THE DANISH
PARLIAMENTARY
OMBUDSMAN

Annual Report

2011

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PARLIAMENTARY
OMBUDSMAN

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TO PARLIAMENT

Pursuant to the provision in section 11(1) of the Parliamentary Ombudsman Act (Act No. 473 of 12 June 1996 as most recently amended by Act No. 568 of 18 June 2012), the Ombudsman is to submit an annual report on his activities to Parliament. The report is to be published. In the report, the Ombudsman is among other things to highlight statements on individual cases which may be of general interest. The accounts of the cases in the report are to contain information about the explanations given by the authorities concerning the matters criticised (section 11(2) of the Parliamentary Ombudsman Act).

In accordance with the above provisions, I am hereby submitting my annual report for the year 2011. It should be noted that I took up the position of Parliamentary Ombudsman on 1 February 2012 and thus was not Ombudsman in the report year 2011.

The 2011 report contains articles from the institution's divisions. The idea is to provide broad and general information about important matters, cases or development trends.

In addition to these articles, the report includes a brief statement from the office's director general about the general state of the office.

The statistics are appended together with summaries of selected cases from 2011.

Copenhagen, September 2012

JØRGEN STEEN SØRENSEN

Jørgen Steen Sørensen
Parliamentary Ombudsman

OMBUDSMAN ANNO 2012[1]

On 1 February this year, I took up the position of Parliamentary Ombudsman, succeeding Hans Gammeltoft-Hansen, who had made a strong and distinctive mark on the position for a period of 25 years. There is every reason to believe that I will serve for a considerably shorter period, as Parliament is planning a legal amendment whereby an Ombudsman can hold the position for ten years at the most[2]. In my opinion, that represents a good balance between the need for, on the one hand, regular replacement and thereby renewal in the position and, on the other, reasonable continuity in the Ombudsman institution itself.

The time limitation also acts as an incentive for the Ombudsman to consider what is to characterise the position during the time available, because the Ombudsman is to a large extent expected to set the course of the institution, and of course ombudsmen are different, just like other people.

It may be useful to start by considering why there is an ombudsman in Denmark at all.

The development of modern Denmark in the later interwar years not only involved sowing the seeds for a welfare society with benefits for the citizens, but also the creation of a strong regulatory power. Over the years, both central and local government were given extensive authority to lay down rules and make decisions which affected the daily lives of ordinary people. It was all intended for the best of society, but as is well known, this is not much comfort for those who feel they have been unfairly treated.

To whom would citizens turn when they were not satisfied with the authorities? Of course they could use the normal appeal bodies, but often they were part

1 This article corresponds to a feature article published in the newspaper Politiken on 27 April 2012 entitled 'Last stage in citizens' legal protection'.
2 The amendment has now come into force with the passage of Act No. 568 of 18 June 2012 to amend the Parliamentary Ombudsman Act.

of the system they were intended to monitor. The courts were another option, but for many people a lawsuit was – and still is – a lengthy and costly affair. An alternative was needed to meet the individual citizen's need for an independent, free and easily accessible appeal body. At the same time, the legislature itself needed an institution able to monitor the administration's use of the rules that had been passed.

The solution was the Parliamentary Ombudsman. The Ombudsman institution was included in the Constitution of 1953 and established in 1955. The model was the Swedish ombudsman system, which was established already in 1809, but the Danish model differed from the Swedish in important respects. To a large extent, it is the Danish model which subsequently spread to other countries, with the result that the word 'ombudsman' is today known in several continents.

At times, the Ombudsman is called 'the common man's advocate'. This expresses something very important in that the Ombudsman fundamentally exists for the ordinary citizen and the principal mission of the Ombudsman is to ensure that the individual does not have his or her rights infringed or is exposed to unfair treatment by public authorities. It is not, however, the Ombudsman's role to take the citizen's part in the way that a lawyer must take a client's part. The Ombudsman's role is to assess soberly and objectively whether the administration has treated the individual citizen in accordance with applicable law and good administrative practice.

Another characteristic is that the Ombudsman cannot make binding decisions in relation to the administration, but only express an opinion and, if appropriate, recommend that the authorities reopen the relevant case. It may sound fragile and in a way it is, but it cannot easily be otherwise. In principle, the Ombudsman's authority covers all activities of the public administration and if he could make binding decisions, exceptional power would be concentrated in a single institution. This is unlikely to be desired by anyone, including the Ombudsman.

In reality, a fine balance is maintained by the Ombudsman on the one hand having the power to investigate any case in the entire public administration and on the other being unable to enforce his legal conception. As a result, Ombudsman and authorities have to establish suitable checks and balances in relation to each other.

In addition, the Ombudsman's legal conception is in practice virtually always followed. This is of course connected with the strong mandate held by the Om-

budsman because he is elected by Parliament, even though Parliament does not as such get involved in the individual cases. It is also connected with the strong support in principle of the Ombudsman institution traditionally shown by the Danish administration. However, the pivotal factor should be that the Ombudsman carries out his function in such a way that the administration simply recognises that his views are right and reasonable, because in the long term, it is better to get the authorities to comply with the Ombudsman's recommendations because they understand and recognise them than because it is, so to speak, poor form not to.

Fundamentally, the Ombudsman's influence should thus be based on respect by the authorities – combined with strong Parliamentary backing. Above all, this requires the Ombudsman institution to represent high legal quality, but it also imposes some other important demands:

Firstly, the Ombudsman must remember – even though he exists for the individual citizen – that the Danish administration overall is competent and professional. That does not change the fact that the Ombudsman's day-to-day task is to keep a critical eye on the administration, because nonetheless the authorities may, for instance, be mistaken about legal matters, be too superficial in their case processing or treat citizens contrary to general principles of quick case processing, politeness and consideration. Of course the Ombudsman must take action against such things, but at the same time he must not forget to recognise the administration and its many competences as well.

Secondly, the Ombudsman must make sure that he deals with the right issues. The Ombudsman has the privilege of being able to decide himself which cases to take up and which issues in the cases to investigate. The intention is that the Ombudsman is to assess himself where and how his resources are best used. Therefore, the Ombudsman must not waste effort on insignificant formality issues, but concentrate on cases where important rights may have been neglected or where issues of fundamental importance need to be clarified. The latter applies in relation to Danish law, but definitely also very much in relation to for instance EU law and international human rights, which are increasingly important to the individual citizen. And, interestingly, cases involving issues of fundamental importance keep coming up. In my first two months as Ombudsman, I have, for instance, already considered issues as different as the freedom of expression of public-sector employees, the clearing of the Scala building by the Copenhagen Police, local authorities' obligation to obtain sufficient evidence in the battle against social fraud and the health service's treatment of babies born alive following a late abortion.

Thirdly, the Ombudsman must as far as possible be constructive and forward-looking. As already mentioned, the Ombudsman's main task is obviously to investigate whether the authorities have acted wrongly, and naturally he must take action when the administration's actions are open to criticism. Fundamentally, however, the Ombudsman must be a team-player in the overall public law system – a kind of backstop contributing to the optimisation of legality, administrative culture and respect for human rights.

The Ombudsman should thus ideally be both the administration's 'evil spirit and good fairy', as this is the best and most effective way to fulfil his core function of being a safeguard for citizens who believe they have been wrongly or unfairly treated by the authorities.

In the coming years, the Ombudsman institution is facing a number of important issues:

One issue relates to the resources available to the public administration. Recently, both central and local authorities have experienced considerable cuts, and nothing suggests that this will change for some time. In the coming years, it will therefore be a very important task for the administration to prioritise and administer effectively so that the resource situation does not affect core services more than absolutely necessary. Here, the Ombudsman can be said to have a double task.

On the one hand, it is important that the Ombudsman does not, for instance, impose greater demands on formalities in the administration's case processing than is warranted with reasonable certainty by legislation or the principles of good administrative practice. As is well known, the same money cannot be spent twice, and if it is spent on process and formalities, it cannot also be spent on the core service. Here, the Ombudsman must be aware of the resource-related consequences of the demands he imposes on the administration.

On the other hand, the Ombudsman has an equally important task in monitoring that the core service is actually provided to the extent stipulated by legislation and, not least, with the necessary speed. Here, it is not the Ombudsman's task to help the authorities, in a way quite the contrary. The Ombudsman must help to ensure that citizens get the services to which they are entitled and make the authorities be open, to the relevant extent, about any reductions of their service level within the legislative framework. Ultimately, a potential fundamental tension between the available resources and citizens' entitlements according to the rules has to be resolved by the legislature and not by either the administration or the Ombudsman.

Another issue relates to the Ombudsman's use of the institution's own resources. The Ombudsman has a secretariat of approx. 90 employees and an annual appropriation of approx. DKK 55 million. By contrast, the total public administration has almost 800,000 employees and a huge budget. It is therefore obvious that in the real world, the Ombudsman can only deal with a minute proportion of the administration's day-to-day activities.

In addition, the number of complaints lodged with the Ombudsman has been steadily increasing for many years. Today, he receives approx. 5,000 per year. The individual complainant usually has a quite natural expectation that his or her case will be subjected to an in-depth investigation, and preferably by the Ombudsman himself. At the same time, it is an important task for the Ombudsman not only to consider complaint cases, but also to take up cases for investigation on his own initiative where there is reason for doing so (irrespective of whether they turn out to afford grounds for criticism or not). Equally important are the inspections, where the Ombudsman visits institutions for the most vulnerable groups in society, such as prisons, psychiatric wards and residential institutions for children and young people, with a view to checking, among other things, whether the relevant persons are treated in accordance with the law and ordinary humanitarian standards. These activities are already taking up significant resources and they will be further expanded in the autumn when a special children's office will presumably be established in the Ombudsman institution[3]. Finally, the Ombudsman also has other special tasks, such as monitoring deportations of foreigners from Denmark.

As a result of all this, the Ombudsman has to prioritise ruthlessly in the coming years with regard to which cases he can take up, so that the institution's resources are used in the best possible way. This, among other things, implies that the Ombudsman has to carry out a tough screening of the individual complaint cases and decline to consider them if it is unlikely that there is any real prospect that he will be able to criticise the authorities involved, or if the resources required are not justified by the likely outcome of the case. Quite naturally, the complainants affected may be dissatisfied when complaints are rejected, but the alternative could easily be that the Ombudsman was unable to carry out any of his tasks is an entirely satisfactory way, at least not within an even vaguely reasonable time frame. And perhaps it is actually better for the individual complainant to be given a straight answer quickly instead of getting false hopes because the Ombudsman is spending a long time on thorough investigations, which do not in any case lead to the result desired by the complainant.

3 The necessary legislative basis for a children's office has now been provided with the passage of the Amendment Act mentioned in note 2 on page 9.

It will therefore be important to balance expectations as accurately as possible to prevent unrealistic expectations of the likely result of lodging a complaint with the Ombudsman. At the same time, it will be important to continue the work to achieve more efficient and better case handling procedures at the Ombudsman institution, always provided the legal quality is not impaired. Good administration involves far more than finely calibrated law. It is also a matter of well-considered use of resources, fast case processing and good management, and of course the Ombudsman institution should lead the way with a good example.

In short, there is a broad range of important issues to tackle when the Ombudsman institution has to adapt to new times. However, if the Ombudsman institution succeeds in maintaining and developing a critical yet constructive relationship with the administration, using the institution's resources purposefully for its core activities and realistically adjusting the expectations of the surrounding world, the Ombudsman institution will continue to be a fundamental part of the Danish legal community and of the principle of protection of the individual's rights – of course in close interaction with the courts, which will always have the final say in legal matters, but which are at the same time influenced and inspired by the legal conceptions of the Ombudsman in their practice.

In addition, the Ombudsman institution must never become above debate and criticism itself – because there is always a potential problem in independent monitoring bodies: who monitors the monitors? It is therefore important to pay constructively critical attention to the Ombudsman institution as well. Otherwise it is too easy to rely on familiar routines and established practice which could perhaps be improved. We would like to receive the respect which we and the institution deserve, but we also want to learn to become better where possible.

Personally, I am deeply honoured by the trust shown by Parliament and I will do my best to prove myself worthy of it. The word 'ombudsman' should continue to be one of the best known Danish words in foreign continents because Denmark has developed and exported a good concept for the protection of the individual.

A woman employed under the flexible job scheme was dismissed when a local authority had to make cuts. Among other things, the Ombudsman criticised that the local authority had not tried to find her another position, which it had an increased obligation to do because she was employed under the flexible job scheme. The Ombudsman recommended that the local authority reconsider the case. It then compensated the woman for her dismissal.

In 2011, the Ombudsman expressed criticism, made recommendations, etc. in 153 cases.

During a deportation, a 16-year-old Afghan boy went berserk in Copenhagen Airport. He tried to bang his head on a concrete staircase to avoid being returned to Afghanistan with his mother and two younger siblings. Several police officers had to restrain him and talk to him for several hours, together with his mother, to calm him down. An Ombudsman employee observed the entire incident and accompanied the family and police officers on the flight to Frankfurt, where the family were handed over to Afghan security personnel.

The Ombudsman representative subsequently reported that the police officers had used force against the boy, but that it had been proportional to the situation. The Ombudsman asked why Afghan security guards had taken over in Frankfurt and who was responsible for the rest of the journey to Afghanistan. The response was that the 'route' had been discontinued, and the Ombudsman closed the case.

In April 2011, the Ombudsman established a so-called deportation unit to monitor the process in connection with police deportations of foreigners staying illegally in Denmark. From April to December 2011, the unit participated in four accompanied deportations.

After a man had failed to attend a meeting with the local authority, his sickness benefit was stopped. The local authority sent the decision by post to the man in early February 2011, but he did not appeal the decision until April.

The man's appeal was rejected by the appeal body – the Employment Appeals Board – which stated that the four-week appeal deadline had been exceeded. However, when the Ombudsman looked into the matter, it turned out that the man had not received the decision from the local authority in February at all, as it had been returned to sender because the address was wrong. The man stated that he had not received the decision until April and had appealed the following day. In addition, it even turned out that he had previously asked the local authority to communicate by e-mail. The Employment Appeals Board then decided to consider the appeal and the Ombudsman closed the case.

The Ombudsman was subsequently informed of the decision made by the Employment Appeals Board.

Occasionally, the Ombudsman asks to be kept informed of further developments in a case even after it has formally been closed. On other occasions, the authorities provide information on their own initiative.

A woman worked in a public canteen once a week and every other weekend. In addition, she worked extra shifts. The issue was whether she was permanently employed or a casual worker. This was important because she was pregnant and would only be eligible for maternity benefit if she had a permanent association with the labour market. The woman herself believed that she was eligible for maternity benefit, but the local authority and the Employment Appeals Board regarded her as a casual worker and therefore as not eligible.

The Ombudsman submitted the woman's complaint to the Employment Appeals Board for consultation, and the Board subsequently asked her employer for further information about her working hours. On the basis of the new information, the Board changed its decision and granted the woman maternity benefit. The Ombudsman therefore closed the case.

In 2011, the Ombudsman discontinued 50 cases because the authorities reopened the cases after they were submitted to them for consultation – i.e. while the Ombudsman was processing the cases.

An employee at a residence for mentally retarded people anonymously informed the local paper that a male resident was repeatedly sexually assaulting female fellow residents by undressing them. The employee had unsuccessfully tried to get the local authority to move the resident to another, more suitable institution.

The Ombudsman opened an own-initiative investigation. The supervisory local authority explained that it was already tackling the issue, and the Ombudsman therefore discontinued his investigation.

The Ombudsman frequently reacts to press coverage of an issue and opens a case, only to close it again immediately afterwards. This happens, for instance, if the story turns out to be misleading or the authorities immediately deal with the issue.

A woman lodged a complaint with the Ombudsman about a decision made by the Eastern High Court regarding her children's residence. The Ombudsman had to reject the complaint as it related to a court.

In 2011, the Ombudsman rejected 69 complaints because they related to courts.

By Jens Møller
Director General

GENERAL STATE OF THE OFFICE

On 3 June 2011, the Parliamentary Ombudsman, Hans Gammeltoft-Hansen, asked the Legal Affairs Committee of the Danish Parliament for permission to step down from the position of Ombudsman from the end of January 2012.

A general election was held on Thursday 15 September 2011, and pursuant to section 1(1) of the Ombudsman Act, Parliament must elect an Ombudsman after every general election. At its first meeting after the election, the Legal Affairs Committee set up a sub-committee with a representative of each of the parties Denmark's Liberal Party, the Social Democratic Party, the Danish People's Party, the Social Liberal Party, the Socialist People's Party, the Unity List, the Liberal Alliance and the Conservative Party. The sub-committee had two tasks: to present a proposal to the Legal Affairs Committee for a nomination for the Ombudsman election and to consider the need for an amendment to the Ombudsman Act on the basis of the report on the previous Legal Affairs Committee's Motion No. B 99 concerning amendment of the Ombudsman Act (Report of Parliamentary Proceedings 2010-11, 1st session).

With regard to the follow-up of the report on Motion No. B 99, Mogens Lykketoft (Social Democrat), Bertel Haarder (Liberal), Søren Espersen (Danish People's Party), Marianne Jelved (Social Liberal) and Holger K. Nielsen (Socialist People's Party) introduced Bill No. L 188 to amend the Parliamentary Ombudsman Act (Report of Parliamentary Proceedings 2011-12) on 11 May 2012. The Bill was passed on 13 June 2012. We will of course follow up on the Act in the Annual Report of the Parliamentary Ombudsman for 2012.

As appears from motion No. B 23 concerning election of the Parliamentary Ombudsman (Report of Parliamentary Proceedings 2011-12), Jørgen Steen Sørensen, then Director of Public Prosecutions, was nominated. Jørgen Steen Sørensen was elected Parliamentary Ombudsman from 1 February 2012.

In the period 20 to 22 October 2011, the Danish Ombudsman hosted the 8th National Seminar of the European Network of Ombudsmen with the support of Parliament. The seminar was entitled *Law, politics and ombudsmen in the Lisbon era*.

The seminar was organised as part of the work carried out in the network of ombudsmen established around the European Ombudsman. Apart from the European Ombudsman himself, the collaboration in the Network, which was established in 1996, comprises the national and regional ombudsmen of the EU member states, Norway, Iceland and countries approved as applicant states.

National and regional ombudsmen in the Network can ask the European Ombudsman for written replies to questions about EU law and its interpretation, including questions that arise in connection with their processing of specific cases.

The members of the Network also regularly exchange information and experiences from their offices' daily work. The individual institutions have appointed permanent contact persons. Every other year, the European Ombudsman organises meetings of these *liaison officers*. In addition, a seminar is organised every other year with participation of the ombudsmen themselves. These seminars are organised by the European Ombudsman in close collaboration with the national ombudsmen in turn. The seminar in Copenhagen in October 2011 was thus jointly organised by the European Ombudsman and the Danish Ombudsman.

As part of the Network's activities, the *European Ombudsmen – Newsletter* is published for exchange of information about EU law and best practice. It is issued twice a year in English, French, German, Italian and Spanish. The newsletter offers ombudsmen a forum for explaining EU law cases which they have processed, for exchanging examples of case-handling practices which may be useful to other members of the Network and for keeping their colleagues informed about changes within their institutions. The newsletter is also a medium for the many members of the European Region of the International Ombudsman Institute (IOI) and contains a section devoted to the activities of the European Region of the IOI.

The European Ombudsman provides an Extranet service with discussion forums and document sharing facilities to members of the European Network of Ombudsmen. The Extranet also contains an electronic news service, *Ombudsman Daily News*, which is published every working day and contains articles, press releases and announcements from the offices in the Network. In addition, the Extranet contains an up-to-date list of national and regional ombudsmen in the EU member states, applicant states and certain other European countries.

When Parliament passed Act No. 248 of 30 March 2011 to amend the Aliens Act, the Parliamentary Ombudsman became responsible, from 1 April 2011, for monitoring deportations of citizens of third countries (non-EU countries) staying illegally in Denmark.

The purpose of the Act was to implement the changes to the Aliens Act required by EU Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (the deportation directive). Pursuant to Article 8(6) of the Directive, member states must provide an effective system for monitoring deportations.

Pursuant to section 8(2), first sentence, of the Aliens Act, the Danish police are responsible for foreigners' departure from the country when their departure is not voluntary. Before the Amendment Act was passed, there was no separate monitoring of police activities in connection with deportations.

Pursuant to section 30 a of the Aliens Act, the Parliamentary Ombudsman is responsible for monitoring police deportations. The monitoring covers deportations resulting from return decisions within the meaning of the Directive, cf. Article 6 of the Directive. However, while the Directive only covers deportations of third-country citizens, the monitoring pursuant to the provision in the Aliens Act also includes deportations of EU citizens in order to ensure that they are not in a worse position than third-country citizens.

The monitoring covers the period from the Danish authorities' decision on deportation until its implementation. Pursuant to section 30 a(2) of the Aliens Act, the Ombudsman is particularly to ensure that police activities in connection with deportations are carried out with respect for the individual and without unnecessary use of force.

The monitoring is carried out on the basis of the Danish Ombudsman Act. The Ombudsman must therefore assess whether the police act in contravention of applicable Danish law, including Denmark's obligations pursuant to EU law and international human rights conventions, cf. section 21 of the Ombudsman Act. Insofar as the Ombudsman carries out inspections pursuant to section 18 of the Ombudsman Act as part of the monitoring, he can also assess conditions from human and humanitarian perspectives.

The monitoring must be of a general nature. Thus, actual complaints about the behaviour of individual police officers are not to be processed as part of the Ombudsman's monitoring activities. Such complaints must be considered by the relevant complaint bodies. Similarly, the foreigners whose cases the

Ombudsman chooses to consider as part of his monitoring activities are not to be notified. The Ombudsman's task is general monitoring of the deportation area. However, pursuant to the general provisions of the Ombudsman Act, the Ombudsman may accept concrete complaints and open cases on his own initiative, cf. sections 13 and 17 of the Ombudsman Act. In such cases, the general principle of section 14 of the Ombudsman applies. According to this provision, the Ombudsman cannot consider complaints which can be brought before another administrative authority until the latter has made a decision.

The Ombudsman submits an annual report on his monitoring activities to Parliament.

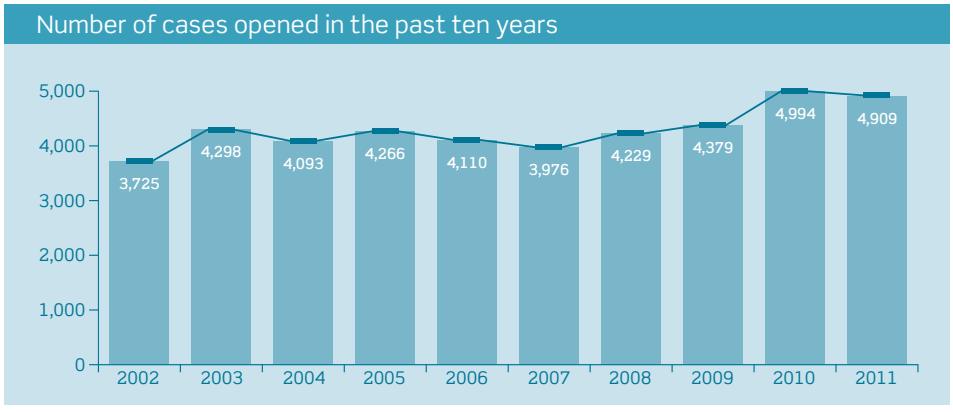
In the period April 2011 to December 2011, the Ombudsman participated in four observed and four accompanied deportations. The observed deportations were to Serbia, Lebanon, the Ivory Coast and India. The accompanied deportations were to the Democratic Republic of Congo, Nigeria, Afghanistan and Lebanon. Altogether, the Ombudsman monitored 13 deportation cases involving 17 people.

