

THEME:

**Ethnic profiling in Denmark
– legal safeguards within
the field of work of the police**



THE DANISH INSTITUTE
FOR HUMAN RIGHTS
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Ethnic profiling in Danmark – legal safeguards within the field of work of the police

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Executive Summary and Recommendations

This report presents an analysis of Danish law on non-discrimination, policing, counter-terrorism, immigration and border-control standards with regards to ethnic profiling. The study examines legal sources, including legislation, administrative orders, national guidelines, Danish case law from courts and administrative bodies, international case law of relevance to Denmark, and international good practices on combating ethnic profiling.

Police Powers to Carry out Measures

The Police Activities Act, The Road Traffic Act and the Administration of Justice Act enable the police to carry out random stop and search measures towards citizens without a requirement of reasonable suspicion. As stated by the European Court of Human Rights in the judgment *Gillian and Quinton v. The United Kingdom*, wide discretion when carrying out random stops creates a clear risk of ethnic profiling by the individual police officer, when selecting persons for police stops. No Danish guidelines exist concerning prevention of ethnic profiling when carrying out random police stops.

- 1. The Danish Institute for Human Rights recommends that section 6 of the Police Activities Act is amended in accordance with the European Court of Human Rights judgment Gillian and Quinton v. The United Kingdom.*
- 2. The Danish Institute for Human Rights recommends the adoption of national guidelines aimed at prevention ethnic profiling. The guidelines should contain guidance on which criteria are legitimate as the basis of police measures and how ethnic profiling is best avoided when carrying out stops.*

Police training can be an effective tool in minimizing the risk of ethnic profiling. Training should aim to educate officers concerning relevant anti-discrimination law; challenge stereotypes and prejudices; raise awareness of the consequences of discrimination and the importance of public trust; and practical advice on how to communicate with the public.

3. The Danish Institute for Human Rights commends that police cadets receive training concerning ethnic profiling and recommends that such training is continued after completion of police academy education. Especially guidance by superior police officials has significant importance to prevention of ethnic profiling.

Immigration and Border Control

The Aliens Act enables the police to carry out random searches of vehicles to search for immigrants without a legal residence permit. No national guidelines exist focusing on ethnic profiling when patrolling near national borders. The risk of ethnic profiling when combating illegal immigration is presumably higher than other working areas of the police since the object of a search is to detect non-Danish citizens crossing the borders illegally. Clear guidelines concerning legitimate and objective criteria when patrolling near borders are therefore essential to prevent ethnic profiling.

4. The Danish Institute for Human Rights recommends the adoption of national guidelines focusing specifically on handling and preventing ethnic profiling when carrying out border control.

Anti-Terrorism

As part of surveillance and investigation, the Danish Security and Intelligence Service (PET) collects personal data on persons or organisations suspected of criminal activities. Guidelines on PET's handling of personal data have been issued and the Wamberg Committee monitors the activities of PET. However, neither the guidelines nor the terms of reference of the Wamberg Committee specifically mention the risk of ethnic profiling.

5. The Danish Institute for Human Rights recommends that guidelines on PET's handling of personal data and the terms of reference of the Wamberg Committee are amended by introducing clear regulations on prevention of ethnic profiling.

When combating radicalisation, PET emphasises that terror threats against Denmark mainly originates from networks, groups or single persons possessing various types of militant Islamic ideology. Home-grown extremists are described as typically loosely structured networks of youths between 16 and 25 years who are born or raised in Denmark. They see themselves as part of a global, Islamic network in which violence

often plays a central role. The use of religious practice as a main criteria when identifying potential terrorists creates a real risk of ethnic profiling.

6. The Danish Institute for Human Rights recommends that counter-radicalisation initiatives are based on objective criteria and focus on clear behavioural indicators and actions showing planning or direct support for violence. Counter-radicalisation initiatives should not target people based on religion; consideration of religious affiliation should at most be used as a contributing factor.

The Prohibition against Discrimination under Danish Law

Ethnic profiling by the police constitutes differential treatment on the ground of a persons' race or ethnic origin and is in violation of the Danish administrative equality principle. Danish legislation does however not contain a specific, written prohibition against ethnic profiling and discrimination by the police.

7. The Danish Institute for Human Rights recommends that a provision specifically prohibiting discrimination including ethnic profiling is added to the Act on Police Activities. The prohibition can be added as a leading principle in a new section 3, subsection 2 on regular provision concerning police measures.

Complaints Mechanisms

Ethnic profiling can often be difficult to prove in individual cases since it can be difficult to establish that the motive for carrying out police measures was different from the one stated by the police. The Parliamentary Ombudsman is the only complaints mechanism that is able to carry out broader investigations into patterns of police practice and potential ethnic profiling.

8. The Danish Institute for Human Rights recommends that the possibility of carrying out broader investigations of ethnic profiling patterns is introduced in the general police complaints system.

9. The Danish Institute for Human Rights recommends that the Parliamentary Ombudsman carries out a full pattern and practice investigation concerning ethnic profiling carried out by the police.

In Denmark there is no systematic registration of ethnic origin of persons subject to police stops. It is therefore difficult to measure whether individuals of specific ethnic origin in practice are being stopped by

police officers more often than others and it is difficult to estimate whether ethnic profiling is taking place in Denmark.

Using so called stop and search forms to register police stops serves several purposes. The statistical data can be used as an internal police tool monitoring how and how often police measures are applied and whether or not certain groups are disproportionately stopped. Stop and search forms can also be a useful practical tool in encouraging officers to consider making well-founded stops. The statistical data collected can also be used by local communities to hold the police accountable for their actions.

10. The Danish Institute for Human Rights recommends that Denmark carries out a systematic registration of persons who come into contact with the police in order to generate ethnic statistics regarding policing practices that can detect patterns of disproportionate extent and answer questions about the effectiveness of police actions. Furthermore, the registration should be developed in cooperation with the Data Protection Agency in order to ensure compliance with the Act on Processing of Personal Data.

Introduction and Method

1.1. Introduction

The Danish Institute for Human Rights is a National Human Rights Institution (NHRI), accredited according to the UN Paris Principles. The Institute monitors the human rights situation in Denmark and works to protect and promote human rights. The institute is also designated as National Equality Body (NEB) for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin in accordance with EU directive 2000/43/EC.

The Danish Institute for Human Rights has written this report in cooperation with Open Society Justice Initiative who has funded the report, commented on a final draft of the report and assisted with knowledge on ethnic profiling and relevant practices from other countries.

The Open Society Justice Initiative works to address ethnic profiling by the police across Europe. In cooperation with national partners the Justice Initiative has documented ethnic profiling in several countries including Bulgaria, France, Hungary, the Netherlands, Spain and the United Kingdom. Research conducted by the Justice Initiative demonstrates that profiling is a long-standing and widespread practice that affects visible ethnic minorities across the European Union.

This report gives an overview of Danish regulation the general authority of the police to carry out measures against civilians, anti-terrorism measures, and to carry out immigration and border control with a focus on anti-discrimination and ethnic profiling issues. Furthermore, the report examines the degree to which Danish legislation and practices offer protection against ethnic profiling in the daily work of the police and evaluates whether there are sufficient legal safeguards in place in Denmark to combat and prevent ethnic profiling.

Ethnic profiling refers to the use by law enforcement authorities of ethnic or racial stereotypes as a basis for decisions about who may be involved for instance in specific types of illegal activities; or as basis for special investigative decisions and measures.

Ethnic profiling is a phenomenon that has attracted increasing attention over recent years. In many countries there is a lack of focus on ethnic

profiling by legislature and police authorities and the spreading of the phenomenon has not been adequately studied.

In relation to Denmark, available evidence such as academic research projects, statistical information from the Copenhagen Police and newspaper articles points to ethnic profiling as an occurring problem in Denmark.

Two academic research projects in Denmark have suggested that tensions between the police and particularly young members of ethnic minority groups, are partly a result of police ethnic profiling. The first highlights how the police uses stereotyped identification¹; the second study found that police use of stop-and-search results in verbal clashes and resistance by young people with ethnic minority background targeted, which in turn leads to an increase in the crime statistics for this group when they are charged for resisting the police.²

Statistics released by the Copenhagen Police suggest that ethnic profiling may occur in stop and search zones established by the police.³ The statistics also point to a low arrest rate, which questions the effectiveness of the stop and searches. Between 15 September 2008 and 15 January 2010, 9.887 individuals were searched a total of 17.977 times in the stop and search zones in Copenhagen. Over 50 per cent of the people who were stopped and searched were of non-Danish ethnic origin despite the fact that immigrants or descendants of immigrants make up 21,6 per cent of Copenhagen and 27,9 per cent of Nørrebro.⁴

Newspaper research conducted after riots taking place in Nørrebro among immigrant youths in February 2008 stated that the use of stop and search by the police was the reason given by youths for the violent confrontations in Nørrebro.⁵ This research is insufficient when estimating the level of ethnic profiling in Denmark but it indicates that further in-

¹ Holmberg 1999

² Ansel-Henry and Jespersen 2003

³ <http://politiken.dk/indland/ECE882398/18000-visitationer-gav-300-vaaben/>

⁴ <http://www.kk.dk/FaktaOmKommunen/KoebenhavnITalOgOrd/StatistikOmKoebenhavnOgKoebenhavnere/Kort/Temakort/Befolkning/IndvandrereOgEfterkommerelAlt.aspx>

⁵ Politiken 18.02.2008, *Erklæring: Sandheden bag urolighederne* (Declaration: the truth behind the riots)

http://politiken.dk/indland/fakta_indland/ECE473096/erklæring-sandheden-bag-urolighederne/ see also

Jyllands-posten 16.02.2008, *Experten afviser at optøjer handler om diskrimination* (Experts deny that the riots are due to discrimination) <http://jp.dk/indland/krimi/article1268662.ece>

depth analysis of ethnic profiling in Denmark is required. Collection and studying of data concerning ethnic profiling and discrimination is necessary in order to promote equal treatment and prevent discrimination. This also makes it possible to target efforts and measure their effect.

On this basis the Danish Institute for Human Rights has written this legal analysis on ethnic profiling in Denmark, with the main object to evaluate legal safeguards against ethnic profiling in Denmark.

1.2. Definition and Method

There is no definition of the concept of ethnic profiling in Danish legislation. This report relies on the definition employed by the European Commission against Racism and Intolerance (ECRI) for *racial profiling* in ECRI's General Policy Recommendation N° 11 on combating racism and racial discrimination in policing:

"The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities".

Ethnic profiling is most often found in police officers' decisions about whom to stop for identity checks, questioning and searches but can also be used to undertake computerised searches of databases (datamining) for potential terrorist suspects or in targeting surveillance and anti-radicalisation efforts.

Fundamental international human rights instruments, such as the United Nations' International Covenant on Civil and Political Rights, the United Nations' International Convention on the Elimination of All Forms of Racial Discrimination, the European Convention on Human Rights, and the EU Charter of Fundamental Rights do not expressly prohibit ethnic profiling. However, as pointed out by both the United Nations Committee on the Elimination of Racial Discrimination (CERD) and ECRI, ethnic profiling may constitute a violation of the fundamental principle of equality and non-discrimination.⁶

⁶ CERD General Recommendation No. 31: Administration of the Criminal Justice System; ECRI General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.

