendelse af håndjern og sikringscelle finder tilsvarende anvendelse på varetægtsarrestanter.

**§ 776.** Justitsministeren fastsætter nærmere regler om behandlingen af varetægtsarrestanter. For arrestanter, der er isoleret efter rettens bestemmelse, fastsætter justitsministeren særlige regler om øget personalekontakt, udvidet adgang til besøg, særlig adgang til eneundervisning og bestemte typer af arbejde samt tilbud om regelmæssige og længerevarende samtaler med præster, læger, psykologer eller andre. Justitsministeren fastsætter endvidere regler om den bistand, der i øvrigt ydes varetægtsarrestanter for at begrænse de erhvervsmæssige, sociale og personlige ulemper, der følger af varetægten.

**§ 777.** En varetægtsarrestant kan anbringes i en anstalt for personer, der udstår fængselsstraf eller forvaring, eller i hospital m.v., jf. straffelovens §§ 68 og 69, hvis den pågældende selv, anklagemyndigheden og institutionens ledelse samtykker heri. Hvis helbredsmæssige hensyn eller hensynet til andres sikkerhed gør det påkrævet, kan retten undtagelsesvis godkende en sådan anbringelse uden arrestantens samtykke. I institutionen behandles den frivilligt overførte varetægtsarrestant efter de regler, der gælder for personer, der er anbragt dér i henhold til dom, mens den tvangsmæssigt overførte varetægtsarrestant behandles efter reglerne om varetægtsarrestanter, i det omfang hensynet til orden og sikkerhed i institutionen gør det muligt. Arrestanten må dog ikke uden rettens godkendelse forlade institutionen, bortset fra de tilfælde, der er nævnt i § 771, stk. 2.

**§ 778.** Varetægtsarrestanters klager over fængselspersonalets adfærd indgives til vedkommende fængselsinspektør (arrestinspektør) eller til Direktoratet for Kriminalforsorgen. Har klageren ikke fået medhold, eller er der ikke truffet endelig afgørelse inden 2 uger efter indgivelsen, kan klagen indbringes for retten på det sted, hvor varetægtsfængslet (arresthuset) er beliggende.

*Stk. 2.* Retten kan afvise at iværksætte en undersøgelse, hvis klagen findes åbenbart grundløs, hvis den angår forhold af uvæsentlig betydning, eller hvis den indgives mere end 4 uger efter, at det forhold, som klagen angår, har fundet sted. Rettens undersøgelse foretages i overensstemmelse med reglerne i § 1019 b, § 1019 e, stk. 1 og stk. 3-5, § 1019 f, stk. 2, og § 1019 g. Dommeren træffer bestemmelse om afhøring af klageren, indklagede og vidner samt om tilvejebringelse af udtalelser fra sagkyndige og af andre bevismidler.

*Stk. 3.* Når undersøgelsen er afsluttet, afgiver retten en redegørelse herfor, som sendes til klageren, til den, klagen angår, og til fængselsinspektøren (arrestinspektøren) samt til Direktoratet for Kriminalforsorgen.

**§ 779.** (Ophævet)

Kapitel 71

## Indgreb i meddelelseshemmeligheden, observation og dataaflæsning

§ **780.** Politiet kan efter reglerne i dette kapitel foretage indgreb i meddelelseshemmeligheden ved at

1) aflytte telefonsamtaler eller anden tilsvarende telekommunikation (telefonaflytning),
2) aflytte andre samtaler eller udtalelser ved hjælp af et apparat (anden aflytning),
3) indhente oplysning om, hvilke telefoner eller andre tilsvarende kommunikationsapparater der sættes i forbindelse med en bestemt telefon eller andet kommunikationsapparat, selv om indehaveren af dette ikke har meddelt tilladelse hertil (teleoplysning),
4) indhente oplysning om, hvilke telefoner eller andre tilsvarende kommunikationsapparater inden for et nærmere angivet område der sættes i forbindelse med andre telefoner eller kommunikationsapparater (udvidet teleoplysning),
5) tilbageholde, åbne og gøre sig bekendt med indholdet af breve, telegrammer og andre forsendelser (brevåbning) og
6) standse den videre befordring af forsendelser som nævnt i nr. 5 (brevstandsning).

*Stk. 2.* Politiet kan foretage optagelser eller tage kopier af de samtaler, udtalelser, forsendelser m.v., som er nævnt i stk. 1, i samme omfang som politiet er berettiget til at gøre sig bekendt med indholdet heraf.

