THE DANISH
PARLIAMENTARY
OMBUDSMAN

Annual Report

2009

THE DANISH
PARLIAMENTARY
OMBUDSMAN

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CONTENTS

1. PREFACE 7

2. ARTICLES

Parliamentary Ombudsman Professor Hans Gammeltoft-Hansen 9
Director General Mr. Jens Møller 17
Mrs. Kirsten Talevski, 1st Division 23
Mrs. Bente Mundt, 2nd Division 29
Mr. Lennart Frandsen, 3rd Division (Inspections) 35
Mr. Morten Engberg, 4th Division 41
Mr. Karsten Loiborg, 5th Division 47
Mrs. Lisbeth Adserballe, General and International Division 55

3. APPENDICES

Annex A: Staff and office 61
Annex B: Budget 2009 63
Annex C: Statistics 65
Annex D: Summaries of selected cases 83

TO PARLIAMENT

Pursuant to the provision in section 1 (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 shall submit an annual report on his activities to Parliament. The report shall be published. In the report, the Ombudsman shall among other things highlight statements on individual cases which may be of general interest. The outline of the cases in the report shall 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 2009.

The 2009 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 annexed together with summaries of selected cases from 2009.

Copenhagen, September 2010

HANS GAMMELTOFT-HANSEN

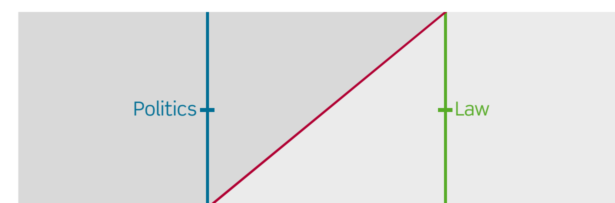
Hans Gammeltoft-Hansen
Parliamentary Ombudsman

THE OMBUDSMAN'S ROLE IN CASES WITH POLITICAL CONTENT

One of the most central and fundamental issues in the Ombudsman's discharge of his function relates to cases involving both politics and law. Throughout the existence of the Ombudsman institution, it has at times been questioned – sometimes critically – whether the Ombudsman has exceeded the limits of his task and interfered in matters of a purely political nature.

The problem can emerge in very different – and sometimes unexpected – variants. It is therefore important that the Ombudsman has a general opinion on the issue and guidelines for handling it.

In connection with the activities of the public administration, the relationship between law and politics can be illustrated by the graph below:



Some cases are purely political. Statements by the government or the relevant minister about planned political initiatives are of a purely political nature. This also applies to similar statements by local politicians or local political bodies. Conversely, a case concerning e.g. the issuing of a driving licence is a purely legal matter. The conditions for issuing driving licences are clearly stated in the law and the associated administrative directives.

However, what is interesting is the fairly large intermediate area between the purely political and the purely legal cases (in the above illustration, between the blue and the green line), where the cases contain *both* legal and political aspects.

In some cases, the legal aspect is dominant and very little room is left for political considerations (in the illustration, they fall within the right-hand section of the intermediate area). Other cases predominantly require a political assessment and decision, while the legal aspect is only a very limited factor in the substance of the case (the left-hand section of the intermediate area).

On the basis of this summary outline, the Ombudsman's task in cases involving both political and legal aspects can be expressed in two sentences:

a) The Ombudsman shall *not avoid* taking up cases for investigation merely because they (also) contain political substance.

b) In such "mixed" cases, the Ombudsman shall *limit* his investigation to the legal aspects of the case.

In other words, it is the slanting red borderline which is crucial. The Ombudsman must respect this and stick to the legal area in his investigation.

On the face of it, these points may appear fairly straightforward. What is interesting is how they work in practice.

Prime Minister's letterhead: Before a general election in November 1960, the Prime Minister sent a so-called confidential letter on the official Prime Minister's letterhead to a number of voters, encouraging them to vote for the Social Democrats.

The Ombudsman questioned the minister's use of the letterhead. The Prime Minister replied that over the years, the different ministers had used the letterhead not only for correspondence directly related to their office as ministers, but also for letters written in their role as politicians. The Prime Minister justified this practice by arguing that it would "be inconvenient" if a minister had to use several different kinds of letterhead.

The Prime Minister's Office confirmed to the Ombudsman, who had received a complaint about the usage, that the official letterhead had been used to send a letter to two voter groups before the election.

The Ombudsman recommended that the Prime Minister consider whether "ministers should avoid using the distinctive mark in question [the official confidential seal on the letterhead] in future election campaigns".

The Danish Ombudsman institution was very new at the time and that is probably why the then Ombudsman expressed himself in such cautious and diplomatic terms. In addition, the entire concept of "good administrative practice" was still quite under-developed. Today, the Ombudsman would probably have stated plainly that the Prime Minister's behaviour was contrary to good administrative practice. The case is an example of how something which on the face of it may appear completely political – a minister's participation in the election campaign – can nonetheless involve a legal aspect, in other words, there are rules which must be respected. It was this aspect, neither more nor less, which the Ombudsman investigated and established as a limit to the Prime Minister's political scope. *(Annual Report 1960.94).*

Electronic surveillance centre under the university: Some students at the Asiatic Institute of the University of Copenhagen in Kejsergade claimed that the military intelligence service had placed a secret electronic surveillance installation in the basement under the Institute. The Ombudsman decided to take up the case on his own initiative, even though it was clearly political and involved national security. He focused his investigation on two issues. Was there appropriate legal authority for covering the costs of the establishment and operation of the so-called communication hub? Was the activity undertaken in connection with the hub legal?

In his final statement, the Ombudsman said "that it is Parliament's clearly stated view that Denmark must have a defence, including an effective intelligence and warning service. Considering a political decision of this kind is outside the scope of the Ombudsman's authority". He added that if such an intelligence and warning service is to function effectively, it cannot be judged by the same criteria as an ordinary civil administration. In his final assessment, the Ombudsman then concluded that the work carried out in Kejsergade did not afford grounds for criticism or recommendations.

This example again illustrates that the Ombudsman need not refrain from considering a case of a highly political character. It involved the Danish government's defence policy during the Cold War. At the same time, it illustrates how the Ombudsman strictly limited his investigation to the purely legal aspects of the case. *(A.R. 1969.59).*

Secret gerfalcons to the Middle East: This case also involved a distinctly "political area" – foreign policy – which as a starting point is beyond the scope of what an Ombudsman may or should subject to investigation.

A citizen requested access to the Ministry of Foreign Affair's case concerning export of gerfalcons to certain Arab countries. The Ministry refused on the grounds of "foreign powers' interpretation and possible reactions if the Ministry of Foreign Affairs releases document exposing these countries' relationship with Denmark". (It later emerged that the actual issue in the case was that a very high-ranking and influential person in an Arab country wanted to receive a Greenlandic gerfalcon as a gift from Denmark. A private person, who claimed to have bred the protected bird, was happy to present it as a gift and applied for an export licence for this purpose, but his application was rejected).

In the Ombudsman's opinion, the Ministry had not given a legally valid reason for exempting the entire case from disclosure. He therefore asked the Ministry to reconsider the case and assess the disclosure issue in relation to each of the documents of the file. The Ministry reconsidered the case, but once again decided not to disclose any documents in the file. *(A.R. 1980.654).*

Cancellation of newspaper subscription by the Ministry of Transport: The Minister for Transport decided to cancel all subscriptions to the newspaper Politiken, so that the paper would no longer be delivered to the Ministry departments and administrations or the country's post offices and railway stations. The reason was a section of an article which the Minister regarded as "a gross and unacceptably blasphemous attack on the Danish national church and its holiest symbol".

The Ombudsman took up the case on the basis of several complaints and asked the Minister to explain the legal basis of his decision to cancel the subscriptions. The Minister explained that he was responsible for the way in which appropriations are used and currently did not find that the Ministry's funds could be used for purchasing Politiken.

In his final statement, the Ombudsman noted that the Minister had made his decision in his capacity of head of administration. Although the case fell within "the border area of administrative law", the Minister was nonetheless subject to the ordinary rules of administrative law. These include the principle of abuse of power, i.e. an administration may only pursue purposes which are within the scope of the relevant administration's overall purpose. In the Ombudsman's opinion, the Minister's desire to show his disapproval of the article in question was not an "objective purpose" for the Ministry of Transport. The Minister then reinstated the newspaper subscriptions, recognising that he had contravened some legal limits. *(A.R. 1984.156).*

The Tamil case – a legal case: In brief, this case involved the failure to respond to applications for family reunification with wives and under-age children from several young Tamil men with refugee status and residence permits in Denmark. Under the rules then in force, refugees in Denmark were entitled to bring their closest family to this country, so the case largely fell within the legal area. Nonetheless, the Directorate of Immigration under the Ministry of Justice had not made any decisions for two or three years. The reason later turned out to be that the Minister for Justice (who for political reasons wanted to limit family reunification as much as possible) had indicated that the cases should be left pending.

The Ombudsman expressed severe criticism. The case was later the subject of extensive judicial investigation with hearings of numerous politicians and public servants. In addition, the former Minister for Justice was impeached.

The case differs from those above in that the legal aspects are clearly dominant. It is thus an example of the way in which a case which predominantly falls within the legal area can become a political matter and be considered from a purely political perspective. *(A.R. 1988.100).*

Prime Minister's interview on the Iraq war: A journalist lodged a complaint with the Ombudsman because the Prime Minister had refused to be interviewed about the Iraq war. The journalist had repeatedly been requesting an interview for a long time. Initially, the Ombudsman closed his investigation of the case without expressing criticism and in this connection attached importance to a statement from the Prime Minister's Office that the Prime Minister had given no actual interviews about the Iraq war for a long time. However, soon afterwards the Prime Minister gave an extensive interview about the Iraq war to another medium. On this background, the Ombudsman took up the case for renewed investigation.

The Ombudsman stated that he still found no grounds for criticising the Prime Minister's refusal to be interviewed by the journalist at a time when the Prime Minister was refusing to give any interviews about the Iraq war. However, when the Prime Minister began to give interviews about the war again, he should in the Ombudsman's opinion either state his objective reasons for continuing to refuse to be interviewed by the journalist in question or give him an interview. After an interlude, where the Prime Minister first rejected the Ombudsman's statement, he decided to give the journalist an interview.

Ministers are clearly allowed to decide to whom they wish to give interviews. It is a political assessment and decision. However, as they also act as ministers (and therefore representatives of the public administration) in connection with

such decisions, the ordinary principles of objectivity and equality of administrative law *may* come into play and in certain circumstances be fairly significant. This may for instance be relevant to ensure that certain journalists are not blacklisted for subjective reasons, e.g. because they are regarded as being particularly critical. *(A.R. 2007.347).*

All the above examples relate to the activities of the government, i.e. the *ministers*. In relation to the activities of Parliament, the Ombudsman can no longer act as a control body, as it obviously is not appropriate for the Ombudsman to assess Parliament.

A fixed procedure has been established for situations when the Ombudsman is considering an issue which is also being considered in consultation between a minister and a standing committee. The Ombudsman asks the chairman of the committee whether the committee has expressed a particular view on the case or whether the discussion was purely informative. If the consultation was purely informative (as is usually the case), the Ombudsman continues to investigate the case. However, if the committee has made a decision in the form of a statement of a particular view, the Ombudsman drops the case.

Very occasionally, the Ombudsman may also refrain from investigating a case which becomes the subject of special and intense parliamentary interest, even though actual decisions are not made. This was e.g. the case in 2007, when two journalists working on a documentary for the Danish Broadcasting Corporation lodged a complaint with the Ombudsman about the (partial) refusal of the Ministry of Defence, the Headquarters Chief of Defence and the Prime Minister's Office to disclose documents about the Danish special forces' deployment and behaviour in Afghanistan. The journalist also complained about the disappearance of certain documents and about the authorities' case processing time.

The Ombudsman took up the case for investigation *(A.R. 2007.109)*. However, after the screening of the documentary, numerous Members of Parliament wanted further information about the Danish special forces in Afghanistan. The MPs asked questions of ministers and attempted to get information as part of their participation in the parliamentary Defence Committee, Foreign Policy Committee and Praesidium. Eventually, MPs had submitted approx. 150 formal questions to and received replies from the Prime Minister, Minister for Defence and Minister for Foreign Affairs and numerous further questions had been submitted. On this background, the Ombudsman decided to drop the case.

It is important to emphasise that these cases, where Parliament effectively takes over the processing, constitute an important and definitive limitation of the Ombudsman's case competence. The Ombudsman is not able to consider such cases even though he carefully restricts his investigation to the purely legal aspects of the case. When Parliament has taken up and expressed an opinion on a case, the Ombudsman cannot get involved at all. In other words, this principle reflects an actual competence limitation, not merely an investigation limitation.

The Ombudsman's role in cases with a political aspect can now be formulated in the following three sentences – the two mentioned at the start plus a third:

a) The Ombudsman shall not avoid taking up a case for investigation merely because it (also) contains political substance.

b) In "mixed" cases, which include both political and legal aspects, the Ombudsman shall limit his investigation to the legal aspects of the case.

c) The Ombudsman shall refrain completely from investigating a case if Parliament expresses an opinion on the case.

These sentences – as the examples also illustrate – constitute guidelines when cases with a political aspect are presented to the office.

Jens Møller
Director General

GENERAL STATE OF THE OFFICE

Every year since 1955, the Parliamentary Ombudsman has submitted a report on his activities to Parliament. This year's report looks different and the change of form and scope requires a brief explanation.

The natural focus of the Ombudsman report has always been to present the cases involving matters of principle which have been processed during the year. However, in recent years, this has resulted in reports of almost 1000 pages. The establishment of the webpage www.ombudsmanden.dk and the Ombudsman's own database in the Danish State's legal online information system (only in Danish), Retsinformation, have made it possible to find the cases involving matters of principle on an ongoing basis as they are selected for publication. This has reduced the need to include these cases in the printed annual report.

Another important reason for changing the form and content of the report was the desire to follow up on the efforts to improve the reader-friendliness of the statements, letters and other written documents of the office with a modernised version of its key publication – the annual report.

On this background, the report is presented in a new form. The emphasis is on giving a more general, interdisciplinary presentation of the Ombudsman's work.

On 19 May 2004, Parliament agreed to ratify the UN's elective protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT obliges participating states to establish a system for regular visits by independent bodies to places where people are deprived of their liberty, in order to prevent torture, etc. Each participating state is obliged to establish a national preventive mechanism for preventing torture, etc.

In autumn 2007, the Danish government chose the Parliamentary Ombudsman as the Danish national preventive mechanism.

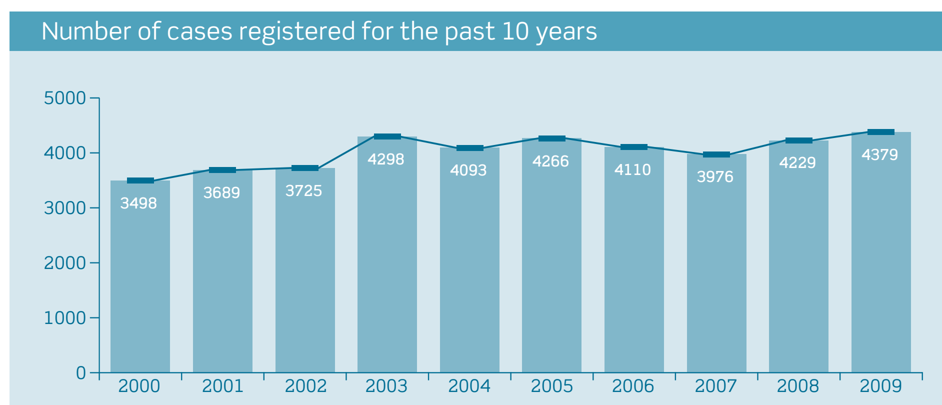
Article 19 of the protocol contains a detailed description of the tasks of the national preventive mechanism. The main task is to undertake regular visits to places where people are deprived of their liberty, in order to strengthen the protection against and prevention of torture and other degrading or inhuman treatment. In addition, the national preventive mechanism shall make recommendations to the relevant authorities with a view to improving the treatment and conditions of people deprived of their liberty. Finally, the national preventive mechanism shall submit suggestions for and comments on existing or proposed legislation.

In 2009, 12 cases related to the Ombudsman's OPCAT function were initiated.

Annex C (page 65) contains various statistics – only a few key figures are highlighted below:

The number of new cases in 2009 was 4,379 as against 4,229 in 2008. The number of cases initiated on the basis of a complaint similarly increased from 4,089 in 2008 to 4,156 in 2009.

Number of cases registered for the past 10 years



The number of completed cases in 2009 was 4,415 as against 4,164 in 2008. The number of cases initiated in the report year 2009 or earlier which – 1 June 2010 – were awaiting Ombudsman processing was 109 in 2009 against 119 in 2008.

The proportion of cases submitted to an actual investigation increased from 16.4 per cent in 2008 to 17.5 per cent in 2009. The proportion of cases submitted to an actual investigation leading to criticism or recommendation similarly increased from 23.8 per cent in 2008 to 24.6 per cent in 2009.

In 36 cases, the authorities chose to reconsider the case already as a result of the Ombudsman's request for a statement. In the statistics, such cases are listed under *rejected cases,* because the Ombudsman does not fully process the case.

The case processing time is relatively stable. For rejected cases, it increased slightly from an average of 33.2 days in 2008 to 36.1 days in 2009, while it decreased slightly from an average of 178.7 days in 2008 to 163.6 days in 2009 for cases submitted to an actual investigation. This does not include 52 cases connected with the inspection of a municipality, where the processing time for various reasons was protracted during 2006-2009.

The Parliamentary Ombudsman has set targets for the desired case processing time for complaint cases which are either rejected or submitted to an actual investigation.

The aim is for 90 per cent of all rejected complaint cases to be completed within two months. With regard to complaint cases submitted to an actual investigation, 75 per cent should be completed within six months and 90 per cent within twelve months.

These targets were not fully met in 2009: 85.2 per cent of the rejected complaint cases were completed within two months (calculated as 60 days) – as against a target of 90 per cent. On the other hand, 75.4 per cent of the complaint cases submitted to an actual investigation were completed within six months, thus meeting the target of 75 per cent. However, 85.9 per cent of the cases submitted to an actual investigation were completed within twelve months, although the target is 90 per cent.