Based on his participation in an accompanied deportation to Afghanistan, the Ombudsman raised two questions. One related to police practice in cases where implementation of a deportation leads to families being split up. In response, the police sent an explanation of its general considerations in relation to the splitting up of families and police procedure in cases where one or more family members are not present when the police come to collect them. The second question related to police practice in connection with deportations to Afghanistan, which involved passing the foreigners over to private security guards in Frankfurt who had been hired by the Afghan airline. The police replied that the route to Afghanistan via Frankfurt was no longer used and that foreigners were therefore no longer passed over to private security guards. The Ombudsman took note of the police replies, which did not afford grounds for expressing criticism.

In December 2011, the Ombudsman received, for the first time, copies of the police's closed deportation cases in 2011 for review. There were 277 cases in total. They included 235 observed deportation cases, 41 accompanied deportation cases and a case concerning a person assumed to have left the country. Ten per cent of the cases were randomly selected for review in relation to the following issues: use of force, deportation of families, deportation of vulnerable groups (such as children, including unaccompanied children, single women, elderly people, people with disabilities and people with poor health), prior contact between the police and the foreigners, the police's security assessments and the police deportation reports.

Appendix C (pp. 87-101) contains various statistics – only a few key figures will be highlighted below:

The number of *new* cases in 2011 was 4,909 as against 4,994 in 2010. For comparison purposes, developments in the number of new cases have been as follows over the past decade:

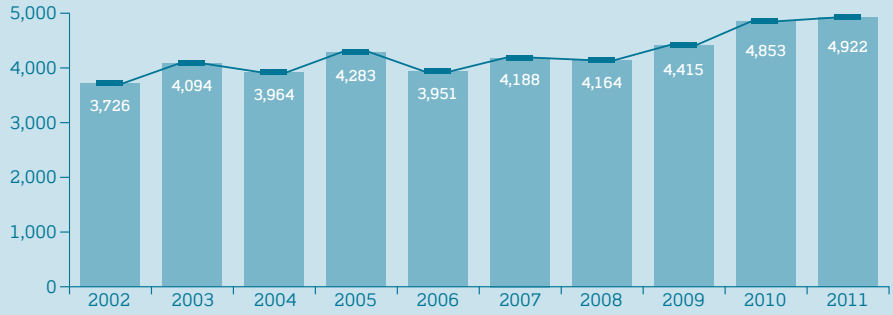


The number of cases opened on the basis of a complaint was 4,670 in 2011 as against 4,827 in 2010.

103 cases were opened as a result of the Ombudsman's option to investigate cases on his own initiative. 23 cases were inspection cases and 75 cases were opened as part of the office's responsibilities in connection with OPCAT (see the Annual Report of the Parliamentary Ombudsman, 2009, pp. 18-19, for further information). In addition, 18 cases were opened in relation to the Ombudsman's function as monitoring authority in connection with deportations of foreigners. One own-initiative project was initiated in 2011, and in this connection the Ombudsman asked the current Food and Veterinary Complaints Board for 20 cases in 2011.

The number of cases *concluded* in 2011 was 4,922 as against 4,853 in 2010. Of the cases concluded, 1,001 (20.3 per cent) were substantively investigated, i.e. the Ombudsman generally concluded these cases with a statement, and 3,921 (79.7 per cent) were rejected for various reasons (see p. 97 for further information).

Number of cases concluded in the past ten years



Usually, a first reply is sent by the Ombudsman to the complainant within ten working days after receipt of the complaint, also in cases which are eventually rejected. 40.7 per cent of rejected complaint cases were concluded within ten calendar days. The average processing time for rejected complaint cases was 33.7 days in 2011.

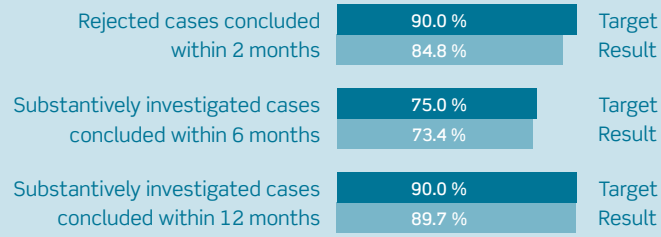
The case processing times of the office are fairly stable: The average processing time for substantively investigated concrete cases (i.e. complaint cases and concrete cases opened on the Ombudsman's own initiative, but not inspection cases etc.) concluded within the report year was 5.3 months (162.7 days). For rejected concrete cases, the average case processing time was 33.7 days in 2011. The corresponding figures for 2010 were 31.0 days for rejected concrete cases and 154.9 days for substantively investigated concrete cases.

The Ombudsman has established targets for the desired case processing times for *complaint cases,* partly for rejected cases and partly for substantively investigated cases. The target is that 90 per cent of rejected complaint cases should be concluded within two months. Of the complaint cases which are substantively investigated, 75 per cent should be concluded within six months and 90 per cent must be concluded within 12 months.

These targets were not entirely met in 2011: 84.8 per cent of rejected complaint cases were concluded within two months (calculated as 60 days) – the target was 90 per cent. 73.4 per cent of substantively investigated complaint cases

were concluded within six months (calculated as 182 days) as against a target of 75 per cent, and 89.7 per cent of substantively investigated complaint cases were concluded within 12 months – here the target was 90 per cent.

The Ombudsman's targets for processing times for complaint cases



As at 1 June 2012, 258 concrete cases had not been concluded within five months of being opened. 163 of them were awaiting the Ombudsman's procedure.

In one complaint case, the Ombudsman declared himself disqualified. The Legal Affairs Committee of the Danish Parliament assigned this case to Mr Ejler Bruun, High Court Judge.

In 2011, the Faroese Lagting asked the Ombudsman to act as ad hoc Ombudsman in two cases, whereas the Landsting of Greenland did not ask the Ombudsman to act as ad hoc Ombudsman in 2011.

A total of 30,305 documents (letters to and from the office etc.) were registered in the electronic system of the office in the calendar year 2011. The corresponding figure for 2010 was 28,346 documents.

On 1 May 2012, the institution was organised as follows:

ORGANISATION

Ombudsman
Director General

General Department

Main areas

Annual report

International work

Own-initiative projects

Effort against torture (OPCAT)

Monitoring of deportations of foreigners

Cases concerning media access to files

Cases from other divisions (buffer)

HR and finance functions of the office

Administration, service and development of the office

Website and news

The language policy of the office

1st Division

Main areas

Company legislation

Foodstuffs

Fisheries

Agriculture

Patient complaints

Pharmaceuticals

Health services

Foreign affairs

Communication

Ecclesiastical affairs

Culture

Cases involving aliens

Registers etc.

Naturalisation

Benefits for persons with unemployment insurance

Succession/foundations

Parental access cases

The law of capacity and legislation regarding names

Family law cases, apart from cases concerning child maintenance and adoption

2nd Division

Main areas

Employment legislation

Cash benefits etc.

Social pensions

Sickness benefits

Consolidation Act on Social Services except relief measures for children and juveniles, social institutions and vehicles for the disabled

Inspections (3rd Division)

Main areas

Inspections

State prisons

Local prisons

Secure institutions

Halfway houses

Detention rooms for intoxicated persons

Custody reception areas

Psychiatric wards

Institutions for the mentally or physically disabled

Non-discrimination of the disabled

Residential institutions for children and juveniles

Others

Patient complaints (psychiatric area)

Psychiatric wards

Prison conditions

Defence

Criminal cases and the police

The courts

Practising lawyers

Private legal matters

Legal matters in general

Non-discrimination of the disabled

Local authorities (4th Division)

Main areas

Municipal law issues

Environmental and planning law

Nature protection

Building and housing

Budget and economy

Elections, registration of individuals, etc.

Personnel cases

Vehicles for the disabled

Traffic and roads

Adoption

Child maintenance cases

Old age pensions

5th Division

Main areas

Housing benefits

Industrial injuries

Schemes for juveniles and children

Taxes and dues

Repayment of social benefits

Criminal injuries compensation

Education and study grants

Research

Child support and family allowance

Social institutions except inspection-relevant cases

To the necessary extent, some of the cases assigned by law to the Ombudsman are handled by the Director General and the Head of the General Department. The Ombudsman may delegate his functions within this area to them, including final statements on cases. The Director General may also carry out inspections. In the Ombudsman's absence, the Director General takes over the Ombudsman's functions when the Ombudsman so decides, cf. section 27 of the Ombudsman Act. If the Director General is also absent, the Head of the General Department takes over. The Director General has overall responsibility for the operation of the Ombudsman institution. Further information about the organisation and personnel of the institution is provided in Appendix A.

Every year, the Ombudsman himself and several of the office's employees give a number of lectures, either of a general informative nature or more specialised, about the activities of the Ombudsman. Some employees, and to some extent the Ombudsman himself, also teach at courses on subjects pertaining to public law, and a number of employees serve as tutors and external examiners at Danish universities.

Further information (in Danish only) about the teaching activities of the Ombudsman and the members of the management team can be found in the Ombudsman's annual reports on the website www.ombudsmanden.dk.

Every year, the office receives foreign visitors, often with very different backgrounds. Common to them all is the wish to know more about the Danish Ombudsman institution, its history and international influence. General information is always offered.

In addition, the office participates in international collaboration at various levels, for instance through a collaboration agreement with the Ministry of Foreign Affairs. The agreement allows the office to enter into collaboration projects with other ombudsman institutions – often in the poorest countries of the world.

After a knee injury, a woman was referred for a so-called MR scan. However, she did not want to wait for the scan but wanted an immediate operation. She therefore went to a private hospital and had a keyhole operation costing just under DKK 18,000. She then asked the Region to pay the bill, but the Region refused. The rules state that treatment can take place at an 'agreement hospital' if the region of residence cannot offer treatment within a month. It is, however, a condition that the regional hospital refers the patient for treatment at the private hospital. As the woman had gone to the private hospital on her own initiative, the Ombudsman could not help her get the Region to refund her costs.

Incidentally, the Region was unable to document that the woman had been given guidance about extended free choice of hospital in connection with being summoned for an MR scan. The Region expressed its regret.

The Ombudsman often does not only consider a single aspect of a case, but the case as a whole. It is therefore not unusual for him to express criticism of an authority in one respect but agree with it in another.

On 20 September 2011, the Ombudsman received a complaint about the Danish School of Media and Journalism from a man whose application had been rejected. The man complained about his rejection and the way his assignments had been assessed. With his complaint, he enclosed a rejection by the Ministry of Education dated 26 August 2010, i.e. more than twelve months before he lodged his complaint with the Ombudsman. The Ombudsman therefore had to write to the man that he could not consider his complaint.

A complaint must be lodged with the Ombudsman within twelve months of the decision by the highest administrative authority. For the last five years, the Ombudsman has had to reject more than 100 complaints every year because the deadline had been exceeded.

A woman with MS was so weakened by her illness that the Social Tribunal found that she should be granted 24-hour assistance with looking after her young daughter, i.e. there had to be a helper in the house whenever her daughter was at home. After almost three weeks, the local authority still had not provided the assistance. The woman's mother lodged a complaint with the Ombudsman, who forwarded it to the local authority as a request from the complainant that the authority speed up the assistance. The assistance was finally provided six weeks after the woman was granted 24-hour assistance.

A so-called 'speeding-up request' is a tool frequently used by the Ombudsman, typically in cases which have not progressed for several months. In this case, the Ombudsman acted sooner because the woman was in acute need of help.

A young man took over his father's car and converted it to increase the engine power. However, he was stopped by the police, who impounded the car because registration duty had only been paid according to the car's original engine size. After a preliminary examination of the car, the Central Customs and Tax Administration estimated that the family must pay an additional DKK 37,000 of registration duty due to the conversion. The father offered to pay immediately so that his son could get his car back. However, the offer was rejected and the father was also told that he had to pay DKK 9,000 for the Central Customs and Tax Administration's storage of the car.

The father's lawyer lodged a complaint with the Ombudsman because the Central Customs and Tax Administration believed he could not appeal to the normal appeal body, the National Tax Tribunal. However, the Ombudsman did not immediately agree. He forwarded the case to the National Tax Tribunal and wrote to the lawyer that the father could re-contact him after receiving a reply from the Tribunal. After two months, the car was returned to the son.

A Danish firearms licence for a sporting rifle is valid for ten years. Before the expiry of the licence, the police will send the owner a reminder that it is due for renewal if the owner still has the weapon. A man with a sporting rifle was only sent the reminder after his licence had expired. He immediately reacted and applied for a renewal, but was nonetheless fined DKK 4,000 because he had owned a rifle without having a licence for approximately five weeks.

The Ombudsman sent a number of questions to the police, who immediately cancelled the fine and wrote that an error had been made.

Kirsten Talevski
Head of 1st Division

UNACCOMPANIED REFUGEE CHILDREN

'(…) it is of crucial importance to a child's mental wellbeing and further development that it is clear about its parents' situation.'

(From the legislative history behind Act to amend the Aliens Act and the Integration Act, Act No. 60 of 29 January 2003)

With the amendment of the Aliens Act in 2003, Parliament decided that the Immigration Service was to be obliged to initiate a search for the parents of unaccompanied minors seeking asylum. The search had to be initiated as soon as possible after the child's arrival in Denmark and normally required the child's consent.

Subsequently, in 2007, the obligation was extended. The Immigration Service thus became obliged to search for the parents of all unaccompanied children – irrespective of whether the child has applied for asylum or not. In addition, the obligation was no longer dependent on the child's consent.

At the same time, it was now decided that all unaccompanied children whose application for residence had been rejected had to be offered well-organised and safe repatriation, so-called 'prepared repatriation'. In other words, the authorities had to investigate whether a family member, organisation or the like could be ready to receive the child at its return and help it afterwards. In this way, the arrangement could also result in the child being reunited with its parents or other family.

THE IRAQI BOY

In December 2008, a 16-year-old Iraqi boy arrived in Denmark and applied for asylum. He stated that his parents and sister had been killed in a bomb explo-

sion in 2007 and that he had lived with his mother's brother and his family until he left for Denmark. He had no other family in Iraq. Subsequently he had been informed that his uncle was no longer alive either.

In summer 2009, the Immigration Service and subsequently the Refugee Appeals Board rejected the boy's asylum application. Soon after, the Immigration Service also rejected his application for residence under the special rules applying to unaccompanied refugee children on the grounds that in the Immigration Service's opinion the boy would not be in an actual emergency situation when he returned to Iraq.

The boy's lawyer appealed the rejection of residence to the then Ministry of Integration, which in January 2010 upheld the decision by the Immigration Service. In the Ministry's opinion, it had not been documented or rendered likely that the boy's uncle was dead or that the boy had no family network in Iraq.

The Immigration Service had made no attempt to search for the boy's uncle while the case was being processed.

The boy's lawyer then lodged a complaint with the Ombudsman. Among other things, he argued that the Immigration Service should have searched for the boy's uncle, as he was the boy's only surviving relative in Iraq after his parents' death. If the uncle was not found, the lawyer believed the boy would be in an actual emergency situation if he returned to Iraq.

PROBLEM NOT CONFINED TO THIS BOY

As mentioned at the start, the Immigration Service had been under an obligation to initiate a search for the parents of unaccompanied minors seeking asylum since 2003 and for the parents of all unaccompanied children since 2007. This obligation was included in the Aliens Act for the sake of the child. The purpose of the rule was to help the child find its parents and – if possible – be reunited with them.

However, the problem was that the Immigration Service did not attempt to find the parents before the child was about to be repatriated, and then only to ensure a safe repatriation. Moreover, the Immigration Service had not yet established a well-functioning search arrangement even as part of the procedure intended to ensure a safe repatriation.

As a result, any attempt by the Immigration Service to find the child's parents might not be made until a long time after the child's arrival in Denmark. How-

ever, it also meant that the Immigration Service normally made no attempt to find the parents of children who did not face repatriation because they had been granted residence in Denmark.

THE OMBUDSMAN'S POINTS OF CRITICISM

The Ombudsman considered it very regrettable that the immigration authorities had neglected their search obligation for so many years.

While the Ombudsman was processing the case, it became clear that the Immigration Service was not only obliged to search for parents, but also other relatives – at least relatives who must be regarded as having taken the place of parents. The Ombudsman therefore also found it a cause for criticism that the Immigration Service had failed to search for the Iraqi boy's uncle, as the uncle had looked after him until he left Iraq and because the boy had been informed that his uncle was – perhaps – dead. A search might have confirmed or disproved this information.

Both the Immigration Service and the Ministry of Integration (now the Ministry of Justice) stated that in future the authorities would ensure that searches for relatives of unaccompanied children were initiated as quickly as possible. However, it was evident already then that the problem was not easily solved.

DIFFICULT SEARCHES

After the 2007 Act was passed, the immigration authorities became aware that – against expectation – the Danish Red Cross was unable to help with searches within the framework now laid down in the Aliens Act. The Immigration Service explained to the Ombudsman that the Danish Red Cross was only prepared to initiate a search at the minor's own initiative. In addition, the Red Cross was unable to pass on the result of a search to the immigration authorities as this information could only be given to the person searching and completing the search form.

The Immigration Service had previously been under the impression that it met its search obligation simply by encouraging the children to initiate a search themselves via the International Red Cross. However, the Ombudsman did not agree, and while he was processing the case, the Ministry of Integration clarified to the Immigration Service that the Immigration Service was itself responsible for ensuring that a search was initiated via available sources, for instance

with the help of the Ministry of Foreign Affairs or the Ministry's own foreign attachés.

However, not all unaccompanied children come from countries where it is likely to be possible to initiate a search via available sources.

In response to a question from the Immigration Service, the Ministry of Foreign Affairs thus stated that – with the necessary personal information – it would in some cases be able to obtain information from public registers and might track down family members in this way. However, according to the Ministry's information, the option of getting information from public registers could only be used in countries where the Ministry already had a permanent, approved source for handling specific cases involving a need for protection, such as Iran, Pakistan and Turkey.

On the other hand, the Ministry declined to carry out actual physical searches for relatives. According to the Ministry, such a task would require house-to-house enquiries in villages outside the capital area, which it was unable to undertake for both resource and safety reasons in for instance Afghanistan, Iraq and Syria.

While the Ombudsman was processing the case, the Ministry took other initiatives to be able to fulfil its search obligation in future. In summer 2010, it thus entered into a pilot agreement with the IOM (International Organization for Migration) concerning a search arrangement covering a limited number of cases and geographical areas. The authorities stated that the intention was to make the arrangement general and global – if an evaluation supported it.

The authorities also promised the Ombudsman to review pending cases where it might be possible to track down relatives through public registers, with a view to initiating a search. Finally, the Ministry stated that it would discuss any 'supplementary alternatives' (in relation to searches for relatives in the child's native country) with the Immigration Service.

ANOTHER CHANGE OF THE OBLIGATION TO INITIATE SEARCHES

Although the content of the obligation to initiate searches was changed again in January 2011, the authorities are still in many cases obliged to search for the families of children who arrive in Denmark on their own.

It appears from the legislative history behind the latest Amendment Act (Act No. 1543 of 21 December 2010) that in some cases an unaccompanied mi-

nor may be aware of the location of its parents in its native country, but does not wish to collaborate with the authorities because it fears being returned. The search obligation therefore now (again) applies only if the child gives its consent. In addition, the obligation no longer applies if suitable reception and care facilities are available in the child's native country or previous country of residence. However, if the child has been subject to human trafficking, a search must always be initiated unless there are special reasons not to do so.

Although the search obligation must therefore be assumed to apply to fewer cases than before, it remains important to ensure that the obligation is actually met in those cases where it still applies.

The Ombudsman monitors how the immigration authorities are complying with their search obligation. On 1 June 2012, the Ministry of Justice informed the Ombudsman of the various measures that had been initiated in the area.

Preliminary experiences from the collaboration with the IOM showed that searches via the IOM had not been as successful as the immigration authorities had expected. They were therefore considering whether there was a basis for entering into a new agreement with the IOM. As the opportunities for help through the Ministry of Foreign Affairs were also very limited, the immigration authorities had problems complying with their search obligation in some countries. The authorities were therefore considering what could be done to improve the searches, for instance whether there was a basis for resuming the collaboration with the Red Cross search service in the light of the reintroduction of the consent requirement by the amendment of the Aliens Act in January 2011.

The Immigration Service had also introduced a number of new procedures in connection with searches for relatives of unaccompanied minors seeking asylum. Thus, it is now established practice to obtain the child's consent for a search during the asylum interview. The child is also given guidance on possibilities for searching for relatives. To ensure that guidance about the possibilities for searching for relatives is also given to unaccompanied minors seeking asylum who are granted residence without an asylum interview, an information package has been made which is sent to the local authority to which the minor is referred.

The Ombudsman has asked the Ministry of Justice for an update on 1 June 2013 on the authorities' progress with regard to complying with their search obligation.

A journalist was refused access to a database in a ministry because two privately owned enterprises had copyright in the database. In the ministry's opinion, the enterprises might lose money if the journalist abused his access to the database by publishing it. The journalist lodged a complaint with the Ombudsman, who stated that the ministry could only refuse access in order to protect the copyright if it had good reason to believe that the journalist would abuse his access. In the Ombudsman's opinion, this was not the case. He therefore recommended that the ministry reopen the case and ask the journalist if he still wanted access to the database.

In 2011, the Ombudsman received approx. 100 complaints from journalists concerning refusals of requests for access to documents pursuant to the Act on Public Access to Documents on Public Files.

The inmates at a secure institution for criminal young people were playing blind man's buff. A boy was blindfolded by an employee and had to find the employee's mobile telephone. The boy, who had been banned from making telephone calls, was told that he could telephone his mother if he found the telephone. The boy found it, but was not allowed to call. This story was uncovered during one of the Ombudsman inspections.

The Ombudsman told the management about the incident. After the institution had issued warnings to the employees involved and taken various steps to avoid repeat occurrences, the Ombudsman closed the case.

Children rarely lodge complaints with the Ombudsman themselves, but he is nonetheless able to contribute to children's legal protection, for instance during inspections or when complaints lodged by adults also involve children.

A Congolese woman and her three-year-old child had been refused residence in Denmark, but the woman was not prepared to return voluntarily to the Democratic Republic of Congo. They were therefore to be deported. A member of the Ombudsman's deportation unit accompanied them on the journey to ensure that the two police officers treated the woman and child with as much dignity as possible. However, in the capital, Kinshaha, the woman and child were not allowed to enter the country and they had to return to Denmark.

The Ombudsman report stated that the police had acted with consideration and discretion. On the other hand, he commented that the police had failed to make a note that they had spoken with the woman before the deportation. The police issued an internal reminder emphasising the obligation to document such things.

After receiving three letters about the same issue from a complainant, the Ombudsman finally had to write to him that he would not receive a reply if he sent any more letters about the same matter.

The man's dissatisfaction concerned his wife's industrial injury case. She worked as an auxiliary nurse and had developed pains in both the small of her back and her neck. The woman had received compensation for permanent injury, but only for her back pains. According to the register of industrial injuries issued by the National Board of Industrial Injuries, her neck injury could not have been caused by her work and she therefore could not be granted compensation for her neck pains. However, the reason the Ombudsman could not consider the complaint was that the decision on the industrial injury case was more than twelve months old and a complaint about the decision was therefore time-barred under the Ombudsman Act.