§ **781.** Indgreb i meddelelseshemmeligheden må kun foretages, såfremt

1) der er bestemte grunde til at antage, at der på den pågældende måde gives meddelelser eller foretages forsendelser til eller fra en mistænkt,
2) indgrebet må antages at være af afgørende betydning for efterforskningen og
3) efterforskningen angår en lovovertrædelse, som efter loven kan straffes med fængsel i 6 år eller derover, en forsætlig overtrædelse af straffelovens kapitler 12 eller 13 eller en overtrædelse af straffelovens §§ 124, stk. 2, 125, 127, stk. 1, 193, stk. 1, 228, 235, 266, 281 eller en overtrædelse af udlændingelovens § 59, stk. 5.

*Stk. 2.* Er betingelserne i stk. 1, nr. 1 og 2, opfyldt, kan telefonaflytning og teleoplysning endvidere foretages, såfremt mistanken angår fredskrænkelser som omhandlet i straffelovens § 263, stk. 2, eller § 263, stk. 3, jf. stk. 2.

*Stk. 3.* Er betingelserne i stk. 1, nr. 1 og 2, opfyldt, kan teleoplysning endvidere foretages, såfremt mistanken angår gentagne fredskrænkelser som omhandlet i straffelovens § 265. Det samme gælder, såfremt mistanken angår en overtrædelse af straffelovens § 279 a eller § 293, stk. 1, begået ved anvendelse af en telekommunikationstjeneste.

*Stk. 4.* Brevåbning og brevstandsning kan desuden foretages, hvis der foreligger en særlig bestyrket mistanke om, at der i forsendelsen findes genstande, som bør konfiskeres, eller som ved en forbrydelse er fravendt nogen, som kan kræve dem tilbage.

*Stk. 5.* Aflytning efter § 780, stk. 1, nr. 2, og udvidet teleoplysning efter § 780, stk. 1, nr. 4, kan kun foretages, når mistanken vedrører en forbrydelse, som har medført eller som kan medføre fare for menneskers liv eller velfærd eller for betydelige samfundsværdier. Udvidet teleoplysning kan foretages, uanset betingelsen i stk. 1, nr. 1, ikke er opfyldt.

§ **782.** Et indgreb i meddelelseshemmeligheden må ikke foretages, såfremt det efter indgrebets formål, sagens betydning og den krænkelse og ulempe, som indgrebet må antages at forvolde den eller de personer, som det rammer, ville være et uforholdsmæssigt indgreb.

*Stk. 2.* Telefonaflytning, anden aflytning, brevåbning og brevstandsning må ikke foretages med hensyn til den mistænktes forbindelse med personer, som efter reglerne i § 170 er udelukket fra at afgive forklaring som vidne.

§ **783.** Indgreb i meddelelseshemmeligheden sker efter rettens kendelse. I kendelsen anføres de telefonnumre, lokaliteter, adressater eller forsendelser, som indgrebet angår. Endvidere anføres de konkrete omstændigheder i sagen, hvorpå det støttes, at betingelserne for indgrebet er opfyldt. Kendelsen kan til enhver tid omgøres.

*Stk. 2.* I kendelsen fastsættes det tidsrum, inden for hvilket indgrebet kan foretages. Dette tidsrum

skal være så kort som muligt og må ikke overstige 4 uger. Tidsrummet kan forlænges, men højst med 4 uger ad gangen. Forlængelsen sker ved kendelse.

*Stk. 3.* Såfremt indgrebets øjemed ville forspildes, dersom retskendelse skulle afventes, kan politiet træffe beslutning om at foretage indgrebet. I så fald skal politiet snarest muligt og senest inden 24 timer fra indgrebets iværksættelse forelægge sagen for retten. Retten afgør ved kendelse, om indgrebet kan godkendes, samt om det kan opretholdes, og i bekræftende fald for hvilket tidsrum, jf. stk. 1, 2.-3. pkt., og stk. 2. Burde indgrebet efter rettens opfattelse ikke være foretaget, skal retten give meddelelse herom til Justitsministeriet.

*Stk. 4.* Ved modtagelse af underretning i medfør af artikel 20 i konventionen af 29. maj 2000 om gensidig retshjælp i straffesager mellem Den Europæiske Unions medlemsstater skal politiet forelægge sagen for retten senest 48 timer fra modtagelsen af underretningen. Retten afgør ved kendelse, om indgreb i meddelelseshemmeligheden må finde sted, eller, hvis indgrebet allerede er iværksat, om indgrebet kan godkendes, og om det kan opretholdes. Bestemmelserne i dette kapitel finder tilsvarende anvendelse.

