Summary

Annual Report 2003

Folketingets Ombudsmand

Parliamentary Commissioner for Civil and Military Administration in Denmark

Published by
Folketingets Ombudsmand
Gammeltorv 22
1457 Copenhagen K
Denmark

Printed by Schultz Grafisk
Printed in Denmark 2004

ISSN 1398-4977

Contents

Preface

This booklet summarises my Annual Report 2003 to the Folketing (the Danish Parliament).

This year, we have amended the structure and content of the summary.

In 2002, the Parliament decided to introduce a yearly public meeting on the report at Christiansborg (the Danish Parliament). Therefore, in this summary you will also find my introduction to this public meeting for 2002 as well as for 2003. (The cases referred to in my speech about the 2002 Report you will find in Summary 2002).

Part 1 of the summary contains the presentation of the Ombudsman Report for 2002 and 2003 to the Legal Affairs Committee.

Part 2 contains information about organisation, staff and office, international relations, travels and visitors, own-initiative projects and inspections and other activities and budget.

Part 3 contains case statistics.

Part 4 contains summaries of cases.

Part 5 contains an article about good administrative practice.

Part 6 contains general information about the Danish Ombudsman Office.

Copenhagen, December 2004

HANS GAMMELTOFT-HANSEN

PART 1

Annual Report 2002 and 2003

The Ombudsman's Presentation of the Ombudsman Report for 2002 at the Public Meeting with the Legal Affairs Committee on 5 November 2003

In Denmark, the idea of establishing an Ombudsman institution was closely connected with the wish that the Ombudsman, who was to monitor the executive power on behalf of Parliament, should submit a public report on his activities. The Ombudsman is responsible to Parliament and the general public in carrying out his duties – and the Report provides an insight into the Ombudsman's activities and the results of the work of his office.

The first public meeting between the Legal Affairs Committee and the Parliamentary Ombudsman in association with the Ombudsman Report was held on 30 October last year. I was very pleased with the meeting and its progress, and it was extremely useful to meet members of the Legal Affairs Committee face to face in this way and get their reactions. I therefore wish to begin my presentation of the Report for 2002 by thanking the Legal Affairs Committee for allowing the idea of a public meeting to take root and develop. The meeting format is slightly different year this year and perhaps the final format has not yet been found, but I am pleased that the basic idea certainly appears to be viable.

-o-

At last year's meeting, I naturally devoted part of my introduction to outlining the individual elements and general structure of the Report. Today, I will keep my introduction brief in order to allow more time for questions and discussion. However, I would like to draw attention to a few key figures and some general facts. Afterwards, Senior Legal Adviser Jens Møller will highlight a few cases from the Report to illustrate the Ombudsman's work and finally Head of Inspections Lennart Frandsen will focus on some important trends in the former and future inspection activities of the office.

-o-

Last year, I explained in my introduction how we in the Ombudsman institution for several years have tried to remind each other that the cases and the Report must be readable for those outside the legal profession. I clearly remember MP Helge Adam Møller's comment on my use of the wording *the Ombudsman was most inclined to believe ...* in connection with a particular case. Then as now I agree that, for the sake of clarity, the Ombudsman in his statements and his Report either believes or does not believe something about a particular legal issue. The expression *most inclined to believe* is quite typical of the linguistic tradition which has characterised not only the Ombudsman office, but also other legal institutions. It is very important that outside readers continue to remind the office that it should avoid unnecessary historical traditions and soften the legal language.

It is not easy to achieve this balance between precision and readability in the cases and the Report. This autumn, we will therefore continue to follow up our language policy (which was introduced in 1995) and we have planned several professional seminars on the theme of language. Last year, I also mentioned our publication "The Work of the Ombudsman 1995-1999", which we intend to revise every five years. However, I am the first to admit that much can still be done to achieve the perfect balance between readability and legally precise language – without becoming complacent about being able to do so.

-o-

The Report contains details of most of the journeys and conferences in which my staff and I participated, and there is a list of some of the guests we received during the year. This gives me occasion to mention the collaboration which after many years has been formalised by the Ombudsman and the Ministry of Foreign Affairs. As the Legal Affairs Committee will be aware, the Ministry of Foreign Affairs and the Ombudsman have entered into a contract reimbursing the office for the secondment of staff to various Ombudsman-related tasks under the auspices of the Ministry of Foreign Affairs. These chiefly involve participation in the preparation of plans to support the establishment or restructuring of Ombudsman institutions abroad, but can also involve participation in and planning of international conferences, just as we have been involved in receiving certain guests of the Ministry of Foreign Affairs associated with an Ombudsman function. To the Ministry of Foreign Affairs, I have expressed great satisfaction with the progress of the collaboration and its results so far. I gather that the Ministry shares my view and assessment.

Chapter 1 of the Report about the general affairs of the office contains comprehensive statistics illustrating the cases and issues considered by the Ombudsman during the report year. Last year, I devoted quite a lot of my introduction to explaining the statistical section and its structure. This time, I will confine myself to highlighting some key figures and facts.

For several years, the number of new cases has been stable. In 2002, 3,543 new complaints were lodged with the Ombudsman, which combined with the own-initiative cases and new inspection cases brought the total number of new cases to 3,695. In 2001, the figure was 3,689 and in 2000, 3,498. Throughout the history of the institution, the pattern has been roughly the same, as the increase in the number of new cases has generally been relatively small and gradual over the years. I have no definitive explanation of this fact.

In 2002, I closed 3,726 cases. The closed cases can be divided into two categories: cases which are rejected and cases which are submitted to an actual investigation.

2,777 cases were rejected. 1,264 of these cases – i.e. almost half – were rejected because the complainant had not exploited the available appeal options in the case. In other words, my refusal to consider this quite large number of cases was temporary because the complainant had the option of returning if he or she believed there was a basis for doing so after the case had been fully processed within the administrative system.

949 cases were submitted to an actual investigation, which means that the Ombudsman takes a final position on the matter complained about by the citizen: either after submitting the case to the authorities or pursuant to the provision in Section 16 of the Ombudsman Act. According to this provision, the Ombudsman may close a case without prior submission of the complaint to the relevant authority for comment if the complaint affords no grounds for criticism or other types of reaction – a so-called fast-track investigation. 531 of the cases submitted to an actual investigation were closed after such a fast-track investigation.

I expressed criticism of and/or made recommendations to the authorities in 197 cases, corresponding to 20.8 per cent of all cases submitted to an actual investigation. In 73 cases, the criticism or recommendation related to the actual outcome of the case, while the criticism or recommendation in the remaining 124 cases related to the case processing generally.

On 1 June 2003, 215 cases initiated before 1 January 2003 were still pending, as were two own-initiative projects. Of the individual pending cases, 125 were awaiting my statement, while 90 were awaiting responses from the authorities or complainants.

The complainants usually receive an initial reply from the Ombudsman within ten days of the receipt of the complaint. Almost half the rejected complaints were also closed within the first ten days. Otherwise, the average processing time for rejected cases was 33 days. For the cases submitted to an actual investigation, the average processing time was six months (181 days).

-o-

Following these introductory remarks, I call upon Senior Legal Adviser Jens Møller to speak on some key cases and administrative law trends from the Report for 2002.

As you know, the Ombudsman is not limited to the complainant's choice of complaint theme when considering a case. After reviewing the complaint, the files of the case and any statements from the authorities, the Ombudman himself decides which themes in the case afford grounds for investigation and possible criticism or recommendation. In some cases, the main theme therefore changes when the Ombudsman investigation starts. As mentioned above, this is because the Ombudsman finds no grounds for criticising the authorities in relation to the issues raised by the complainant, but has discovered other errors or derelictions in connection with his examination of the case.

Our internal statistics show that in 58.6 per cent of the complaint cases closed by the Ombudsman in 2002, the citizens were complaining about the outcome of their cases. The 2002 figure is fairly similar to the figures from earlier years. In round figures, it can therefore be said that about six in ten complaints lodged with the Ombudsman concern the content of the case. In addition, our statistics show that the Ombudsman *only* criticised the authorities for the outcome of the case in 37.1 per cent of the complaint cases resulting in criticism or recommendation and that the corresponding percentage for the case processing was 32.4 per cent. On the basis of these cases, it is therefore reasonable to conclude that the citizen's perception of the decision on a case as wrong is not always supported by an Ombudsman investigation, but that the Ombudsman on the other hand sometimes discovers errors in connection with the case processing which the complainant has not explicitly mentioned in the complaint. Thus it is not always possible to help the complainants with the key issue for them – having the outcome of the case changed. A significant part of the Ombudsman's work is therefore done on what could be called the general level – i.e. areas and issues of general legal protection significance. As a result, the Report covers many cases where the complainant did not succeed in having the outcome changed, but where the case has been included because it contains one or more general administrative law aspects.

In this presentation of some key cases from the Ombudsman Report for 2002, I will discuss a couple of cases illustrating which subject matters are presented to the Ombudsman and then a couple of cases illustrating the case processing problems also touched on in this year's Report.

-o-

When the Ombudsman is considering the outcome of the cases, a frequently recurring theme is the way in which the authorities have interpreted the acts and their provisions. Time obviously does not allow a detailed discussion of the many theoretical and legal protection issues raised by this particular subject. I will only highlight one example:

A key issue in case *19-1* (Report p. 491) was the interpretation of the concept *small building* in the building regulations. A landowner had built a woodshed. Originally the shed had a roof, which the owner later replaced by a tarpaulin in order to avoid the shed being classified as a "building". His neighbour wanted the local authority to intervene against the shed and therefore reported it to the local authority

as a *small building*. The local authority did not regard the shed as a *small building*, even though a tarpaulin had been placed over the shed as a partial roof. By contrast, the appeal authority believed that the structure must be described as a *small building* and the Ombudsman agreed with this, which meant that the local authority's decision not to intervene against the shed contravened the regulations.

Cases involving fundamental legal issues are by their very nature often complex. Let me mention a couple of examples:

The exact limit of the legal scope for laying down administrative directives was the theme of Case *15-3* (Report p. 382). Referring to Section 12, subsection (1) of the Taxi Act, which states that "The Ministry of Traffic may lay down rules for ... 8) the use, marking, outfitting and equipment of vehicles, including for taximeter, control device, printer, mobile telephone, control documents and maximum fare for taxi transport ...", the Ministry of Traffic issued an order with special taxi requirements. Section 8 of the order laid down a requirement that the taximeter design must meet the conditions in European Standard EN 5048. This standard is available in English, but not in Danish. In its statement to the Ombudsman on the case, the Ministry of Justice found it a matter for significant fundamental legal protection concern that the circular thus in effect laid down rules in English. The Ombudsman agreed with this statement.