The man was not pleased that the Ombudsman could not help in the case and told him so several times. When the Ombudsman finally wrote that the man would not receive a reply to any more letters about the same subject, the man demanded a personal apology from the Ombudsman directed to his wife. The Ombudsman refused to apologise. When the man wrote again, the Ombudsman did not reply.

'Complaint curtailment' is the term used when the Ombudsman feels a need to 'cut off' certain complainants.

An unemployed teacher called the Ombudsman and was transferred to a lawyer. The teacher explained that he was not entitled to unemployment benefit and had asked the job centre for help to acquire a truck certificate. The job centre had rejected his request. The man explained that he had been offered a job provided he could get a truck certificate. The lawyer at the Ombudsman's office asked the man to send in any papers he had within four weeks. Four weeks later, the Ombudsman had heard nothing further from the man and the case was closed.

The Ombudsman usually asks for material to be sent within four weeks.

Bente Mundt
Head of 2nd Division

WHO BEARS THE RISK IF A LETTER DOES NOT ARRIVE?

Every day, public authorities send many letters to citizens. It can be crucial to citizens' legal status that letters from the authorities are handed over to the postal service on the day they are dated and that the postal service ensures that they arrive (on time). For letters containing decisions, it is, for instance, very important to know with certainty when they were sent and when they can be presumed to have reached the addressee. This is particularly important for the calculation of appeal deadlines. It is also important when a local authority summons a cash or sickness benefit recipient to a follow-up meeting, because if the summons does not arrive (before the meeting) and the citizen fails to turn up, the local authority may make a decision that the recipient is no longer entitled to cash or sickness benefit.

The Ombudsman considers many cases about late or missing mail from authorities, but although the theme may appear simple, it can be extremely difficult to assess who is right: authority or citizen.

LATE APPEAL BY SENIOR CITIZEN

A local authority sent a letter by ordinary first-class post to a senior citizen, informing him that his pension would be calculated on the basis of the rate for cohabitees rather than that for a single person, which he had requested. As a result, he would receive less money. After various letters between the parties, the local authority again made a decision that the man was cohabiting and also informed him that he could appeal to the Social Tribunal within four weeks. He appealed the decision, but the Tribunal regarded the complaint as having arrived one day too late. The Tribunal therefore asked the man why he had not appealed before the deadline.

The man stated that the letter, which the local authority had dated 13 November 2007, had not reached his address until 17 November 2007. An error must therefore have been made by either the local authority or the postal service.

The Tribunal declined to consider the appeal because it was lodged too late. In the Tribunal's opinion, there was no information to support the claim that the local authority's letter had not arrived the day after it was dated.

FAILURE OF SICKNESS BENEFIT RECIPIENT TO ATTEND JOB CENTRE INTERVIEW

A job centre sent a letter to a sickness benefit recipient summoning her to an information meeting. The letter was sent by ordinary first-class post. She failed to attend as requested and therefore the local authority sent her another letter, informing her, among other things, that payment of her sickness benefit had been stopped. The woman turned up at the job centre on the day when she received the letter about the discontinuation of her sickness benefit and stated that she had never received the letter summoning her to an information meeting.

The job centre considered the letter to have been sent and to have reached the woman and therefore upheld its decision to stop payments of sickness benefit. The woman's union appealed the decision, but the Employment Appeals Board reached the same result as the job centre.

The two cases show that it is necessary to be able to trust 1) the authorities to ensure that letters are handed over to the postal service (on the day they are dated) and 2) the postal service to ensure that letters arrive (on time).

LETTERS REGARDED AS HAVING ARRIVED WITHIN TWO DAYS

Every day, administrative authorities send many letters by ordinary mail. That a letter has arrived means that it has been placed in the addressee's post box. As soon as the letter has been put in the addressee's post box, the recipient is responsible for reading the letter and for ensuring that he or she understands its content.

In practice, the starting point used to be that a letter sent by first-class post was regarded as having reached the addressee on the day after it had been sent. On 1 January 2009, the National Social Appeals Board changed its practice, and

letters sent by first-class post are now regarded as having arrived within two days of mailing. The Ministry of Justice followed up this change of practice in May 2011 by stating (in Circular Letter No. 9189 of 10 May 2011 to all ministries) that in future, letters should generally be regarded as having arrived within two days of mailing. This was based on information from the postal service about the percentage of letters reaching the addressee within one, two, three and four days of mailing, respectively.

The examples of the senior citizen who appealed too late and the sickness benefit recipient who failed to attend a job centre interview are both from before the change of practice – i.e. from the time when it was assumed as a starting point that letters sent by first-class post would arrive on the day after mailing.

In the case of the senior citizen, it was therefore in accordance with practice when the Social Tribunal regarded the letter sent on 13 November 2007 as having arrived on 14 November 2007. It was also in accordance with ordinary practice to regard letters sent by a public authority as having reached the addressee.

Apart from the addition of a day for the conveyance by mail, the legal position is still the same.

However, not all letters sent by first-class post reach the addressee within two days as presumed by the new practice. This may for instance be due to bad weather, strikes or other circumstances at the postal service or to the above-mentioned failure of the authority to hand over the letter to the postal service on the day it is dated. It is also generally accepted that some letters never reach the addressee.

BURDEN OF PROOF RESTING WITH THE AUTHORITY

The legal starting point is that it is the authority's responsibility that the letters it sends reach the addressee on time. This implies that the authority has to prove that the letter has been sent and has arrived (on time). The courts have processed a number of cases and have demanded that – to discharge the burden of proof – the authority must for instance

- outline its mailing routines in order to render probable that there are no errors in the authority's mail dispatch and/or
- provide a copy of the letter sent and a file note or a list of mail sent, stating when the letter was sent.

In addition, the authority must

– confirm that the postal service has not returned the letter to the authority and/or
– check whether there were irregularities in postal deliveries in the relevant area at the time of the dispatch.

Finally, the authority must

– investigate when any other parties or authorities received their copies of the letter.

In this way, it is possible to establish an assumption that the letter to the citizen has also been handled correctly by both the authority and the postal service.

In the case concerning the senior citizen (Annual Report of the Parliamentary Ombudsman, 2010, Case No. 2010 14-2), the Ombudsman found no grounds for criticising that the Social Tribunal assumed that the letter had arrived the day after it was dated, even though the senior citizen was able to produce several letters sent to him by authorities which had not been mailed the day they were dated. The fact that he could refer to 15 newspaper articles and letters to the editor concerning postal service errors did not help him either, as the local authority had met the requirements for an authority's production of evidence in order for a letter to be regarded as having arrived on time.

DISPUTE ENDING UP IN COURT

The case of the sickness benefit recipient who failed to attend an information meeting at the job centre because according to her own information she had not received the letter summoning her to the meeting illustrates how difficult the assessment of evidence can be in a specific case.

The Ombudsman criticised (Annual Report of the Parliamentary Ombudsman, 2011, Case No. 2011 1-4) that the Employment Appeals Board had not requested further information about the local authority's mail dispatch before assessing whether the summons to the information meeting had arrived. However, this information was procured while the Ombudsman was processing the case.

In addition, the Ombudsman questioned whether the local authority's internal mailing routines were as secure as they should be. His doubt arose for several reasons:

– The letter containing the summons to a meeting differed from the other documents of the case by not being a copy, but printed on ordinary letterhead paper with an amendment written by hand directly on the printout sent to the Ombudsman.

– The local authority's own statements about the dispatch of another letter to the woman in the same case were contradictory.

– A statement on the case sent by the local authority to the Employment Appeals Board was dated 18 days before it was sent.

– The woman's union had demonstrated that errors had been made in the dispatch of mail by the local authority in other cases. Some letters had erroneously been sent to someone other than the addressee.

The issue of sickness benefit payment was dependent on whether the woman had failed without reasonable grounds to contribute to the local authority's follow-up. Of course it was crucial whether she was aware that she had been summoned to the information meeting, i.e. whether the summons had reached her.

On the basis of all the information about the local authority's handling of mail dispatch, the Ombudsman was of the opinion that the Employment Appeals Board should reconsider the case.

The Ombudsman also pointed out that a decision to stop paying sickness benefit and therefore to deprive a citizen of his or her subsistence basis was an exceptionally intrusive intervention. The Employment Appeals Board reopened the case, but did not change its original decision. It still took the view that the local authority had discharged the burden of proof that the letter had been sent.

On this basis, the Ombudsman recommended that the Civil Affairs Agency grant the woman free legal aid so that the decision could be tested by the courts, as the courts are better able to assess evidence because they can examine witnesses etc., while the Ombudsman processes cases on a written basis.

The Civil Affairs Agency has now granted the woman free legal aid.

A fair amount of information about public employees is contained in so-called personnel files. Pursuant to the Act on Public Access to Documents on Public Files, others cannot, as a starting point, get access to such information. This was the argument of the Central Customs and Tax Administration when a journalist requested access to information about a high-profile case where tax administration management had been invited on expensive trips by collaborators. The journalist lodged a complaint with the Ombudsman and it turned out that the information about the trips was not only included in the personnel files, but also in a general file. The Central Customs and Tax Administration therefore could not simply reject the journalist's request, but had to carry out a specific assessment of which information was confidential and which was not. The Ombudsman recommended that the Central Customs and Tax Administration reopen the case.

It may be necessary to use force and compulsion against elderly people with dementia. The Ombudsman's so-called OPCAT unit therefore visited a nursing home in Rødovre. The Ombudsman employees spoke with both personnel and residents. The recurrent question was what was done to prevent so-called degrading treatment of residents. A doctor from the Rehabilitation and Research Centre for Torture Victims also participated in the visit. During the visit, various specific issues were discussed. During the discussions, the nursing home management stated that the problems would be resolved. The final report was a couple of pages long, as the Ombudsman found no grounds for submitting written comments to the responsible authorities.

OPCAT is an abbreviation of the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In Denmark, the Ombudsman monitors that persons deprived of their liberty are treated in accordance with the principles of the international rules against torture etc.

An Afghan woman applied for family reunification with her Afghan husband. Pursuant to the rules, this was conditional on the couple's joint association with Denmark being greater than their association with another country. In this case, the authorities took the view that the couple had a greater association with Afghanistan or Iran than with Denmark.

The Ombudsman could not criticise this view. However, the case caused him to emphasise to the Immigration Service that the authorities are responsible for ensuring that foreigners understand their letters. There is no obligation to translate a letter which a foreigner understands, just because he or she would prefer another language, and if an authority receives a letter in Danish, it may usually also reply in Danish.

When a motorist appealed a parking fine, the City of Copenhagen sent him a photograph of the car taken by the parking warden to document that the parking ticket had not been displayed in the windscreen. However, the motorist argued that the night-time photograph proved nothing due to the use of flash, reflections and shadows.

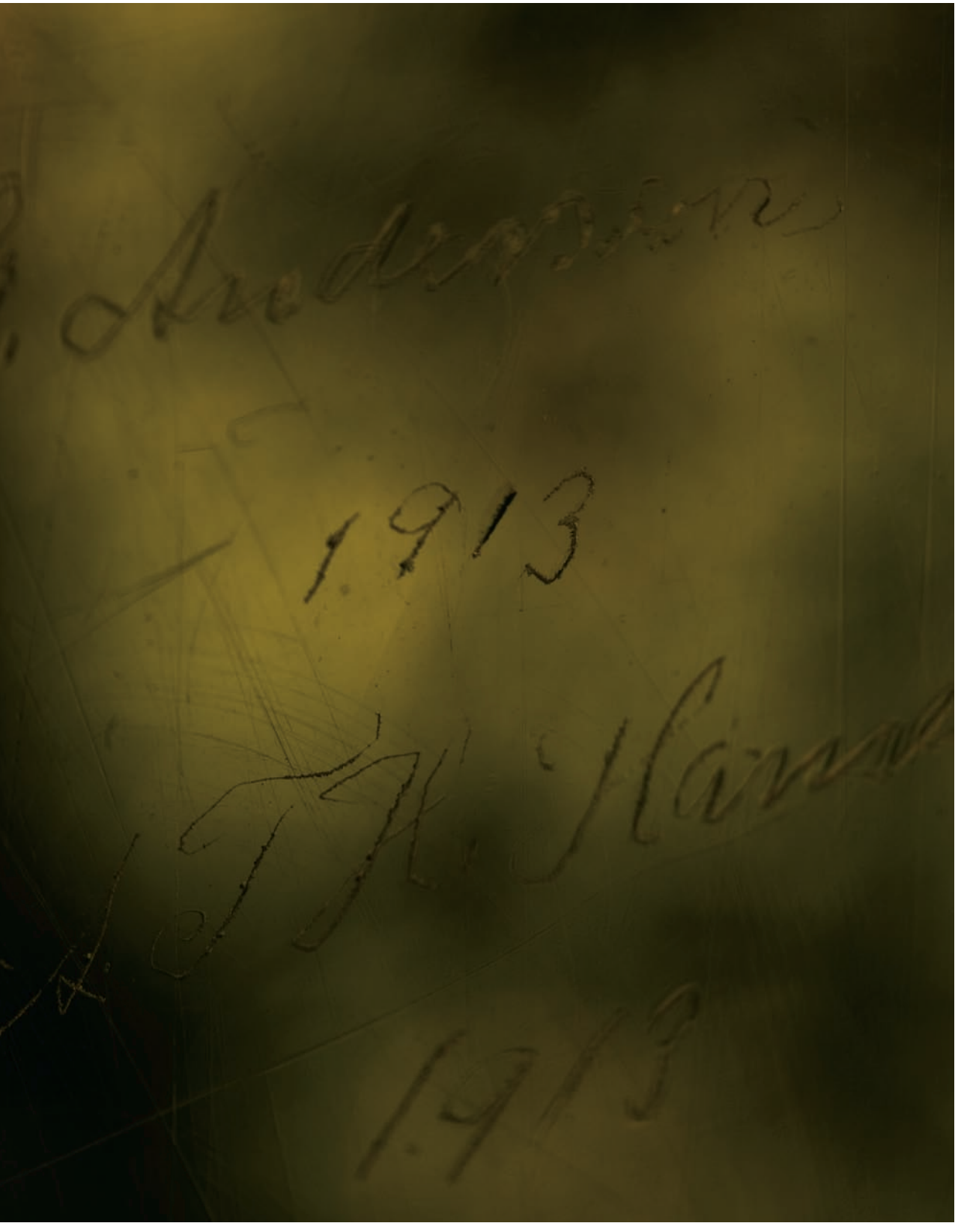
The Ombudsman rejected the case as local authorities' use of photo documentation is warranted by an order made by the Supreme Court in 2010. Partly for this reason, the Ombudsman found it more appropriate to leave it to the courts to decide how good the quality of such photographs must be.

If a child is ill for a long time and cannot take part in school tuition, it may be granted sickness tuition. The offer is adapted to the individual child. For instance, the tuition may take place in the child's home or at a hospital. However, a severely arthritic girl was refused sickness tuition because she was already receiving special needs tuition for dyslexia. The Ombudsman wanted to know the connection between the two and therefore asked the local authority for a statement. In its statement, the local authority wrote that in principle it agreed with the Ombudsman that dyslexia tuition does not replace sickness tuition. The Ombudsman closed the case by recommending that the local authority, in collaboration with the school and with the involvement of the girl's parents, as soon as possible prepare an individually planned tuition programme for the girl, consisting of sickness tuition as well as dyslexia tuition. The local authority subsequently informed the Ombudsman that the girl would now receive sickness tuition.

The Arthritis Association, which helped lodge the complaint with the Ombudsman, wrote that the rules on sickness tuition were very old-fashioned and out of step with reality. The Ombudsman forwarded the Association's letter to the then Ministry of Education and asked to be informed how the Ministry intended to deal with the matter.

May a local authority forbid a citizen to record his conversations with its employees? This question was submitted to the Ombudsman, who answered that pursuant to the Ombudsman Act, he cannot reply to general questions, but only consider complaints. However, he enclosed a printout of an earlier statement dealing with the same issue. The statement says that authorities have the right to forbid recordings unless a citizen has special needs which necessitate a recording.

The Ombudsman is often approached by citizens with general questions, requests for advice or a need of legal aid. According to the Ombudsman Act, it is not the Ombudsman's job to provide such help. The Ombudsman's task is to investigate whether the authorities have committed errors in connection with their work.



Lennart Frandsen
Head of 3rd Division
(Inspections)

WOMEN IN PRISON

> 'It is clearly unacceptable that mentally ill women are compulsorily placed in a situation where they feel pressurised into marrying a male prisoner – possibly a prisoner sentenced for a very serious and dangerous sexual crime.'[1]

The Act on the Execution of Sentences and the administrative provisions issued under the authority of the Act contain a number of rules protecting the legal rights of prisoners and their conditions generally. The rules apply to persons in state prisons and as a starting point also to those detained in local prisons and Prison and Probation Service halfway houses.

Detailed legal guarantees apply to the individual measures which may be implemented in relation to prisoners. The purpose is of course to ensure that prisoners can live at the institutions without inconveniences beyond those which follow from the deprivation of liberty itself. In the legislative history behind the Act on the Execution of Sentences it is stated in this connection that no restrictions should be made to the prisoners' lives beyond those necessary for the implementation of the deprivation of liberty imposed by the sentence. The deprivation of liberty is only intended to affect local freedom.

RELATIONS AMONG PRISONERS

The Act on the Execution of Sentences and the administrative provisions thus govern the relationship between the State (the Prison and Probation Service) and prisoners, with a number of rights, guarantees, etc. intended to ensure that prisoners can serve their sentences with as few problems as possible. However, what about relations among the prisoners themselves? There are virtually no

1 Parliamentary Ombudsman Report for 1996, p. 380

written regulations in this respect. And it is a fact that many prisoners experience many and serious problems in relation to other prisoners.

There may be problems between various groups in relation to:

- prisoners from different ethnic backgrounds
- young people
- drug addicts
- foreigners
- prisoners serving sentences for particular crimes (crimes involving children)
- women

In a way it is paradoxical that the Act on the Execution of Sentences and the administrative provisions aim to protect prisoners' rights etc. in relation to the authorities executing their sentence if the reality is that the lives of inmates in state and local prisons are mainly dominated by abuse, threats, etc. by other inmates.

These matters attract particular attention in the processing of complaint cases and especially at the Parliamentary Ombudsman's inspections. Questions are asked about them and the angle is that the authorities are under an obligation to protect particularly vulnerable groups and individuals in prisons. It is, however, extremely difficult for the authorities to prevent abuse, threats, etc. effectively and it is an illusion to believe that the Ombudsman's inspection activities can reveal and relieve such problems to any significant extent. Nonetheless, the Parliamentary Ombudsman should continue to pay attention to these problems, and so he does during inspections of the institutions of the Prison and Probation Service.

In this article, I have chosen to consider the vulnerable group consisting of women.

WOMEN IN PRISON

In Denmark, there are on average 170 women detained in state and local prisons, corresponding to approx. 5 per cent of all prisoners. As is also the case for male prisoners, the length of their sentences varies greatly, from 7 days to life.

There is no separate women's prison in Denmark. The only women-only prison – the low-security women's prison in Amstrup with room for 20 prisoners – was

closed in 2000, incidentally after an inspection by the Parliamentary Ombudsman in 1998. Among the reasons for the closure was that the inspection revealed that the prison was in an extremely poor structural condition.

Women are received at all local prisons, including those in Copenhagen. Five state prisons receive female prisoners: Ringe State Prison, Horserød State Prison, Møgelkær State Prison, Eastern Jutland State Prison and Herstedvester Prison. In other words, female prisoners serve their sentences together with male prisoners. Danish legislation does not contain provisions specifying that women and men have to serve their sentences in separate institutions. European prison rules lay down that the need to separate male and female prisoners must be taken into consideration when deciding to house prisoners in particular prisons or prison blocks.

MEN AND WOMEN TOGETHER

The question is whether it causes problems for women that female prisoners serve their sentences together with male prisoners in Denmark. The short answer is: yes, it causes major problems. For space reasons, I will only consider the conditions of female prisoners at Herstedvester Prison.

Herstedvester Prison has a special women's block with room for 14 women (now distributed in two sections). During their imprisonment, the women serving sentences for serious crimes are offered treatment by psychiatrists and psychologists, among others. The women are able to spend time with male prisoners in the workshops and during their leisure time.

The women's block has been inspected by the Parliamentary Ombudsman on several occasions and the Ombudsman has monitored the women's conditions on a regular basis. The problems were/are due to the fact that the women are serving their sentences in the same institution as some of the worst male sexual offenders in the country. A recommendation by a Prison and Probation Service working group considering 'vulnerable' prisoners in the institutions of the Prison and Probation Service which was issued in March 1996 also considers the conditions of women. In relation to female prisoners being housed at Herstedvester Prison, the Prison's chief medical officer at the time, Heidi Hansen, wrote, among other things, in a minority statement:

> 'On the basis of the experiences gained by the institution since the establishment of the women's block, it is considered a cause for grave concern that women are housed among the male prisoners at all.

> Just under half of the prisoners are serving sentences for very serious sexual crimes. On 26 October 1995, 56 sexual offenders were serving their sentences at Herstedvester Prison. Of these, 31 had received sentences of indefinite imprisonment, six were serving eight to 16 years and only 19 less than eight years. This in itself shows that the sexual offenders at Herstedvester Prison have committed very serious sexual crimes. It is obvious that persons guilty of such serious crimes have major problems managing their sex drives and for this reason alone it is a cause for grave concern that female prisoners have to serve their sentences with them. In addition, relatively many of the sexual offenders at the prison can only be granted a pardon or be conditionally discharged or released if they accept medical castration, a treatment which it has in several cases been difficult to motivate the prisoners to consider, partly due to influence by some of the female prisoners.'

INITIATIVES BY THE PARLIAMENTARY OMBUDSMAN

In his final report of 13 May 1997[2] of an inspection of the women's block at Herstedvester Prison on 13 and 16 December 1996, the Ombudsman stated, among other things:

> 'It is clearly unacceptable that mentally ill women are compulsorily placed in a situation where they feel pressurised into marrying a male prisoner – possibly a prisoner sentenced for a very serious and dangerous sexual crime.
>
> The Prison and Probation Service is responsible for ensuring that sentenced women who need psychiatric/psychological assistance are offered such help in an institution where there is no risk that they are exposed to pressure to marry a man sentenced for a serious sexual crime. This should be achieved without resulting in any negative effect on the female prisoners' employment and education opportunities.
>
> I do not regard it as my place to suggest what solution should be implemented to establish such conditions.
>
> I recommend that the Department of the Prison and Probation Service find a solution as soon as possible to the above-mentioned problem and I ask to be informed of further developments in the case.'

On the basis of the Ombudsman's recommendation, the Department of the Prison and Probation Service established a new women's block in the Prison. The new block consisted of two separate sections with room for six and eight prisoners, respectively. In the new block, the women were still able to serve their sentences separate from the male prisoners, but now this also applied to some extent to leisure time, prison yard exercise, employment and education.

Initially, the Parliamentary Ombudsman therefore took no further action in the matter, but asked the Department of the Prison and Probation Service for

2 Parliamentary Ombudsman Report for 1996, pp. 363-399 (esp. pp. 380-381)

information about the annual assessments of the women's conditions. The Department's assessments were that their conditions could still be problematic, but had improved significantly.

