THE DANISH
PARLIAMENTARY
OMBUDSMAN

Annual Report

2010

THE DANISH
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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. 502 of 12 June 2009), 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 outline of the cases in the report is 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 2010.

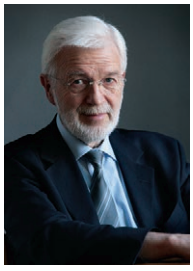
The 2010 report contains articles from the institution's divisions. The idea is to provide broader and more general information about important matters, cases or development trends.

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

The statistics are appended together with summaries of selected cases from 2010.

Copenhagen, September 2011

HANS GAMMELTOFT-HANSEN



Hans Gammeltoft-Hansen
Parliamentary Ombudsman

GOOD ADMINISTRATIVE PRACTICE

– about good behaviour by the administration

All the cases processed by the Parliamentary Ombudsman are assessed according to rules. These are primarily rules of *law,* i.e. legal provisions, administrative regulations and unwritten fundamental legal principles. However, alongside the actual rules of law, another system of rules and principles also forms part of the basis of the Ombudsman's assessments: good administrative practice.

It can be difficult to get an overview of the standards and principles constituting good administrative practice. They cannot be found in the text of acts and orders. Within some areas, they may be mentioned in guides and other regulations, but the directions are far from always as specific as the actual rules of law. New definitions of what must be regarded as good administrative practice may also be introduced, especially when the Ombudsman considers specific cases.

All this results in some uncertainty about the concept of good administrative practice among many case workers and authorities. They have a feeling that it is not always possible to guard against breaking the rules and principles of good administrative practice.

This is a problem not only for the relevant members of the administration themselves, but for the entire relationship between citizen and public administration, for good administrative practice is – both historically and currently – a core concept in our administrative culture; a pivot in relations between administration and citizens.

It is therefore also important to understand the meaning and origins of good administrative practice and in addition to have some overview of what it involves. If one knows where administrative practice originates, how it develops and what it covers, it should also be easier to comply with its rules.

ADMINISTRATIVE PRACTICE IS ETHICS-BASED

150 years ago, good administrative practice was almost the only rule. It formed the basis of the administration's relations with citizens. Gradually rules of law were added. In particularly important areas, good administrative practice was translated into legal principles and rules of law. However, good administrative practice still underlies the entire system of case processing rules that we know today. Where rules of law are inadequate or do not reach, good administrative practice still emerges and applies.

Good administrative practice is ethics-based. In other words, it is based on some fundamental values in the view of human nature and society and it is reflected in a multitude of rules and patterns of behaviour between individuals and groups of people.

This also explains why good administrative practice tends to cover everything from the most general to the most specific. It is good administrative practice to respect the citizen whose welfare depends to a greater or lesser extent on your decision as an independent and equal human being; this is 'general' ethics. However, it is also good administrative practice to introduce yourself to citizens by name or print your name under a hard-to-read signature in a letter to a citizen; this is 'specific' ethics, also called etiquette.

OVERVIEW AND STRUCTURE

It is not easy to get an overview of the existing rules and principles of good administrative practice. It is not a simple matter to recognise the connection between the following: public employees must not speak in a patronising or offensive way to a citizen, public employees must not receive gifts or other benefits of any value in connection with their work, case processing must not be protracted, grounds given for decisions must include comments on any views expressed by the citizens, the documents of a case must not be in a confused mess, an authority must to some extent provide information about for instance new rules impacting on citizens, etc.

Some structure is necessary to form an overview of this apparent mishmash of rules and directions. Two categorisations are particularly useful for sorting the many rules.

The first distinction is between standards associated with existing rules of law and those not connected with rules of law. For instance, sections 22-24 of the

Public Administration Act lays down rules stating that grounds must to some extent be given for administrative decisions. There are, however, situations beyond the limited scope of these sections where it is still good administrative practice to give grounds. In other words, these standards are a kind of extension of the legal rules. Conversely, for instance the rules that citizens must be addressed politely in speech and writing and that public employees should introduce themselves by names are not linked to any rule of public administration law.

The other distinction identifies whether a rule of good administrative practice relates to the case processing in relation to a specific citizen or to the behaviour of the administration and its employees generally. The above examples (extended obligation to give grounds, introduction by name and polite use of language) are associated with the processing of specific cases. Conversely, the rule concerning not accepting gifts or other financial benefits reflects a general standard of behaviour which is not necessarily linked to specific cases.

Combining these two categorisations produces the following four categories:

Good administrative practice	In specific cases	As general behaviour
In connection with rules of law	group A	group B
Not linked to rules of law	group C	group D

Each of the four groups A-D has some external similarities and internal connections. This should make it somewhat easier to get an overview of and understand the nature of good administrative practice.

ADMINISTRATIVE PRACTICE AS AN EXTENSION OF THE RULES OF LAW

An example of *group A* – good administrative practice as an extension of rules of law and in connection with a specific case – is the obligation to give grounds. Other examples are the obligation to hear the parties and to give guidance on appeal. There are legal rules concerning both (above all sections 19-21 and sections 25-26 of the Public Administration Act). However, in certain situations, good administrative practice may imply that the parties must be heard or that guidance must be given on appeal even though this is not covered within the scope of the legal rules.

If for instance an employee of a private operator with which an authority has contracted concerning job creation efforts is dismissed at the request of the

authority, this is not a dismissal case within the administration, and the rules concerning the hearing of parties laid down in section 19 of the Public Administration Act do not apply. Nonetheless, good administrative practice implies that the employee should be heard in such a situation (Annual Report of the Parliamentary Ombudsman, 2009, Case No. 1-1). In this connection, the employee should also be informed which decision or reaction the authority has in mind (for instance dismissal or a warning), so as to be able to take this into account in his/her statement before the final decision is made.

Group B also involves good administrative practice as an extension of rules of law – now not in connection with a specific case, but as a general standard of behaviour. As an example the prohibition against accepting gifts can be mentioned. Of course this prohibition can be regarded as an extension of the rules prohibiting the acceptance of bribes, but it is also related to the rules of law concerning disqualification.

The statutory rules concerning disqualification have not only been established to prevent subjective and therefore wrong decisions. They also have the wider objective of helping to establish confidence that the administration is not influenced by extraneous considerations, that it is impartial. Here, the disqualification rules are extended by the standards of good administrative practice preventing public employees from receiving gifts from citizens. If they did, this would reduce confidence in the administration's impartiality and, in the worst case, also affect the objectivity of the decisions.

ADMINISTRATIVE PRACTICE NOT LINKED TO RULES OF LAW

Guidelines concerning case processing times are an important example of *group C* – good administrative practice when processing specific cases involving citizens, but usually not linked to existing rules of law.

Whether the case processing time is too long depends on various circumstances, above all the nature of the case. It is therefore usually impossible to set specific deadlines for how long the processing of a case may take. However, the principles of good administrative practice comprise other types of general directions on case processing time; for instance, a case should not remain untouched for a long time without any kind of action. If the case processing is protracted, the citizen must be informed of this and given a reason as well as an indication of when a decision is likely to be made, if possible. Reminders from the citizen must be answered.

Another example in this group is the rules laying down that citizens must be treated in a polite and considerate way. This also applies to the tone and style of letters written by authorities to citizens. It is patronising and contrary to good administrative practice to write for instance: 'In reply, we will endeavour to make you understand (…) without further examining your layman's legal considerations, we note that (…)' (Annual Report of the Parliamentary Ombudsman, 1990, p. 162). Good administrative practice also implies that the administration is obliged not only to write to citizens politely and correctly, but also to endeavour to use simple, comprehensible language which as far as possible is adapted to the recipient's background.

Group D comprises general rules and guidelines which are not linked to rules of law or directly associated with the processing of specific cases involving citizens. For instance, it includes the guidelines on how the individual administrations should make themselves accessible to citizens. Examples are reasonable opening hours for personal or telephone contact, suitable notice boards or other similar information and physical conditions taking account of any discretion required. The specific requirements obviously depend on the nature of the individual administration's activities and the extent to which it directly serves citizens. Some standards relating purely to orderliness also belong to this group, for instance that the documents of a case must be kept together or at least placed in the correct context and must be retrievable or that correct and comprehensive records must be kept by the authorities.

ESTABLISHED CUSTOM

It may be questioned whether the term 'good administrative practice' is fully adequate. 'Practice' usually refers to what is normally done and has been done for a long time, a kind of custom – that which is 'established custom'.

A look at the development of good administrative practice reveals that quite often the rules have been introduced as something which *should* be done rather than a reflection of what the administration is already doing. Nonetheless, the use of the term 'practice' is probably defensible. After all, it is not a mysterious phenomenon totally disassociated from normal standards of behaviour. On the contrary, most good administrative practice reflects the common understanding of what is decent, polite and reasonable in inter-human behaviour, with the addition of ordinary common sense and some sense of order.

The Ombudsman's efforts to develop and enforce good administrative practice are therefore to a large extent a matter of transferring ordinary good behaviour to the administration's case processing and behaviour towards citizens.

Jens Møller
Director General

GENERAL STATE OF THE OFFICE

The Ombudsman has implemented two initiatives aimed at improving the quality of the institution's work: a user survey and an evaluation panel. The idea behind both initiatives is that the ongoing development of the quality of the Ombudsman institution's work should to a greater extent be the result of a dialogue with the rest of the world.

The Ombudsman's legal conception in headline cases is frequently discussed by the public and at times also the subject of political and academic debate. However, the underlying daily work in the form of complaint case processing, inspection activities etc. does not attract similar attention. Moreover, the Ombudsman's own case processing, unlike that of many other public institutions, is not subject to external monitoring and control. These factors point towards greater user involvement in the development of the quality of the institution's work. In addition, a number of quality improving initiatives in connection with the institution's language and design project are primarily linked to user considerations. The user survey should therefore also be seen as part of the follow-up on that project.

The purpose of the user survey is to give a more detailed picture of how the users of the office perceive the Ombudsman's activities. The survey comprises five sub-surveys: citizens' perceptions of the complaint case processing, authorities' perceptions of the complaint case processing, the inspection activities of the office, the Ombudsman's website and the Ombudsman's electronic newsletters. The survey is carried out by the consultancy company Kalus (now Meng Institute ApS), primarily by means of questionnaires sent to different user groups. The consultancy company presents the results of the surveys in reports to the Ombudsman and they are communicated to the office's personnel on a regular basis.

In 2010, Kalus completed the user surveys concerning the Ombudsman's website and electronic newsletters. These two surveys look at various aspects of the Ombudsman's electronic communication with the rest of the world. The other three surveys focus mainly on citizens' and authorities' perceptions of the case

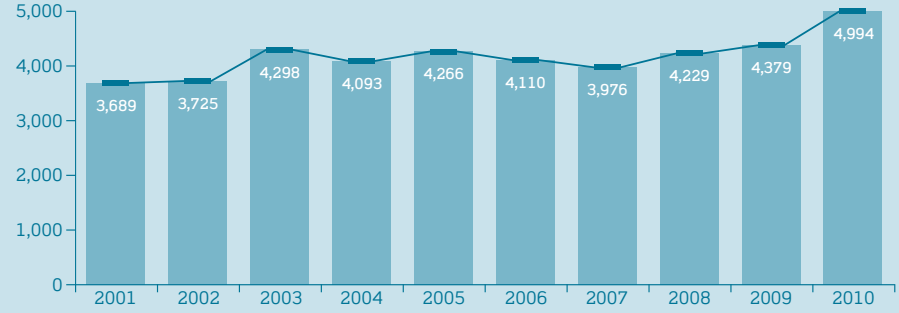
processing by the Ombudsman's office. The survey of citizens' perceptions was completed in 2011 and the survey of authorities' perceptions is expected also to be completed in 2011. The survey relating to inspection activities covers five institutions where inspections have been carried out by the Ombudsman. We expect this survey to be completed in early 2012.

The evaluation panel was established by the Ombudsman in 2009 to make a professional legal assessment of the office's work. The panel comprises five lawyers with a thorough knowledge of administrative law: Ms Pernille Boye Koch, Senior Lecturer, University of Southern Denmark, Ms Lisbeth Larsen, President, Glostrup Court, Professor Karsten Revsbech LLD, University of Aarhus, Professor Steen Rønsholdt LLD, University of Copenhagen, and Mr Anders Valentiner-Branth, practising lawyer. Every year, the panel reviews ten cases concluded during the preceding year in which a statement has been made by the Ombudsman. Half the cases are selected by the members of the panel, the other half are randomly selected by the office, in such a way that the cases show some diversity of content. The panel prepares a memo on its evaluation of the cases and this memo forms the basis of a meeting between the Ombudsman and the panel to discuss the subjects considered by the panel. Afterwards, the result of the panel's work is communicated to the Ombudsman's employees. In 2009, the main focus of the discussions was the decision concept in administrative law, while the discussions in 2010 among other things concerned the principles of discretion under rule and institution considerations.

Appendix C (pp. 63-77) contains various statistics – only a few key figures will be highlighted below:

The number of *new* cases in 2010 was 4,994 as against 4,379 in 2009. For comparison purposes, developments in the number of new cases have been as follows over the past decade:

Number of cases opened in the past ten years

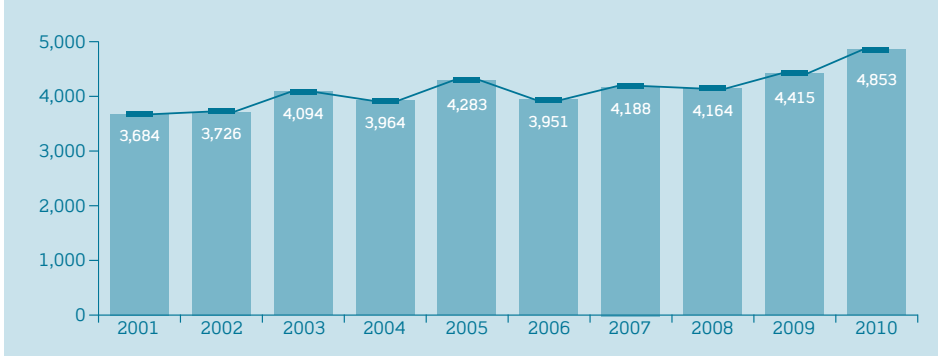


The number of cases opened on the basis of a complaint increased from 4,156 in 2009 to 4,827 in 2010.