For individuals who are searched and detained by the police and in that connection experience to be subject to ethnic profiling, potentially through several encounters with the police, the experience can be frightening and humiliating. Ethnic profiling can furthermore increase the hostility between individuals and police officers. This increases the risk of routine measures escalating into conflicts or acts of aggression, which can risk posing a safety threat to the police and citizens of local communities.

Ethnic profiling can also serve to alienate persons subject to police measures and stigmatise entire communities. When the support of the very communities is necessary in fighting crime and terrorism, ethnic profiling is an ineffective and counter-productive method of police work.

Ethnic profiling may result from direct discrimination where a police officer purposefully targets certain ethnic groups. Ethnic profiling can also result from indirect discrimination where individual officers are unaware of the degree to which generalisations and ethnic stereotypes are motivating their subjective decision-making. Institutional factors that impact different ethnic groups unequally, such as the use of certain police tactics, focus on specific neighbourhoods or on certain types of crimes may also result in indirect discrimination.

In this report, current Danish regulation on policing, counter-terrorism, immigration, border-control and anti-discrimination is examined with the purpose of identifying the level of protection against ethnic profiling in Denmark. The report includes statutory rules, administrative orders and guidelines, case law from Danish courts and administrative bodies, as well as Denmark's international obligations in light of recent international case law. The findings concerning the Danish level of protection against ethnic profiling are put into perspective with recommendations and good practice developed by the Open Society Justice Initiative and the European Union Agency for Fundamental Rights. On this basis, the Danish situation in regard to ethnic profiling is evaluated and recommendations for strengthening the safeguards against ethnic profiling in Denmark are provided.

1.3. The Content of the Report

Chapter 2 in this report presents the structure of the police and intelligence service in Denmark. The various actors within the police and the security service are presented and the division of labour between these actors is described.

Chapter 3 concerns the scope of the police's authority to carry out measures against civilians. The chapter describes the powers of the police to carry out random searches under the Danish Act on Police Activities, the Road Traffic Act and the Administration of Justice Act. Furthermore, the chapter describes the powers of the police to carry out measures against civilians who pose a threat to the public order, as well as the powers of the police to carry out body searches and searches against suspected and accused persons.

Chapter 4 concerns Danish border control of goods and individuals. The chapter goes through relevant legislation, the division of labour between the police and other actors, and the practice of the police regarding control of goods and persons.

Chapter 5 outlines Danish anti-terrorism legislation and anti-terrorism measures. The duties of the Danish Security and Intelligence Service and its cooperation with other Danish authorities are discussed.

Chapter 6 describes the prohibition against discrimination on grounds of race or ethnic origin under Danish law. The chapter focuses especially on the police duty to practice equal treatment.

Chapter 7 discusses the possibilities to complain about the behaviour and decisions of the police and other authorities in relation to the areas described in chapter 3, 4 and 5.

2. The Police and Public Prosecution in Denmark

The Danish police and public prosecution both report directly to the Minister of Justice and are subject to the instructions of the Minister of Justice. The chief executive officer of the police services is the National Commissioner, and for the prosecutor it is the Director of Public Prosecutions.⁷

2.1. The National Police

The National Police is headed by the National Commissioner. The National Commissioner has overall responsibility for police activities throughout the country and monitors the individual Police Districts and District Commissioners.⁸ The National Police consists of three areas: the policing function, administration and the Danish Security and Intelligence Service. Within the policing function, the National Police formulates strategies for the entire Danish police force, supports activities in the districts and coordinates activities nationwide. The National Police also functions as the link to the international police cooperation and provides specialist skills to the police districts in certain areas such as crime prevention, gang crime and transboundary crime.

2.2. The Danish Security and Intelligence Service

The Danish Security and Intelligence Service (PET) is organisationally a part of the National Police, but the Director General of PET reports directly to the Minister of Justice. The main duty of PET is to prevent, investigate and counteract activities that poses or may pose a threat to Denmark as an independent, democratic and safe society. This includes among others an evaluation of security threats against Denmark, crimes covered by the Criminal Code's chapters 12 and 13, including terrorism, extremism and espionage, the most serious organised crime, for instance gang crime, protection of persons and other security tasks. PET also has a squad that can provide assistance to the districts in relation to specific police missions. PET undertakes its tasks through the gathering of intelligence, surveillance and investigations as well as preventative measures.

PET does not press charges in criminal cases. Should PET's investigations give reason to press criminal charges, the case is transferred to the

⁷ Administration of Justice Act sections 108 and 98.

⁸ Administration of Justice Act section 109.

ordinary police, the Public Prosecutor or in specific instances to the Minister of Justice.⁹

2.3. The Police Districts

Denmark is divided into 12 police districts that are all under the supervision of the National Commissioner. Every police district is headed by a District Commissioner and a Deputy Commissioner.¹⁰ Below the District Commissioner and Deputy Commissioner is a Senior Chief Prosecutor, who is responsible for public criminal proceedings, and an Assistant Commissioner who is responsible for the police activities in the district. Below the Assistant Commissioner are the Chief Superintendents who are responsible for the tactical support department, the investigation department and the local police department respectively.¹¹

2.3.1. The Tactical Support Department

The Tactical Support Department in a police district has a control room where the overall patrolling in the district and responses to unforeseen incidents are coordinated. The control room has an overview of all the patrol cars in the district and their location. The Tactical Support Department also is responsible for the district alarm centre, which receives emergency calls through the 112 phone number and a road traffic division, responsible for traffic control in the district.¹²

2.3.2. The Investigation Department

The Investigation Department is located at the main station of the district and contains departments for criminal offences endangering life and health, economic crime and organised crime. The Investigation Department is responsible for the investigation of cases of a serious or a more complicated nature in the district.¹³

2.3.3. The Local Police Department

The Local Police Departments consist of a number of local police stations intended to anchor the police activities in the local communities. The local police is responsible for the tasks that do not fall under the Tactical Support Department or the Investigation Department. Local crime is

⁹ For more see The Danish Security and Intelligence Service's homepage www.PET.dk. See also the Ministry of Justice's instruction to the head of the Danish Security and Intelligence Service from 7. December 2009.

¹⁰ Administration of Justice Act section 110.

¹¹ See www.justitsministeriet.dk/politikreds.html.

¹² Henricson page 51c.

¹³ Henricson page 59c.

investigated by local police, unless the crime is of a larger scale or a more serious nature making it more expedient to investigate by the Investigation Department at the main station in the district. The local police is also responsible for patrolling, which is coordinated via the control room of the Tactical Support Department, and local preventative work through crime prevention education and SSP-cooperation.¹⁴ At some local police stations, a community police is established with in-depth knowledge of and contact with the local community. Finally, the local police may establish a country police, which consists of a single police officer stationed in a demarcated less populated area, for example an island. The country police officer is responsible for keeping law and order in the area.¹⁵

2.4. The Prosecution Service

The public prosecutors in Denmark consist of the Director of Public Prosecutions, six Public Prosecutors and the Police Commissioners from the 12 districts.¹⁶ The Police Commissioners are subject to supervision by the Public Prosecutors who themselves are subject to supervision by the Director of Public Prosecutions.¹⁷

2.5. The District Councils

Every police district has a district council, which often consists of the District Commissioner and the mayors from the municipalities covered by the district. The District Commissioner is head of the District Council, which meets at least four times a year. The purpose of the District Council is to ensure coherence between the tasks of the police and the municipal authorities. The District Council can for instance discuss the organisation of police activities in the district concerned and recommend to the District Commissioner that the police prioritises certain tasks, such as putting emphasis on combating certain types of crime. If the District Council makes a recommendation to the District Commissioner, the Commissioner must inform the Council about the measures taken in order to comply with the recommendation or explain why it is not considered possible to comply with the recommendation.¹⁸

¹⁴ SSP is a local cooperation between School, Social Services and Police the purpose being to prevent crime among children and youth.

¹⁵ Henricson page 52-58.

¹⁶ Administration of Justice Act section 95

¹⁷ Administration of Justice Act sections 99-101.

¹⁸ Act no. 1053 of 29.10.2009 on Administration of Justice, sections 111 and 112; Administrative Order no. 1426 of 13. December 2006 on district councils and police activities. See also Henricson page 492c.

Police Powers to Carry out Measures

This chapter describes the police powers to carry out measures against civilians. The first part concerns measures that can be carried out towards all citizens by the police without any specific reason for doing so. These measures include identity checks, body searches within “stop and search zones” and stopping and controlling vehicles and drivers. The second part concerns police powers to carry out measures towards persons who are suspected of posing a threat in a specific situation. The third part concerns provisions from the Administration of Justice Act, which enables the police to carry out body searches and search of premises against persons who are suspected of having committed a criminal offence.

3.1. Random Measures

3.1.1 Identity Checks

According to section 750 of the Administration of Justice Act¹⁹, the police can carry out identity checks of all persons. On request from a police officer, everyone has a duty to state name, address and date of birth. The police have no duty to inform the person as to why this information is requested. The Danish legislation does not require a specific purpose for obtaining this information.²⁰

Other than stating one's name, address and date of birth, individuals have no duty to talk to the police. Neither can the police demand that a person states his or her social security number, which apart from a person's date of birth contains four additional digits.

If a person refuses to provide the information or states false information, the person concerned can be detained until the information is provided and subject to a fine. The length of detention and the burden caused by the detention must however always be proportionate to the purpose of detaining a person. In the Judgment *Vasileva v. Denmark*.²¹ The European Court of Human Rights decided that it was disproportionate to detain a 67-year old woman with high blood pressure for 13.5 hours, because she refused to state her name. On this ground, the European Court of Human

¹⁹ Consolidated act no. 1237 of 26.10.2010 on The Administration of Justice

²⁰ Cf. also Western High Court of Denmark case U.2002.2295V

²¹ *Vasileva v. Denmark*, Judgment of 25 September 2003, application no. 52792/99.

Rights found that Denmark had violated article 5 in the European Convention on Human Rights, concerning the right to liberty.

3.1.2. Stop and Search Zones

Section 6 of the Police Activities Act²² enables the police to establish so called "stop and search zones" in areas open to the public, educational facilities, youth clubs, after-school facilities etc. within which the police can stop any persons to search for weapons. Stop and search zones do not give the police power to search individuals at private premises or other places where the Offensive Weapons Act does not prohibit carrying knives.

The purpose of establishing stop and search zones is to control for possession of arms and therefore searches are undertaken to determine whether or not a person is carrying weapons. Stop and search zones for instance do not enable the police to carry out searches in order to check if in possession of drugs or other illegal objects. The establishment of a stop and search zone requires intelligence that there is an increased risk of criminal offences being committed, which could endanger the lives, health or welfare of individuals within specific locations. Reports of violence in particular locations are sufficient justification. The character and scale of previous criminal actions should be taken into account when deciding upon the establishment of a stop and search zone. A recent series of minor criminal violations concerning possession of weapons or one serious criminal action as for instance assault with a knife will serve as justification for the establishment of a stop and search zone.

Within a stop and search zone, the police can carry out random stops to control for arms without having a reasonable suspicion towards an individual and without a search warrant. Everyone within a stop and search zone can be subject to a random stop. The police have the power to search the exterior of a person's body and the clothes, which the person is wearing. Furthermore the police can search other clothes and objects as for instance bags, suitcases etc. if these are located within the stop and search zone. Vehicles can also be searched if the person in possession of the vehicle is present. The police powers to carry out searches within stop and search zones are equal to the security checks carried out in most airports.