On 26 October and 5 November 2004, the Parliamentary Ombudsman visited the women's block again. In his report of 28 January 2005[3] on the visit, the Ombudsman stated, among other things:

> 'During my conversations with several of the female prisoners at the institution, I was thus informed that the female prisoners find it difficult to avoid the attention of the male prisoners and that they are often addressed or accosted in an unsuitable way by the male prisoners – for instance with indecent comments during prison yard exercise and services. Even those of the women who have a boyfriend or husband at the prison (or outside) are not always left in peace. I was also informed that several of the female prisoners do not tell staff when they are accosted by male prisoners – partly because they are afraid of reprisals by the male prisoners. The female prisoners in Block S stated that they have to be constantly on the alert in relation to the male prisoners.'

During the inspection, it was again stated that it was not only the female prisoners who were to some extent affected by the structure – it also affected the male prisoners. Among other things, it was thus (still) a problem in relation to the treatment of some of the male prisoners, as they did not wish to start treatment with sex-drive reducing medication because they were in a relationship with a female prisoner.

After further exchanges of letters with the Department of the Prison and Probation Service, the Ombudsman stated in a letter of 15 August 2005[4] that the offer given to the women to serve their sentences separate from the male prisoners could not be regarded as a genuine offer enabling them to serve their often long sentences in accordance with the Act on the Execution of Sentences. It had turned out that none of the women took up the opportunity to serve their sentences separate from the male prisoners due to the conditions under which they would then have to serve their sentences, for instance in relation to employment, education and leisure offers. The Ombudsman stated that the necessary solution, at least in the longer term, would be the establishment of a completely separate women's block with separate workshops and leisure facilities. The Ombudsman also asked whether the Department had considered or was prepared to consider obtaining funding to establish a completely separate block for women with adequate employment and leisure offers at or by Herstedvester Prison.

3 Parliamentary Ombudsman Report for 2004, pp. 671-694 (esp. p. 678)
4 Parliamentary Ombudsman Report for 2004, pp. 690-691

In May 2006, the Department of the Prison and Probation Service therefore initiated an elucidation project in which the issue of establishing a completely separate women's block was considered. A research project about female prisoners in Denmark was also initiated.

DKK 16 MILLION GRANTED FOR BUILDING IMPROVEMENTS

Due to the intense attention paid to the conditions of the female prisoners at Herstedvester Prison, the multi-annual agreement for 2008-2011 for the Prison and Probation Service allocated DKK 16 million for building improvements with a view to 'ensuring that female prisoners at Herstedvester Prison can be offered employment and leisure activities separate from the men and more opportunities to spend time with children and grandchildren'.

Subsequently, a new women's block was established at Herstedvester Prison:

- The block was moved and further rooms were included.
- A completely new section with three rooms with own bath and toilet was built.
- A new common room and a workshop were established.
- An interview room was created.
- The option of separate prison yard exercise in a separate outdoor area was introduced.
- A fitness training room was established.
- A washing machine and a tumble dryer were installed.
- Kitchen facilities were established.

In addition, two visitor flats were established, where the women can meet their families. These can also be used by other prisoners.

The new block etc. was inaugurated in late 2010.

AN ACTUAL WOMEN'S PRISON

The research project 'Perspectives on women's daily lives in Danish prisons' was completed in March 2011. In this connection, the Department of the Prison and Probation Service set up a committee with the task of making recommendations regarding the future housing of and offers for female prisoners. The

committee issued its recommendation on 12 September 2011. It recommended establishing an actual women's state prison in Denmark (with a closed block, a treatment block (psychiatric) and a medium- and a low-security block). The committee also recommended establishing three regional prison facilities for women.

Partly on the basis of the committee's work, the Parliamentary Ombudsman decided to pay particular attention to female prisoners in 2012. Thus, new inspections have been carried out at Horserød State Prison, Ringe State Prison and Herstedvester Prison, including the women's block. Møgelkær State Prison was inspected in 2010.

The Parliamentary Ombudsman will monitor further developments with regard to the possible establishment of an actual women's state prison as well as regional prison facilities for women.

As part of the Parliamentary Ombudsman's future inspection activities, it may be relevant to pay particular attention to the conditions of some of the other vulnerable groups or individuals mentioned at the start of this article.

A man who was absent from work due to sickness contacted the local authority to ask about the possibility of being granted disability pension. He anticipated being dismissed soon as he had been absent from work for a long time, and he did not expect to work again. The following year he returned to the local authority. As expected, he had been dismissed and he now applied for sickness benefit for a period after his dismissal. His application was rejected by both the local authority and the Employment Appeals Board. He was not entitled to benefit in arrears but should have applied at the time of his dismissal. However, in the Ombudsman's opinion, the local authority had an obligation to give the man guidance on the sickness benefit rules when it was first approached, even though he was asking about something else. On the Ombudsman's recommendation, the Employment Appeals Board reopened the case.

The Ombudsman can recommend that an authority reopen a case and make a new decision, but he cannot order the authority to reach a different conclusion.

A dentist was unhappy that he was not allowed to take early retirement until his dentist's equipment had been picked up by a buyer. This was the decision of the Employment Committee of the National Social Appeals Board. By contrast, the dentist believed that his business activities had ceased when he cancelled his so-called provider number.

The Ombudsman returned the case to the Employment Committee, asking it to explain to the dentist why the time at which he cancelled his provider number was not decisive.

The Ombudsman can ask an authority to give a citizen more detailed grounds for a decision, for instance if a complaint lodged with him suggests that misunderstandings exist between complainant and authority.

While the Ombudsman was processing a family reunification case, the European Court of Justice pronounced a judgment. In the Ombudsman's opinion, the immigration authorities should assess whether this judgment was relevant to the person's right of residence in Denmark. He therefore returned the case to the Ministry of Refugees, Immigration and Integration with a request that it consider this issue.

The Ombudsman keeps up to date with judgments from the European Court of Justice etc. because Danish authorities are bound by them.

A man was granted a laptop by the local authority as an aid (consumer product). At one point, he was given a more recent model which weighed 400g more than the old one. He found it too heavy. Conversely, the local authority's medical consultant took the view that the man had been well compensated with his new computer.

The man lodged a complaint because the medical consultant 'interfered' in a non-medical issue at all. First he complained unsuccessfully to the mayor, who did not believe the medical consultant had exceeded his authority. He then lodged a complaint with the Ombudsman, who considered it unlikely that he would be able to criticise the mayor's view. The Ombudsman therefore decided not to go into that aspect of the case, but at the same time he informed the man that he had initiated an investigation of the role of medical consultants on the basis of a circular from the Ministry of Employment.

If the Ombudsman notices general confusion or doubt about the legislation in a particular area, he can draw this to the attention of the ministry responsible. He did so, for instance, after receiving several complaints about the role of medical consultants. In spring 2012, he made a general statement about the authority to lay down binding guidelines for the work of medical consultants held by the Ministry of Social Affairs and Integration (which was now in charge of the area).

A plane from Copenhagen Airport was delayed for several hours. A traveller and his companions ordered food and a bottle of wine while they were waiting. The wine cost DKK 297. The airline was only prepared to refund the cost of the food, not the wine. The man therefore appealed to the Danish Transport Authority. When the Transport Authority failed to uphold his claim, he lodged a complaint with the Ombudsman, who rejected his complaint on the grounds that it was too trivial.

Pursuant to the Ombudsman Act, the Ombudsman himself decides which cases to take up. If the financial loss for the complainant is very small, the Ombudsman will normally reject the case unless it is of fundamental or general importance.

Two months after a car had suffered a collision, the car owner still had not received a reply from his insurance company. The man therefore lodged a complaint with the Ombudsman, but the Ombudsman could not help him as insurance companies are not part of the public administration.

Normally, the Ombudsman can only consider complaints about public authorities. In 2011, he therefore had to reject 149 complaints about privately owned enterprises, associations, persons, etc. The Ombudsman often tries to refer the complainant to the right place, for instance the Consumer Ombudsman.

Morten Engberg
Head of 4th Division

USE OF CRIMINAL RECORD CERTIFICATES IN CONNECTION WITH APPOINTMENTS

Every year, thousands of jobs in the public sector are advertised. On each occasion, those responsible for the appointment process have to assess whether to request a criminal record certificate for the applicant. They also have to know what to do if an applicant's criminal record certificate shows that he or she has a previous criminal conviction. This is not an easy exercise: the individual nursery manager, head nurse, etc. must be familiar with a variety of legal provisions.

In 2011, the Ombudsman considered two cases concerning the use of criminal record certificates in connection with appointments in the public administration. This provided an opportunity to consider the legal problems arising in such cases and how they are best solved.

One case concerned a doctor who was appointed to a position at a hospital. Soon after his appointment, he was summarily dismissed because the management discovered that he had previously received a 12-month unconditional prison sentence for sexual abuse of a child (Annual Report of the Parliamentary Ombudsman, 2011, Case No. 2011 20-3).

The Ombudsman took up the other case on his own initiative on the basis of a newspaper article. The article concerned a man who had applied for various jobs with a local authority, among other things as a substitute teacher. According to the article, the man's applications had been rejected because he had a criminal record (Annual Report of the Parliamentary Ombudsman, 2011, Case No. 2011 20-4).

THREE TYPES OF CRIMINAL RECORD CERTIFICATES

The information in a criminal record certificate is derived from the criminal register of the National Commission of the Danish Police. Here all criminal

convictions and other criminal law decisions are recorded. However, not all information is necessarily included in a criminal record certificate. It depends on the type of certificate.

There are three different types of criminal record certificates: criminal record certificates for public use, private criminal record certificates and 'child certificates'. In brief, a criminal record certificate for public use includes more types of information and may also include older information than a private criminal record certificate. A 'child certificate' contains information about any sexual offences against children aged under 15 years. A citizen may request a private criminal record certificate from the police. The other two types of criminal record certificate are not issued to individual citizens, only to authorities etc., and only in certain types of cases.

Incidentally, an authority cannot obtain a private criminal record certificate or a child certificate without the consent of the person covered by the certificate. As a general rule, this also applies to criminal record certificates for public use. In the case of private criminal record certificates, employers will often ask applicants to obtain the certificate themselves.

WHEN IS IT ALLOWED TO DEMAND A CRIMINAL RECORD CERTIFICATE?

Information about criminal matters is confidential. An authority is therefore only allowed to request a criminal record certificate if it is for a legitimate purpose and necessary. In other words, an authority may not request a criminal record certificate unless it has a legitimate use for the information in the certificate and unless it is necessary in order for the authority to carry out one of its tasks. However, even if there are good reasons why an authority wants to request a criminal record certificate, there may also be good arguments against it, especially consideration for the person covered by the certificate. Before an authority requests a criminal record certificate, it must therefore consider pros and cons, but for some types of jobs, criminal record certificates are probably requested more or less as a matter of routine.

In addition, there are certain jobs for which a child certificate must always be obtained before a person is appointed. This applies to positions where the employee will be in direct contact with children aged under 15 years. These rules are laid down in the Act on Child Certificates, and various orders list the positions covered by the rules. An authority may also request a child certificate for applicants for jobs other than those covered by the provisions of the Act on Child Certificates if the authority has a legitimate reason for doing so and if it

is necessary. Thus, the hospital doctor's position was not covered by the provisions of the Act on Child Certificates, but the Ombudsman found it acceptable that the hospital had nonetheless requested a child certificate.

However, the Ombudsman criticised the way in which the hospital had handled the matter, as the doctor was not informed about the requirement for a child certificate when he called to get more information about the Region's guidelines on criminal record and child certificates. The requirement for a child certificate was not stated in the job advertisement, and the doctor was given no information about the requirement at the job interview either. The Ombudsman regarded this as an error. He pointed out that if particular importance is to be attached to the information contained in a child certificate in the assessment of an applicant, this should be mentioned in the job advertisement – it should at least be clear that a child certificate will be demanded and that appointment is subject to the information in this certificate.

DUTY TO TAKE NOTES ALSO IN RELATION TO CRIMINAL RECORD CERTIFICATES

In the case of the man who applied for a job as a substitute teacher, the local authority explained that it kept criminal record certificates on its personnel files for as long as the information in the certificates could be obtained by requesting a new certificate. However, private criminal record certificates were returned to applicants after review. They were not entered electronically in the local authority's records nor did the local authority make an electronic copy. In the Ombudsman's opinion, the local authority should record its correspondence with the National Commission of the Danish Police and applicants about criminal record certificates. He recommended that the local authority consider changing its practice in this respect. He also reminded the local authority of its obligation to take notes considering that it did not make a copy of private criminal record certificates. If an authority does not keep a copy of a criminal record certificate, it is obliged to make a note of key information in the certificate if it affects the authority's decision on the case.

PERSONS WITH CRIMINAL RECORDS CANNOT BE EXCLUDED FROM THE OUTSET

The Ombudsman took up the case of the man who applied for a job as a substitute teacher because the newspaper article gave the impression that persons with criminal records were generally excluded from obtaining a job with the

local authority. This would not be legal; an authority must always carry out an individual assessment of whether the offence committed by the applicant precludes appointing the person. However, the local authority explained that the information in the article was incorrect, as it did carry out an individual assessment.

The issue is how such an individual assessment must be carried out. First of all, the authority should assess whether the workplace offers special temptations to offend, for instance because employees have to handle assets for vulnerable people. It is also important whether the workplace carries out functions of a 'particularly qualified nature', i.e. functions which involve important social interests and require the employee to enjoy special respect and trust. This applies for instance to positions with the police and the Prison and Probate Service. In addition, the authority should consider the applicant's previous offence: what kind of offence was involved, what was the extent of the offence, when did it take place, how old was the applicant at the time and what was the background to the offence? This information should be considered together with the other information about the applicant available to the authority. The authority should also to some extent attach importance to the decision made in the criminal case. It makes a difference whether the person received a long prison sentence or a small fine.

In the case of the hospital doctor, the Region had stated in its guidelines concerning child certificates that the starting point was that sentences for sexual offences would be an obstacle to appointment. However, exceptions might be made on the basis of an individual assessment, for instance because of the time of the sentence, the seriousness of the offence, the age of the offender at the time and the nature of the work to be undertaken in the position. The Ombudsman considered this wording unfortunate, as it might give the impression that the Region did not in fact carry out an individual assessment of each applicant. The Region was, however, already revising its guidelines, and the Ombudsman therefore asked to be kept informed of the work.

WHEN AN EMPLOYER FINDS OUT TOO LATE

In the case of the hospital doctor, the Region did not become aware of the doctor's sentence until after he had been appointed. The Region had not mentioned the requirement of a satisfactory child certificate in the job advertisement or during the job interview and it had not made his appointment subject to this requirement. Was the Region then right to dismiss the doctor summarily when it became aware of his sentence? In the Ombudsman's opinion, this must depend

on an individual assessment in the same way as if the Region had been aware of the situation before the appointment. However, it had to play some part that the person was no longer an applicant but someone employed at the hospital. In the specific case, the Ombudsman found that the dismissal of the doctor was acceptable, but recommended that the Region reconsider whether there was adequate basis for dismissing the doctor summarily or whether he should have been dismissed with the usual notice.

Soon after her birth, a girl was compulsorily removed from her parents and placed with a foster family. The local authority allowed the parents to spend 1½ hours with the girl every other week, while the grandparents were allowed to spend an hour with the girl every other month. Their time together had to be supervised by a representative of the local authority as well as the girl's foster family.

When the little girl was a couple of years old, the two grandmothers lodged a complaint with the Ombudsman. They wanted to spend time with their granddaughter more frequently – and without supervision. They wanted their own children – the girl's mother and father – to have the same right. The Ombudsman obtained a power of attorney from the girl's parents, reviewed the complaint and documents and eventually forwarded the material to the local authority's committee for children and young people.

Decisions on contact with children placed with foster parents are sometimes made by local authority officials and at other times by the committee for children and young people. All local authorities have such a committee, which comprises, among others, specialists, a judge and local councillors. The issue was whether this case should be handled by the committee rather than local authority officials.

The Ombudsman wrote to the grandmothers, asking them to wait for a reply from the committee for children and young people and informing them that they could subsequently contact him again if necessary.

The case resulted in the Ombudsman initiating a general case in relation to the local authority concerning the task allocation between its social services department and the committee for children and young people.

Many cases are forwarded to other authorities because the Ombudsman cannot consider the cases.

The City of Copenhagen needed to refer a woman and her son to cheaper accommodation. However, the woman only wanted to live in Vesterbro, where her entire network was located. The City did not wish to offer them accommodation there. When the Ombudsman took up the case after the woman had lodged a complaint, it turned out that the City's own guidelines emphasised that special account could be taken of the networks of children. As the woman had specifically mentioned that the situation of the boy, who was described as fragile, had been stabilised in Vesterbro, the City decided to find accommodation for them in this location.

'Trade secrets', was the response of the then Ministry of Economic and Business Affairs to a freelance journalist who requested access to the terms applying to the work of several financial and legal consultants to the State in connection with the preparation of the second bank package. According to the Act on Public Access to Documents on Public Files, so-called trade secrets can be exempted from access, but the authority must specify what harm granting access may do. The Ministry had not done so. When the Ombudsman moreover found some of the information freely available on a legal firm's website, he recommended that the Ministry reconsider the case.

Many Ombudsman cases are closed without an actual statement expressing either criticism or 'exoneration', for instance if the authority changes its decision while the Ombudsman is processing the case.

A local authority's provision of assistance to a disabled woman in the form of, among other things, someone to accompany her was discontinued because the local authority could not find staff to carry out the work. The Social Tribunal rejected the woman's appeal on the grounds that the local authority had not made a decision to provide no further assistance to the woman – it was merely not practically possible. As the Social Tribunal can only consider appeals against decisions, it was unable to take up the case. The Ombudsman, however, found that the local authority's notification that the assistance would be discontinued must be regarded as a decision. When the Ombudsman closed the case, the assistance to the woman had been resumed and he therefore did not ask the Social Tribunal to reconsider the case.

When the Ombudsman receives a complaint, it is often important to determine at an early stage whether a 'decision' within the meaning of the Public Administration Act has been made. If that is the case, the citizen is covered by a number of legal protection guarantees.

A motorist bought a parking ticket, but when the local authority parking warden later checked the car, the ticket had slipped down from the windscreen and was no longer visible. The motorist therefore received a parking fine. The motorist appealed the fine and especially the decision that he could not deduct the amount which he could document having paid for his parking ticket.

The Ombudsman rejected the case as there was no prospect of his being able to criticise the local authority's decisions, including its rejection of the motorist's deduction request.

The Ombudsman 'prospect rejects' a complaint if he can tell in advance that there is no likelihood of his being able to help the complainant in the case.

The Department of Family Affairs (now the Division of Family Affairs at the National Social Appeals Board) had decided that a woman had to send the father of her daughter a photograph of their daughter. The father of the child now wanted the Ombudsman's help to get the mother to provide the photograph. The Ombudsman was not able to help himself, but he forwarded the man's complaint to the Department of Family Affairs so that it could give the father guidance on how he might compel the woman to provide the photograph.

Parents with shared custody who want to change the terms of contact can approach the Regional State Administration, then appeal to the National Social Appeals Board and finally lodge a complaint with the Ombudsman.

Karsten Loiborg
Head of 5th Division

WHEN AUTHORITIES USE PUBLICLY AVAILABLE PERSONAL INFORMATION

Are authorities allowed to check out citizens on Facebook?

A caseworker logs into Facebook and comes across interesting information about a citizen. The citizen's Facebook profile is public. The caseworker can therefore immediately see the information, but is the caseworker also allowed to record and use the information in a case? This issue is very relevant today when ever more personal information is becoming publicly available through for instance social networks.

As a starting point, the rules are straightforward: an administrative authority may only record and use publicly available information about citizens to the extent that it is legitimately relevant to the authority's tasks. This applies generally and therefore irrespective of whether the authority's task is actual administrative activity – such as education, hospital treatment or childcare – or involves making decisions in relation to citizens.

In its daily work, an authority probably often uses publicly available personal information in connection with actual administrative activities – for instance if a local authority's technical administration looks in the local directory to establish who needs to be informed about major excavation works on a residential street. In practice, however, it is probably mainly cases involving decisions which may give rise to doubt at an authority and disagreement between authority and citizen in relation to the authority's use of personal information. Is the information publicly available and is the authority allowed to find and use it?

There may undoubtedly be a need to use publicly available information in all types of cases involving decisions – whether they involve a citizen applying for something, an authority considering issuing an order or a prohibition notice to a citizen or an authority performing control measures in relation to citizens (con-

trol cases). For instance, a local authority receiving an application for planning permission may consult the Land Register for information about the ownership of the property. However, it is the use of publicly available personal information in control cases that has recently received most media attention – especially the social services' control measures to establish whether citizens are receiving benefits to which they are not entitled and the tax authorities' control activities to establish whether tax and duty evasion has taken place.

Information may be publicly available in many ways. It may appear in the media, in reference works, in public records (such as the Land Register or the Central Business Register) or on the Internet. If information is available on a generally accessible website, probably nobody would dispute that the information has been made public. However, an urgent practical need has arisen for clarification of what actually applies in relation to the now very widely used social media on the Internet.

In a case concluded by the Ombudsman in the report year 2011 (Annual Report of the Parliamentary Ombudsman, 2011, Case No. 2011 15-1), the Central Customs and Tax Administration, SKAT, had obtained information about a female taxpayer from her Facebook. SKAT was searching for information about the tax liability of a person known by the woman, and in this connection, questions arose about his association with the woman. On this basis, SKAT obtained material from various authorities and companies about both the woman herself and the other person. The information about the woman was obtained in order to check her statement to SKAT concerning a loss made by a business and the calculation of her private consumption. In this connection, information about the woman, including information of a personal nature, was also obtained from her Facebook.

The woman was not happy about this, and an accountancy firm complained to the Ombudsman on her behalf about SKAT having obtained information of any kind from the woman's Facebook. Throughout the case, the accountancy firm maintained the view, among others, that the information on the woman's Facebook was not publicly available. The firm distinguished between information on a public Facebook page and the Internet generally. It argued that Facebook involves sharing information among a closed circle of people, not making information available on the Internet for direct search via a search engine.

The Ombudsman did not agree with the accountancy firm's view of the matter. At the time when SKAT obtained information about the woman from her Facebook, her profile was set up to allow all Facebook users to see the infor-

mation posted about her. Facebook is the world's largest social network, and according to the website www.checkfacebook.com it had more than 750 million active users worldwide in mid-October 2011. The same website showed that the number of active users in Denmark was just under 2.7 million at the time. The Ombudsman stated that information on a person's Facebook is publicly available if the person has a profile which allows not only his or her Facebook 'friends' but all other Facebook users as well to access the information because the profile is set up to be 'public'. This applies both to information posted by the person him- or herself and to information posted there by others.

FROM PRIVATE TO PUBLICLY ACCESSIBLE PROFILES

However, it is not only when a person's Facebook profile is 'public' that his or her information on Facebook may have been made public in the legal sense. If the person has a very large number of Facebook 'friends', especially 'friends' not known to him or her, the result may be the same – even if the person does not have a 'public' profile. Politicians, for instance, may use Facebook in this way. However, it depends on an individual assessment whether people with a very large number of 'friends' are in reality making information about themselves public when posting pictures or text on Facebook. This also applies to information posted on their Facebook by one of their 'friends'. Generally, however, the more accessible the profile and behaviour are, the more likely it is that information will be regarded as having been made public in the legal sense.