On 1 May 2010, the institution was organised as follows:

ORGANISATION

Ombudsman
Director General

General Division
Main areas
- Annual Report
- International projects
- General administrative law issues
- Own initiative projects
- Opcat visits
- Certain concrete cases
- The Office's human resource, financial and other internal matters
- Secretarial assistance to the Ombudsman and the Director General

1st Division
Main areas
- Company legislation
- Foodstuffs
- Fisheries
- Agriculture
- Patient complaints
- Pharmaceuticals
- Health services
- Appeal permissions
- Foreign affairs
- Communication
- Ecclesiastical affairs
- Culture
- Cases involving aliens
- Registers etc.
- Naturalization
- Unemployment benefits etc.
- Early retirement pension

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
- Detentions
- Police holding cells
- Psychiatric hospitals
- Institutions for the mentally or physically disabled
- Non-discrimination of the disabled
- Residential institutions for children and juveniles

Others
- Patient complaints (psychiatry)
- Psychiatric hospitals
- Prison conditions
- Defence
- Criminal cases and the police
- The courts
- 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 support cases

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 benefit for families with children
- Social institutions except cases concerning inspections
- Cases concerning family law, except child support and adoption cases
- Rules of inheritance/trusts

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. Within this area, the Ombudsman may delegate his functions to the Director, including final statements on cases and inspections. In the absence of the Ombudsman, the Director takes over the Ombudsman's tasks if the Ombudsman so decides, cf. Section 27 of the Parliamentary Ombudsman Act. The Director has overall responsibility for the operation of the Ombudsman institution. Annex A (page 61) contains further information about its organisation and personnel.

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 the Danish universities.

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

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 Nordic countries.

Kirsten Talevski
Head of 1st Division

GOOD GUIDANCE IMPROVES THE CITIZENS' LEGAL PROTECTION

In early 2008, the family reunification application of a Danish-Thai married couple was rejected because the Thai woman was younger than 24. She therefore could not be with her husband in Denmark. In their effort to find a solution, the couple lodged a complaint about the rejection with the Ministry of Integration.

The couple explained that the woman spoke excellent English and was prepared to start an education, become an au pair or do something else to be granted a residence permit in Denmark. They therefore asked the Minister to suggest how she might achieve legal residence in Denmark.

Soon afterwards, the husband sent a letter to the Minister for Integration.

"We hope that you will consider our case and perhaps give us an opportunity to live together again. There may be alternative solutions which have not come to our attention?" wrote the man, who worked in a border shop on a ferry route between Denmark and another EU country. He also explained that the couple was considering moving to another EU country.

The couple were not aware of a possible alternative: family reunification pursuant to EU law. The husband had explicitly mentioned the possibility of moving to another EU country and mentioned that he worked on a ferry route between Denmark and the EU country in question. Nonetheless, the Ministry did not refer to EU law in its reply to the couple. Instead, it described various less realistic options such as an income of over DKK 450,000 a year or the so-called green card system, which may release a residence permit for foreigners with actual job offers within certain fields of employment.

Although the couple had explicitly asked the Ministry of Integration for guidance on possible solutions, they did not receive the guidance to which they were entitled. This was the Ombudsman's conclusion in early autumn 2008.

EXPANSION OF THE GUIDANCE CASE

The Ombudsman often focuses on the authorities' guidance of the citizens. If the citizens do not receive correct guidance, they may not obtain their rights under the law. Good guidance creates predictability, and predictability is an important element of legal protection. The Danish-Thai couple were not given guidance on the possibility of family reunification under EU law and therefore did not get the opportunity to organise themselves in such a way that they might be able to take advantage of the options offered by EU law.

While the couple continued their efforts to obtain a residence permit, family reunification under EU law became an important issue in the public debate, especially the question of the authorities' guidance – or lack of it. Partly on this background, the Ombudsman in summer 2008 at his own initiative initiated a major administrative law investigation of the immigration authorities. This investigation was soon nicknamed the guidance case. Both the individual guidance of citizens who approach the authority with questions and the general guidance – called 'information' – of the general public were closely examined. On 21 November 2008, the Ombudsman brought the case to a preliminary conclusion. In a press release published on the Ombudsman's website, www.ombudsmanden.dk, the same day, Hans Gammeltoft-Hansen said:

"The overall conclusion is that the authorities have not given the citizens adequate guidance and information about the possibility of family reunification under EU law. I find this a matter for criticism. On the other hand, the authorities have worked hard to improve the situation and they have also informed me that in future they will keep a close eye on the area. This of course meets with my satisfaction."

LACK OF GUIDANCE ON WEBSITE

In his report on the guidance case, which ran to more than 60 pages, the Ombudsman stated that an authority is obliged to provide the citizens with a certain amount of information about its practice. This can among other things be done via the internet, leaflets or television broadcasts. If the authority chooses to communicate via its website, it must ensure that the information is easily accessible, correct and sufficiently detailed for the citizens to gain an overview of their legal position and therefore their options.

As part of the investigation, the Ombudsman reviewed the content of the immigration authorities' website, www.nyidanmark.dk, during the period 2002-2008. He subsequently stated that the information on the website in several respects had been inadequate and therefore misleading.

One example was the information about which persons may obtain family reunification under EU law. Since 18 June 2003, children have also been able to obtain family reunification under EU law. Nonetheless, this was not added to the website for almost five years and when it was eventually added, it was placed under the heading "Danish citizens' right to family reunification under EU law as married couples".

INDIVIDUAL GUIDANCE ALSO INADEQUATE

When a citizen contacts an authority either verbally or in writing and asks specific questions within the authority's area of responsibility, the authority must provide guidance to the citizen. This is explicitly laid down in section 7 (1) of the Public Administration Act. In addition, a more extensive obligation to give guidance may follow from ordinary legal principles and good administrative practice.

The authority must ensure that the citizens are provided with information about rules and practice to enable them to look after their interests. In some cases, the requirements in relation to the authority's guidance are more strict, for instance if the rules are complicated, or if the case might result in a major intervention in the citizen's life. As part of its guidance, the authority may hand out a folder about the authority's practice or refer to a description of practice on the internet. On the other hand, the citizen cannot claim binding advance information about for instance the likely decision on a family reunification application.

Ipso facto, the Ombudsman was unable to assess each of the innumerable verbal and written replies given daily to the many citizens who approach the immigration authorities. However, he established that the Ministry had not met its obligation to give guidance to the Danish-Thai couple, even though this obligation could in his opinion have been met simply by explicitly telling the couple that they could read more about practice in relation to family reunification under EU law on the website, possibly supplemented with an outline of practice. The same incidentally applied to a Danish-Costa Rican couple who had told the media of their case, which was in several respects similar.

The Ombudsman also touched on four published taped telephone conversations between journalists from Berlingske Tidende and employees of the Danish Immigration Service. In two conversations, the EU rules were described as "a circumvention of national rules" and "a gap in the law". The immigration authorities themselves considered it "extremely regrettable" that incorrect information had been given, and that the employees had refused to provide guidance. The Ombudsman concurred.

The guidance case was published in the Annual Report of the Parliamentary Ombudsman for 2008, p. 238 ff.

THE OMBUDSMAN CONTINUES TO MONITOR THE CASE

The entire guidance case has undoubtedly increased the immigration authorities' focus on providing correct guidance on the EU rules.

In autumn 2008, both the Ministry of Integration and the Danish Immigration Service established special EU units to monitor the area of family reunification under EU law. The purpose is among other things to ensure that any changes to practice are implemented and published as soon as possible after each new judgment, and that the employees are aware of the EU rules.

Also in autumn 2008, the general information made available on the authorities' website was comprehensively revised, so that it now provides an explicit description of the possibility of family reunification under EU law. In this connection, the Ministry has promised that the information on the website will be reviewed and updated on a regular basis.

The guidance case and perhaps especially the case of the Danish-Thai couple also prompted the Ministry to prepare new standard letters for replies in writing to questions about family reunification under EU law. Finally, the Danish Immigration Service endeavoured to improve the telephone guidance of the citizens by introducing a so-called "telephone guidance constitution".

Much has thus changed since the Danish-Thai couple asked in vain for guidance. Nonetheless, the Ombudsman continues to monitor developments in this very important area. As an example, he regularly obtains information about the development of practice in relation to family reunification under EU law and the guidance initiatives initiated since 2008. Most recently, the Ombudsman has asked for information about the development of practice by the end of 2010.

Bente Mundt
Head of Department,
2nd Division

WHEN LOCAL AUTHORITIES WITHDRAW MAINTENANCE BENEFITS

Most cases in the social area begin by a citizen applying for a benefit. However, some cases are initiated by the authority, for instance when a local authority stops paying regular maintenance benefit. In such cases, the Ombudsman has come across various case processing errors and has therefore contacted the Ministry of Employment.

The Ombudsman has criticised the failure to observe important case processing rules. One rule concerns the hearing of parties, laying down that the authority must inform the citizens about any facts of the case which are unknown to them before withdrawing the benefit. Another rule states that an authority must gather sufficient information to be able to make a completely sound decision. Finally, the citizen must be informed that the local authority has made its decision before the benefit is withdrawn.

CASH BENEFIT

During a general inspection within Copenhagen Municipality in 2006, the Ombudsman received 40 randomly selected cases from the social area for examination to assess how quickly the local authority processes complaints received.

To form a quick overview of the local authority's case processing, the Ombudsman made a summary review of the cases. All 40 cases had been initiated by the citizen by an application, apart from seven of the eight cash benefit cases, which the Ombudsman decided to submit to a more detailed investigation (Annual Report 2009 20-4). The overall impression was that the general case processing rules had been observed in most of the cases, but that the situation was different in the seven cash benefit cases.

Cash benefit can be reduced or withdrawn for various reasons. In five of the seven cases, the cash benefit was reduced. According to the local authority, three of the five cash benefit recipients had failed to attend an offer (a language school course) without good reason. One was deemed to have failed to call in sick correctly and one married woman had her cash benefit reduced because she had received it for six months.

One person was deemed not to be entitled to cash benefit because of failure to take up job opportunities and in another case the local authority decided that the cash benefit should be paid weekly.

All seven cases were characterised by having been initiated by the local authority.

Hearing of parties – failure to hear the citizen

In all seven cases, the local authority had failed to observe its obligation to hear the citizen as a party before making its decision. In other words, the decisions had been made without advising the citizens of the information available to the local authority, which led to the cash benefit being withdrawn or reduced. The citizens were not given an opportunity to correct any wrong information (the person in question might in fact have reported sick) or provide supplementary information (the person in question might have had a good reason for failing to attend the language course). The Ombudsman found this a matter for criticism. The cases illustrate that the hearing of parties helps ensure that the public authority complies with the inquisitorial principle, i.e. a public authority's obligation to ensure that it is in possession of all the information required to make a completely sound and legal decision.

In several cases, the Ombudsman considered it doubtful that the citizen was even aware that a case concerning reduction of the cash benefit was pending. This also afforded him grounds for criticism. Normally, an authority may not make a decision on a case until the party to the case have been informed that a case is pending.

The information must be received

In three cases, the local authority withdrew the cash benefit without informing the citizen. The files gave the impression that the citizens only became aware that a decision had been made when they discovered that the money was not transferred to their accounts at the end of the month, for instance a married woman's cash benefit was reduced because she had received it for six months, but she only found out when she received the reduced benefit payment.

It is a fundamental principle of administrative law that a decision does not have legal effect until the person affected by it has been informed of the decision. The Ombudsman therefore regarded the failure to observe this case processing rule as a serious error. Because the decision to reduce the maintenance basis was in the nature of an intervention, the Ombudsman also stated that it would be most in keeping with good administrative practice to notify the citizen in writing.

SICKNESS BENEFIT

Alongside the cases concerning withdrawal of cash benefit, the Ombudsman also considered a case concerning withdrawal of sickness benefit (A.R. 2009 1-3). This case had some elements in common with the cash benefit cases. The case involved a man who was on sick leave following a traffic accident.

In this case, the man had been called for a meeting by the local authority and failed to attend. The local authority therefore took the view that he "had failed to contribute to the local authority's follow-up without good reason" and withdrew his sickness benefit. He was not involved in the case before the local authority stopped paying his benefit.

In other words, as in the cash benefit cases, the local authority made its decision before the citizen had been heard as a party. However, in this case it had a good reason.

The National Board of Social Appeal had stated that in certain cases involving withdrawal of sickness benefit, local authorities may make a preliminary decision to stop payments without hearing the benefit recipient first. These included cases such as the one described above. The Board took the view that when the local authority makes the preliminary decision, it must at the same time hear the sickness benefit recipient as a party. The recipient will thus be given the opportunity to comment on the case at this stage – but after the benefit payment has been stopped. After the citizen has had a chance to comment and in this way ensure that all relevant information is available, the local authority makes a final decision. In doing so, it must consider the benefit recipient's information – for instance that he did not receive the local authority's letter calling him to the meeting or that he was in hospital. The local authority may decide to confirm its decision to withdraw sickness benefit or to recommence paying the benefit with retroactive effect from the time when payments were stopped.

The Board of Social Appeal based its view that local authorities may make a preliminary decision without hearing of parties on the assumption that payment of sickness benefit is not warranted if a recipient fails to attend a follow-up interview. The Board believes that this follows from the rule in the Sickness Benefit Act stating that the right to sickness benefit ceases the day after the conditions for payment are no longer met.

The Ombudsman did not agree with the Board's interpretation of the law.

According to the Public Administration Act, the parties must be heard before a decision is made. In the Ombudsman's opinion, deviations from this fundamental rule of administrative law must be explicitly warranted. He therefore did not agree with the Board that a local authority may make a decision – even a preliminary one – without hearing the citizen as a party. The local authority will not have sufficient evidence in the case to make a completely sound and legal decision until the citizen has commented on it.

On the basis of the wording of the Sickness Benefit Act, the issue is, however, subject to so much doubt that the Ombudsman did not express criticism of the National Board of Social Appeal, but merely explained his conception of the law.

UNEMPLOYMENT BENEFIT

Like sickness benefit and cash benefit, unemployment benefit can be withdrawn if the citizen no longer meets the conditions for receiving benefit.

Unemployment funds are not public authorities. The case processing rules applying to public administration authorities therefore only apply to the administration of the unemployment funds if this is laid down by law or in rules issued pursuant to the law. However, to a large extent it follows from the rules laid down by the Directorate of Labour that the case processing rules of administrative law also apply to the unemployment funds.

In recent years, the Ombudsman has also in this area come across cases where the unemployment funds' application of the general rules of administrative law affords grounds for doubt.

INVOLVEMENT OF THE MINISTRY OF EMPLOYMENT

On the basis of the cases concerning cash benefit, sickness benefit and unemployment insurance, the Ombudsman has written to the Ministry of Employment. He has questioned the application of the case processing rules of administrative law in cases concerning withdrawal of maintenance benefits.

The Ministry of Employment agrees with the Ombudsman that a local authority cannot stop cash benefit payments until it obtains sufficient evidence in the case, partly by hearing the citizen, and until the citizen has subsequently been informed of the local authority's decision.

Within the unemployment and sickness benefit area, the Minister for Employment on 24 March 2010 introduced a bill reflecting the Ombudsman's legal protection views. Pursuant to the bill, the citizen must be heard and other necessary information must be procured, before the unemployment fund or the local authority can decide that the citizen is not entitled to the benefit and payment cannot be stopped until after the citizen has been informed of the decision.

The Danish Parliament (the Folketing) adopted the Bill on 4 June 2010 (act No. 701 of 25 June 2010). The act came into force on 1 July 2010.

Lennart Frandsen
Head of 3rd Division
(Inspections)

KNOCK-ON EFFECT OF THE INDIVIDUAL INSPECTION

Every year, the Parliamentary Ombudsman makes recommendations and/or expresses criticism in some 150 cases. Compared with the total number of decisions by the country's public authorities each year – probably several million – this figure is so tiny that one has to ask what impact the Ombudsman's decisions have beyond the 150 cases. Experts generally believe that the Ombudsman's activities in relation to complaint cases and own initiative investigations have a significant and extensive impact on the actions of the public administration. This applies to central, regional and local authorities alike.

In the same way, one may ask about the impact of the Ombudsman's inspection activities on the hundreds of institutions which have not been inspected and in many cases are unlikely to be.

LARGE NUMBER OF INSPECTION-RELEVANT INSTITUTIONS

Every year, the Parliamentary Ombudsman undertakes 20-30 inspections. During the history of the office, more than 500 inspections have been carried out. The inspections have – and are – focused on public institutions where people are retained more or less against their will, such as state and local prisons, the Prison Service hostels, secure institutions for children and young people, police detentions and waiting rooms, psychiatric wards, regional psychiatric institutions, psychiatric and social residences and residential institutions for children and young people.

During the inspections, the building conditions and maintenance standards, etc. of the institutions are typically examined. In addition, the inspections examine various aspects of the living conditions of the institution's residents: employment, education, leisure time, catering, visiting arrangements, medical

arrangements, telephone arrangements, spokesman arrangements, drugs and cases of violence. During the inspection, the institution provides the office with reports for a specified period about one or more selected subjects, such as the use of force, handcuffs, observation and security cells and commitments to psychiatric wards, with a view to subsequent examination for inclusion in the inspection report.

The Ombudsman is under a particular obligation to inspect and re-inspect state prisons (a total of 18) and local prisons (40 in total), which he observes. In addition, he inspects all the Prison Service hostels, secure institutions and detentions as well as psychiatric wards.

The country has a huge number of inspection-relevant institutions. The Parliamentary Ombudsman is completely unable to carry out inspections of all these institutions – let alone systematically recurring inspections. He therefore aims for a wider-ranging impact of the individual inspections in various areas.

MANY DIFFERENT INITIATIVES

In the inspection work, the Ombudsman in many different ways seeks to achieve results reaching beyond the individual inspection. He involves any superior – central or regional – authorities, so that the results of the inspection, whenever relevant, are applied to the other similar institutions within the superior authority's area of responsibility. This can be done in several ways:

- Specific problems found during individual inspections and relevant to other similar institutions are raised as separate cases with the superior authority within the area. As an example, inspections of a number of local prisons in 2009 showed that many of these do not offer any employment to the prisoners and therefore no team work either. The reason given by the local prisons was that light (assembly) work – which used to be carried out in the local prisons – has now been outsourced to companies in Eastern European and Baltic countries. The local prisons cannot compete with these companies, because they are bound by a particular calculation system intended to prevent them from becoming unfair competition to Danish companies. The Ombudsman has raised this general issue, which affects all the Danish local prisons, with the Directorate of Prisons and Probation.