119 cases were opened as a result of the Ombudsman's option to investigate cases on his own initiative. 23 cases were inspection cases and 25 cases were opened as part of the office's responsibilities in connection with OPCAT (please see the Annual Report of the Parliamentary Ombudsman, 2009, pp. 18-19, for further information). No own-initiative projects were initiated in 2010.

The number of cases *concluded* in 2010 was 4,853 as against 4,415 in 2009. (In addition, 60 cases connected with an own-initiative project were concluded in April 2010). Of the cases concluded, 875 (18.0 per cent) were substantively investigated, i.e. the Ombudsman generally concluded these cases with a statement, and 3,978 (82.0 per cent) were rejected for various reasons (see p. 73 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. 41.4 per cent of rejected complaint cases were concluded within ten calendar days. The average processing time for rejected cases was 31 days in 2010.

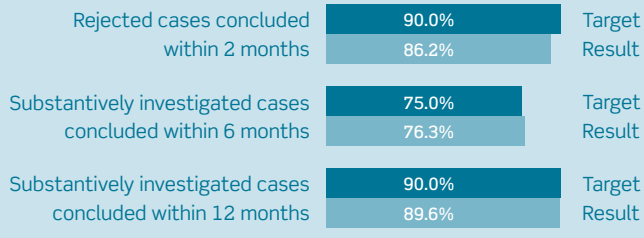
The average processing time for substantively investigated cases (other than inspection cases and cases in connection with OPCAT) concluded within the report year was 5.1 months (154.9 days).

The case processing time of the office is fairly stable. For rejected cases, it has declined slightly from an average of 36.1 days in 2009 to 31.0 days in 2010, and for substantively investigated cases, it has declined slightly from an average of 163.6 days in 2009 to 154.9 days in 2010. (The figures for substantively investigated cases are not fully comparable as from 2010 the totals do not include inspection cases or cases in connection with OPCAT).

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.

This target was not entirely met in every respect in 2010: 86.2 per cent of rejected complaint cases were concluded within two months (calculated as 60 days) – the target was 90 per cent. By contrast, 76.3 per cent of the substantively investigated complaint cases were concluded within six months (calculated as 182 days) – the target of 75 per cent was therefore met. 89.6 per cent of the substantively investigated complaint cases were concluded within 12 months, as against a target of 90 per cent.

The Ombudsman's targets for processing times for complaint cases



As at 1 June 2011, 178 cases had not been concluded within five months of being opened. 120 of them were awaiting the Ombudsman's procedure.

In one complaint case, the Ombudsman declared himself disqualified. The Legal Affairs Committee assigned this case to Mr Hans Würtzen, High Court Judge.

Neither the Landsting of Greenland nor the Faroese Lagting asked the Ombudsman to act as ad hoc Ombudsman in any cases in 2010.

A total of 28,346 documents (letters to and from the office etc.) were registered in the calendar year 2010. The corresponding figure for 2009 was 24,781 documents.

On 1 May 2011, the institution was organised as follows:

ORGANISATION

Ombudsman
Director General

General Division

Main areas

Annual report

International work

Own-initiative projects

Effort against torture (OPCAT)

Monitoring of forcible expulsion of aliens

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

Permissions to appeal

Foreign affairs

Communication

Ecclesiastical affairs

Culture

Cases involving aliens

Registers etc.

Naturalisation

Benefits for people 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

Half-way 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.

Human resource matters

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 cases concerning inspections

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 Division. 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 tasks when the Ombudsman so decides, cf. section 27 of the Ombudsman Act. If the Director General is also absent, the Head of the General Division 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. The employees, and to some extent the Ombudsman himself, also teach at courses on subjects pertaining to public law, and some of the 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 cooperation agreement with the Ministry of Foreign Affairs. The agreement allows the office to enter into cooperation projects with other Ombudsman institutions – often in the poorest countries of the world.

The office also collaborates closely with other European Ombudsmen, usually facilitated through the European Ombudsman, and with the Ombudsmen in the other Nordic countries.

Kirsten Talevski
Head of 1st Division

COMPLAINT CASES REVEAL SYSTEM ERRORS

The core area of the Ombudsman's activities is the processing of complaint cases lodged by citizens. In 2010, we received more than 4,800 complaint cases. The cases we are asked to consider normally concern the complainant's own problems. However, during our processing we also consider whether some of the issues are of a more general nature and may reveal system errors – in other words, other citizens may experience the same problems. If that is the case, it is an important part of the Ombudsman's work to use the citizen's complaint as a lever for more general improvement of the case processing by the public administration.

Three cases processed by the Ombudsman within the last couple of years are good examples of specific complaints revealing general problems in the public administration. Common to all cases was that the citizens did not receive replies from the authorities; the cases came to a standstill. The reasons differed, but the problems were resolved – for the benefit of other citizens, too.

All three cases involved the immigration authorities, but it could equally well have been other authorities.

THE COMPLAINT CASE THAT CAME TO A STANDSTILL

In December 2008, the Immigration Service refused family reunification between a man and his wife from Morocco. It would not accept their marriage as valid in Denmark on the grounds that the wife had not been present at the ceremony. The man found this argument completely unreasonable and lodged an appeal with the Ministry of Integration in February 2009. His complaint was accompanied by a translation of the marriage certificate. The certificate showed that both he and his wife were present at the ceremony. The Ministry entered the case and in March 2009 asked the Immigration Service for a statement.

A problem arose because the Immigration Service did not reply to the Ministry's request or its subsequent reminders. The case came to a standstill. As the Ministry had not received a statement from the Immigration Service, it could not start its investigation of the case.

In September 2009, the man had had enough and lodged a complaint with the Ombudsman. He wrote that it was completely unacceptable that the Ministry of Integration could not get a statement from the Immigration Service and he found it unfair that his case was not being processed. We contacted the Ministry and were informed that it had sent the Immigration Service five reminders of its request for a statement, with no success. We decided to enter the case and received an explanation from both the Immigration Service and the Ministry.

The Immigration Service admitted that the Ministry's request for a statement had remained unanswered for six months. It recognised that this was completely unacceptable, and both the Immigration Service and the Ministry expressed extreme regret. In addition, the Immigration Service reprimanded the relevant employee and sent the man a letter of apology. The Immigration Service also promised the Ministry that it would reconsider the man's case. The Ministry therefore returned the case to the Immigration Service and asked for it to be processed quickly. The Ombudsman later expressed criticism of both the Immigration Service and the Ministry.

As far as the man was concerned, the Ombudsman case was now settled. However, it also helped to improve the future case processing by the immigration authorities, as it caused the Immigration Service to promise, among other things, that the deadlines for submitting statements to the Ministry would in future be met. In addition, the Immigration Service asked the Ministry to send any reminders of statement requests directly to its senior management.

Furthermore, a meeting between the Immigration Service and the Ministry resulted in the preparation of detailed shared guidelines for processing requests from the Ministry in complaint cases etc. The guidelines came into force in early 2010.

AN URGENT CASE WHICH WAS NOT PROCESSED

A Somali man lodged a complaint about the Immigration Service, which was taking far too long to decide on his wife's family reunification case. We submitted the case to the Ministry of Integration as the appeal authority. The Ministry criticised the case processing by the Immigration Service and in March 2009 asked for the case to be processed quickly. In September 2009, the man wrote again to the Ombudsman to report that the Immigration Service still had not

made a decision. We submitted the case once again to the Ministry of Integration as the appeal authority, this time as a complaint about the additional time the Immigration Service was taking to process the case. In December 2009, the Ministry once again criticised the case processing time at the Immigration Service, which granted family reunification to the wife later that month.

As far as the couple were concerned, the case was over, but it subsequently influenced the administration culture at the Ministry of Integration. When the man wrote to the Ombudsman for the second time, the Ministry explained that, following its initial criticism of the Immigration Service, it had closed and filed the case. A reminder was not attached to the case (i.e. it was not automatically revisited) and the Ministry had not checked whether the Immigration Service had complied with its request for quick processing.

We therefore wrote to the Ministry of Integration to ask whether it did not follow up on cases in which it had criticised the Immigration Service's case processing time. We wanted to know whether the Ministry did not revisit the cases at its own initiative after a period of time to ask about their status at the Immigration Service. The Ministry replied that there was no formalised follow-up procedure and promised to review this issue with the Immigration Service.

With effect from April 2010, the Ministry then introduced a formalised procedure for following up on cases which had led to criticism of the Immigration Service's case processing and which were still pending there. In such cases, the Ministry will ask the Immigration Service for an update on the status of the case within two months of expressing criticism. If the case is still pending, the Ministry will in each individual case assess whether it needs to request another status update after a new, individual deadline has been set.

UNANSWERED QUESTIONS

The last example concerns a man from Aalborg who in July 2008 tried to help a Vietnamese acquaintance by sending a letter to the Ministry of Integration with some questions about family reunification. Soon afterwards, he was informed that the questions had been forwarded to the Immigration Service. However, he did not receive a reply from the Immigration Service and therefore sent it a reminder, with no result. He then wrote again to the Ministry of Integration, which reacted by forwarding his enquiry to the Immigration Service once more. The man still did not receive any replies to his questions and in September 2008 lodged a complaint with the Ombudsman about the lack of reply.

The man used the expression 'deafening silence'.

In October 2008, we forwarded the man's complaint about the Immigration Service to the Ministry of Integration as the appeal authority and then considered the case closed. In June 2009, the Ministry made a decision on the case concerning the Immigration Service and sent the Ombudsman a copy. The Immigration Service had expressed regret to the Ministry for the very long case processing time and the sequence of events. The Ministry wrote to the man that it concurred in the Immigration Service's expressions of regret. It also apologised for its own case processing time.

Although the Ministry had now completed its case processing in relation to the man, the Ombudsman found grounds for initiating a case. We could see from the decision that the case had remained at a virtual standstill for almost eight months, and when we asked the Ministry about this matter, the Ministry confirmed that this was correct and regrettable. The reason was that the case had been handled by an employee who was absent due to illness for a long period of time. The case was not found when the office redistributed the employee's cases – it was only found when the employee returned to work.

As a result of the Ombudsman's enquiry, the Ministry office in question tightened – and stressed the importance of observing – its internal procedures for dealing with a case worker's long-term absence due to illness in relation to the cases handled by the employee. As a result, other citizens may in future avoid a similar situation.

As the three above-mentioned examples show, specific cases may reveal problems of a more general nature.

Of course it is important for the Ombudsman to help the individual citizen with the actual problems he or she has encountered in dealing with the public administration. Sometimes, however, the cases landing on the Ombudsman's desk turn out to contain general problems which, when resolved, help to improve the public administration's case processing. The improvements to which the Ombudsman has contributed since 1955 have thus happened in collaboration with the many citizens who have written to him over the years.

Bente Mundt
Head of 2nd Division

Karsten Loiborg
Head of 5th Division

INSTITUTION STATUS – A COMPLEX AUTHORITY ISSUE

In most cases, an administrative authority's activities in relation to citizens are governed by written rules, i.e. an act passed by the Danish Parliament or an order (administrative rules issued under the provisions of an act). However, in some cases an administrative authority may regulate citizens' affairs on the basis of unwritten law. The legal basis is thus not a provision of an act or order. When, for instance, a local authority lays down rules for citizens' access to the town hall during opening hours or otherwise regulates citizens' access to various local authority institutions, this is done on the basis of unwritten law.

In legal terminology, the term 'institution decree' is used when a public authority issues rules for a public institution on a non-statutory basis. 'Institution' refers to organisations which typically handle care, treatment, confinement or education of citizens or otherwise make public services available to citizens – i.e. day and residential institutions, prisons, hospitals, nursing homes, schools and further education institutions, libraries, museums etc. 'Decree' is the legal term for general rules regulating citizens' affairs which have been issued by an administrative authority.

One may then ask what is the legal basis for recognising 'institution status' as giving authority. In brief, the situation is that Parliament (in the Finance Act) or a local authority (in its local budget) has subsidised an institution whose existence is implied in legislation. That being the case, the administrative authority must be able to make the necessary decisions on the operation of the institution so that it can function in accordance with its purpose. The requirement of necessity also implies a reasonable relationship between means and ends – the so-called principle of proportionality must be met.

This non-statutory regulation can take the form both of introducing general rules and of making specific decisions in relation to individual citizens. This has been established by the courts on several occasions. For instance, a library was

allowed to forbid that citizens bring in dogs (Ugeskrift for Retsvæsen (Weekly Journal of Legal Affairs) 1988.731/2Ø) and a vocational training centre was entitled to expel a student who failed to observe the centre rules (Ugeskrift for Retsvæsen 2001.83H). In both cases, the citizens' affairs were regulated on the basis of institution status.

What is difficult to establish is *what* authority institution status provides. First of all, the decree must be based on objective considerations and not go further than necessary in view of the institution's purpose and activities. Secondly, the ordinary principles of administrative law still apply, including proportionality and objective reasons for differential treatment. Thirdly, citizens' civic and human rights, as laid down primarily in the Constitution and the European Human Rights Convention, may result in significant limitations of how their affairs may be regulated on the basis of institution status.

Furthermore, many important areas which were historically regulated by institution decrees are now governed by statute. This is especially true of areas involving significant interference with citizens. For instance, confinement and other force in psychiatric institutions used to be regulated by an institution decree before the Mental Illness Act 1938. Today, it is difficult to imagine such an area not being governed by statute.

However some areas are still not governed by statute and the authorities therefore have to regulate them on the basis of institution status. Some recent Ombudsman cases show that these particular areas give rise to uncertainty about the authorities' application of the law.

CORRECT AND **COMPREHENSIVE** AUTHORITY

Where there are no written rules, it is important that an authority first establishes which unwritten rule of law applies, then establishes the detailed content of this rule and finally investigates which other – written or unwritten – rules apply to the case.

A local authority had decided to limit the visiting hours for a nursing home resident (Annual Report of the Parliamentary Ombudsman, 2010, Case No. 20-7). Some close family members were thus only allowed to visit for an hour a day at particular times. The local authority had not established which rules applied to the visiting restriction. Initially, it believed its decision was authorised by 'the personnel's working environment'. However, this is not an unwritten rule of law, although no doubt a consideration which can in some contexts be both legal and relevant. The local authority then believed that the visiting

restriction was authorised by 'the local authority's competence as employer', i.e. its non-statutory right as employer to manage and distribute work. However, a local authority's competence as employer only authorises decisions in relation to local authority employees, not citizens. The correct authority for the visiting restriction was institution status. The local authority likewise had not realised that the relationship between the nursing home resident and his close family members was covered by Article 8 of the European Human Rights Convention. Moreover, the Ombudsman considered it doubtful whether the actual wording of the visiting restriction was in accordance with the principle of proportionality in Article 8.

