NOTAT

PUBLIC SECTOR IT SOLUTIONS: ADMINISTRATIVE LAW REQUIREMENTS

FOLKETINGETS OMBUDSMAND

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The Parliamentary Ombudsman has in recent years processed a number of cases in which IT has played a central role and where the conclusion had to be that the IT solutions had not measured up to the requirements in administrative law. The main message is that these requirements apply regardless of the technical way in which an administrative body solves an administrative task. Therefore, the general rules, which the authority must observe, still apply when computers replace paper.

Another important point is that it is the responsibility of the individual administrative authority that its solutions measure up to the requirements in administrative law – and it is still the responsibility of the authority, even though it has chosen a standard solution that turns out to be inadequate. This is also the case, even when suppliers of IT systems are not able to offer a solution that meets the requirements.

This summary paper provides an outline of the problems within this field, which have been uncovered in the course of the Ombudsman's work.

The paper is centred round the specific cases in relation to public authorities' lack of observing the requirements within administrative law in their IT systems, which the Ombudsman has processed through the years. Thus, the report of the individual cases is based on the actual and legal conditions at the time where the Ombudsman's statement was delivered. This means, among other things, that the linguistic terms in legal as well as IT context may vary from case to case.

Authentic copies and keeping them on file

An old age pensioner in the municipality of Gentofte was of the opinion that the municipality had used an incorrect basis of calculation for his pension. The authorities, however, considered the old age pensioner to have been passive by not contacting them about it until the spring following the pension year. Therefore, he would have to carry the consequences of the error. The notifications of pension could not be reconstructed, however. The Ombudsman was therefore of the opinion that the risk of evidential uncertainty in the case

should rest with the public authority. In general, the Ombudsman said, it must be an absolute requirement that a public authority has in its case files either copies of documents produced by the authority or is able, quickly and securely from a computer system, to make a completely accurate printout (corresponding to a copy) of the document. The public authority's choice of an electronic instead of a paper-based medium does not warrant the destruction of a document at an earlier stage than would have been the case for a paper document[1].

As for the requirements for the 'authentic copy' which the authorities are obliged to keep on file, the Ombudsman has stated[2] that an outgoing letter is either to be saved in the shape of a hard copy or in an electronic version fully identical with the original letter and as such also showing who has signed it. It cannot be required, however, that the electronic version of a letter also includes a copy of the actual signature but as a minimum requirement it must be evident with certainty from the electronic document who signed the original letter[3]. It applies generally to all cases, by the way, that authentic copies must be kept on file. The case is referred to further under the heading 'Signing, dating and sending letters'.

In a case[4] concerning the City of Copenhagen, the city administration was unable to reconstruct payment demand letters sent in cases involving collection of alimony. The Ombudsman stated that the council was not entitled to choose not to have copies of the payment demand letters printed out regularly. In addition, the letters cannot be discarded until there is no further legal or administrative need for them, in other words when it is certain that any demands arising from the case are statute-barred or inadmissible due to the debtor's death.

The demand for keeping an authentic copy also applies in cases where an authority only communicates digitally. The Danish Market Management and Intervention Board had in an e-mail replied to an employee's application for leave of absence. The Ombudsman stated that the Board should have stored the e-mail, either in the form of a printout or electronically[5].

[1] Annual Report of the Parliamentary Ombudsman 1997, p. 198, published at www.ombudsmanden.dk.
[2] Annual Report of the Parliamentary Ombudsman 2008 p. 79, especially p. 85.
[3] Please see now section 32 b of the Danish Public Administration Act, mentioned in note 14 and 15.
[4] Annual Report of the Parliamentary Ombudsman 2003, p. 686.
[5] Annual Report of the Parliamentary Ombudsman 2001, p. 290.

Authenticity requirements for documents sent electronically

It is a minimum requirement that the contents of the documents which the authorities send electronically to the citizens cannot easily be altered after they have been sent.