People who restrict access to their profile cannot always be sure that the information on their Facebook will remain within their circle of 'friends'. Thus, information about a person may change from being private to being publicly available if he or she has 'friends' with public profiles and these 'friends' use Facebook in certain ways. If, for instance, a person with a private profile posts information on his or her Facebook and a 'friend' with a public profile posts information on the person's Facebook as part of a dialogue or discussion, information about the person may in certain circumstances be visible to all Facebook users. The information will thus be disseminated to a wider, indefinite circle and in this way become publicly available.

In relation to other social media on the Internet, it likewise has to be assumed that an assessment of the individual case is needed in order to determine if information has been made public. In other words, it is necessary to assess, among other things, how easily accessible the information is and how many people are able to access it.

AUTHORITIES SUBJECT TO DANISH LEGISLATION

Whether information is publicly available or not is of great importance to whether authorities may use it in a case. This follows from the rules in the Act on Processing of Personal Data (Act no. 429 of 31 May 2000). Pursuant to section 7(1) of the Act, information concerning racial or ethnic background, political, religious or philosophical conviction, trade union membership or health or sexual matters may not be processed. However, this rule does not apply to information made public by the person him- or herself (section 7(2)(3)). Similarly, it must be permitted to process personal information less sensitive than the information listed in section 7(1) freely if the information has been made public by the person him- or herself.

In the Facebook case, the Ombudsman also had the opportunity to consider whether the standard terms and conditions unilaterally laid down by Facebook in the USA had any independent relevance to Danish administrative authorities' handling of information on Facebook. This was not the case, as the authorities' handling of personal information – also from Facebook – is governed by Danish public law.

Even if information is publicly available, a public authority is not necessarily entitled to process it, as the provision in section 5 of the Act on Processing of Personal Data on good data processing practice also applies to information which has been made public. An authority is still only allowed to obtain and use information if obtaining and using such information is relevant and legitimate in relation to the case. The legitimacy requirement in section 5 must be understood in the same way as the general legitimacy requirements of administrative law in relation to case processing. With regard to the provision of evidence in a case, these requirements follow from the generally applicable evidential or inquisitorial principle, possibly supplemented by special statutory rules on evidence (such as the rules of the Tax Control Act) and the relevance requirement. According to the inquisitorial principle, the authority is responsible for providing sufficient evidence in the case for a sound and legal decision to be made.

In other words: the information which an administrative authority may obtain and use is limited by what is legitimate and relevant according to the legislation within the specific area – and this also applies to publicly available information.

A woman was unhappy about a large roof terrace which her neighbour had built on an ordinary single-family house. The problem was partly that the roof terrace overlooked the woman's garden. First the woman complained twice to the local authority, which on both occasions denied that the construction contravened the local plan. She subsequently lodged an appeal with the then Nature Protection Board of Appeal. The issue was now whether the appeal deadline of four weeks had been exceeded. If the local authority's second reply was regarded as an independent decision, she was within the deadline, but the Board of Appeal did not take that view.

The discontented neighbour lodged a complaint with the Ombudsman, who submitted a number of questions to the Nature Protection Board of Appeal. In the end, the Board agreed that the deadline had been met and considered the case. The Board annulled the local authority's decision and asked the local authority to reconsider the case.

A local authority wanted to amalgamate two primary and lower secondary schools into one new school. As part of the argumentation, the authority wrote on its website that some parents chose not to send their children to one school because it had a large number of bilingual pupils. A father turned up in person at the Ombudsman's office in Copenhagen to lodge a complaint about the local authority. He was opposed to the amalgamation and believed that the local authority's argumentation was wrong, so that the decision was invalid.

A lawyer at the Ombudsman's office spoke to the man and discovered that a decision had not yet been made. The school amalgamation proposal was still in the consultation phase. For this reason alone, the Ombudsman was unable to take up the case. The man was informed that he could return once the local authority had made its decision.

Many people lodge a complaint by e-mail, but in principle any method may be used – as long as the Ombudsman understands the complaint. Typically, a citizen turns up five to ten times a week at the Ombudsman's office in Copenhagen to complain.

For a number of years, a local authority had granted a severely arthritic man support towards the purchase of a so-called mobility vehicle. However, when the man applied for a renewal of the grant, the local authority rejected his application. The Ombudsman returned the case to the Social Tribunal, stating that the man was entitled to a better explanation of the change in the local authority's practice. The Ombudsman then closed the case, but wrote to the man that he could contact him again if he was not happy with the Tribunal's reply.

A fitter was absent from work due to a bad back and received sickness benefit. He was dismissed, and some four months later the local authority discontinued his sickness benefit on the grounds that he was no longer 'fully unfit for work'. However, in his union's opinion, he was unable to work as a fitter due to his bad back. The union therefore lodged a complaint with the Ombudsman.

The Ombudsman forwarded the complaint to the Employment Appeals Board, as he wanted to establish whether sufficient evidence had been obtained in the case for a decision to discontinue sickness benefit to be made. The reason for the Ombudsman's doubts was that while processing the case, the Ombudsman had become aware that the local authority – when assessing whether the man was able to work – had obtained information about the job of fitter by calling the student guidance office at a technical high school.

The Board decided to reopen the case and concluded that there was not sufficient evidence to make the decision. The local authority should, for instance, also have consulted the man's own doctor.

The Ombudsman does not have medical or social service expertise and therefore cannot assess whether a man is unfit for work or not. On the other hand, he can establish whether sufficient evidence has been obtained in a case, i.e. whether it has been adequately investigated.

A married couple lodged a complaint with the Ombudsman about decisions made by the Patient Insurance Association and the Patients' Complaints Board of Appeal. Even though these are health bodies, the Ombudsman does not consider complaints about their decisions because the Patient Insurance Association is a private association and not part of the public administration, while the Patients' Complaints Board of Appeal is a court-like body and therefore also outside the Ombudsman's jurisdiction.

A man who fled from Iran to Denmark in the 1980s wanted a visit from his sister in Iran. He therefore applied for a tourist visa for Denmark for her. However, the Danish authorities turned down the application, among other reasons because the man's sister did not fall within the right 'category of persons' and because in their opinion the man could visit his sister himself in Iran or meet up with her in another country. The man was disappointed, but the Ombudsman could not help him as the Ministry of Integration had followed an established, lawful practice.

The Ombudsman's task is to investigate whether the authorities comply with statutory rules and regulations. He cannot change existing rules, even if citizens find them unreasonable.

Jens Olsen
Head of Division,
General Department

THE OMBUDSMAN AROUND THE WORLD

In a humid, hot room in Hanoi, the Danish Ombudsman and some of his employees are at a conference with various representatives of the Vietnamese government, university world, media, etc. The conference is the last in a series which the Danish Embassy has funded and organised with the Danish Ombudsman institution and the Vietnamese Parliament. The purpose of the collaboration project is to assist the Vietnamese government in investigating the possibilities of enhancing the effectiveness of the national assembly's appeal system, and in this connection also to investigate together the possibilities of establishing an ombudsman office.

After some days of presentations, questions and explanations about the ombudsman concept and its migration from Sweden via Denmark across the world, an older, evidently respected and wise woman takes the floor. It is the former Minister for Social Affairs, who wants to present her assessment of whether an ombudsman in Vietnam is at all realistic. Her words are abrupt, but very precise in the translation into English: *'In this country, we think in terms of the community; we protect the community and groups within the community and are not focused on the individual in the same way as you are. Moreover, an ombudsman is an individual, and giving so much power and influence to one person is foreign to us.'*

Fifty years earlier, another Danish ombudsman, Stephan Hurwitz, was also invited to a conference, this time in Kandy, Sri Lanka. The conference was organised by the UN, and Stephan Hurwitz's presentation was entitled 'The Scandinavian Ombudsman'. The audience included Attorney-General Dr John Robson from New Zealand. In April 1960, his report on the ideas in Hurwitz's presentation and the Danish ombudsman model was included in the political manifesto for administrative reforms of the National Party, which later formed a government, and subsequently it became reality. The New Zealand Ombudsman office was established in 1962 – the first of its kind in the English-speaking world – and from there the inspiration to establish ombudsman offices spread to other countries within the British Empire.

CONTEXT, RESPECT AND PATIENCE

There are many good reasons why the idea of an ombudsman was quickly accepted in New Zealand and just as many good reasons why Vietnam is not immediately opening an ombudsman office. The differences in the legal, historical, cultural and also economic context are striking, as pointed out by Madame Ba at the Hanoi conference.

In its modern version, the ombudsman institution has become an integral part of a liberal, Western democratic principle. The focus is on protecting the individual and the individual's fundamental rights as a citizen in a system where the powers of the executive are increasing. It is therefore not surprising that Denmark adopted the basic concept from Sweden in the post-war years, nor is it surprising that the concept is normally exported at the very time when overall administrative reforms are implemented – as in the case of New Zealand and in a way also in Vietnam at the moment.

Despite the major and striking differences between 'systems' globally, the website of the International Ombudsman Institute (IOI) reveals that 122 institutions are members – from all over the world. However, the map of the distribution of national ombudsmen is not a uniform colour all over the world. Red is dominant in Europe (with the notable exceptions of Germany and Italy), Africa, Central and South America and large parts of Oceania. By contrast, there are large white areas – without ombudsmen – in especially the Arab world.

Under the Arab Initiative, the Danish Ombudsman participated in a project in Jordan to establish an ombudsman institution. As so often before, one person drove the project right through to the new institution, in this case the Danish Consul General in Amman, Mr Kawar.

As a result of the collaboration, Jordan established an ombudsman office in 2008/2009, and today the Jordanian Ombudsman has become a member of the International Ombudsman Institute, which imposes certain basic conditions of admission.

The basic thoughts and conditions for an ombudsman and his work resulted in many and major discussions in Jordan. As in Vietnam, we were faced with fitting a basic concept into a very different framework. A key issue in these situations is usually the theme of the ombudsman's independence – how much freedom is the ombudsman given to monitor the exercise of power and to influence the administrative culture effectively?

Generally, it is not possible to export 'the Danish model' without adjustment – and this also applied in Jordan. This must be balanced against the ideal and the belief that certain basic conditions must be met for an ombudsman institution to function and benefit the individual citizen.

Our collaboration projects require us to respect the differences that exist, but at the same time we are committed to certain ideals or fundamental conditions. In our view, the crucial thing is that a seed is sown and that we as collaborators show respect and a certain amount of patience in allowing reality and developments to determine whether a new institution is given the space and has the capacity and will to benefit the citizens.

DIFFERENT PROJECT TYPES

The Danish Ombudsman institution has a long tradition of active participation in bilateral cooperation around the establishment, development and consolidation of ombudsman offices. We feel an obligation because of the way in which we once received inspiration and willing assistance from Sweden.

Initially, the dissemination was mainly a result of a personal effort by the ombudsmen themselves, as in the case of the first Danish Ombudsman, Stephan Hurwitz, and other ombudsmen, such as Sir Guy Powles from New Zealand and Alfred Bexelius from Sweden. Later, the ombudsman institutions and their employees have become involved, and at the same time international organisations such as the UN, OSCE, EU and IOI have developed traditions of providing financial and technical support. There also seems to be a certain prestige associated with helping to develop democratic institutions such as ombudsmen.

In Denmark, an actual formalised collaboration agreement between the Ministry of Foreign Affairs and the Ombudsman has existed since 2000. Through the agreement, the Ombudsman has obtained the resources to participate in international activities and actual collaboration projects aimed at developing democratic institutions, good governance and good administrative practice. Through Parliament, the Ministry of Foreign Affairs every year transfers an amount corresponding to one academic standard man-year with overheads to the Ombudsman office. Obviously, these resources are limited, but nonetheless they can result in participation in many activities.

Broadly speaking, we are familiar with three types or stages where Danish assistance may be relevant: 1) the political clarification or decision phase, as in the projects in Vietnam and Jordan, 2) the establishment phase, when the political

decision to set up an ombudsman office has been made and 3) a consolidation and/or rehabilitation phase, when an established institution typically needs to get out of a period of stagnation.

ALBANIA

Until 1991, Albania was an isolated dictatorship. The process which was to result in democracy was tumultuous and finally collapsed in 1997. The country literally fell apart within a few days – at every level, from police and central authorities down to schools and the smallest local administrative authorities. Many will remember the pictures on television from Tirana, Vlora and other Albanian cities, where aggressive and desperate citizens had armed themselves with weapons stolen from army depots.

In 1998, order and peace began to be restored to society and a new constitution came into force the same year. The constitution contained provisions on the establishment of an ombudsman office, Avocati i Popullit – *the people's advocate*.

In June 1999, the Danish Embassy in Tirana signed a five-year collaboration agreement with the Albanian government. The purpose of the programme was to strengthen the independence and impact of Avocati i Popullit in a democratically very fragile society. The Danish Ombudsman was involved in the project and visited his newly elected colleague, Ermir Dobjani, for the first time in September 2000.

In December 2009, Avocati i Popullit celebrated its 10th anniversary in Tirana and the Danish Ombudsman and his employees from the project were invited together with other key institutions and persons from the establishment phase, including the former project leader from the Danish Embassy.

After ten years of extensive and valued work in Albania, there were again signs of political unrest and concern. An ombudsman was to be elected in February 2010 and much suggested that there would again be problems in the political system. This turned out to be true. The result was that a new ombudsman was not elected until the following year and the institution suffered from cuts and loss of prestige and influence for a long period.

In spring 2011, some of the Danish Ombudsman's employees travelled to Tirana, where they found an office which in the absence of an ombudsman was led by a very competent and committed deputy ombudsman. After their visit to Tirana, the Danish Ombudsman's employees contacted the Neighbourhood

Programme of the Ministry of Foreign Affairs, partly to report on their visit and partly to attempt to get the support for the Avocati i Popullit institution restored during this difficult period. A new support programme worth approx. DKK 10 million was signed on 21 December 2011.

Ombudsmen and their institutions are often very much alone in their work. The establishment phase is of course extremely important to the institution's chances of falling into place. However, as experiences in Albania have shown, long-term, patient support is very often necessary.

GHANA

In many ways, things are going well and improving in Ghana, also economically. Nonetheless, the country, which includes the former Danish Gold Coast colony, is still profoundly affected by a history of poverty and exploitation. In many ways, Ghana is representative of the problems many African countries have experienced in implementing and maintaining a democratic system of government.

After the country gained its independence in 1957, the great hero of the battle for independence, Nkrumah, was deposed by a military coup in 1966. During the following years, which were characterised by increasing poverty, the country was led by successive civilian and military governments until the mid 1990s, when Lieutenant Jerry Rawlings fulfilled his promises of letting the country change to a popularly elected government.

During a visit in 1995, the governor of the Ashanti province pointed out the dilemma between anti-poverty programmes and the development of democracy to one of the Danish Ombudsman's employees: *'If I have to choose between being able to feed 1,000 of my countrymen or using the money to support an ombudsman, I would not hesitate to choose the former. Why don't you do the same with your support for Ghana and help us get out of poverty more quickly?'*

This is probably to a large extent the explanation for the fact later formulated by the former Ghanaian Commissioner on Human Rights and Administrative Justice, Emile Short: *There must, of course, be a minimum of political will to ensure the survival and effective functioning of these democratic institutions.*

In 1995, Ghana decided to transform a failed ombudsman office into an institution better calibrated to the situation and needs in Ghana. The *Commission on Human Rights and Administrative Justice,* as it came to be called, also reflects in

its name the ambition: to increase focus on fundamental human rights while still strengthening the monitoring of and support for the development of the executive power, including the efforts to combat corruption. All this had to be done with sparse and inadequate funding.

Since the establishment of the Commission, the Danish Embassy in Accra has consistently had the Commission on its support programme – which has probably been crucial to the office's survival. Today, the Commission on Human Rights and Administrative Justice is an important institution in Ghanaian society and ordinary people's daily lives – and in reality therefore also an important element in ensuring stability and economic progress.

The Danish Ombudsman has participated in the collaboration since 1995, when the first contacts took place. Focus and intensity have varied, but the aim has always been the same: to ensure through the collaboration that the ombudsman function has been able to gain a foothold and fall into place in a country which has been affected by poverty and inadequate administration.

APPENDIX A: STAFF AND OFFICE

As at 1 May 2012 the office had six main divisions with the following people in charge:

General Department

Mr Kaj Larsen, **Director of Public Law**

1st Division

Ms Kirsten Talevski, **Head of Division**

2nd Division

Ms Bente Mundt, **Head of Division**

3rd Division (Inspections Division)

Mr Lennart Frandsen, **Deputy Permanent Secretary**

4th Division

Mr Morten Engberg, **Head of Division**

5th Division

Mr Karsten Loiborg, **Head of Division**

The 88 employees of my office included 24 senior administrators, 27 investigation officers, 19 administrative staff members and 10 law students.

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Tel. +45 33 13 25 12
Fax +45 33 13 07 17

E-mail: post@ombudsmanden.dk
Website: www.ombudsmanden.dk

APPENDIX B.
BUDGET 2011

Salary expenses	
Actual salaries	39,217,000
Law students	262,000
Special holiday allowance	22,000
Overtime	287,000
Pension fund contributions	3,253,000
Contributions for civil service retirement pensions	1,072,000
Contributions for the Danish Labour Market Supplementary Pension (ATP)	113,000
Maternity reimbursement etc.	- 499,000
Salary expenses in total	**43,727,000**

Operating expenses	
Subsidy, Ministry of Foreign Affairs	- 900,000
Rent	4,121,000
Leasing of photocopiers	254,000
Official travels	403,000
Entertainment	171,000
Staff welfare	110,000
Phone subsidies	7,000
Subsidy, staff lunch arrangement	227,000
IT, central equipment, network, programmes	1,249,000
IT, client equipment	1,069,000
IT, consultants	254,000
Decentralised continued education	811,000
Translations	390,000
Printing of publications etc.	321,000
Misc. services	100,000
Office supplies	796,000
Furniture and other fittings	671,000
Books and subscriptions etc.	1,137,000
Cleaning, laundry and refuse collection	202,000
Housekeeping uniforms	7,000
Operating expenses in total	**11,400,000**

Civil servant retirement payments	
Civil servant retirement contributions	- 1,000,000
Retirement payments for former civil servants	400,000
Civil servant retirement payments in total	**- 600,000**

BUDGET	**54,527,000**

APPENDIX C. STATISTICS

This appendix provides a detailed explanation of the key figures related to the cases processed by the office.

The Ombudsman statistics are intended to reflect some important characteristics of the cases processed – but also to say something about the utilisation of the institution's resources. The presentation is based on some general distinctions. First of all, the statistics and the Director General's overview on pp. 19-27 provide information about new cases at the office and the cases which have been processed by the office. The figures for concluded cases relate to cases *concluded* in 2011 – irrespective of when they were opened – while the figures for new cases relate to cases *opened* in 2011 – irrespective of whether they were concluded in 2011 or later. The figures are therefore not necessarily identical.

In addition, a distinction is made between different types of cases: complaint cases, inspection cases and cases opened by the Ombudsman on his own initiative (own-initiative cases), cases where the complainant or others request access to documents, cases connected with international cooperation etc. The various case types are included in the statistics to varying degrees. However, the figures for the cases concluded and the information in the Director General's article about the number of new cases only relate to the first three types of cases.

Finally, a distinction is made between cases which the Ombudsman concludes with a statement about the issue(s) raised in the case – referred to as substantively investigated cases – and cases which are rejected for various reasons.

In general, a substantive investigation is carried out on the basis of a consultation where the authorities have the opportunity to make a statement to the Ombudsman about the content of the complaint. However, in particularly obvious cases where the Ombudsman does not express criticism or make recommendations, he may also choose to consider the complaint without prior consultation.

Certain cases must be rejected – for the time being or finally.

For instance, the Ombudsman is not permitted to consider complaints concerning matters *that may be appealed to another administrative authority until that authority has made a decision* (section 14 of the Ombudsman Act). Therefore, complaints submitted to the Ombudsman before any appeal options available have been exhausted cannot be processed and have to be rejected – at least for the time

being, until the relevant appeal authority or authorities may have processed the appeal.

Pursuant to section 7(2) of the Ombudsman Act, the courts are outside the Ombudsman's jurisdiction. Therefore, complaints concerning e.g. courts have to be rejected, and in this case the rejection is final.

In the statistical overview, we have attempted to gather the various figures and information under clear themes: How many cases did the office open? How many cases did the Ombudsman conclude? How long did it take to process the cases? These themes have been dealt with separately in the Director General's article on pp. 19-27.

This appendix considers the issues: What did the Ombudsman do in the cases concluded in 2011? What did the cases concern? Which authorities were affected?

WHAT DID WE DO IN THE CASES?

We concluded 4,922 cases in 2011. Of these, 1,001 (20.3 per cent) were substantively investigated and 3,921 (79.7 per cent) were rejected.

Substantively investigated cases

As mentioned in the introduction to this appendix, the category of substantively investigated cases includes cases where the Ombudsman carries out an investigation in which he submits the case to the relevant authority or authorities for consultation and concludes the case with a statement. These cases may be complaint cases, inspections or cases initiated on the Ombudsman's own initiative.

The category also includes cases subjected to what is referred to as a shortened substantive investigation. These may be complaint cases where the Ombudsman assesses, after reviewing the information available in the case, that a full substantive investigation of the case is unlikely to result in criticism of the authorities or some other way of helping the citizen with the outcome of the case. Therefore, the Ombudsman usually concludes these cases without obtaining statements from the authorities. Typically, the Ombudsman investigates the complaint and the case in the same way as in a full substantive investigation. Cases subjected to a shortened substantive investigation may also be cases initiated by the Ombudsman on his own initiative where he questions the authorities about certain matters and on the basis of their replies chooses not to take any further steps in the case.

Cases subjected to a shortened substantive investigation are governed by section 16(2) and section 17(1) of the Ombudsman Act.

In 2011, 541 (54.0 per cent) of the cases subjected to a substantive investigation were concluded after a shortened investigation as described above.

Occasionally, an authority will reopen a case as a result of the Ombudsman's request for a statement. This means that the authorities will reconsider the case, and as they cannot therefore be said to have concluded it, the Ombudsman will virtually always discontinue his investigation of the case. The authorities may not change their original decision, but in practice, the effect is the same as if the Ombudsman had recommended that the authorities reconsider the case.

In 2011, a total of 50 cases were concluded on this basis.

Of the cases subjected to a full substantive investigation, 257 did not give rise to criticism, recommendation etc. in relation to the relevant authority.

153 of the substantively investigated cases did result in criticism, recommendation etc. in relation to the relevant authority.

Table 1 overleaf shows the distribution by authority, first for the substantively investigated cases as a whole and then for the 153 cases which gave rise to criticism, recommendation etc.