A final example from this year's Report of cases concerning the scope of a particular provision is found in Case *11-1* (Report p. 268). In this case, students were informed in "News from the Faculty of Law, University of Copenhagen" that they could only register for exams via the internet. On the background of this case, the Ombudsman in his submission to the Ministry of Technology, Science and Development argued that a requirement making digital communication compulsory for approaching a public authority must be authorised by law. The Ministry agreed with the Ombudsman's view and recommended that the University change the compulsory requirement of digital enrolment for exams and, if desired, introduce optional digital enrolment.

-o-

The actual application and interpretation of the case processing rules in the Public Administration Act and the Access to Public Administration Files Act are very often the subject of the Ombudsman's investigations in complaint cases and own-initiative cases. For the sake of completeness, I will just mention that the Data Protection Act of course also contains case processing rules so that the Ombudsman will also have a role in relation to this Act.

The scope of fundamental concepts such as the core concepts in the Public Administration Act relating to cases on which a *decision* has been or will be made and to the rights of the *parties* to a case continues to be the subject of a significant proportion of the office's test cases this year. In the second edition of the book "Administrative Law" written by Ombudsman staff, Gammeltoft-Hansen among other things analyses the above-mentioned concepts and systematises the office's practice accordingly. Let me mention a couple of examples of the difficult and fundamental issues raised by such basic concepts in actual cases.

In Case *3-1* (Report p. 105), the availability contract of an armed forces employee had erroneously been renewed on more favourable terms than the rules warranted. When this error was discovered, the regiment offered the person in question the option of entering into the new contract on normal – in this case worse – terms or completing the current contract. The fundamental administrative law issue in this case was whether the armed forces' decision to change the contract terms could be said to be a decision within the meaning of the Public Administration Act, which implied that the regiment among other things should have heard the employee as a party before making its

decision. In the Ombudsman's opinion, a decision had been made, which in turn implied certain requirements in relation to the case processing.

The citizens' ability to look after their own interests during the case processing by the public authorities to a large extent depends on whether the citizen can be said to be a party to the case. In Case *13-6* (Report p. 358), a father asked for access to the files of the local authority's social services department concerning his two under-age children for whom the mother had sole custody. If the father was a party to the case, he was entitled to access to the files pursuant to the rules of the Access to Public Administration Files Act. The Ombudsman agreed with the authorities that the father was not a party to the case concerning the two children and therefore was excluded from access to the files pursuant to the rules of the Access to Public Administration Files Act.

The final test case in the Report for 2002 which I have time to mention here is Case *5-4* (Report p. 182) concerning a married couple who had been approved as adoptive parents. The couple lodged a complaint against the secretariat of the Joint Adoption Council, which had provided information about the adoption case to a television station. The information was unquestionably covered by Section 152 of the Penal Code concerning the obligation to observe confidentiality, but the authorities argued that the documents had been rendered anonymous by removing names etc. The Ombudsman agreed that rendering the documents completely anonymous might have justified passing on the information. However, in the actual case it was not enough to remove a few names. Moreover, it turned out that the journalists already knew the identity of the parties so that the information for this reason alone could not be anonymous.

In 2002, 23 inspections were undertaken. The focus of the inspection activities continues to be public institutions etc where the citizens have been placed more or less against their will, i.e. prisons, county gaols, boarding houses, secure institutions, detentions, police waiting rooms, mental hospitals and accommodation for the physically or mentally disabled. In addition, the inspection activities cover equal treatment of the disabled, pursuant to the Parliamentary Resolution on this of 1993. – Here I may add that after the Legal Affairs Committee meeting last year, MP Margrete Auken called for better conditions for people with impaired mobility at Middelfart Station. I am pleased to tell you that the Parliamentary Ombudsman has initiated a nationwide investigation of the accessibility at all Danish State Railways stations in relation to the Ministry of Traffic and that among others Middelfart Station now has been – or is being – put right.

The choice of the inspections described in the Report for 2002 has been made on the basis of a desire to illustrate the different areas inspected by the Parliamentary Ombudsman and his staff.

On 15 September this year, the Ombudsman submitted a paper on his inspection activities to the Directorate of Prisons and Probation, the Ministry of Justice, the Ministry of the Interior and Health, the Ministry of Social Affairs and of course the Parliamentary Legal Committee. One of the reasons was that the so-called "first round" of inspections of the prison and probation institutions was approaching completion, which provided a basis for outlining the plans for the organisation and implementation of future inspections.

I will therefore use this paper as the starting point for a brief introduction to the inspections in 2002.

-o-

The Ombudsman's inspection activities in relation to prisons and probation carry a special responsibility in the relationship with Parliament.

All the nation's prisons have been inspected several times and most of the prisons have been inspected since 1 January 1997, when the new Ombudsman Act came into force. The rest will be inspected within a

couple of years. These inspections have caused the Ombudsman to initiate a number of general cases concerning for instance the scope for passing on medical information, measures to prevent drug smuggling and threats and violence between prisoners.

All county gaols have been inspected since 1 January 1997 and within a few months the boarding houses will also all have been inspected since 1 January 1997.

In the above-mentioned paper, the Ombudsman outlines the main principles of the way in which for instance the prison and probation institutions have been inspected and also establishes guidelines for future inspections in this area. Thus it is announced that there will be a triviality limit at future inspections and that for instance structural issues will only be mentioned to the extent that significant changes or alterations have been implemented compared to the situation at the last inspection. The Parliamentary Ombudsman should not make recommendations in relation to trivialities – this can appear disproportionate and may in the worst case reduce the respect for the report as a whole. As a starting point, minor problems will therefore be resolved during the inspection itself, at the concluding meeting, and to the extent that issues are mentioned in the report, the office and its staff will use wording proportionate to the nature and scale of the problem.

-o-

The preliminaries of the Ombudsman Act presume that the Ombudsman will inspect mental hospitals. The Report for 2002 describes the inspection of the psychiatric ward at Randers Hospital.

In this connection, it is natural to draw attention to the work undertaken by the Board of Supervision pursuant to Section 71, subsection (7) of the Constitution.

As you know, the Board of Supervision consists of nine Members of Parliament who monitor the treatment of persons deprived of their liberty by decisions by authorities other than the judiciary. In other words, the Section 71 Board of Supervision deals with an area which is also the subject of some of the Ombudsman investigations – the mental health area. To some extent, the tasks therefore overlap. On this background, it is important to emphasise the collaboration existing between the Board of Supervision and the Ombudsman in the form of continuous contact and reciprocal briefing.

-o-

The guidelines described in the above-mentioned paper will also be normative for future inspections in the other areas.

In the Board of Supervision's anniversary publication, "Fifty Years of Section 71 Supervision", I described the relationship between the Section 71 Board of Supervision and the Ombudsman as characterised by mutual independence, reciprocal contact and co-ordination and occasional provision of assistance in the form of resources and legal advice from the Ombudsman office.

Herewith my staff and I have completed our presentation for questions and subsequent debate. In conclusion, I will just mention that the Report for 2002 does not contain any of the so-called own-initiative projects.

The own-initiative projects result from the Ombudsman's choice of a considerable number of cases – usually more than 100 – within a particular authority and/or a particular administrative area. In this way, the Ombudsman has the opportunity to work at a more general level and perhaps discover systematic errors. The reports on the own-initiative projects have been included in the Annual Report at irregular intervals because the work on these large investigations takes time and because there has probably be a tendency to progress these cases more slowly in favour of the actual complaint cases awaiting a statement from the Ombudsman.

For information, I can state that I have now decided to set aside fixed minimum resources every year specifically for own-initiative projects so that the Annual Report for each year can include one or more reports from this area of activity, which in my opinion is important.

The Ombudsman's Presentation of the Ombudsman Report for 2003 at the Public Meeting with the Legal Affairs Committee on 2 December 2004

This is the third consecutive annual public meeting between the Parliamentary Legal Affairs Committee and the Parliamentary Ombudsman in association with the Ombudsman Report.

Last year, I thanked the Legal Affairs Committee for allowing the idea of a public meeting to take root and develop in Denmark. I should like to take this opportunity to thank the Legal Affairs Committee and everyone attending today once again for this opportunity to illustrate, document and discuss the work of the Danish Ombudsman – the legal, administrative and at times also administration ethical issues inevitably raised by the work of the Danish Ombudsman office.

I also wish to present the colleagues joining me today: Jens Møller, Director at the Parliamentary Ombudsman office, who immediately after my general introduction to the work of the institution will outline some significant test cases from the Report for 2003. Also joining me today is Head of Inspections, Lennart Frandsen, who will end our presentation with a brief description of the inspections.

-o-

I have outlined the structure and individual sections of the Report at the earlier meetings, so I will not spend time on this now, but merely mention that the look and layout of the Report has changed slightly this year compared to earlier years. We have tried to make the layout, typography, tables and figures more clear and readable. On the other hand, we have not found it desirable or useful to change the basic structure and subdivision of the individual chapters of the Report. I should mention that the English summary of the Report will also be published this year, although it will no longer be sent out with the Report but only after the public meeting.

The work on modernising the Report, while at the same time retaining the solid basic structure, is in line with the institution's ongoing work on maintaining linguistic awareness and care, which I have previously outlined. We wish continuously to improve our language; we constantly try to make it both more precise and more readable although, as you will know, it is not always easy to find the right and universally satisfactory balance between these two considerations.

-o-

The Report contains an outline of some of the trips and conferences in which my staff and I participated during the report year. In this connection, I have explained the co-operation agreement made between the Ministry of Foreign Affairs and the Ombudsman, both in the Report and at the public meeting last year, and outlined the nature of the activities in which the Ombudsman institution is expected to be involved. The Report does not yet contain any actual examples of such projects and activities under the co-operation agreement, so I will briefly mention some of the institutions and project types with which we have been involved:

In 2000, we started a project aimed at supporting the establishment and operation of an Ombudsman institution in Albania during a transitional phase. A certain sum was set aside for this purpose and our task was to advise on the most suitable use of the funds to secure the establishment and consolidation

of an effective Ombudsman office in Albania. The project ended in 2003 and we gather our colleagues are very satisfied with it. Even though the project has ended, we remain in touch with our colleagues in Tirana and continue the collaboration and exchange of experiences.

In the same way, we are currently involved in a project in Ghana, where we are working with the Commission for Human Rights and Administrative Justice. The project is of the same kind as in Albania – the Danish Ombudsman staff are involved as advisers and collaborators for colleagues.