In two instances, the National Social Appeals Board had sent out decisions as standard Word files. This meant partly that the decision letters changed date every time the documents were opened, and partly that the contents of the documents could be changed easily after the documents had been opened. The Ombudsman stated[6] that an electronically sent document could instead be sent as a PDF file or be converted into an image and sent in a certified image format, for example as a TIFF file. This prevents the document from being automatically changed every time it is opened, just as it prevents any other unintentional changes being made to the document. The Ombudsman referred to the basic requirements pursuant to the Danish standard for information security, DS 484, which all sectors of the State must adhere to[7]. The Ombudsman did not give an opinion on whether it will in all cases be sufficient that electronically transmitted documents be sent as PDF files or image files, or whether documents in certain cases may be sent with a lesser degree of security. Thus, the Ombudsman only considered the issue of whether or not decisions may be sent as Word files.

In another case, a municipality used Word files to send letters electronically. In the Word file, the signature field was formatted with a field code, which meant that the user opening the document in some instances accidentally appeared from the letter to be the signer[8]. With reference to the above-mentioned case involving the National Social Appeals Board, the Ombudsman informed the municipality of the problem. The municipality then changed its practice so that it subsequently no longer used Word in connection with the creation of automatic signatures with the use of field codes. The municipality also stated that when sending documents electronically to citizens, it would in future use a file format, which ensured that the content of a decision could not be changed.

In addition, the *original* letters that the authorities send to the citizens must as a minimum observe the requirements for the *copies*, which, regardless of the method of conveyance, the authorities have to keep on file, cf. the above-mentioned cases.

[6] Annual Report of the Parliamentary Ombudsman 2009, Case No. 2009 4-7,
[7] Effective 1 January 2014, DS 484 is replaced by ISO 27001-security standard. Please see the Danish Agency for Digitisation's website:
https://www.digst.dk/informationssikkerhed/Implementering-af-ISO27001
[8] Case No. 13/02325: not published.

Search options and registration in IT systems

Administrative IT systems must be organised so that it is possible to search for and retrieve relevant cases based on content-related criteria. In connection with an own initiative project regarding police fine cases, it was not possible with the help of the police IT system to retrieve those cases involving refusal of payment instalments, payment respite and remission which the Ombudsman wished to investigate[9]. In a later case, the Ombudsman criticised that the electronic file system of the University of Copenhagen only allowed case searches when a person's civil registration number was used as a search criterion. Consequently, the University could not carry out a case search based on a specific subject or on a specific provision in the study grant legislation. The authorities must observe the equality principle of administrative law, and they can only do so if they are able to retrieve earlier, relevant cases and furthermore have a sufficiently reliable grasp of their own practice[10].

Moreover, the authorities' IT system registrations must be clear and sufficient. As an ombudsman case from 2007[11] showed, confusion resulted from the National Social Appeals Board's practice of registering the *receipt date* for incoming letters in a field entitled 'Letter date' in the electronic case and document management system. Further, the system was inadequate because it did not at all register the *date* written on the incoming letters. This was problematic as a citizen is entitled to have access to a document list. The intention is *partly* to provide the citizens with information on the processing of the case, and *partly* to give the citizens the opportunity to check that they have had access to all the documents to which they find they are entitled to have access. As, however, the citizen cannot know when the authority has received a letter, it is also necessary to register the date on the letter in order to identify it.

Signature, date, name of sender, sending letters

In different contexts, it is of vital importance that the date on which the authorities have sent letters is reliably documented. This is true in relation to, among other things, the calculation of deadlines, including complaint deadlines. When calculating complaint deadlines, it must be safe to assume that the authorities' decisions are sent out in accordance with the date on the letter.

The Ombudsman has investigated the system and practices of the National Board of Industrial Injuries in connection with the dating and sending of letters. The system is organised in such a way that most outgoing letters are

[9] Annual Report of the Parliamentary Ombudsman 2004, p. 569, especially p. 571 f. and 622 f.
[10] Annual Report of the Parliamentary Ombudsman 2006, p. 390.
[11] Case No. 2007-3631-009; not published.

dated automatically and put in envelopes by machine. However, a not inconsiderable number of letters are still dealt with manually, and the Ombudsman pointed out a number of opportunities for error that may have an impact on the calculation of the complaint deadline. Among other things, the Board must have routines, which ensure that manually handled letters that are not sent on the same day as the system dates the letter will be printed out again with a new date corresponding to the date when the letter is actually sent[12].