Table 1

Substantively investigated cases, including cases resulting in criticism, recommendation etc., by minister areas, local and regional authorities and other authorities etc. within the Ombudsman's jurisdiction[1]

Table 1: Substantively investigated cases concluded in 2011

Authority etc.	Substantively investigated cases, total	Substantively investigated cases resulting in criticism, recommendation etc.
A. Minister area (central authorities)		
a. Ministry of Employment	95	12
b. Ministry of Business and Growth	12	4
c. Ministry of Finance	4	0
d. Ministry of Defence	9	2
e. Ministry of Justice	256	36
f. Ministry of Climate, Energy and Building	2	0
g. Ministry of Culture	5	3
h. Ministry of the Environment	32	2
i. Ministry of Housing, Urban and Rural Affairs	0	0
j. Ministry of Children and Education	7	2
k. Ministry of Science, Innovation and Higher Education	13	5
l. Ministry of Food, Agriculture and Fisheries	11	3
m. Ministry for Gender Equality and Ecclesiastical Affairs	2	1
n. Ministry of Health	51	4
o. Ministry of Taxation	33	14
p. Ministry of Social Affairs and Integration	230	20
q. Prime Minister's Office	12	3
r. Ministry of Transport	14	0
s. Ministry of Foreign Affairs	8	5
t. Ministry of Economic Affairs and the Interior	44	7
Central authorities, total	**840**	**123**

Table 1: Substantively investigated cases concluded in 2011

Authority etc.	Substantively investigated cases, total	Substantively investigated cases resulting in criticism, recommendation etc.
B. Local and regional authorities		
Local authorities[2]	121	20
Regions	35	10
Local and regional authorities, total	**156**	**30**
C. Other authorities etc. within the Ombudsman's jurisdiction		
DSB S-tog A/S (Danish National Railways S-trains)	2	0
Accommodation facilities for children and juveniles	3	0
Other authorities etc. within the Ombudsman's jurisdiction, total	**5**	**0**
D. Total		
Central authorities, total (A)	840	123
Local and regional authorities, total (B)	156	30
Other authorities etc. within the Ombudsman's jurisdiction, total (C)	5	0
Year total (A-C total)	**1,001**	**153**

1) The statistical registration of cases concluded in 2011 was done immediately after the individual case had been concluded. The cases in Table 1 (and Table 3 below) are classified under the ministries existing at the end of the year. In the same way, as a general rule, cases relating to authorities closed down or reorganised after the statistical registration have as far as possible been classified under the minister areas where the cases would have belonged the end of the year.

2) A small number of cases relating to municipal and county authorities which ceased to exist as a result of the local government reform as at 1 January 2007 are still classified under local authorities. In other words, the designation *local authorities* covers both the former primary local authorities and county authorities and the current local authorities. The figures do not include local authority dispute tribunals covered by section 7(3) of the Ombudsman Act.

Rejected cases

A total of 3,921 (79.7 per cent) of the cases concluded were rejected without being subjected to a full or shortened substantive investigation.

Cases may have to be rejected by the Ombudsman for various reasons and the category 'rejected cases' covers a number of situations:

If a complaint is submitted too late, the case must be rejected pursuant to section 13(3) of the Ombudsman Act. In 2011, the Ombudsman rejected 116 cases for this reason.

Sometimes the person lodging a complaint with the Ombudsman has not exhausted the appeal options available in connection with the case processing by the administrative authorities within the existing deadlines. In such cases, the complaint cannot subsequently be considered by the Ombudsman. In 2011, the Ombudsman rejected 57 cases of this kind.

The Ombudsman does not consider cases which are outside his jurisdiction. Pursuant to section 7(2) of the Ombudsman Act, the Ombudsman must reject complaints relating to the courts and their work. The Ombudsman also rejects cases concerning matters on which a court is expected to make a decision. In 2011, a total of 137 cases were rejected for these reasons. Complaints relating to the Danish Parliament, including complaints about legislative issues, are likewise outside the Ombudsman's jurisdiction (a total of 34 cases). This also applies to complaints relating to private legal matters and complaints about certain tribunals, even though they are part of the public administration in other contexts (section 7(3) of the Ombudsman Act). In 2011, 229 cases were rejected for these reasons.

In 2011, the Ombudsman rejected a total of 400 cases because they were outside his jurisdiction.

1,898 cases were rejected for the time being because the citizens could still complain about the matter/appeal the decision within the administrative appeal system etc. As already mentioned, the Ombudsman cannot enter a case until all administrative complaint/appeal options have been exhausted (section 14 of the Ombudsman Act). In such situations, the Ombudsman will either forward the case to the relevant authority or authorities or ask the complainant to use his or her complaint/appeal options etc. within the administrative system. In this connection, the Ombudsman will also inform the complainant of the possibility of returning after his or her complaint/appeal options have been exhausted and a final

decision has been made. In 2011, the Ombudsman forwarded 1,271 (67.0 per cent) of the cases he rejected for the time being to the relevant authorities.

In the 1,898 cases which the Ombudsman rejected for the time being in 2011, the vast majority of the complainants were thus able to return to the Ombudsman if they remained dissatisfied with the authorities' decision on and/or processing of their case.

In certain cases, the complaint was anonymous and therefore had to be rejected pursuant to section 13(2) of the Ombudsman Act (26 cases in 2011). In other cases, the approach turned out not to be an actual complaint, but an enquiry or simply material sent to the Ombudsman for his information (359 cases). In still other cases, it was necessary to ask the complaint to clarify his or her complaint, but the complainant did not respond, or the complainant withdrew his or her complaint (187 cases). We have combined all these situations in the statistical overview (item 1.4 in Table 2 overleaf). We had 572 such cases in 2011.

Pursuant to section 16(1) of the Ombudsman Act, the Ombudsman decides himself whether a complaint offers sufficient grounds for an actual investigation.

The Ombudsman's decision to reject a case is made after a review of the complaint and any enclosures, but the Ombudsman is free to obtain case documents from the authorities before responding to the complaint with an explanation of why he has decided not to initiate an investigation.

In 2011, the Ombudsman rejected 878 cases pursuant to section 16(1) of the Ombudsman Act.

Table 2 overleaf contains information about the grounds registered for rejection, first for all cases and then for local and regional authority cases.

Table 2
Cases rejected in 2011

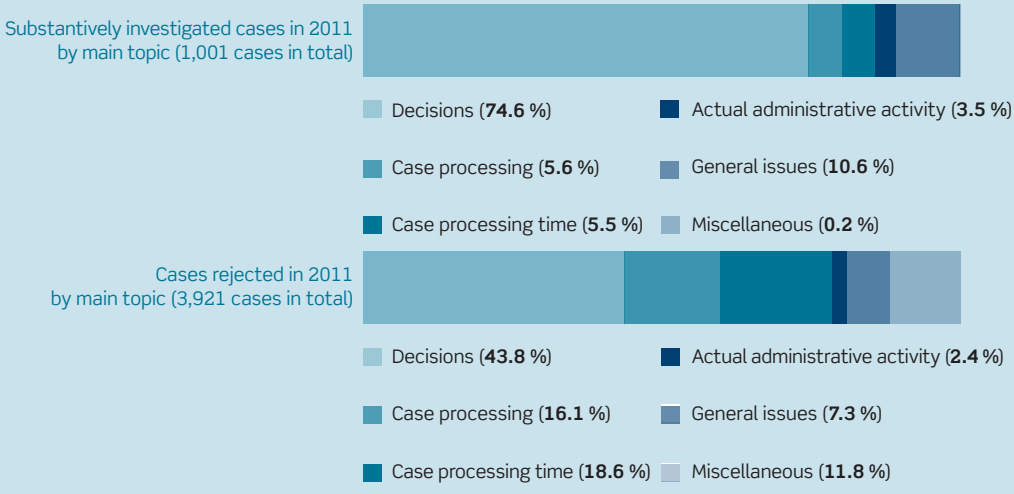
Table 2: Cases rejected in 2011

	Rejected cases, total	Of which local and regional cases
Grounds for rejection		
1. Final rejections		
1. Complaints submitted too late (section 13(3) of the Ombudsman Act)	116	36
2. Administrative case processing options not exhausted and no longer available (section 14 of the Ombudsman Act)	57	36
3. Complaints relating to matters outside the Ombudsman's jurisdiction, e.g. a court, judges, Parliament, legislative issues or private legal matters	400	35
4. Enquiries etc. without actual complaints; complaints not clarified; complaints withdrawn; anonymous complaints etc.	572	188
5. Other approaches, including complaints which the Ombudsman decided to reject (section 16(1) of the Ombudsman Act)	878	308
Final rejections, total	**2,023**	**603**
2. Temporary rejections		
Administrative case processing options not exhausted etc. (section 14 of the Ombudsman Act)	1,898	893
Temporary rejections, total	**1,898**	**893**
Total (1+2)	**3,921**	**1,496**

WHAT DID THE CASES CONCERN?

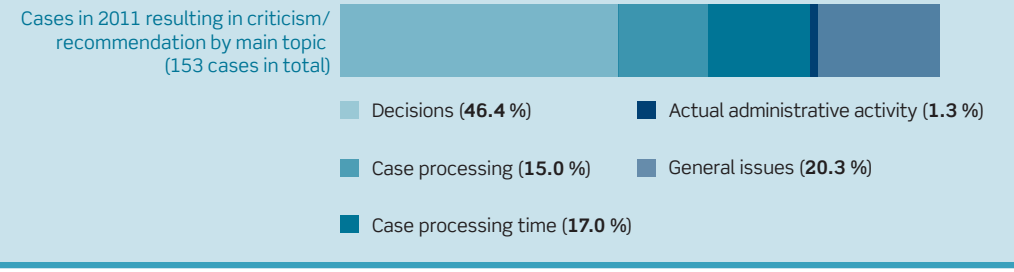
The distribution by main topic – i.e. the main focus of the Ombudsman's reaction in the case – of the 4,922 cases concluded in 2011 was as follows for substantively investigated cases (1,001 cases in total) and for rejected cases (3,921 cases in total):

Figure 1



By way of comparison, the distribution by main topic was as follows for substantively investigated cases which gave rise to criticism, recommendation etc. (153 cases):

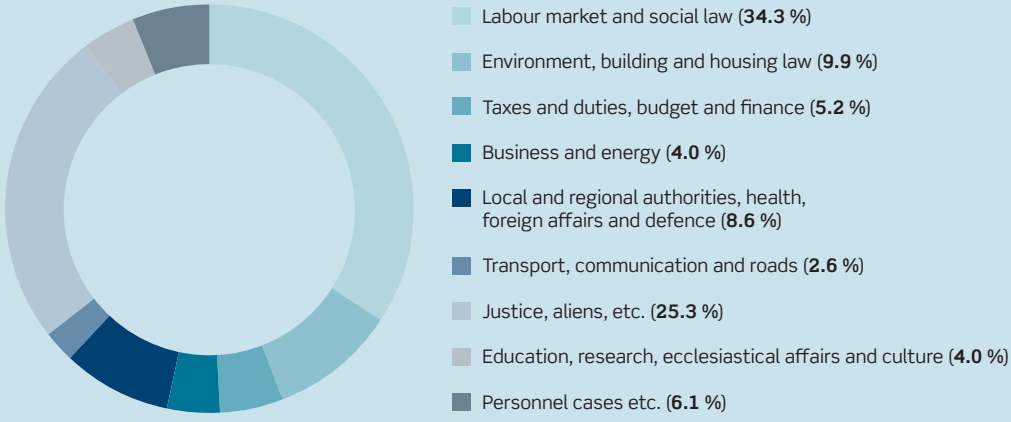
Figure 2



The distribution of concluded cases by administrative area was as follows:

Figure 3

Cases concluded in 2011 by general area (archive code) (4,922 cases in total)



WHICH AUTHORITIES ETC. WERE AFFECTED?

Table 3 overleaf shows the distribution of all cases concluded in 2011 by authority etc. involved. A more detailed overview is provided (in Danish only) on the Ombudsman's website, www.ombudsmanden.dk.

Table 3
Authorities etc. affected[1]

Table 3: Authorities etc. affected

Authority etc.	All cases	Rejected cases
A. Minister area (central authorities)		
a. Ministry of Employment	230	135
b. Ministry of Business and Growth	50	38
c. Ministry of Finance	17	13
d. Ministry of Defence	23	14
e. Ministry of Justice	863	607
f. Ministry of Climate, Energy and Building	18	16
g. Ministry of Culture	40	35
h. Ministry of the Environment	92	60
i. Ministry of Housing, Urban and Rural Affairs	0	0
j. Ministry of Children and Education	29	22
k. Ministry of Science, Innovation and Higher Education	68	55
l. Ministry of Food, Agriculture and Fisheries	29	18
m. Ministry for Gender Equality and Ecclesiastical Affairs	25	23
n. Ministry of Health	151	100
o. Ministry of Taxation	207	174
p. Ministry of Social Affairs and Integration	572	342
q. Prime Minister's Office	21	9
r. Ministry of Transport	57	43
s. Ministry of Foreign Affairs	14	6
t. Ministry of Economic Affairs and the Interior	183	139
Central authorities, total	**2,689**	**1,849**
B. Local and regional authorities		
Local authorities[2]	1,509	1,388
Regions, total	124	89
– Capital Region	54	39
– Central Jutland	25	21
– Northern Jutland	4	4
– Zealand	15	7
– Southern Denmark	23	15
– Not specified	3	3
Local or regional authority collaborations	3	3
Special local or regional authority units	1	1
Local and regional authorities, total	**1,637**	**1,481**

Table 3: Authorities etc. affected

Authority etc.	All cases	Rejected cases
C. Other authorities etc. within the Ombudsman's jurisdiction		
DSB S-tog A/S (Danish National Railways S-trains)	2	0
Electricity companies[3]	1	1
Accommodation facilities for children and juveniles	3	0
Total	**6**	**1**
D. Authorities etc. within the Ombudsman's jurisdiction, total		
Central authorities, total (A)	2,689	1,849
Local and regional authorities, total (B)	1,637	1,481
Other authorities etc. within the Ombudsman's jurisdiction, total (C)	6	1
Total (A-C total)	**4,332**	**3,331**
E. Institutions etc. outside the Ombudsman's jurisdiction		
1. Courts etc.[4]	84	84
2. Dispute tribunals[5]	39	39
3. Other institutions, companies, businesses and persons outside the Ombudsman's jurisdiction	219	219
Total	**342**	**342**
F. Cases not relating to specific institutions etc.		
	248	248
Year total (A-F total)	**4,922**	**3,921**

1) The statistical registration of cases concluded in 2011 was done immediately after the individual case had been concluded. The cases in Table 3 are classified under the ministries existing at the end of the year. In the same way, as a general rule, cases relating to authorities closed down or reorganised after the statistical registration have as far as possible been classified under the minister areas where the cases would have belonged at the end of the year.

2) A small number of cases relating to municipal and county authorities which ceased to exist as a result of the local government reform as at 1 January 2007 are still classified under local authorities. In other words, the designation *local authorities* covers both the former primary local authorities and county authorities and the current local authorities. The figures do not include local authority dispute tribunals covered by section 7(3) of the Ombudsman Act. Cases relating to such tribunals have been included under item E.2. of the Table.

3) In a case concluded in 2011, the Ombudsman decided in pursuance of section 7(4) of the Ombudsman Act that his jurisdiction was to extend to Energi Midt Net A/S and Energi Midt Net Vest A/S.

4) Cf. section 7(2) of the Ombudsman Act.

5) Bodies covered by section 7(3) of the Ombudsman Act.

APPENDIX D:
SUMMARIES OF SELECTED CASES

A. MINISTRY OF EMPLOYMENT

The following cases concluded in 2011 were selected for publication in the Annual Report:

1-1. DIAGNOSTIC INFORMATION ABOUT INJURED PERSON PASSED ON TO EMPLOYER BY THE NATIONAL BOARD OF INDUSTRIAL INJURIES

The Ombudsman opened an own-initiative investigation of a case involving the passing on of information by the National Board of Industrial Injuries.

The reason for the own-initiative investigation was a specific complaint case during which the Ombudsman had learned that the Board had passed on information about an injured person's diagnosis to the insolvent estate of the person's former employer. The information was passed on in connection with two reminder letters to the insolvent estate as part of the Board's efforts to obtain information about the injured person's income.

The Ombudsman asked the Board, the Ministry of Employment and the Data Protection Agency for statements on the matter.

The Data Protection Agency stated, among other things, that when a reminder letter is written in a case processing system, printed and then sent manually as an ordinary letter by post, the passing on of information is covered by section 1(1) of the Act on Processing of Personal Data. The Agency gave weight to the fact that in the specific case, the information was printed from an IT system with a view to direct forwarding.

The Agency was of the opinion that section 7(2)(iv) of the Act was applicable. The Agency stated that it can hardly be considered necessary to pass on information about the diagnosis at a time when it is not relevant for the employer or the insolvent estate to assess whether the case gives either cause to consider using their appeal options. On the basis of the information available, the Agency did not find that section 7(2)(iv) of the Act on Processing of Personal Data entitled the Board to pass on information about a diagnosis to the employer or the employer's insolvent estate in connection with reminder letters as part of the case investigation.

The Ombudsman agreed with the Agency's conception of the law. He was thus of the opinion that the National Board of Industrial Injuries should not have passed on the diagnostic information in the two reminder letters concerned.

(Case No. 2007-3407-003)

1-2. REQUIREMENTS ON GROUNDS GIVEN IN DISABILITY PENSION CASE

A man complained to the Ombudsman about his disability pension case, including in particular a question of inclusion of a particular expert opinion from a medical specialist. The local authority and the Employment Appeals Board had refused the man's application for disability pension, and the National Social Appeals Board had declined to consider the case as it was not of fundamental or general public importance.

The Ombudsman did not find that there were grounds for criticising the authorities' decisions in the case.

However, the Ombudsman did find that there was (definite) occasion for the Employment Appeals Board to explain in the grounds for its decision the significance of the above-mentioned expert opinion from a medical specialist and to account for the reason why this particular expert opinion was not given decisive importance. The Ombudsman stressed that the expert medical opinion which was given importance and the one which was not given importance differed widely, also in that the latter expert opinion might argue for an outcome which was different from the actual outcome of the case. The Ombudsman also gave weight to the fact that the man had drawn the attention of the Employment Appeals Board particularly to the expert opinion which was not given importance and that the man considered that expert opinion to be of decisive importance. Therefore, the Ombudsman considered it an error that the Employment Appeals Board had not in the grounds for its decision explained the significance of the medical expert opinion which was not given importance in the decision.

(Case No. 2010-2810-0410)

1-3. GUIDANCE ON SICKNESS BENEFIT DURING PROCESSING OF DISABILITY PENSION CASE

While processing an application for disability pension from a man who was absent from work due to sickness, a local authority was informed that the applicant's employer was located in Greenland, and that the applicant expected to be dismissed after 120 days of absence due to sickness and did not expect to return to the labour market. At that time the man was still receiving a salary, and the payment of the salary continued until his employment ceased. As the Greenland employer had not applied for refund of sickness benefit and as the man had not applied for sickness benefit, no sickness benefit was paid when his salary payments ceased.

The Employment Appeals Board upheld the local authority's decision that the man was not entitled to sickness benefit.

Due to the increased obligation to provide guidance in social matters, the Ombudsman found that the local authority ought to have guided the man on the rules pertaining to sickness benefit.

Following a recommendation from the Ombudsman, the Employment Appeals Board reopened the case and decided that the man should be put in a position as if he had received correct guidance.

(Case No. 2010-2395-0050)

1-4. PROOF THAT SUMMONS TO MEETING HAD REACHED PERSON ON SICKNESS BENEFIT. FREE LEGAL AID

A local authority stopped payments of sickness benefit to a woman because she had not attended an information meeting. The woman stated that she had never received a summons to the meeting.

The local authority and the Employment Appeals Board assumed that the summons had reached the woman, based on the facts that the letter had not been returned to the local authority and that there were no reports from the postal service of any irregularities in postal deliveries.

The Ombudsman stated, among other things, that the burden of proof that a letter has reached the intended recipient rests with the administrative author-

ity. The Ombudsman also commented in general terms on what information the local authority must provide in order to discharge the burden of proof that a letter has reached the addressee.

Stopping payments of sickness benefit and thereby depriving a citizen's of his or her subsistence basis is an unusually intrusive decision. The Ombudsman assessed that this factor could play a role in the courts' assessment of the evidential certainty which must be present that a letter has been sent and has reached the addressee.

Errors and inaccuracies had occurred in the local authority's (the job centre's) mail dispatch, both in this particular case and apparently also in other cases. Consequently, the Ombudsman found that the dispatch of mail by the local authority (the job centre) was subject to a not insignificant level of uncertainty, which weakened the presumption that the summons to the meeting had been correctly sent and had reached the woman. For this reason the Ombudsman found it inadvisable to assume that the summons had been posted correctly.

On the basis of the Ombudsman's statement, the Employment Appeals Board reopened the case but upheld its decision. The Ombudsman recommended to the Civil Affairs Agency that the woman be granted fee legal aid.

(Case No. 2008-4469-025)

B. MINISTRY OF BUSINESS AND GROWTH

No cases concluded in 2011 were selected for publication in the Annual Report.

C. MINISTRY OF FINANCE

No cases concluded in 2011 were selected for publication in the Annual Report.

D. MINISTRY OF DEFENCE

No cases concluded in 2011 were selected for publication in the Annual Report.

E. MINISTRY OF JUSTICE

The following cases concluded in 2011 were selected for publication in the Annual Report:

5-1. REFUSAL OF ACCESS TO INFORMAL E-MAILS BETWEEN PUBLIC AUTHORITIES. THE DOCUMENT CONCEPT

A prison inmate asked the Department of the Prison and Probation Service for access to documents regarding his case of leave from prison. The Department refused to grant him access to the internal work documents of the case with reference to section 12 of the Public Administration Act. The Department subsequently stated that it had exempted a number of 'informal e-mails' which had been exchanged during the case processing between the Department and the state prison where the man was serving his sentence. The Department's grounds for the exemption were that the information contained in the 'informal e-mails' would not have been included in the duty to take notes if the information had been received by telephone.

In principle, a party to a case is entitled to access to all documents of the case unless one of the exemptions in sections 12-15 of the Public Administration Act is applicable. The Ombudsman therefore found that the decisive point must be whether the informal e-mails could be considered documents.

The Ombudsman stated that the question of whether it can be presumed that an e-mail can be considered a document must be decided on the basis of an individual assessment of, in particular, the contents of the e-mail in question, but that it is unlikely that the sole decisive factor is whether the e-mail contains information included in the duty to take notes (pursuant to section 6 of the Act on Public Access to Documents on Public Files).

The Ombudsman found no grounds for criticising the Department's interpretation, but in his opinion it was questionable whether some of the 'informal e-mails' were not to be considered documents. Consequently, he recommended that the Department reconsider the question of access in respect of these e-mails – and thereby also the question of whether they could be considered documents.

The Ombudsman found no grounds for criticising that the Department had exempted internal work documents from access pursuant to section 12 of the

Public Administration Act. However, he found it a matter for criticism that the Department did not give adequate grounds in its decision.

(Case No. 2010-0392-6012)

5-2. THE OMBUDSMAN'S JURISDICTION IN RELATION TO ENERGY COMPANIES

A journalist complained to the Ombudsman about the case processing time of an energy company in a case concerning access to documents. The journalist had asked the energy company for access to a variety of information. The company consisted of several companies, some of which produced, transmitted or distributed electricity at a voltage of or above 500 V themselves and some of which did not, but were directly or indirectly the owners of the other companies.

The complaint first raised the question of the Ombudsman's jurisdiction in relation to these companies.

In the energy company's opinion, only those companies which themselves produced, transmitted or distributed electricity at a voltage of or above 500 V were covered by section 1(2)(i) of the Act on Public Access to Documents on Public Files, while this was not the case for those companies which did not themselves produce, transmit or distribute electricity but were direct or indirect owners of the other companies. On the basis of the available information, the Danish Energy Association and the Ministry of Justice agreed.

On the basis of the available information, the Ombudsman agreed that solely those companies which themselves produced, transmitted or distributed electricity at a voltage of or above 500 V were covered by section 1(2)(i) of the Act on Public Access to Documents on Public Files, while this was not the case for those companies which did not themselves produce, transmit or distribute electricity but were direct or indirect owners of the other companies. In pursuance of section 7(4) of the Ombudsman Act the Ombudsman was therefore only able to decide that his jurisdiction would extend to the former companies – but not to the latter.