As the Legal Affairs Committee will be aware, we have also been involved in the preparation and running of three seminars and a conference in Jordan about the Ombudsman concept. We were particularly pleased to be able to collaborate with the Legal Affairs Committee, represented by its Chairman, in this context and I know our Jordanian hosts greatly appreciated this collaboration with the Danish Parliament and one of its institutions.

-o-

On 1 April next year, it will be 50 years since the first Ombudsman, Professor Stephan Hurwitz, opened the doors and the post in the Danish Ombudsman office for the first time.

We are looking forward to being able to celebrate this anniversary, which is a rarity, also in an international context. I will not mention the individual events during the anniversary here, but merely thank Parliament in advance for its promise to help make the celebration of our anniversary possible.

-o-

Let me conclude my introduction to the Report for 2003 by quoting some key figures from the Report. Last year, I mentioned that the number of new cases has been relatively stable for several years. In 2003, however, the number of new cases increased somewhat compared to previous years, from *3,695* in 2002 to *4,133* in 2003.

3,956 of the new cases were opened as a result of complaints, *131* cases were initiated on my own initiative and *46* cases were initiated in connection with our inspection activities.

We closed *4,094* cases in 2003. At the public meeting last year, I outlined the typical distribution between cases submitted to an actual investigation and rejected cases, i.e. cases which the Ombudsman cannot consider, either temporarily or permanently. The ratio has not changed significantly in 2003, so there is no particular reason to dilate on the issue again.

The Ombudsman expressed criticism or made a recommendation in *202* of the *1,011* cases submitted to an actual investigation, again a ratio roughly similar to the figures for the previous Reports in recent years (for instance *949* cases were submitted to an actual investigation last year, with criticism and/or recommendation expressed in *197* cases).

In addition to the *202* cases resulting in criticism or recommendation, the mere fact that the Ombudsman asked for a statement (possibly replies to some more specific questions) caused the authority to reconsider *48* cases. In other words, it could be said that the Ombudsman's intervention had a tangible result for the relevant citizens in *250* cases.

When the Report for 2003 was compiled, *106* cases were awaiting consideration by the Ombudsman, while the corresponding figure from last year's Report was *125* cases.

In 2002, the average processing time for cases submitted to an actual investigation was *181* days. In 2003, this figure dropped to *164* days, which I am naturally very pleased about. Here I should probably add that the development of this particular figure is beyond my office's own control – there are several contributing factors, with the combination and complexity of the individual cases being particularly crucial to the case processing time.

After this brief introduction, I call upon Jens Møller to speak.

-o-

Like last year, I will attempt to give a brief outline of some of the key principles and issues of administrative law illustrated by the cases in the Report for 2003.

In the case summarised on p. 115 (*case 2-2),* a journalist lodged a complaint against the Ministry of Finance for circulating the Budget to, among others, members of the Parliamentary Press Gallery, although its contents could not be published until the Budget had been introduced to Parliament. Other journalists not belonging to the Press Gallery were unable to obtain copies of the Budget until after it had been introduced to Parliament.

Taking the equal rights principle for his basis, the Ombudsman stated that in his opinion the Ministry of Finance was not entitled to refuse to supply embargoed copies of the Budget to journalists not belonging to the Parliamentary Press Gallery solely on the grounds that they were not members. In other words, the Ombudsman considered it unwarranted to treat journalists differently simply on the grounds of a potentially increased risk of the embargo being disregarded.

In *cases 13-8* and *13-9,* summarised on pp. 449 and 463, the complaints concern two administrative law issues of practical importance, in this instance within the social services area in connection with pension cases.

In *case 13-8*, a rehabilitation and pension board decided to endorse a local authority's refusal of early retirement pension. By mistake, the board sent the applicant a decision with a different content, stating that he had been granted ordinary enhanced early retirement pension. Three days after the applicant had received the decision, the board informed him of the mistake by telephone and on the same day forwarded the correct decision.

The Ombudsman regarded the decision originally sent as invalid and therefore stated that the board was entitled to inform the applicant later on of the correct decision to refuse early retirement pension.

The National Board of Social Appeal had considered the case pursuant to the rules concerning 'recall of decisions'. The Ombudsman did not agree with this and stated that the principles and tenets concerning recall of decisions apply when an otherwise valid decision is changed. That did not apply in the present case, where an invalid decision needed to be annulled.

In its decision, the Board of Social Appeal had moreover listed various criteria for recalling a decision. The Ombudsman stated that the outline of criteria given by the Board did not sufficiently accurately identify the circumstances that must be considered when determining whether a decision can be recalled.

In *case 13-9,* a local authority granted a citizen enhanced ordinary early retirement pension. The citizen lodged a complaint with the social board, as she believed she was entitled to a higher pension. The social board changed the local authority's decision to the disadvantage of the citizen, as the board did not consider the complainant entitled to early retirement pension at all.

The National Board of Social Appeal endorsed the social board's decision and furthermore took the view that the local authority was not obliged to state in its guidance of appeal that the social board might change the decision to the disadvantage of the citizen.

The Ombudsman did not criticise the decision by the social board and the National Board of Social Appeal. He did, however, state that in keeping with good administrative practice, the appeal authorities' general information about the case process should have advised the citizen that that the authority's decision might be to the disadvantage of complainant. To avoid the unintended effect of making the citizens afraid of complaining, the Ombudsman considered it

correct to state that changes to the disadvantage of the complainant are extremely rare. In addition, it should be explained that it only happens when the original decision is invalid.

In *case 17-2,* summarised on p. 552, a lecturer was dismissed from his job at a business and engineering college. The dismissal was based on anonymous student evaluations of the lecturer's teaching and information about the lecturer's recommendation for an adult education training course.

The Ombudsman made a general statement on the extent to which he would examine future cases such as the lecturer's, where a union had initiated an industrial procedure still in progress. The Ombudsman completed his consideration of the lecturer's case with regard to evidence, hearing of parties and giving of grounds.

It afforded the Ombudsman grounds for criticism that the anonymous student evaluations had formed part of the basis for the dismissal and that the college's basis of evidence concerning the completion of the adult education training course had been inadequate. The Ombudsman found it unfortunate that the college had assumed it was able to make a dismissal decision – with major consequences for the lecturer – on the basis available to the college at the time of dismissal.

The Ombudsman found no grounds for taking steps with regard to the college's hearing of parties, but he criticised the grounds given with the decision.

-o-

Finally Lennart Frandsen will briefly outline the inspection activities of the office:

In 2003, a total of 43 inspections were carried out. That is significantly more than in previous years and also more than in 2004. The larger number is partly connected with an inspection visit to Greenland in May 2003, where seven institutions and county gaols/detentions were inspected. It is also connected with the fact that 2003 was the European Disability Year, which resulted in a particular effort within the area of equal treatment of people with disabilities, including a number of inspections of access conditions for the disabled in public buildings.

As a new element, the Ombudsman Report for 2003 includes a general section about the inspection activities, pp.929-935. This also includes a description of the legal basis of the inspections and the assumptions made by Parliament about these activities. As a new basis it is mentioned that Parliament on 14 May 2004 passed a motion for a resolution that Denmark ratify the optional protocol to the UN Convention on Torture and Other Cruel, Inhuman or Humiliating Treatment or Punishment, which presumes that the participating states have an independent national body for the prevention of torture. Among other things, this body must have the authority to investigate the treatment of persons deprived of their liberty at the place of detention. Parliament took for its basis when passing the motion that the Parliamentary Ombudsman inspections comply with the protocol's provisions concerning an independent national body.

Most of the almost 190 inspections carried out since the current Ombudsman Act came into force have involved precisely such institutions, i.e. prisons, county gaols, secure institutions, boarding houses and mental hospitals.

Apart from the above-mentioned seven inspections in Greenland, the following inspections were carried out during the report year:

2 prisons
6 county gaols
1 boarding house
1 secure institution
9 detentions
10 police waiting rooms
2 psychiatric hospitals
2 social residences
3 access for the disabled

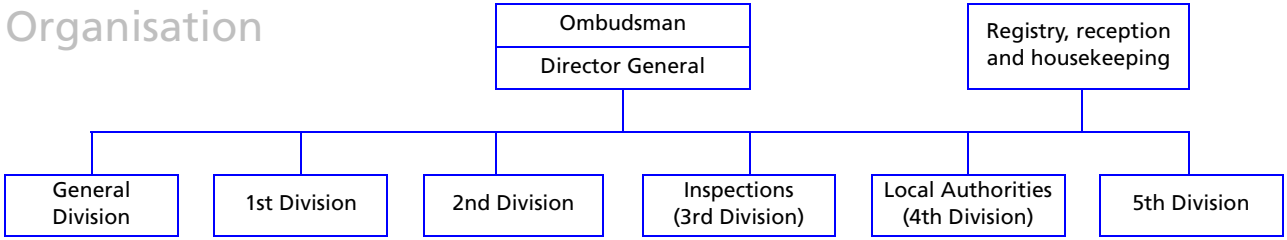
Almost all the prisons and probation institutions have been inspected (again) since the current Ombudsman Act came into force and a number of county gaols have by now been re-inspected. A slightly different approach is used for the re-inspections, which are naturally based on the previous inspection. The method is described in more detail in the Report, pp. 932 and 933, item 5.

The inspections also result in the initiation of own-initiative investigations of a number of general and fundamental issues. The section on inspections includes a brief description of this. In addition, there is a description of the status of the individual inspection areas and some indication of the plans for the coming years. It will be seen that the psychiatric field has been given a higher priority, so that more inspections are now carried out in this field than previously. The plan is to have inspected all psychiatric hospitals/wards in the country before too long. Moreover, a number of general cases have been initiated within the psychiatric field, among other things to make the Ministry of the Interior and Health aware of the experiences from the inspections for use in its work on the revision of the Mental Illness Act due in 2005/2006.

PART 2

YEAR
IN
REVIEW

Organisation



Main areas

Annual Report
International projects
General administrative law issues
Own initiative projects
Certain concrete cases
The office's human resource, financial and other internal matters
Secretarial assistance to the ombudsman and the Director General

Main areas

Company Legislation
Foodstuffs
Fisheries
Agriculture
Patient complaints
Pharmaceuticals
Health services
Appeal permissions
Foreign affairs
Communication
Ecclesiastical affairs
Culture
Cases involving aliens
Registers
Naturalization

Main areas

Employment service
Secondary industrial law
Social pensions
Social security
Other social security benefits
Social institutions

Main areas

Inspections:

Prisons
County gaols
Remand substitutes
Detentions
Psychiatric hospitals
Police waiting room
Institutions for the mentally or physically disabled

Other:

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

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

Main Areas

Housing benefits
Adoption
Access and child support cases
Industrial injuries
Schemes for juveniles and children
Taxes and dues
Repayment of social benefits
Rules of inheritance/trusts
Criminal injuries compensation
Education and study grants
Research

Staff and Office

The structure of the Office was as follows:

In my absence from the Office Mr. Jens Møller, Director General, replaced me in the performance of my Ombudsman duties. He was in charge of general matters taken up for investigation on my own initiative and the processing of special complaint cases.