REGULATION MAY CONSTITUTE A DECISION

Some of the actual resolutions made in relation to individual citizens on the basis of institution status are decisions within the meaning of the Public Administration Act. This results in certain requirements in relation to the case processing, including the requirements to hear parties to the case and to give grounds. It is therefore important that the authorities are aware when they are processing a decision case.

In the above-mentioned nursing home case, the visiting restriction undoubtedly constituted a decision. However, the local authority had not realised this – with rather unfortunate consequences. The borderline between decisions and other resolutions made on the basis of institution status can also be illustrated by two other cases from 2010. In one case (Annual Report of the Parliamentary Ombudsman, 2010, Case No. 20-2), a local authority had decided that a citizen must not contact the family and labour market administration by telephone, but had to turn up in person by prior agreement. The prohibition only applied to the citizen's contacting the local authority as party representative in his spouse's case. On the basis of a significance assessment, the Ombudsman did not regard this as a decision within the meaning of the Public Administration Act. By contrast, a decision was involved in another case (Annual Report of the Parliamentary Ombudsman, 2010, Case No. 20-3), where a citizen was forbidden to turn up at the town hall in person for initially three years. However, the citizen was still allowed to contact the local authority by telephone or in writing, via a contact person.

REGULATION BY STATUTE INSTEAD OF NON-STATUTORY RULES?

It is our impression that the local authority in the nursing home case (Annual Report of the Parliamentary Ombudsman, 2010, Case No. 20-7) is not alone in

being uncertain about the legal basis of cases involving limiting the hours when relatives may visit nursing home residents and about how to handle such cases. We are occasionally approached by local authorities and citizens in cases where a conflict has arisen between nursing home personnel or management and relatives and where a case concerning visiting restrictions is under consideration or has already been initiated.

On the basis of the specific case, the Ombudsman therefore wrote to the Ministry of Social Affairs. The purpose of the letter was to draw the Ministry's attention to the challenges faced by local authorities when having to deal with a not uncommon problem on the basis of an unwritten and relatively unknown authority. At the same time, the local authorities must consider Article 8 of the Human Rights Convention. Finally, they have to include the Public Administration Act and other administration procedural rules in their consideration of the case if the outcome is a decision within the meaning of the Public Administration Act.

The Ombudsman pointed out that, in recent years, social legislation has become increasingly detailed within many areas and that comprehensive guides to the various provisions have been issued. This may make it easier for the authorities that have to apply and enforce the rules. The Ombudsman asked the Ministry of Social Affairs whether it believed there was a need for regulation by statute of the issue of visiting restrictions at nursing homes and other similar institutions – partly by rules stating in which situations visiting restrictions may be applied, partly by rules concerning the procedure to be followed when a need for visiting restrictions arises. The Ombudsman had no opinion about the possible content of such written rules; as is well known, he is unable to consider legislation policy issues (section 7(1) of the Ombudsman Act). He was therefore merely referring to a technical change from unwritten (and therefore to some extent unknown and uncertain) law to written law.

The Ombudsman's enquiry was positively received by the Ministry, which set up a working group to consider the matter. In extension of this, the Minister of Social Affairs announced in the government's programme of bills for 2010/11 that a bill to amend the Social Services Act (limitation of local authorities' ability to impose visiting restrictions) would be introduced in early 2011. The bill was introduced on 16 March 2011 and passed on 24 May 2011 (Act No. 627 of 14 June 2011). The Act came into force on 1 July 2011.

Lennart Frandsen
Head of 3rd Division
(Inspections)

DETENTION FACILITIES IN GREENLAND FOR INTOXICATED PERSONS

- a long-term project

> *'I assume that the Ministry of Justice agrees that there is no reason why the conditions offered the population of Greenland within this area should be worse than the conditions offered the population of Denmark'* (quote from the Ombudsman's letter of 23 October 1990 to the Ministry of Justice; Annual Report of the Parliamentary Ombudsman, 1990, p. 97)

The Parliamentary Ombudsman's activities primarily involve handling individual complaint cases. In addition, cases are opened on the Ombudsman's own initiative (including own-initiative projects) and inspections are carried out. Most of these cases typically relate to specific matters and are concluded within a foreseeable period of time. However, occasionally the Parliamentary Ombudsman only reaches a satisfactory result after many years. This may be the case when the Ombudsman deals with major problem combinations.

An example of a long-term project is the Parliamentary Ombudsman's work with the police and prison service in Greenland. The problems have mainly been associated with the detention facilities for intoxicated persons. The Ombudsman has worked on these issues for more than 20 years.

THE PARLIAMENTARY OMBUDSMAN AND GREENLAND

The Constitution of the Realm of Denmark is fully applicable to Greenland as part of the federation. As a result, acts passed by the Danish Parliament automatically apply to Greenland as well unless otherwise stated in the act. The Ombudsman Act thus also applies to Greenland. However, the Parliamentary

Ombudsman is assumed not to have jurisdiction in relation to authorities under Greenland's self-rule (previously Greenland's Home Rule).

The police and prison service in Greenland are not self-rule authorities and therefore fully within the Ombudsman's jurisdiction.

Since 1989, the Parliamentary Ombudsman has worked relatively intensively on the conditions for those confined in institutions in Greenland, i.e. primarily the five prisons for convicted persons in West and South Greenland and the total of 14 detention facilities for intoxicated persons located throughout Greenland. The work has mainly consisted in inspections of the prisons and detention facilities – including the building conditions – and investigations of the inmates' conditions, the rules in force etc. Some of the problems are connected with the special geographic, climate and social conditions in this huge Arctic country. The work is now largely completed.

In connection with the inspections in Greenland, it was natural for the Parliamentary Ombudsman to inspect the conditions for the inmates of the Greenlander Ward at the Herstedvester Prison and the Greenlandic forensic psychiatric patients at initially the Oringe State Hospital and subsequently the Aarhus University Hospital in Risskov. Among other things, several inspections have been carried out.

A DEATH IN A DETENTION ROOM IN QEQERTARSUAQ (GODHAVN) FOR INTOXICATED PERSONS

On 18 July 1989, Skive Folkeblad wrote the following about a death in a detention room in Qeqertarsuaq (Godhavn) for intoxicated persons:

> **'Died from over-heating in Greenlandic cell**
>
> *Hopefully the prisons will now be improved, says Chief Constable of Godthaab*
>
> An inmate in a Greenlandic prison died – from over-heating. This was revealed by Consultant (…) on yesterday's television news.
> In his capacity of Chief District Doctor, (…) found a man dead in a cell in Godhavn on the morning of 1 June. The man had been taken into custody due to domestic disturbances the previous evening and was placed in one of the two very small cells in the local prison.
> The post-mortem showed that the inmate had died from over-heating, partly due to the small size of the cell, but especially because the thermostat was not working and the ventilator was partially covered. When the doctor found the deceased, rigor mortis had set in and the body was very warm.

Investigation

…

'Was it very warm in Godhavn at the time?'
'The outside temperatures in Greenland can change a lot and very quickly,' says the Chief Constable. 'The central heating was turned on in the prison and the death was apparently due to the thermostat not working. However, this must be clarified by a detailed investigation and it is up to the central authorities in Copenhagen to decide how to proceed in the case.'

'You have presumably visited many prisons in Greenland. Do you believe their standard is fit for human beings?'
'I will go so far as to say that I wish several of the prisons were considerably better', says the Chief Constable (…). 'And hopefully the death in the cell in Godhavn will now result in improved standards."

On the basis of the media coverage, the Parliamentary Ombudsman opened an own-initiative investigation. He started by asking the Ministry of Justice for information about the result of the investigation which he assumed the Ministry would initiate. However, the case quite quickly developed into a complex project, including among other things six actual inspection trips to West, South and East Greenland in the period from 1991 until today.

On the basis of the case concerning the death in a detention room in Qeqertarsuaq, the special building expert at the National Commission of the Danish Police had reviewed nine detention facilities for intoxicated persons on the west coast already by September 1989. In the report, four of the detention facilities were described as 'completely unsatisfactory'.

Conditions in the detention facilities in Qeqertarsuaq, which consisted of two rooms in the basement underneath the police station, were described as poor 'in every respect'. The very thorough review among other things showed that the rooms were approx 3.35 m^2 large, without windows, air intake or any other kind of ventilation, that drilled ventilation holes in the walls to the corridor were covered and that the rooms were heated by plate radiators under the bolted-down wooden plank beds. In addition, there was only an earth closet and no bathing facilities.

The material submitted to the Parliamentary Ombudsman showed that the room in which the man died had a cubic capacity of 6.7 m^3, far less than half the minimum cubic capacity of detention rooms in Denmark.

After reviewing the information about the detention facilities in Greenland for intoxicated persons, the Parliamentary Ombudsman stated among other things:

> 'It is immediately obvious that conditions in the detention facilities in Greenland – with a few exceptions – are so poor that it must be described as inexcusable. This applies to the inmates' safety and in this connection also to the special circumstances in relation to surveillance etc. (…). It also applies to the requirement that staying in the rooms must be tolerable. I refer here to the size, light, fresh air supply, sanitary facilities etc. in the rooms.
>
> The facts that the same room is sometimes used for several inmates and that people in custody may be confined there for some time of course make the requirements in relation to the standard of the rooms more stringent.'[1]

After the review of the standard of the detention facilities for intoxicated persons, an extensive building programme was initiated. Partly due to the climate and geographic conditions, it was a complex and costly process. The Ombudsman monitored the process, also to ensure that all 14 detention facilities were included to the necessary extent in the building programme, which lasted several years.

As a result of the building programme, the conditions which were formerly open to severe criticism were replaced by detention facilities of a standard largely similar to that of facilities in Denmark.

Alongside the building programme, the prisons for convicted persons and most of the detention facilities in Greenland for intoxicated persons were inspected. At the inspections, a large number of additional problems were revealed and these were resolved on an ongoing basis.

In bullet point form, they included:

- suicide risk due to the cell layout
- serious cold issues
- breach of silence
- lack of access to the open air
- conditions for women inmates open to criticism
- very inadequate report preparation
- placing of monitors (associated with television surveillance) in publicly accessible locations
- inadequate testing of fire alarm
- kitchen sink and kitchen table in the same room as toilet

1 Parliamentary Ombudsman Report for 1990, pp. 90-101

- lengthy stays in unfurnished detention rooms, with television surveillance and fully lit 24 hours a day (see below for further details)
- work availability in prisons
- employees' private use of official car and washing machines
- use of security cell in the basement as an ordinary cell for two inmates
- prison warden's use of the inmates' common room as office and relocation of the inmates to a small room in the basement
- problems around security arrangements (television surveillance, emergency call device, smoke alarm etc.

LONG-TERM STAYS IN DETENTION FACILITIES FOR INTOXICATED PERSONS

A particular – and very serious – problem has been long-term confinement of inmates in detention facilities for intoxicated persons, especially after the building improvements.

Although the facilities are (primarily) intended for intoxicated persons, the Ombudsman's inspections revealed that they were also used for instance for detainees (prisoners in custody) and convicted persons (people serving a sentence) – often for a very long time. The rooms used for these purposes were only 'furnished' with a vinyl-covered mattress on the floor and had 24-hour television surveillance and the light on permanently.

These circumstances caused the Parliamentary Ombudsman to recommend to the Ministry of Justice and the Chief Constable of Greenland that the detention facilities – when exceptionally used for non-intoxicated persons – were only used for short stays, without constant television surveillance and light. The Parliamentary Ombudsman also recommended that the rooms were equipped with (basic) furniture. This has in the main been the arrangement in force since 2006.

During a visit to the Prison for Convicts in Kangerlussuaq in August 2007, an inmate stated that he had spent approx. 11 weeks in a detention room in contravention of the arrangement. The Parliamentary Ombudsman initiated a detailed investigation and in his final letter of 22 September 2008 to the Ministry of Justice and others he stated[2]:

2 Parliamentary Ombudsman Report for 2008, pp. 720-721

'Confinement for a total of 74 days in unfurnished detention room for intoxicated persons
A was confined in the detention facilities in (…) for intoxicated persons from 23 May 2007 to 3 August 2007, i.e. 74 days. According to A's information, which I take as the basis of my assessment of the case, the detention room was only furnished with a mattress on the floor throughout this period.
…
In my opinion, this circumstance is a matter for severe criticism. In my assessment, I have also attached importance to the very extensive correspondence over a considerable period of time, after the Parliamentary Ombudsman inspections of a number of detention facilities on the west coast of Greenland in 2003 (…), with the Chief Constable of Greenland, the Directorate of Prisons and Probation and the Ministry of Justice concerning the matter of furnishing of detention rooms as well as the meetings held with the Chief Constable of Greenland and representatives of the Directorate of Prisons and Probation and the Ministry of Justice about this issue.

Access to the open air
...
In its letter of 26 November 2007, the police stated that A was 'aired' on eight occasions during the 74-day period. In addition, A had been shopping twice and to the dentist once.
…
In my opinion, it can be assumed on the available basis with the necessary certainty that on very many of the days when A was confined in the detention facilities, he did not get into the open air and was not offered the opportunity to do so.
I consider this extremely regrettable.

Constant television surveillance and light for 74 consecutive days
...
I must take for my basis that A, when in the detention room, was under constant television surveillance for 74 consecutive days. As I understand it, this also meant that the light was on in the room for 24 hours a day.
…
In the case of such extraordinarily long confinement, the Chief Constable had the authority to decide that television surveillance should not be carried out and that the light could be turned off at night.'[3]

RULES ON CONFINEMENT IN DETENTION FACILITIES FOR INTOXICATED PERSONS – OTHER PROBLEMS

The Chief Constable of Greenland's order of the day for 'Confinement in local prisons and in detention facilities for intoxicated persons, etc.' has now – after extensive correspondence with the Parliamentary Ombudsman and others – been amended with effect from 1 March 2011 to ensure that there will be no further cases of long-term confinement of non-intoxicated persons in deten-

3 In June 2011, the Parliamentary Ombudsman initiated an investigation of a (possibly similar) instance of long-term confinement (more than 3½ months) in the detention facilities in Nuuk in 2008.

tion facilities for intoxicated persons and that non-intoxicated persons are not subjected to constant television surveillance and light.