**§ 784.** Inden retten træffer afgørelse efter § 783, skal der beskikkes en advokat for den, som indgrebet vedrører, og advokaten skal have lejlighed til at udtale sig. Angår efterforskningen en overtrædelse af straffelovens kapitler 12 eller 13, beskikkes advokaten fra den særlige kreds af advokater, som er nævnt i stk. 2. Rettens beslutning om, at advokaten ikke skal beskikkes fra denne særlige kreds, kan påkæres til højere ret.

*Stk. 2.* Justitsministeren antager for hver landsrets område et antal advokater, der kan beskikkes i de i stk. 1, 2. pkt., nævnte sager. Justitsministeren fastsætter nærmere regler om de pågældende advokaters vagtordninger, om vederlag for at stå til rådighed og om sikkerhedsmæssige spørgsmål, herunder godkendelse af sekretærhjælp.

**§ 785.** En advokat, som er beskikket efter § 784, stk. 1, skal underrettes om alle retsmøder i sagen og er berettiget til at overvære disse samt til at gøre sig bekendt med det materiale, som politiet har tilvejebragt. Advokaten er endvidere berettiget til at få udleveret en genpart af materialet. Finder politiet, at materialet er af særlig fortrolig karakter, og at genpart heraf derfor ikke bør udleveres, skal spørgsmålet herom på begæring af advokaten af politiet indbringes for retten til afgørelse. Advokaten må ikke give de modtagne oplysninger videre til andre eller uden politiets samtykke sætte sig i forbindelse med den, over for hvem indgrebet er begæret foretaget. Den beskikkede advokat må ikke give møde ved anden advokat eller ved fuldmægtig.

*Stk. 2.* Bestemmelserne om beskikkede forsvarere i kapitel 66 og § 746, stk. 1, samt bestemmelserne i kapitlerne 91 og 92 om sagsomkostninger og rettergangsbøder finder tilsvarende anvendelse på den beskikkede advokat. Retten kan bestemme, at den beskikkede advokat ikke senere under sagen kan virke som forsvarer for nogen sigtet.

**§ 786.** Det påhviler postvirksomheder og udbydere af telenet eller teletjenester at bistå politiet ved gennemførelsen af indgreb i meddelelseshemmeligheden, herunder ved at etablere aflytning af telefonsamtaler m.v., ved at give de i § 780, stk. 1, nr. 3 og 4, nævnte oplysninger samt ved at tilbageholde og udlevere forsendelser m.v.

*Stk. 2.* Uden for de i § 780, stk. 1, nr. 3, nævnte tilfælde kan retten efter begæring fra politiet med samtykke fra indehaveren af en telefon eller andet kommunikationsapparat give de i stk. 1 nævnte selskaber m.v. pålæg om at oplyse, hvilke andre apparater der sættes i forbindelse med det pågældende apparat.

*Stk. 3.* Bestemmelsen i § 178 finder tilsvarende anvendelse på den, som uden lovlig grund undlader at yde den bistand, som er nævnt i stk. 1, eller at efterkomme et pålæg, som er givet efter stk. 2.

*Stk. 4.* [8)] Det påhviler udbydere af telenet eller teletjenester at foretage registrering og opbevaring i 1 år af oplysninger om teletrafik til brug for efterforskning og retsforfølgning af strafbare forhold. Justitsministeren fastsætter efter forhandling med ministeren for videnskab, teknologi og udvikling nærmere regler om denne registrering og opbevaring.

*Stk. 5.* Justitsministeren kan efter forhandling med ministeren for videnskab, teknologi og udvikling fastsætte regler om telenet- og teletjenesteudbyderes praktiske bistand til politiet i

forbindelse med indgreb i meddelelseshemmeligheden.

*Stk. 6.* [9] Overtrædelse af stk. 4, 1. pkt., straffes med bøde.

*Stk. 7.* For overtrædelse af bestemmelser i forskrifter, der er fastsat i medfør af stk. 4, 2. pkt., og stk. 5 kan der fastsættes bestemmelser om bødestraf.

*Stk. 8.* Justitsministeren kan fastsætte regler om økonomisk godtgørelse til de i stk. 1 nævnte virksomheder for udgifter i forbindelse med bistand til politiet til gennemførelse af indgreb i meddelelseshemmeligheden.

**§ 786 a.** Som led i en efterforskning, hvor elektronisk bevismateriale kan være af betydning, kan politiet meddele udbydere af telenet eller teletjenester pålæg om at foretage hastesikring af elektroniske data, herunder trafikdata.