The many letters, which the National Board of Industrial Injuries prints and puts in envelopes by machine, are then sent to the recipient through the postal service. These letters are not signed by hand. The Ombudsman has also looked into the issue of signatures on the Board's letters[13]. All letters in decision cases should be signed, including the letter containing the actual decision in a case[14]. However, the letters need not be signed by hand but could be signed by a facsimile signature (a rendering of the actual signature) being inserted electronically in the letter[15]. There are several reasons why a signature is required in decision cases. It must be possible to allocate an individual responsibility; it must also be possible to see that the decision has been made by an authorised employee; and it must be possible to see that the document in question is a final document and not a draft. The signature counteracts forgery, and it must be possible for the recipient of the letter to assess whether the signer is disqualified due to a conflict of interest. The Ombudsman only had the opportunity to come to a definite conclusion on the requirements for letters sent by post. The same considerations and requirements apply in relation to letters, which, for example, are sent by e-mail or by the electronic postal solution 'Digital Post'[16].

Another even more basic demand than the demand for a signature is that you must be able to see which authority has sent the message to you.

In connection with the investigation of the postal solution Public Digital Post (now Digital Post), the Ombudsman has ascertained that the name of the sender authority does not always appear from the letters which the authorities

[12] Annual Report of the Parliamentary Ombudsman 2007, p. 399.
[13] Annual Report of the Parliamentary Ombudsman 2008, p. 79.
[14] Today, please see section 32 b of the Danish Public Administration Act (law amendment No. 1624 of 26 December 2013 about amendment of the Danish Public Administration Act, among other things) which codifies the demand for a signature. However, the demand is not required in relation to documents where automatic case processing is being used, or documents in which acknowledgement, reminder or other case processing steps are undertaken which are not considered essential, cf. section 32 b(2) and (3).
[15] By means of section 32 b(1) of the Danish Public Administration Act, it became possible to ensure an unmistakable identification of the sender of the document in another way than by signature and that the document is final, cf. the second part of the provision (for example when using IT systems where documents are sent with a digital signature and where the necessary measures are taken to avoid unauthorised use, etc.).
[16] It is stipulated in section 3(1) of the Consolidation Act No. 801 of 13 June 2016 about Digital Post from public senders that natural persons must be connected to the mail solution unless they are exempted from mandatory signing up. The provision was put into effect on 1 November 2014, cf. Executive Order No. 1535 of 18 December 2013.

send to the citizens through Public Digital Post[17]. This may be the case when the sender authority has not signed up for the postal solution directly but is signed up as 'digital letter box' under another authority instead. The Ombudsman informed the Danish Agency for Digitisation and the Ministry of Finance – in their capacity as service providers for Public Digital Post – that it would have been desirable if the authorities – before the provision regarding citizens' mandatory signing up for Public Digital Post was put into force – had ensured that the postal solution was customised so that it supported the compliance with the basic demands within administrative law that a letter from an authority must contain the correct name of the sender.

The right of a party to be represented

When an authority during the processing of a case communicates with a citizen, the citizen has a right to be represented by other persons, cf. section 8 of the Public Administration Act. This also applies when the communication is done electronically. This was the issue in a case[18] concerning the universities who can choose to decide that all communication between the university and students and between the university and applicants for the university's (study) programmes must take place electronically. The Ombudsman stated that the right to be represented is met if the university creates the IT system in a way that makes it possible for others to use it on behalf of the student or the applicant. This is also possible if the university, as part of the decision to introduce mandatory electronic communication, establishes the possibility of being exempted if a student or an applicant wants to be represented by other persons. Moreover, the Ombudsman assumed that the IT system would inform the student or the applicant about the possibility of being represented by others. If the system did not provide that option – and the student or the applicant therefore could be exempted from the obligation to use electronic communication – the Ombudsman presumed that the student or the applicant would receive clear and relevant guidance about that possibility.