Mr. Lennart Frandsen, Deputy Permanent Secretary, was in charge of inspections.

Mr. Kaj Larsen, Deputy Permanent Secretary, was in charge of staffing and recruitment, budgeting and other administrative matters.

Mr. Jon Andersen, Deputy Permanent Secretary, Mr. Karsten Loiborg, Chief Legal Adviser, and Mr. Jens Olsen, Chief Legal Adviser, dealt with general questions of public administrative law as well as investigations undertaken on my own initiative. They also participated in the processing of individual complaint cases.

The Office had five Divisions with the following persons in charge:

General Division

Deputy Permanent Secretary 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 Mrs. *Vibeke Riber von Stemann*

The 77 employees of my Office included among others 14 senior administrators, 20 investigation officers, 21 administrative staff members and 13 law students.

Office address

Folketingets Ombudsmand
Gammeltorv 22
DK-1457 Copenhagen K

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

Email: ombudsmanden@ombudsmanden.dk
Homepage: www.ombudsmanden.dk

International Relations

During 2003, as in previous years, the guests we received had very different backgrounds. However, generally their common goal was to learn more about the (Danish) Ombudsman institution and its role in a modern democratic society. Therefore, my Office always offers general information about the Ombudsman institution and its history with a view to a subsequent exchange of experiences and reflections.

Travels and visitors

January

Copenhagen

17 Delegation from the Research Department of the National Peoples' Congress of China.

24 The ambassador for Armenia, Mr. Vladimir Karmirshalyan.

Abroad

10–13 I paid an official visit to Armenia.

4–10 Chief Legal Adviser Mr. Jens Olsen attended a seminar in Vietnam conducted by the Vietnamese National Assembly concerning the possible establishment of an ombudsman institution in Vietnam.

February

Copenhagen

19 The ambassador for Finland, Mr. Pekka Armas Ojanen.

Abroad

March

Copenhagen

24 Members of the Vietnamese National Congress.

25 Participants in international course on human rights via the Danish Institute for Human Rights.

Abroad

5 I attended a seminar on freedom of speech, in Oslo, Norway.

11–13 Head of Division Mr. Karsten Loiborg attended the Faroese Constitutional Conference in Tórshavn, the Faroe Islands.

14 Deputy Ombudsman Mr. Jens Møller, Head of Division Mrs. Bente Mundt and Head of Division Mrs. Vibeke von Stemann attended a conference on the rule of law and communication hosted by the Danish Ministry of Social Affairs.

April

Copenhagen

9 A group pf Vietnamese public prosecutors via the Danish Institute for Human Rights.

9 Group of lawyers from Oberlandesgericht in Brandenburg, Germany.

25 The ambassador for Armenia, Mr. Vladimir Karmirshalyan.

Abroad

7–8 Head of Division Mrs. Vibeke von Stemann and I attended the 4th Seminar for the National Ombudsmen of the EU Member States in Athens, Greece.

May

Copenhagen

14 A delegation of politicians and civil servants from the"Permanent Coordination Body for the Council for Judicial and Legal Reform" of Cambodia via the Danish Institute for Human Rights.

22 A group of deputy judges from Albania.

Abroad

June

Copenhagen

3 Delegation from the Commission for the Investigation of Abuse of Authority, Nepal.

4 The Chargé d'Affaires for Albania, Mr. Qemal Minxhozi.

4 The Chairman of the Human Rights Commission for Mexico City, Señor Emilio Alvarez Icaza.

10 The Ombudsman for Guatemala, Señor Sergio Morales Alvaredo.

14-18 Study visit by members of the National Congress of Vietnam.

24 The Ombudsman of Spain, Señor Enrique Múgica Herzog.

Abroad

July

Copenhagen

4 The Ombudsman of Albania, Mr. Ermir Dobjani, and members of the Albanian Parliament's judicial committee.

Abroad

August

Copenhagen

Abroad

September

Copenhagen

2 Delegation from Vietnam led by vice-minister Tran Quoc Toan.

3 British researcher, Mr. David Banisar, in connection with an international survey of legislation pertaining to access to public administrative files.

Abroad

October

Copenhagen

24 Association of junior legal staff at the Dutch Ombudsman Office.

30 Denmark's Consul General in Jordan, Mr. Tawfiq Kawar.

30 A group of public prosecutors from China via the Danish Institute for Human Rights.

Abroad

9–10 Chief Legal Adviser Mr. Jens Olsen attended a conference on "The Changing Nature of the Ombudsman Institution" hosted by the International Ombudsman Institute, in Cyprus, Greece.

16–17 Legal Adviser Mrs. Lisbeth Adserballe attended the Minority Ombudsperson Project Network Conference in Berlin, Germany. The conference was hosted by ECMI (European Centre for Minority Studies).

30–31 Deputy Permanent Secretary Mr. Jon Andersen attended a conference in Strasbourg celebrating the fifth anniversary of the Framework Convention for the Protection of National Minorities.

November

Copenhagen

5–7 The European Ombudsman, Professor Nikiforos Diamandouros.

14 A group of students from Russia via the Danish Ministry for Foreign Affairs.

20 The President of the Court of Accounts of Romania, Professor Dan Drosu Saguna.

Abroad

December

Copenhagen

11 Group from the Norwegian Board of Health.

4–12 The Ombudsman for Norway, Mr. Arne Fliflet, the Ombudsman for Iceland, Mr. Tryggvi Gunnarsson, the Ombudsman for Greenland, Mrs. Vera Leth, and the Ombudsman for the Faroe Islands, Mr. Joen Andreassen.

15 Members of the National Human Rights Commission of Korea.

Abroad

1–2 Deputy Permanent Secretary Mr. Jon Andersen attended the European Ombudsman's Liaison Meeting 2003 in Strasbourg on the subject, "European Information, Advice and Justice for All".

Own-initiative Projects and Inspections

Two own-initiative projects were concluded in 2003. Forty-three inspections have been carried out during the reporting year. Part IV of the Danish Report provides details of own-initiative projects and inspections.

Other Activities

During the year some of my senior administrators and investigation officers and I myself gave several lectures on general and more specific subjects related to my activities as Danish Ombudsman; together, we also lectured at various courses in public administrative law.

As mentioned in my previous annual report, at the request of the Minister of Justice, and with the approval of the Danish Parliament's Legal Affairs Committee, I have undertaken to chair the government's Public Disclosure Commission. The Commission's task is to describe current legislation concerning public disclosure and to deliberate on the extent to which changes are required to the Access to Public Administration Files Act, and to make proposals to such changes. High Court Judge Mr. John Vogter from the Danish Western High Court is appointed vice-chairman, and Deputy Permanent Secretary Mr. Jon Andersen from the Parliamentary Ombudsman Institution is secretary to the Commission.

In the spring of 2002 the Minister for Justice appointed Deputy Ombudsman Mr. Jens Møller as chairman of the government's Due Process Commission, which has made proposals for changes to the current legislation with a view to advancing the legal rights of individuals, particularly in connection with the authorities' supervision and inspection activities whereby access to private dwellings and companies is obtained without a warrant. The Commission submitted its report on 4 June 2003 (report No. 1428).

The Minister for Defence has appointed Deputy Permanent Secretary Mr. Lennart Frandsen as member of the committee which is charged with examining the military penal code and administration of justice act with the attendant administrative provisions with a view to a revision of the existing legislation. The committee was appointed by the Minister of Defence in 1999.

Budget 2003

Salary grade	
Salary for civil servants	6.490.000
Salary for employees under a collective wage agreement	17.540.000
Contributions for civil service retirement pensions	715.000
Pension contributions	1.891.000
Salary for other temp. workers	154.000
Maternity reimbursement, etc.	-415.000
Wage pools	336.000
Additional work/overtime	268.000
Wage drift budget account	1.303.000
Special holiday allowance	20.000
Payroll total	28.302.000

Civil servant retirement pays	
Retirement pays for former civil servants	764.000
Benefits	3.000
Civil servant retirement contributions, income	-720.000
Retirement payments total	47.000

Operating expences	
Travels, etc.	236.000
Expenses, visitors to the office	127.000
Staff welfare	20.000
Printing, book binding expenses	539.000
Telephone subsidy	17.000
Cost of office space	3.253.000
Maintenance, fixtures and fittings	737.000
External services	57.000
Office expences	545.000
Library	629.000
Office machines, fixtures and fittings	166.000
IT services	215.000
IT operations and maintenance	710.000
IT purchases	595.000
Operating budget ajustment acc.	103.000
Transfer costs	2.177.000
Continuing education	676.000
Subsidy, Ministry of Foreign Affairs	-697.000
Operating Charges total	10.105.000

TOTAL	**38.454.000**

PART 3

CASE STATISTICS

Complaints Received and Investigated

1. New cases

4,133 new cases were registered during 2003. By way of comparison, the corresponding figure for 2002 was 3,695 new cases.

The figures below illustrate the development in the total number of cases registered over the past decade:

1994	2,937	1999	3,423
1995	3,030	2000	3,498
1996	2,914	2001	3,689
1997	3,524	2002	3,695
1998	3,630	2003	4,133

3,956 of the total 4,133 new cases were complaint cases.

I took up 131 individual cases on my own initiative, cf. Section 17, subsection (1) of the Ombudsman Act.

The Ombudsman may carry out inspections of public institutions and other administrative authorities. Of the 4,133 new cases in 2003, 46 were inspection cases. Most of the inspection cases relate to institutions managed by the police and the prison service (remand centres, county goals, prisons, etc.) and psychiatric institutions. However, inspections of other administrative authorities were also carried out, e.g. the West Zealand County Hall and Sorø Town Hall, both in relation to access for people with disabilities. The inspection cases are described in more detail in the Danish version of this Report. In addition, all inspection reports are available in Danish on the Ombudsman website www.ombudsmanden.dk).

1.1. Own initiative projects

The Ombudsman may on his own initiative undertake general investigations of the case processing by various authorities, cf. Section 17, subsection (2) of the Ombudsman Act.

The cases investigated in connection with the own-initiative projects are not included in the number of cases registered or in the following statistics for cases closed in 2003.