*Stk. 2.* Et pålæg om hastesikring i medfør af stk. 1 kan alene omfatte elektroniske data, som opbevares på det tidspunkt, hvor pålægget meddeles. I pålægget anføres, hvilke data der skal sikres, og i hvilket tidsrum de skal sikres (sikringsperioden). Pålægget skal afgrænses til alene at omfatte de data, der skønnes nødvendige for efterforskningen, og sikringsperioden skal være så kort som mulig og kan ikke overstige 90 dage. Et pålæg kan ikke forlænges.

*Stk. 3.* Det påhviler udbydere af telenet eller teletjenester som led i sikring efter stk. 1 uden ugrundet ophold at videregive trafikdata om andre telenet- eller teletjenesteudbydere, hvis net eller tjenester har været anvendt i forbindelse med den elektroniske kommunikation, som kan være af betydning for efterforskningen.

*Stk. 4.* Overtrædelse af stk. 1 og 3 straffes med bøde.

**§ 787.** Den beskikkede advokat kan forlange at overvære åbningen af breve og andre lukkede forsendelser. Dette gælder dog ikke, hvis åbningen ikke kan udsættes.

*Stk. 2.* Reglen i stk. 1 finder tillige anvendelse på en forsvarer.

**§ 788.** Efter afslutningen af et indgreb i meddelelseshemmeligheden skal der gives underretning om indgrebet, jf. dog stk. 4 og 5. Har den person, til hvem underretning efter stk. 2 skal gives, været mistænkt i sagen, skal der tillige gives underretning herom og om, hvilken lovovertrædelse mistanken har angået.

*Stk. 2.* Underretningen gives

1) ved telefonaflytning og teleoplysning til indehaveren af den pågældende telefon,
2) ved anden aflytning til den, der har rådighed over det sted eller det lokale, hvor samtalen er afholdt eller udtalelsen fremsat, og
3) ved brevåbning og brevstandsning til afsenderen eller modtageren af forsendelsen.

*Stk. 3.* Underretningen gives af den byret, som har truffet afgørelse efter § 783. Underretningen gives snarest muligt, såfremt politiet ikke senest 14 dage efter udløbet af det tidsrum, for hvilket indgrebet har været tilladt, har fremsat begæring om undladelse af eller udsættelse med underretning, jf. stk. 4. Er der i medfør af § 784, stk. 1, beskikket en advokat, skal genpart af underretningen sendes til denne.

*Stk. 4.* Vil underretning som nævnt i stk. 1-3 være til skade for efterforskningen eller til skade for efterforskningen i en anden verserende sag om en lovovertrædelse, som efter loven kan danne grundlag for et indgreb i meddelelseshemmeligheden, eller taler omstændighederne i øvrigt imod underretning, kan retten efter begæring fra politiet beslutte, at underretning skal undlades eller udsættes i et nærmere fastsat tidsrum, der kan forlænges ved senere beslutning. Er der efter § 784, stk. 1, beskikket en advokat, skal denne have lejlighed til at udtale sig, inden retten træffer beslutning om undladelse af eller udsættelse med underretningen.

*Stk. 5.* Efter afslutningen af et indgreb i meddelelseshemmeligheden i form af udvidet teleoplysning efter § 780, stk. 1, nr. 4, skal der ikke gives underretning om indgrebet til indehaverne af de pågældende telefoner.

**§ 789.** Får politiet ved et indgreb i meddelelseshemmeligheden oplysning om en lovovertrædelse, der ikke har dannet og efter § 781, stk. 1, nr. 3, eller § 781, stk. 5, heller ikke kunne danne grundlag for indgrebet, kan politiet anvende denne oplysning som led i efterforskningen af den pågældende lovovertrædelse.

*Stk. 2.* Oplysninger, der er tilvejebragt ved et indgreb i meddelelseshemmeligheden, må ikke anvendes som bevis i retten vedrørende en lovovertrædelse, der ikke har dannet og efter § 781, stk. 1, nr. 3, eller § 781, stk. 5, heller ikke kunne danne grundlag for indgrebet.

*Stk. 3.* Retten kan bestemme, at stk. 2 ikke finder anvendelse, såfremt

1) andre efterforskningsskridt ikke vil være egnede til at sikre bevis i sagen,
2) sagen angår en lovovertrædelse, der efter loven kan medføre fængsel i 1 år og 6 måneder eller derover, og
3) retten i øvrigt finder det ubetænkeligt.

