

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2020-0260
- Klageren:** XX
2750 Ballerup
- Indklagede:** Movia
CVR-nummer: 29 89 65 69
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet manglende zone på pendlerkort
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at bussen skulle afgang fra endestationen kl. 19:48, og han købte sin tillægsbillet kl. 19:45 om bord på bussen, før den afgik
- Indklagede fastholder kontrolafgiften
- Ankenævnets sammensætning:** Nævnensformand, landsdommer Tine Vuust
Rasmus Markussen
Torben Steenberg
Helle Berg Johansen
Susanne Beyer Svendsen

Ankenævnet for Bus, Tog og Metro har på sit møde den 12. marts 2021 truffet følgende

AFGØRELSE:

Movia er berettiget til at opretholde kravet om betaling af kontrolafgiften på 750 kr.

Beløbet skal betales til Movia, der sender betalingsoplysninger til klageren.

Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke, jf. ankenævnets vedtægter § 24, stk. 2, modsætningsvist.

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Hver af parterne kan anlægge sag ved domstolene om de forhold, som klagen har vedrørt.

Klageren henvises til at søge yderligere oplysning om eventuel bistand i forbindelse med sagsanlæg fx på www.domstol.dk, www.advokatnoeglen.dk og /eller eget forsikringselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren skulle den 20. november 2020 rejse med buslinje 350S fra endestoppestedet Nørreport st. mod Ballerup, og ifølge køreplanen skulle bussen afgå kl. 19:48:

Stoppestedsoversigt:

Afgangstider fra Nørreport st.:

Rute	Zone	Stoppesteder	
Nørre Voldgade Frederiksborggade Nørrebrogade	1	Nørreport St.	
		Nørre Farimagsgade Elmegade	19.48
Frederikssundsvej	2	Nørrebros Runddel St.	19.48
		Nørrebro St.	20.08
		Hulgårds Plads Bellahej	08
		Brønshøj Torv Veksøvej	28
		Husumvej Husum Torv	48
Herlev Hovedgade	31	Åfløjen	23.48
Skovlunde Byvej Lautrupvang	31	Elverhøjen Herlev Bymidte	
		Marielundvej Virkeholm	
Malmparken Ballerup Boulevard	42	Torvevej DTU Ballerup Campus	
		Ballerup, Borupvang Malmparken St.	
		Tempovej Ring 4	
Hold-an Vej Banegårdspladsen		Psykiatrisk Center Ballerup Ballerup St.	

Klageren har oplyst, at han godt så kontrollørerne ved stoppestedet, inden han selv steg om bord. Han fortalte chaufføren, der var i gang med at indstille apparaturet og førersædet, at han på sin telefon ville købe en tillægsbillet til sit 2-zoners pendlerkort (gyldigt til zone 02 og 31), men chaufføren svarede ikke.

Ifølge kontrollørens elektroniske logs af kontrolafgiften steg de om bord på bussen kl. 19:44:53.

Klageren modtog tillægsbilletten i DSB-appen på sin telefon kl. 19:45:28.

Ifølge klageren tog det mellem 30 og 60 sekunder fra han påbegyndte købet, til billetten blev leveret til hans telefon. Efter kontrollørerne steg om bord, bad de om at se hans billet, som de sagde var købt for sent. Chaufføren ville ikke vedkende sig at have talt med klageren, og kontrolløren pålagde ham en kontrolafgift, selv om billetten var købt, 3 minutter før bussen skulle afgå. Kontrolløren syntes også selv, at det var fjollet og oplyste, at klageren ville få annulleret kontrolafgiften, hvis han klagede til Movia.