In two other cases[19], the Ombudsman has examined the issue of being represented by other persons in relation to the digital self-service systems minSU (student grants) and mitUddannelseskort (today ungdomskort.dk). These cases revealed that the systems were not developed in a way that rendered it technically possible to be represented by others. If a student wanted to be represented by others, the student should therefore have the right to apply for and to be notified of the decision about student grants and grant aided

[17] Annual Report of the Parliamentary Ombudsman 2015, case No. 2015-22. It appears from the Ombudsman's final statement that the authorities in charge stated that the problem would be solved when Digital Post 2 would be put into operation on 1 February 2016. Therefore, the Ombudsman informed the authorities that he would take no further action in the matter.
[18] Annual Report of the Parliamentary Ombudsman 2011, Case No. 2011 12-1.
[19] Annual Report of the Parliamentary Ombudsman 2012, Case No. 2012-5.

transport, respectively, in a letter sent through the post. The Ombudsman stated the necessity of giving clear and relevant guidance to the applicants about this possibility of being exempted from using digital communication when wanting to be represented by others. With regard to grant aided transport in youth education – the system ungdomskort.dk – the case generated a further question regarding the right to be represented by other persons due to the special parental responsibility between parents and their underage children. The Ombudsman thus stated that it was necessary that the custodial parent also received clear and relevant guidance about this possibility of being exempted from using digital communication if he or she wanted to represent his or her child.

Based on the information given to the Ombudsman subsequently about the actual possibilities of the right of a party to be represented in the two digital self-service systems minSU (student grants) and ungdomskort.dk – including the use of a (non-digital) paper-based power of attorney solution – he found reason to express further comments on this in a later statement[20]. The fact of the matter was that the Ombudsman after having given his previous statement had found that it was in reality impossible to be represented by others when applying for SU or grant aided transport in such a way that section 8 of the Danish Public Administration Act was met. As to the system ungdomskort.dk, the Ombudsman found that it was not until the common public digital power of attorney solution[21] had been put into operation in March 2015 that it became possible in the first place to be represented by someone else when applying for grant aided transport. With regard to the system minSU, sufficient information was not available until the beginning of the autumn of 2015 where the Ombudsman found that the authorities had reached an acceptable clarification of the possibility of being represented by others when applying for SU, etc. On this basis, the Ombudsman expressed criticism of the overall temporal extent of the process.

Information about decisions, mandatory digital letters from citizen to authority, guidance

In a case[22] concerning the (former) National Education Agency, the Ombudsman became aware that the Agency in cases about special educational assistance (SPS) gave notification of its decisions only by placing them in the Agency's computer system. It was hereafter up to the applying educational institution to enter the system in order to see whether the Agency had made a decision in the case. Thus, notification of the decision was neither given to the

[20] Annual Report of the Parliamentary Ombudsman 2016, Case No. 2016-1. Please also see the Ombudsman's news story of 22 January 2016, 'Self-service systems excluded students from being represented by others' at www.ombudsmanden.dk.
[21] Please see more about the power of attorney solution on the website of the Danish Agency for Digitisation: https:www.digst.dk/It-loesninger/Digital-fuldmagt.
[22] Annual Report of the Parliamentary Ombudsman 2011, Case No. 2011 18-1.

educational institution who had applied, nor to the pupil who was supposed to receive the special educational assistance. The Ombudsman stated that a citizen who is a party to a case must be informed directly when an authority makes a decision. Because the pupil was a party to the case about special educational assistance, the Agency should therefore give notification of the decision directly to the pupil. The case also generated questions about the Agency's notification of the decision to the educational institution; thus, there was not sufficient legal basis for the Agency to require the use of the Agency's computer system in order for the applying educational institution to receive the decisions.