- The purpose of the inspection activities is to reveal shortcomings or legal protection issues in the legislation which the Ombudsman can subsequently draw to the attention of the relevant ministry and (possibly) Parliament. Inspections of psychiatric wards revealed various legal protection issues, for instance in connection with personal and physical screening, searches and compulsive personal hygiene. The Ministry of Health has been informed of the issues discovered on a regular basis. The Mental Health Act now in force takes account of several of the issues highlighted, so that explicit legal authority now exists for them.

- Regular contact with the relevant superior authorities ensures that the result of inspections are applied to other similar institutions, for instance regular meetings are held with the Directorate of Prisons and Probation, also in relation to issues covered by the inspection activities.

- In connection with inspections of social and psychiatric residences and residential institutions for children and young people, the Ombudsman also more systematically examines the methods of the regional or local inspection authorities. In this way, he aims to ensure that results achieved by an inspection are applied to other similar institutions covered by the inspection authority. – Incidentally, the Parliamentary Ombudsman's approach during the inspections has in many cases been found to "set a precedent" for the regional and local authority inspections of the subsidiary institutions, etc.

Efforts are also made to ensure that the individual inspections have a knock-on effect in ways other than through the superior authorities:

- All inspection and follow-up reports are published on the Parliamentary Ombudsman's website by institution type. Experience shows that many institutions and superior authorities keep themselves informed of these reports.

- The Annual Report of the Parliamentary Ombudsman includes a detailed description of the inspection activities and summaries of a number of inspection reports.

- In some cases, press releases about inspections undertaken are issued, mainly in order to create awareness at other similar institutions, for instance an inspection of disabled access at a football stadium (Fionia Park in Odense).

- Employees from the Parliamentary Ombudsman's inspection department regularly give talks at conferences and courses about subjects that are (also) suited to inspection-relevant institutions.

Finally, the inspections, like the Ombudsman's activities generally, must be assumed to have a certain preventive effect. The fact that an institution may one day be inspected by the Ombudsman may prompt it to endeavour to operate in such a way that it avoids (serious) criticism at a possible future inspection.

The physical presence of the inspections also increases prisoners' and patients' awareness of the Ombudsman as a complaint body, for instance prisoners in the Prison Service institutions constitute by far the largest complaint group at the office. In 2007-2009, 435, 318 and approx. 300 cases respectively were thus opened within the area of responsibility of the Directorate of Prisons and Probation.

HIGH PRIORITY WORK

It is reasonable to assume that the Parliamentary Ombudsman's inspection activities, like his processing of ordinary cases, have significant impact beyond the results achieved by the individual inspection. This is particularly important because it is clearly not possible to carry out inspections of all the country's inspection-relevant institutions at suitably short intervals or to re-inspect at short intervals the institutions where the Ombudsman has a particular obligation. Priority and significant importance must therefore be attached to the part of the work described above which involves achieving a wider-reaching knock-on effect of the inspections carried out.

Morten Engberg
Head of 4th Division

THE CASE IS PROTRACTED

In 2007, the Ombudsman initiated a project focusing on the authorities' case processing time. The subject was not new. Every year, he receives many complaints about authorities taking too long to process cases, but the local authority reform provided a special reason for paying attention to the problem.

The local government structural reform was implemented in 2005-2007. It was the greatest change to the public administration in Denmark for many years and required a huge effort by local and regional authorities, etc. At the same time, it created a risk that the case load would increase. The Ombudsman did in fact receive more complaints about long case processing time and he therefore decided to focus on this area. Certain authorities were selected for closer examination: two local authorities, two tax appeal boards, the regional state administrations and the National Board of Patients' Complaints.

MERGERS RESULTED IN PROBLEMS

One of the local authorities investigated by the Ombudsman was South Djurs Municipality. The investigation covered the local authority's nature protection, technology and environment administration.

Problems were discovered. In several areas, the number of new cases was significantly larger than the number of closed cases and many cases were protracted. The situation was particularly serious in certain kinds of agricultural cases, where the case processing time was 80 weeks. In addition, the local authority is legally obliged to carry out numerous tasks within the nature protection and environment area, which it was either doing only partially or not at all. This included failure to carry out monitoring of 176 companies and only partial monitoring of the drinking water supply.

The other local authority investigated by the Ombudsman was Holbæk Municipality. The investigation covered a broad area and showed that case processing time was not an issue in many cases. However, the local authority did not escape criticism completely – for instance, the Job Centre had for five months failed to meet its statutory obligation to set up individual job interviews with cash benefit recipients and a case backlog had arisen in relation to sickness and maternity benefit.

Both municipalities were created by the merger of several local authorities and this was a major reason for the problems. The new local authorities had taken over numerous cases from the old ones, the merger of different systems had caused many technical problems and there was a shortage of experienced employees. The Ombudsman therefore accepted that for a while the local government structural reform had made things difficult for the municipalities, but he pointed out that they were responsible for ensuring that this period was kept short and that case processing was at all time sound.

The situation improved during 2008 in both municipalities and the Ombudsman therefore stated in early 2009 that he would take no further action on the case.

TARGET REQUIREMENT

The regional state administrations were created in 2007 by mergers of the former state counties. There are a total of five regional state administrations, which fall under the Ministry of the Interior and Health.

In relation to the regional state administrations, the Ombudsman focused on the targets set for the case processing time for various kinds of cases. In 1997, the Ministry of Justice sent a letter to all ministries, boards, etc. requesting that they establish targets for how quickly various kinds of cases would be processed. The investigation of the regional state administrations showed that targets had not been established for all the case types in which the administrations make decisions in relation to the citizens. The Ombudsman recommended that targets were set and published. However, the Ministry of the Interior and Health believed that targets need only be set for case processing times for the main tasks of the regional state administrations and various minor case areas. In addition, the information to the citizens about case processing times would be improved in various ways. On this background, the Ombudsman decided to take no further action in the case.

Nonetheless, the Ombudsman in 2009 again focused on the case processing times of one of the regional state administrations, which seems to have particular problems. This case has not yet been closed.

APPEAL BOARDS

The project also involved investigation of some appeal boards, which carry out tasks directly affecting the citizens, even though they were not directly involved in the local authority reform. They were the tax appeal boards for Lolland-Falster and Vendsyssel. The two tax appeal boards were found to have an acceptable average case processing time. However, the Ombudsman expressed criticism of both appeal boards' failure to notify the parties to several cases when the processing was protracted (Annual Report of the Parliamentary Ombudsman, 2008, p. 507 and p. 522).

By contrast, the case processing time was unacceptably long at the National Board of Patients' Complaints. Both the Board and the Ministry of Health agreed. The problems were discussed at a meeting in autumn 2007, along with possible initiatives to resolve them. After further correspondence on the case, the Ministry of Health in 2009 stated that the Minister for Health was likely to introduce a bill concerning a new patient appeal system in the near future. The Ombudsman therefore asked to be kept informed of both the new patient appeal system and the development in relation to case processing times.

CITIZEN FRUSTRATION

For the citizen who has a case pending at an authority, it is often a major problem when the case is not progressing. In many cases, the citizens approach the authorities repeatedly and ask for the case to be speeded up, without any result. The citizens who contact the Ombudsman therefore often feel very frustrated and helpless.

This also applied to a married couple who in November 2005 had lodged a complaint with the National Forest and Landscape Agency because the local authority had allowed cattle rearing at a neighbouring property. When the case dragged on, the couple repeatedly asked for it to be speeded up. When this did not help, they lodged a complaint with the Ombudsman. It turned out that the Agency had held the case for 13 months without processing it. The case

had then been passed on to the Environmental Board of Appeal, where it had been held for another 21 months. The Board of Appeal did not make a decision until May 2009. Despite mitigating circumstances, the Ombudsman expressed severe criticism of the case processing.

In special cases, protracted case processing can have serious consequences. In 2004, the Supreme Court considered a case of a man who had to wait for many years for a local authority to consider his application for permission to erect a wind turbine. The man became mentally ill with a chronic strain syndrome due to the protracted case processing time. However, the local authority was under no obligation to pay him compensation because it could not have predicted that the case would have such serious consequences (Weekly Journal of Legal Affairs, 2005, p. 523).

HOW LONG PROCESSING TIME IS ACCEPTABLE?

Pursuant to the rules of good administrative practice, the authorities must process cases as quickly as possible and within a reasonable period of time. If a case is protracted, the citizens must be informed why and when a decision can be expected. If the authority receives a reminder from the citizen, it should usually reply immediately if the reminder is reasonable. In the reply, the authority should state why no decision has been made on the case and when it can be expected.

The rules of good administrative practice have been developed during the Ombudsman's practice over many years. The Ministry of Justice has followed up the Ombudsman's statements on good administrative practice by including them in a guide to the Public Administration Act.

In addition, the legislation includes various provisions for how much time an authority may use on certain tasks, but it does not include any general provisions concerning case processing time.

However, a general rule that the local authority must process requests for help as quickly as possible applies to social cases. In addition, the local authority must establish targets for how much time may elapse between receiving an application and making a decision on it within the individual case areas. The targets must be published. If the target cannot be met in a specific case, the applicant must be informed in writing when a decision can be expected. These rules are laid down in the Social Legal Protection Act.

When the Ombudsman assesses individual cases, the total case processing time is of course examined. In addition, he considers whether the nature of the case implies that a decision must be made at a particular time. If, for instance, a parent applies in good time for access to children during Christmas, the regional state administration should of course consider the case before Christmas. The Ombudsman also considers how many investigations the authority needs to carry out, the normal case processing time and the ongoing transactions in the case as well as whether the authority has given the citizen sufficient information about the progress of the case while it is pending.

Even if the case processing has been protracted, the Ombudsman may not express criticism of the authority. In a case from 2005, for instance, he did not criticise a county for taking several years to process a case of environmental approval of a fish farm. It turned out that much of the time had been spent on waiting for necessary information from the owner of the fish farm as well as necessary decisions by the local authority and the Environmental Protection Agency.

The case processing time project was initiated in 2007 and closed in 2009. Regrettably, the Ombudsman still receives as many complaints about protracted case processing as immediately after the local authority reform. In 2007, 759 complaints were received and in 2009 765. He will therefore continue to focus on the development of the authorities' case processing time.

Karsten Loiborg
Head of 5th Division

IT-SOLUTIONS MUST COMPLY WITH THE REQUIREMENTS OF ADMINISTRATIVE LAW

In recent years, the Ombudsman has considered several cases where IT played a central role and where he regrettably found that IT solutions did not comply with the requirements of administrative law. The main message is that these requirements apply irrespective of the administrative technology used by the administrative authority to carry out a task. The ordinary rules applying to the authority still apply when computers replace paper.

Another important point is that the individual authority is responsible for ensuring that its solutions comply with the requirements of administrative law. This responsibility also applies if the authority has chosen a standard solution which turns out to be inadequate, even if a solution complying with the requirements is not available from any IT solution supplier.

The cases which have come before the Ombudsman undoubtedly illustrate only some of the problems that may result from digitalisation

AUTHENTIC COPIES

An old age pensioner in Gentofte believed that the local authority had calculated his pension on the wrong basis. The authorities argued that the old age pensioner had been too passive in not contacting them until the spring following the relevant pension year. He was therefore himself liable for the error. However, the pension statements could not be reconstructed. In the Ombudsman's opinion, the liability for the inadequate evidence in the case therefore rested with the public authority. He stated that generally it is an unconditional requirement that an authority must either have a copy in the file of documents it has produced or be able to produce a completely accurate print-out (corres-

ponding to a copy) of the document securely and quickly. The authority's choice of an electronic rather than a paper-based medium does not justify discarding a document earlier than if it had been on paper *(Annual Report 1997, p. 198)*.

In a later case *(A.R. 2003, p. 686)*, Copenhagen Municipality was unable to reproduce demand letters sent out in cases concerning collection of alimony. The Ombudsman stated that the local authority cannot choose not to have copies of the demand letters printed out on a regular basis. In addition, the letters must not be discarded until they are no longer required legally or administratively, i.e. until it is certain that claims cannot be made because the case is out of date or the debtor has died.

The requirement that an authentic copy must be kept also applies in cases where an authority communicates purely digitally. The Danish Market Management and Intervention Board had replied to a leave application from an employee by email. The Ombudsman stated that the Board should have kept the email – either as a print-out or electronically *(A.R. 2001, p. 290)*.

DOCUMENTS SENT ELECTRONICALLY

In two cases, the National Board of Social Appeal had sent decisions as ordinary Word files with a date code. This resulted partly in the decisions changing date whenever the documents were opened, partly in it being possible to change the content of the documents after opening them. In the Ombudsman's opinion, decisions sent electronically must be in a file format which prevents unintentional changes and makes it difficult to change them deliberately after they have been sent *(file no. 2009-1196-009; included in A.R. 2009 as case no. 4-7)*. As an alternative to Word, a document can for instance be sent as a pdf file or in a recognised image format, such as a tiff file. This ensures that the document does not change automatically whenever opened and prevents other unintentional changes to the document. It probably is not always sufficient to send documents electronically as pdf or image files. Conversely, it may be acceptable to send some documents with a lesser degree of security. The Ombudsman did not consider such situations. However, he made a statement on the situation where a citizen has difficulty accessing the content of a decision sent in a sufficiently secure format, for instance due to visual impairment. In the actual case, the citizen had no such problems, but if relevant, the authority must *also* send the decision in a format which the citizen can access.

SEARCH OPTIONS AND REGISTRATIONS IN IT SYSTEMS

Administrative IT systems must be organised in such a way that it is possible to find relevant cases on the basis of content criteria. In connection with an own initiative project concerning police fine cases, it was not possible to find the case types which the Ombudsman wished to examine by using the police IT system *(A.R. 2004, p. 569, especially p. 571 f and p. 622 f)*. In a later case, the Ombudsman expressed criticism because the University of Copenhagen's computer filing system only allows case search by civil registration number. The University thus could not search for cases concerning a particular subject or a specific provision in the State Education Fund legislation. The authorities must comply with the equality principle of administrative law, which is only possible if they can find previous relevant cases and generally have a sufficiently secure overview of their own practice *(A.R. 2006, p. 360)*.

Overall, registrations in the authorities' IT systems must be clear and adequate. In an Ombudsman case in 2007, uncertainty was created because the Board of Social Appeal in its electronic case and document handling system used the field entitled "Date of letter" to record the date of receiving incoming letters. The system was also inadequate because the dating of the incoming letters was not recorded. It is necessary to record when a letter is received, because a citizen (pursuant to both section 10 (1) (2) of the Public Administration Act and section 5 (1) (2) of the Access to Public Administration Files Act) is entitled to access to a document list. The purpose of this is partly to provide the citizens with information about the case processing, partly to enable the citizens to check whether they have been given access to all the documents which they believe should be disclosed to them. As the citizen in the nature of things cannot know when a letter has reached the authority, it is (also) necessary to record the dating of the letter in order to be able to identify it.

SIGNATURE, DATING, POSTING OF LETTERS

In various contexts, accurate documentation of when the authorities have posted letters is crucial. This applies for instance in relation to the calculation of time limits, including complaint time limits. When calculating time limits for complaints, it should be safe to assume that authorities' decisions are posted on the day they are dated.

The office has examined the system and working processes of the National Board of Industrial Injuries in connection with the dating and posting of letters. The system is set up in such a way that most outgoing letters are dated automatically and enveloped by machine. However, a significant number of outgoing letters are still handled manually and the Ombudsman pointed out a number of potential errors which might affect the calculation of the time limit. Among other things, the Board must have routines to ensure that manually handled letters which are not posted on the date added to the letter by the system are printed out again with a new date corresponding to the actual posting date *(A.R. 2007, p. 399)*.

The many letters from the National Board of Industrial Injuries which are printed out and enveloped by machine are sent to the addressee by Post Danmark. These letters are not signed manually. A later case *(A.R. 2008, p. 79)* among other things concerned signatures on the Board's letters. Letters do not need to be signed manually; a facsimile signature (reproduction of the manual signature) may be added to the letter electronically. However, all letters in decision cases must be signed. There are several reasons for this requirement. It must be possible to identify who is officially responsible and it must be obvious that the decision has been made by a competent employee and that the document is the final version, not merely a draft. The signature counteracts fraud and allows the recipient of the letter to assess whether the signatory is disqualified. The Ombudsman was only able to take an explicit position on letters sent on paper. The same considerations and requirements apply to letters sent for instance by email – but a future case will have to show exactly how a purely digital solution must be created so that it meets all legal requirements.

BROADER PROBLEM AREAS

The Ombudsman is entitled to carry out systematic investigations of a large number of cases within a particular area – the so-called own initiative projects. These projects have typically involved administrative areas where the authorities make many decisions which affect the citizens and the Ombudsman investigations have mainly focused on recurring errors and general problems ("system errors"). The Ombudsman has carried out own initiative projects in two areas which are extensively administered using large IT systems. They involved 90 national service cases *(A.R. 2003, p. 735)* and 75 fine cases (payment by instalments, extension and remission) *(A.R. 2004, p. 569)*, respectively.

The own initiative project concerning the national service cases showed that the central IT system partly explained why the authorities in some cases generally disregarded fundamental rules of administrative law. The Ombudsman noted that the authorities had disregarded the obligations to provide guidance, to take notes and to inform the registered citizen pursuant to the Personal Data Act. In some cases, the authorities had also disregarded the obligations to procure evidence in the case, to give grounds and to provide adequate guidance on appeal. As an example, the inadequate grounds given were due to the lack of adequate grounds in the standard (form) letters in the IT system.

The own initiative project concerning the fine cases revealed problems at three levels. *Firstly,* the Ombudsman noted that the police had disregarded some fundamental rules of administrative law, i.e. the duty to make notes, the provisions in the Personal Data Act concerning notification, the provisions in the Public Administration Act concerning giving of grounds (in a relatively small number of cases) and providing guidance on appeal, the rules concerning filing of documents and authentic copies of letters and the signature requirement.

The problems at the other two levels were mainly due to the interaction of certain factors. Most applications for payment by instalments, extension or remission of fines were made orally (by contacting a police office in person or by telephone) and notes or other documentation concerning the application and evidence in the case were, at best, sparse.