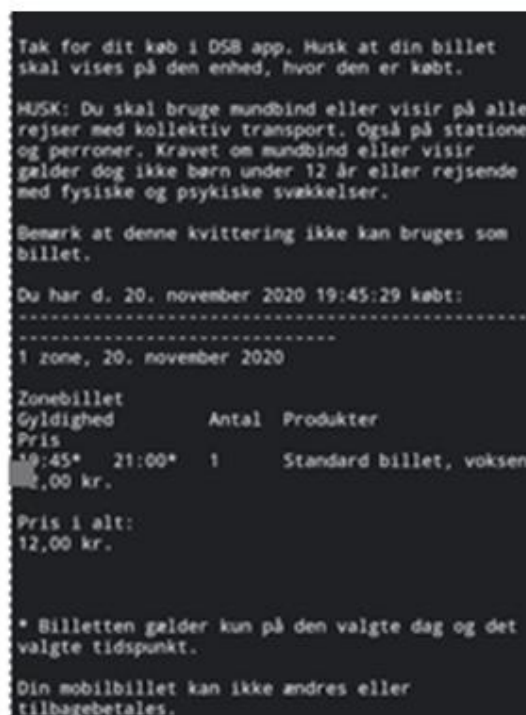
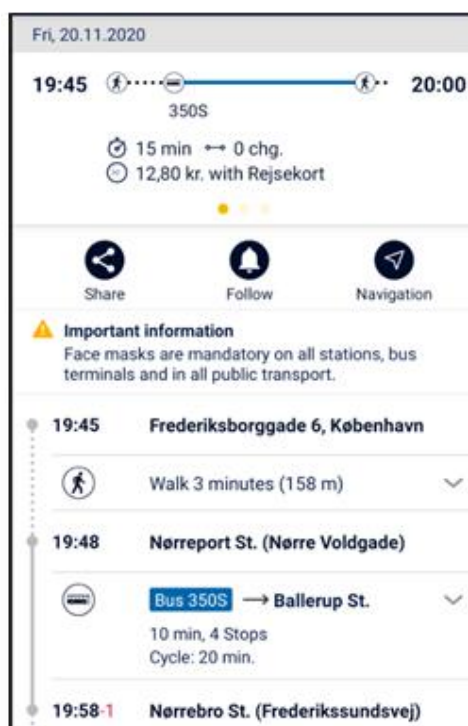
Ifølge kontrollørens log blev kontrolafgiften udstedt kl. 19:53:46, og den tog 6 minutter og 33 sekunder at udstede. Kontrolløren noterede, at chaufføren havde oplyst, at han ikke havde talt med klageren.

Samme aften den 20. november 2020 anmodede klageren Movia om at annullere kontrolafgiften og gjorde gældende som gengivet ovenfor. Han oplyste desuden, at han er læge fra Pakistan og er i gang med at lære dansk og ikke er en person, der er ude på at snyde.

Movia fastholdt kontrolafgiften den 25. november 2020 med den begrundelse, at chaufføren ikke kunne bekræfte at have talt med klageren, og de anmodede klageren om at indsende dokumentation for sit billetkøb.

Dette gjorde klageren samme dag og tilføjede, at han altid køber ekstra zoner, når det er nødvendigt, og at det savnede mening at forsøge at snyde, når han steg om bord sammen med kontrollørerne, at billetten var købt, inden han satte sig på sædet, og at folk, som skulle checke ind med Rejsekort, havde været længere tid om at skaffe sig rejsehjemmel, end klageren havde.

Han vedhæftede screenshots fra sit billetkøb den 20. november (indsat nedenfor) og andre billetkøb i DSB-appen dateret den 9., 17., 18. og 23. november 2020.



Movia fastholdt kontrolafgiften, da kontrollørerne var steget om bord efter klageren, men inden han havde købt sin billet, hvorfor billetten var købt for sent.

Under den efterfølgende ankenævns sag har Movia fået oplyst fra DSB, der driver DOT-billetappen, at klageren er blokeret fra at købe flere billetter i DOT-appen, da han annullerer eller undlader at gennemføre 84% af sine billetbestillinger.

Hertil har klageren oplyst, at han har problemer med mobilepay, der nogle gange ikke går igennem eller "hænger" i systemet, at han checker zonerne på den måde for at se, om det er nødvendigt at købe en tillægsbillet, at hans baby ser tegnefilm på telefonen og trykker på alle mulige apps – herunder DOT-appen, men at han altid køber tillægsbilletter i DSB-appen og ikke i DOT-appen grundet problemerne med mobilepay, og endelig at hvis han er sådan en snyder, hvorfor er han så ikke blevet fanget i en af de mange kontroller gennem de seneste 2 år.

SEKRETARIATETS UNDERSØGELSER:

DSB har på sekretariatets anmodning indsendt en udskrift af klagerens billetbestillinger og gennemførte køb i DSB-appen i perioden 2. august – 30. november 2020.