(Case No. 2010-5164-3000)

5-3. CASE PROCESSING IN CRIMINAL INJURIES COMPENSATION CASE UNACCEPTABLE AND A MATTER FOR EXTREME CRITICISM

In 2005 a woman applied to the Greenland Criminal Injuries Compensation Board for criminal injuries compensation. In 2009 she complained to the Ombudsman about the Board's processing of the case.

The Ombudsman stated that in his opinion it was regrettable that the Greenland Criminal Injuries Compensation Board told the woman's lawyer that the entire preparation of the case was his responsibility; that it was a regrettable error when the Board advised the lawyer in a letter of 6 November 2006 to contact a wrong authority; and that it was a matter for severe criticism that the Board did not correct the error until more than 22 months later.

In addition, the Ombudsman stated that the case processing time was a matter for severe criticism and that it was a matter for criticism that the Board did not inform the woman's lawyer on its own initiative that the case would not be brought to a conclusion in March 2006 – when the Board had expected the case to be concluded according to information previously given to the lawyer by the Board. And it was a matter for extraordinary criticism that the Board took almost three months to reply to a fax of 27 April 2006 in which the woman's lawyer asked when a decision in the case would be reached.

Overall, the Ombudsman found the processing of the case to be unacceptable and a matter for extreme criticism.

The Ombudsman recommended to the Greenland Criminal Injuries Compensation Board that the Board consider whether actual targets should be established for the Board's case processing times.

As major errors and derelictions had in the Ombudsman's opinion been committed in the case, he notified the Legal Affairs Committee of the Danish Parliament and the Minister of Justice of the case.

(Case No. 2009-0911-600)

5-4. ACCESS TO READ ACTION PLAN SCHEDULES IN PRISON OFFICE ONLY – SECTION 16(3) OF THE PUBLIC ADMINISTRATION ACT

The spokesman for a group of inmates in a state prison complained to the Department of the Prison and Probation Service about the established practice of the prison of only allowing inmates to read their own action plan schedules in the office of the prison block when they asked for access.

The Department found that it could not criticise the state prison's practice regarding access. The Department referred to section 16(3) of the Public Administration Act and to the view that the state prison's practice reflects the need for a balance between, on the one hand, the individual inmate's right to be able to look after their own party interests in the best way possible and, on the other hand, the consideration of avoiding that inmates force other inmates to produce documents which detail the crime they have committed, with the subsequent risk of reprisals.

The Ombudsman asked the Ministry of Justice for a statement on the case. The Ministry stated that the option provided by section 16(3) of refusing to hand over a transcript or photocopy is a matter for discretion. Consequently, a general practice whereby an administrative authority refuses to release documents without making an individual assessment will not be compatible with the provision. However, the Ministry also stated that in the Ministry's opinion it could not be ruled out that certain types of cases could present exceptional circumstances which mean that there will generally be compelling reasons that conclusively speak against the release of a transcript or a photocopy.

The Ombudsman concurred with the Ministry's view and thus criticised the Department's conception of the law. He recommended that the Department inform the institutions of the Prison and Probation Service of his opinion.

The Ombudsman was subsequently informed by the Department that his statement had been circulated to the institutions of the Prison and Probation Service, and he then informed the Department that he would take no further action in the case.

(Case No. 2010-4614-6012)

10-1. REFUSAL OF ACCESS TO CORRESPONDENCE BETWEEN THE IMMIGRATION SERVICE AND A PRIVATELY OWNED ENTERPRISE

A journalist asked the Immigration Service for access to the Service's correspondence with a privately owned enterprise. His request for access was refused because the Immigration Service could not locate the desired correspondence via its electronic filing system. The journalist complained to the Ombudsman.

The Ombudsman did not find that there were grounds for criticising the Immigration Service. He found it significant that it was not possible to locate cases via the electronic search system by entering the name of a company. He also attached major weight to information about the resources required if the Immigration Service had to manually unearth the correspondence with the enterprise: the Immigration Service would need more than one man-year to locate the correspondence manually. Finally, the Ombudsman found it important that the Immigration Service could not just give the journalist free access to the files as this would contravene the rules on confidentiality.

(Case No. 2010-3082-601)

10-2. FAILURE OF IMMIGRATION SERVICE TO SEARCH FOR FAMILIES OF CHILDREN ARRIVING IN DENMARK UNACCOMPANIED

A lawyer complained on behalf of a refugee child about, among other things, the Immigration Service's failure to institute a search for the child's maternal uncle after the child had arrived in Denmark unaccompanied. The lawyer referred to the Aliens Act, pursuant to which the Immigration Service was obliged to search for the child's uncle as the only remaining relative after the death of the child's parents. It followed from the provisions of the Act that a search for relatives should be instituted as quickly as possible after the child had arrived in the country and a representative for the child had been designated.

While the Ombudsman was investigating the case, he became aware that it had been the practice of the Immigration Service not to institute the statutory search until the child had been refused a residence permit and was about to be deported. In addition, the Immigration Service informed the Ombudsman that it assumed it was sufficient to encourage the child to institute a search itself through the International Red Cross.

In the Ombudsman's opinion, the practice of the Immigration Service did not fulfil the obligation to institute a search as provided by the 2007 Aliens Act.

In addition, the Ombudsman found it very regrettable that in the case in question the Immigration Service had not instituted a search for the child's uncle as quickly as possible following the child's arrival in Denmark

The Immigration service informed the Ombudsman that in future the Service would ensure, by various means, that a search would be instituted for family members of unaccompanied children as quickly as possible following arrival. The Ombudsman asked to be kept informed of the authorities' experiences with the measures taken.

(Case No. 2010-0540-6462)

F. MINISTRY OF CLIMATE, ENERGY AND BUILDING

No cases concluded in 2011 were selected for publication in the Annual Report.

G. MINISTRY OF CULTURE

No cases concluded in 2011 were selected for publication in the Annual Report.

H. MINISTRY OF THE ENVIRONMENT

The following case concluded in 2011 was selected for publication in the Annual Report:

9-1. COPYRIGHT DID NOT PRECLUDE ACCESS TO DATABASE

A journalist complained to the Ombudsman that the Ministry of the Environment had refused him access to the database 'The Danish Elevation Model'. The Ministry's grounds for its refusal were that two privately owned enterprises had copyright in the database and that it would mean an obvious risk of a

considerable financial loss for the enterprises if the Ministry were to grant the journalist access.

The Ombudsman stated that, according to circumstances, the provision in section 12(1)(ii) of the Act on Public Access to Documents on Public Files could allow a refusal to grant access in order to protect the copyright. However, if access were to be refused in order to protect the copyright, it would in the Ombudsman's opinion require that it must be assumed that the request for access had an unlawful purpose. The burden of proof that a request for access must be assumed to have an unlawful purpose must rest with the public authority.

Based on an overall assessment, it was the Ombudsman's opinion that neither on the basis of the journalist's statements during the case nor on the basis of his conduct during the case could the Ministry claim to have sufficient cause to assume that the elevation model would unlawfully be made public if the journalist were granted access. Consequently, the Ombudsman did not find that the Ministry had grounds for refusing the journalist access to the information contained in the database.

(Case No. 2010-0306-1011)

I. MINISTRY OF HOUSING, URBAN AND RURAL AFFAIRS

No cases concluded in 2011 were selected for publication in the Annual Report.

J. MINISTRY OF CHILDREN AND EDUCATION

The following case concluded in 2011 was selected for publication in the Annual Report:

18-1. NOTIFICATION OF DECISIONS REGARDING SUPPORT FOR STUDENTS WITH DISABILITIES OR SPECIAL NEEDS

It came to the Ombudsman's attention that the former State Education Grant and Loan Scheme Agency (now the Agency for Higher Education and Educational Support) only announced its decisions on support for students with

disabilities or special needs by making the decisions available in the Agency's computer system. It was then up to the applying educational establishment to search the system in order to see whether the Agency had made a decision in the case. Thus, neither the applying educational establishment nor to the student who was the intended recipient of the support was notified of the decision.

The Ombudsman asked the Agency to explain the legal basis for its practice and to inform him who the Agency considered to be parties to such a case.

In the Agency's opinion, the student who was the intended recipient of the support was, among others, a party to the case. The Ombudsman concurred with this.

In addition, the Ombudsman stated that it follows from general legal principles that authorities must directly notify the parties to a case of their decision. A deviation from a legal principle requires a clear statutory basis.

The act on support for students with disabilities or special needs did not provide such a clear statutory basis, and the Ombudsman therefore recommended that the Agency change its administrative practice and communicate its decisions directly to the students who were to receive the support.

Finally, the Ombudsman stated that there was not a sufficient legal basis for the Agency's requirement that educational establishments applying for support for students with disabilities or special needs had to receive the decisions via the Agency's computer system.

(Case No. 2010-1527-7093)

K. MINISTRY OF SCIENCE, INNOVATION AND HIGHER EDUCATION

The following case concluded in 2011 was selected for publication in the Annual Report:

12-1. ELECTRONIC COMMUNICATION WITH UNIVERSITIES. REPRESENTATION BY OTHERS

The Ombudsman opened a case on his own initiative vis-à-vis the Ministry of Science, Technology and Development regarding the access of students and

applicants to being represented by others – to which they are entitled pursuant to section 8 of the Public Administration Act – when communicating with universities.

The reason for the Ombudsman investigation was an executive order giving the universities the power to decide that all communication between university and students and between university and applicants for courses must, completely or partially for the individual course, be electronic.

The Ministry agreed with the Ombudsman that students and applicants must have access to representation by others when communicating with universities. One way to enable this is for the university to design its IT system to allow others to use it on behalf of students or applicants. Another way is for the university to include, as part of its decision to adopt obligatory electronic communication, the option of exemption for students and applicants wishing to be represented by others.

The Ministry stated that it would adjust the executive order to ensure observance of the provisions of the Public Administration Act on representation by others.

The Ombudsman wrote to the Ministry that he assumed that the IT system would inform students and applicants of the possibility of being represented by others. If the system did not provide this possibility – and students and applicants wishing to be represented by others could therefore be exempt from electronic communication – the Ombudsman assumed that students and applicants would receive clear and relevant guidance on the option of exemption from electronic communication.

(Case No. 2011-0050-7091)

14-5. THE INFORMATION IN THE VETSTAT DATABASE IS ENVIRONMENTAL INFORMATION

The Ministry of Science, Technology and Development refused a number of citizens access to the Vetstat database, which contains information about the use, prescription and consumption of prescription-only drugs, growth promoters and coccidiostat feed additives.

With reference to section 3(3) of the Environmental Information Act on administrative measures intended to protect the environment, the Ombudsman stated that all information in Vetstat is environmental information. In addition,

the Ombudsman was of the opinion that the citizens' requests for access were so specific that they fulfilled the identification requirement pursuant to section 2(1) of the Environmental Information Act, cf. section 4(3) of the Act on Public Access to Documents on Public Files. Regarding access to information about veterinarians' authorisation numbers, the Ombudsman stated that the Ministry had not specified how handing over such information would entail an obvious risk of such harm as to warrant refusal of access pursuant to section 2(1) of the Act on Access to Environmental Information and section 2(1), cf. section 12(1)(ii) of the Act on Public Access to Documents on Public Files.

The Ombudsman recommended that the Ministry of Science, Innovation and Higher Education reopen the case.

(Case No. 2009-3430-301)

L. MINISTRY OF FOOD, AGRICULTURE AND FISHERIES

The following cases concluded in 2011 were selected for publication in the Annual Report:

11-1. FEE CHARGED FOR EXTRACTION OF INFORMATION FROM THE CENTRAL HUSBANDRY REGISTER

The Veterinary and Food Administration decided that a man was entitled to access to the Central Husbandry Register (CHR), except for confidential information. In its decision the Veterinary and Food Administration left it to its partner – a privately owned enterprise – to execute access to the CHR and to calculate and charge a fee. The man complained to the Ministry of Food, Agriculture and Fisheries and later to the Ombudsman. The subject of his complaint was, among other things, the enterprise's demand that the man first accept the inclusion in the fee of a number of items within a set amount.

First, the Ombudsman pointed out that according to its own contents the executive order on payment for the release of information from the General Agricultural Register/Central Husbandry Register had been issued pursuant to three repealed enabling acts. The executive order's provisions were upheld through acts which were later adopted. It was, however, the opinion of the

Ombudsman that it would be most consistent with the guidance notes issued by the Ministry of Justice on the composition of administrative provisions that the executive order be corrected within a reasonable time frame so that the current legislative basis appear from its wording.

In the Ombudsman's opinion it was regrettable that while processing the man's appeal the Ministry had not made it clear to him which items he did not have to pay a fee for. The Ombudsman also found it regrettable that the Veterinary and Food Administration and the Ministry had left it to the enterprise to determine the fee payable for extraction of information from the CHR.

The Ombudsman informed the Ministry of Food, Agriculture and Fisheries of his opinion and recommended that Ministry reopen the case and include the contents of his statement when making a new decision.

(Case No. 2009-4630-301)

11-2. THE IDENTIFICATION REQUIREMENT OF THE ENVIRONMENTAL INFORMATION ACT

The Danish Food Industry Agency and the Ministry of Food, Agriculture and Fisheries refused a man access to information about all production blocks in Denmark since 1992. The concept 'production block' is mainly used in connection with the administration of the EU hectare support schemes. The information was contained in a database at the Danish Food Industry Agency. The grounds for the authorities' refusal were, among others, that the man's request for access did not fulfil the identification requirement of the Environmental Information Act and the Act on Public Access to Documents on Public Files.

The man complained to the Ombudsman. The Ombudsman took as his basis that the information was covered by the Environmental Information Act. He stated that the provisions of the Act on Public Access to Documents on Public Files to which the Environmental Information Act referred should be interpreted in the light of the Environmental Information Directive. On that basis, the Ombudsman did not find that the part of the identification requirement of the Act on Public Access to Documents on Public Files regarding prior knowledge of the information – the subjective identification requirement – could be applied in exactly the same way in relation to requests for access to environmental information. In the Ombudsman's opinion, the man had identified his

request sufficiently according to the Environmental Information Act, and he was therefore entitled to access to the information unless concrete provisions on exemption could be applied. However, the Ombudsman stated that the authorities might consider whether there were reasonable grounds for giving the man the information in another form or another format than that which he had requested. The Ombudsman encouraged the authorities to enter into a dialogue with the man regarding this possibility.

(Case No. 2009-3686-301)

M. MINISTRY FOR GENDER EQUALITY AND ECCLESIASTICAL AFFAIRS

The following case concluded in 2011 was selected for publication in the Annual Report:

6-1. DECISION BY THE MINISTRY OF ECCLESIASTICAL AFFAIRS ON LOSS OF ELIGIBILITY MADE ON INSUFFICIENT GROUNDS

A former member of a parochial church council complained to the Ombudsman regarding his loss of eligibility for election to the council. The loss of eligibility happened as a result of an act of violence.

The Ombudsman did not find it a cause for comment that in the Bishop's decision the Bishop had given weight to the fact that the act of violence was perpetrated on another council member during a discussion of a subject which was partly related to council work and partly about the basic democratic rules pertaining to parochial church council elections. Neither did it give the Ombudsman cause for comment that in its decision the Ministry of Ecclesiastical Affairs had given weight to the view that the act of violence and the circumstances under which the act took place were incompatible with the responsibility of performing the tasks of a parochial church council member.

Neither did the authorities' statements about practice in this area and its application give the Ombudsman cause for comment on the available basis.

However, the Ombudsman found that the Ministry of Ecclesiastical Affairs had made its final decision about the parochial church council member's eligi-

bility on insufficient grounds. The Ombudsman therefore considered whether to recommend because of this error that the Ministry reconsider the question of the member's eligibility. In the Ombudsman's opinion, however, there was no prospect that inclusion of the additional circumstances would result in a different outcome of the case as far as the question of eligibility was concerned. Consequently, the Ombudsman decided not to recommend that the Ministry reconsider the question.

(Case No. 2009-4422-749)

N. MINISTRY OF HEALTH

No cases concluded in 2011 were selected for publication in the Annual Report.

O. MINISTRY OF TAXATION

The following cases concluded in 2011 were selected for publication in the Annual Report:

13-1. CASE PROCESSING TIME OF THE PROPERTY ASSESSMENT APPEAL BOARD FOR COPENHAGEN

In 2010 a firm of accountants complained to the Ombudsman on behalf of a utility company about the case processing time of the Property Assessment Appeal Board for Copenhagen. The firm of accountants was dissatisfied because the Board still had not finished processing the cases regarding the public land assessment as at 1 October 2006 for five properties owned by the utility company. The Board received the appeals in March 2008 and stated during the Ombudsman's processing of the complaint to him that the five cases could be expected to be concluded mid-2011. This meant that the Board's case processing time would be more than three years.

The Ombudsman concluded processing the complaint from the firm of accountants before the Board had finished processing the five cases. He stated that the Board's case processing time, including the Board's estimated conclusion date for the cases, was clearly unacceptable.

The Board stated that all the country's Property Assessment Appeal Boards had problems with their case processing times, as the boards had experienced a marked increase in the number of appeal cases. Consequently, the boards had decided to process the oldest cases in the country as a whole first.

With regard to the boards' organisation of the case processing and their prioritisation of the cases under the circumstances, the Ombudsman stated that he could not criticise that the oldest cases in the country were dealt with first. Neither could he criticise that the Property Assessment Appeal Board for Copenhagen had declined to process the utility company's five cases before other (older) cases.

The Ombudsman also mentioned the duty to give notification of the case processing time in a situation such as that of the Property Assessment Appeal Boards.

The information which the Ombudsman received from the Board about the mismatch between the number of appeal cases and the Board's resources prompted the Ombudsman to open a case on his own initiative vis-à-vis the Ministry of Taxation concerning the case processing times of the country's 15 property assessment appeal boards.

(Case No. 2010-1882-2001)

13-2. CASE PROCESSING TIME OF THE TAX AND PROPERTY ASSESSMENT APPEAL BOARD FOR BORNHOLM

In 2010 a man complained to the Ombudsman that the Tax and Property Assessment Appeal Board for Bornholm still had not finished processing his case regarding the public land assessment as at 1 October 2008 for a number of holiday home properties. The Board received the man's appeal in July 2009 and informed him in July 2010 that the earliest the case could be expected to be concluded was in August 2011, meaning that the Board's processing time would be at least 25 months.

The Ombudsman concluded processing the man's complaint before the Board has finished processing the case. The Ombudsman stated that the Board's case processing time, including the Board's estimated conclusion date for the cases, clearly exceeded the case processing time which the complainant could reasonably expect.

The Board stated that all the country's Property Assessment Appeal Boards had problems with their case processing times, as the boards had experienced a marked increase in the number of appeal cases. Consequently, the boards had decided to process the oldest cases in the country as a whole first.

The Ombudsman stated that he could not criticise that the oldest cases in the country were dealt with first.

The Ombudsman also mentioned the duty to give notification of the case processing time. In a situation such as that of the Property Assessment Appeal Boards, he could not criticise that the Board only gave notification about its case processing time every 12 months.

The information which the Ombudsman received from the Board about the mismatch between the number of appeal cases and the Board's resources prompted the Ombudsman to open a case on his own initiative vis-à-vis the Ministry of Taxation concerning the case processing times of the country's 15 property assessment appeal boards.

(Case No. 2010-3186-2001)

13-3. CENTRAL CUSTOMS AND TAX ADMINISTRATION'S OBSERVANCE OF REFUND DEADLINE. PAYMENT OF INTEREST ON LATE PAYMENTS

A car dealer complained to the Ombudsman that the Central Customs and Tax Administration (SKAT) generally did not observe the deadline of three weeks stipulated by the Act on Motor Vehicle Registration Duty for refunding registration duty on export of cars. The car dealer also complained that SKAT did not pay any interest on registration duty that was refunded too late if the interest sum was less than DKK 200.

On the basis of information received from SKAT, the Ombudsman took as his basis that SKAT had not observed the deadline in about one per cent of cases in 2009 and in about three per cent of cases in 2010, and that SKAT had not observed the deadline in about 80 per cent of the car dealer's cases.

On this basis, the Ombudsman criticised SKAT's non-compliance with the deadline pursuant to the Act on Motor Vehicle Registration Duty and severely criticised SKAT's non-compliance with the deadline in the complainant's cases.

With regard to the minimum interest amount payable, SKAT and the Corporate Group Centre under the Ministry of Taxation referred to SKAT's legal guide, which set the minimum amount at DKK 200. SKAT wrote that the minimum amount had been carried over from a 1987 departmental circular.

The Ombudsman recommended SKAT and the Corporate Group Centre to investigate whether SKAT had a legal basis to maintain a DKK 200 minimum on refunds.

(Case No. 2009-0174-200)

13-4. CASE PROCESSING TIME FOR REQUEST FOR ACCESS TO MINISTER'S APPOINTMENT BOOK AND OTHER INFORMATION

On 6 August 2010 the Ministry of Taxation received a request for access to information about the Minister's entertainment costs since his appointment in 2007, to his appointment book, to information about his domestic and international travels and to information about benefits in kind 'granted'.

On 3 September 2010 the Ministry declined to give access to the Minister's appointment book. On 17 November 2010 the Ministry granted access to the rest of the requested information.

The Ombudsman did not criticise the Ministry's case processing time. However, the Ombudsman did find that the Ministry ought to have made a decision on the request for access to the Minister's appointment book as soon as possible after receiving the request.

The Ombudsman gave weight to the facts that there were two ministries involved in the case and that the two ministries had followed different practices when classifying the Minister's meetings as official and non-official, respectively. This had made it difficult to determine which documents were covered by the request. The Ombudsman also took into considerable account the volume of material procured and that the applicant had been regularly informed of the reason for the delay and of when a decision could be expected.

With regard to access to the Minister's appointment book, the Ombudsman found it important that reference was made in the decision to the fact that ministers' appointment books as such are not covered by the Act on Public Access to Documents on Public Files. As the Ministry had thus at no point in time doubted that the request for access to the Minister's appointment book was to

be declined, the Ombudsman was of the opinion that the Ministry should have made a decision on the request as soon as possible after receiving it.

(Case No. 2010-3954-2000)

13-5. REQUEST FOR ACCESS IN GENERAL CASE REGARDING TRIPS MADE BY EMPLOYEES

A journalist complained to the Ombudsman about the Ministry of Taxation's refusal of his request for access to information about nine trips made by employees of the Central Customs and Tax Administration (SKAT). The grounds given by the Ministry to the journalist for its refusal were that the Ministry had not been able to find any documents or information about the trips by searching its records.

During the Ombudsman's investigation of the case, the Ministry located nine questionnaires about the trips. The questionnaires had been completed by employees and were meant for use in a review in connection with the report to Parliament which the journalist has referred to in his request for access.

The Ministry of Taxation stated to the Ombudsman that the journalist could not be granted access to the questionnaires because they were part of the employees' personnel files. The Ministry referred to section 2(2) of the Act on Public Access to Documents on Public Files. The Ombudsman stated that in his opinion the questionnaires were part of the case concerning the general review for use in the report to Parliament. Consequently, the Ombudsman did not find that section 2(2) of the Act on Public Access to Documents on Public Files could be used as grounds for exemption from access. The Ministry should have made an individual assessment of whether the information could be exempted from access.