Secondly, it was therefore not possible to *document* – on the basis of the material available in the cases investigated – that some (other) fundamental rules of administrative law had been observed, i.e. the rules concerning party representation, hearing of the parties, procuring of evidence in the case and giving of grounds (in most cases). As an example, if the file does not show whether the application has been met in full, it is impossible to know whether there was any obligation to give grounds.

Thirdly, last but not least, it was impossible to *check* whether the authority requirements of administrative law had been observed in the cases examined. For instance, the poorly documented cases made it impossible to determine the authority for the individual decisions, which criteria had been applied, whether practice was consistent, if subjective differential treatment might have been involved, etc.

PLANS FOR A NEW COLLECTION SYSTEM

In 2005, the Ombudsman became aware of plans to set up a new joint IT based collection system in connection with the establishment of a central collection authority for outstanding payments. He therefore wrote to the Ministry of Taxation to point out that on several occasions he had noticed failures to observe fundamental requirements of administrative law in connection with mass administration using IT systems.

In a preliminary reply to the Ombudsman's letter, the Ministry of Taxation explained that the work on the new joint collection system (later entitled EFI) was still at an early stage and the requirement specification was not yet ready. In February 2008, the Ombudsman asked the Ministry for an update on the case and was sent a status report on the EFI project from Skat (the Danish Tax and Customs Administration). The report, and the Ministry's supplementary replies, among other things showed that the authorities were explicitly aware of many of the requirements of administrative law, but that they were still unable to give a detailed description of how each of these would be met technically.

In connection with digitalisation of the administration, there has been a tendency to focus on administrative efficiency and rationalisation. As the cases show, this involves a risk of neglecting the requirements of administrative law, which are mainly intended to ensure the citizens' legal protection. This is particularly true of the development of large, central administrative systems. Everything suggests that it is less difficult and costly to take account of the requirements of administrative law when planning an IT system than having to modify it later.

A note of the requirements of administrative law in relation to public administration IT solutions can be found under "Publications" at the Ombudsman's website **(www.ombudsmanden.dk)**. The note is regularly updated to take account of new cases. In connection with the description of individual cases, the note includes a link to a more detailed explanation of the case (in Danish only).

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General and International
Division

ADDITIONAL ACCESS TO PUBLIC ADMINISTRATION DOCUMENTS AS AN OBLIGATION

The Access to Public Administration Files Act as a starting point only considers whether the authorities are *obliged* to provide access to the files, i.e. which information *must* be disclosed to a citizen.

However, the Access to Public Administration Files Act is also a so-called minimum act. In other words, the authorities *may* disclose information even though they do not *have to,* provided it does not infringe professional secrecy. This so-called additional access principle plays an important part in many of the disclosure cases considered by the Ombudsman.

The principle of additional access, which is laid down in section 4 (1) (2) of the Access to Public Administration Files Act, is based on the desire for maximum openness in the administration. The principle of maximum openness is particularly crucial in relation to journalists, as they can be regarded as representing large groups of citizens.

The authorities are obliged to consider whether additional access is appropriate when citizens request access to the files, even if the citizens do not themselves mention the word additional access. This obligation is central and often a theme in the Ombudsman's processing of disclosure cases. If information is not confidential and there are no other significant grounds for refusal, the authority generally should grant access to the files. Put differently: If the authority has no good reason for refusing access, it should grant it. This follows from the Ministry of Justice's guide to the Access to Public Administration Files Act and has been confirmed by several earlier statements by the Ombudsman.

MINISTRY OF DEFENCE SHOULD DISCLOSE LISTS TO JOURNALIST

Every year, the Ombudsman receives some 250 complaints about refusals to disclose files. Approx. 50 of these are from journalists complaining about refusals to disclose files pursuant to the Access to Public Administration Files Act. With effect from 1 January 2005, it was decided to separate these "media disclosure cases" and consider them in a special section in the General Division. This was mainly done to prioritise the cases and reduce the case processing time, but also to ensure the cases were processed in a section with special expertise and experience within this area.

When the Ombudsman processes disclosure cases, he always examines whether the authority has actually considered additional access. That is by no means always the case. If not, the Ombudsman usually expresses criticism and recommends that the case is reconsidered, with special attention to additional access.

If an authority has in fact considered additional access, the Ombudsman may among other things examine whether the considerations to which the authority has attached importance are legal and whether the authority has involved arguments both for and against disclosure in its weighting. This is illustrated by a case closed in 2009:

A journalist had asked the Ministry of Defence for access to material relating to the purchase of new fighter planes. The material was filed in two general cases. The journalist was granted access to some documents and at the same time received a document list for the two composite cases. However, the list only included the documents to which he had requested access. The journalist now asked to see the lists of all the material in the two composite cases. His application was rejected by the Ministry of Defence.

The Ombudsman could not criticise the Ministry's refusal to grant the journalist access to additional files. However, he agreed with the journalist that the Ministry had organised its filing system in such a way that it was difficult for the journalist to check whether he had received all the documents relevant to the subjects to which he had requested access. In the Ombudsman's opinion, consideration for journalists' ability to monitor together with the organisation of the filing system suggested that additional access to the full version of the file lists for the two composite cases should be granted. He therefore recommended that the Ministry reconsider the case.

The Ministry reconsidered the case and again refused to grant additional access to the file lists. The reason given was that access to the complete file lists would inform the journalist of cases which were not already known to him.

The journalist lodged another complaint with the Ombudsman, who stated that the Ministry of Defence could not correctly refuse access to the file lists merely on the grounds that the journalist – and perhaps others – might become aware of other cases in the Ministry. As the Ministry had not given any other grounds for its refusal, the Ombudsman recommended that it reconsider the case and make a fresh decision. The Ministry complied with the recommendation and granted access to the lists with the exception of a few details.

The decision whether additional access should be granted is discretionary. The Access to Public Administration Files Act does not give any direct guidelines for making the decision, other than that the authorities must not infringe professional secrecy. Decisions on additional access therefore have to be made pursuant to the general requirements in administrative law with regard to discretionary decisions. This applies to the issue of which considerations may and should be included in the decision and how these considerations should be weighted against each other.

SOLID GROUNDS

Another important theme in the Ombudsman cases concerning additional access is the grounds given for a refusal. Pursuant to the Public Administration Act, the grounds given by an authority for refusal of access must among other things include an explanation of the main considerations to which it has attached importance.

In a case closed in 2009, the Ministry of Justice partially refused a journalist access to a case relating to a bill concerning disclosure of ministers' appointment book. The Ministry referred to section 10 (2) of the Access to Public Administration Files Act, which states that letter correspondence between ministries about legislation are exempt from disclosure. The Ministry also refused to grant additional access. In this connection, it attached importance to the considerations which are also behind section 10 (2) of the Access to Public Administration Files Act, i.e. relating to the political decision-making process.

The Ombudsman stated that in cases where information is subject to professional secrecy, he believed it was most appropriate to refuse additional access on the grounds that the documents exclusively contained confidential information and that the obligation to observe professional secrecy therefore prevented additional access.

In cases where an authority is not directly prevented from granting additional access on the grounds of professional secrecy, it should weigh considerations for and against access and include the main considerations in its written refusal of additional access, cf. section 24 of the Public Administration Act.

As the grounds given by the Ministry did not show whether professional secrecy played a role or mention any other main considerations to which the Ministry had attached importance, the Ombudsman criticised the grounds given. The Ministry reconsidered the case and gave more detailed grounds.

In the specific case, the Ombudsman had no reason to believe that the Ministry had not included all relevant criteria. However, the case illustrates that the obligation to give grounds is not a purely formal matter. The obligation to give good grounds can often result in more thorough preliminary investigations and considerations and in this way contributes to ensuring that the basis of the decision is sound and adequate.

In November 2009, the Access to Public Administration Files Commission presented a proposal for revision of the Access to Public Administration Files Act. The Commission suggests that the obligation to consider additional access should be included in the Act itself (not just in the Ministry of Justice's guide). The above-mentioned issues will therefore remain relevant if a new Access to Public Administration Files Act is passed in accordance with the Commission's proposal and the Ombudsman will continue to receive complaints about refusal of additional access.

In many cases, it will thus still be worthwhile considering an application for access to files from the perspective: "What do we actually need to exempt?" In other words: Instead of carrying out a resource-demanding review of what may be exempted pursuant to the exemption provisions of the Act and then considering whether additional access may be granted, the authority can ask straight away whether there is a real and sound need to exempt information from disclosure. In this way, the issue of additional access becomes less resource-demanding and easier to handle.

ANNEX A: STAFF AND OFFICE

The Office had six main divisions with the following persons in charge:

General Division

Director of Public Law Mr. Kaj Larsen

First Division

Head of Division Mrs. Kirsten Talevski

Second Division

Head of Division Mrs. Bente Mundt

Third Division (Inspections Division)

Deputy Permanent Secretary Mr. Lennart Frandsen

Fourth Division

Head of Division Mr. Morten Engberg

Fifth Division

Head of Division Mr. Karsten Loiborg

The 82 employees of my Office included among others 21 senior administrators, 25 investigation officers, 19 administrative staff members and 11 law students.

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Email: post@ombudsmanden.dk
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ANNEX B: BUDGET 2009

Salary expenses	
Actual salary	35,283,000
Law students	178,000
Special holiday allowance	21,000
Wage budget regulation account	2,271,000
Overtime	308,000
Pension fund contributions	3,113,000
Contributions for civil service retirement pensions	1,024,000
Contributions for the Danish Labour Market Supplementary Pension (ATP)	108,000
Maternity reimbursement, etc.	- 477,000
Salary expenses in total	**41,829,000**

Operating expenses	
Subsidy, Ministry of Foreign Affairs	- 853,000
Rent	3,931,000
Leasing of photocopiers	243,000
Official travels	376,000
Business entertainment	163,000
Staff welfare	105,000
Phone subsidies	17,000
Subsidy, staff lunch arrangement	216,000
IT, central equipment, network, programmes	1,196,000
IT, client equipment	1,144,000
IT, consultants	243,000
Decentralized continued education	776,000
Translations	534,000
Printing of publications etc.	502,000
Office supplies	899,000
Furniture and other fittings	1,440,000
Books and subscriptions etc.	1,088,000
Cleaning, laundry and renovation	242,000
Housekeeping uniforms	7,000
Transfer costs	120,000
Operating charges in total	**12,389,000**

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

TOTAL	53,818,000

ANNEX C: STATISTICS

1. NEW CASES

In the year 2009 a total number of 4,379 new cases were registered. The corresponding figure for the year 2008 was 4,229 new cases.

4,156 of the total number of 4,379 new cases in 2009 were complaint cases.

The Ombudsman took up 130 individual cases on his own initiative, cf. section 17(1) in the Ombudsman Act.

The Ombudsman may carry out inspections of public institutions and other administrative authorities. Out of the total number of 4,379 new cases, 21 were inspection cases. Most of the inspection cases registered relate to institutions under the jurisdiction of the police and the prison services (detentions (among others, six in the Faroe Islands), police holding cells, local prisons and state prisons) and psychiatric wards. However, inspections of other administrative units were also carried out, e.g. residential institutions for children and juveniles and inspections focused on disabled people's access to buildings. All inspection reports are available in Danish on the Ombudsman's website www.ombudsmanden.dk.

The Danish Parliamentary Ombudsman carries out inspections in accordance with the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the so-called OPCAT inspections. Of the new cases opened in 2009, 12 were opened as a consequence of the OPCAT work.

The Ombudsman may undertake general investigations of the authorities' case processing on his own initiative, cf. section 17(2) in the Ombudsman Act. One own initiative project was initiated in 2009, concerning 60 cases from the Board of Appeal for State Student Grants.

2. COMPLETED CASES

A total of 4,415 cases were completed in the period of 1 January – 31 December 2009. Of the completed cases 771 (17.5%) were substantively processed, and 190 (24.6%) of the substantially processed cases gave rise to criticism, recommendation of both in relation to the relevant authority. Decisions were the main subject in 59 (31.1%) of the cases which gave rise to criticism, recommendation, etc. Case processing time was the main subject in an aditional 42 (22.1%) of these cases while the rest of the cases mainly concerned case processing issues, etc. Figure 1 and 2 on page 80 show the distribution of the substantively processed cases according to main subject.

3,644 complaints lodged with the Ombudsman Office during 2009 were not investigated for the reasons mentioned below. In 1,748 cases, the complaint had not been appealed to a higher administrative authority, and a fresh complaint may therefore be lodged with the Office at a later stage.

The 3,644 cases were not investigated for the following reasons:

Complaint had been lodged too late	112
Complaint concerned judgments, judges or matters which had been or were expected to be assessed by the courts	119
Complaint concerned matters relating to the Parliament, including legislation	54
Complaint concerned other matters outside the Ombudsman's competence, including private legal matters etc.	198
The administrative possibilities of processing the case were not exhausted and were no longer applicable	42
Complaint not clarified or withdrawn	188
Inquiry without complaint	336
Anonymous complaint	8
Other applications, including complaints that the Ombudsman decided to turn down	756
The authority has reopened the case following the Ombudsman's request for a statement	36
Cases on the Ombudsman's own initiative and not fully investigated	47
The administrative possibilities of processing the case were not exhausted	1,748
Total	**3,644**

3. CASES REFERRED TO THE AD HOC OMBUDSMAN – FUNCTION AS AD HOC OMBUDSMAN FOR THE LAGTING OMBUDSMAN AND THE LANDSTING OMBUDSMAN

One of the complaints lodged in 2009 gave the Ombudsman reason to declare himself disqualified from the investigation. The Legal Affairs Committee assigned the case to a High Court judge, Mr. Hans Würtzen.

The Faroese Lagting has asked the Ombudsman to act as ad hoc Ombudsman in 2 cases in 2009. The Landsting in Greenland did not ask him to act as ad hoc Ombudsman in 2009.

4. PENDING OMBUDSMAN CASES

166 individual cases submitted to the Ombudsman Office before 1 January 2010 were still pending on 1 June 2010.

133 of the pending individual cases were submitted in 2009, and 33 dated from previous years. Some of the pending individual cases required a statement from the relevant authority or the complainant in order to be concluded, while others were awaiting general responses from a complainant or an authority. Out of the 166 cases, 109 were awaiting the Ombudsman's procedure.

5. CASE PROCESSING TIME

Usually, complainants receive a preliminary reply from the Ombudsman Office within ten working days after receipt of the complaint, also in cases which are later rejected. Of the rejected complaint cases, 39.4 per cent were concluded within ten calendar days from receipt of the complaint. The average processing time for cases that were rejected, was 36.1 days.

The average processing time for cases subjected to a full investigation and concluded in 2009 was 5.4 months (163.6 days).

Table 1
All cases (regardless of registration date) concluded during the period 1 January – 31 December 2009, distributed per main authority and the result of the Ombudsman's case processing

Table 1: All concluded cases 2009

Authority, etc.	Cases in total	Cases rejected	Cases investigated	
			No criticism, recommendation, etc.	Criticism, recommendation, etc.
A. State authorities				
1. Ministry of Employment				
Department of Employment	18	12	3	3
The National Directorate of Labour	9	8	1	0
Labour Market Holiday Fund	2	2	0	0
Labour Market Supplementary Pension	2	2	0	0
National Labour Market Authority	1	1	0	0
Working Environment Complaints Board	1	1	0	0
National Board of Industrial Injuries	16	14	0	2
Danish Working Environment Authority	4	4	0	0
Employment appeal boards, in total	119	74	44	1
Employment regions	1	0	0	1
Job centres[1]	3	3	0	0
Employees' Guarantee Fund	1	0	1	0
Danish Pensions Agency[2]	23	23	0	0
Total	**200**	**144**	**49**	**7**
2. Ministry of Finance				
Department of Finance	2	1	1	0
The State Employer's Authority	3	1	1	1
The Danish Agency for Governmental Management	1	1	0	0
Total	**6**	**3**	**2**	**1**

Table 1: All concluded cases 2009

Authority, etc.	Cases in total	Cases rejected	Cases investigated	
			No criticism, recommendation, etc.	Criticism, recommendation, etc.
3. Ministry of Defence				
Department of Defence	15	10	1	4
The Danish Defence Personnel Service	13	13	0	0
Defence Command Denmark	2	2	0	0
The Danish Home Guard	1	1	0	0
Admiral Danish Fleet	1	1	0	0
Total	**32**	**27**	**1**	**4**
4. Ministry of the Interior and Social Welfare				
Department of the Interior and Social Welfare	39	31	6	2
The Department's supervision of municipalities and regional and state administrations	2	1	1	0
The National Social Appeals Board	147	89	43	15
The National Social Appeals Board (Employment Committee)[3]	29	21	8	0
Corporation Tax Distribution Board	1	1	0	0
The Board of Equal Treatment	2	0	2	0
The Danish Supervisory Board of Psychological Practice	7	7	0	0
(Regional) Social Boards of Appeal, in total	146	99	41	6
Regional State Administrations, in total	141	122	15	4
Regional State Administrations' supervision of municipalities and regions, in total	49	35	10	4
Total	**563**	**406**	**126**	**31**

Table 1: All concluded cases 2009

Authority, etc.	Cases in total	Cases rejected	Cases investigated	
			No criticism, recommendation, etc.	Criticism, recommendation, etc.
5. Ministry of Justice				
Department of Justice	56	39	10	7
The Danish National Board of Adoption	2	2	0	0
The Civil Affairs Agency	24	21	3	0
The Data Protection Agency	11	7	4	0
The Danish Prison and Probation Service	144	76	54	14
Local prisons	51	35	9	7
State prisons	100	92	5	3
The Courts of Denmark	2	2	0	0
The Criminal Injuries Compensation Board	6	2	4	0
The Department of Family Affairs	92	62	29	1
Prison and Probation Service subdivisions	1	1	0	0
Prison and Probation Service hostels	2	1	0	1
Police Commissioners, in total	121	108	5	8
The Danish Medico-Legal Council	3	2	0	1
The Director of Public Prosecutions	11	7	3	1
The National Police Commissioner	27	20	5	2
Public prosecutors, in total	39	27	11	1
Total	**692**	**504**	**142**	**46**
6. Ministry of Ecclesiastical Affairs				
Department of Ecclesiastical Affairs	25	15	9	1
Bishops	2	2	0	0
Diocesan authorities	2	2	0	0
Total	**29**	**19**	**9**	**1**
7. Ministry of Climate and Energy				
Department of Climate and Energy	2	2	0	0
The Energy Board of Appeals	3	2	0	1
The Danish Energy Agency	1	1	0	0
Total	**6**	**5**	**0**	**1**