²² Act no 444 of 09.06.2004 on Police Activities

It is a requirement that the establishment of a stop and search zone and the episodes justifying the establishment take place within a reasonable time frame. Furthermore, the police must be able to explain why an increased risk of crimes exists within that specific zone. The possible size of stop and search zones will depend on the reason justifying the establishment. The Police Activities Act states that the geographical span of a stop and search zones most often covers a pub, a shopping mall or a street or square and that a zone cannot include an entire police district or municipality.

Contrary to other provisions concerning interferences with private life, the establishment of stop and search zones does not require a court order. Stop and Search zones are established by the District Commissioners of the police. Stop and search zones must be established in writing and must contain a reason for the establishment and state the geographic area and duration of the zone. The establishment of stop and search zones are made public on the webpage of the individual police district. There is no upper limit for the duration of a stop and search zone, however, the preparatory works of the Act on Police Activities states that only under very special circumstances may zones be established with a duration exceeding one month. There is however no limit to the number of times a zone can be prolonged.²³

Annex 1 to this report lists all public notifications establishing stop and search zones, which are available from the webpage of the Copenhagen Police. The data shows that stop and search zones often last 30 days but in some cases have been prolonged several times. The reason for establishing the zones often refer to specific criminal incidents but there is a great variation in the quality of the intelligence justifying the zones. Some zones are established on a seemingly serious grounds, such as killings while others are established due to the finding a couple of weapons. From the end of 2008 to the beginning of 2010, the entire city of Copenhagen was in principle one large stop and search zone. The reason given for maintaining the zone was an ongoing rivalry between different gangs, which resulted in a large number of shootings in Copenhagen. Since January 2010, the number and size of stop and search zones has decreased significantly.

²³ L159 2003-04, Proposed Bill on Police Activities, annex A 5870 section 5.2.4.4.

Persons stopped within a stop and search zone will be able to appeal if they find that the establishment of the zone is unjustified. It is not possible to appeal a decision by the police to carry out random stops within a stop and search zone. The decision to establish a stop and search zone can be appealed by anyone who possesses a legal interest. See also chapter 7 on complaints mechanisms.

3.1.3. *Gillian and Quinton v. U.K.*

The European Court of Human Rights' judgment in the case *Gillian and Quinton v. U.K.*²⁴ has initiated a debate in Denmark concerning whether or not the Danish legislation concerning stop and search zones is in accordance with article 8 in the European Convention on Human Rights on the right to respect for private life.

The case concerns English legislation regarding police powers to stop and search for articles, which could be used for terrorist purposes, the so-called section 44 of the Terrorism Act 2000. The European Court of Human Rights decided that the police powers were not "in accordance with the law" as is required of an interference with private life according to article 8 (2). In order to be in accordance with the law, interference must have some basis in domestic law. Furthermore, the law must be adequately accessible and foreseeable to enable the individual to regulate his or her conduct according to the law. Finally, the national legislation must afford a measure of legal protection against arbitrary interferences by public authorities.

The European Court of Human Rights criticised English legislation on a number of points that are comparable to the Danish system concerning stop and search zones. For instance, the Court stated that the risk of arbitrariness increases when a police officer is given a broad discretion to stop and search everyone within a geographic area without any reason or reasonable suspicion towards the individuals selected for stop and search. That stop and search zones are time limited and only within a specific geographical area does not provide protection against arbitrary interferences if the zones cover extensive areas with concentrated populations and if they are continuously renewed. The Court stated that the possibility of judicially challenging a stop and search is useless when the police have the power to carry out random stops. It is virtually

²⁴ *Gillian and Quinton v. The United Kingdom* (Application no. 4158/05), Judgment of 12 January 2010.

impossible to prove that the power was improperly or arbitrarily exercised. The fact that the establishment of the stop and search zone in itself can be challenged is also a very limited safeguard, given the difficulty of proving that the establishment is unfounded. The judicial control of stop and search zones is therefore not a sufficient safeguard against arbitrary interferences with private life. The Court noted that the British law provided no guidance on the requirement of assessment of proportionality in invoking the measure (para. 80). The Court thus held that the Terrorism Act 2000 contained insufficient safeguards to constitute a real curb on the wide powers afforded to the executive so as to offer the individual adequate protection against arbitrary interference. While the present cases does not concern black applicants or those of Asian origin, the risks of the discriminatory use of the powers against such persons is a very real consideration.” (para 85).

The Danish Minister of Justice has stated in a press release that he does not see a need to change the Danish legislation since the judgment *Gillian and Quinton v. The United Kingdom* according to the ministry is not directly comparable to the situation in Denmark. The minister emphasises that establishment of a stop and search zone in Denmark requires that there is a heightened risk of criminal offences being committed, which could put the life or health of other people at risk.²⁵

Annex 1 listing stop and search zones available from the webpage of the Copenhagen Police does however show a decreased use of stop and search zones after the judgment *Gillian and Quinton v. The United Kingdom* in January 2010. Since July 2010, no new zones have been established.

The Danish Institute for Human Rights finds that there is a risk that The European Court of Human Rights in a case similar to The United Kingdom would find that Denmark violated article 8 of the Convention. The Institute emphasises that the geographical extent and time length of the zone in practice have been excessive; that Danish police has access to carry out stop and search measures without reasonable suspicion, which increases the risk of arbitrariness; and that it is very difficult to substantiate a complaint concerning random stop and search measures.²⁶

²⁵ Press release from the Ministry of Justice of 22 March 2010.

[http://www.justitsministeriet.dk/pressemeddelelse+M55d794bfe1a.html?&tx_ttnews\[pointer\]=1](http://www.justitsministeriet.dk/pressemeddelelse+M55d794bfe1a.html?&tx_ttnews[pointer]=1).

²⁶ Press release from The Danish Institute for Human Rights of 14 January 2010, *Danmark må rette ind efter dom*, available at: <http://menneskeret.dk/nyheder/arkiv/nyheder+2010/danmark+m%c3%a5+rette+ind+efter+dom>.

1. The Danish Institute for Human Rights recommends that section 6 of the Police Activities Act is amended in accordance with the European Court of Human Rights judgment Gillian and Quinton v. The United Kingdom.

3.1.4. Measures According to the Road Traffic Act

Sections 76a and 77 of the Road Traffic Act enable the police to carry out some types of random stops and searches towards vehicles and drivers of vehicles. These types of searches do not require the police to have reasonable suspicion and they can be applied to all drivers. If the police develops reasonable suspicion that a crime has been committed during the search, this can form basis of more intensive measures such as search of premises and body searches in accordance with chapter 72 and 73 of the Administration of Justice Act, as described below.

The driver of a vehicle has a duty to identify him or herself at the request of the police and to state who the owner of the vehicle is. The driver can furthermore be requested to provide a breath, saliva or sweat sample and to accept an eye exam in order for the police to assess whether there is a basis to suspect that the driver is intoxicated by alcohol or drugs in violation of the Road Traffic Act. This type of control is not in itself sufficient to determine whether the driver is intoxicated. If the test however gives reason to suspect that the driver is intoxicated or if the driver refuses to cooperate or is unable to complete the test, the police can detain the person in order to have a medically trained person extract a blood or urine sample.

Furthermore, the police has the power to stop a vehicle in order to control that the vehicle is registered in accordance with the Road Traffic Act and to inspect the vehicle for defects and to ascertain that the driver is allowed to drive the vehicle. If the vehicle does not meet the requirements of the Road Traffic Act, the police can summon the vehicle to a subsequent inspection. If the vehicle is considered to endanger the traffic safety, the license plates can be forfeit.

3.2. Measures Towards Persons Suspected of Posing a Threat of Public Order

Chapter 3 of the Police Activities Act enables the police to carry out measures towards individuals or groups who in a specific situation pose a threat to public order or to the safety of individuals or public safety. The threat can be caused by several factors such as street disorder, pub brawls or indecent behaviour. It is a requirement that there is an actual and

imminent threat before the police is able to carry out any measures and there must be an assumption that a disturbance of public order will take place if no measure is carried out. The purpose of the measure must be the prevention of threat and the measure must be justifiable with reference to the actual threat.

The Act on Police Activities lists examples of measures the police can use towards persons posing a threat as described above. The police must as far as possible apply the least restraining measure in any given situation where there is a need to prevent a threat and the measure used must always be proportionate to the specific threat. For instance, the police can issue an injunction to undertake or abstain from certain actions. The police can furthermore search the exterior of a person's body as well as clothes and other objects and vehicles in the possession of the person, if there is a reasonable suspicion that the individual is in possession of objects which can be used to disturb the public order etc. This is for instance the case if the police receive credible information that a person is in possession of dangerous objects or if the police observes that a person is trying to hide the objects in question. The exterior body search is equal to searches carried out in stop and search zones, but the police is also allowed to take pictures, prints etc. of a person's exterior body.

If the exterior search reveals objects, which can be used to disturb public order, the police can remove these objects. Removing the object requires that this contributes to prevent the threat to public order or safety. The Act on Police Activities does not enable the police to confiscate objects. As a rule the objects must be returned once the threat, which justified the removal, is no longer present. If the police find an illegal object, that object can be confiscated in accordance with the criminal provisions concerning confiscation

The police also has the power to detain persons, who pose a threat, for a maximum of 12 hours, cf. section 5 of the Police Act. It is not a requirement that the detainees are charged with a criminal offence. The detention must however be for the shortest duration possible and it is required that less restrictive measures will be insufficient in preventing the threat. Once the circumstances justifying the detention are no longer present, the detainee must be released.

3.3. Measures Towards Suspects and Accused Persons

The Administration of Justice Act enables the police to carry out certain measures towards persons who are suspected of having committed a

crime or persons who are arrested. Chapter 72 in the Administration of Justice Act enables the police to carry out body searches. Body searches include exterior body searches, which are described above, and body examinations. Chapter 73 of the Administration of Justice Act enables the police to carry out searches of premises.

Body searches and search of premises must always be proportionate. This means that the purpose of the measure must be reasonable compared to the violation and discomfort caused by the measure imposed. Furthermore body searches and search of premises must be carried out as gently as possible and without attracting unnecessary attention. For instance, if a body search is carried out in a way that can let the person feel exposed, it must be carried out by a person of the same sex or medical staff; search of premises must as far as possible be carried out without causing destruction to property.²⁷

Some measures in the Administration of Justice Act require reasonable suspicion whereas others require a strengthened suspicion. In the Western High Court case *U.1997.972V*, the body of a murdered woman with stains of seamen on her body and clothes was found in a park. A person who was parked his car close to the area around the time when the killing was assumed to have occurred, would not voluntarily agree to an extraction of a blood sample in order to compare with evidence from the scene of the crime. Because of this, he was charged with the murder of the woman and a blood sample was extracted against the will of the suspect. The court found that there was a reasonable suspicion against the person but not a strengthened suspicion, which is required when extracting a blood sample against a suspect's will.

3.3.1 Exterior Body Search

Exterior body search according to section 792 of the Administration of Justice Act covers body search as well as taking pictures, prints etc. of a persons' exterior body and the clothes which the person is wearing. A body search requires according to the Administration of Justice Act that there is a reasonable suspicion that a person has committed a crime and that the body search is of great significance to the police investigation.²⁸

²⁷ Administration of Justice Act, sections 792 e, 797 and 798

²⁸ Administration of Justice Act, section 792 a

The police decide whether or not to carry out the exterior body search of a suspect. Decisions made by the police can however be tried in court. The courts can allow the police to carry out an exterior body search, which does not involve undressing of non-suspects if the police is investigating a crime which has a maximum penalty of 1 year and 6 months or more; and the measure is of great significance to the investigation.²⁹

3.3.2. Body Examinations

According to section 792 of the Administration of Justice Act, body examinations consist of feeling the body in order to find objects beneath the skin or in the body cavities as well as extracting samples from the inner or outer parts of the body.