Moreover, administrative bodies cannot just like that require citizens to write to them electronically. They can only do so if it is required by law. This was stated by the Ombudsman in a case[23] about a municipality which had decided to disregard future applications for employment if they were not sent by e-mail. Having heard about the municipality's practice, the Ombudsman chose on his own initiative to investigate whether this method was legal. The Ombudsman wrote to the municipality that section 32 a of the Danish Public Administration Act stipulates that the minister concerned may lay down rules about the right to use digital communication when contacting a public body. In the explanatory notes to the provision, it says, among other things, that there are 'no legal grounds for laying down provisions, which exclude other ways of communication than digital communication (for example by specifying that a citizen's enquiry to a public body can only happen by means of digital communication)'. The municipality was of the opinion that its procedure was legal because, among other things, the issue in question was applications for employment in the municipality, and the municipality presumed that applicants for jobs in the public sector are not covered by the provisions of the Public Administration Act. The Ombudsman disagreed with the municipality's interpretation and referred to the fact that it is an established presumption that applicants for jobs in the public sector are covered by the provisions of the Public Administration Act. Section 32 a of the Public Administration Act would therefore also apply in this case. As an explanation for its procedure, the municipality had also referred to the existence of a general strategy aimed at motivating public bodies to implement digital administration which is far more economical. The Ombudsman was of the opinion, however, that this did not provide legal grounds for the municipality's procedure either, seeing as the strategy had not led to legislation allowing the municipality to require e-mail communication. The Ombudsman concluded that the municipality's decision to leave applications for employment in the municipality out of account, if they were not sent by e-mail, was illegal.

[23] File No. 2011-1776-8100, reported as part of a news story of 21 December 2011, at www.ombudsmanden.dk.

It can also not be required without legal authority that citizens must use a digital self-service solution when contacting the authorities. The Ombudsman made this clear in a case about a municipality, which had stated on its website that the citizens should use the municipality's self-service digital solution if they wished to complain about an imposed parking charge[24]. At the same time, the Ombudsman emphasized the importance that the authorities make it clear whether it is mandatory or non-mandatory to use a digital self-service when they work out complaint guides and give information to the citizens on their websites.

The Ombudsman also initiated an investigation into a case regarding admission to higher education programmes which during the summer of 2010 revealed that several hundred applicants who were qualified for admission to the university – and who had applied via optagelse.dk (the university's digital enrolment form) – had been refused[25]. The grounds for the refusals were that the applicants' diplomas had not arrived along with the applications. The Ombudsman asked the Ministry of Science to explain whether there had been errors in the admission system or whether it was due to other errors that the diplomas had not been received. The Ombudsman also asked the Ministry to state what guidance the applicants had received, and whether the applicants had received an acknowledgement of due receipt showing whether the diploma was attached or not. The Ministry informed the Ombudsman that the Ministry had settled the matter in such a way that applicants who were qualified for admission, but whose application through optagelse.dk had been refused due to a missing diploma, had all been offered admission with commencement of study by 1 September 2010. The Ministry also improved the guide at www.optagelse.dk. On that basis, the Ombudsman decided to withdraw from the case.

Citizens' right to communicate digitally with public authorities

The Ombudsman has also come across cases where deficiencies in a public IT system has meant that citizens do not fully obtain their lawful right to communicate digitally with public authorities.

The Public Digital Post Act gives citizens (and companies) who are signed up for the postal solution the right to write to public authorities via the postal solution[26]. In connection with an examination of Public Digital Post (now Digital Post), the Ombudsman has ascertained that letters sent from citizens to authorities were only to have a file size of 10 MB and contain 10 documents[27].

[24] Annual Report of the Parliamentary Ombudsman 2015,Case No. 2015-36.
[25] File No. 2010-3100-7120, mentioned in two news stories of 10 August 2010 and 6 July 2011, respectively, at www.ombudsmanden.dk.
[26] Section 8 of Consolidation Act No. 801 of 13 June 2016 about Digital Post from public senders.
[27] Annual Report of the Parliamentary Ombudsman 2015,Case No. 2015-21. It appears from the Ombudsman's final statement that the Danish Agency for Digitisation informed him that an in-

The Ombudsman informed the authorities in charge that the capacity of the postal solution constitutes such an essential obstacle or impediment for the right authorised by law to use the postal solution to write to the authorities that this right cannot be considered real.