Oversigten er sendt til parterne og er forelagt for ankenævnets medlemmer. Det fremgår af oversigten, at klageren har foretaget:

11 stk. pladsbilletter til 0 kr. til regionale togrejser til og fra København
29 stk. gennemførte og betalte tillægsbilletter til 12 kr. i København
15 stk. bestilte men annullerede billetter i København

Procentuelt har klageren annulleret 34 % af de i alt 44 bestilte tillægsbilletter.

Klageren har på sekretariatets anmodning oplyst, at han efter kontrollen steg af bussen på Nørrebro st., der ligger i zone 02, og mødtes med en ven.

ANKENÆVNETS BEGRUNDELSE:

Det er en klar regel i den kollektive transport, at billetter på en mobil enhed skal være modtaget på enheden, inden passageren stiger om bord på bus, tog, letbane eller metro.

I den konkrete sag er det utvivlsomt, at klageren steg om bord på buslinje 350S, inden han havde modtaget mobilbilletten på sin telefon, således som rejsereglerne foreskriver. Uanset at billetten blev modtaget på telefonen kl. 19:45:29, og bussen først skulle afgang fra stoppestedet 19:48 ifølge køreplanen, opfyldte klageren ikke kravet om at vente med at stige om bord, indtil billetten var modtaget på hans telefon.

Kontrolafgiften for manglende gyldig rejsehjemmel blev dermed pålagt med rette.

Ankenævnet bemærker, at det ikke er en betingelse for at pålægge en kontrolafgift, at passageren bevidst har søgt at unddrage sig at betale fuld pris for rejsen.

På den baggrund sammenholdt med sagens øvrige omstændigheder, herunder at billetten blev købt efter, at kontrollørerne var steget på bussen, at klageren ikke fik chaufførens udtrykkelige accept til at måtte stige på bussen, inden billetten var modtaget på telefonen, og klagerens påfaldende annulleringsmønster samt et generelt omgåelseshensyn, finder ankenævnet, at der ikke har foreligget sådanne særlige forhold, at kontrolafgiften skal frafaldes.

Ud fra det oplyste om, at kontrollen tog 6 minutter og 33 sekunder, må kontrollen være blevet påbegyndt kl. 19:47:13, selv om bussen først skulle afgang kl. 19:48. I stedet for at vente uden for bussen på at modtage mobilbilletten steg klageren på bussen 3-4 minutter før afgang. Han satte sig på et sæde og var klar til at modtage en transportydelse, hvorefter han var at betragte som passager, der på forlangende skulle forevise gyldig rejsehjemmel, hvilket han ikke gjorde. Det har i den henseende ikke betydning, at billetten var modtaget på telefonen inden kontrollen, når den ikke var modtaget inden påstigning.

RETSGRUNDLAG:

Ifølge § 29 i lov om trafikselskaber, kan trafikselskabet fastsætte kontrolafgifter til passagerer, der ikke på forlangende viser kort eller billet.

I de fælles landsdækkende rejseregler, som trafikvirksomhederne har vedtaget, præciseres hjemmelen til at udstede en kontrolafgift.

Det anføres således bl.a., at passagerer, der ikke på forlangende viser gyldig rejsehjemmel, herunder er korrekt checket ind på rejsekort til deres rejse, skal betale en kontrolafgift på 750 kr. for voksne. Det gælder også, hvis passageren har købt rejsehjemmel via en mobil enhed, der ikke kan kontrolleres, f.eks. hvis denne er løbet tør for strøm eller gået i stykker. Det er passagerens ansvar, at rejsehjemlen er endeligt modtaget på den mobile enhed før påstigning.

Fra Vejledningsdokumentet pr. 29.09.2019:

"Gyldighed – Tid

Billetter til korte rejser kan bruges til et ubegrænset antal rejser inden for den tid og de zoner, den er gyldig i. Den sidste påstigning skal ske, inden billetten udløber, og billetten skal være gyldig, når bussen eller toget ifølge køreplanen skal køre fra stoppestedet eller stationen.