Carrying out body examination requires that there is a strengthened suspicion that a criminal offence with a maximum penalty of 1 year and 6 months or more has been committed and that the body examination is of decisive significance to the investigation.³⁰ The police can however register fingerprints, take photos and extract saliva or blood samples to secure subsequent identification of a person who is suspected of having violated section 235, subsection 2 of the Criminal Code, concerning downloading of child pornography or other criminal offences with a maximum penalty of 1 year and 6 months or more.³¹ The police can also extract blood samples if a person is suspected of having committed a crime, which includes consumption of alcohol or drugs. Finally, the police can carry out body search on arrested persons in order to remove objects which can be used to commit violence or escape, or cause danger to the arrested person or other individuals.³²

Body examination requires a court order and the suspect must have had access to make a statement beforehand. Furthermore, a doctor is required to participate at a body examination.³³

3.3.3. Search of Premises

Chapter 73 of the Administration of Justice Act enables the police to search rooms, locations and objects belonging to suspects as well as non-suspects.

²⁹ Administration of Justice Act, sections 792 c, 792 d, subsection 3 and 746.

³⁰ Administration of Justice Act, section 792, subsection 2

³¹ Administration of Justice Act, section 792 b

³² Administration of Justice Act, section 758

Search of premises or possessions belonging to a person who is under suspicion of having committed a criminal offence, subject to public prosecution, requires that there is a reasonable suspicion and that the search is of significant importance to the investigation.³⁴ Search of premises or possessions of a non suspect requires that the investigation concerns a criminal offence punishable by prison sentence and that there is a specific reason to assume that seizable objects can be found by carrying out the search.³⁵ According to section 796 of the Administration of Justice Act, a search of premises normally requires a court order and the individual who is subject to the search must have had the opportunity to make a statement before the decision to search is made. If the search of premises concerns other than housing, rooms, locked compartments, documents, papers etc. which a suspect is in possession of, the police itself can make a decision to carry out a search. For instance, the police can decide on whether or not to search an unlocked car, bag, garden etc.³⁶

3.4. Risk of Ethnic Profiling and recommendations

The Police Activities Act, the Road Traffic Act and the Administration of Justice Act enable the police to carry out random stop measures towards citizens without requiring a reasonable suspicion. The stop can be carried out within a stop and search zone, through stop of vehicles and through identity checks. As stated by the European Court of Human Rights in the judgment *Gillian and Quinton v. The U.K.*, wide discretion when carrying out random stops creates a clear risk of ethnic profiling by the individual police officer, when selecting persons for police stops. Recent data from the United Kingdom also shows that wide police power to carry out random stops results in a higher rate of disproportionality with regards to targeting certain ethnic minorities.³⁷

More intense measures such as search of vehicles or premises, body examinations and arrest according to the Administration of Justice Act require a reasonable suspicion and a justification of the measure. When carrying out such measures ethnic profiling may still occur but the risk is

³³ Administration of Justice Act, sections 792 c and 792 e.

³⁴ Administration of Justice Act, section 794

³⁵ Administration of Justice Act, section 795

³⁶ Cf. The Eastern High Court of Denmark, Judgment U1997.1572.

³⁷ Stop Watch Research and Action for Fair and Accountable Policing - *StopWatch's response to the proposed changes to the Police and Criminal Evidence Act 1984 (PACE) Code of Practice A. Revisions proposed 20th September 2010*

smaller since the measure must be objectively justified and is subject to court supervision.

The National Police has explained that no national guidelines exist concerning ethnic profiling and prevention of ethnic profiling when police officers are in contact with citizens. Furthermore, the National Police has explained that the police does not commit ethnic profiling since police work is based on relevant legislation and experience obtained through policing. The police identifies suspicious behaviour that requires further investigation based on a persons' behaviour and actions in certain situations. At the Police Academy during courses in regular police theory and sociology, the police cadets are informed that police investigations should not be carried out solely on the grounds of a persons' ethnic origin.³⁸

The Open Society Justice Initiative recommends that operational guidelines are issued, establishing clear and precise standards for initiating and conducting stops, identity checks and searches, including their function and grounds for carrying them out. Operational guidelines should clarify the nature of "suspicion" and define what reasons constitute legitimate grounds for a stop and what reasons do not.³⁹

2. The Danish Institute for Human Rights recommends the adoption of national guidelines aimed at prevention ethnic profiling. The guidelines should contain guidance on which criteria are legitimate as the basis of police measures and how ethnic profiling is best avoided.

The European Union Agency for Fundamental Rights (FRA) recommends training as an effective tool in minimizing the risk of ethnic profiling. Training should aim to educate officers on the law relevant to discrimination; challenging stereotypes and prejudices; raise awareness of the consequences of discrimination and the importance of public trust; and practical advice on how to communicate with the public. Following their training, especially guidance issued by senior officers is important when avoiding discriminatory practices in policing.⁴⁰

³⁸ Response to question no. 16 to bill L171 amending the Criminal code, the Administration of Justice Act, Offensive Weapons Act and act on execution of sentences etc. (increasing the measures against illegal firearms and knives carried at public locations) Parliamentary year 2007-08, 2nd session.

³⁹ Open Society Justice Initiative, Addressing Ethnic Profiling by Police – A report on the Strategies for effective police stop and search project, p. 14

⁴⁰ European Union Agency for Fundamental Rights, Towards More Effective Policing, Understanding and Preventing Discriminatory Ethnic Profiling: A Guide

3. The Danish Institute for Human Rights is pleased that police cadets receive training concerning ethnic profiling and recommends that such training is continued after completion of police academy training. Especially guidance by superior police officials has significant importance to prevent ethnic profiling.

4. Immigration and Border control

4.1. Legislation

The rules for border control of persons at the Danish borders are set out in the Aliens Act⁴¹ and in the Administrative Order on Aliens.⁴² The rules for customs duty are set out in the Customs Act. The purpose of the border control is to uncover illegal immigration and prevent transboundary crime.⁴³

4.2. Division of Labour

The responsibility for securing the Danish borders against illegal immigration and the smuggling of illegal and dutiable goods is shared between the police, the customs authorities and the Danish Defence. Customs authorities are responsible for control of goods while the police is responsible for person and crime control. The local police and customs units often undertake joint investigations and operational activities with the aim of combating smuggling of illegal and highly taxed goods as well as human trafficking and illegal immigration.⁴⁴ The Danish Defence for instance assists the border control with police control and surveillance at sea. The handling of such tasks takes place in accordance with the rules that are applicable to the police's handling of the concerned tasks and under police management.⁴⁵

Denmark is part of the Schengen Agreement⁴⁶, which amongst other things abolishes border controls between countries that are part of the Schengen Area, control at so-called "inner borders". Borders between Schengen countries and countries that are not part of the Schengen Agreement are correspondingly referred to as "outer borders." The Danish police's control of persons is undertaken at the outer borders, which consist of ports, airports and coasts. Even though the police as a consequence of the Schengen Agreement no longer carries out control of

⁴¹ Consolidated Act no 1061 of 18 August 2010 with subsequent amendments.

⁴² Administrative Order no. 270 of 22 March 2010 on alien's access to Denmark.

⁴³ Audit of the State Accounts, Report to the Public Accountants on border control, November 2004 RB A302/04

⁴⁴ Audit of the State Accounts, Report to the Public Accountants on border control, November 2004 RB A302/04

⁴⁵ Administrative Order no. 178 of 10 March 2008 on the Danish Defence's handling of police tasks at sea and Law no. 122 of 27. February 2001 on the Danish Defence's purpose, tasks and organisation etc.

⁴⁶ The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. See also Act no. 418 of 10.06.1997 on Denmark's accession of the Schengen Convention

persons at the inner borders, crime control is still undertaken in areas of close proximity to the inner borders with the aim to expose illegal immigration and prevent transboundary crime. The control is undertaken by staff from Tactical Support Departments in the police districts.⁴⁷ The two designated border police districts, South- and Southern Jutland's Police, and South Zealand and Lolland-Falster's Police, have established special alien control units in the Tactical Support Department, responsible for border control among others tasks.⁴⁸

At the outer Schengen borders, the police also deal with cases of rejection of entry into Denmark of aliens that do not have a legal right to enter Denmark in accordance with The Aliens Act section 28. Cases of rejection of aliens are dealt with by the Danish Immigration Service. However, together with the Ministry of Integration, the Minister of Justice can decide to temporarily undertake control of the inner borders in the Schengen Area, by which the police takes over the Immigration Service's authority to reject aliens at the inner borders.⁴⁹ This approach is used for instance during big international events such as summits.

4.3. Valid Documentation

Aliens above 18 years of age who are not a citizen of another Nordic country, the EU, The European Monetary Cooperation, or Switzerland, must while staying in Denmark always carry documentation of Danish residence permit, passport or other travel documentation or a residence permit issued by another Schengen country. Violations are punishable by fine cf. sections 48 and 56 of the Administrative Order on Aliens. Passport or other travel documentation must be shown to the public authorities if so requested, cf. the Aliens Act section 39.

4.4. Control of Persons at the Outer Schengen Borders

At borders with countries that are not part of the Schengen Agreement, Denmark has a duty to conduct border control, cf. the Aliens Act section 38. Circular no. 11851 dated the 20th of March 2001 contains a list of approved border passages, which do not border other Schengen countries. These approved passages solely consist of ports and international airports, as Denmark physically borders only Schengen countries.

⁴⁷ Audit of the State Accounts, Report to the Public Accountants on border control, November 2004 RB A302/04

⁴⁸ Report by the Justice Committee May 23. 2006.

⁴⁹ Henricson page 471.

Aliens who enter Denmark from countries not party to the Schengen Agreement have a duty to report to the police's border control and submit the information necessary to conduct the control.⁵⁰ The police systematically controls the passports and possible visas of all travellers, and whether the traveller is wanted by the police in Denmark or in the Schengen Area.

The police can also decide to conduct physical controls of travellers and their luggage etc. In relation to border control, the police have the authority to search trunks and other closed compartments in vehicles, ships and aircrafts with the aim of ensuring that illegal entry and exit does not take place. The control primarily is concentrated around major airports and ports with passenger traffic from countries outside of the Schengen Area. The physical control by the police in minor ports and airports is more limited and is often conducted on grounds of reasonable suspicion based on information from ports and airports about arrivals and departures as well as information from transport companies etc. about suspicious incidents.⁵¹

Aircrafts and ships arriving from countries that are not part of the Schengen Area must at the request of the police hand in a list of passengers and crew prior to their arrival. The list must contain information about name, birth date and nationality; for the aircraft, the list must also include travel identification of the travellers.⁵² Thus, the police can conduct a preceding search in the Schengen information system (SIS) and target the physical control towards persons that are estimated to pose a particular risk in relation to entry. In 2004, the National Police informed the Audit of the State Accounts that physical control is most efficient based on an intelligence based effort. The Audit of the State Accounts recommended that the control was coupled with controls based on random stops.⁵³

4.5. Control of Persons at the Inner Schengen Borders

As mentioned above, the police do not conduct a systematic control of persons at the Inner Schengen borders.⁵⁴ Denmark's borders to other

⁵⁰ Section 10 in Administrative Order no. 270 of 22 March 2010 on alien's access to Denmark (the Administrative Order on Aliens)

⁵¹ Audit of the State Accounts, Report to the Public Accountants on border control, November 2004 RB A302/04

⁵² Sections 11 and 12 in Administrative Order no. 270 of 22 March 2010 on aliens access to Denmark (the Administrative Order on Aliens)

⁵³ Audit of the State Accounts, Report to the Public Accountants on border control, November 2004 RB A302/04

⁵⁴ The Aliens Act section 38 and the Administrative Order on Aliens section 9.