Table 1: All concluded cases 2009

Authority, etc.	Cases in total	Cases rejected	Cases investigated	
			No criticism, recommendation, etc.	Criticism, recommendation, etc.
8. Ministry of Culture				
Department of Culture	10	7	2	1
DR (Danish Broadcasting Corporation)	13	10	2	1
The Heritage Agency of Denmark	5	5	0	0
The Danish State Archives	1	1	0	0
TV2 regional station	1	1	0	0
Total	**30**	**24**	**4**	**2**
9. Ministry of the Environment				
Department of the Environment	12	10	1	1
The Agency for Spatial and Environmental Planning	3	3	0	0
The National Survey and Cadastre	1	1	0	0
Environmental Centre	7	6	1	0
The Environmental Appeal Board	9	6	1	2
The Danish Environmental Protection Agency	7	5	1	1
The Nature Protection Board of Appeal	56	32	21	3
The Danish Forest and Nature Agency	4	4	0	0
Forest district	1	1	0	0
Total	**100**	**68**	**25**	**7**
10. Ministry of Refugee, Immigration and Integration Affairs				
Department of Refugee, Immigration and Integration Affairs	161	118	40	3
The Refugee Board	7	7	0	0
The Board of Ethnic Equality	1	1	0	0
The Working Group on Administrative Deportation secretariat	1	0	0	1
The Immigration Service	76	75	0	1
Total	**246**	**201**	**40**	**5**

Table 1: All concluded cases 2009

Authority, etc.	Cases in total	Cases rejected	Cases investigated	
			No criticism, recommendation, etc.	Criticism, recommendation, etc.
11. Ministry of Food, Agriculture and Fisheries				
Department of Food, Agriculture and Fisheries	13	10	2	1
The Danish Food Industry Agency	6	6	0	0
The Danish Directorate of Fisheries	2	2	0	0
The Danish Veterinary and Food Administration	7	7	0	0
Agricultural commissions	2	2	0	0
The Food and Veterinary Complaints Secretariat	4	4	0	0
Total	**34**	**31**	**2**	**1**
12. The Ministry of Health and Prevention				
Department of Health and Prevention	23	19	2	2
The Appeal Board for Induced Abortion, Foetal Reduction and Sterilisation	1	1	0	0
The Danish Council of Ethics	1	1	0	0
Medical health officers	6	6	0	0
Danish Medicines Agency	4	4	0	0
Psychiatric patient complaint boards	5	5	0	0
The National Board of Health	13	13	0	0
The National Board of Patient Complaints	69	40	24	5
Total	**122**	**89**	**26**	**7**

Table 1: All concluded cases 2009

Authority, etc.	Cases in total	Cases rejected	Cases investigated	
			No criticism, recommendation, etc.	Criticism, recommendation, etc.
13. Ministry of Science, Technology and Innovation				
Department of Science, Technology and Innovation	13	11	1	1
The Danish Agency for Science , Technology and Innovation	1	1	0	0
The Danish Council for Independent Research	1	1	0	0
The National IT and Telecom Agency	1	1	0	0
The Danish Committees on Scientific Dishonesty	1	1	0	0
Universities and institutions of higher education	25	24	1	0
The Danish University and Property Agency	16	11	4	1
Total	**58**	**50**	**6**	**2**
14. Ministry of Taxation				
Department of Taxation	26	23	1	2
The National Tax Tribunal	37	27	9	1
SKAT (Danish customs and tax administration), in total	124	122	2	0
Assessment boards of appeal	1	1	0	0
Assessment authority (property)	3	3	0	0
Total	**191**	**176**	**12**	**3**
15. The Prime Minister's Office				
Department of the Prime Minister's Office	15	11	2	2
Total	**15**	**11**	**2**	**2**

Table 1: All concluded cases 2009

Authority, etc.	Cases in total	Cases rejected	Cases investigated	
			No criticism, recommendation, etc.	Criticism, recommendation, etc.
16. Ministry of Transport				
Department of Transport	5	3	2	0
DSB (Danish state railways)	7	6	1	0
The Road Safety and Transport Agency	5	5	0	0
The State Commissioners for Expropriations	1	0	1	0
The Danish Coastal Authority	1	0	1	0
The Civil Aviation Administration	1	1	0	0
The Public Transport Authority	4	3	1	0
The Danish Road Directorate	11	8	3	0
Total	**35**	**26**	**9**	**0**
17. Ministry of Foreign Affairs				
Department of Foreign Affairs	11	9	1	1
Danish delegations abroad (embassies, etc.)	2	2	0	0
The Industrialisation Fund for Developing Countries	1	0	0	1
Total	**14**	**11**	**1**	**2**

Table 1: All concluded cases 2009

Authority, etc.	Cases in total	Cases rejected	Cases investigated	
			No criticism, recommendation, etc.	Criticism, recommendation, etc.
18. Ministry of Education				
Department of Education	17	13	3	1
The Students' Grants and Loan Scheme Appeal Board	6	2	3	1
The Appeal Board concerning Vocational Training Establishments	1	1	0	0
Upper secondary education (gymnasier)	4	3	1	0
The National Authority for Institutional Affairs	2	2	0	0
The Complaints Board for Extensive Special Education	9	5	4	0
University College Capital (UCC)	1	1	0	0
The State Educational Grant and Loan Agency	9	8	1	0
Total	**49**	**35**	**12**	**2**
19. Ministry of Economic and Business Affairs				
Department of Economic and Business Affairs	16	14	1	1
The Danish Enterprise and Construction Authority	22	19	3	0
The Danish Commerce and Companies Agency	4	4	0	0
The Danish Financial Supervisory Authority	3	3	0	0
The Consumer Complaints Board	3	3	0	0
The Consumer Ombudsman	4	4	0	0
The Danish Competition Authority	2	2	0	0
The Storm Council	1	1	0	0
The Danish Maritime Authority	1	1	0	0
Total	**56**	**51**	**4**	**1**
State authorities, in total	**2,478**	**1,881**	**472**	**125**

Table 1: All concluded cases 2009

Authority, etc.	Cases in total	Cases rejected	Cases investigated	
			No criticism, recommendation, etc.	Criticism, recommendation, etc.
B. Municipal and regional authorities[4]				
Municipalities	1,325	1,158	104	63
Regions, in total	116	110	4	2
Former counties	1	1	0	0
Municipal or regional co-operation	4	4	0	0
Special municipal bodies	5	5	0	0
Municipal and regional authorities, in total	**1,451**	**1,278**	**108**	**65**
C. Other authorities, etc. under the jurisdiction of the Ombudsman				
Metroselskabet I/S	2	1	1	0
Total	**2**	**1**	**1**	**0**
D. Administrative authorities under the jurisdiction of the Ombudsman				
State authorities, in total (A)	2,478	1,881	472	125
Municipal and regional authorities, in total (B)	1,451	1,278	108	65
Other authorities included in the jurisdiction of the Ombudsman (C)	2	1	1	0
Total	**3,931**	**3,160**	**581**	**190**
E. Institutions, etc. outside the jurisdiction of the Ombudsman				
1. The Courts[5]	69	69	0	0
2. Dispute boards[6]	18	18	0	0
3. Other institutions, companies, enterprises or persons outside the jurisdiction of the Ombudsman	205	205	0	0
Total	**292**	**292**	**0**	**0**
F. Cases not related to specific institutions, etc.				
	192	192	0	0
Year total (A-F total)	**4,415**	**3,644**	**581**	**190**

Notes:

1) Cases concerning the State's conduct of tasks – until 1 August 2009 – in the municipally established job centres.

2) The Social Security Agency under the Ministry of the Interior and Health was abolished on 5 October 2009. The Agency's tasks passed to the Pensions Agency under the Ministry of Employment. The figures for the Pensions Agency includes figures for the Social Security Agency.

3) On 1 August 2009 the Labour Market Appeal Board and the National Social Appeal Board's Employment Committee was combined. Figures from the now abolished Labour Market Appeal Board, previously under the Ministry of Employment, are included in the figures for the National Social Appeal Board's Employment Committee.

4) Cases regarding municipal authorities abolished as a consequence of the Structural Reform are still placed under these authorities. The designation municipalities thus covers both the former primary municipalities and the present municipalities. The figures do not include muncipal dispute boards covered by section 7(3) of the Ombudsman Act. Cases concerning such boards are included in table I.E.2.

5) Cf. section 7(2) of the Ombudsman Act and section 8 of the Danish Court Administration Act.

6) Boards included in section 7(3) of the Ombudsman Act.

Table 2
All municipal and regional cases[7] (regardless of time of creation) concluded on 1 January - 31 December 2009, divided by type of municipality, type of administration and the result of the Ombudsman's investigation

Tabel 2: All municipal cases 2009

Authority, etc.	Cases in total	Cases rejected	Cases investigated	
			No criticism, recommendation, etc.	Criticism, recommendation, etc.
A. Municipal cases				
Job centres	104	101	0	3
Human resources administration	57	37	7	13
Schools and culture	57	51	3	3
Social and psychiatric services	53	37	9	7
Social benefits and health	674	607	37	30
Technology and the environment	294	251	39	4
Other administrative bodies	62	51	8	3
Unspecified administration	24	23	1	0
Total	**1,325**	**1,158**	**104**	**63**
B. Regional cases				
Human resources administration	7	6	1	0
Social and psychiatric services	58	56	0	2
Hospitals and health	47	44	3	0
Technology and the environment	3	3	0	0
Other administrative bodies	1	1	0	0
Total	**116**	**110**	**4**	**2**
C. Cases from the former counties				
Technology and the environment	1	1	0	0
Total	**1**	**1**	**0**	**0**
D. Cases from special municipal bodies				
Social benefits and health	2	2	0	0
Technology and the environment	1	1	0	0
Other administrative bodies	2	2	0	0
Total	**5**	**5**	**0**	**0**

Tabel 2: All municipal cases 2009

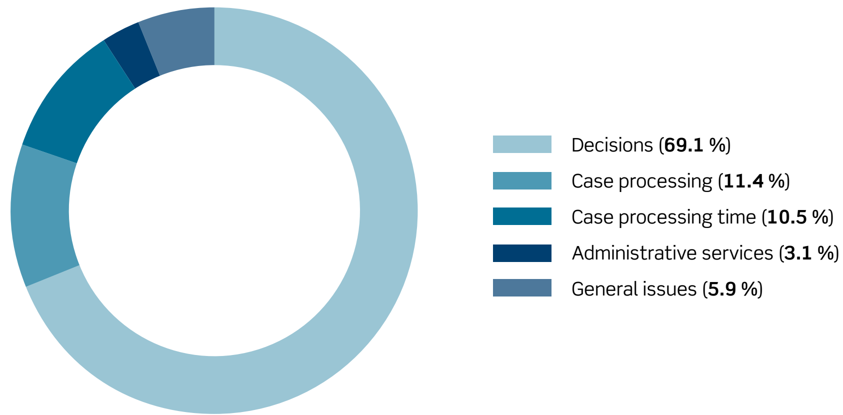
Authority, etc.	Cases in total	Cases rejected	Cases investigated	
			No criticism, recommendation, etc.	Criticism, recommendation, etc.
E. Cases from municipal joint companies				
Technology and the environment	3	3	0	0
Human resources administration	1	1	0	0
Total	**4**	**4**	**0**	**0**

F. All municipal and regional cases divided into type of administration

	Concluded cases, total	Relative distribution in percentage
Job centres	104	7,2
Human resources administration	65	4,5
Schools and culture	57	3,9
Social and psychiatric services	111	7,6
Social benefits and health	676	46,6
Hospitals and health	47	3,2
Technology and the environment	302	20,8
Other administrative bodies	65	4,5
Unspecified	24	1,7
Total	**1,451**	**100**

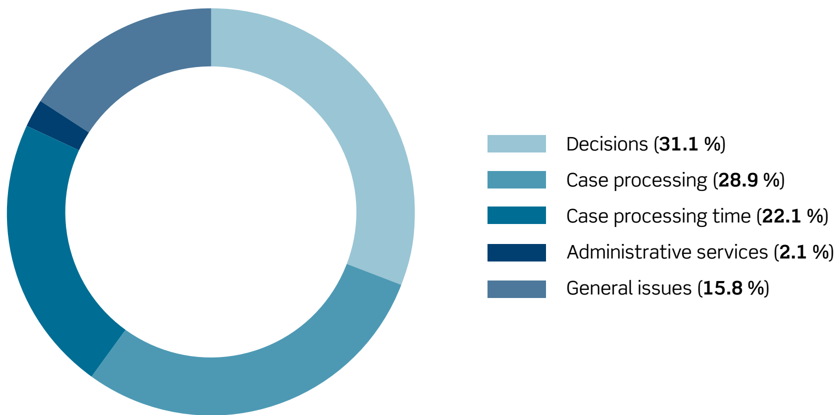
7) Cases regarding municipal authorities abolished as a consequence of the Structural Reform are still placed under these authorities.

Figure 1 Categories of cases investigated to conclusion in 2009 (771 cases in total)



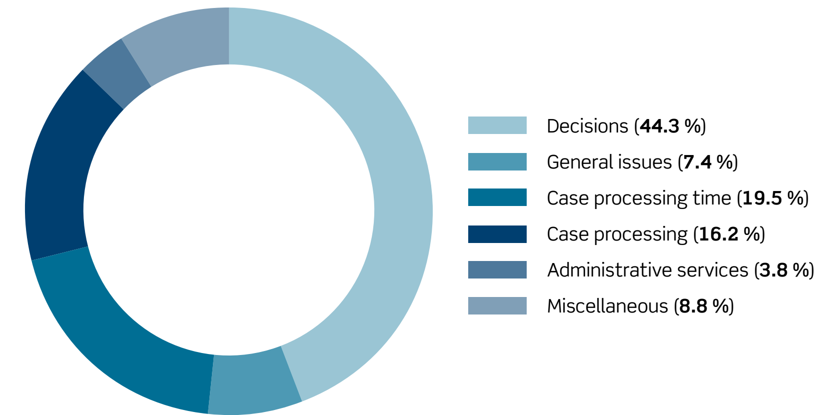
- Decisions (**69.1 %**)
- Case processing (**11.4 %**)
- Case processing time (**10.5 %**)
- Administrative services (**3.1 %**)
- General issues (**5.9 %**)

Figure 2 Categories of cases in which criticism/recommendations were expressed (190 cases in total)



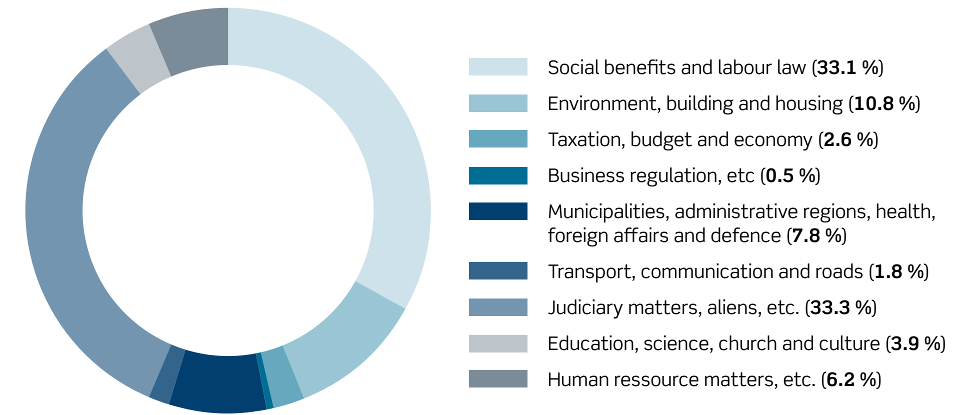
- Decisions (**31.1 %**)
- Case processing (**28.9 %**)
- Case processing time (**22.1 %**)
- Administrative services (**2.1 %**)
- General issues (**15.8 %**)

Figure 3 Cases rejected in 2009, in categories (3,644 cases in total)



- Decisions (**44.3 %**)
- General issues (**7.4 %**)
- Case processing time (**19.5 %**)
- Case processing (**16.2 %**)
- Administrative services (**3.8 %**)
- Miscellaneous (**8.8 %**)

Figure 4 Cases closed in 2009, in categories (771 cases in total)



- Social benefits and labour law (**33.1 %**)
- Environment, building and housing (**10.8 %**)
- Taxation, budget and economy (**2.6 %**)
- Business regulation, etc (**0.5 %**)
- Municipalities, administrative regions, health, foreign affairs and defence (**7.8 %**)
- Transport, communication and roads (**1.8 %**)
- Judiciary matters, aliens, etc. (**33.3 %**)
- Education, science, church and culture (**3.9 %**)
- Human ressource matters, etc. (**6.2 %**)

Figure 5 Reasons for rejections in 2009, in categories (3,644 cases in total)

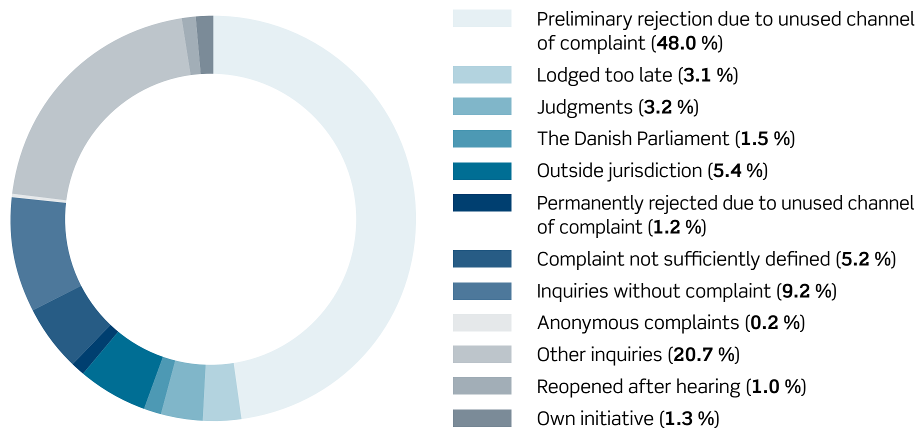
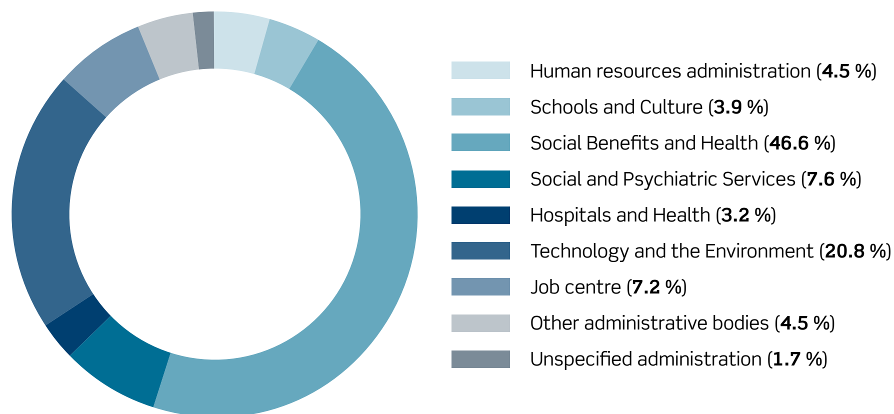


Figure 6 All municipal and regional cases concluded in 2009, by administration type (1,451 cases in total)



ANNEX D: SUMMARIES OF SELECTED CASES

1. MINISTRY OF EMPLOYMENT

Of 200 cases closed in 2009, 56 were investigated. Criticism and/or recommendations were expressed in 7 cases. 4 cases are summarized.