Two own-initiative projects were initiated in 2003. One related to the processing of and decisions on conscription cases by Regional State Authorities and the Prefect's Office. The own initiative project involved an examination of 90 cases and was completed on 17 December 2003. The report on the investigation is summarised on p. 735. In addition, an investigation of 75 cases was initiated involving chief constables' refusal to accept payment by instalments of fines, postpone payment of fines or remit fines. This project is still pending.

Several own-initiative projects were initiated in the years before 2003 and three of these projects were still pending in 2003. One of the projects involved the examination of 75 cases concerning rehabilitation support by five local authorities. This own initiative project was completed in April 2004 and the report on it is summarised on p. 794. The remaining two projects involving respectively 50 disclosure cases from the Central Customs and Tax Administration and 30 cases from a regional (psychiatric) patient complaints board are still pending.

2. Cases Rejected after a Summary Investigation

3,083 complaints lodged with my office during 2003 were not investigated for the reasons mentioned below. In 1,414 cases, the complaint had not been appealed to a higher administrative authority and a fresh

complaint may therefore be lodged with my office at a later stage.

The 3,083 cases were not investigated for the following reasons:

Complaint had been lodged too late	111
Complaint concerned judgments or the discharge of judges' official duties	146
Complaint concerned other matters outside my jurisdiction including legislation issues and matters of private law	232
Complaint not clarified or withdrawn	134
Inquiry not involving a complaint	310
Inquiry involved an anonymous and manifestly ill-founded complaint	609
The authority has reopened the case following my preliminary request for a statement	48
Cases on my own initiative and not fully investigated	46
Complaint had been lodged too late with a superior authority	33
Complaint had not been lodged with a superior administrative authority	1,414
Total	3,083

3. Cases Referred to the Ad Hoc Ombudsman. – Function as Ad Hoc Ombudsman for the Lagting Ombudsman and the Landsting Ombudsman

I declared myself disqualified from investigating one complaint case in 2003 and High Court Judge Holger Kallehauge was appointed ad hoc Ombudsman by the Legal Affairs Committee. Cases for which I have declared myself disqualified are not included in the statistics for the Ombudsman's pending cases, case processing time or closed cases.

The Faroese Representative Council, the Lagting, asked me to act as ad hoc Ombudsman for the Lagting Ombudsman in two cases in 2003. Cases where I am asked to act as ad hoc Ombudsman are not included in the statistics or otherwise mentioned in the Annual Report.

4. Pending Ombudsman Cases

177 individual cases submitted to my office before 1 January 2003 were still pending on 1 June 2004. 106 of the pending cases were awaiting my decision, while 71 cases were awaiting responses from the authorities or the complainants.

132 of the pending individual cases were submitted in 2003 and 45 dated from previous years. Some of the pending individual cases only required a statement from the relevant authority or the complainant to be closed, while others were awaiting general responses from a complainant or an authority.

As mentioned above, three own-initiative projects were also still pending on 1 June 2004.

5. Case Processing Time

As mentioned above, 3,083 complaints were rejected (corresponding to 75.3 per cent of the complaints received during 2003). The majority of these cases were closed within ten days of receipt of the complaint.

1,011 (24.7 per cent) of the closed cases were subjected to a full investigation. In most of these cases,

the complainant and the authorities involved were notified within ten days that an investigation would be undertaken.

The average processing time for cases subjected to a full investigation in 2003 was 5.5 months (164 days).

Tables

Table 1 All cases (regardless of registration date) concluded during the period 1st of January – 31st December 2003, distributed per main authority, and as the result of the Ombudsman's case processing

Table 1: All concluded cases 2003 Authority	Cases in total	Cases rejected	Investigated	
			No criticism	Criticism
A. State Authorities				
1. Ministry of Employment				
Department of Employment	17	11	6	0
Labour Market Appeal Board	41	10	30	1
Directorate General for Employment and Placement	5	5	0	0
Working Environment Appeal Board	3	2	1	0
Danish Labour Market Supplementary Pension	1	1	0	0
National Institute of Occupational Health	1	0	1	0
Labour Market Councils, total	8	3	3	2
Public Employment Services	16	14	2	0
National Working Environment Service	6	6	0	0
The National Directorate of Labour	11	7	4	0
LD Pensions	1	1	0	0
National Board of Industrial Injuries	18	18	0	0
The Official Conciliation Service	1	1	0	0
Total	129	79	47	3

Table 1: All concluded cases 2003 Authority	Cases in total	Cases rejected	Investigated	
			No criticism	Criticism
2. Ministry of Finance				
Department of Finance	11	6	0	5
Financial Administration Agency	3	2	1	0
State Employer's Authority	6	4	1	1
Total	20	12	2	6
3. Ministry of Defence				
Departement of Defence	18	10	6	2
Defence Command Denmark	1	1	0	0
Home Guard	5	4	0	1
Total	24	15	6	3
4. Ministry of the Interior and Health				
Department of the Interior and Health	61	36	19	6
Regional State Authorities, total	51	45	4	2
(Regional) Supervisory Boards, total	57	37	19	1
The Commission on Administrative Structure	2	2	0	0
Emergency Management Agency	1	1	0	0
Danish Medicines Agency	6	6	0	0
National Board of Health	7	7	0	0
Medical Health Officers, total	1	1	0	0
National Board of Patient Complaints	45	32	12	1
Psychiatric Patient Complaint Board, total	3	3	0	0
Total	234	170	54	10

Table 1: All concluded cases 2003 Authority	Cases in total	Cases rejected	Investigated	
			No criticism	Criticism
5. Ministry of Justice				
Departement of Justice	85	56	18	11
Departement of Private Law	162	80	80	2
Data Protection Board	8	6	2	0
The Danish Court Administration	2	2	0	0
Danish Prison and Probation Service	165	102	45	18
State Prisons	43	36	2	5
Pensions	2	0	1	1
County Prisons	63	40	16	7
Prison and Probation Service Subdivision	2	1	0	1
Criminal injuries Compensation Board	7	3	2	2
Danish Medico-Legal Council	1	1	0	0
Director of Public Prosecutions	34	24	10	0
National Commission of the Danish Police	62	59	1	2
Chief Constables	83	67	5	11
Public Prosecutors, total	77	57	19	1
Total	796	534	201	61
6. Ministry of Ecclesiastical Affairs				
Departement of Ecclesiastical Affairs	25	16	6	3
Bishops	3	3	0	0
Diocesan Authorities, total	2	2	0	0
Sexton's Office	1	1	0	0
Parish Councils	4	4	0	0
Deanery Committee	2	2	0	0

Table 1: All concluded cases 2003 Authority	Cases in total	Cases rejected	Investigated	
			No criticism	Criticism
Total	37	28	6	3
7. Ministry of Culture				
Departement of Culture	17	7	4	6
DR Radio	18	17	1	0
TV 2	6	6	0	0
The Royal Library	2	2	0	0
The Danish Litterary Council	1	1	0	0
Total	44	33	5	6
8. Ministry of Environment				
Departement of Environment	9	7	1	1
The Danish Forest and Landscape Research Institute	1	0	1	0
Environmental Protection Agency	5	4	0	1
Nature Protection Board of Appeal	49	24	24	1
Forest And Nature Agency	18	13	5	0
Total	82	48	31	3
9. Ministry of Refugee, Immigration and Integration Affairs				
Departement of Refugee, Immigration and Integration Affairs	410	333	72	5
Refugee Board	51	51	0	0
Immigration Service	254	243	11	0
Total	715	627	83	5
10. Ministry of Food, Agriculture and Fisheries				

Table 1: All concluded cases 2003 Authority	Cases in total	Cases rejected	Investigated	
			No criticism	Criticism
Departement of Food, Agriculture and Fisheries	14	6	7	1
Directorate for Food, Fisheries and Agri Business	7	5	1	1
The Fisheries Inspectorate	1	1	0	0
Veterinary and Food Administration	5	4	1	0
Agricultural Commissions, total	2	2	0	0
Danish Plant Directorate	1	1	0	0
Total	30	19	9	2
11. Ministry of Science, Technology and Innovation				
The Danish National Research Foundation	1	1	0	0
Departement of Science, Technology and Innovation	19	7	10	2
Danish Research Agency	1	1	0	0
National IT and Telecom Agency	1	1	0	0
The Telecom Agency	2	2	0	0
The Danish Committees on Scientific Dishonesty	4	4	0	0
Universiteties and institutions of higher education	8	8	0	0
Total	36	24	10	2
12. Ministry of Taxation				
Departement of Taxation	9	7	0	2
National Income Tax Tribunal	22	15	6	1
Central Customs and Tax Administration	28	21	7	0
Regional Customs and Tax Administration, total	25	21	3	1
Valuation Appeal Boards, total	4	4	0	0
Total	88	68	16	4

Table 1: All concluded cases 2003 Authority	Cases in total	Cases rejected	Investigated	
			No criticism	Criticism
13. Ministry of Social Affairs				
Departement of Social Affairs	12	8	2	2
Social Appeals Board	104	35	64	5
National Social Security Agency	15	15	0	0
The Social Pension Fund	1	1	0	0
Supervisory Board of Psychological Practice	2	2	0	0
(Regional) Social Boards of Appeal, total	265	107	136	22
Total	399	168	202	29
14. Prime Minister's Office				
Departement of the Prime Minister's Office	21	18	1	2
Total	21	18	1	2
15. Ministry of Transport				
Departement of Transport	19	10	6	3
DSB	3	3	0	0
Road Safety and Transport Agency	5	4	1	0
The Postal Supervisory Authority	1	0	1	0
Civil Aviation Administration	1	1	0	0
Road Transport Council	16	5	8	3
The State Commissioners for Expropriations	1	1	0	0
The Danish Motor Vehicle Inspection Office	1	1	0	0
Total	47	25	16	6

Table 1: All concluded cases 2003 Authority	Cases in total	Cases rejected	Investigated	
			No criticism	Criticism
16. Ministry of Foreign Affairs				
Departement of Foreign Affairs	10	7	2	1
Danish delegations abroad	2	2	0	0
Total	12	9	2	1
17. Ministry of Education				
Departement of Education	12	9	2	1
National Authority for Institutional Affairs	6	4	0	2
The Council for Agricultural Vocational Training	1	1	0	0
The Board of EU Enlightenment	1	1	0	0
National Education Authority	12	8	4	0
Student's Grants and Loan Scheme Appeal Board	4	2	2	0
State Educational Grant and Loan Agency	4	4	0	0
Technical and Vocational Schools	2	2	0	0
Other Institutions of higher education	2	1	0	1
Total	44	32	8	4
18. Ministry of Economic and Business Affairs				
Departement of Economic and Business Affairs	23	20	2	1
The Danish Export Credit Fund	1	1	0	0
Danish Commerce and Companies Agency	2	1	1	0
National Agency for Enterprise and Housing	7	5	1	1
Commercial Appeal Board	3	1	2	0
Danish Consumer Agency	1	1	0	0
Danish Competition Council	1	1	0	0