Schengen countries consist of the country border with Germany, the bridge connection to Sweden as well as ports and airports to and from other countries in the Schengen Area. Even though the control of persons at the inner borders is removed, the police can still undertake crime control in areas of close proximity to the borders with the aim of preventing illegal immigration and transboundary crime. The control is not allowed to be of a degree whereby the Schengen requirement of removal of personal control is circumvented in practice.⁵⁵ The Schengen Borders Code's article 23 furthermore provides the possibility of reintroducing border control in exceptional circumstances for a period of up to 30 days, if there is a serious threat against the public order or internal safety which necessitates border control.

As an alternative to controlling vehicles at borders with Schengen countries, the police can stop vehicles inside the country with the aim of controlling if the vehicle is transporting one or more aliens that have entered the country illegally.⁵⁶ The control can take place as random stops, and a concrete suspicion is not necessary in order to undertake the control. During the control, the police can inspect the vehicle and its cabin as well as question the persons in the vehicle. The persons only have a duty to disclose their name, address and birth date, but the Police can demand that aliens in the vehicle show their passports or other approved travellers documentation.⁵⁷ The aim of the control is to ensure that aliens do not enter the country illegally, and therefore the control must not exceed what is necessary to ensure this aim. As a result the police do not have authority to search the trunk of the vehicle or other closed compartments, unless there is reasonable reason to suspect that illegal immigrants are hiding there.⁵⁸ When controlling illegal immigration the police can also use identity checks according to section 750 of the Administration of Justice Act and measures according to the Road Traffic Act mentioned above in section 3.1.

In 2004, the Audit of the State Accounts noted that identity control at the inner Schengen borders are carried out randomly and that the selection of persons' for police stops is based on the personal experience of the individual police officer. The Audit of the State Accounts recommended

⁵⁵ Audit of the State Accounts, Report to the Public Accountants on border control, November 2004 RB A302/04

⁵⁶ The Aliens Act section 38 subsection 6

⁵⁷ The Administration of Justice Act section 750 and The Aliens Act section 39.

⁵⁸ Cf. the Administration of Justice Act section 794.

that the border control is targeted towards persons constituting the greatest risk, through analysis and systematic inclusion of police experience.⁵⁹

The National Police has introduced an evaluation system, which selects a range of measures and targets which among others covers the police Districts' measures regarding transboundary crime. The police set out annual targets of the border police's controls in Southern Jutland and on Lolland-Falster. The targets of control regulate the degree of controls and the number of authorities involved. The targets are based on overall risk analyses in order to employ resources where the risk is deemed to be the highest.⁶⁰ The measures of control in relation to legislation regarding aliens can be split into further targets such as daily patrol in areas of close proximity to the border and bigger controls of roads, trains and ports.⁶¹

4.6. Customs Duty⁶²

Persons entering Denmark from a country not part of the Schengen Area have a duty to present themselves to a control by the Customs and Tax Services. The customs services can moreover conduct controls of persons entering the Danish customs area who have been aboard a ship or an aircraft, on a train or public roads, at the border, along coastlines, in ports and airports or other landing places. The aim of the control is to ensure that customs and duties on imported goods are paid.

When a control is undertaken, it is a duty to disclose all goods and give the information necessary to customs officers. It is also a duty to disclose name and address and documentation for the accuracy of the information. During the control the customs authorities can demand access to all compartments and hiding places in luggage, transportation vehicles etc.

According to section 25 of the Customs Act, the customs authorities can search a person's outer clothing, but this has to take place as gently as possible and must not be more extensive than what is necessary in order to conduct the control. The customs authorities can also conduct a more thorough control of persons, but this requires that there are reasonable

⁵⁹ *Report to the State Auditors concerning the border control*, The Audit of the State Accounts, November 2004 RB A302/04

⁶⁰ Follow-up in the case of border control (report no. 4/04), Audit of the State Accounts, May 2008, RN A307/08

⁶¹ Bill no. L 168, Danish Parliament 2005-06. Report given by the Justice Committee May 23 2006 – Annex 49

⁶² The Customs Act sections 23-25.

grounds to assume that a person illegally is bringing in goods etc. hidden on his person; furthermore, such a measure should be sanctioned by the highest representative from the customs authorities present. The person being searched can demand that a witness of the persons own choosing be present at the control, and only people of the same sex as the controlled person can conduct and be present during the control. If the customs authorities assume that a person is attempting to evade control, the authorities can pursue and stop the individual concerned and search the person and the vehicle and home of the concerned, provided that it takes place in immediate connection with the pursuit.

The control is primarily directed at large ports and airports, while marinas and smaller airports mainly are controlled on grounds of concrete intelligence. Annually, customs authorities carry out a number of joint smuggle controls, as it is presumed to improve exchange of experience, give greater flexibility and uniformity of controls as well as increase visibility and be a more efficient use of resources.⁶³

4.7. Risk of Ethnic Profiling and Recommendations

Section 38 of the Aliens Act enables the police to carry out random searches of vehicles to search for illegal immigrants. The general measures to carry out random stops according to the Police Activities Act, the Administration of Justice Act and the Road Traffic Act as mentioned above also afford wide discretionary powers to police officers searching for illegal immigrants. As mentioned above the Audit of the State Accounts noted in a report from 2004 that identity controls in police districts near Danish borders are carried out randomly based on the personal experience of the individual police officer.

The risk of ethnic profiling when combating illegal immigration is presumably higher than other working areas of the police since the object of a search is to detect non-Danish citizens crossing the borders illegally. Clear guidelines concerning legitimate objective criteria when patrolling near borders are therefore essential to prevent ethnic profiling.

4. The Danish Institute for Human Rights recommends the adoption of national guidelines focusing specifically on handling and preventing ethnic profiling when carrying out border control.

⁶³ Audit of the State Accounts, Report to the Public Accountants on border control, November 2004 RB A302/04

5. Anti-terrorism

5.1. Division of Labour

Danish anti-terrorism measures are administered by The Danish Security and Intelligence Service (PET), which coordinates assignments between the individual police districts.⁶⁴ PET handles its tasks in close cooperation with the Danish police, the Danish Defence Intelligence Service and relevant private players. PET and the Danish Defence Intelligence Service cooperate through a continuous exchange of information concerning issues of importance to maintaining their respective tasks. PET's mandate mainly concerns criminal actions covered by chapter 12 and 13 of the Danish Criminal Code. This covers offences against the Constitution, terrorism, proliferation of weapons of mass destruction, extremism and espionage.

PET has two major areas of operation. The first area concerns surveillance and investigation, which is the main field of work for PET. The work of PET is to a large extent preventive through information gathering and risk assessments concerning the capacity, will and ability of specific targeted groups to commit criminal offences. The second area of operation concerns conducting a coordinating function between a wide range of authorities and actors who contribute to the internal security of Denmark. Since this is not only a task for the police and Intelligence Service, PET works to secure as broad an effort as possible in order to strengthen the aggregated resistance of society.

5.2. Legislation

The police work concerning anti-terrorism is basically covered by the same legislation as the rest of the Danish police. The Minister of Justice has however issued a brief, which specifies the tasks and responsibilities of PET.⁶⁵ Furthermore, the Administration of Justice Act contains separate provisions in some areas concerning investigation concerning criminal offences covered by chapter 12 and 13 of the Criminal Code.

The Processing of Personal Data Act does not apply to the data collected by PET. Instead a committee called the Wamberg Committee has been established to monitor registrations performed by PET. Danish legislation

⁶⁴ Henricsson page 39.

⁶⁵ Brief from the Minister of Justice to the chief of The Danish Security and Intelligence Service of 7 December 2009

does not stipulate rules and regulations for the actual registrations of the Service. The Ministry of Justice has however in consultation with the Wamberg Committee issued guidelines⁶⁶ on PET's handling of personal data.⁶⁷ The Wamberg Committee regularly discusses the overall principles of registration with the Ministry of Justice and PET. The Wamberg Committee conducts an annual report, which is delivered to the Minister of Justice and the Minister of Defence. The report is forwarded by the ministers to the Parliamentary Committee on the Danish Defence and Security Intelligence Services whose members are prohibited from disclosing information obtained in the committee.⁶⁸

As with other authorities PET, is covered by the provisions concerning rights of access to documents of the Public Administration Act and the Act on openness in the Administration, but both acts enables PET to exempt information for the sake of the security of the State, national defence or the sake of prevention, solving and prosecution of criminal actions. A large part of information and correspondence in the possession of PET will therefore not be available to the public.

PET does not have the power to institute criminal proceedings but cases can be handed over to the regular police or the state prosecution. In cases covered by chapter 12 and 13 of the Criminal Code criminal proceedings must however be instituted by the Minister of Justice.

5.3. Handling of Personal Data

The guidelines for PET's handling of personal data enable PET to make files of persons, organisations and corporations against whom there is or has been a reasonable suspicion of committing or planning criminal activities covered by PET's working sphere. Personal and organisational files must be deleted if they are no longer relevant or if no new information is added to the file during a 10 year period.⁶⁹

Furthermore, PET can make electronic support registers where information concerning targeted persons, threats and incidents as well as other information of relevance is recorded. Establishment of a support register must be approved by the Wamberg Committee and the

⁶⁶ The guidelines are available at: <http://www.pet.dk/Kontrol/Wamberg-udvalget/Retningslinjer.aspx>

⁶⁷ Section 3 of the terms of reference for the oversight committee concerning the handling of personal data by the Danish Security and Defence Intelligence Services (Wamberg Committee) 7 December 2009

⁶⁸ Section 5, Act no. 378 of 06.07.1988 establishing a committee on the Danish Defence and Security and Intelligence Services

⁶⁹ <http://www.pet.dk/English/Control.aspx>

committee sets a time limit for the storage of the information, which only rarely exceeds 5 years.

According to section 7 of the guidelines, searches made in the IT systems of PET can only be carried out if it is related to PET's tasks. Every search in PET's registers is recorded.

The introduction to the guidelines states that registration of Danish citizens and residing non-Danish citizens cannot be based solely on legal political activities. The guidelines have no specific focus on prevention of ethnic profiling in connection with anti-terrorism and handling of personal data.

5.4. Surveillance

Intrusive methods of investigation are covered by chapter 71 of the Administration of Justice Act, which allows for telephone interception, bugging and electronic telecommunications data (for instance information on which phone numbers have been in contact with a specific phone number), enhanced electronic telecommunications data (for instance mast data), opening of letters, intercepting letters and video surveillance of locations that are not publicly available.