1. JOB CENTRE REGION'S REQUEST FOR REPLACEMENT OF PRIVATE OPERATOR'S EMPLOYEE. CONSULTATION WITH CASE PARTIES

The National Labour Market Authority had on behalf of the state job centre regions contracted with a private operator concerning job creation efforts for certain types of unemployed. According to a provision in the contract the private operator had to replace an employee at the job centre region's request, provided the request was well-founded. One job centre region used the provision in the case of one of the private operator's employees, and the employee's contract was subsequently not extended.

The Ombudsman considered whether the case should be compared to a dismissal case in the public sector so that the provisions in the Public Administration Act on consultation with the parties in a case would apply, but he could not take that as a basis. He did, however, agree with the Ministry of Employment that it would have been more considerate and in accordance with good administrative behaviour if the employee had been consulted. The Ombudsman was also of the opinion that good administrative behaviour dictated that the region should have informed the employee of the region's request and of the reason for it.

(Case No. 2007-3042-819).

2. ACCESS TO FILES IN LAW AMENDMENT CASES. ACCESS TO INFORMATION ON FOREIGN LAW

A union asked the Ministry of Employment (the Ministry) for access to two law amendment cases and appurtenant document lists. Both cases concerned amendments to the Act on Equal Pay. The Ministry granted access with the exception of internal documents. The Ministry considered giving increased access but decided that there was no basis for doing so.

The union complained to the Ombudsman who stated that he found it regrettable that the Ministry's decision on partial refusal to give access was not in accordance with the provisions in the Access to Public Administration Files Act. This was because some of the documents which the Ministry had exempted as internal, in the Ombudsman's opinion could not be considered internal and therefore could not be exempted from access according to section 7 of the Access to Public Administration Files Act. In addition, the Ombudsman did think that there was some information in a number of the internal documents to which access should have been given pursuant to section 11 of the Access to Public Administration Files Act.

One of the documents in which, in the Ombudsman's opinion, information ought to have been given out was a document containing descriptions of Swedish law. The Ombudsman stated that in a law amendment case descriptions of foreign law were factual information about the content of the case to which access should be given pursuant to section 11 of the Access to Public Administration Files Act. This was information which formed part of the basis for whether or not and in which way the act was to be amended, meaning facts elucidating the motives for amending the act.

The Ombudsman criticised the grounds given by the Ministry for its decisions, and that when refusing increased access the Ministry had not stated the main considerations which had been decisive for the Ministry in making its assessment.

(Case No. 2007-2241-001).

3. CLAIMANT NOT HEARD ON TERMINATION OF SICKNESS BENEFITS

A sickness benefit claimant failed to appear at a meeting to which the municipality has summoned him. Consequently, the municipality thought that he had failed for no adequate reason to participate in the municipality's follow-up, and his sickness benefits were therefore suspended. Early the following morning the claimant did appear for the meeting which he thought were to take place on that day.

The Ombudsman stated that the sickness benefit claimant had not been informed clearly enough that non-appearance without reasonable cause for this meeting would result in a suspension of the sickness benefits. According to practice, there are quite extensive requirements for the precision of this guidance. The Ombudsman therefore recommended that the case be reopened.

The Ombudsman further stated that there were not sufficient grounds for concluding that the sickness benefit claimant had failed to participate in the follow-up without reasonable cause. The Ombudsman referred to judicial practice where a subjective assessment of the circumstances must be made on whether or not the individual's non-appearance mean that that he or she has failed to participate without reasonable cause.

The Ombudsman also made a more general statement on the question of hearing the claimant about the suspension of his sickness benefits on the grounds of non-appearance at the meeting with the municipality. In the opinion of the National Social Appeals Board, hearing of the affected party can be done simultaneously with a preliminary decision to suspend sickness benefits. The Ombudsman stated that a citizen should be heard before a decision is made to suspend the payment of sickness benefits. The Sickness Benefits Act does not say that the rule in section 19(1) of the Public Administration Act on a preceding hearing of parties can be disregarded in connection with decisions to suspend the payment of sickness benefits. In the Ombudsman's opinion, there must be a legal basis for such a general departure from a fundamental rule in administrative law. The Ombudsman noted, however, that the question was problematic. He has raised the question of legal basis with the Ministry of Employment in a more general form.

(Case No. 2006-2447-025).

4. ACCESS TO DOCUMENTS LIST AT THE WORKING ENVIRONMENT AUTHORITY

A journalist asked for access to the lists of documents in any cases the Working Environment Authority (the Authority) might have regarding a specific ward at a particular hospital.

The Authority and the Ministry of Employment (the Ministry) refused to give access on the grounds that the release of the requested material would reveal whether or not the hospital ward had been reported to the Authority. In the opinion of the Authority and the Ministry, such a disclosure would contravene the purpose of section 79(2) of the Working Environment Act which forbade telling either the employer or the employer's representative if an inspection visit came about as a result of a complaint.

The Ombudsman could not criticise the Authority's and the Ministry's view that section 79(2) of the Working Environment Act was a special secrecy provision which limited the duty to give information pursuant to the Access

to Public Administration Files Act. As the secrecy provision in the Working Environment Act only required secrecy vis-à-vis "the employer or the employer's representative", the power to exempt the list of documents from access should, formally, be found in section 13(1)(6) of the Access to Public Administration Files Act. However, this provision should be understood in accordance with the principle in section 79(2) of the Working Environment Act.

The Ombudsman agreed with the Authority and the Ministry that on the basis of the general provisions in the Access to Public Administration Files Act, access must usually be given to the list of documents in a case. In the Authority's cases, with very few documents not related to inspections, the Ombudsman did think, however, that a refusal to give access to the list of documents would be warranted so as not to reveal the presence of a complaint.

Consequently, the Ombudsman could not criticise the refusal by the Authority and the Ministry to give the journalist access to any relevant lists of documents. The Ombudsman did, however, criticise the grounds given by the Authority and the case processing time of both the Authority and the Ministry.

(Case No. 2008-3848-001).

2. MINISTRY OF FINANCE

Of 6 cases closed in 2009, 3 were investigated. Criticism and/or recommendations were expressed in 1 case. No cases are summarized.

3. MINISTRY OF DEFENCE

Of 32 cases closed in 2009, 5 were investigated. Criticism and/or recommendations were expressed in 4 cases. 1 case is summarized.

1. DOCUMENT LISTS. INCREASED ACCESS TO PUBLIC FILES. IDENTIFICATION

A journalist complained to the Ombudsman that the Ministry of Defence (the Ministry) had refused him access to the document lists of two composite cases. The journalist had asked for access to the Ministry's material regarding the purchase of new fighter jets. The material was filed on the two composite cases, and when given access to some of the documents the journalist had received extracts from the document lists of the two cases, corresponding to the documents to which he had applied for access. However, in order to check that he had indeed received all the material, the journalist wished to see the entire lists.

The Ombudsman could not criticise the Ministry's refusal to give access to the document lists. The Ombudsman did, however, agree with the journalist that the way in which the Ministry had set up its case management system made it difficult for the journalist to verify whether he had received all the documents relating to the subjects to which he had applied for access. In the Ombudsman's opinion the regard for verification contrasted with the set-up of the case management system indicated that the journalist should be given increased access to the document lists in the two related cases. The Ombudsman therefore recommended that the Ministry reopen the case.

The Ministry reopened the case and again refused to give increased access to the document lists. The Ministry's grounds were that giving access to all of the document lists would give the journalist knowledge of a plurality of cases of which he was not previously aware. Release of the document lists would consequently make the identification requirement according to the Access to Public Administration Files Act illusory. The journalist complained anew to the Ombudsman who stated that the Ministry could not rightfully refuse access to the document lists on the grounds that the journalist, and potentially others, could gain knowledge of cases in the Ministry which he perhaps did not know about already. As the Ministry had stated no other grounds for its refusal, the Ombudsman recommended that the Ministry reopen the case and make a new decision.

The Ombudsman also criticised the Ministry's case processing time.

(Case No. 2009-0768-400, 2009-0449-401 and 2008-1308-401).

4. MINISTRY OF INTERIOR AND SOCIAL AFFAIRS

Of 563 cases closed in 2009, 157 were investigated. Criticism and/or recommendations were expressed in 31 cases. 7 cases are summarized.

1. LIMITATION BY THE NATIONAL SOCIAL APPEALS BOARD OF COMPLAINT ISSUES IN INDUSTRIAL INJURY CASE

The National Board of Industrial Injuries made a decision which consisted of three partial decisions: one decision to recognise a work accident as an indus-

trial injury, one decision on the injured person's degree of permanent injury as a result of the industrial injury, and one decision on the injured person's loss of earning capacity. The lawyer for the injured person lodged a complaint with the National Social Appeals Board which only perceived the complaint to concern that partial decision by the National Board of Industrial Injuries which dealt with the issue of permanent injury degree, but not as a complaint concerning the partial decision about the loss of earning capacity. On this basis the National Social Appeals Board only made a decision on the question of the degree of permanent injury but not on the question of loss of earning capacity, and the National Social Appeals Board rejected the lawyer's subsequent request to also consider the National Board of Industrial Injuries' partial decision concerning the loss of earning capacity.

The Ombudsman stated that a citizen who is entitled to complain may include all aspects of a case which is within the jurisdiction of an appeal body in a complaint to that body, and that the recourse body is obligated to consider all claims raised by the complainant in the complaint. According to the inquisitorial principle, an administrative authority must make sure that a case is sufficiently elucidated, and this principle also applies when there is doubt about, for instance, the subject of a complaint. If a decision consists of several partial decisions, and it does not appear clearly and unequivocally from the complaint that it only concerns one or more of the partial decisions, the complaint must be considered to concern all those parts of the overall decision which do not sustain the complainant's claim in full. It is therefore supposed that an unclear complaint encompasses all those partial decisions which do not sustain the complainant in full. If the administrative authority intends to dispense with the supposition rule, it is obligated to clarify the subject of the complaint before coming to a decision in the case. This would typically mean that the administrative authority must ask the complainant to clarify the subject of the complaint. If an administrative authority has actually – mistakenly – limited the processing of a complaint to considering only some of the parts of a decision which does not fully sustain the complainant, the authority is obligated on a non-statutory basis to reopen the case at the request of the complainant.

(Case No. 2007-3544-024).

2. COMPLAINT CONCERNING A BUILDING PERMIT REJECTED

Two citizens complained to a regional state authority that a building permit had been granted for a multi-storey building in a low-rise neighbourhood. Following local government reform then coming into force, the complaint was passed on to a regional state administration (the Administration) which refused to consider the complaint on the grounds that the complainants were not parties in the case and therefore, according to the Building Act, not entitled to complain. The citizens complained to the Ombudsman who asked the Administration for a statement. The Administration then made a new decision to reject the complaint, but now on the grounds that the Administration did not have the authority to consider the complaint because it concerned a town planning regulation and not the building legislation. The citizens complained to the Ombudsman about this decision also.

The Ombudsman criticised the Administration's latest decision because the complaint to the Administration most naturally had to be seen as a complaint that the municipality had not consulted the neighbours before granting the building permit. The Administration should at least have asked the complainants if that was how the complaint should be understood. The Ombudsman did not comment on the Administration's first decision but recommended that the Administration reopen the case. If the Administration again reached the conclusion that the citizens were not entitled to complain, the Ombudsman would consider the complaint concerning this issue.

(Case No. 2007-3930-120).

3. RIGHT TO KNOW THE NAME OF MEDICAL CONSULTANT, EVEN WHEN THE CASE IS PENDING

A representative for a party in a case with the National Social Appeals Board (the Board) lodged a complaint with the Ombudsman that the Board had refused access to the name of the medical consultant who participated in the Board's processing of the case on the grounds that the case was still pending. The Ombudsman stated that he agreed with the Board that as party representative in a decision case the complainant had a right to access to the name of the medical consultant who had participated in the processing of the case. The Ombudsman also commented in more general terms on the right of access to the names of those (employees) who participate in the handling of a case.

However, the Ombudsman did not agree with the Board that there was no right of access to the name of the medical consultant participating in the processing of a case until the Board had concluded the case (in the case of child protection enquiries, when it has been decided if the Board will discuss the case at a meeting). The Ombudsman particularly stressed that the right to access – according to the provisions in the Access to Public Administration Files Act as well as the provisions in the Public Administration Act – covers both pending and concluded cases. In the Ombudsman's opinion it was on this basis a matter

for criticism that the Board had refused the party representative access to the name of the medical consultant participating in the handling of the case. The Ombudsman presupposed that at the time of the party representative's request for access the medical consultant was actually participating in or had participated in the processing of the case.

(Case No. 2008-3460-001).

4. APPOINTMENTS FOR RENT CONTROL BOARD AND TENANTS' COMPLAINT BOARD. THE INQUISITORIAL PRINCIPLE. DUTY TO TAKE NOTES

A tenants association lodged a complaint that a municipality had not appointed those members for the rent control board and the tenants' complaint board which the association had nominated.

The Ombudsman said that the rules must be taken to mean that, basically, a tenants' representative nominated by a major tenants association in the municipality should be appointed. However, the right of nomination did not imply that the association had an absolute claim to have the nominated person appointed, even though the nominee must be considered qualified. If a nomination only included the number of persons to be appointed, it was considered that the nomination could be generally assumed to be non-binding. If the association had nominated more people than was needed, the principal rule must be that one of the nominees had to be appointed.

It could not be a condition for choosing a non-nominated person that in its call to enter a nomination the municipality had pointed out the possibility of nominating several people. It would, however, have been most in accordance with good administrative behaviour if the municipality had invited the association to nominate several candidates. If the municipality had to choose from several candidates, it had to assess which was the best qualified.

As there was no documentation for the qualifications of those chosen, the Inquisitorial Principle could on the present basis not be considered to have been observed.

In addition, the Ombudsman criticised that no notes had been taken on the factual information on which the assessment of the candidates' qualifications was based.

(Case No. 2006-3144-169 and 2006-3145-169).

5. DISCRETION WITHIN RULE IN A CASE INVOLVING A PERSONAL ALLOWANCE UNDER THE PENSIONS ACT

A citizen complained to the Ombudsman that the municipality and the social board had refused to recognise her car expenses as "reasonable regular outlays" in connection with her application for a personal allowance under the Pensions Act. As grounds the authorities had referred to a regular practice whereby car expenses can only be approved if the car is necessary for reasons of health or work.

The Ombudsman was of the opinion that the authorities should have assessed whether the applicant's arguments for having a car could mean that the authorities had to depart from their practice in this particular case. By not doing so, the authorities had in the Ombudsman's opinion unlawfully employed discretion within rule.

The case also raised a question of grounds, cf. section 24 of the Public Administration Act. In the Ombudsman's opinion the grounds stated by the authorities – in which the authorities referred to the standard practice – were overall subjectively correct.

(Case No. 2008-1332-055).

6. SOCIAL BOARD HAD A DUTY TO CONSIDER COMPLAINT THAT THE FATHER HAD NOT BEEN CONSULTED IN MAINTENANCE RECOVERY

A father complained to the social board that the municipality had not consulted him before deciding to recover child support maintenance from him. The social board refused to consider the complaint on the grounds that the board did not have the authority to consider complaints about decisions involving support maintenance. As the social board did not have the authority to consider the factual aspects of the case, the board did not, it thought, have the authority to consider an objection concerning any omission of consultation of parties, either.

In the Ombudsman's opinion it was a matter for criticism that the social board had refused to consider the complaint about the municipality's case processing in connection with the recovery of child support maintenance from the father. The Ombudsman stated that according to the Act on Recovery of Support Maintenance Payments the father could complain to the social board about the municipality's decision. The social board can – and shall – consider isolated complaints about a municipality's case processing in connection with the recovery of child support maintenance if the case processing complaint concerns matters which according to their nature have a bearing on the content of a decision.

The consultation of parties in a case is a guarantee rule and may have a bearing on the content of the decision.

(Case No. 2007-4200-658).

7. DECISION GIVEN IN AN ATTACHED WORD FILE WHICH CHANGED THE DATE EVERY TIME IT WAS OPENED

During his investigation of a complaint concerning two decisions by the National Social Appeals Board, the Ombudsman noticed that the decisions had been communicated to the complainant in Word files which were attached to e-mails. The Word files contained a code which meant that the date of the decisions changed every time the files were opened.

The National Social Appeals Board stated that it was an error that the decisions had been sent in this manner, and the Board expressed its regret.

The Ombudsman stated that the electronic communication of a decision must be done using formats which cannot automatically change the file just by opening it.

(Case No. 2009-1196-009).

5. MINISTRY OF JUSTICE

Of 692 cases closed in 2009, 188 were investigated. Criticism and/or recommendations were expressed in 46 cases. 4 cases are summarized.