Her er to eksempler:

- Billetten udløber kl. 13.00. Bussen eller toget skal køre kl. 12.59 efter køreplanen, men kører først kl. 13.02. Billetten gælder alligevel.
- Billetten udløber kl. 13.00. Bussen eller toget skal køre kl. 13.02 efter køreplanen. Billetten gælder ikke, selvom man står på inden udløbet.

Rejser du på en enkeltbillet udstedt på mobil salgskanal (app eller sms), skal den være modtaget inden første påstigning. Efter billettens udløb er fortsat rejse tilladt inden for gyldighedsområdet, så længe der ikke skiftes transportmiddel undervejs.

Billettens tidsgyldighed er anført på billetten. Enten med tidsgyldighed pr. købte antal zoner eller med start- og/eller udløbstidspunkt."

PARTERNES ARGUMENTER OVER FOR ANKENÆVNEN:

Klageren anfører følgende:

"I got a fare evasion ticket which I believe is wrong. I have screenshots and pictures of the tickets and everything else and I believe I have a valid and strong point to appeal for the decision. I can attach all the things if been contacted as I can't see any option to attach it over here the pictures.

I will tell in the summarized way here.

On 20th november, I was at Norreport station bus stop around 19:44. I had to take the bus number 350s towards Ballerup. When I reached the stop, I saw ticket checkers from Movia at the door of the bus. They were just standing there. I entered in front of them. As the bus starts its journey from Norreport station, so the bus was standing there. AND IT HAD TO START ITS JOURNEY AT 19:48. I entered the bus, driver was busy in something with setting and seats I showed him my two zones ticket and said I AM BUYING ONE ZONE EXTENSION TICKET. he never replied and respond WHICH IS VERY USUAL OF BUS DRIVERS. I entered in the bus at around 19:44 or 19:45, buying my ticket and sat on my seat. I bought the ticket at 19:45:28. IF SOMEONE USES DSB APP TO BUY TICKET, THEY CAN SEE THAT IT TAKES 30 to 60 seconds to buy a ticket on app. Checkers entered the bus just after me. and when they came to me I SHOWED THEM THE VALID 1-ZONE EXTENSION TICKET.

Checker said can you show me the time you bought the ticket, i showed him, he said you bought it few moments back . I said i entered and showed my 2 zones valid ticket AND TOLD DRIVER THAT I AM BUYING 1-zone extension. He sent his colleague and asked driver and driver said he does not know anything. Checker came back to me. He said as you bought your ticket late, we will give you fare evasion ticket. I WAS NOT AGREED WHAT THEY SAID AS I BOUGHT TICKET ENTERING INTO THE BUS, I WAS ENTERING IN FRONT OF THEM INTO THE BUS, TELLING DRIVER ABOUT MY BUYING, almost 3 MINUTES BEFORE THE BUS DEPARTURE, so they were not making sense. PEOPLE IN THE BUS STARTING TO TALK TO THEM IN DANISH AND TOLD THEM YOU ARE DOING WRONG. CHECKERS THEMSELVES SAID YOU CAN COMPLAINT ABOUT THE TICKET AND IT WOULD BE WAIVED OFF. I KEPT ON ARGUING BUT THEY WERE NOT BUDGING. EVENTUALLY TO NOT CREATE DRAMA AND KEEP IT NICE, I got the fare evasion ticket around 1953.

I went to Movia website, complained about the fare evasion ticket and attached the documents I had. DUE TO SOME TECHNICAL ERRORS ON THEIR WEBSITE, no file was attached i guess. As i got their first reply on my email stating THAT FARE EVASION TICKET CANNOT BE WAIVED OFF, BECAUSE I WAS NOT ABLE TO SHOW ANY VALID TICKET AT THE TIME OF CHECKING. And if I have any material I can send them through email. I emailed them again with my attached documents. Then i got a reply THAT FARE EVASION TICKET CANNOT BE WAIVED OFF, BECAUSE I BOUGHT TICKET LATE. I emailed them again and said that i did not buy ticket late and I am not lying or cheating. I got a reply that CHECKER ENTERED INTO THE BUS AT 19:44:53 and I INITIATED THE BUYING PROCESS AT 19:45:29. I replied that is wrong and i actually GOT THE TICKET AT 19:45:28 and initiated the buy almost half a minute to minute before. They replied the case is closed they will not do anything further. and I have time to pay the fine till 14th December 2020.