It should therefore now be possible to regard the complex project at the Parliamentary Ombudsman as closed. However, the Ombudsman is still monitoring a few remaining issues, including the following:

– The waiting list in Greenland (to serve a sentence in one of the prisons for convicted persons) is – still – very long, despite the authorities' many efforts to deal with the problem.
– The Parliamentary Ombudsman has had to ensure that inmates in the Greenlander Ward of the Herstedvester Prison continue to be able to stay at the detention facilities during their annual – very important – visits to Greenland.

Meetings between the Ministry of Justice, the Directorate of Prisons and Probation and the Chief Constable of Greenland are held every six months, covering, among other things, conditions in the detention facilities. The Parliamentary Ombudsman continues to monitor the situation, partly by receiving minutes of the meetings.

In early summer 2011, the Parliamentary Ombudsman carried out follow-up inspections of two prisons for convicted persons, three detention facilities and one boarding house on the west coast of Greenland.

The Ombudsman's statement from 1990, cf. the quote at the top of this article, has been pivotal to the work with the prison service in Greenland throughout all the years. The wish expressed by the then Chief Constable of Greenland in July 1989 that the death in a detention room in Qeqertarsuaq would lead to improvement of the standard of especially detention facilities for intoxicated persons must be said to have been fulfilled.

Morten Engberg
Head of 4th Division

NEIGHBOURS AS PARTIES TO BUILDING CASES

The Ombudsman often receives complaints from citizens in building cases. Some of these cases concern local authorities allowing the owner of a property to start building work without involving the neighbours in the case. If the neighbours approach the Ombudsman, they therefore often ask whether the local authority acted legally in not asking for their view on the case. In some cases, the local authority is obliged to involve the neighbours before deciding on a building case.

BRIEFING THE NEIGHBOURS

The neighbours are entitled to be heard if the building work requires dispensation from building or planning legislation, including the rules of the building regulations or any local plan. In such cases, the local authority must brief the neighbours about the building work planned, so that they are able to state their views on the project to the authority before it decides whether to grant dispensation. This is laid down in section 20 of the Planning Act and section 22 of the Building Act. However, these rules do not apply if the building work can be done without dispensation from building and planning legislation. In other words, the local authority is not obliged to brief the neighbours if the building work does not require dispensation from these rules. The local authority is likewise not obliged to brief the neighbours if it regards the dispensation as insignificant in relation to the relevant neighbours.

HEARING OF PARTIES

In cases where the local authority is not obliged to brief the neighbours, it is interesting whether it nonetheless has to involve them pursuant to the rules on the hearing of parties. These rules, which are laid down in section 19 of the Public Administration Act, are in many ways similar to the rules concerning

briefing of neighbours. The local authority's obligation to hear the parties implies that it must provide the parties to the case with information about it and give them an opportunity to make a statement to the authority before it decides on the case.

Of course this presupposes that a decision needs to be made on the case, but that applies to most building cases, as planning permission is required. In addition, the local authority is only required to hear the parties to the case. The question is therefore when is a neighbour a party to a building case?

PARTY TO THE CASE

A neighbour can only claim to be a party to a building case if the building work will expose the neighbour to actual, significant nuisance. It is difficult to say exactly how significant the nuisance must be for the neighbour to have party status. The key factor is what actual changes the intended building work will impose on the neighbour. If, for instance, the neighbour's property has not previously been overlooked, the neighbour will probably have party status if a new build will result in the property being overlooked to a significant degree. If, however, the neighbour's property is already overlooked to a significant degree, the neighbour will probably not have party status if a new build will result in it being overlooked slightly more. The neighbour will only be a party to the case if the new build in itself will cause (further) actual significant nuisance.

DISPENSATION NOT CRUCIAL TO PARTY STATUS

In practice, a building project complying with all the rules concerning distance to neighbour property lines, building height etc. will probably cause so little nuisance to the neighbours that they cannot be regarded as parties to the building case. Nonetheless, a neighbour may have party status even if the building work does not require dispensation. This was shown by a case covered in the Annual Report of the Parliamentary Ombudsman, 2007, p. 437. However, the case did not primarily concern the hearing of parties. It focused on another party right, i.e. the right to appeal against the local authority's decision. The local authority had granted permission to build a property with holiday flats on a site which had not previously been built on. It was to be a two-storey building 8.5m high in total, which would be close to a holiday home on the neighbouring property.

The owners of the holiday home appealed the decision to the County Governor's Office, which refused to consider the case as it did not regard them as parties to the case. The County Governor's Office commented among other

things that the building project would not have required dispensation pursuant to the previous rules, so there were no grounds for assuming that it was unusual with regard to light conditions and the degree to which neighbouring properties would be overlooked. The light conditions and the degree to which the holiday home would be overlooked would therefore not be significantly affected compared to what was to be expected in the area. The area had, among other things, been designated for hotel purposes in a town planning bylaw (corresponding to a local plan). By contrast, the Ombudsman did regard the owners of the holiday home as parties to the case. He emphasised that the assessment of whether the light conditions would be satisfactory and the holiday home overlooked to a significant degree must be made on the basis of an objective consideration of these issues, irrespective of what expectations the neighbours might have. The Ombudsman took for his basis that the holiday home would be overlooked as a result of the build – not only from windows on the second floor, but also an external staircase with a landing. Due to the short distance between the properties, the nuisance caused by the holiday home being overlooked must be regarded as so significant that the owners were parties to the case.

WHEN THE RESULT IS KNOWN IN ADVANCE

It is not only the absence of party status which may cause a local authority to fail to hear a neighbour as a party to a building case. It may also be because the authority does not believe the neighbours will be able to influence the decision on planning permission because the builder is entitled to permission.

This issue is considered in Case No. 2011 4-1, published on the website of the Parliamentary Ombudsman, www.ombudsmanden.dk. In this case, the local authority took the view that the residents of a neighbouring property were not parties to a planning permission case because the building project did not require dispensation. By contrast, the Regional State Administration as the appeal authority recognised the neighbours as parties to the case, but nonetheless found that they should not have been heard. The property was in an area covered by an old town planning bylaw. The local authority was of the opinion that the building project complied with the bylaw and that therefore it could not refuse to grant planning permission. On this basis, the Regional State Administration decided that the conditions for hearing the parties pursuant to the Public Administration Act were not met in relation to the provisions of the Building Act. In this connection, the Regional State Administration pointed out that, pursuant to the Building Act, it could only consider the part of the case relating to building legislation, including the planning permission, but not issues relating to the town planning bylaw.

SECTION 19 OF THE PUBLIC ADMINISTRATION ACT

At the Parliamentary Ombudsman, we therefore had to investigate whether the local authority and the Regional State Administration were correct in assuming that the neighbours were not entitled to be heard as parties. Section 19 of the Public Administration Act includes rules stating when an authority must submit information in a case to party hearing. Pursuant to this rule, a party to a case is only required to be heard about specific information concerning the facts of the case, and only information which is detrimental to the relevant party and of significant importance to the decision on the case. If the party in question is already aware that certain information is included in the authority's processing of the case, it is not necessary to hear the party about this information either.

In the case, the Ombudsman stated that the local authority should have heard the residents of the neighbouring property as parties before issuing planning permission. In this connection, it was not relevant that the local authority expected the neighbours to attach importance to information that their property would be overlooked by the new build if they had been heard as parties. The local authority had argued that the issue of the property being overlooked was to be considered in accordance with the rules of the town planning bylaw, which had been met, and the Ombudsman agreed. However, he emphasised that the local authority should have assessed which information in the case would significantly influence its decision on planning permission and ensured that the parties were heard about this information. In addition, the Ombudsman pointed out that, pursuant to section 19 of the Public Administration Act, the Regional State Administration's information that the local authority could not refuse planning permission was not significant. The Ombudsman further believed that the residents of the neighbouring property would not necessarily have been unable to influence the local authority's decision if they had been heard as parties, as the Building Act and the Planning Act contain special rules enabling the local authority to influence or possibly completely block a building project. Finally, the Ombudsman pointed out that both legal practice and Ombudsman practice take for their basis that a local authority may be obliged to inform a party to a case if the party is not aware that the case is being processed by the authority.

BOTH HEARING OF PARTIES AND BRIEFING OF NEIGHBOURS

In this case, the local authority should have heard the neighbours as parties, but it was not obliged to brief the neighbours as the building project did not require dispensation from the building or planning legislation.

In some cases, the local authority is, however, obliged to follow both the rules on hearing the parties and those on briefing the neighbours. This applied to a case published in the Annual Report of the Parliamentary Ombudsman, 1995, p. 221. In this case, a local authority had briefed the neighbours because the builder had applied for dispensation from a local plan. However, in his statement the Ombudsman pointed out that the briefing of the neighbours did not appear to comply fully with the party hearing requirements of the Public Administration Act. Moreover, the grounds given by the local authority did not comply with the requirements of section 24 of the Public Administration Act. In other words, the Ombudsman took for his basis that the party hearing requirements of the Public Administration Act must be met, even if the local authority has briefed the neighbours. The other rules of the Public Administration Act must also be followed, including the rules concerning the giving of grounds. In his statement, the Ombudsman emphasised that the party status issue must be determined on the basis of the general rules of public administration law. In other words, it cannot be assumed that as a general rule people who must be briefed about a dispensation application pursuant to section 20 of the Planning Act are not parties to the case.

These cases illustrate that when considering a building case which involves neighbours' interests, a local authority must consult both the rules on briefing neighbours and the rules on the hearing of parties when assessing whether the neighbours must be heard.

Erik Dorph Sørensen
Head of OPCAT Unit

BAPTISM BY FIRE FOR NEW UNIT DURING CLIMATE SUMMIT

On 7-18 December 2009, the UN held a climate summit (COP15) in Copenhagen. The police had been notified of and approved many demonstrations. Some organisations had announced that they might resort to illegal methods during the demonstrations. In turn, the police said that it was well prepared, and the police had, among other things, established temporary waiting rooms – the so-called climate cages – at Retortvej in Valby. In addition, before the summit Parliament had changed the provisions of the Police Act concerning preventive arrests, allowing demonstrators to be detained for up to 12 hours as against 6 hours previously.

The largest demonstration, with almost 100,000 participants, took place on Saturday 12 December 2009. It was a cold day with temperatures around freezing. A group of possibly up to 300 people began to commit vandalism, smashing shop windows and setting off fireworks. In their attempts to escape from the police, they mingled with the tail end of the large demonstration. At 3.26 p.m., the police detained just over 900 people at Amagerbrogade. The detainees were handcuffed with plastic handcuffs with their arms behind their back and made to sit in long rows on the asphalt.

From Amagerbrogade, the detainees were to be taken by bus to the climate cages at Retortvej. However, there were insufficient buses to transport so many to Valby. The final detainees were not taken away until 8 p.m., after almost 4½ hours at Amagerbrogade.

During the 4½ hours, many had no access to a toilet, but had to remain seated on the asphalt. The detainees were not given food or water or anything to sit on, even though it was so cold. However, some people were given water by policemen at Amagerbrogade and a few were able to go to the toilet at nearby pizzerias etc.

No doctors were present, but around 6 p.m. – 2½ hours after the first detentions – the police called a doctor and ambulance for a person who had cramps. The person was released after treatment. The doctor pointed out to the police that it was too cold to sit on the ground and asked for the detainees to be removed from the ground. The police then took some of them for a walk.

The detainees could not contact relatives or a lawyer until they reached the climate cages at Retortvej.

During the 4½ hours at Amagerbrogade, the police did not undertake registrations or interrogations. However, after a short while, the police released 200-300 persons who clearly did not belong to the group they wished to detain.

The police action was extensively covered by the media – also internationally. In the subsequent days, the Parliamentary Ombudsman received a number of complaints from citizens dissatisfied with the police approach. The Ombudsman's new OPCAT Unit therefore decided to investigate the general treatment of the detainees by the police.

OPCAT – THE NEW INSPECTION UNIT

As a new responsibility, the Ombudsman now undertakes so-called OPCAT inspections and investigations based purely on human rights considerations. Unlike the Ombudsman's ordinary inspections, the OPCAT Unit draws on medical expertise from the Rehabilitation and Research Centre for Torture Victims and obtains expert knowledge about human rights from the Institute for Human Rights. Unlike the ordinary inspections, the OPCAT inspections may also be carried out in private places where people may be confined, such as social homes. The inspections and investigations must be future-oriented and result in recommendations for improvements to the authorities. In summer 2009, the Ombudsman Act was amended, partly with a view to giving the Ombudsman the necessary competences as an OPCAT authority.

OPCAT inspections are carried out by a special Ombudsman unit comprising three lawyers and a member of office staff, equalling a total of 2½ full-time jobs. The unit was established in 2008 to ensure that Denmark complies with UN's so-called 'OPCAT protocol' (Optional Protocol to the Convention against Torture), which was ratified by Parliament in 2004. The OPCAT protocol requires participating states to establish a system of regular visits by independent bodies to places where people are or may be confined. The purpose is to prevent torture and other cruel, inhuman or degrading treatment or punish-

ment. Each participating state is obliged to establish one or more national authorities for the prevention of torture etc.

In collaboration with the Rehabilitation and Research Centre for Torture Victims and the Institute for Human Rights, the OPCAT Unit undertook nine inspections in 2009 and 20 inspections in 2010. The inspections were carried out in detentions rooms for intoxicated persons, gaols, prisons, closed psychiatric wards, homes for the mentally retarded and one boarding house run by the Prison Service. The inspections were targeted towards four areas: the relationship between inmates/patients/residents and employees, the use of isolation, medical matters and the extent to which force was used. In 2011, the OPCAT Unit expects to undertake 40 inspections.

It soon became clear that an investigation of the situation on 12 December 2009 fell more naturally under the OPCAT Unit than the Ombudsman's department for ordinary inspections. This was partly because several hundred of the detainees had immediately stated that they wanted the courts to test the legality of their detention by the police. The Ombudsman traditionally does not enter cases with special access to being tested by submission to a court, but the OPCAT mandate provides an opportunity to assess circumstances with a view to the future and to make recommendations for possible improvements to the authorities without taking any court judgments about legality into consideration. When detaining people, the police must respect human rights, irrespective of whether the detentions are legal or not.

The information in the media and the citizens' approaches to the Ombudsman about the events moreover suggested that the treatment of certain citizens might have endangered their health. This indicated that it might be necessary to include medical expertise in the investigation.