**§ 790.** Forsendelser, der har været tilbageholdt med henblik på brevåbning, skal snarest muligt befordres videre efter deres bestemmelse. Ønsker politiet at standse den videre befordring, skal begæring om brevstandsning indgives til retten inden 48 timer efter tilbageholdelsens iværksættelse.

**§ 791.** Båndoptagelser, fotokopier eller anden gengivelse af det, der ved indgrebet er kommet til politiets kendskab, skal tilintetgøres, hvis der ikke rejses sigtelse mod nogen for den lovovertrædelse, der dannede grundlag for indgrebet, eller hvis påtale senere opgives. Politiet underretter en i medfør af § 784, stk. 1, beskikket advokat, når tilintetgørelse har fundet sted.

*Stk. 2.* Er materialet fortsat af efterforskningsmæssig betydning, kan tilintetgørelse undlades eller udsættes i et nærmere fastsat tidsrum. Politiet indbringer spørgsmålet herom for retten, der, inden der træffes afgørelse, skal give den beskikkede advokat lejlighed til at udtale sig. Bestemmelserne i 2. pkt. finder ikke anvendelse på materiale, der er tilvejebragt som led i efterforskning af overtrædelser af straffelovens kapitel 12, §§ 111-115 og 118.

*Stk. 3.* Er der i forbindelse med telefonaflytning, anden aflytning eller brevåbning foretaget indgreb i den mistænktes forbindelse med personer, som efter reglerne i § 170 er udelukket fra at afgive forklaring som vidne, skal materiale om dette indgreb straks tilintetgøres. Dette gælder dog ikke, hvis materialet giver anledning til, at der rejses sigtelse for strafbart forhold mod den omhandlede person, eller at hvervet som forsvarer bliver frataget den pågældende, jf. §§ 730, stk. 3, og 736.

*Stk. 4.* I øvrigt skal politiet tilintetgøre materiale, som tilvejebringes ved indgreb i meddelelseshemmeligheden, og som viser sig ikke at have efterforskningsmæssig betydning.

**§ 791 a.** Politiet kan foretage fotografering eller iagttagelse ved hjælp af kikkert eller andet apparat af personer, der befinder sig på et ikke frit tilgængeligt sted (observation), såfremt,

1) indgrebet må antages at være af væsentlig betydning for efterforskningen, og
2) efterforskningen vedrører en lovovertrædelse, der efter loven kan medføre fængselsstraf.

*Stk. 2.* Observation som nævnt i stk. 1 ved hjælp af fjernbetjent eller automatisk virkende tv-kamera, fotografiapparat eller lignende apparat må dog kun foretages, såfremt efterforskningen vedrører en lovovertrædelse, der efter loven kan medføre fængsel i 1 år og 6 måneder eller derover.

*Stk. 3.* Observation af personer, der befinder sig i en bolig eller andre husrum, ved hjælp af fjernbetjent eller automatisk virkende tv-kamera, fotografiapparat eller lignende apparat eller ved hjælp af apparat, der anvendes i boligen eller husrummet, må dog kun foretages, såfremt

1) der er bestemte grunde til at antage, at bevis i sagen kan opnås ved indgrebet,
2) indgrebet må antages at være af afgørende betydning for efterforskningen,
3) efterforskningen angår en lovovertrædelse, der efter loven kan straffes med fængsel i 6 år eller derover, en forsætlig overtrædelse af straffelovens kapitler 12 eller 13 eller en overtrædelse af straffelovens §§ 124, stk. 2, 125, 127, stk. 1, 193, stk. 1, 266, 281, 289 eller en overtrædelse af udlændingelovens § 59, stk. 5, og
4) efterforskningen vedrører en lovovertrædelse, som har medført eller som kan medføre fare for menneskers liv eller velfærd eller for betydelige samfundsværdier.

*Stk. 4.* Observation af et ikke frit tilgængeligt sted som nævnt i stk. 1-3, som den, der angiver at være forurettet ved lovovertrædelsen, har rådighed over, er ikke omfattet af reglerne i denne bestemmelse, såfremt den pågældende meddeler skriftligt samtykke til observationen.

*Stk. 5.* Observation må ikke foretages, såfremt det efter indgrebets formål, sagens betydning og den krænkelse og ulempe, som indgrebet må antages at forvolde den eller de personer, som det rammer, ville være et uforholdsmæssigt indgreb.

*Stk. 6.* Reglerne i § 782, stk. 2, §§ 783-785, § 788, stk. 1, § 788, stk. 2, nr. 2, og § 788, stk. 3 og 4,