Table 1: All concluded cases 2003 Authority	Cases in total	Cases rejected	Investigated	
			No criticism	Criticism
Danish Energy Authority	1	1	0	0
Energy Board of Appeal	3	0	3	0
Danish Energy Regulatory Authority	3	3	0	0
Danish Financial Supervisory Authority	2	2	0	0
The Danish Central Bank	1	1	0	0
Danish Maritime Authority	1	1	0	0
Total	49	38	9	2
State Authorities, total	2,807	1,947	708	152

Table 1A: All concluded cases 2003 Authority	Cases in total	Cases Rejected	Investigated	
			No Criticism	Criticism
A. State Authorities	2,807	1,947	708	152
B. Local Government Authorities	882	732	100	50
C. Other Authorities under the jurisdiction of the Ombudsman	1	0	1	0
D. Administrative Authorities under the jurisdiction of the Ombudsman, total	3,690	2,679	809	202
E. Institutions, etc., outside the jurisdiction of the Ombudsman, total	227	227		
F. Cases not related to specific institutions	177	177		
Year total	4,094	3,083	809	202

Graphics

Figure 1
Number of cases registered for the past ten years

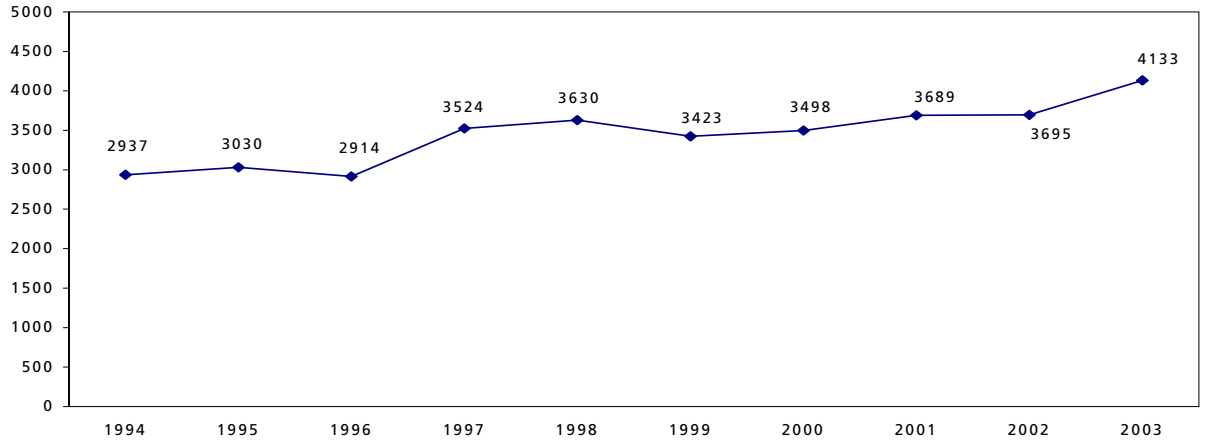


Figure 2
Categories of cases investigated to conclusion (2003)

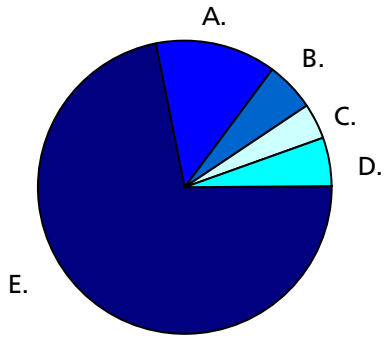
A. Case Processing.....13,5 %

B. Case Processing Time.....5,3 %

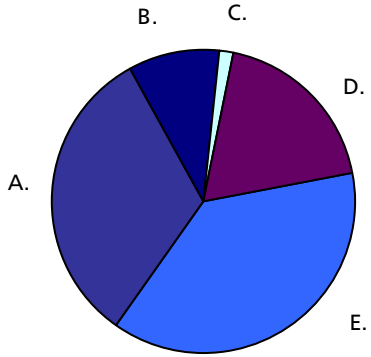
C. Services.....4,0 %

D. General .....5,3 %

E. Decisions .....71,9 %



Figur 3
Categories of cases in which criticism or recommendations were expressed (2003)



A. Decisions .....32,7 %

B. Case Processing Time.....9,9 %

C. Services.....1,5 %

D. General .....18,8 %

E. Case Processing.....37,1 %

Figure 4
Cases rejected, in categories (2003)

A. Decisions..... 57,5 %

B. Services..... 2,4 %

C. Case Processing..... 10,9 %

D. Miscellaneous..... 8,4 %

E. Case Processing Time..... 13,0 %

F. General..... 7,8 %

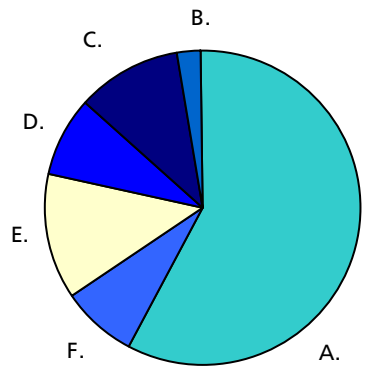
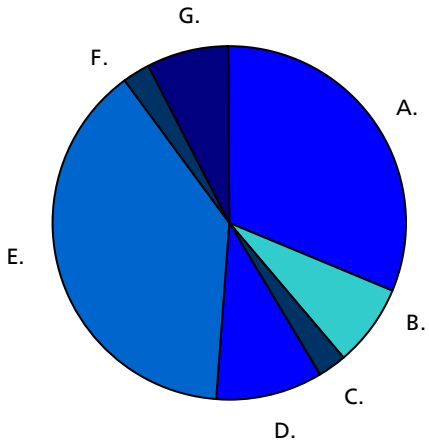


Figure 5
Cases closed, in categories (2003)



A. Social benefits ..... 31,2 %

B. Environment, building and housing ..... 7,7 %

C. Taxation ..... 2,5 %

D. Other matters ..... 9,6 %

E. Judiciary matters, etc. ..... 39,0 %

F. Education, science, church and culture ..... 2,4 %

G. Human Ressource matters, etc. ..... 7,6 %

Figure 6
Reasons for rejection, in categories (2003)

A. Lodged too late ..... 3,6 %

B. Judgments ..... 4,7 %

C. Outside jurisdiction ..... 7,5 %

D. Final rejection – unused channel of complaint ..... 1,1 %

E. Complaint not sufficiently defined ..... 4,3 %

F. Inquiries without complaint ..... 10,0 %

G. Other Inquiries ..... 19,8 %

H. Reopened after hearing ..... 1,6 %

I. Own Initiative ..... 1,5 %

J. Preliminary rejection – unused channel of complaint ..... 45,9 %

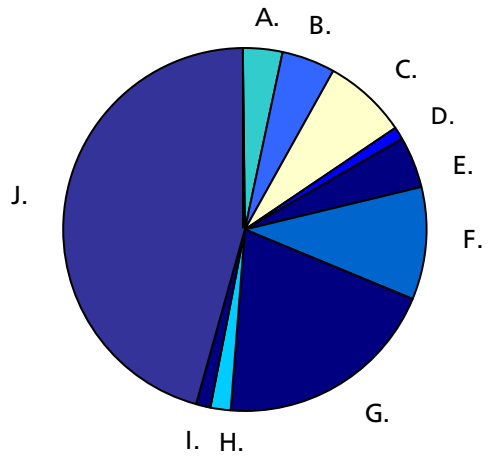
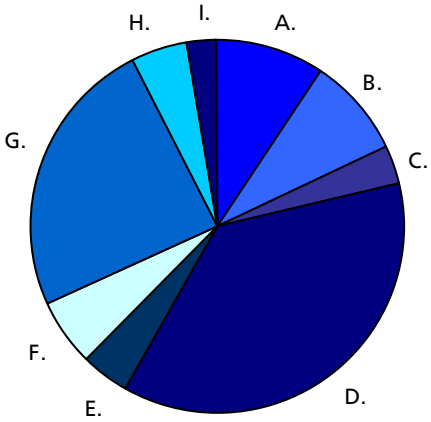


Figure 7
Total of municipal cases closed in 2003, in categories



A. Human Resource administration ..... 9,5 %
B. Taxation ..... 8,5 %
C. Schools and culture ..... 3,3 %
D. Social benefit and health ..... 36,8 %
E. Social and psychiatric services ..... 4,2 %
F. Hospitals ..... 5,7 %
G. Technology and environment ..... 24,6 %
H. Other administrative bodies ..... 4,8 %
I. Various ..... 2,6 %

Part 4

SUMMARIES

1. Ministry of Employment

0f 129 cases closed in 2003, 50 were investigated. Criticism was expressed in 3 cases. One case is referred below.

1. Disclosure of a regional office's case presentation to the Labour Market Council

Public Administration Act Section 14, subsection (1.2). Disqualification

An unemployed person lodged a complaint with a Labour Market Council about the action plan offer he had received from the Public Employment Service. He asked for access to the correspondence between the Public Employment Service and the Labour Market Council. The request must be regarded as a wish for disclosure of the case presentation which the regional office of the Public Employment Service had written for the purpose of the Council's decision. The Ombudsman stated that the disclosure request should be considered by the Labour Market Council.

The Ombudsman stated that the regional office was undoubtedly an independent authority in relation to the disclosure rules. The regional manager, and thus the region as an authority, undertakes secretariat duties for the Labour Market Council, cf. Section 52, subsection (8) of the Active Labour Market Policy Act.

In the Ombudsman's opinion, the disclosure request must be assessed pursuant to Section 14, subsection (1.2) of the Public Administration Act and not, as the Council had done, pursuant to Section 12, subsection (1.2) of the Public Administration Act concerning internal working documents. If a document has exclusively been exchanged between the secretariat authority (the region) and the central authority (the Labour Market Council) in relation to the secretariat work, the document may be exempted from disclosure pursuant to Section 12, subsection (1.2) of the Public Administration Act. As the Public Employment Service – and not merely the Public Employment Service acting as secretariat for the Labour Market Council – (erroneously) made the decision on disclosure, and as a complaint about the refusal was later lodged with and considered by the National Labour Market Authority, the document was passed on beyond the exchange that took place in relation to the secretariat function. Accordingly the Ombudsman was of the opinion that the document could not be exempted from disclosure pursuant to Section 14, subsection (1.2). A member of staff participated in the consideration of the disclosure case, initially as a head of section in the Public Employment Service and later as head of secretariat in connection with the Labour Market Council's consideration of the case. In the Ombudsman's opinion, the relevant member of staff was disqualified in relation to the Labour Market Council's consideration of the case.