THE OPCAT INVESTIGATION

On Tuesday 15 December 2009, three days after the large demonstration, the OPCAT Unit wrote to the Copenhagen Police to request answers to a number of questions about the climate cages at Retortvej.

On the same day, at around 2.30 p.m., the OPCAT Unit, with a doctor from the Rehabilitation and Research Centre for Torture Victims, carried out an unannounced inspection of the climate cages, which had been erected in a disused production hall at Retortvej in Valby. There were no people in the cages during the inspection. Twelve cages were intended for eight persons and the remain-

ing 25 for ten. There was sufficient room for everyone to lie down. There were 18 toilets and, according to the police, everyone who needed to visit the toilet was able to do so within a reasonable period of time. Asked whether the just over 900 people detained on 12 December 2009 were able to visit the toilet, the police said: 'Certainly there were no accidents and nobody waited more than an hour.' There were many pallets with water in plastic bottles and numerous mats and blankets in the production hall. The hall was also very well heated. According to the police, everybody had been given water in plastic bottles on request as well as a chicken sandwich on 12 December 2009. In addition to the cages and toilets, there was a registration section with approx. ten counters. Here all detainees were given a guide to their rights before they were locked in the cages. The guide was in five different languages. At registration, everyone was allowed to call a relative or a lawyer – either on their own mobile phone or using the police telephone. The production hall also had a separate, screened-off sick bay, which was manned by doctors on 12 December 2009 and after that according to need. On that day, the police had also ensured that the 24-hour Social Service was available to look after any children.

The climate cages only had room for approx. 350 people, so they were inadequate for the just over 900 people who were bussed from Amagerbrogade to Retortvej on 12 December 2009. According to the police, approx. 600 persons were registered while sitting on the buses and subsequently released without being detained in the cages. They were released on a continuous basis and driven to nearby metropolitan train stations.

In its reply to the OPCAT Unit's written questions about the waiting rooms, the police subsequently confirmed the findings of the inspection. The police also provided the OPCAT Unit with many other details for use in its investigation of the police's handling of the detainees.

On Friday 18 December 2009, the OPCAT Unit asked the Copenhagen Police to reply to a number of questions about the police's handling of those detained in connection with the demonstrations during the climate summit, especially the largest demonstration at Amagerbrogade.

In its reply, the police confirmed among other things that 600-700 people had to wait for more than an hour at Amagerbrogade, that the police had not organised water, food or something to sit on and that a doctor and ambulance had not been called for the detainees until a person got cramps after sitting for approx. 2½ hours on the ground at Amagerbrogade. In addition, the police confirmed that it was correct that the detainees – with a few exceptions – were not able to visit a toilet.

The police information was included in the investigation together with the full explanation submitted by the National Commission of the Danish Police to the Legal Affairs Committee in February 2010.

NEW POLICE GUIDELINES

In July 2010, the OPCAT Unit's report was completed. It established that the climate cages provided sufficient heating, water as needed, the opportunity to visit the toilet within a reasonable period of time, access to telephone contact with the outside world and food for those waiting in the cages for some time. In addition, the climate cages were large enough for everyone to lie down on the mats handed out, and detainees were given written information about their rights. The conclusion was therefore that neither the conditions in the police climate cages nor the police procedures at the cages constituted an offence against basic human rights – as long as the cages were only used for short-term detention.

However, on the basis of the OPCAT Unit's inspection, the police changed the procedure for medical services so that at future detentions, detainees suffering from chronic illness will have access to their medication already at registration.

By contrast, the police detention of the many people at Amagerbrogade was not acceptable. The OPCAT Unit recommended that at similar future events the police should follow different procedures to those at the COP15 demonstrations in several respects. The OPCAT Unit's recommendations for the future were:

- that detainees should be given the opportunity to visit the toilet within a reasonable period of time
- that it was made regular practice to arrange water and something to sit on at events which may lead to mass detentions
- that medical competence should be provided at such events to minimise the risk of endangering the health of those detained/confined
- that at such events the police should carry out the necessary interrogations as quickly as possible so as to reduce the detention time to a minimum.

At the end of November 2010, the Ministry of Justice replied that it endorsed all the OPCAT Unit's recommendations and that the police would incorporate the recommendations into the guidelines for the police effort in connection with large demonstrations.

On 16 December 2010, the Copenhagen City Court pronounced judgment in relation to 250 of those detained. The Court stated that the detention was illegal and that conditions for 178 people had contravened Article 3 of the European Human Rights Convention, which prohibits torture and other cruel, inhuman or degrading treatment or punishment. The prosecution appealed the judgment and the case is still pending at the High Court.

APPENDIX A: STAFF AND OFFICE

As at 1 May 2011 the office had six main divisions with the following people in charge:

General Division

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 86 employees of my office included 23 senior administrators, 25 investigation officers, 20 administrative staff members and 10 law students.

Office address:

Folketingets Ombudsmand
Gammeltorv 22
DK-1457 Copenhagen K

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

Email: post@ombudsmanden.dk
Website: www.ombudsmanden.dk

APPENDIX B: BUDGET 2010

Salary expenses	
Actual salaries	36,070,000
Law students	183,000
Special holiday allowance	22,000
Salary budget adjustment account	2,444,000
Overtime	316,000
Pension fund contributions	3,192,000
Contributions for civil service retirement pensions	1,052,000
Contributions for the Danish Labour Market Supplementary Pension (ATP)	111,000
Maternity reimbursement etc.	- 490,000
Salary expenses in total	**42,900,000**

Operating expenses	
Subsidy, Ministry of Foreign Affairs	- 800,000
Rent	3,978,000
Leasing of photocopiers	246,000
Official travels	381,000
Business entertainment	165,000
Staff welfare	106,000
Phone subsidies	17,000
Subsidy, staff lunch arrangement	219,000
IT, central equipment, network, programmes	1,210,000
IT, client equipment	1,158,000
IT, consultants	246,000
Decentralised continued education	785,000
Translations	378,000
Printing of publications etc.	508,000
Office supplies	869,000
Furniture and other fittings	1,181,000
Books and subscriptions etc.	1,101,000
Cleaning, laundry and refuse collection	245,000
Housekeeping uniforms	7,000
Operating expenses in total	**12,000,000**

Civil servant retirement payments	
Civil servant retirement contributions	- 1,000,000
Retirement payments for former civil servants	500,000
Civil servant retirement payments in total	**- 500,000**

TOTAL	54,400,000

APPENDIX C: STATISTICS

This appendix includes 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. 15-20 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 2010 – irrespective of when they were opened – while the figures for new cases relate to cases *opened* in 2010 – irrespective of whether they were concluded in 2010 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 initiated 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. 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). Complaints submitted to the Ombudsman before any appeal options available have been exhausted therefore cannot be processed and have to be rejected – at least for the time being, until the relevant appeal authorities may have processed the complaint.

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.

As mentioned in last year's report, the structure of the statistical overview has been changed as from this year. The intention is 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. 15-20.

Appendix C considers the issues: What did the Ombudsman do in the cases concluded in 2010? What did the cases concern? Which authorities were affected? We hope this structure will make the statistical overview clearer, but the figures and underlying facts outlined are largely the same as in previous reports by the office. In other words, the focus or substance of the overview has not changed – it basically conveys the same information. However, there have been a few adjustments compared with previous reports. For instance, the former Tables 2 and 4 and Figure 7 are no longer included. This also applies to the former sections about each minister area (see e.g. the Annual Report of the Parliamentary Ombudsman, 2009, pp. 68-75).

WHAT DID WE DO IN THE CASES?

We concluded 4,853 cases in 2010. Of these, 875 (18.0 per cent) were substantively investigated and 3,978 (82.0 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, after reviewing the information available in the case, assesses 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 2010, 450 (51.4 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 2010, a total of 42 cases were concluded on this basis.

Of the cases subjected to a full substantive investigation, 246 did not give rise to criticism and/or recommendation in relation to the relevant authority.

137 of the substantively investigated cases did result in criticism, recommendation or both 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 137 cases which gave rise to criticism, recommendation etc.

Table 1
Substantively investigated cases, including cases resulting in criticism/recommendation, by minister areas and local and regional authorities[1]

Table 1: Substantively investigated cases concluded in 2010

Authority etc.	Substantively investigated cases, total	Substantively investigated cases resulting in criticism, recommendation etc.
A. Minister area (central authorities)		
1. Ministry of Employment	50	2
2. Ministry of Finance	6	1
3. Ministry of Defence	3	0
4. Ministry of the Interior and Health	73	18
5. Ministry of Justice	222	32
6. Ministry of Ecclesiastical Affairs	3	1
7. Ministry of Climate and Energy	2	2
8. Ministry of Culture	12	4
9. Ministry of the Environment	36	3
10. Ministry of Refugees, Immigrants and Integration	75	3
11. Ministry of Food, Agriculture and Fisheries	8	1
12. Ministry of Science, Technology and Development	7	1
13. Ministry of Taxation	29	0
14. Ministry of Social Affairs	161	16
15. Prime Minister's Office	4	0
16. Ministry of Transport	7	0
17. Ministry of Foreign Affairs	4	4
18. Ministry of Education	20	3
19. Ministry of Economic and Business Affairs	9	1
Central authorities, total	**731**	**92**

Table 1: Substantively investigated cases concluded in 2010

Authority etc.	Substantively investigated cases, total	Substantively investigated cases resulting in criticism, recommendation etc.
B. Local and regional authorities[2]		
Local authorities	126	38
Regions	17	7
Local or regional authority collaboration	1	0
Local and regional authorities, total	**144**	**45**
C. Total		
Central authorities, total (A)	731	92
Local and regional authorities, total (B)	144	45
Year total (A-B total)	**875**	**137**

1) The statistical registration of cases concluded in 2010 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, substantively investigated cases relating to authorities subsequently closed down or reorganised have as far as possible been classified under the minister area which had competence in the case at the end of the year.

2) Cases relating to municipal and county authorities which ceased to exist as a result of the local government reform are still classified under these authorities. In other words, the designation covers both the former primary local 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 3,978 (82.0 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 2010, the Ombudsman rejected 144 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 2010, the Ombudsman rejected 49 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 2010, a total of 147 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 32 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 2010, 229 cases were rejected for these reasons.

In 2010, the Ombudsman rejected a total of 408 cases because they were outside his jurisdiction.

1,902 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 2010, the Ombudsman forwarded 1,287 (67.7 per cent) of the cases he rejected for the time being to the relevant authorities.

In the 1,902 cases which the Ombudsman rejected for the time being in 2010, 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 (28 cases in 2010). 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 (453 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 (180 cases). We have combined all these situations in the statistical overview (item 1.4 in Table 2 overleaf). We had 661 such cases in 2010.

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 complainant's approach 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 2010, the Ombudsman rejected 814 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 2010

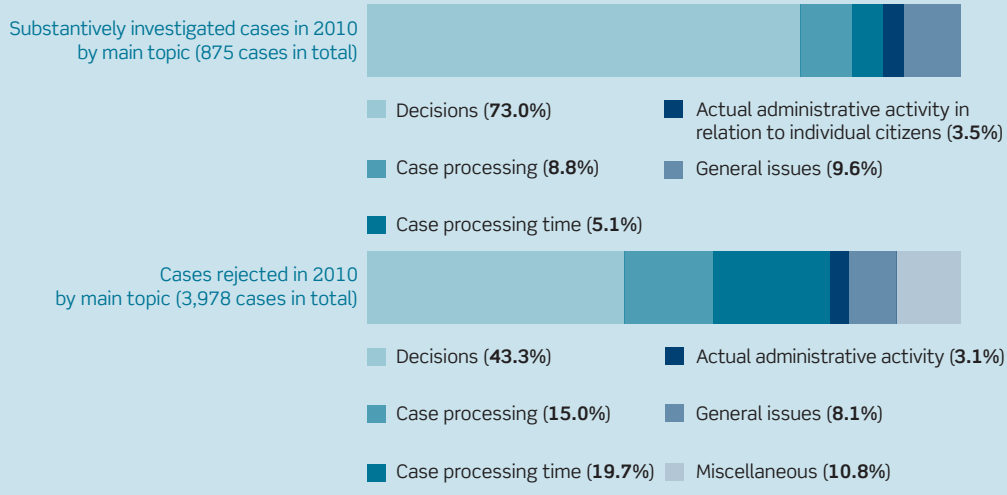
Table 2: Cases rejected in 2010

	Rejected cases, total	Of these local and regional authority cases
Grounds for rejection		
1. Final rejections		
1. Complaints submitted too late (section 13(3) of the Ombudsman Act)	144	36
2. Administrative case processing options not exhausted and no longer available (section 14 of the Ombudsman Act)	49	23
3. Complaints relating to matters outside the Ombudsman's jurisdiction, e.g. a court, judges, Parliament, legislative issues or private legal matters	408	28
4. Enquiries etc. without actual complaints; complaints not clarified; complaints withdrawn; anonymous complaints etc.	661	212
5. Other approaches, including complaints which the Ombudsman decided to reject (section 16(1) of the Ombudsman Act)	814	262
Final rejections, total	**2,076**	**561**
2. Temporary rejections		
Administrative case processing options not exhausted, etc. (section 14 of the Ombudsman Act)	1,902	831
Temporary rejections, total	**1,902**	**831**
Total (1+2)	**3,978**	**1,392**

WHAT DID THE CASES CONCERN?

