Procedure in Denmark for Dealing with Drinking Drivers

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At the first International Conference on Alcohol and Road Traffic in Stockholm three years ago I gave a review of the general procedure of the Danish Medico-Legal Council in cases concerning motordrivers under the influence of alcohol. This procedure is of course based on the Danish legislation in this field, and as this legislation has not been changed since the Stockholm conference, what I am going to say to-day is bound to be to some extent or even to a rather large extent a repetition of what I said in Stockholm.

In the Danish Motor Act of the 1st July, 1927, with additions and modifications of the 14th April, 1932, section 24, sub-section 1, reads:

"A motor vehicle must not be driven, or attempted to be driven by a person who on account of intake of alcohol is unable to drive in a safe manner."

It is provided by the act that any person sentenced for an offence against this provision has forfeited his driver's licence for a period of not less than six months. Under particularly alleviating circumstances the withdrawal of the licence may be dispensed with, but in practice this possibility for dispensation is very seldom used. An offence against section 24, sub-section 1 of the Act, will for all practical purposes, render the offender liable to a term of light imprisonment, usually from 10-20 days. Under particularly alleviating circumstances the offender may be sentenced to a fine the amount of which is fixed with a regard to the financial position of the person in question. In the case of subsequent offences the withdrawal of the licence and the term of imprisonment will of course be of longer duration. The licence may be withdrawn for ever. The term of imprisonment probably never exceeds 40-60 days. If a motor driver has caused a fatal casualty he will be sentenced for this offence, and if he has been under the influence of alcohol, this will be considered a serious aggravating circumstance. The penalties in use in Denmark in cases concerning motor drivers under the influence of alcohol are, with regard to terms of imprisonment, less severe than in some other countries. For a professional motor driver the withdrawal of his driver's licence for not less than 6 months is, however, a rather severe penalty.

Of the persons arrested in Denmark charged with the offence of having driven a motor vehicle under the influence of alcohol more than half of the number have not caused or been involved in accidents. It is very common that the background for such arrests is information given to the police by private persons. Only
very rarely such information is
given anonymously. In the general
population it is not considered a dis-
grace to be under the influence of
alcohol or even intoxicated under
most circumstances, but it is con-
sidered a most condemnatory act to
drive a motor vehicle while under
the influence of alcohol. I mention
this to point out that the vast ma-
ajority of the population feel it their
responsibility to cooperate with the
police in cases of this type.

If a person is charged with the
offence of driving while under the
influence of alcohol the police will
submit him to a medical examina-
tion, preferably undertaken by a
medical officer of health but, in num-
berous cases undertaken by a general
practitioner. In the pursuance of the
Act the police are authorized to de-
mand such examination to be per-
formed. The examination consists in
an observation of the behaviour of
the accused and in the performance
of some rather crude tests. Finally
the examining physician has to answer
the question, whether the accused
must be assumed to be under the
influence of alcohol. If this question
is answered in the affirmative the
degree of such influence must be
stated as: light, medium or severe,
as the case may be.

At the examination the accused
must submit a specimen of his hand
writing; after a couple of days, when
he must be presumed to be sober the
police require a control specimen to
serve as a basis for comparison with
the one submitted at the clinical
examination. Besides, three samples
of blood from the lobe of the ear and
a sample of urine must be taken. The
samples are sent to the Institute of
Forensic Medicine to be analysed for
content of alcohol. If the accused
protests against having the blood
samples drawn, the drawing of the
samples may be enforced on him.
This is well known in the population
and protests against having the
samples taken are very rare.

The prosecuting authorities — in
the provincial towns the chief of
police, in Copenhagen the judges of
the police court—decide whether the
case shall be laid before the Medico-
Legal Council before sentence is pro-
nounced or not. The Medico-Legal
Council provides expert medical
knowledge, and operates as a con-
sultative body for the legal authori-
ties.

The majority of the cases are de-
cided by the courts without pre-
viously having been laid before the
Medico-Legal Council. This will be
the general procedure, provided that
the examining physician concludes,
without any reservation, that the
accused was under the influence of
alcohol at the time of the examina-
tion, that the concentration of alcohol
in the blood was more than 1 0/00,
and that the case did not contain any
special features. Special features may
consist in a presumption that the
alcohol concentration in the organism
of the accused at the time of driving
differed essentially from the concen-
tration found at the time of the exami-
nation, either because of a
rather long interval between the time
of driving and the time of examina-
tion, or the accused may have con-
sumed alcohol after the driving or,
finally, because the greater quantity
of alcohol was consumed shortly, or
immediately, before the driving took
place, so that the absorption of alco-
hol, presumably, was not completed.
before the driving took place. Moreover, the accused may be suffering from a disease or, he may have taken some medicine influencing his general condition at the time of the clinical examination. Cases in which a clinical examination of the accused was not performed, among other things on account of injuries, are generally laid before the Medico-Legal Council.