The Ombudsman recommended that the Labour Market Council make a fresh decision on disclosure and asked the Council to include the issue of the staff member's disqualification in its reconsideration of the case. (Case No. 2002-2209-001).

2. Ministry of Finance

Of 20 cases closed in 2003, 8 were investigated. Criticism was expressed in 6 cases. 3 cases are referred below.

1. Advertising vacancies in the central administration on the internet

On his own initiative, the Ombudsman investigated a case concerning the advertisement of vacancies in the central administration on the internet. It was the Ombudsman's immediate opinion that public advertising of vacancies (and salaried posts) exclusively in the form of internet advertisements did not comply with existing rules concerning public advertising. Conversely, the new arrangement where public advertising of vacancies (and salaried posts) in the central administration was done by advertisements both on an internet site and in two national newspapers would comply with existing rules. However, the newspaper advertisements should include a telephone number to be used for requesting further information about the post. In addition, they should include a postal address to be used for applications etc. Moreover, the existing obligation to assess the suitability of the advertising medium in relation to the actual post still applied, i.e. the obligation to assess whether advertising on the internet and in two national newspapers was sufficient. (Case No. 2001-0025-810).

2. Disclosure of Budget, preferential treatment of members of the Parliamentary Press Gallery

A journalist lodged a complaint against the Ministry of Finance, which had circulated the Budget to, among others, members of the Parliamentary Press Gallery with the embargo that the contents must not be published until the Budget had been introduced to the Folketing. Other journalists, who did not belong to the Press Gallery, were unable to obtain copies of the Budget until after its introduction to the Folketing.

The Ombudsman stated that in his opinion the Ministry of Finance had no right to refuse to supply embargoed copies of the Budget to journalists who did not belong to the Press Gallery, solely on the grounds that they were not members. The Ombudsman did not consider such an arrangement objectively warranted. (Case No. 2002-0936-201).

3. Disclosure of the Ministry of Finance diary

The Ministry of Finance rejected a journalist's request for disclosure of the Ministry of Finance diary on the grounds that the diary was an internal working document not containing information which must be extracted pursuant to Section 11 of the Access to Public Administration Files Act.

The journalist lodged a complaint with the Ombudsman, who stated that the diary was undoubted-

ly covered by the rules of the Access to Public Administration Files Act. The Ombudsman agreed with the Ministry that the diary was an internal working document. However, in the Ombudsman's opinion the Ministry's view that the diary did not contain information subject to the extraction obligation was based on an erroneous legal conception of Section 11 of the Access to Public Administration Files Act. The Ombudsman explained his understanding of the provision and recommended that the Ministry of Finance reconsider the case on this basis.

The Ministry of Finance reconsidered the case and granted the journalist access to the information in the diary, after exempting a few items. (Case No. 2002-3547-801).

3. Ministry of Defense

Of 24 cases closed in 2003, 9 were investigated. Criticism was expressed in 3 cases. One case is referred below.

1. Repatriation of enlisted private

Qualification. The decision concept. Hearing of parties. Written proceedings

An enlisted private lodged a complaint because he had been sent home (repatriated) from service abroad.

The Ombudsman stated that he agreed with the Head Quarters, Chief of Defence and the Ministry of Defence that it was a matter for criticism that the procedure directives for repatriation had not been observed in the case. The repatriation decision had been made by an unqualified person and the decision should have been discussed with the army medical officer on duty in Denmark before it was implemented. However, there was no basis for assuming that these errors had affected the outcome of the case.

The repatriation decision was based on individual and partly reprehensible issues relating to the enlisted private and the repatriation had a negative influence on his future employment prospects in the armed forces. In these circumstances, the decision must be regarded as a decision within the meaning of the Public Administration Act. Consequently, the parties should have been heard pursuant to Section 19 of the Public Administration Act and even though the repatriation was not a disciplinary measure, the non-statutory obligation to extend the hearing of parties should have been applied to the case in accordance with good administrative practice.

In addition, it would have been most correct if the decision had been announced in writing or very quickly had been confirmed in writing to the enlisted private. (Case No. 2001-3411-819).

4. Ministry of the Interior and Health

Of 234 cases closed in 2003, 64 were investigated. Criticism was expressed in 10 cases. 4 cases are referred below.

1. Town clerk's disqualification as a result of board membership of a financial institution

A local authority citizen lodged a complaint because the town clerk was a board member of a financial institution which the local authority was using as its main bank, and because the town clerk was a member of the local parish council.

The Ombudsman stated that it is normally assumed that a mayor cannot be a board member of a financial institution which the local authority is using as its main bank, and that the same concerns generally apply to a town clerk being a board member of a financial institution. In this situation, however, it was better to avert any concerns by laying down guidelines specifying when the town clerk must not participate in the consideration of local authority matters directly or indirectly affecting the bank.

The Ombudsman did not consider membership of the parish council incompatible with the position of town clerk. (Case No. 2000-2844-409).

2. Mayors and town clerks as representatives (of the public administration) on the board of financial institutions – disqualification

Through his consideration of an actual case concerning qualification issues in relation to a town clerk, the Ombudsman became aware that the mayor was also a board member of a financial institution which the local authority was using as its main bank. The mayor had been appointed by the Minister for Economic and Business Affairs as the public administration's representative on the board. As a result, the Ombudsman on his own initiative initiated investigations of the relationship between, on the one hand, the legislation relating to the appointment of representatives to the boards of financial institutions and, on the other hand, the practice established by the Ombudsman and the Ministry of the Interior and Health that a mayor may not be a board member of a financial institution used by the local authority as its main bank.

The legislation requiring a representative of the public administration to be appointed to the board of a financial institution had been repealed and the terms of the mayors already appointed to the boards of financial institutions acting as the local authority's (main) bank had expired or were about to expire. In view of this, the fact that the Ministry of the Interior and Health had seen no reason to take further action on the matter could not give the Ombudsman cause for comment.

As a result of this case and the above-mentioned case concerning the qualification of the town clerk, the Danish Financial Supervisory Authority decided to include a description of the practice established by the Ministry of the Interior and Health and the Ombudsman for cases concerning the qualification of mayors and town clerks in its revision of a guide to financial legislation requirements concerning among other things the suitability and probity of board members. (Case No. 2003-1144-409).

3. Access to collective bargaining agreements on working conditions

A trade union asked a local authority for copies of all agreements which were not included in the central agreements – framework agreements and other agreements – and which related to wage and employment conditions. An attachment to the disclosure request contained an explanation of the types of agreement covered by the request and listed a large number of trade groups sharing the wish for disclosure. The case was submitted to the Board of Supervision and the Ministry of the Interior, which stated that the local authority was entitled to refuse the application as it aimed at obtaining access to an indefinite number of cases.

The Ombudsman did not criticise the statements, but pointed out that the local authority could legally have complied with the request, as the Access to Public Administration Files Act is a minimum act. (Case No. 2002-1321-801).

4. Annual reports from the regional patients' complaints boards

Pursuant to section 17, subsection (1) of the Ombudsman Act, the Ombudsman initiated an own-initiative investigation of the 2001 and 2002 annual reports from the regional psychiatric patients' complaints boards. The Ombudsman recommended to the Ministry of the Interior and Health that the ministry stipulate a change in regulations for the presentation of the annual report that would i.a. ensure greater precision in the statistical information and make it possible to assess the activities of the individual boards in relation to each other. (Case No. 2002-2611-429).

5. Ministry of Justice

Of 796 cases closed in 2003, 262 were investigated. Criticism was expressed in 61 cases. 5 cases are referred below.

1. Discretionary warning and relocation of public servant

Non-statutory obligation to extend the hearing of parties

A deputy detective superintendent employed as a public servant was informed that the management was dissatisfied with the way he was leading his group and some requirements were imposed on him in writing. He was also informed that his case would subsequently be assessed and that – unless noticeable improvements had occurred – he would be relocated to another field without actual management responsibilities. When the deputy detective superintendent failed to meet the conditions set, he was relocated to a position as case officer without management responsibility.

In the Ombudsman's opinion, the management's warning of the deputy detective superintendent was in the nature of a 'discretionary warning' – a decision within the meaning of the Public Administration Act.

The Ombudsman furthermore found many indications that the change of position was a relocation within the meaning of the Public Servants Act.

Finally, the Ombudsman pointed out shortcomings in connection with the hearing of parties in relation to both Section 19, subsection (1) of the Public Administration Act and the non-statutory obligation to extend the hearing of parties (Case No. 2000-2660-812).

2. Compensation for intervention as part of criminal proceedings

Consideration of criteria. Giving of grounds

The Ministry of Justice refused to give compensation pursuant to Section 1018c of the Administration of Justice Act for damage to a kitchen table caused as a result of the procuring of evidence during the police investigation of a double murder. According to Section 1018c of the Administration of Justice Act, compensation may be granted in special cases if this is considered reasonable. The Ministry argued that the person seeking compensation as the spouse of one of the murder victims must have been interested in the police solving the crime and finding the perpetrator.

The Ombudsman agreed with the Ministry of Justice that cutting away of part of a kitchen table during the procuring of evidence in connection with the investigation of a murder case was an intervention as part of criminal proceedings, which is covered by Section 1018c of the Administration of Justice Act.

The Ombudsman stated that in his opinion there were no grounds for assuming Section 1018c of the Administration of Justice Act warranted taking the claimant's interest in the case being solved into account, as the Ministry had done in this case.

The decision on the case by the Director of Public Prosecutions – which the Ministry of Justice endorsed – was based on a number of additional considerations. The Ombudsman criticised that the Director of Public Prosecutions had not explained these considerations in his decision and that the Ministry of Justice did not point this out and comment on it.

The Ombudsman recommended that the Ministry of Justice make a fresh decision on the case. (Case No. 2002-3681-611).

3. Case processing time

The Ombudsman considered it a matter for severe criticism that it took a state prison more than 26 months to make a decision on a case, and that the prison during this period had failed to keep the complainant informed of the case processing. During the 26 months, the prison had received four reminders from the complainant and several messages and reminders from the Directorate of Prisons and Probation.

Considering the time the state prison had already taken to reply to the complaint, the Ombudsman also found it a matter for severe criticism that it took almost seven months before the prison replied to the request for a statement made by the Directorate of Prisons and Probation following a complaint.

The Ombudsman further agreed with the Directorate of Prisons and Probation that the total case processing time in the Directorate was regrettable.