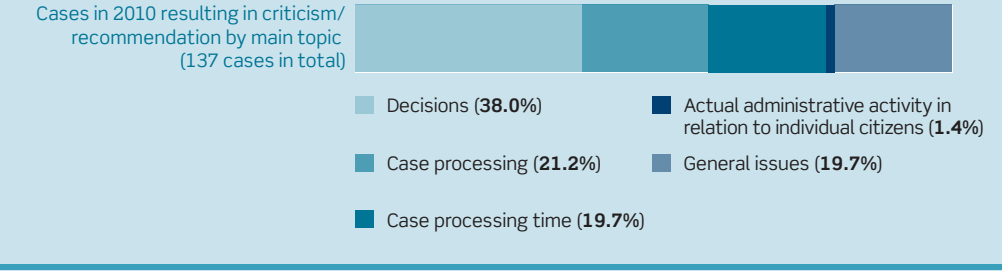
The distribution by main topic – i.e. the main focus of the Ombudsman's reaction in the case – of the 4,853 cases concluded in 2010 was as follows for substantively investigated cases (875 cases in total) and for rejected cases (3,978 cases in total):

Figure 1



By way of comparison, the distribution by main topic was as follows for substantively investigated cases which gave rise to criticism/recommendation (137 cases):

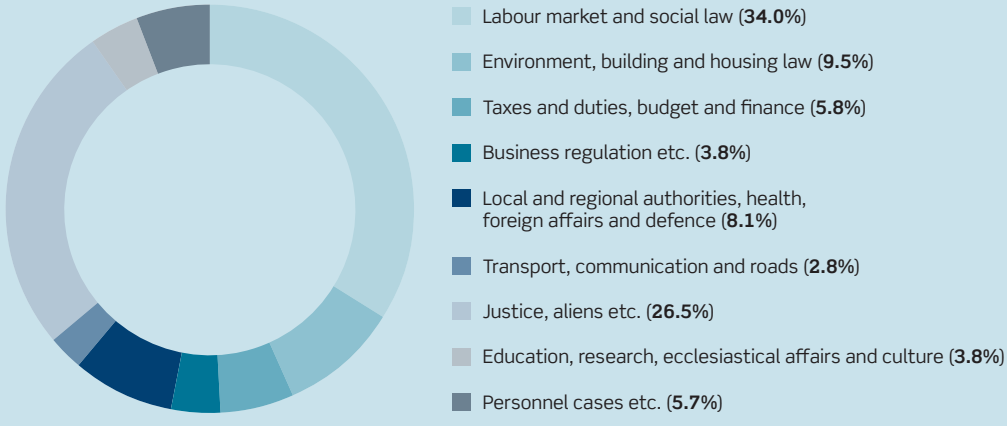
Figure 2



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

Figure 3

Cases concluded in 2010 by general area (archive code) (4,853 cases in total)



An own-initiative project concerning the practices of the Board of Appeal for State Student Grants within selected areas was concluded in April 2010. The project was initiated in 2009 and comprised 60 cases.

WHICH AUTHORITIES ETC. WERE AFFECTED?

Table 3 overleaf shows the distribution of all cases concluded in 2010 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

Table 3: Authorities etc. affected

Authority etc.	All cases	Rejected cases
A. Minister area (central authorities)		
1. Ministry of Employment	241	191
2. Ministry of Finance	13	7
3. Ministry of Defence	20	17
4. Ministry of the Interior and Health	346	273
5. Ministry of Justice	765	543
6. Ministry of Ecclesiastical Affairs	13	10
7. Ministry of Climate and Energy	15	13
8. Ministry of Culture	53	41
9. Ministry of the Environment	117	81
10. Ministry of Refugees, Immigrants and Integration	247	172
11. Ministry of Food, Agriculture and Fisheries	41	33
12. Ministry of Science, Technology and Development	62	55
13. Ministry of Taxation	238	209
14. Ministry of Social Affairs	410	249
15. Prime Minister's Office	17	13
16. Ministry of Transport	46	39
17. Ministry of Foreign Affairs	15	11
18. Ministry of Education	60	40
19. Ministry of Economic and Business Affairs	45	36
Central authorities, total	**2,764**	**2,033**
B. Local and regional authorities[1]		
Local authorities	1,415	1,289
Regions, total	93	76
– Capital Region	30	22
– Central Jutland	23	21
– North Jutland	4	4
– Zealand	17	12
– Southern Denmark	19	17
Former counties	1	1
Local or regional authority collaboration	11	10
Special local authority units	6	6
Local and regional authorities, total	**1,526**	**1,382**

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)	1	1
Metroselskabet I/S (Copenhagen Metro)	2	2
Total	**3**	**3**
D. Authorities etc. within the Ombudsman's jurisdiction, total		
Central authorities, total (A)	2,764	2,033
Local and regional authorities, total (B)	1,526	1,382
Other authorities etc. within the Ombudsman's jurisdiction (C)	3	3
Total (A-C total)	**4,293**	**3,418**
E. Institutions etc. outside the Ombudsman's jurisdiction		
1. Courts etc.[2]	86	86
2. Dispute tribunals[3]	30	30
3. Other institutions, companies, businesses and persons outside the Ombudsman's jurisdiction	229	229
Total	**345**	**345**
F. Cases not relating to specific institutions etc.		
	215	215
Year total (A-F total)	**4,853**	**3,978**

1) Cases relating to municipal and county authorities which ceased to exist as a result of the local government reform are still classified under these authorities. In other words, the designation covers both the former primary local 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 are included in Table 3.E.2.

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

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

APPENDIX D:
SUMMARIES OF SELECTED CASES

1. MINISTRY OF EMPLOYMENT

The following case concluded in 2010 was selected for publication in the Annual Report:

1. DELETION OF CASE DOCUMENTS IN CONNECTION WITH REQUEST FOR ACCESS

The National Directorate of Labour (the Directorate) had asked the National Institute of Social Research (the Institute) for a review of the effects of the so-called '300-hours rule' which stipulates that a married couple on cash benefit must have had a minimum of 300 hours' work within any two-year period in order to receive the benefit (section 13(8) of the Act on an Active Social Policy). In connection with this review, the Institute set up a project group. Two members of the group came from the Directorate.

After the review had been concluded, a journalist asked for access to the Directorate's documents concerning the review. While processing the request for access, the Directorate became aware that the Institute considered the project group to be a part of the Institute and saw representatives from other authorities who were members of the group not as representatives of the authorities in question but as personally appointed members working for the Institute. The Institute was of the opinion that documents exchanged between the members of the project group should be considered the Institute's internal documents.

Because of the Institute's point of view, the Directorate did not consider whether the journalist was entitled to access to these documents, nor did the Directorate inform him of their existence. After processing the case concerning access, the Directorate deleted the documents.

The Ombudsman stated that in his opinion, the documents of the project group had been passed on from the Institute and been included by the Directorate as Directorate documents. The documents could consequently not be considered internal within the meaning of the Access to Public Administration Files Act. He also stated that the Directorate could not suddenly decide that the documents were no longer to be considered external. At the time of the journalist's request for access, the documents were therefore part of the Directorate's case concerning the Institute's review.

On this basis, the Ombudsman found it a matter for criticism that the Directorate had not considered whether the journalist was entitled to access to the documents, nor informed the journalist of their existence. In addition, the Ombudsman found it a matter for severe criticism that the Directorate had deleted the documents.

(Case No. 2009-2181-001)

2. MINISTRY OF FINANCE

No cases concluded in 2010 were selected for publication in the Annual Report.

3. MINISTRY OF DEFENCE

No cases concluded in 2010 were selected for publication in the Annual Report.

4. MINISTRY OF INTERIOR AND HEALTH

The following four cases concluded in 2010 were selected for publication in the Annual Report:

1. REGIONAL STATE ADMINISTRATION'S COMPETENCE REGARDING LOCAL AUTHORITY'S DUTY TO MAKE NOTES – LEGAL DOCTRINE OR GOOD ADMINISTRATIVE PRACTICE?

A regional state administration rejected a complaint that a local authority had failed to make notes regarding an inspection of the environmental effects caused by the establishment of a roundabout close to the complainants' house. The regional state administration explained that the duty to make notes on important case processing steps in connection with actual administrative services could only follow from good administrative practice. The regional state administration does not have competence to check whether local authorities observe the principle of good administrative practice.

The Ombudsman stated that according to a general administrative doctrine an administrative body may also have a duty, even outside decision cases, to make notes regarding important case processing steps. The Ombudsman has previously expressed this view in connection with 'conventional' administrative cases which have certain infringing and important effects for the citizen and where a requirement to make notes of important case processing steps is natural and desirable. The Ombudsman therefore recommended that the regional state administration resume processing the complaint that the local authority had failed to make notes regarding the inspection.

(Case No. 2008-3903-114).

2. ACCESS FOR RELATIVES TO INFORMATION ABOUT DECEASED PATIENTS

While processing a case, the Ombudsman became aware that there could be some doubt regarding the extent of relatives' right to information about deceased patients under the provisions of the Health Act. Consequently, the Ombudsman opened an own-initiative case vis-à-vis the National Board of Patient Complaints (the Board) and the Ministry of Health and Prevention (the Ministry) regarding the Board's application of the provisions.

After reviewing the replies from the Board and the Ministry, the Ombudsman concurred with the authorities that the Health Act could not be presumed to give the next of kin an actual right to access to the medical records of deceased patients. However, on the basis of the Act's clear explanatory notes the Ombudsman was in no doubt that the Act was to be interpreted as meaning that, as a general rule, the next of kin of a deceased person has a valid right to information about the course of disease, the cause of death and the manner of death of the deceased. This right on the part of the relatives must necessarily impose a duty on the relevant health care providers to hand over the information.

Furthermore, the Ombudsman pointed out that the National Board of Patient Complaints must inform the health care provider in question if the Board finds that a health care provider has contravened his or her duty to hand over information.

(Case No. 2006-3974-401)

3. CASE SHELVED BY MISTAKE. CASE PROCESSING TIME.

A regional state administration mistakenly shelved a child maintenance case which was to have been reopened according to a decision by the Department of Family Affairs. The state regional administration only became aware of the mistake when the citizen's lawyer asked about the progress of the case. At the time when the Ombudsman made his statement, more than four years had passed since the Department of Family Affairs had decided that the case was to be reopened. The Ombudsman agreed with the regional state administration that the case processing error was deeply regrettable and recommended that the regional state administration speed up the processing of the case as much as possible. The Ombudsman also found it regrettable that the regional state administration had not replied to reminders from the citizen's lawyer. In addition, the Ombudsman found that the regional state administration should have informed the citizen that the case processing was protracted.

(Case No. 2010-1653-6005)

4. HOSPITAL DOCTORS' DUTY TO KEEP MEDICAL RECORDS

A patient complained, among other things, that the National Board of Patients Complaints (the Board) had acquitted a doctor of responsibility for an inadequately kept medical record. The Board's grounds for acquitting the doctor were that he was a hospital doctor and that it was a medical secretary who had entered the doctor's dictated notes into the medical record.

The Ombudsman opened a general case concerning the Board's practice on hospital doctors' duty to keep medical records. The Board stated that this practice had been followed for many years.

The Ombudsman criticised the Board's practice. He stressed that this practice was in contravention of the statutory duty for doctors to keep medical records.

The Ombudsman recommended that the Board change its practice as soon as possible in order to bring it into accordance with the law. He also recommended that the Board together with the National Board of Health and the Ministry of Interior and Health inform the doctors of the change in practice and ask the hospitals to help provide their doctors with optimal conditions for observing the statutory duty to keep medical records.

In addition, the Ombudsman notified Parliament's Legal Affairs Committee of the case, as the Ombudsman found the practice of the National Board of Patients Complaints to constitute an error or a dereliction of major importance.

(Case No. 2008-2276-420)

5. MINISTRY OF JUSTICE

No cases concluded in 2010 were selected for publication in the Annual Report.

6. MINISTRY OF ECCLESIASTICAL AFFAIRS

The following case concluded in 2010 was selected for publication in the Annual Report:

1. DISMISSAL OF VICAR. SECTION 43 OF THE CIVIL SERVICE ACT.

The Ministry of Ecclesiastical Affairs (the Ministry) dismissed a vicar with reference to a deep-seated disagreement persisting for a period of years between the vicar and the parishioners which presented a considerable hindrance to the welfare of church activities in the parish.

After studying in detail the conditions laid down in section 43 of the Civil Service Act, the Ombudsman stated that in his opinion the Ministry did not have sufficient grounds for dismissing the vicar pursuant to this provision.

The Ombudsman recommended that the Ministry reopen the case and make a new decision in the light of the recommendations he had made in his statement, including that the Ministry obtain certain additional information, that the Ministry seek to shed light on the doubt that had arisen concerning some of the circumstances of the case and that the Ministry consider the impact of the intervening parish council election.

In addition, the Ombudsman hesitated to consider such a brief period as 20 months to fulfil the provision's condition that the disagreement was to have persisted for a period of years.

The Ombudsman received a copy of the Ministry's letter of 7 February 2011 to the vicar. It appeared from the letter that the Ministry would not reconsider the

case. The Ministry had come to this decision after scrutinising the Ombudsman's statement and a number of new communications which the Ministry had received from people connected to the authorities which had been involved in the case. Subsequently, the Ombudsman wrote to the Ministry that he had no grounds for taking further action in the case as the Ministry had, strictly speaking, complied with his recommendation. In a letter of 1 April 2011 the Ombudsman wrote to the vicar's lawyer that he would wait until the Ministry had had the opportunity to consider the lawyer's objections before he decided whether or not to recommend that the vicar be granted free legal aid.

(Case No. 2009-1699-813)

7. MINISTRY OF CLIMATE AND ENERGY

No cases concluded in 2010 were selected for publication in the Annual Report.

8. MINISTRY OF CULTURE

No cases concluded in 2010 were selected for publication in the Annual Report.

9. MINISTRY OF THE ENVIRONMENT

The following case concluded in 2010 was selected for publication in the Annual Report:

1. ACCESS TO INFORMATION ABOUT HAZARDOUS COMPANIES

A journalist complained to the Ombudsman about the refusal by the Environmental Protection Agency and the Ministry of the Environment to grant him access to data contained in information charts regarding hazardous companies. The authorities had refused to grant access on the grounds of, among other things, a statement from the Security and Intelligence Service. The Service had stated that the charts contained specific information about all hazardous companies and that the information was of such a nature that it would, in case it was made public, present a distinct risk of being used for terrorist aims. It was

therefore necessary to exempt the information from access due to regards for important aspects of the security of the State.

The Ombudsman stated that hazardous companies are subject to several special provisions according to which the public must be informed of the companies' circumstances. The provisions stipulate that the public is to have access to a number of particulars of the type contained in the charts. Consequently, it was the Ombudsman's opinion that much of the information was not confidential and was therefore not covered by section 13(1) of the Access to Public Administration Files Act on exemption from access due to regards for the security of the State.

The Ombudsman criticised that the authorities' assessment of the question of access to the charts had not included the public access presumption contained in the special provisions on matters pertaining to hazardous companies. This omission meant that the authorities had not considered whether access should be granted to (parts of) the documents on the basis of these provisions.

(Case No. 2009-0872-101)

10. MINISTRY OF REFUGEES, IMMIGRANTS AND INTEGRATION

No cases concluded in 2010 were selected for publication in the Annual Report.