Cases to the Council are drawn up on a special form in which the main points of the case are stated by the police. The form is accompanied by the proofs and evidence of the case, which normally means: the police report, the findings at the clinical examination, both specimens of the handwriting and the results from the alcohol determination in blood and urine.

The Medico-Legal Council is asked certain definite questions among which the most significant one is the question whether the accused must be assumed to have been under the influence of alcohol at a certain stated hour or period (i.e. when the driving was performed) and if so, the degree of such influence.

It will be observed that neither in the final question asked the examining physician nor in the main question asked the Medico-Legal Council is the wording of the Act "unable to drive in a safe way on account of intake of alcohol" used. It is considered a legal or juridical question whether a person under certain circumstances is able to drive a motor vehicle in a safe manner, whereas it is considered a medical question whether a person has been under the influence of alcohol in the sense: influenced so as to cause deviations from the normal condition demonstrable by the tests applied at the clinical examination and/or the writing tests. This distinction is, however, quite formal. It is the practice of the Danish courts to consider a person unable to drive in a safe manner if he must be assumed to have been under even light influence of alcohol in the said sense of the term.

The difference in principle between the Danish legislation in the field we are dealing with and the corresponding Norwegian and Swedish legislations is, that according to Norwegian and Swedish legislation a person is considered to have violated the dispositions concerning driving under the influence of alcohol if the blood alcohol concentration has reached a certain limit while he was driving. The Danish Motor Act does not mention the blood alcohol concentration. In the Danish legal practice the blood alcohol concentration is considered important circumstantial evidence but is generally not considered sufficient evidence per se to warrant that the accused has been unable to drive in a safe manner. There is, however, undoubtedly an increasing tendency in the police court of Copenhagen to lay decisive stress on the blood alcohol concentration.

The question has been raised on various occasions, whether it might be opportune to amend the Danish Motor Act and to introduce what I here for the sake of brevity shall call "a concentration limit".

In 1936 the Medico-Legal Council submitted a proposal for such amendment, viz., that a person with a 1 0/00 or above concentration of alcohol in his blood in any case should be considered to be under the influence of alcohol to such an extent that he is liable to punishment if he has driven a motor vehicle. On the request of
the Ministry of Justice the Medico-Legal Council recently has taken up this proposal to renewed deliberations. The outcome of the very thorough discussions in the Council was, that the Council did not recommend the introduction of such a concentration limit in the Danish legislation. In its response to the Ministry the Council expressed the view that the present legislation is satisfactory.

At a meeting of Scandinavian criminologists held in Copenhagen in June 1952 one of the main subjects for discussion was the legislation concerning alcohol and road traffic. A representative of each of the Scandinavian countries including Iceland made introductory speeches on this subject. The representatives of Iceland (Judge of the criminal court V. Stefansson) and Finland (Counsel of legislation R. Ellila) spoke decisively against the introduction of a concentration limit, which so far has not been introduced in the Icelandic and Finnish Motor Acts. The representative of Norway (Policeinspector P. Vogt.) criticized the Norwegian very low concentration limit of 0.5 0/00 very strongly. From a criminological point of view he considered it objectionable that the question: guilty or not guilty, should be decided solely on the basis of a chemical determination. He even went so far as to say that the prosecuting authorities had the feeling that the vindication of justice in this field has become a caricature. In the discussion this view was of course challenged by other Norwegian members of the conference. The representative of Sweden (Counsel of the State I. Lindell) gave a review of the Swedish legislation concerning alcohol and traffic without making any personal comments. The Danish representative (Judge P. M. Sachs) who is known in his function as a judge to lay decisive stress on the blood alcohol concentration, nevertheless expressed the opinion, that it would be doubtful if anything was achieved by introducing "presumptive" rules similar to the Norwegian and Swedish rules in the Danish legislation. He added that rules of this type probably would not conform with the general concept of justice of the Danish population. It is of course extremely difficult to sum up the discussion which followed the introductory speeches. It is my impression that this discussion is not likely to stimulate the introduction of concentration limits in the three of the five participating countries in which such concentration limits have not so far been introduced in the legislation concerning motor drivers under the influence of alcohol.

In these short introductory remarks I shall not venture on a discussion pro et contra of what I have called a concentration limit. The main objection against such a limit is the pronounced variation in alcohol tolerance met with in humans. From a medical or biological point of view it must be held wrong—and therefore, according to my view, unjust—to apply identical classifications to persons whose blood contains certain alcohol concentrations without regard to their individual reaction to such concentrations.

From a biological point of view there is no fundamental difference between an alcohol concentration in the blood of 1.05 0/00 and one of 0.95 0/00, but there is a fundamental difference between being sentenced to imprisonment and loss of licence and being acquitted.