Now I have decided to appeal this case at ABTM. As I think there are many wrong things in this case. And they have changed many stances and statements, and many things which they said are wrong and does not make sense. They have taken decision in A BIASED MINDSET. I am appealing as its not just about money , its about dignity and justice and right thing. I always buy zone extension tickets and i have proof for that. I would like you guys to check GPS, Bus Cameras and everything possible to see that who is wrong in that situation. I entered the bus in front of checkers and NO SANE MIND WOULD CHEAT WHEN THEY KNOW HE OR SHE GOING TO BE CHECKED NOW. Whatever they did was wrong, illogical, inhuman and senseless. The journey starts from the first stop at 1948, person has got the the ticket at 1945, person entered the bus in front of checkers, person told and showed driver his ticket and said i am buying one more extension. IT DOES NOT MAKE SENSE to give someone fare evasion ticket for that. I am from Pakistan, I am a professional doctor. I am learning Danish and going to work as a doctor. I am not a cheat or some liar who would try to cheat for 12 kroner. I am appealing for my dignity and justice.”

Indklagede anfører følgende:

Background

A valid ticket is a customer's documentation of the right to be transported in public transport. According to the principle of self-service it is the passenger's own responsibility to have a valid ticket and to be able to present it at the inspector's request.

A mobile commuter card is a prepaid card that gives the right to unlimited travel in the selected area at a fixed price. The mobile commuter card is a personal card and may only be used by the person to whom it is issued. The validity of a mobile commuter card ranges from 30 to 60 days. If you travel in a different zone than the chosen ones, you have to buy an additional ticket.

Tickets via app or SMS, including mobile commuter cards, must be received on the telephone before boarding. Tickets purchased after one's own and the inspectors' boarding will therefore not be considered valid.

A customer who does not show a valid ticket upon the ticket inspectors must pay a control fee according to the joint national travel regulations.

Comments and decision

The ticket inspectors board line 350S at 19:44:53 at bus stop Nørreport St. in zone 001 and begins a ticket inspection. Complainant who is already on the bus cannot present a valid ticket at the inspectors' request and a inspection fee is issued.

Complainant has a commuter card valid in zones 002 and 031 but not in zone 001 where the ticket inspection takes place.

According to complainant: *"I said to driver I have 2 zones I'm buying a ticket extension"*

The bus driver, however, denies this when questioned by the ticket inspector: [udeladt, men forelagt for ankenævnets medlemmer i bilagsmaterialet]

Movia and public transportation in general, operates according to the principle of self-service, where it is the customer's own responsibility to provide a valid ticket before the journey begins. The customer must thus make sure that a mobile ticket has been received on the telephone before boarding and is valid for the entire journey, so that a valid travel document can be presented upon request.

A mobile ticket must be received on the telephone before boarding, This rule ensures that there are no areas of conflict regarding the circumstances under which one may stay on the bus without a ticket or whether a ticket is purchased solely because of a ticket inspector boarding the bus.

Complainant is already on the bus and there can be no doubt that complainant is about to commence a journey.

One may be considered a passenger when boarding any means of transportation, according to section 10 of the Railways Act, where it is stated that the railway company must compensate damage to passengers if the damage is a consequence of an event in connection with rail transport during the passenger's stay on the train. The moment complainant gets on the bus and passes the bus driver, regardless of whether the bus has left the bus stop or not, the journey has therefore begun.

Jernbanelov

Kapitel 10 

Erstatning, forsikring og farligt gods

Stk. 2 Jernbanevirksomheden skal endvidere erstatte skader på og tab af genstande, som passageren medfører som håndbagage, hvis skaden er en følge af en begivenhed i forbindelse med jernbanebefordring under passagerens ophold i tog eller under dennes ind- eller udstigning, jf. dog [§ 50, stk. 2](#).

It is the customer's own responsibility not to be on the bus without a valid ticket. The bus driver does not perform actual ticket inspection, but can perform random checks.

Complainant payed and received his ticket at 19:45:29 but argues that he ordered it 30-40 seconds prior to this. Neither DSB or Movia can confirm this information. In continuation of this it is worth mentioning that

since complainant does not complete his purchase in 84% of his ticket orders he has been blocked by DSB from purchasing tickets in the DOT Tickets app until further notice.