1. TRANSMISSION OF INFORMATION FROM THE CENTRAL REGISTER OF MOTOR VEHICLES. THE INQUISITORIAL PRINCIPLE. EQUALITY. IMPARTIALITY

An insurance company complained to the Ombudsman that the National Police and the Ministry of Justice had refused a request from 7 insurance companies for weekly data transmissions from the Central Register of Motor Vehicles (CRM).

The Ombudsman was of the opinion that the authorities were allowed to pass on the information pursuant to section 6(1)(7) of the Act on Processing of Personal Data. However, the question was whether the authorities were also obligated to pass on the information. In the assessment of this question the Ombudsman stressed that the National Police had not as a rule refused similar requests. If the authorities wanted to refuse the company's request – even though a transmission was legitimate according to the Act on Processing of Personal Data – the authorities therefore had to be able to concretely explain the reasons which led to this particular request being denied, as the authorities are subject to the common administrative law requirements of equality and impartiality.

The Ministry of Justice had emphasised that there was a risk of abuse if every insurance company, and other companies with a similar interest in the information, could gain access to the data. The Ministry had also attached importance to the administrative burden which a possible permission would entail. Finally, the Ministry did not think that the fact that the company Forsikring & Pension received the information in question for the use of 'Forsikringsluppen' (an online insurance advice guide) could mean that the National Police was also obligated to pass on the information to the 7 insurance companies.

To sum up, it was the Ombudsman's opinion that the Ministry of Justice had not had sufficient grounds for refusing the company's request.

As the administration of the Central Register had passed to the Inland Revenue on 1 January 2008, the Ombudsman recommended that the Ministry of Taxation reopen the case with a view to making a new decision.

(Case No. 2007-4303-619).

2. ACCESS TO RECORDED SIDE EFFECTS TO A MEDICINAL PRODUCT. INCREASED ACCESS TO PUBLIC RECORDS. DISIDENTIFICATION

On the basis of a specific case, the Ombudsman raised an own-initiative case concerning interpretation of section 10 of the Act on Processing of Personal Data.

The Ombudsman stated that section 10(1) and (2) are not in the nature of special confidentiality provisions.

He further stated that in his opinion the majority of the medical histories mentioned in the record of side effects was not – except for an identification code – information included in section 12(1)(1) of the Access to Public Administration Files Act. This meant that, basically, access to the information could be granted in accordance with the general provisions of the Access to Public Administration Files Act.

The Ombudsman had no comments with regard to the practice of the Data Protection Agency that information included in section 10(1) and (2) could be passed on in a form which did not allow the recipient to directly identify the individuals involved. However, the Ombudsman did think it unfortunate that the provision's wording and explanatory notes were not quite compatible with this practice. The Ombudsman therefore recommended to the Ministry of Justice that the Ministry seek to change this provision so that it did not appear to completely prevent the passing on of information other than for statistical or scientific purposes, even when it was impossible to identify personal details in the information.

The Ombudsman was of the opinion that when information covered by the Act on Processing of Personal Data was made anonymous with a view to passing it on, the degree of disidentification had to equal that applied by the Public Administration Act and the Access to Public Administration Files Act

(Case No. 2008-0214-401).

3. BALANCING OF CONCERNS AND GIVING CORRECT GROUNDS FOR REFUSING INCREASED ACCESS TO FILES

A journalist asked the Ministry of Justice (the Ministry) for access to a bill on regulation of access rights to the appointment books of government ministers. The journalist was given partial access to the case files but the Ministry exempted a total of 7 documents pursuant to the provision in section 10 of the Access to Public Administration Files Act. The Ministry wrote that giving access to the 7 documents according to the principle of increased access to files had been considered but had been found to have no basis. The Ministry emphasized the same considerations as those underlying the exemption provisions in section 7 and section 10 of the Access to Public Administration Files Act.

The journalist complained to the Ombudsman about the partial refusal to grant access. The Ombudsman stated that he could not criticise that the Ministry had exempted the documents from access pursuant to the provision in section 10 of the Access to Public Administration Files Act.

In his statement the Ombudsman made some general comments on the balancing of the various concerns and on providing adequate and correct grounds for the refusal to give increased access to files.

(Case No. 2009-1997-601).

4. LONG-TERM INMATES' CHANCES OF UNACCOMPANIED LEAVE AND THEREBY TRANSFER TO AN OPEN PRISON. INTERPRETATION AND PRACTICE BY THE DEPARTMENT OF PRISONS AND PROBATION

A long-term inmate complained several times to the Ombudsman that the practice of the Department of Prisons and Probation (the Department) with regard to leave for long-term inmates was in violation of the Corrections Act. The long-term inmate referred to the fact that this practice had a crucial influence on the time when the inmate could be transferred from a closed to an open prison. He explained that according to practice it is usually a fundamental condition for such a transfer that the inmate has proved that he or she can be on unaccompanied leave without any problems.

Following two rounds of investigation of the complaint the Ombudsman gave his (second) statement on the raised issues on 14 May 2009.

On the current basis the Ombudsman considered it highly probable that it was extremely rare – if ever – that a long-term inmate had been granted unaccompanied leave from a closed prison before having served half the sentence, and it had certainly not happened in recent years. The Ombudsman stated furthermore that the Department's practice – if based on the above – was partly in violation of the principle in administrative law of discretion within rule and partly problematic in relation to the requirement that the Prison and Probation Service no later than the time when a long-term inmate has served half his sentence must consider the question of transfer to an open prison. The Ombudsman asked for a response on what actions his comments prompted the Department to take.

In addition, the Ombudsman found that the regulations in the Department's executive order on leave could be understood and was actually understood in two different ways. He recommended that the Department provide a clearer legal basis for long-term inmates' chances of getting leave if the Department wished to retain its (in relation to other inmates) stringent practice regarding leave for long-term inmates.

(Case No. 2007-3630-622).

6. MINISTRY OF ECCLESIASTICAL AFFAIRS

Of 29 cases closed in 2009, 10 were investigated. Criticism and/or recommendations were expressed in 1 case. No cases are summarized.

7. MINISTRY OF CLIMATE AND ENERGY

Of 6 cases closed in 2009, 1 was investigated. Criticism and/or recommendations were expressed in this case. 1 case is summarized.

1. NOTIFICATION OF PRICE RISE TO THE ENERGY REGULATORY AUTHORITY. ASSESSMENT OF EVIDENCE

In 2001 a private utility company notified the Energy Regulatory Authority (the Authority) of a rise in the company's prices. Several years afterwards it was discovered that a correctly filled in tariff sheet concerning this price rise was missing from the Authority's file for the company. The reason for the absence was unclear. The Authority thought that the absence was due to matters within the Authority itself. The Energy Board of Appeals (the Board), however, found that a correctly filled in tariff sheet had not been enclosed with the company's notification of the price rise, and that consequently the price rise was invalid.

The utility company complained to the Ombudsman about the Board's decision in the case. The Ombudsman agreed with the authorities that the tariff sheet was a condition of validity. The Ombudsman did not, however, agree with the Board's assessment of the evidence in the case. He found it important i.a. that the utility company had received a confirmation from the Authority that the notification had been received with several enclosed documents, including the tariff sheet. Therefore, the utility company had had no need to ensure further evidence that the tariff sheet had been sent to and received by the Authority. In addition, there were circumstances which the Ombudsman found important to the case which the Board had not, however, included in its assessment of the case.

Consequently, the Ombudsman recommended that the Board carry out a new assessment of the case.

According to the Board's decision, the missing tariff sheet meant that the price rise was invalid. The Ombudsman pointed out that the Board had not considered the consequences of invalidity in this case, and he made some comments in this connection. The Ombudsman recommended that the Board included, to the relevant extent, his comments when assessing the case anew.

(Case No. 2008-2291-324).

8. MINISTRY OF CULTURE

Of 30 cases closed in 2009, 6 were investigated. Criticism and/or recommendations were expressed in 2 cases. 1 case is summarized.

1. DISMISSAL FROM BROADCASTING CORPORATION ON THE GROUNDS OF AGE

On the grounds of age Danmarks Radio (the Danish Broadcasting Corporation) dismissed a musician in the Radio Symphony Orchestra with effect from April 2008. The dismissal was based on a public service regulation which stipulated that employment should be terminated with effect from the end of the month in which the member of the orchestra reached his 63rd birthday. The musician lodged a complaint with the Ombudsman because he was of the opinion that the dismissal was an expression of age discrimination.

Danmarks Radio held that the dismissal was lawful according to section 5(3) of the Discrimination Act. On certain conditions, this provision allows the maintenance of existing age limits that are determined or agreed in relation to collective or labour agreements. The provision i.a. presupposes that the proportionality between the intended aims and the means used to achieve them is assessed. The main reasons given by Danmarks Radio to the Ombudsman for the compulsory retirement age was a number of musical and physical demands on musicians in the Radio Symphony Orchestra, and the fact that classical musicians were subject to considerable physical strain and therefore often developed work-related injuries.

The Ombudsman stated i.a. that generally there was no doubt that information about an occupation's professional and physical demands, including development of physical injuries, could, based on an overall assessment, justify the maintenance of an compulsory retirement age pursuant to section 5(3) of the Discrimination Act. Factually, the Ombudsman could not criticise the dismissal. At the time of the Ombudsman's investigation of the case, there were two on-going studies on musicians' health. In the Ombudsman's opinion the

compulsory retirement age should be re-assessed when the results from these studies were available, and in that context the Ombudsman asked Danmarks Radio to keep him informed.

(Case No. 2008-1056-813).

9. MINISTRY OF THE ENVIRONMENT

Of 100 cases closed in 2009, 32 were investigated. Criticism and/or recommendations were expressed in 7 cases. 4 cases are summarized.

1. ACCESS TO DANISH ELEVATION MODEL DATA. COPYRIGHT. THE ENVIRONMENTAL INFORMATION ACT

A journalist complained to the Ombudsman that the National Survey Cadastre and the Ministry for the Environment had refused him access to all data concerning the Danish Elevation Model (a model of the elevations and contours in a landscape, in this case for the whole of Denmark).

The Ombudsman stated that according to legislation copyright give way to any form of request for access to files. This applies even when the authorities know for a fact that the information may be used in an unlawful way. When granting access, the authorities may inform the applicant that the intended use may be contrary to copyright regulations.

Furthermore, in the Ombudsman's opinion there could be no doubt that the information contained in the Danish Elevation Model is included in the Environmental Information Act. The Ombudsman did not think that the authorities had made a specific assessment pursuant to section 12(1)(2) of the Access to Public Administration Files Act on "operating or business procedures or the like" compared with the weighing rules in section 2(3) of the Environmental Information Act.

The Ombudsman recommended that the Ministry for the Environment reopen the case and make a new decision.

(Case No. 2008-1869-101).

2. CASE IDENTIFICATION BY THE NATURE PROTECTION BOARD OF APPEAL. APPEAL CHARGE

A consultancy company complained to the Ombudsman that a demand from the Nature Protection Board of Appeal (the Board) for payment of a charge did not identify the case which the charge concerned. The company claimed that the problems in identifying the subject of the charge caused the company to pay the charge too late. The Board had refused the complaint because the charge had been paid too late.

In the Ombudsman's opinion, there was no basis for criticising the Board's general practice for identification of the cases which letters to complainants concerned . The Ombudsman stressed that the Board was already aware that there might be occasions when an addressee (typically a party representative) may find it difficult to identify the case which a letter from the Board concerns. Consequently, the Board supplies the payment demands with additional case identification, such as for instance a case number, or a cadastral registry number where the complaint states such information with reasonable clarity.

In addition, the Ombudsman did not think that this case provided sufficient grounds for criticising that the Nature Protection Board of Appeal had not supplied the demand with further case identification.

(Case No. 2008-1870-109)

3. DISPENSATION FOR ALTERATION OF BOTTLE DEPOSIT RATE

A juice producer applied to the Ministry of the Environment for dispensation from the rules concerning bottle deposit payment. The producer wanted a special bottle deposit rate for his 25 cl. bottles. The Environmental Protection Agency refused the application because the possibility of using special deposit rates was exhaustively regulated in section 4 of the Statutory Order on bottle deposits and collection, and the conditions pursuant to this regulation for being able to use an increased deposit rate were not met.

In the Ombudsman's opinion, section 4 of the Statutory Order for bottle deposits does not preclude using the general dispensation rule in section 123(2) of the Statutory Order for bottle deposits and collection when considering applications for dispensation from the regulation on bottle deposit rates. The Environmental Protection Agency was therefore in error when failing to consider whether dispensation might be granted pursuant to section 123(2) of the Statutory Order

on bottle deposits and collection. However, there were no grounds for recommending that the Environmental Protection Agency reopen the case.

(Case No. 2008-4544-113).

4. REFUSAL OF ACCESS TO INTERNAL NOTE PURSUANT TO THE ACT ON ACCESS TO ENVIRONMENTAL INFORMATION

The Nature Protection Board of Appeal (the Board) refused a request for access to a recommendation from the Board's secretariat to the Board. The refusal was given pursuant to section 2(3) of the Act on access to environmental information, cf. section 12(1) of the Public Administration Act, concerning internal documents. In the Board's opinion the ability to advise the Board members was such an important consideration that the public's interest in access to the note had to be dispensed with. Later the Board stated i.a. that it was the Board's standpoint in principle that such recommendations should not be accessible to the public.

The information in the case did not give the Ombudsman basis for considering it proved that the Board's decision had been made on the grounds of a concrete assessment, such as the regulations prescribed. In the Ombudsman's opinion the grounds given by the Board was of such an abstract character that the same grounds could be used to prevent access to all the secretariat's internal documents prepared for the use of the Board.

Neither did the Board's standpoint in principle seem compatible with the requirements of national and EU law that the exemption clauses for access to public files be used restrictively under consideration for the public interest in allowing access in the individual case.

The Ombudsman recommended that that Nature Protection Board of Appeal reopen the case.

(Case No. 2007-3031-101).

10. MINISTRY OF REFUGEE, IMMIGRATION AND INTEGRATION AFFAIRS

Of 246 cases closed in 2009, 45 were investigated. Criticism and/or recommendations were expressed in 5 cases. No cases are summarized.

11. MINISTRY OF FOOD, AGRICULTURE AND FISHERIES

Of 34 cases closed in 2009, 3 were investigated. Criticism and/or recommendations were expressed in 1 case. 1 case is summarized.

1. REFUSED REQUEST FOR COMPLETE EXTRACT OF DATA FROM THE CENTRAL HUSBANDRY REGISTER. USE OF SEARCH ROBOT

A journalist complained to the Ombudsman that the Veterinary and Food Administration (the Administration) and the Ministry of Family and Consumer Affairs (the Ministry, now the Ministry of Food, Agriculture and Fisheries) had refused his request for a complete extract of data from the Central Husbandry Register (CHR).

The Ombudsman criticised the authorities for not even considering the regulation in section 6(1) of the Husbandry Act which expressly states that there is access to acquiring mass information from the CHR. In the refusal the authorities had referred to an agreement between the Administration and the Commerce and Companies Agency (the Agency). The agreement meant that the Administration would have to pay quite a large sum to the Agency if the journalist's request for access were granted. In the Ombudsman's opinion this economic consideration could not be used as grounds for a refusal. In addition, the journalist had himself suggested that the information be extracted from CHR by means of a search robot.

The Ombudsman could not criticise that the Administration had refused to assist the journalist in using the search robot. If the journalist wished to use the search robot on his own, however, the authorities could not in the Ombudsman's opinion demand prior permission. The Ombudsman advised the journalist to assess for himself the risk of overloading the system by doing the extraction on his own in the light of what the authorities had said about such a risk. The Ombudsman recommended that the authorities make a new decision pursuant to section 6(1) of the Husbandry Act.

(Case No. 2007-1784-301).

12. MINISTRY OF HEALTH AND PREVENTION

Of 122 cases closed in 2009, 33 were investigated. Criticism and/or recommendations were expressed in 7 cases. 2 cases are summarized.

1. THE DUTY OF THE NATIONAL BOARD OF PATIENT COMPLAINTS TO GIVE GUIDANCE ON THE CONSEQUENCES OF A DECISION BY THE BOARD

In continuation of the processing of a specific complaint case concerning a father's right to access to his son's medical file, the Ombudsman on his own initiative took up a general question concerning the guidance obligation of the National Board of Patient Complaints (the Board).

The background was that the while the complaint case was being processed by the Board, the father's custody of his son was revoked. As a consequence, the father was not longer entitled to have access to his son's medical file.

In its decision the Board criticised two health care individuals for holding back a number of supporting documents which, in the Board's opinion, should – at the time – have been given to the father. However, the decision did not mention that the father had lost custody of his son in the meantime.

In the Ombudsman's opinion the Board's decision should – i.a. according to good administrative behaviour – have mentioned the judgment in the custody case and the consequences of that judgment for the father's right to access to his son's medical file. In this way both the father and other health care personnel would be informed of the judgment and its consequences.

(Case No. 2007-4199-402).

2. A TOTAL CASE PROCESSING TIME OF 5.5 YEARS BY THE NATIONAL BOARD OF PATIENT COMPLAINTS. VALUE OF THE BOARD'S MANY REGRETS AND PROMISES

The father of a mentally ill young man who had committed suicide complained to the Ombudsman about the case processing time in a complaint case lodged with the National Board of Patient Complaints (the Board). Over a period of just over 2 years the son had been admitted to a psychiatric ward a total of 8 times, and the patient complaint was directed partly against the hospital's doctors and partly against the nurses at the care home where the young man lived between the hospitalisations and at the time of his death.

The Board received the father's complaint on 23 January 2004. On 19 April 2004 the complaint was accepted for consideration, and the case was then sent for a preliminary investigation by the medical health officer institution which returned the case to the Board a year later.

On 19 November 2007 the case was discussed at a meeting in the Board. On 2 January 2009 the father complained to the Ombudsman that the Board had not yet concluded the case.

Following a detailed investigation of the case the Ombudsman stated on 22 October 2009 that the Board's case processing time – a total of 5.5 years – by far exceeded what is reasonable and acceptable, even though the case was complicated. In his statement the Ombudsman characterised the case processing time as a matter for extraordinary criticism. One of the aspects which the Ombudsman particularly noticed was that more than 18 months passed by from the time when the case was discussed at a meeting in the Board and until the complainant was informed of the outcome of the meeting.