In connection with another investigation[28] whether it is possible for Arbejdsmarkedets Feriefond (the Danish Labour Market Holiday Fund) to answer enquiries from citizens sent to the fund via Digital Post, the Ombudsman has ascertained that the fund made use of an IT solution with malfunctioning recipient and sender functionality. This had resulted in difficulties for the fund in regard to answering some of the enquiries from citizens which the fund had received via Digital Post. The Ombudsman stated, among other things, that citizens have the right to use Digital Post in relation to authorities signed up for Digital Post for public senders, and that it is the responsibility of Arbejdsmarkedets Feriefond to ensure that the fund in its capacity as public sender can receive and handle the enquiries which are sent to the fund via Digital Post.

Problems in a wider perspective

The Ombudsman may on his own initiative decide to carry out systematic investigations of a larger number of cases on a specific topic; the so-called own initiative projects. The focus of these investigations has been specifically directed at recurring errors and general problems. The Ombudsman has carried out two own initiative projects on, respectively, 90 national service cases[29] and 75 fine cases[30] on subject matters which are to a large degree administered by big IT systems. Both investigations demonstrated that there were problems in living up to the basic requirements of administrative law and showed that the central IT system was the cause of these problems.

With regard to the national service cases, the Ombudsman thus noted that the authorities had neglected their duty to give guidance, the duty to take notes, the duty pursuant to the Act on Processing of Personal Data to notify registered persons, in some cases the duty to clarify the case, the duty to give grounds and the duty to provide satisfactory appeal guidance. The reason for,

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crease of the receiving capacity and an amendment to the Act would be initiated so that the legislative basis and the actual possibilities conformed. The conclusion was, however, that by Amendatory Act No. 633 of 8 June 2016, the Minister was authorised to set rules for, among other things, limitation of capacity and number of files, which can be sent by each e-mail (section 11(1) of the Act). This authorisation is used by executive order No. 821 of 13 June 2016 about file size in Digital Post, which stipulates that the citizen is entitled to send e-mails of up to 10 MB and with 10 attached files (section 1(1) of the executive order). Thus, an expansion of the receiving capacity was not initiated.

[28] Annual Report of the Parliamentary Ombudsman, Case No. 2018-1

[29] Annual Report of the Parliamentary Ombudsman 2003, p. 735.

[30] Annual Report of the Parliamentary Ombudsman 2004, p. 569.

for example, the lack of adequate grounds was that those standard letters (forms) which the IT system provided did not contain such adequate grounds.

The own initiative project concerning the fine cases showed problems on three levels. *Firstly*, the Ombudsman could *demonstrate* that the police had ignored some basic rules of administrative law: the duty to take notes, the provisions according to the Act on Processing of Personal Data on notification, the provisions pursuant to the Public Administration Act on the giving of grounds (in a relatively minor number of cases) and on appeal guidance, the rules on the keeping of documents and authentic letter copies and the signature requirement. The problems on the latter two levels were caused in particular by interaction between the following factors: Most applications for payment by instalment, payment respite or remission of fines were given verbally (by means of a personal appearance or a telephone call to the police), and notes and other documentation on the application and the clarification of the case were at best scanty. *Secondly*, the material which the investigated cases contained therefore could not provide the background to *document* that some (other) basic rules of administrative law had been observed: The rules on representation and party consultation procedure, case clarification and giving of grounds (for the majority of the cases). As an example, you cannot know if grounds have to be given for a decision when it is impossible to see whether the decision grants an application in full or not. Last but not least, *thirdly*, it had not been possible to *verify* if the statutory authority requirements according to administrative law had been observed in the investigated cases. The badly documented cases thus made it impossible to see what the statutory authority had been for the individual decisions and which criteria had been used, whether the practice had been consistent or whether there might be a question of unlawful discrimination, etc.

Development of new IT systems by the authorities

The Ombudsman has been in dialogue with the authorities concerning the system development for the Customs and Tax Administration’s Central Debt Collection System (EFI).