11. MINISTRY OF FOOD, AGRICULTURE AND FISHERIES

The following case concluded in 2010 was selected for publication in the Annual Report:

1. A COMPANY WAS NOT A PARTY TO A CASE CONCERNING ANOTHER COMPANY'S MARKETING OF AN ALMOND CAKE PRODUCT

The food safety authorities would not consider a company a party to a case concerning the marketing and branding of another company's almond cake product. The Veterinary and Food Administration had decided that the other company could not use the designation 'almond cake' about a product with an

almond content of 1.6 per cent, as that designation required a higher almond content. The decision by the Veterinary and Food Administration came to form the basis for the authorities' future practice regarding the requirements for the almond content of almond cakes.

The company which was not considered to be a party to the 'almond cake case' then complained to the Ombudsman.

The Ombudsman took as his basis that the decision in the 'almond cake case' did not have any legal consequences for the company wanting party status and that, consequently, the company's interest in the case was secondary and indirect. In addition, there were a number of other companies which probably also had an interest in the case, and the company complaining to the Ombudsman did not appear to be affected to any special extent.

On this basis the Ombudsman concurred with the Veterinary and Food Administration that the company was not a party to the case.

(Case No. 2009-2324-309)

12. MINISTRY OF SCIENCE, TECHNOLOGY AND DEVELOPMENT

The following case concluded in 2010 was selected for publication in the Annual Report:

1. ACCESS TO NAMES OF PRELIMINARY CASE PROCESSORS

The Agency for Science, Technology and Innovation and the Ministry for Science, Technology and Innovation refused a party to a decision case access to the names of two preliminary case processors. The Ombudsman opened an own-initiative case vis-à-vis the authorities.

The authorities stated, among other things, that research committees receive a large number of applications and that it is not possible for all members of a committee to process all applications in detail. For that reason, the committees often arrange to have each case prepared by (usually two) preliminary case processors who are members of the committee. The preliminary case processors' job is to study the application so thoroughly that they are able to present the application to the committee for consideration and decision at a subsequent

committee meeting. Preliminary case processors do not make decisions in cases but only prepare the cases so that the committee is able to come to a decision on whether to accept or reject the applications. The preliminary assessment is often changed. The names of all members of the committee are open to the public and applicants are therefore not prevented from being able to argue for a member's possible disqualification on grounds of personal involvement.

The Ombudsman stated that as a general rule the authorities are obliged to give access to the names of preliminary case processors. The Ombudsman was of the opinion that if these names only appear from internal documents, the names are included in the extraction duty laid down in the Public Administration Act.

The Ombudsman based his opinion on the fact that although there is normally no right of access to personnel case documents, there is nevertheless access to the name. The fact that there is a right of access to names in personnel cases means that there must also be – and to an even higher degree – a right of access to the names of those involved in cases other than personnel cases. He also stressed that preliminary case processors have a special function vis-à-vis the other committee members in that unlike the other committee members, they have the task of subjecting the application to preliminary case processing.

The Ombudsman subsequently recommended that the Ministry reopen the cases of requests for access to names of preliminary case processors and make a new decision based on the Ombudsman's opinion.

(Case No. 2008-3586-701)

13. MINISTRY OF TAXATION

No cases concluded in 2010 were selected for publication in the Annual Report.

14. MINISTRY OF SOCIAL AFFAIRS

The following three cases concluded in 2010 were selected for publication in the Annual Report:

1. REFUSED GRANT FOR REPLACEMENT OF EXHAUST PIPE PURSUANT TO THE MOTOR VEHICLE ORDER

A local authority refused a disabled man a grant for replacement of an exhaust pipe in his car. The social tribunal confirmed the refusal. The man had previously been granted a loan to purchase the car and had received a grant for special refitting of the car, including a lift. The car had to be modified in order for the lift to be fitted. This included a special modification of the exhaust pipe as the lift could not be fitted otherwise. When the exhaust pipe later on had to be replaced, the authorities did not find that the pipe was a special modification which entitled the man to a grant pursuant to the Motor Vehicle Order. The pipe did not constitute a change of the car's function due to the man's disability. In addition, an exhaust pipe was standard equipment on all cars.

The Ombudsman stated that a special modification did not have to be designed to facilitate the disabled citizen's use of the car. It could – as in this case – also be designed to facilitate the fitting of necessary aids in the car. As the exhaust pipe had been specially adapted, it could no longer be termed standard equipment. Therefore, and with reference to the principle of compensation, the Ombudsman found it doubtful whether the local authority could refuse to assist the man with at least the extra cost resulting from the special modification of the exhaust pipe. The Ombudsman recommended that the social tribunal reopen the case or refer the case back to the local authority for renewed consideration.

(Case No. 2008-3563-055)

2. RELIABILITY OF POSTAL SERVICES, APPEAL DEADLINE AND EXEMPTION FROM DEADLINE

A man complained because the social tribunal had refused to consider his appeal to the tribunal on the grounds that the appeal deadline of four weeks had been exceeded. The man alleged that he had not received the local authority's decision until four days after the date of the decision, and that the appeal deadline had therefore not been exceeded.

The Ombudsman could not criticise that the tribunal had considered the local authority's decision to have reached the complainant the day after it had been sent. He pointed out the, in general practice, lenient standard of proof of the assumption that a letter from a public authority has reached its recipient the day after it has been sent.

However, it is possible for the social tribunal to grant an exemption from the appeal deadline. The Ombudsman enumerated a number of circumstances which in his opinion may be included when assessing whether or not an authority should grant an exemption. He recommended that the tribunal reopen the case.

(Case No. 2008-3306-009)

3. INTERPRETATION OF TWO PROVISIONS ON FREE TREATMENT FOR CHILDREN AND JUVENILES IN SOCIAL SERVICES ACT

A mother complained to the Ombudsman about a case concerning free treatment pursuant to two provisions in the Social Services Act. The treatment was for a 12-year-old girl with sensory-motor difficulties. The local authority, the social tribunal and the National Social Appeals Board had all refused.

With regard to the first provision, the authorities had referred to the provision being solely meant for isolated or quite temporary and short-term treatment, not for longer-term therapy. The Ombudsman stated that the wording of the provision and the guidance notes from the Ministry of Social Affairs spoke most in favour of the view that the provision also included longer-term therapeutic processes. In the Ombudsman's opinion, there was nothing in the explanatory notes on the provision which spoke against this interpretation.

With regard to the second provision, the authorities had based their refusal on the interpretation that the provision covered solely maintenance training, meaning training focused on preventing loss of function and maintaining an existing level of function. The Ombudsman stated that according to the explanatory notes on the provision, this interpretation could not be applied, regardless of any superficial reading of the provision's wording, which spoke of 'maintaining' physical or mental skills. Thus, in the Ombudsman's opinion, 'maintenance training' must be understood as defined in the explanatory notes, meaning that it also included training intended to 'improve the existing level of function'.

On this basis the Ombudsman asked the National Social Appeals Board to reopen the case with a view to reassessing the issue of granting support for the treatment in question.

(Case No. 2009-0440-059)

15. PRIME MINISTER'S OFFICE

No cases concluded in 2010 were selected for publication in the Annual Report.

16. MINISTRY OF TRANSPORT

No cases concluded in 2010 were selected for publication in the Annual Report.

17. MINISTRY OF FOREIGN AFFAIRS

The following case concluded in 2010 was selected for publication in the Annual Report:

1. REFUSAL OF ACCESS TO CIA WORKING GROUP'S DOCUMENTS ETC. INDEPENDENT AUTHORITY AND REGARD FOR THE PROTECTION OF DANISH FOREIGN POLICY INTERESTS

In the wake of a TV documentary, the so-called CIA Working Group was set up by the Government to investigate covert CIA flights over Danish territory and any Danish involvement therein. The Ministry of Foreign Affairs (the Ministry) refused three journalists access to the Working Group's documents on the grounds that the Working Group must be considered an independent authority and that the documents were therefore to be considered internal work documents. One document, created outside the Working Group and relating to the contact with the United States, was exempt from access due to significant Danish foreign policy interests.

The Ombudsman stated that the CIA Working Group could not be considered an independent authority and the Working Group's documents could therefore not be exempt from access on the grounds that they were internal work documents. The basis for the Ombudsman's opinion was, among other things, that

the chairman of the Working Group was itself an authority, namely the Ministry of Foreign Affairs, that the chairmanship did not use a specially screened case number for the Working Group's documents, that the chairmanship primarily acted as secretariat for the Working Group, and that the individual Working Group members contributed on behalf of the authorities each of them represented. The Ombudsman therefore recommended that the Ministry of Foreign Affairs reconsider its refusal to give access.

The Ombudsman also recommended that the Ministry reconsider whether there was still a need for secrecy with regard to contacts with the United States. The Ombudsman referred to the fact that the Home Rule Government of Greenland had already issued a press release which contained information about the contact with the United States.

(Case No. 2009-0188-401, Case No. 2009-0318-401 and Case No. 2009-1264-401)

18. MINISTRY OF EDUCATION

The following three cases concluded in 2010 were selected for publication in the Annual Report:

1. SCHOOLS CANNOT DEMAND THAT PUPILS USE THEIR OWN COMPUTER IN SCHOOL

The Ombudsman decided to open an own-initiative case vis-à-vis the Ministry of Education concerning schoolchildren's use of their own computer during lessons at school.

The reason for his decision was a newspaper article according to which several of the country's primary and lower secondary schools demanded that schoolchildren brought a computer of their own to school to use during lessons.

The Ministry of Education stated that no payment may be demanded from parents for necessary teaching materials that are used in general teaching, such as text books, dictionaries and pocket calculators. The Ministry also stated that there is no authority to demand that primary and upper secondary school pupils bring a computer of their own to lessons. If lessons are based on the use of computers, the school must provide these free of charge for pupils who do not wish to use a computer of their own.

The Ombudsman stated that he agreed with the Ministry in this conception of the law.

In addition, the Ministry stated that it is the responsibility of the local authorities and the individual schools to clearly and unequivocally communicate this conception of the law to parents so that parents do not feel obliged to or pressured into having their children bring their own computer to school. The Ministry found that it would be a matter for criticism if a school gave rise to doubts about the legal status regarding this issue.

The Ombudsman stated that he agreed with the Ministry's view and that he had no other comments on the Ministry's statement.

(Case No. 2009-4267-710)

2. APPEAL GUIDANCE WHEN DECISION IS BASED ESSENTIALLY ON PREVIOUS DECISION(S)

The Ombudsman opened an own-initiative case regarding failure to provide guidance on appeal. The reason was a complaint about a letter from the State Educational Grant and Loan Scheme Agency (the Agency) about calculation of the number of study grant portions that had been used. The complainant had not received guidance on appeal.

The Agency and the Board of Appeal for State Student Grants (the Board) did not consider the Agency's letter to the complainant to be a decision, and this was the reason why the letter had contained no guidance on appeal.

The Ombudsman asked the Ministry of Education (the Ministry) for a statement on the matter.

The Ministry stated among other things that the Agency's letter to the complainant was a decision even though grant notifications from previous years (which could have been appealed separately at the time) were essentially part of the basis for the decision. The Ministry also stated that according to general rules of administrative law an authority may have a duty to reopen a previously decided case and that the decision whether to reopen the case may also be appealed.

The Ombudsman stated that he agreed with the Ministry's conception of the law. He did, however, specify that the Agency's obligation to make a decision

must apply even though no request for reopening has been put forward and no doubt has been raised about the correctness of the previous grant notifications that have been included in the basis for the new decision.

Therefore, the Ombudsman was of the opinion that the Agency's letter to the complainant was a decision which could be appealed to the Board. Consequently, the decision should have contained guidance on appeal.

(Case No. 2008-1216-730)

3. ACCESS TO INTERNAL DOCUMENTS FROM INSPECTION VISIT AT FREE SCHOOL

Inspectors from the Danish School Agency (the Agency) had written down a large number of observations from lessons they had watched in connection with an inspection of a free school. The free school wanted access to these observations.

The Agency granted only partial access, as the school was refused access to those parts of the observations which the Agency found to be 'internal assessments'. The Ministry of Education agreed with the Agency's opinion.

The school's lawyer complained to the Ombudsman about the authorities' decision on access to the observations.

The case raised issues in relation to section 12(2) of the Public Administration Act about authorities' duty to hand over information contained in internal documents regarding the facts in a case. The case also raised questions regarding the application of section 13 of the Public Administration Act, which stipulates that parties to a case are entitled to access to certain internal case material.

In the Ombudsman's opinion the free school was entitled to access to certain additional information, and he recommended that the Ministry of Education reopen the case.

(Case No. 2009-4506-701)

19. MINISTRY OF ECONOMIC AND BUSINESS AFFAIRS

No cases concluded in 2010 were selected for publication in the Annual Report.

20. LOCAL AND REGIONAL AUTHORITIES

The following fourteen cases concluded in 2010 were selected for publication in the Annual Report:

1. PASSING ON OF INFORMATION ABOUT AN EMPLOYEE AS A CONSEQUENCE OF THE LOCAL GOVERNMENT REFORM

A union complained on behalf of a member that information regarding the member's course of illness had been passed on against her wish from a county where she was employed to her new employer, a local authority, as a consequence of the local government reform, which abolished the counties in favour of larger local authorities.

In the Ombudsman's opinion the woman's transition from the county to the local authority was part of a succession whereby the local authority entered into the legal relationship which existed between the county and the woman. It followed naturally that the local authority would also have to take over the woman's personnel file. In the Ombudsman's opinion, the fact that a succession had taken place meant that the provisions of the Public Administration Act and the Health Information Act on passing on information were not applicable when the local authority took over the woman's personnel file from the county. Therefore, the Ombudsman did not find that any further investigation of the complaint would enable him to criticise any breach of these provisions.

In addition, the Ombudsman did not see any prospect of being able to criticise the local authority's assessment that the information received about the woman was correct, up to date and relevant.

(Case No. 2008-4564-803)

2. BAN ON CONTACTING LOCAL AUTHORITY BY TELEPHONE AND ON APPEARING IN PERSON WITHOUT A PRIOR APPOINTMENT IN SPOUSE'S CASE. NOT A DECISION.

A local authority decided that a man was not allowed to telephone the local authority's family and labour market administration and that he was not allowed to appear in person without a prior appointment. The ban only applied to his contact with the local authority regarding his spouse's case. The reason for the ban was that the man's approaches up till then had been unpleasant in both tone and choice of words. Individual staff members described contact with him as degrading and transgressive. In addition, the frequency of the man's approaches had imposed a disproportionate strain on the local authority.