In addition, the grounds given by the Ministry to the journalist for its refusal to grant access could, in the Ombudsman's opinion, leave the incorrect impression that the Ministry was not in possession of documents or information about the nine trips. The Ombudsman therefore criticised the Ministry of Taxation for giving a misleading reason for its refusal.

The Ombudsman asked the Ministry of Taxation to reopen the case.

(Case No. 2011-1088-8019)

15-1. AUTHORITIES ALLOWED TO USE INFORMATION FROM OPEN FACEBOOK PROFILES

The Central Customs and Tax Administration (SKAT) used an employee's private Facebook profile to obtain information about a woman from her Facebook. The woman had an open profile, which meant that any Facebook user would be able to see the information about her on Facebook. The woman felt that her privacy had been invaded and she complained to the Data Protection Agency, which forwarded her complaint to the Ombudsman.

The Ombudsman stated that the standard terms drawn up by Facebook for the use of Facebook are contractual terms governing the private law relationship between Facebook and its users. The standard terms have no legal effect in relation to administrative authorities in Denmark, which are subject to public law regulations and principles. In the matter at hand, SKAT was subject to the inquisitorial principle and the provisions of the Act on Processing of Personal Data.

The Ombudsman also stated that if a person has a Facebook profile which is so open that any Facebook user will be able to see the information on the person contained therein, such information is in reality publicly available. According to circumstances, this can also be the case if a person has a restricted-access Facebook profile but has a very large number of Facebook 'friends'. Information about the person can become publicly available in this instance as well.

In principle, the authorities may freely process publicly available personal data pursuant to section 7(2)(iii) of the Act on Processing of Personal Data. However, the free processing is limited by the Act's section 5 on good data processing practice. The authorities may only process personal data for legitimate purposes and if the data are relevant to the case.

The Ombudsman could not criticise that SKAT had obtained information using an employee's private Facebook profile, because the employee did not use a false profile and, given the way the woman had set up her Facebook profile, did not need to make himself known to the woman in order to get the information.

(Case No. 2011-2657-2091)

15-2. CASE PROCESSING TIMES OF THE COUNTRY'S 15 PROPERTY ASSESSMENT APPEAL BOARDS

The Ombudsman had previously concluded investigating two specific cases on the case processing times of two of the country's 15 Property Assessment Appeal Boards. The cases have been published as Cases no. 2011 13-1 and 2011 13-2 on the website of the Parliamentary Ombudsman and are included in the Annual Report of the Parliamentary Ombudsman, 2011.

In the two specific complaint cases, the Ombudsman criticised the case processing times of the boards, which were between two and three years. However, the two cases showed that these were not isolated incidences but symptomatic of a general problem. Consequently, the Ombudsman initiated a general investigation vis-à-vis the tax authorities on the case processing times of the country's 15 Property Assessment Appeal Boards.

The Appeal Centre of SKAT (the Central Customs and Tax Administration), which acts as secretariat for the Property Assessment Appeal Boards, informed the Ombudsman that the reason for the long case processing times was a tremendous increase in 2008 in the number of appeals submitted to the appeal boards.

The Appeal Centre had implemented a series of measures to reduce the case processing times. A very large number of case officers had been transferred to process the many appeal cases. In addition, the Appeal Centre had coordinated the case processing across all appeal boards so that all the country's cases were pooled and the oldest processed first. The Appeal Centre had established national targets for the conclusion of those appeal cases which the appeal boards had received in 2009, 2010 and 2011.

The Ombudsman stated that the targets set by the Appeal Centre would continue in the near future to result in case processing times which would be longer than acceptable. In the Ombudsman's opinion, however, the Appeal Centre had implemented a series of absolutely necessary and factually relevant measures in order to remedy the unusual situation. The Ombudsman asked the Appeal Centre to keep him informed of how the continued process of clearing the backlog of cases was progressing.

(Case No. 2011-0772-2001)

P. MINISTRY OF SOCIAL AFFAIRS AND INTEGRATION

The following cases concluded in 2011 were selected for publication in the Annual Report:

14-1. ENTITLEMENT TO TEMPORARY BENEFIT WHEN MOVING TO ANOTHER LOCAL GOVERNMENT AREA

A woman resigned from her flexible job under the flexible job scheme in order to move to another part of the country. The new local authority made a decision to the effect that the woman was to be reassessed for eligibility for a flexible job before being entitled to temporary benefit. This interpretation was in accordance with a decision in principle by the National Social Appeals Board.

According to the legislative history behind section 74 b of the Act on an Active Social Policy, a person who has resigned from a flexible job under the flexible job scheme is entitled to temporary benefit if he or she had a valid reason for resigning.

The Ombudsman did not agree with the authorities that moving to another local government area could never constitute a valid reason for resigning. Neither did the Ombudsman agree that the receiving local authority was always to reassess whether a relocating person was eligible for a flexible job under the flexible job scheme before temporary benefit could be paid to that person. In the Ombudsman's opinion, the new local authority should have checked whether the woman had a valid reason for resigning from her flexible job. The Ombudsman therefore recommended that the Employment Appeals Board reopen the case with respect to this question.

(Case No. 2010-0436-0540)

14-2. DUTY TO PROVIDE AN EXPLANATION IN PROTRACTED CASES CONCERNING ACCESS TO DOCUMENTS

A journalist had asked the Burka Working Group for access to a report prepared for the Working Group. No decision was made about the request within 10 days, and the Working Group was consequently required by section 16(2) of the Act on Public Access to Documents on Public Files to inform the journalist

of the reason for the delay and to give her an estimate of when a decision could be expected.

While processing the journalist's request, the Burka Working Group sent her four updates. In all four updates the Working Group stated that the reason why no decision had been made was deliberations as to principle concerning the question of access.

The Burka Working Group informed the Ombudsman that the deliberations as to principle concerned the question of whether those exemption provisions of the Act on Public Access to Documents on Public Files which aim at protecting the regard for the internal or political decision process applied in relation to the documents and the information in the case. In the Ombudsman's opinion, it would have been most appropriate if the Working Group had given the journalist this general description in its first three updates.

With regard to the fourth and last update, the deliberations as to principle had been concluded by the time the update was sent – and the Burka Working Group was only waiting for a statement from the Ministry of Foreign Affairs in order to make its final decision. The Ombudsman found that in this fourth and last update the Working Group should have informed the journalist that the case awaited a statement from the Ministry of Foreign Affairs.

(Case No. 2010-0164-6018)

14-3. INCLUSION OF NEW AND EASIER RULES COMING INTO FORCE AFTER THE ORIGINAL DECISION IN CONNECTION WITH REASSESSMENT AND ADMINISTRATIVE REVIEW OF DECISIONS IN THE SOCIAL SERVICES DOMAIN

A few days after a local authority had refused a citizen's application for a subsidy for necessary extra costs incurred due to permanent impairment of her physical function, new and easier rules on subsidies for necessary extra costs came into force.

The citizen subsequently appealed the refusal, but neither the local authority nor the Social Tribunal included the new and easier rules when they reassessed and reviewed the decision, respectively. In the Ombudsman's opinion, they should have done so.

The Ombudsman also made a more general statement on when in his opinion authorities should include new legislation which has come into force after the original decision was made – particularly in the social services domain.

(Case No. 2009-3497-050)

14-4. DE FACTO STOP FOR SOCIAL SERVICES CONSIDERED A DECISION

A social tribunal refused to consider an appeal against a local authority's de facto discontinuing socioeducational support and attendance granted to a citizen by the local authority. The reason why the services were discontinued was, among other things, that the local authority could not find staff to carry out the work. The local authority and the Social Tribunal considered the local authority's notification to discontinue the services to be part of the local authority's actual administrative activity.

The Ombudsman stated that the local authority's notification must be considered a decision, with the effect that the Social Tribunal was competent to consider the appeal against the local authority's de facto failure to provide the services granted.

(Case No. 2010-4161-0311)

16-1. ADEQUATE GROUNDS NOT GIVEN FOR CHANGED ASSESSMENT OF WOMAN'S ELIGIBILITY FOR EXTRA COST SUBSIDY UNDER SECTION 100 OF THE SOCIAL SERVICES ACT

For two and a half years a relatively young woman had received a subsidy for necessary extra costs incurred due to permanent impairment of her physical function pursuant to section 100 of the Social Services Act. When the local authority reassessed the woman's subsidy, it changed its assessment of whether she was eligible for an extra cost subsidy under section 100 of the Social Services Act. Thus, the woman was no longer entitled to a subsidy for necessary extra costs.

The woman appealed the decision to the Social Tribunal, which agreed with the local authority that the woman was not eligible for an extra cost subsidy under section 100 of the Social Services Act.

The authorities' decisions solely stated grounds for why the woman did not fulfil the conditions for eligibility. The authorities did not address the fact that she had been considered eligible for extra cost subsidies under section 100 of the Social Services Act for two and a half years, and they did not give her an explanation of why, as opposed to previously, they now assessed her not to be eligible.

Because the authorities' decisions did not provide an explanation of why the woman was no longer considered eligible for an extra cost subsidy under section 100, the Ombudsman was of the opinion that she had not been given adequate grounds for the decisions. In the Ombudsman's opinion, this was a matter for criticism.

The Ombudsman recommended that the Social Tribunal reopen the case and give the woman an explanation of why, as opposed to previously, she was not considered eligible for an extra cost subsidy under section 100 of the Social Services Act.

(Case No. 2010-2967-0315)

16-2. PUBLIC STATISTICS OR SCIENTIFIC RESEARCH – SECTION 10(V) OF THE ACT ON PUBLIC ACCESS TO DOCUMENTS ON PUBLIC FILES

A man asked the National Social Appeals Board for access to three questionnaires completed by three local authorities as part of the Board's preparation of a report on the supervision of social care accommodation facilities by local authorities and regions.

The Board refused the man access on the grounds that material can be exempted from access if it has been collected as a basis for the preparation of public statistics or scientific research (section 10(v) of the Act on Public Access to Documents on Public Files).

However, the Ombudsman was of the opinion that the Board's report – which was intended to provide a picture of local authorities' and regions' execution of their duty of supervising social care accommodation facilities – could not be deemed public statistics or scientific research.

The Ombudsman stated that the term 'public statistics' must be understood to mean something different and more than just a count of information received

from public authorities or other parties. In order for the term 'public statistics' to be applicable, it is required that the underlying material has undergone a certain qualified specialist statistical analysis. And 'scientific research' must be understood to mean research which is part of a scientific context and is performed by institutions whose primary function is of a scientific nature, such as universities or public research institutes.

The Ombudsman then stated that the National Social Appeals Board could not refuse the man's request for access to the questionnaires returned by the local authorities with reference to the above-mentioned rule, and he recommended that the Board reopen the case.

As the Board had in fact refused the man's request for access with reference to this rule, the man should at the same time have received guidance about the option of applying for access to the questionnaires directly from the three local authorities.

(Case No. 2010-4905-0016)

Q. PRIME MINISTER'S OFFICE

No cases concluded in 2011 were selected for publication in the Annual Report.

R. MINISTRY OF TRANSPORT

No cases concluded in 2011 were selected for publication in the Annual Report.

S. MINISTRY OF FOREIGN AFFAIRS

No cases concluded in 2011 were selected for publication in the Annual Report.

T. MINISTRY OF ECONOMIC AFFAIRS AND THE INTERIOR

The following cases concluded in 2011 were selected for publication in the Annual Report:

4-1. CONSULTATION WITH NEIGHBOURS PRIOR TO PLANNING PERMISSION

Two citizens complained to the Ombudsman that they had not been consulted before their local authority issued a planning permission in respect of a neighbouring property.

The Regional State Administration and the local authority did not find that the two citizens should have been consulted as parties to the case. Among other things, the Regional State Administration stated that the local authority could not have refused to issue a planning permission irrespective of any additional information and objections put forward by the citizens.

The Ombudsman found that the two citizens should have been consulted as parties to the case. He was also of the opinion that the Regional State Administration should have reprimanded the local authority for this omission. The Ombudsman stated, among other things, that the duty to consult parties in an application case is not contingent on whether or not the public authority is allowed to refuse to make the decision applied for.

(Case No. 2009-3164-104)

4-2. REQUEST FOR ACCESS TO SCHOOL MEMOS ON INCIDENTS BETWEEN SCHOOL EMPLOYEES AND PARENT

A parent representative on a school board complained to the Ombudsman about a refusal of a request for access to three memos. The memos had been written by three employees at the school and concerned incidents between the employees and the parent representative. The employees had given the memos to the school principal, who had read out the memos at a school board meeting at which the parent representative was also present. The parent representative afterwards requested access to the three memos. The request was refused by the local authority and the Regional State Administration (the unit supervis-

ing local authorities). In the local authority's opinion, the memos were internal documents within the meaning of the Act on Public Access to Documents on Public Files and there was no duty to release the information contained in the memos. The Regional State Administration was of the opinion that the memos were not covered by the Act at all.

The Ombudsman stated that the memos were covered by the Act and that the Regional State Administration's conception of the law was clearly incorrect. He was also of the opinion that the three memos had been subject to administrative processing, cf. section 4(1), first sentence, of the Act, which is a condition for a right of access under the Act to exist at all.

The Ombudsman noted that the memos did not contain any assessments from the three employees but solely information about factual circumstances of the three incidents. Regardless of the possible internal character of the memos, there was consequently a right of access to the memos according to section 11(1) of the Act (on the obligation to extract from documents and provide information which is not exempt from access). Accordingly, the Ombudsman did not find it necessary to determine whether the memos might have lost their internal character on being read out.

The Ombudsman recommended that the Regional State Administration resume processing the case.

(Case No. 2009-2870-701)

20-5. NO DUTY FOR LOCAL AUTHORITY TO CHECK WHETHER POWER OF ATTORNEY FROM OWNERS' ASSOCIATION HAD BEEN VALIDLY SIGNED

A construction firm applied on behalf of an owners' association for a building permit to put up two balconies. The construction firm had a power of attorney that had been signed by the association's chairman. One of the owners complained to the Regional State Administration and then to the Ombudsman. She found that the local authority should have checked whether the power of attorney was valid before granting the permit. In the Ombudsman's opinion, the local authority did not have a duty to check either whether the decision to put up balconies had been validly made at the association's general meeting or whether the power of attorney given to the construction firm had been signed in

accordance with the provisions governing the powers to bind owner-occupied flat associations.

(Case No. 2009-4541-109)

U. LOCAL AND REGIONAL AUTHORITIES

The following cases concluded in 2011 were selected for publication in the Annual Report:

20-1. DEMAND BY LOCAL AUTHORITY THAT COUNCILLOR REPAY COMPENSATION FOR LOST EARNINGS

Part of a local councillor's remuneration had been paid in accordance with the special rules on compensation for lost earnings. The councillor had handed in statements on a regular basis of the number of hours he had spent working on the council, and the local authority had paid him his remuneration on the basis of these statements.

Later, the local authority demanded that the councillor repay his remuneration as he had not documented that he had suffered a loss of earnings corresponding to the amount that he had received in remuneration.

The Ombudsman emphasised that the local authority's guidance to the councillor indicated that he had been in good faith when he received his remuneration. In the Ombudsman's opinion, the local authority had not included the significance of its guidance to a sufficient degree when assessing whether there was a basis for demanding repayment of the remuneration received by the councillor.

The Ombudsman recommended that the local authority reopen the case and make a new decision.

(Case No. 2009-3774-410)

20-2. REVOCATION OF DECISION THAT COMPLAINT ABOUT EMPLOYEE WOULD HAVE NO CONSEQUENCES

A local authority received a verbal complaint that an employee had acted inappropriately towards a colleague. The local authority informed the employee that the complaint would have no consequences for him. A written complaint was subsequently lodged which led to the local authority obtaining witness statements about the incident. The local authority then revoked the favourable decision that no further action would be taken in the matter and gave the employee a reprimand.

The Ombudsman stated that the revocation was based on a reassessment of the information already available and that there were no considerations sufficiently weighty to justify a revocation of the decision. The local authority had also neglected its duty to take notes by not taking notes about the verbal complaint and the verbal witness statements. The Ombudsman recommended that the local authority reopen the case.

(Case No. 2009-3418-812)

20-3. SUMMARY DISMISSAL DUE TO CRIMINAL CONVICTION

A doctor complained to the Ombudsman because he had been summarily dismissed from a hospital position due to a previous criminal conviction. The Ombudsman could not criticise the Region's view that the doctor did not fulfil the decorum requirement for the position as doctor at the hospital. However, the Ombudsman did criticise several elements of the Region's decision and recommended that the Region reopen the case in order to decide whether the Region could dismiss the doctor summarily or whether he should have been dismissed with the usual notice.

(Case No. 2009-3690-810)

20-4. LOCAL AUTHORITY'S ACTIONS IN RELATION TO APPOINTMENT OF PREVIOUSLY CONVICTED PERSONS AND IN RELATION TO REQUESTING AND REGISTERING CRIMINAL RECORD CERTIFICATES

A newspaper article wrote of a man who had applied for jobs with the local public swimming baths and as a substitute teacher at the local schools. The article

stated that the man's applications had been refused on the grounds that he did not have a clean criminal record. The Ombudsman decided to open an own-initiative investigation of the matter vis-à-vis the local authority. While processing the case, the Ombudsman raised some additional questions regarding the local authority's actions in relation to requesting and registration of criminal record certificates.

The local authority stated that convicted persons were not excluded in advance from employment. In addition, the local authority decided, while the Ombudsman was processing the case, that in future a specific assessment of each individual case would be made to determine whether to request a private criminal record certificate. The Ombudsman criticised that the local authority did not register in its archives those criminal record certificates which it obtained directly from the Commissioner of Police or received from job applicants.

(Case No. 2008-4296-810)

20-6. REGION'S PROCESSING OF COMPLAINT ABOUT AMBULANCE RESPONSE TIME OPEN TO SEVERE CRITICISM

A woman telephoned the emergency call centre after finding her husband unconscious. However, the emergency call centre gave a wrong address to the ambulance operator. This delayed the ambulance and the woman's husband died. The woman lodged a complaint with Region Zealand about the time that elapsed before the ambulance arrived.

The Region did not request the necessary information from the emergency call centre and the ambulance operator to be able to reply to the complaint. As a result, the Region's reply to the woman did not contain an account of the chain of events. Neither did the Region's reply address the woman's complaint about the ambulance response time. The woman therefore objected against the Region's reply. At first the Region did not reply to her objections, but after the woman had complained to the Ombudsman, the Region wrote to her that it had not replied to her objections because it had considered the matter closed.

It was the Ombudsman's overall opinion that the way in which the Region had dealt with the woman's complaint was a matter for severe criticism. He recommended that the Region consider whether there was a more general need for establishing guidelines for case processing at the Region's pre-hospital centre.

(Case No. 2010-0573-4299)

20-7. FLEXIBLE JOB SCHEME EMPLOYEE DISMISSED WITHOUT INCLUSION OF THE SOCIAL CHAPTER

As a result of cutbacks a woman was dismissed from a flexible job at an institution run by the local authority.

The Ombudsman criticised that the local authority had not included its duties pursuant to the framework agreement on the Social Chapter in its decision to dismiss the woman. The Ombudsman stated that the framework agreement presumably meant that the local authority had an increased obligation to try to find the woman another position. In the Ombudsman's opinion, the local authority had neither documented that it had been impossible to find the woman another position nor that the local authority had made any real effort to do so.

In addition, the Ombudsman criticised the local authority for not giving the woman adequate grounds for her dismissal, neither when she was consulted as a party nor in the local authority's subsequent decision. Furthermore, the local authority had not observed the rules on the consultation of parties to cases or on the duty to take notes.

On this basis the Ombudsman asked the local authority to reopen the case.

(Case No. 2010-1951-8133)

20-8. LOCAL AUTHORITY'S CASE PROCESSING TIME

In a case concerning an inspection of a private communal road, a citizen complained to the Ombudsman about the local authority's case processing time. From the first time the citizen contacted the local authority until the local authority submitted a statement to the Ombudsman, a period of over two years and seven months had elapsed without any processing steps being taken in the case.

The Ombudsman stated that this left the impression that the case had been forgotten by the local authority, and in his opinion the case processing by the local authority was a matter for severe criticism. The Ombudsman also found it regrettable that the local authority had not replied to reminders and to a request from the Road Directorate for comments, and that the local authority had not provided any information about the case processing time on its own initiative.

The Ombudsman recommended that the local authority consider setting targets for its case processing times and monitor observance of the targets.

(Case No. 2011-3023-5001)

20-9. SITUATION OF OTHER FAMILY MEMBERS MUST BE INCLUDED WHEN DAY CARE PLACES ARE ALLOCATED

As an own-initiative case, the Ombudsman investigated whether it was legal that a local authority had declined, pursuant to its own guidelines and practice, to include information about the situation of other family members when deciding which day care place to offer the individual child.

The background to the own-initiative case was a complaint to the Ombudsman from two parents. The Ombudsman could not help the parents because there were no available places at their desired kindergarten. However, the Ombudsman became aware that the local authority would only include information about the child in question in its decision and had declined to include information about the special circumstances of others in the child's family.

The local authority denied that it generally refused to include certain information, such as special circumstances of other family members. However, in the local authority's opinion, a condition for including such information was that it resulted in a special social or educational need for the child in question.

In the opinion of the Ministry of Social Affairs, the local authority's individual assessment could not be limited to the child's circumstances but must also include special family circumstances which impacted on the child.

The Ombudsman agreed with the Ministry's conception of the law. The local authority could not refuse to include information about special circumstances of others in the family.

The Ombudsman stated that it was regrettable that neither the local authority's nor the Ministry's conception of the law was reflected in the information on childcare posted on the local authority's website.

The Ombudsman recommended that the local authority consider how to include in its information on childcare the fact that special family circumstances

could (also) be considered. The Ombudsman asked to be kept informed of the result of the local authority's considerations.

(Case No. 2010-3782-0600)

20-10. NAME OF INFORMER COVERED BY DUTY TO TAKE NOTES. EXEMPTION OF NAME FROM ACCESS

A local authority received information from a citizen about illegal spreading of liquid animal manure on a farm. Shortly afterwards, the local authority carried out an unannounced inspection of the farm. The local authority refused to give the farmer access to the name of the informer on the grounds that the informer had claimed to have been threatened by the farmer before. The Regional State Administration at first referred the case back to the local authority but later upheld the local authority's refusal to give access.

The Ombudsman stated that the local authority should have noted down and filed the name of the informer on the case file. The local authority could not omit noting down the name of the informer on the grounds that it wished to avoid disclosure of the name to the farmer. Depending on the circumstances, an authority can exempt from access the names of informers and others who have contributed with information about a case. On the available basis, the Ombudsman did not find that the local authority and the Regional State Administration had sufficient grounds for refusing the farmer access. The Ombudsman recommended that the local authority reopen the case.

(Case No. 2010-5270-1011)

21-1. LANGUAGE USED BY LOCAL AUTHORITY

A man complained to the Ombudsman about a local authority's processing of several requests for access to documents in its cases about a local property. The man's complaint concerned, among other things, the way in which the local authority replied to his requests for access.

The Ombudsman did not find that he had grounds for criticising the local authority's processing of the man's requests for access, but he did find that the language used in the local authority's replies to the requests overstepped the bounds of good administrative practice.

In addition, the Ombudsman stated that he would not ask the local authority to obtain information from its chief executive about his statements on the case to a local newspaper because this would place the chief executive in a position which might lead to self-incrimination.

(Case No. 2011-1291-1090)

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