In 2005, the Ombudsman was made aware that the authorities intended to create a new, central IT-based debt collection system in connection with the concentration of debt collection in a central recovery body. Therefore, the Ombudsman wrote to the Ministry of Taxation[31], asking the Ministry to state how the Ministry intended to ensure that the system would be set up to comply with the requirements within administrative law. The Ombudsman pointed out that he had noted on several occasions that basic administrative law re-

[31] Annual Report of the Parliamentary Ombudsman 2014, Case No. 2014-24.

quirements are neglected in connection with mass administration through IT systems.

Over the following years, the Ombudsman then received regular updates from the Customs and Tax Administration and the Ministry of Taxation but it took almost 9 years before the Ombudsman received a statement with descriptive information on how the administrative law requirements would be observed in the IT system. At that time, the system was partly in operation.

On the current basis, the Ombudsman did not find any grounds for taking further action as a final assessment of the system's ability to adequately support compliance with administrative law requirements would have to be based on the processing of actual cases. However, the Ombudsman stated that he considered it to be unsatisfactory that an adequate description of the way in which administrative law requirements would be observed in the new system was first provided after the system had been partly put into operation.
In addition, the Ombudsman considered it to be most regrettable that the Ministry of Taxation had to report that no continuous documentation, etc. of the system's ability to comply with administrative law requirements seemed to have been made during the development of the system. Furthermore, the Ombudsman made a number of general comments on the prerequisites for sound and appropriate planning of the work involved in developing new IT systems for the public sector.

The many cases concerning problems with meeting the demand within administrative law in connection with the introduction of new IT systems in the public sector resulted in a general approach by the Ombudsman in May 2014 to the Ministry of Finance to learn more about the Ministry's considerations – in the Ministry's capacity as cross-sectoral responsible authority within this field – in order to avoid future problems with meeting the demands within administrative law in connection with the introduction of new IT systems in the public sector[32] and which steps the Ministry considered taking[33]. The Ombudsman requested the Ministry of Finance to involve the Ministry of Justice as cross-sectoral responsible ministry for the administrative law legislation. Following the Ombudsman's enquiry, the authorities in charge stated that they were of the opinion that a broad guideline perspective within the field was needed – including an extension of a number of existing guideline texts – in order to ensure that public authorities in their planning of new IT systems in time are aware of relevant demands within administrative law.

[32] Please also see the Annual Report of the Parliamentary Ombudsman 2005, page 409 ff. where the Ombudsman prior to the reform of municipal structures (Local Government Reform) had approached the ministries in charge and Local Government Denmark (KL) and requested them to state how they would ensure that new municipal IT systems would comply with the basic requirements within administrative law.
[33] Annual Report of the Parliamentary Ombudsman 2014, Case No. 2014-34. Please also see the Ombudsman's news story of 10 December 2014, 'Authorities receive better legal advice about their IT systems' at www.ombudsmanden.dk.

Risk that digitisation develops without the necessary legal authority

In the circumstances, digitisation can result in the exercise of authority being carried out without the necessary legal basis.

Thus, the Ombudsman became aware in a specific case[34] where a municipal citizen advisor had contacted the Ombudsman that the handling of the task in connection with the issue of NemID – which over the years has developed from being a voluntary offer to persons ready for the digitisation into actually becoming an 'admission card' to many mandatory public digital solutions – without any clear legal framework. This was, among other things, the case in relation to the carrying out of the task that the municipal citizens service centres undertake on behalf of the private company Nets DanID and the question of access to lodge a complaint with the Danish Agency for Digitisation about rejection of the issue of NemID.

Following the Ombudsman's enquiry, the Danish Agency for Digitisation informed the Ombudsman that based on the development in the use of NemID and due to the protection of the citizens' legal rights, it would be advisable to have a clearly defined legislative framework regarding responsibility and rights with regard to NemID.

Since the Ministry of Finance had initiated the legislative work aimed at preparing a draft legislation stipulating the framework of NemID with expected introduction in the 2017/18 sessional year of the Danish Parliament and with effect in 2018, the Ombudsman did not take further action in the matter.

[34] Case No. 2017-19. Please also see news story of 19 June 2017, 'Doubt about the legal basis of NemID is now solved with legislation' at www.ombudsmanden.dk.