Intrusive methods of investigation generally require specific reasons for assuming that a message will be delivered to or from a suspect. Furthermore, it is required that the measure has a decisive significance to the investigation. Finally, the investigation must concern a criminal offence with a maximum penalty of more six years or an offence covered by chapter 12 or 13 of the Criminal Code concerning offences against the independence and safety of the State and offences against the Constitution and the Supreme Authorities of the State, terrorism etc.

Intrusive methods of investigation must always be proportionate to the purpose of the measure imposed, the importance of the case and the violation and discomfort caused by the measure. Intrusive methods of investigation require a court order unless the purpose of the measure will be lost by awaiting a court order. In such an instance, the police can carry out the measure and present the case to a court within 24 hours.

Communications not transmitted via the public network is not covered by the regulation of telephone interception. Such interception can therefore be carried out without a court order. Communication with a ship radio or walkie-talkies is examples of communications not covered.

The police and other public authorities can carry out TV-monitoring of public places with no basis in Danish law. In public places, for instance during a demonstration the police is furthermore able to take pictures of the persons present. The police can carry out more systematic monitoring of public places where unrest often takes place. Such monitoring is covered by administrative principles concerning good administrative practice, objectivity and proportionality and does not require a court order.⁷⁰

5.5. Initiatives Against Terrorism and Radicalisation

In 2005, PET initiated a project called "Police against terrorism", which aims to make the entire Danish police force more aware of activities related to terrorism when carrying out their daily police work. The entire police force should be aware of certain indicators of suspicion in each police district and inform actions related to terrorism to PET. Furthermore, the police should increase their knowledge concerning the course of radicalization, which can lead certain individuals to take part in terror related activities.⁷¹

In a paper on radicalisation and terrorism, PET emphasises that radicalisation is not solely an Islamic phenomenon, but can also take place in extreme right or left wing environments. However, PET also states that the terror threat against Denmark mainly originates from networks, groups or single persons possessing different types of militant Islamic ideology, which is why the paper is focused in Islamic radicalisation.⁷²

The paper on radicalisation and terrorism identifies networks of "home-grown extremists" as typically loosely structured networks of youths between 16 and 25 years who are born or raised in Denmark. They see themselves as part of a global, Islamic network, often with an agenda where violence takes centre stage. The networks can be closed to outsiders and conduct meetings in private. They can however also be focused on disseminating their messages and appear moralising regarding religious behaviour.

⁷⁰ The cross-ministerial working group on terror prevention – The Danish society's measures and preparedness for terrorism attacks (October 2005).

⁷¹ The cross-ministerial working group on terror prevention – The Danish society's measures and preparedness for terrorism attacks (October 2005).

⁷² PET, Center for Terroranalyse, *Radikalisering og terror*

The Danish government has developed an action plan called "A common and safe future – Action plan on prevention of extremist views and radicalisation amongst youths".⁷³ Extremism is here characterised by totalitarian and anti-democratic ideologies, intolerant views of others, hostile imagery and a division into "them" and "us". Extremist ideas may be expressed in different ways and may result in violent or undemocratic methods as a means tool to reach political objectives. Radicalisation is the process in which a person gradually accepts the ideas and methods of extremism.

The action plan stresses that some of the activities of the extremist groups may be completely legal and some deliberately use democratic tools to obtain influence.

5.6 Risk of Ethnic Profiling and Recommendations

The PET has two major areas of operation, surveillance and investigation and coordinating the internal security of Denmark against terrorism. As part of surveillance and investigation, PET collects personal data on persons or organisations suspected of illegal activities. Guidelines on PET's handling of personal data have been issued and the Wamberg Committee monitors the activities of PET. Neither the guidelines nor the terms of reference of the Wamberg Committee however specifically mention the risk of ethnic profiling in the registration of electronic data.

Many activities carried out by PET are classified and the nature of the data collected is not publicly available. The persons who are subjects to surveillance are suspected of plotting serious crimes but have not been charged with a crime and have not had the chance to a fair hearing by an independent judiciary. It is therefore essential to maintain effective oversight of activities carried out by PET and clear guidelines on how to counter terrorism without applying ethnic profiling.

5. The Danish Institute for Human Rights recommends that guidelines on PET's handling of personal data and the terms of reference of the Wamberg Committee are amended by introducing clear regulations on prevention of ethnic profiling.

⁷³ Danmarks regering, *En fælles og tryk fremtid - Handlingsplan om forebyggelse af ekstremistiske holdninger og radikaliserings blandt unge* (Januar 2009)

When combating radicalisation, PET emphasises that the terror threat against Denmark mainly originates from networks, groups or single persons possessing different types of militant Islamic ideology. Home-grown extremists are described as typically loosely structured networks of youths between 16 and 25 years who are born or raised in Denmark. They see themselves as part of a global, Islamic network and often have an agenda where violence plays a central role.

The description above concerning the terror threat against Denmark establishes a list of indicators of potential terrorists in which religious practice is a main criteria. If these criteria are used to develop indicators to identify potential terrorists there is a risk of ethnic profiling. Counter-radicalisation initiatives should be based on objective criteria and focus on clear behavioural indicators and actions showing planning or direct support for violence.

6. The Danish Institute for Human Rights recommends that counter-radicalisation initiatives are based on objective criteria and focus on clear behavioural indicators and actions showing planning or direct support for violence. Counter-radicalisation initiatives should not target people based on religion; consideration of religious affiliation should at most be used as a contributing factor.

6. The Prohibition against Discrimination under Danish Law

In this section, the Danish legislation relating to the prohibition against differential treatment on grounds of race and ethnic origin, which include police activities, is discussed. The relevant acts are the Ethnic Equal Treatment Act, the Public Administration Act and the Aliens Act, the Criminal Code and the Act on the Prohibition against Differential Treatment on Grounds of Race etc.

6.1. The Act on Ethnic Equal Treatment⁷⁴

The Ethnic Equal Treatment Act prohibits differential treatment on grounds of racial or ethnic origin. Combined with The Act on the Prohibition against Differential Treatment in the Labour Market,⁷⁵ the act implements the EU Directive 2000/43/EC from 29. June 2000 on the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin.

The Ethnic Equal Treatment Act covers all public and private activities with respect to social protection; including social security and healthcare, social goods, education and access to and delivery of goods and services, including housing that are available to the public. The prohibition against discrimination also applies to memberships to and participation in organisations, whose members perform a certain trade and the benefits that such organisations provides for its members. The act does not apply to areas covered by the Act on the Prohibition against Differential Treatment in the Labour Market etc. According to the legislative history of the act, the concept of access to and delivery of goods and services should be interpreted widely. This includes goods and services, including housing, which is provided or carried out as part of commercial. This implies that it must be economic activities of a certain scale and intensity. As a general rule, goods and services usually provided or carried out free of charge will not be covered by the provision.⁷⁶

The Complaints Committee for Ethnic Equal Treatment has considered whether the exercise of authority by the police is covered by the Ethnic Equal Treatment Act. In a decision from 2004 (case 790.5) the Committee

⁷⁴ Act no. 374 from 28/05/2003 on ethnic equal treatment.

⁷⁵ Consolidated Act no. 1349 of 16/12/2008 on the prohibition against differential treatment in the labour market etc.

⁷⁶ Bill L 155 on ethnic equal treatment. Parliamentary Assembly 2002-03, Annex A 3853.

found that the Ethnic Equal Treatment Act applies to police conduct while on duty. In a case from 2008, the Committee reversed its position and rejected to deal with a complaint based on lack of competency according to the Act on Ethnic Equal Treatment. The Complaints Committee found that routine control measures by the police with a view to enforce the provisions in the Road Traffic Act cannot be considered a social good within the scope of the Ethnic Equal Treatment Act. Neither did Copenhagen Police find that the Complaints Committee could consider the case, as it was covered by the Administration of Justice Act's chapter 93b about consideration of complaints about police officials.

In the case 711.52 from 2007, the Copenhagen police also declared that it was most appropriate that the case was dealt with according to the provisions of the Administration of Justice Act. The Complaints Committee subsequently requested clarification from the Ministry of Justice regarding whether the Ethnic Equal Treatment Act applies in the treatment of cases of differential treatment on grounds of racial or ethnic origin by police officials. The Ministry of Justice responded that submission regarding differential treatment by the police on grounds of racial or ethnic origin is considered to the extent that it is part of the complaint or otherwise is relevant to the case. It remains unclear as to whether the Ethnic Equal Treatment Act applies and has yet to be legally tested.⁷⁷

The Board of Equal Treatment which 1 January 2009 replaced the Complaints Committee for Ethnic Equal Treatment has as of yet not dealt with any cases concerning discrimination carried out by the police.⁷⁸

6.2. The Public Administration Act

In all parts of public administration, an unwritten administrative equality principle applies, which entails that equivalent circumstances must be treated the same. The public administration is therefore not allowed to exercise unfounded differential treatment. Since the police are part of the public administration, they are also obligated to comply with the equality principle. The principle applies to all areas of police activity, meaning both administrative decisions of the police, which measures the police have applied in a given situation, such as a warning or a fine, as well as the type of measure applied in certain situations.⁷⁹

⁷⁷ Christoffersen 2009, p. 28c

⁷⁸ Act no. 387 of 27.05.2008 on the Board of Equal Treatment

⁷⁹ See for example Henricson page 130 and page 132c and The Ministry of Justice's answer to a section 20 question no. S 338 of March 2005 asked by Søren Pind in the Danish Parliament.

6.3. The Act on the Prohibition against Differential Treatment on Grounds of Race etc.⁸⁰

In the commercial and non-profit sectors, The Act criminalises denial to provide an individual the same service as other persons due to race, skin colour, national or ethnic origin, faith or sexual orientation of the concerned. It is also a criminal offence to deny providing an individual with access to places, shows, events, gatherings and the likes which are open to the public. Violations are punishable by fine or prison up to 6 months. The Act does not apply to activities carried out by the police.

6.4. The Aliens Act

It follows from section 38 of the Aliens Act that Danish border control must follow Schengen Borders Code's article 6 according to which border control must not exercise differential treatment on grounds of sex, racial or ethnic origin, religion or faith, disability, age or sexual orientation.

6.5. The Criminal Code

Section 266b of the Criminal Code⁸¹ protects against hate speech. As a consequence, it is prohibited to publicly express statements that threaten, defame or degrade a group of people because of their race, skin colour, national or ethnic origin, faith or sexual orientation. Violation is punishable by fine or prison up to two years.

6.6. Conclusion and Recommendation

Ethnic profiling by the police is in violation of the administrative equality principle since ethnic profiling constitutes differential treatment on the ground of a persons' race or ethnic origin. Therefore, using ethnic origin as a motivation for police stops is illegal. Carrying out stops based on witness descriptions that include ethnicity, is however in accordance with the equality principle if it is based on an objective and non-discriminatory reason. Thus, when carrying out a specific investigation, police officers can consider race and ethnic origin of an individual if there is trustworthy information whereby a person of a particular race or ethnic origin is linked to an identified criminal offence at a specific time and place.

Danish legislation does however not contain a specific and written prohibition against ethnic profiling and discrimination by the police. Routine stops, arrests and other measures carried out by the police are

⁸⁰ Consolidated Act no. 626 of 29/09/1987 on the prohibition against differential treatment on grounds of race etc.