Furthermore, the Ombudsman found that the Board had four times expressed its regret to the father that the case was delayed. However, the Ombudsman stated that the regrets concerning the Board's promises of a speedy case processing appeared to be without any actual value when one compared the number of regrets and promises to the time that had passed from the Board's first expression of regret (promise, respectively) until the time when a decision was actually made. The Ombudsman stated that this fact significantly weakened the value of the Board's expressions of regret.

(Case No. 2009-0031-400).

13. MINISTRY OF SCIENCE, TECHNOLOGY AND INNOVATION

Of 58 cases closed in 2009, 8 were investigated. Criticism and/or recommendations were expressed in 2 cases. No cases are summarized.

14. MINISTRY OF TAXATION

Of 191 cases closed in 2009, 15 were investigated. Criticism and/or recommendations were expressed in 3 cases. 1 case is summarized.

1. BINDING REPLY ON TAX-RELATED CONSEQUENCES OF PLANNED TAX TRANSACTION. THE INQUISITORIAL PRINCIPLE. THE NATIONAL INCOME TAX TRIBUNAL'S RESPONSE OPTIONS

An accountant complained to the Ombudsman that the National Income Tax Tribunal (the Tribunal) had refused to give a binding reply concerning the tax-related consequences of a planned tax transaction.

The Ombudsman stated that the rules on binding replies should be understood to mean that a binding reply could only be given concerning a specific transaction or measure, and that – in cases involving a planned transaction or measure – this rule caused a requirement that the planned transaction or measure be described in sufficient detail. In the Ombudsman's opinion the accountant had not described the planned transaction sufficiently clearly and in detail, and the Ombudsman could therefore not criticise that the Tribunal had refused to reply to the accountant's question.

The accountant was of the opinion that the Tribunal ought to have asked him to send the missing information. The Ombudsman did not agree. He referred to the fact that the missing information did not exist and that the Inquisitorial Principle did not imply an obligation that the Tribunal obtain non-existing information or material. In the Ombudsman's opinion, neither was the Tribunal obliged to give the accountant a reply with reservations.

(Case No.2007-4341-214).

15. PRIME MINISTER'S OFFICE

Of 15 cases closed in 2009, 4 were investigated. Criticism and/or recommendations were expressed in 2 cases. 1 case is summarized.

1. CONCEALMENT OF WHETHER OR NOT THE PRIME MINISTER WAS IN LINE FOR A TOP POSITION IN THE EU OR NATO

Two journalists asked the Prime Minister's Office for access to any documents on the Prime Minister's chances of being in line for a top position in the EU or NATO. The Prime Minister's Office refused to disclose whether such documents even existed. The Office gave its grounds in a very brief statement.

The journalists complained to the Ombudsman, and following a meeting between the Prime Minister's Office and the Ombudsman the Office issued a statement outlining those considerations which formed the basis for the decision. In the opinion of the Prime Minister's Office, disclosure of whether or not the Office was in possession of such documents could have harmful effects on both foreign and national politics. Foreign politics because the chances of appointing a Danish minister to an international top position would be considerably diminished if confirmation of a Danish candidacy were announced too early. And national politics because "the Prime Minister's credibility of functioning as leader of the Government – and thereby the Government's feasibility of functioning as a working government – would suffer material harm".

The Ombudsman could not criticise that the Prime Minister's Office had considered the foreign politics aspect to be protected by the exemption provisions in the Access to Public Administration Files Act. On the other hand, he did find it more doubtful whether the, more generally worded, national politics consideration was protected by those provisions. But, as the case also had aspects similar to those found in employment and personnel cases which did not normally give full access, the Ombudsman could not criticise the result of the Office's decision.

However, the Ombudsman did criticise the very brief grounds which the Prime Minister's Office gave the journalists originally.

(Case No. 2008-1469-401).

16. MINISTRY OF TRANSPORT

Of 35 cases closed in 2009, 9 were investigated. No criticism and/or recommendations were expressed in any of the cases. No cases are summarized.

17. MINISTRY OF FOREIGN AFFAIRS

Of 14 cases closed in 2009, 3 were investigated. Criticism and/or recommendations were expressed in 2 cases. 2 cases are summarized.

1. REFUSED ACCESS TO IDENTIFYING INFORMATION IN DOCUMENTS

A journalist complained to the Ombudsman that the Ministry of Foreign Affairs had not given full access to the Ministry's briefings to the Auditor General's Office on financial irregularities in the administration of Danish aid to developing countries. The Ministry had allowed partial access to the documents but had removed all information in the documents which could lead to an identification of the countries, projects, etc., meaning that country names, towns, currencies, authorities and case file numbers had been removed. The refusal to grant access to the identifying information was based on the rule in section 13(1)(2) of the Access to Public Administration Files Act concerning regard for the security of the State or the defence of the Realm. Access to the rest of the information in the documents was granted pursuant to the rule in section 13(2) of the Act whereby access must be granted to the rest of a document's contents if the provisions in section 13(1)(2) apply only to parts of a document.

The Ombudsman stated that the Ministry's application of the rule in section 13 of the Access to Public Administration Files Act was based on a not quite correct understanding of the rule. The Act does not oblige the authorities to make documents anonymous in order to grant access to them. That the Ministry had granted access to material parts of the documents containing information covered by the rule in section 13(1)(2) was thus an expression of increased access to public records.

However, in the Ombudsman's opinion the Ministry had not done a sufficiently concrete assessment of whether or not it was necessary to remove information out of regard for substantial opposing interests of the nature described in section 13(1)(2) of the Access to Public Administration Files Act and section 27(1)(2) of the Public Administration Act. On this basis the Ombudsman recommended that the Ministry reopen the case and go through the documents again in order to assess whether increased access could be granted.

The Ministry of Foreign Affairs subsequently reopened the case and on 23 June 2009 made a new decision granting the journalist increased access.

(Case No. 2008-2571-401).

2. ACCESS TO PUBLIC FILES. IDENTIFICATION. INCREASED ACCESS. GUIDANCE ON ACCESS PURSUANT TO RULES IN THE ADMINISTRATION OF JUSTICE ACT

A journalist asked the Industrialisation Fund for Developing Countries (IFU) for access to the IFU's cases on fraud, etc. involving public funds. The IFU initially refused the request, citing that the fund's business activities were in general exempt from the Access to Public Administration Files Act. Later, the IFU cited as reason for the refusal that the documents the journalist asked to see were not adequately identified. In addition, the IFU refused to grant increased access to the files.

The journalist complained to the Ombudsman. In its statement to the Ombudsman the IFU said that it had identified a district court judgment in a criminal case which was included in the journalist's application for access to files.

The Ombudsman said that he could not criticise the IFU for its assessment that the request for access did not fulfil the identification requirement.

The Ombudsman did not agree with some of the arguments used by the IFU to refuse increased access. In the Ombudsman's opinion the IFU should have talked with the journalist about ways in which to clearly define the request for access. The Ombudsman recommended that the IFU reopen the case so that it could be assessed through dialogue if the journalist could be given total or partial access to at least some documents, including the district court judgment. If relevant, the IFU should also provide guidance on the possibility of achieving access to judgments or other documents according to the rules in the Administration of Justice Act, and with this aim as far as possible forward the journalist's request to the relevant courts.

(Case No. 2008-2800-401).

18. MINISTRY OF EDUCATION

Of 49 cases closed in 2009, 14 were investigated. Criticism and/or recommendations were expressed in 2 cases. 1 case is summarized.

1. REFERRAL OF AUTISTIC CHILD TO SPECIAL NEEDS SCHOOL RATHER THAN INDIVIDUAL INTEGRATION IN FREE SCHOOL

The parents of a 13-year-old autistic boy with learning difficulties complained to the Ombudsman. They were dissatisfied that their son had been referred to a special needs school for autistic children with learning difficulties. Instead, they chose to enrol the boy at a (general) Free School where he was individually integrated according to the so-called ABA (Applied Behaviour Analysis) method. The parents submitted a number of claims in the complaint to the Ombudsman, i.a. violation of the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities.

Among other things, the Ombudsman stated his understanding of the relevant article in the UN Convention on the Rights of the Child. He did not think that the conventions had been violated. In addition, the Ombudsman did not think that he could criticise the decision by the Complaints Board for Extensive Special Needs Education in the case. In this context, neither did the Ombudsman think that he would be able to criticise the Board's review as a complaints authority.

(Case No. 2009-1787-710).

19. MINISTRY OF ECONOMIC AND BUSINESS AFFAIRS

Of 56 cases closed in 2009, 5 were investigated. Criticism and/or recommendations were expressed in 1 case. 1 case is summarized.

1. ACCESS TO A GOVERNMENT MINISTER'S APPOINTMENT BOOK

A journalist asked for access to a government minister's appointment book for the period 2003–2008. When the journalist received the appointment book, he saw that the ministry had edited the contents before giving it to the journalist – to avoid the journalist misunderstanding the nature of the appointments. In addition, the ministry had omitted some of the information in the appointment book, saying that the journalist was only entitled to see those parts of the appointment book which concerned the minister's appointments in his capacity of minister and not the minister's appointments as party chairman or as a private person.

The journalist complained to the Ombudsman who criticised that the ministry had made changes in the appointment book before giving access to it. This was in violation of the Access to Public Administration Files Act. If the ministry felt a need for supplementing or explaining the information in the appointment book, it should have been done in a separate document. The Ombudsman also criticised that the ministry had just exempted those parts of the appointment book from access which in the ministry's opinion concerned the minister's activities as party chairman and private person. The question of whether or not information about private activities, etc. could be exempt had to be determined based on a concrete assessment pursuant to the specific rules of the Access to Public Administration Files Act on protection of private matters and interests.

In addition, the Ombudsman criticised the ministry for apparently using the exemption rules of the Access to Public Administration Files Act wrongly on a number of points. Finally, the Ombudsman criticised the ministry's grounds for omitting information from the access to files.

(Case No. 2008-2194-301).

20. LOCAL AUTHORITIES

Of 1.451 cases closed in 2009, 173 were investigated. Criticism and/or recommendations were expressed in 65 cases. 8 cases are summarized.

1. REPRIMAND FOR USING WORKPLACE E-MAIL ADDRESS TO SEND A PRIVATE MESSAGE

The Ombudsman criticised that a municipal librarian was reprimanded by the municipality for using her workplace e-mail address to send an e-mail to a number of private friends and acquaintances.

The e-mail was a call to participate in a debate meeting concerning the future of the library, and it also called attention to the possibility of participating in a debate forum on the internet, a questionnaire survey and an interview.

The Ombudsman did not agree with the municipality that the e-mail could be perceived to have been sent by the municipality, and in his opinion neither the erroneous factual information in the e-mail nor regard for the authority's internal decision process could justify the reprimand.

(Case No. 2008-2317-812).

2. GUIDANCE ON DEADLINE AND TELEPHONE TEXTING SERVICE FOR DAY-CARE APPLICATIONS

In a case concerning registration for a municipal day-care place, parents complained that the municipality had not informed them of the short deadline for replying to the offer of a day-care place, nor publicised the municipality's telephone texting service in connection with the specific offer of a day-care place.

The municipality stated that a leaflet and the municipality's website provide information about the deadline for replying, which is 5 days. However, not all parents who register their child for a day-care place receive the leaflet. On the other hand, all parents registering their child for a day-care place in the municipality receive a registration voucher. This registration voucher is sent to the parents before they receive a concrete offer of a day-care place. However, the registration voucher does not mention the short deadline for replying when the child is later offered a place, nor does it mention the telephone texting service.

The Ombudsman stated that pursuant to its guidance duty in section 7(1) of the Public Administration Act, or at least in accordance with good administrative behaviour, the municipality should inform the parents of the reply deadline and the telephone texting service in the registration voucher, or clearly and unambiguously highlight the information in a guidance leaflet sent together with the registration voucher. The Ombudsman recommended that the municipality provide this guidance in future.

(Case No. 2008-3322-060).

3. SCHOOL'S CONFISCATION OF PUPIL'S MOBILE PHONE AFTER SCHOOL HOURS

During a lesson a pupil's mother phoned him. The school confiscated the mobile phone and kept it till the next day. The pupil's father complained about the overnight confiscation.

The Ombudsman made a general statement about the scope of section 52 of the Education Act, then in force. This provision authorized the Minister for Education to stipulate rules on discipline in schools. The Ombudsman stated that the schools had the authority to stipulate rules concerning the pupils' use of mobile phones during school hours, including the confiscation of the pupils' mobile phones during school hours. But section 52 could not be extended in time to implement measures which extended into the pupils' leisure time, i.e. after school hours. In this particular case the Ombudsman thought it a matter for criticism that the school had kept the pupil's mobile phone after the time when the pupil left school on the day the phone was confiscated.

The Ombudsman also said that the school's policy up till now on the confiscation of pupils' mobile phones generally lacked legal basis, and that it was, in addition, contrary to the principle of proportionality.

During the Ombudsman's processing of the case, the school changed its guidelines for the use of mobile phones, and the Ombudsman stated that the changed guidelines did not give him cause for any comments.

(Case No. 2007-2808-710).

4. HEARING OF CASE PARTIES AND NOTIFICATION OF DECISIONS IN 8 CASES INVOLVING CASH BENEFITS

During a general inspection in 2006 of the municipality of the City of Copenhagen the Ombudsman received 8 randomly chosen cases concerning termination or reduction of cash benefits. It turned out that in 7 of the cases the rules on the hearing of case parties had not been observed, and that in 3 of the case the parties had not even been notified that a decision had been made. In this context, the Ombudsman explained the rules on the hearing of parties in a case and the notification of decisions in relation to cases on termination and reduction of cash benefits.

The Ombudsman stated that the case processing errors were matters of severe criticism.

During the Ombudsman's review of the cases the municipality regretted the demonstrated case processing errors. As explanation, the municipality stated that most of the cases reviewed by the Ombudsman had been decided during a period in which the municipality was undergoing considerable structural changes. The Ombudsman expressed his sympathy with the municipality's explanation but maintained that the citizens, regardless of structural changes, must be entitled to a correct and professional processing of their case.

(Case No. 2007-4281-004).

5. ACCESS TO MAYOR'S APPOINTMENT BOOK

A man had asked for access to a Mayor's appointment book for a specific period. The municipality refused the applicant's request on the grounds that he had to define precisely which activities, etc. he wished to know about. In addition, the municipality refused the applicant's wish to receive the accessed information electronically.

The Ombudsman stated that the Mayor's appointment book for a specific period had to be considered one whole document, and that the applicant therefore had defined the document to which he wished to have access. The Ombudsman therefore criticised the municipality's refusal to grant access. Furthermore, the Ombudsman stated that is was an error that the municipality had summarily refused the applicant's wish to receive the information electronically. In the Ombudsman's opinion, good administrative behaviour dictated that the authorities gave electronic access to documents if that was what an applicant wanted, provided it did not delay the processing of the request and provided that there were no concrete circumstances which spoke against an electronic reply. Consequently, the municipality ought to have made a specific assessment of any circumstances which might motivate a refusal to give access electronically.

The Ombudsman recommended that the municipality reopen the case with a view to making a new decision regarding the request for access, and that the municipality in that context made a specific assessment of the issue of giving an electronic reply to the request for access.

(Case No. 2008-2266-401).

6. DISMISSAL AND BLACKLISTING DUE TO FORMER CHARGE WHICH THE POLICE HAD DROPPED BECAUSE OF INSUFFICIENCY OF EVIDENCE

A municipality dismissed a youth worker and blacklisted him from future employment with children and adolescents in the municipality. The municipality stressed that it lacked confidence in the youth worker because he had been charged with indecent exposure by a 13 year old autistic boy in a previous job. The police had dropped the charge due to insufficiency of evidence. The municipality had neither seen the video of the police questioning of the boy nor spoken with the boy. The municipality stated that the conclusive basis for the municipality's decision was what the boy had explained to the police, and that the boy was autistic.

The Ombudsman stated that it was a matter for criticism that the municipality had dismissed the youth worker without checking what the municipality claimed were the grounds for the dismissal. The municipality had not inquired about the reason why the police had dropped the case (including the video of the questioning of the boy), nor had the municipality itself initiated an investigation into the charge. The Ombudsman also said that the municipality's general statement on the truth value of statements from autistic children caused him some misgivings.

The Ombudsman said that there is no statutory authority allowing the municipality, on the basis of a diagnosis of autism, to disregard the general principles of free assessment of evidence, and that, overall, an assessment of the evidence should have been carried out. As the municipality had not examined the basis for the dismissal, it would be a matter for criticism if the municipality included the old – un-investigated – charge in connection with future job applications from the youth worker.

(Case No. 2006-2211-819).

7. SUPPORT TEACHER'S MENTION OF A CHILD IN A PUBLIC PLACE. CONFIDENTIALITY

While on a bus, a support teacher told a former colleague about a specific child in very negative terms. No names, place names or times were mentioned during the conversation on the bus. On the bus was also a girl who knew the support teacher because she had been support teacher for the girl's younger brother. She could hear the conversation and was certain that the child they were talking about was her younger brother.

The support teacher received a reprimand from the municipality which employed her because the municipality thought she had breached her duty of confidentiality.

The Ombudsman disagreed with the municipality's conception of the rules on confidentiality. He did not think that the support teacher had breached her duty of confidentiality by – in anonymous terms – mentioning a specific child in a public place. He stressed that only those who already knew the child and the specific circumstances mentioned would know the identity of the child. The Ombudsman recommended that the municipality reopen the case and consider whether there were grounds for the reprimand.

(Case No. 2008-3925-803).

8. MUNICIPALITY'S CASE PROCESSING TIME IN A HOUSING BENEFIT CASE

A man complained that his municipality had not complied with a decision by the social board in a case involving housing benefit. The social board had referred the case back to the municipality for renewed consideration.

When the man complained to the Ombudsman, 17 months had passed without the municipality taking any action in the case.

In reply to the Ombudsman's inquiry, the municipality regretted the long case processing time and explained that this was due to a change in case workers and long-term sick leave.

The Ombudsman did not think that changes in case workers and long-term sick leave could be an acceptable explanation for the case processing time. In the Ombudsman's opinion, it was a matter of severe criticism that the municipality had for a period of 17 months taken no action in the case. The Ombudsman also found it a matter of severe criticism that the municipality had not informed the man that the case was protracted, and told him when the municipality expected the case to be concluded.

The Ombudsman recommended that the municipality consider setting a target for the processing time in cases of this character.

(Case No. 2009-1729-000).