The Ombudsman did not criticise the local authority's ban but came to the conclusion that the specific limitation of the man's access to contacting the administration did not constitute a decision within the meaning of the Public Administration Act. The Ombudsman found it important that the restriction in the man's contact with the local authority was not of a sufficiently appreciable nature to be considered a decision. The man had only been refused access to contact by telephone with regard to his spouse's case, and he could appear in person by appointment.

Regarding the decision concept, please see contrary outcome in Case No. 2008-2963-009, published in the 2010 Annual Report of the Parliamentary Ombudsman as Case No. 2010 20-3.

(Case No. 2009-2756-009)

3. BAN ON APPEARING IN PERSON AT TOWN HALL WAS A DECISION

A local authority decided to ban a woman from appearing in person at the town hall. The reason for the ban was a particular incident where the woman had acted in a threatening manner and yelled at a case worker in a lift in the town hall. The local authority informed the woman that the ban on appearing in person applied for three years for the time being, and the woman was given a name and telephone number of a contact person within the administration. When the woman's representative asked for a more detailed explanation for the ban, the local authority added that there had been several prior incidents where the woman had been unpleasant and loud-mouthed towards various staff members in the administration.

The Ombudsman did not find grounds for criticising the local authority's decision. In his assessment, the ban on the woman's appearing in person was a decision within the meaning of the Public Administration Act. The Ombudsman found it regrettable that the local authority had not heard the woman as a party to the case before making the decision. He also found it regrettable that the local authority had not observed the duty to take notes pursuant to the Public Administration Act, as the local authority also included previous specific incidents in the grounds for issuing the ban on appearing in person. The Ombudsman criticised that the local authority had not described the nature of the threatening behaviour in its original decision and that the local authority only referred to these previous incidents when the woman's representative later asked for an explanation.

Regarding the decision concept, please see contrary outcome in Case No. 2009-2756-009, published in the 2010 Annual Report of the Parliamentary Ombudsman as Case No. 2010 20-2.

(Case No. 2008-2963-009)

4. RECRUITMENT FOR THE SECRETARIAT OF THE LORD MAYOR OF COPENHAGEN

Because of articles in the press the Ombudsman opened an own-initiative investigation of the recruitment procedures for a number of positions in the secretariat of the newly elected Lord Mayor of Copenhagen. Among other things, the Ombudsman criticised the City of Copenhagen's manner of advertising the jobs and the deadlines for applications. He also criticised the job interview procedures, which in his opinion might strengthen the suspicion raised by the press that it had been decided beforehand who would get the jobs. The Ombudsman found no basis for criticising the new Lord Mayor's part in the case.

(Case No. 2010-0200-8102)

5. NO DOCUMENTATION THAT LOCAL AUTHORITY HAD INFORMED CITIZEN HOW AND WHEN TO PAY BACK SURPLUS HOUSING BENEFIT. REMINDER FEE UNWARRANTED.

A local authority had imposed a reminder fee on a man in connection with the collection of surplus housing benefit. The man did not think that the local authority had provided guidance on how to pay the surplus housing benefit or sent him a giro transfer form with which to do so, and he therefore complained to the Ombudsman. The local authority then decided to waive the reminder fee.

The Ombudsman agreed with the local authority's decision to waive the fee. He stated that even when a reminder fee is warranted, the deadline for payment must have expired and the citizen must have been informed how to pay the due amount to the local authority. The Ombudsman also stated that, as the local authority could not prove that a giro transfer form had been sent to the man or that information had otherwise been provided on payment method and deadline for payment of the surplus housing benefit, the local authority had to bear the risk of evidential uncertainty. Consequently, the local authority could not impose a reminder fee on the man.

(Case No. 2009-3939-009)

6. LOCAL AUTHORITY MANAGERS NOT ALLOWED TO COMMENT ADVERSELY ON BUDGET CUTS AS PRIVATE CITIZENS. FREEDOM OF SPEECH.

The Ombudsman contacted a local authority because of an article on the Internet according to which the local authority had written to its managers that they were not allowed to comment adversely on planned cut-backs, even if they did so as private citizens.

On the basis of the local authority's reply, the Ombudsman decided to investigate the matter on his own initiative.

The Ombudsman agreed with the local authority that the wording of the local authority's instruction to the managers was regrettable. The Ombudsman also agreed with the local authority that the instruction could justifiably be read as an instruction with the intent of circumscribing freedom of speech for the local authority managers.

The Ombudsman noted that the local authority has expressed its regret to all the managers at the wording of the instruction and had also done so on the local authority's website. The local authority stressed that the intent had not been to circumscribe freedom of speech for either managers or staff.

(Case No. 2010-1682-8111)

7. LOCAL AUTHORITY'S VISITING RESTRICTIONS FOR RELATIVES OF NURSING HOME RESIDENT WERE A DECISION

A woman complained to the Ombudsman that she and her family had had their access to visiting her father at a nursing home owned by the local authority

restricted. The local authority had decided that the family were only allowed to visit her father for one hour a day out of consideration for the working environment of the nursing home staff.

The Ombudsman stated that the authority of the local authority to restrict the family's access to visiting the nursing home resident was based on 'institution status' (i.e. an administrative authority is entitled to make the necessary decisions on the operation of institutions under it). In the basis for the decision the local authority should, however, have included Article 8 of the European Convention on Human Rights concerning the right to a private and family life.

The Ombudsman criticised the local authority for not establishing what was the correct authority for the visiting restrictions. In addition, the local authority had not described and thereby provided a clear picture of the actual circumstances in the case. The woman and her family had a different interpretation of the course of events from that of the local authority. Consequently, there was a considerable level of doubt as to the actual basis on which the decision to curtail the visits had been made. The Ombudsman therefore found that it was uncertain whether the visiting restrictions were in accordance with Article 8 of the European Convention on Human Rights. However, having regard particularly to the information provided by the complainant, the Ombudsman did find that that there was a high level of conflict between the family and the nursing home staff, and that the staff felt that the family regarded them with suspicion and made often unreasonable accusations. The Ombudsman therefore stated that he appreciated why the local authority had decided to curtail the family's access to visiting the nursing home.

The Ombudsman criticised that the local authority had not considered the curtailing of visits to be a decision within the meaning of the Public Administration Act. Furthermore, the Ombudsman criticised the local authority for not consulting the woman and her family pursuant to section 19 of the Public Administration Act prior to making the decision. Lastly, the Ombudsman criticised the local authority's grounds as they did not comply with the requirements in section 24 of the Public Administration Act.

(Case No. 2008-2199-063)

8. LOCAL AUTHORITY'S CASE PROCESSING TIME

A man complained to the Ombudsman about a local authority's case processing time in a case concerning a noisy and disruptive enterprise at a neighbouring property. Prior to the local authority's involvement, the case had had a long his-

tory, first with the county and later on with the Greater Copenhagen Authority. From the time when the local authority began processing the case until the local authority made a decision, five years and three months passed. For a period of more than three years, nothing happened in the case.

The Ombudsman stated that this gave the impression that the local authority had forgotten about the case, and he found the local authority's case processing time to be a matter for severe criticism. The Ombudsman also found it regrettable that the local authority had not replied to a reminder, nor on its own initiative informed the complainant about the case processing time. The Ombudsman recommended that the local authority consider setting targets for its case processing time and monitoring that the targets were observed.

(Case No. 2010-0688-1002)

9. LOCAL AUTHORITY REACTED TOO SLOWLY AND INADEQUATELY TO TEACHER'S REPORT OF CHILD ABUSE

A class teacher suspected that a child in her class and the child's siblings suffered physical abuse when visiting their father, and the teacher therefore notified the local authority of her grave suspicion.

The lawyer of the children's mother complained to the Ombudsman that the local authority did not take adequate measures in response to the teacher's notification.

The Ombudsman criticised the local authority for not reporting the matter to the police.

The Ombudsman stated that the local authority ought to have contacted the regional state administration, which makes decisions about visiting rights, and reported the information it had received. Thus, the local authority should not just have asked the children's mother to contact the regional state administration herself with the information about the teacher's notification.

The Ombudsman also criticised the processing time for the family assessment investigation pursuant to section 50 of the Social Services Act which the local authority was obliged to carry out on the basis of the notification.

In addition, the Ombudsman criticised certain matters in connection with the local authority's communication with the mother's lawyer in the lawyer's capacity as party representative.

(Case No. 2010-0824-0007)

10. COMPETENCE OF SOCIAL TRIBUNAL TO CONSIDER COMPLAINT ABOUT LOCAL AUTHORITY'S FORCED ADMINISTRATION OF DISABILITY PENSION. INTERPRETING THE SCOPE OF PREVIOUS ADMINISTRATIVE DECISION.

A local authority made the decision to take over the administration of a man's disability pension because he did not pay his rent or clean his flat adequately. Subsequently, the local authority saw to it that the man's rent was paid but the local authority also paid a number of other bills for the man. These included a medicine bill, a bill for relocation of the man's household effects and a bill for the renovation of the man's flat when he moved out.

Two of the man's relatives complained about the local authority's administration of the man's disability pension. The social tribunal refused to consider the relatives' complaint, as the tribunal did not think that any new decisions had been made in the case which could be appealed to the tribunal. The Ombudsman disagreed.

On the basis of an interpretation of the local authority's original decision to take over the administration of the man's pension, the Ombudsman established that a number of the bills which the local authority had paid on the man's behalf were not included in the original administration decision. Consequently, the social tribunal should not have refused to consider the complaint from the relatives, and the Ombudsman criticised this refusal.

In addition, the Ombudsman found it regrettable that the local authority had not realised that it had in fact made new decisions concerning the administration of the man's disability pension.

The Ombudsman recommended that the social tribunal reopen the case and consider the part of the relatives' complaint which concerned the issue of the local authority's administration of the man's disability pension.

(Case No. 2008-0569-009)

11. RIGHT OF ACCESS TO GUIDELINES FOR ISSUING PARKING TICKETS

The Ombudsman received a complaint from a motorist who had been given a parking ticket. The motorist complained to the Center for Parkering (the Greater Copenhagen parking department) and also asked for access to the traffic wardens' guidelines for issuing parking tickets. The motorist received a partial refusal of access and complained to the Ombudsman.

The partial refusal of access was based especially on the regard for public monitoring activities and law enforcement (section 13(1)(3) and (4) of the Access to Public Administration Files Act). Among other things, the Center for Parkering claimed that public access to the guidelines in their entirety might cause motorists to exploit their knowledge of the guidelines by following the guidelines and not the parking regulations laid down in the Road Traffic Act, thereby reducing general respect for the Road Traffic Act regulations.

The Ombudsman found that the guidelines did not contain information which might cause exemption from access on the grounds put forward by the Center for Parkering. Consequently, the Ombudsman recommended that the Center for Parkering reopen the case concerning access to the guidelines.

(Case No. 2009-4045-601)

12. CASE PROCESSING TIME IN ENVIRONMENTAL APPROVAL CASE

A farmer complained that a local authority had not yet made a decision regarding environmental approval for a capacity expansion of a biogas plant.

The application for environmental approval was submitted in 2004, and the local authority took over the case on 1 January 2007. The local authority decided that the case was not EIA (Environmental Impact Assessment) obligatory but this decision was appealed to the Nature Protection Board of Appeal. The local authority did not start the actual processing of the environmental approval case until it had concluded the EIA case, and a decision in the environmental approval case was left in abeyance until a final decision had been made on whether the expansion was EIA obligatory.

The Ombudsman found it regrettable that the local authority had not started the actual case processing until 2008. In addition, it was regrettable that the local authority postponed the processing of the case until it had made a decision on whether the expansion was EIA obligatory. If the cases had been processed

concurrently, the total case processing time for the environmental approval case would probably have been shorter.

The Ombudsman did not criticise that the local authority put the final decision in the case in abeyance until the Nature Protection Board of Appeal had decided whether the expansion was EIA obligatory. The Board referred the case back to the local authority, and in this context the Ombudsman recommended that the local authority speed up the EIA case as much as possible.

(Case No. 2009-4166-100)

13. WARNING ON INSUFFICIENT GROUNDS

A trade union complained on behalf of a child welfare worker about a written warning from the Region. The grounds for the warning were that the child welfare worker had involved the parents of an institution's residents in an internal conflict. As documentation, the Region referred to information in an internal memo.

The Ombudsman stated that, based on the information in the case, he could not find that the Region's central administration had any knowledge of the memo when the warning was given.

In addition, the Ombudsman found that there was no basis for alleging that the child welfare worker had involved parents in an internal conflict. Giving out factual information about a suspension from duty was not involvement, nor was it disloyal, and there was no breach of her duty of confidentiality. Consequently, the grounds given for the warning were inadequate, and the Ombudsman recommended that the case be reopened.

(Case No. 2009-3401-812)

14. LOCAL AUTHORITY'S DUTY TO REACT TO INFORMATION IN COMPLAINT ABOUT PRIVATE SUPPLIER OF ARCH SUPPORTS

A man lodged several complaints about the local authority supplier of arch supports because in his opinion the supplier had not provided him with usable arch supports.

The Ombudsman stated that when an authority enters into a contract with a company to provide the authority or citizens with services for payment, the authority must supervise that the company fulfils the requirements set out in

the contract and legislation. In this context the Ombudsman referred to sections 15 and 16 of the Act on Legal Protection and Administration in Social Matters and to general rules and principles of administrative law. In the Ombudsman's opinion, due to this supervisory duty a local authority is obliged to respond to a certain extent to – and investigate the accuracy of – information about breaches of contract and non-compliance with relevant legislative provisions. In this specific case the Ombudsman found that the complainant's written information to the local authority about the supplier's (too) poor service and product quality indicated that the local authority obligations in connection with the administration of section 112 of the Act on Social Services were no longer being fulfilled correctly and in accordance with the Act. Consequently, he criticised the local authority for not properly investigating whether the complainant's claims were correct.

The Ombudsman did not ask the local authority to reopen the case as the complainant had subsequently received a new grant for arch supports and had chosen a supplier himself this time.

(Case No. 2009-2657-051)

The Danish Parliamentary Ombudsman

Gammeltorv 22
DK-1457 København K

Phone +45 33 13 25 12
Fax +45 33 13 07 17

www.ombudsmanden.dk
post@ombudsmanden.dk