⁸¹ Consolidated Act no. 1034 of 29/10/2009 Criminal Code

presumably not covered by the Ethnic Equal Treatment Act since such measures are not considered a service. In situations where the police is delivering services, e.g. issuing a drivers license, this will be covered by the Ethnic Equal Treatment Act. The Police Activities Act and the Administration of Justice Act, which regulate police measures, use of force and other activities, do not contain a prohibition against discrimination. Neither does the preparatory work to the Police Activities Act mention the obligation of the police to abstain from discriminating.

7. The Danish Institute for Human Rights recommends that a provision specifically prohibiting discrimination including ethnic profiling is added to the Police Activities Act. The prohibition can be added as a leading principle in a new section 3, subsection 2 on regular provision concerning police measures.

7. Complaints Mechanisms

7.1. The Police Complaints System⁸²

As regards complaints about the police, a distinction is made between complaints concerning police decisions, complaints concerning police conduct and criminal offences committed by police officials while on duty. The opening of an investigation against a police officer is not depending on a complaint being filed by an individual. The police itself has a duty to initiate investigations on its own initiative if the police is aware of misconduct or criminal offences committed by a police officer. Superior police officers can be imposed a fine or be subject to disciplinary actions if they fail to do so.⁸³

7.1.1. Complaints Concerning Police Decisions

Police decisions and actions cover, for example, a decision to arrest a person, search a room or a decision to use force. Complaints concerning police decisions can concern police decisions within and outside of the criminal law.

Complaints concerning police decisions within the criminal law concern the justification of measures applied according to the Administration of Justice Act. This could for instance be a decision to arrest a person or search a car. Complaints concerning police decisions within the criminal law are tried by the District Commissioner in first instance after which it is possible to bring the case to the superior Public Prosecutor. Furthermore, the case can be tried by the courts according to section 746 of the administration of Justice Act,.

Complaints concerning police decisions outside the criminal law concern police decisions according to the Act on Police Activities, the Offensive Weapons Act, Administrative Order on Public Order etc. These complaints are treated by the District Commissioner and can afterwards be brought before the National Commissioner. The decision of the National Commissioner cannot be brought before the Minister of Justice cf. Section 109 subsection 2 of the Administration of Justice Act, but the Minister of Justice will as supervisory authority always be able to intervene in a case.⁸⁴ If the National Commissioner has been involved in a case before

⁸² Henricson p. 633c.

⁸³ Henricson p. 632.

⁸⁴ Henricson page 635.

trying the case in second instance and thereby lacks capacity, the case can be treated by the Minister of Justice instead.

7.1.2. Complaints Concerning Police Conduct

Complaints concerning police conduct are treated according to chapter 93b of the Administration of Justice Act and concerns misconducts committed by police officers. Complaints concerning police conduct does however not cover criminal actions committed by police officers, who instead are treated according to chapter 93c, cf. below.

Complaints concerning police conduct concern the actions of police officers during the fulfilment of police tasks. If for instance during a stop and search the person involved feels that the police officer used unnecessary force or behaved rudely during the stop and search, the complaint would concern police conduct. A complaint concerning conduct differs from complaints concerning police decisions by not focusing on the measure chosen by the police, for instance the stop, but the way in which the measure was carried out.

The Public Prosecutors are responsible for investigation complaints concerning conduct as well as trying the case. The Public Prosecutor decides whether or not there is reason to criticize the police officer in a given case. The decision by the Public Prosecutor can be brought before the Director of Public Prosecutions.

The Public Prosecutors cannot decide on whether or not sanctions should be imposed in a given case. This decision is made subsequently according to the provisions of the Act on Public Servants.

7.1.3. Criminal Actions Committed by Police Officers on Duty

Reports concerning criminal actions committed by police officers on duty are treated according to the ordinary rules in the criminal legislation. Chapter 93c of the Administration of Justice Act however contains some special procedural provisions on criminal actions committed by police officers. According to these provisions the Public Prosecutor investigates the case instead of the police. The Public Prosecutor possesses the same powers during the investigation as the police normally do in criminal cases. The Public Prosecutors can initiate a criminal investigation based on an individual complaint or on his or her own initiative. In cases where a person dies or is severely injured while in police custody or during a police action, the Public Prosecutor will always initiate an investigation. If the Public Prosecutor finds reason to initiate criminal proceedings, the

relevant police officers are charged and the case is brought before the courts.

*7.1.4. Police Complaints Boards*⁸⁵

The Police Complaints Boards are boards that assist in the Public Prosecutors' complaints handling in complaints concerning police conduct and cases concerning criminal offences committed by police officers. A Police Complaints Board consists of an attorney as chairperson and two lay persons appointed by the Minister of Justice. The members are appointed for four years and can be reappointed once.⁸⁶

The Public Prosecutors are obligated to notify the Police Complaints Boards on all complaints concerning police conduct and criminal proceedings against police officers. Furthermore, the Public Prosecutor should continuously send copies of case material and inform Police Complaints Boards of all relevant decisions made during the investigation.⁸⁷ The Police Complaints Board can inform the Public Prosecutor that the Board finds that an investigation should be initiated and request that the Public Prosecutor carries out certain investigative measures. If the accused police officer or the Public Prosecutor refuses to meet the request of the Board to carry out investigative measures, the request can be brought before the courts.⁸⁸

When an investigation is concluded, the Public Prosecutor issues a report to the Police Complaints Board informing of the result of the investigation and a reasoned opinion on how the case should be dealt with. The Police Complaints Board also informs the Public Prosecutor how the Board finds that the case should be handled. On this ground, the Public Prosecutor makes his decision regarding the case. The Police Complaints Board can bring the decision of the Public Prosecutor to the Director of Public Prosecutions. The decision made by the Director of Public Prosecutions is final.⁸⁹

⁸⁵ Administration of Justice Act chapter 93d

⁸⁶ Administration of Justice Act section 1021.

⁸⁷ Administration of Justice Act sections 1021 a and 1021 b

⁸⁸ Administration of Justice Act section 1021 c.

⁸⁹ Administration of Justice Act section 1021 e and 1021 c

7.2. The Parliamentary Ombudsman⁹⁰

The Parliamentary Ombudsman is an independent public authority, which can treat complaints concerning public administrative decisions and treatment of individuals as well as concrete cases. The Ombudsman accepts cases about observance of the Public Administration Act, good administrative practice and the administrative law's equal treatment principle. The ombudsman can treat cases on the basis of complaints; treat cases based on his own initiative and carry out general investigations of the handling of cases by public authorities. Furthermore, The Ombudsman can inspect any institution and place of employment falling under the competency of the Ombudsman; and the Ombudsman can also carry out general investigations of case handling by public authorities. These investigations concern a large amount of similar cases within a certain area. The purpose is to uncover potential systematic errors by a public authority.

If the Ombudsman finds that a case gives reason to do so, he can express criticism, issue recommendations or put forward his view of the case. He can also recommend that a party is awarded free legal aid at the courts. The Ombudsman does not have any powers to enforce his decisions, but it is tradition that his statements are followed.⁹¹

The activities of the Ombudsman cover all parts of the public administration. As a result, authorities dealing with aliens and the police are covered by the competency of the Ombudsman. The Parliamentary Ombudsman can control both the administrative decisions by the police and police conduct toward individuals. To submit a complaint to the Ombudsman concerning administrative decisions by the police or another public authority, other administrative complaints mechanisms must be exhausted. This is not a requirement in relation to complaints regarding the conduct of the police in other matters.

7.3. The Board of Equal Treatment⁹²

In 2003, the *Complaints Committee on Ethnic Equal Treatment* was established under the Danish Institute for Human Rights. The Complaints Committee was an administrative complaints body treating cases

⁹⁰ Act no. 473 of 12 June 1996 on the Parliamentary Ombudsman, as amended by Act no. 556 of 24 June 2005 and Act no. 502 of 12 June 2009.

⁹¹ Henricson page 676c.

⁹² Act no. 387 of 27.05.2008 on the Board of Equal Treatment.

regarding discrimination on grounds of racial or ethnic origin; cf. the Ethnic Equal Treatment Act. On 1st of January 2009, the Complaints Committee was replaced by the Board of Equal Treatment that treats complaints regarding discrimination on all grounds covered by Danish anti-discrimination legislation, including gender, race, skin colour, religion or faith, political observation, sexual orientation, age, disability, or national, social or ethnic origin.

The Board of Equal Treatment treats individual complaints. Complaining to the board is free, and because the board is responsible for gathering information relevant to the case, as a rule it is not necessary for the complainant to hire a lawyer. The board makes legally binding decisions about whether discrimination took place and the board can award compensation to victims of discrimination. If the defendant does not comply with the decision, the board must bring the case to court on behalf of the complaining, at the request of the complainant. The Board of Equal Treatment can only treat cases on the basis of a concrete complaint. As a result, the board cannot investigate cases on own initiative.

7.4. The Danish Institute for Human Rights

The Danish Institute of Human Rights is a designated "specialized equality body" in conformity with article 13 in EU Directive 2000/43/EC. Since the closure of the Complaints Committee for Ethnic Equal Treatment on 31st of December 2008, the Institute has no the authority to make decisions in cases of discrimination on grounds of racial or ethnic origin. As a consequence of the mandate as Specialized Equality Body, the Danish Institute for Human Rights works to promote equal treatment of everyone without distinction based on racial or ethnic origin. The Institute assists victims of discrimination, initiates independent inquiries, publishes reports and makes recommendations regarding questions about differential treatment on grounds of racial or ethnic origin.

The Danish Institute for Human Rights is A-status accredited as a "National Human Rights Institution" according the UN Paris Principles. As part of the implementation of the mandate as National Human Rights Institution, the Institute continuously monitors the development of human rights in Denmark and prepares reports and responses to domestic human rights questions.

7.5. Control with the Activities of PET

The Danish Security and Intelligence Services (PET) are overseen by a number of authorities:

7.5.1. *The Minister of Justice*

The Danish Security and Intelligence Services (PET) are subject to the instructions of the Minister of Justice, who oversees PET on behalf of the government. The Minister of Justice has issued a brief to the director of PET with general regulations regarding PET's activities. It follows that the director of PET must keep the Minister informed about circumstances of significant relevance to PET's activities.

7.5.2. *Parliament*

The Danish Parliament has a particular committee established by Act no. 378 of 6. July 1988 with the aim of "supervising the Danish Defence Intelligence Service and the Danish Security and Intelligence Service". The Committee consists of five parliamentarians nominated by the five biggest parties in parliament who are subject to confidentiality regarding the information they receive in the committee. The Committee must be informed about the general rules applicable to PET's activities, significant circumstances related to security matters, and about questions of foreign policy that are of relevance to the activities of the Danish Defence Intelligence Service and PET. On 26 November 2010, the committee published a report on the overall activities of the committee.⁹³ The report contains no specific focus on non-discrimination in relation to counter terrorism.

7.5.3. *The Courts*

A number of investigative measures by PET require a court order, including surveillance of individuals. In such cases the courts exercise some oversight of PET's activities.

7.5.4. *The Wamberg Committee*

The Wamberg Committee oversees PET's registration and disclosure of personal data. The Committee has access to all personal data stored by PET.⁹⁴ The Committee consists of a chair and three other members. The committee must approve new registrations of Danish citizens and aliens residing in Denmark that PET wishes to make. The Committee also makes random tests of old cases to control that the deadlines for deletion of

⁹³ Available in Danish at: <http://www.ft.dk/samling/20101/almdel/beretning/2/929455/index.htm>

⁹⁴ Guidelines on PET's handling of personal data etc.

cases is complied with. The legislation does not contain rules as such for PET's registrations but the principles for registration are discussed on a regular basis with the Wamberg Committee and the Ministry of Justice. If PET wishes to disclose information about an individual to another public authority, the Wamberg Committee must be presented with the request and issue an approval.