According to the Joint National Travel Regulations a mobile ticket must be received on the telephone before entering the bus. The ticket inspector enters the bus at 19:44:53 and complainant completes his purchase at 19:45:29.

When a fare evasion ticket is issued, we have no reason to believe that this is anything but a regrettable mistake, however, Movia has no way of assessing whether the missing ticket is due to a mistake, attempts at deliberate cheating, oversight or other things. Therefore, we do not relate to it. A fare evasion ticket is not conditional on whether a customer deliberately tried to evade payment or whether it is an error or misunderstanding but only if a valid ticket is presented.

Since complainant has not been able to present a valid ticket during ticket inspection the fare evasion ticket has been correctly issued and is maintained by Movia.”

Hertil har klageren oplyst:

“So first I should explain why 84% of the time I never bought ticket if this is correct percentage.

1st, there is some issue with my mobilepay when i buy the tickets with dot app... Sometimes It never goes through or hangs

2nd. Many times I do this to check zones... As sometimes there is no chance to know which zone are u in the train or busses if they r not displaying it so I check that which zone comes in the nearby zone so I can buy 1 zone extension

3rd. My baby uses my phone and watch cartoon. So many times I have seen her pressing and going in different apps and clicking all the way... So dot app is one of them too.

4th...if u notice... I always buy zone extension ticket with DSB app and not DOT app... Because of my mobilepay problem as I mentioned above... It hangs sometimes... I'm not blaming dot app... It could be my phone...

5th and the most important... If I am such a big cheat and 84% of the time I'm opening app and not buying tickets... And still hasn't been caught in last 2 years by so many ticket control checkers... I guess they need to work hard now...

Regarding reply to my overall complaint... I guess they have no new point... It's a lie that I couldn't show the ticket... I showed them the valid ticket... Only thing they gave me fine about that I just bought it few moments before and not entering... When the checker asked me to show... I showed them the ticket... Then he went through time and said u just bought it... So it's a lie that I din't show the ticket...

One more thing... It's about a ticket which had been bought even before the travel and journey of the bus... 2nd...my complaint is about this fine... Blocking my dot app and checking my history of not buying tickets shouldn't effect this case...and as I told above... Even that is not intentional... Anyhow... This case should be decided on these given facts about this fine... Where we are talking about difference of seconds... And truth is i have shown them the valid ticket when they asked me... It's just that they entered 30 secs before I

got my ticket in hand... And as I said before... I was in the process of buying it and told driver... And when they asked me to show... I showed them the valid one zone extension ticket.”

Til dette har Movia svaret:

“Complainant has been blocked by DSB and not Movia. If complainant has any questions or comments regarding this, or wants the block lifted, he must contact DSB.

Klager gør gældende, at det er fordi han gennemfører købene i DSB app'en og blot benytter DOT app'en til at se, hvilken zone han er i og skal købe billet til.”

The map is on the opening page in the app and it is possible to check zones before (and without) ordering a ticket. Complainant orders a ticket without purchasing.

According to complainant he only uses the DOT app to see which zone he is located in before purchasing a ticket in the DSB app. We notice that complainant on several occasions orders a tickets in the DOT app without finalizing the purchase and without purchasing a ticket in the DSB app e.g. on the 15/9, 30/9 and 16/10.”

Hertil har klageren anført:

“It's not necessary for me that I check zones on DOT app and then I HAVE TO BUY ON DSB APP. I sometimes just check and close... And also use rejsekort then if I have rejsekort with me after checking the zones on DOT app.

2nd point. When I mentioned about DOT app... I told 3 things. 1st) I use to check zones, 2nd) sometimes my baby goes into it and keep on clicking and then reach till end until the code for mobilepay. 3rd) sometimes MOBILEPAY doesn't work with DOT app in my mobile. These are the reasons u can see sometimes unpaid orders.

Again to mention here... This case is not about my history, it's about that particular incident on that day when they are lying that I dint have valid ticket when they asked for ticket. I showed them the ticket. They said you bought moments ago and I have already mentioned all other details in previous mails. Check the back camera of that bus with audio. U'll get the truth.”

På ankenævnets vegne



Tine Vuust
Nævnensformand