7.5. Proving Ethnic Profiling Cases and Recommendations

It is possible to file a complaint concerning ethnic profiling committed by the police or other public authorities. The complaint can be brought before a superior administrative authority, the Danish courts or the Parliamentary Ombudsman. With regards to random measures according to the Police Activities Act, the Aliens Act and the Road Traffic Act, the possibility of raising a complaint is however limited since the police decision requires no justification in itself. It remains possible to file complaints concerning the conduct of police officers. For instance, if random stops are repeated towards a specific individual and the situation crosses the line to harassment, it could be considered a complaint concerning police conduct and should be brought before the Public Prosecutors.

Ethnic profiling can often be difficult to prove in individual cases since it can be difficult to establish that the motive for carrying out police measures was different from the one stated by the police. The Parliamentary Ombudsman is the only complaints mechanism, which is able to carry out broader investigations into patterns of police practice and potential ethnic profiling.

8. The Danish Institute for Human Rights recommends that the possibility of carrying out broader investigations of ethnic profiling patterns is introduced in the general police complaints system.

9. The Danish Institute for Human Rights recommends that the Parliamentary Ombudsman carries out a full pattern and practice investigation concerning ethnic profiling carried out by the police.

7.6.1. Registration of Ethnic Profiling

In Denmark, there is no systematic registration of ethnic origin of individuals subject to police stops. It is therefore difficult to measure whether persons of a specific ethnic origin in practice are being stopped by police officers more often than others and hence, it is difficult to estimate whether ethnic profiling is taking place in Denmark.

Open Society Justice Initiative and the European Union Agency for Fundamental Rights both recommend that statistical data concerning police stops is registered using “stop forms.” Stop forms are used to register information about each stop, including the date, time and place a police stop occurs, the name of the police officer, the legal ground for the stop, the outcome of the stop (fine, arrest, goods confiscated) and the ethnic origin and nationality of the person stopped. Stop forms vary in structure and length, depending on the country. A copy of the stop form is handed to the person stopped as documentation of the stop, and a copy is kept by the police.⁹⁵

Stop forms serve several purposes. The statistical data collected can be used as an internal police tool monitoring how and how often police measures are applied and whether or not certain groups are stopped at a disproportionate rate. It is also a practical tool for police forces to determine the effectiveness of their actions. When indicating the legal ground for a stop, the stop and search forms can be a useful practical tool in encouraging officers to consider making well-founded stops as it encourages them to be able to articulate reason for making a stop, thus preventing arbitrary police stops.

The statistical data collected can also be used by local communities to hold the police accountable for their actions. Overall, the local community is able to monitor whether police stops to a larger extent are used towards specific groups; in individual cases the statistical material can support a complaint if there is a statistical tendency indicating ethnic profiling. Using a formal procedure where a stop form is filled out can also be used to inform persons who have been stopped of their rights and possibilities of filing a complaint.

10. The Danish Institute for Human Rights recommends that Denmark carries out a systematic registration of persons who come into contact with the police in order to generate ethnic statistics regarding policing practices that can detect patterns of disproportionate extent and answer questions about the effectiveness of police actions. Furthermore, the registration should be developed in cooperation with the Data Protection Agency in order to ensure compliance with the Act on Processing of Personal Data.

⁹⁵ Open Society Justice Initiative, *Addressing Ethnic Profiling by Police – A report on the Strategies for effective police stop and search project* and European Union Agency for Fundamental Rights - *Towards More Effective Policing, Understanding and Preventing Discriminatory Ethnic Profiling: A Guide*

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Annex 1. Stop and search zones in Copenhagen

Below is listed the stop and search zones which are available on the website of the Copenhagen Police between 2007 and 2010. The chart shows the start date and end date of the zones, the area covered by the zones and the reason given for establishing the zones.

Start of zone	End date of zone	Area	Reason
6 September 2007	30 September 2007	Nørrebro	Zone established, no reason
21 September 2007	19 October 2007	Christianshavn	Zone prolonged, weapons uncovered in the zone
28 November 2007	22 December 2007	Christiania and Christianshavn	Zone established, several weapons uncovered
7, 8, 14 and 15 December (Fridays and Saturdays)		3 zones in Copenhagen City including Town Hall Square, Central Station and Kongens Nytorv.	Zones established, Several incidents concerning illegal possession of arms
8 February 2008	10 March 2008	6 Zones: Tingbjerg, Inner Nørrebro, Outer Nørrebro, Copenhagen City, Amager and Valby	Several violent incidents in December and January where illegal arms have been used. 9 Incidents where illegal arms have been uncovered and 6 criminal violations concerning possession and sale of drugs
10 March 2008	14 April 2008	Inner Nørrebro, Outer Nørrebro, Copenhagen City and Amager	4 zones prolonged and 2 terminated. 403 criminal incidents involving illegal arms in the 4 zones between 10 December 2007 and 27 February 2008
20 May 2008	15 June 2008	Christiania and Christianshavn	Zone established. 36 knives plus other illegal arms uncovered between January and May
4 June 2008	3 July 2008	Christiania and Christianshavn	Zone prolonged, several illegal arms uncovered
5 June 2008	6 July 2008	Vesterbro, Copenhagen City	Zone established, violent incidents in the night life during weekends
4 July 2008	3 August 2008	Christiania and Christianshavn	Zone prolonged, illegal arms uncovered
5 August 2008	31 August 2008	Christiania and Christianshavn	Zone prolonged. 83 illegal arms confiscated between January and July 2008
15 August 2008	1 September 2008	Tingbjerg and area surrounding Gothersgade	Zones established. Violent episode in Tingbjerg 15 August 2008 where several firearms

			where used and one person was killed. Around Gothersgade several violent incidents indicate gang rivalry.
1 September 2008	28 September 2008	3 zones surrounding Svanevej, Lindgreens alle and Amager Landevej 134. The zones surround Hells Angels club houses.	Zones established. Several incidents in the zones where persons have been wearing body armor, carrying weapons and aimed machine guns at persons. Furthermore a hand grenade was thrown at the club house on Svanevej, but did not detonate.
2 September 2008	28 September 2008	Christiania and Christianshavn	Zone prolonged. Members of the gang AK81 wearing body armor in the zones and shootings occurred in Nørrebro and Tingbjerg. Could indicate future shootout in the zone.
15 September 2008	26 October 2008	Entire city of Copenhagen except municipality of Dragør and parts of Tårnby.	Zone established. Several shootings in Copenhagen.
27 October 2008	25 November 2008	Entire city of Copenhagen except municipality of Dragør and parts of Tårnby.	Zone prolonged. Several shootings as well as confiscation of firearms. 15 September to 26 October 4412 persons searched.
16 December 2008	6 January 2009	Previous zone enlarged. Zone covers entire city of Copenhagen, except municipality of Dragør.	Zone prolonged. Several shootings and stabbings occurred indicating a continued tense relationship between rival gangs in Copenhagen.
6 January 2009	3 February 2009	Municipality of Copenhagen, Frederiksberg and parts of Tårnby	Zone prolonged. Gang tensions continue. Several shootings and stabbings.
3 February 2009	3 March 2009	Municipality of Copenhagen, Frederiksberg and parts of Tårnby	Zone prolonged. Several shootings in January.
31 March 2009	28 April 2009	Municipality of Copenhagen, Frederiksberg and parts of Tårnby	Zone prolonged. Several shootings in March and illegal arms uncovered.
28 April 2009	26 May 2009	Municipality of Copenhagen, Frederiksberg and parts	Zone prolonged. Several shootings in April.

		of Tårnby	
26 May 2009	23 June 2009	Municipality of Copenhagen, Frederiksberg and parts of Tårnby	Zone prolonged. Several weapons uncovered.
23 June 2009	21 July 2009	Municipality of Copenhagen, Frederiksberg and parts of Tårnby	Zone prolonged. Two shootings occurred. Between 26 May and 18 June 463 persons were searched. 54 persons charged of violating Weapons Act
21 July 2009	18 August 2009	Municipality of Copenhagen, Frederiksberg and parts of Tårnby	Zone prolonged. Several shootings and two killings. Between 19 June and 17 July 445 persons were searched and 19 charged in accordance with act on Police Activities and 12 charges concerning weapons.
18 August 2009	24 September 2009	Municipality of Copenhagen, Frederiksberg and parts of Tårnby	Zone prolonged. Shooting in Nørrebro. Between 21 July and 17 August 610 persons searched. 1 charge of violation of Weapons Act and 75 charges involving weapons.
15 September 2009	13 October 2009	Municipality of Copenhagen, Frederiksberg and parts of Tårnby	Zone prolonged. Several shootings and stabbings. 18 August to 15 September 908 persons searched, 37 charged for possession of drugs and 10 for possession of illegal arms.
13 October 2009	10 November 2009	Municipality of Copenhagen, Frederiksberg and parts of Tårnby	Zone prolonged. Several shootings and stabbings. 15 September to 12 October 443 persons searched, 8 charged for possession of drugs and 3 for possession of illegal arms.
10 november 2009	19 November 2009	Municipality of Copenhagen, Frederiksberg and parts of Tårnby	Zone prolonged. 10 Shootings incidents including one person killed.
19 november 2009	22 December 2009	Municipality of Copenhagen, Frederiksberg and parts of Tårnby	Zone prolonged. Three shootings. 48 charges involving illegal arms.
24 December 2009	19 January 2010	Municipality of Copenhagen, Frederiksberg and parts	Zone prolonged. One shooting incident. Zone prolonged due to ongoing criminal trial against leading gang member. 19

		of Tårnby	November to 22 December 185 persons searched, 8 charged for possession of drugs, 2 charged for possession and illegal arms 53 charges involving illegal arms.
19 January 2010	16 February 2010	Zone decreased significantly, now covering Østerbro and area surrounding Eastern High Court of Denmark.	Zone partly prolonged due to ongoing criminal trial against leading gang member. Trial lasts from 8 December to 19 April.
12 February 2010	19 February 2010	Area surrounding Eastern High Court of Denmark, Østerbro, Nørrebro, Bispebjerg, Vanløse	Previous zone enlarged. 9-11 February three shootings occurred.
19 February 2010	19 March 2010	Area surrounding Eastern High Court of Denmark	Zone partly prolonged due to ongoing criminal trial against leading gang member.
19 March 2010	20 April 2010	Area surrounding Eastern High Court of Denmark	Zone partly prolonged due to ongoing criminal trial against leading gang member.
21 April 2010	28 April 2010	Nørrebro	Zone established. One shooting incident, several persons threatened with a pistol, one incident of violent assault, a person shot and killed in the city of Køge. Suspect was traced to Nørrebro. 21 January to 21 April 27 reported crimes concerning Weapons Act.
24 June 2010	1 July 2010	Tingbjerg	Zone established. One shooting incident. 21 April to 24 June 369 reported crimes concerning Weapons Act.
1 July 2010	8 July 2010	Tingbjerg	Zone prolonged. 3 firearms uncovered. 24 to 30 June 17 reported crimes concerning Weapons Act, 10 persons searched and 2 charged for violating Weapons Act.
8 July 2010		No new zones established	