The Ombudsman commented that several of the deadlines the Directorate had given the complainant seemed somewhat automatic, as a subsequent investigation based on the circumstances of the case suggested they were unrealistic. However, the Ombudsman did not find adequate grounds for expressing actual criticism of this.

Finally, the Ombudsman made a statement on an authority's right to make a decision on a case without awaiting a statement from the authority complained of. (Case No. 2003-0324-600).

4. Leading a handcuffed prisoner along a pedestrian street

A prisoner was led on foot between two policemen from a prison to a court along a pedestrian street with his arms handcuffed behind his back.

On his own initiative, the Ombudsman asked the Ministry of Justice for a statement after having obtained a statement from the chief constable involved.

The chief constable made a statement on the case, deeply regretting the episode. After this episode, the chief constable had changed the procedure for moving prisoners.

The Ministry of Justice agreed with the chief constable that the method used in the case was extremely regrettable.

The Ombudsman stated that he likewise considered the method used extremely regrettable. (Case No. 2003-3031-629).

5. Application of illegal criterion in case concerning compensation following body-search – Section 107 of the Execution of Sentence Act

A prison received information that a prisoner possessed illegal substances, allegedly hidden in his rectum. As the prisoner did not agree to a rectal examination, he was placed in an observation cell. After about an hour, the prisoner chose to undergo the rectal examination. The examination did not confirm the suspicion that the prisoner was in possession of substances.

Under Section 107 of the Execution of Sentence Act, compensation may be granted to a person who while serving sentence etc. has been exposed to unmerited interventions other than those mentioned in Section 106 of the Act.

The Directorate of Prisons and Probation refused the prisoner's request for compensation for the examination and in its decision among other things attached importance to the prisoner's agreement to the examination.

The Ombudsman stated that the prisoner's response to an examination request may not be taken into account when deciding whether the prisoner has been exposed to an unmerited intervention. The Ombudsman criticised that the Directorate of Prisons and Probation had used this criterion when considering the compensation claim and recommended that the Directorate make a fresh decision on the case.

The Ombudsman also noted that it was somewhat inappropriate to speak of voluntariness in cases like the present where the authorities have other means at their disposal as an alternative to voluntary cooperation. This applies particularly to cases where the prisoner agrees to the examination after having been placed in an observation cell.

The Directorate of Prisons and Probation made a fresh decision on the case without using the above-mentioned criterion and the Ombudsman took note of this decision. (Case No. 2002-4137-625).

6. Ministry of Ecclesiastical Affairs

Of 37 cases closed in 2003, 9 were investigated. Criticism was expressed in 3 cases. 2 cases are referred below.

1. Expulsion from a church music school

A church music school informed a former student, who was still a member of the school choir, that his criticism of the school management endangered the climate at the school. The message was intended as a written warning and at the same time various conditions for the choir member's continued attendance at the school were imposed.

The choir member was subsequently expelled from the school, partly with reference to the warning. The Ministry of Ecclesiastical Affairs endorsed the school's decision and the choir member lodged a complaint with the Ombudsman.

In the Ombudsman's opinion, the school could only lay down conditions for the choir member's attendance at the school on an objective basis and with sufficient information to assess this. The Ombudsman believed that there had to be weighty reasons before a person – including a former student – could be expelled from a public institution. In this instance, they included evidence that the climate at the school had been seriously impaired or damaged by the choir member's criticism of the school management or that there was a significant risk of this. The Ombudsman found that the case did not contain the necessary documentation and therefore recommended that the Ministry of Ecclesiastical Affairs reconsider the case.

In addition, the choir member had not been heard before the expulsion. In this connection, the Ombudsman stated that the church music school's decision to expel the choir member was undoubtedly a decision within the meaning of the Public Administration Act. The school was therefore obliged to hear the person in question before the expulsion. (Case No. 2001-1582-749).

2. Information about a child's attitude to change of name

A father lodged a complaint with the Ministry of Ecclesiastical Affairs because a ministerial clerk had changed his daughter's surname. The father, who did not have shared custody, among other things stated that the daughter did not want to change her surname. The Ombudsman could not criticise the ministerial clerk's decision to change the daughter's surname.

In connection with the Ombudman's investigation of the case, the Ministry of Ecclesiastical Affairs referred to the vicar's assessment and stated that the ministerial clerk had handled the change of name as provided in Section 14, subsection (2) of the Personal Name Act.

The Ombudsman stated that the ministerial clerk had not had sufficient information about the daughter's attitude to the proposed change of name when he changed her surname (the girl was six years old) – either in the form of information from the mother or from the daughter herself. The Ombudsman considered this a matter for regret.

The Ombudsman therefore did not agree with the

Ministry of Ecclesiastical Affairs that the change of name had been implemented as provided in Section 14, subsection (2) of the Personal Name Act. In addition, the Ombudsman believed that the Ministry of Ecclesiastical Affairs had had insufficient information about the daughter's attitude to the proposed change of name when it considered the father's complaint. The Ombudsman also found this a matter for regret.

The Ombudsman recommended that the Ministry of Ecclesiastical Affairs consider the specific need for a guide to be used by ministerial clerks when administering the provision in Section 14, subsection (2) of the Personal Name Act. The Ombudsman asked the Ministry of Ecclesiastical Affairs to keep him informed of the result of its considerations. (Case No. 2000-1380-604).

7. Ministry of Culture

Of 44 cases closed in 2003, 11 were investigated. Criticism was expressed in 6 cases. One case is referred below.

1. Audition for music foundation course

The decision concept. Duty to make notes. Hearing of parties. Giving of grounds

An applicant lodged a complaint about the outcome of an audition for the foundation course at a music school. At the audition, the applicant was found 'possibly suitable'. The audition panel had stated that this assessment usually did not result in admission to the school.

In the Ombudsman's opinion, the panel's statement immediately after the audition could not be described as a decision within the meaning of the Public Administration Act.

On the other hand, the Ombudsman stated that the eventual rejection of the application was a decision, which meant that the normal case consideration rules must be observed, including the rules regarding hearing of parties and giving of grounds.

The Ombudsman considered it a matter for criticism that the audition panel had not adequately observed the duty to make notes in connection with the audition. (Case No. 2001-3422-759).

8. Ministry of Environment

Of 82 cases closed in 2003, 34 were investigated to conclusion. Criticism was expressed in 3 cases. 2 cases are referred below.

1. Failure to clarify or avoid possible disqualification

When the Minister for the Environment took up his position as minister, he was on leave from a post as deputy head at a primary school. During his leave, he accumulated pension entitlement. Through media comments, the Ombudsman became aware that the school from which the Minister was on leave was planning to establish an eco-base and that the Minister had participated in a decision to grant money to the school project from a nature fund. In addition, the Minister had participated in the decision that the Ministry of the Environment would purchase a property for afforestation and subsequently let the building on the property to, among others, the local authority responsible for the school, for the establishment of the eco-base. This decision was made against the civil servant recommendation that the building on the property should subsequently be sold so that the income from the sale could be used for other afforestation projects. Moreover, the purchase decision was allegedly at variance with normal practice regarding local co-financing.

The Ombudsman took up the case on his own initiative.

The Ombudsman stated that in the actual cases concerning the granting of money from the fund to the school and the purchase of the property, the circumstances were such that the Minister should have considered the question of his possible disqualification more closely and taken steps to either clarify or avoid it. As a starting point, the Minister for the Environment should have informed the Prime Minister pursuant to the principles in Section 6, subsection (1) of the Public Administration Act. The Ombudsman regarded his failure to do so as an error. The consideration of the case by the Minister for the Environment must therefore be regarded as regrettable. (Case No. 2003-3421-149).

2. Guidance in connection with the export of waste

A company was considering exporting a waste product covered by the EU regulation concerning the transfer of waste. The company asked the Environmental Protection Agency for guidance in connection with the completion of a registration form for the receiving country. The Environmental Protection Agency among other things stated that Danish limit values must be met even though the waste was being exported. The company then asked the Environmental Protection Agency to provide the legal authority for this requirement and the Agency replied 6½ months later.

In the Ombudsman's opinion, the very late reply by the Environmental Protection Agency was a matter for severe criticism and he found the guidance given by the Agency too brief and inadequate. The

guidance was also defective because the Agency had failed to inform the company of details which it had obtained from the potential receiving country and that the Agency had at one time changed its legal conception with regard to the interpretation of the regulation concerning transfer of waste.

The Environmental Protection Agency responded to a disclosure request covered by the Access to Environmental Information Act after 31 months. The Ombudsman considered this a matter for severe criticism. (Case No. 2001-1403-113).

9. Ministry of Refugee, Immigration and Integration Affairs

Of 715 cases closed in 2003, 88 were investigated. Criticism was expressed in 5 cases. One case is referred below.

1. Expulsion decision – appeal access

A married couple, who used to be citizens of Iraq but had subsequently been granted Iranian citizenship, arrived in Denmark and applied for – but were refused – asylum under Section 53b, subsection (1) of the Immigration Act. Along with the refusal, the Danish Immigration Service also decided that the couple could be compelled to leave the country if they refused to do so voluntarily.

During his consideration of the case, the Ombudsman questioned whether a compulsory expulsion decision could be appealed to the Ministry of Refugee, Immigration and Integration Affairs.

The Ministry informed the Ombudsman that it believed an expulsion decision must be regarded as ancillary to the asylum decision and that an expulsion decision made by the Immigration Service in connection with an asylum refusal therefore could not be appealed to the Ministry.

The Ombudsman stated that debarring of recourse from a lower to a higher authority requires explicit legal authority. In the Ombudsman's opinion, it should be explicitly stated in the Immigration Act that expulsion decisions in cases like the present could not be appealed to the Ministry.

However, the Ombudsman stated that he did not find adequate grounds for criticising the Ministry's opinion. Although the limitation of appeal access was not explicitly stated in the text of the Act, such a debarring of appeal seemed to be assumed in the preliminaries of Section 32a of the Immigration Act.

The Ombudsman recommended that the Ministry of Refugee, Immigration and Integration Affairs clarify the Immigration Act in this respect at any future amendment of the Act. The Ombudsman asked to be kept informed of the Ministry's actions on this matter. (Case No. 2002-3866-640).

10. Ministry of Food, Agriculture and Fisheries

Of 30 cases closed in 2003, 11 were investigated. Criticism was expressed in 2 cases. No cases referred.

11. Ministry of Science, Technology and Innovation

Of 36 cases closed in 2003, 12 were investigated. Criticism was expressed in 2 cases. No cases referred.

12. Ministry of Taxation

Of 88 cases closed in 2003, 20 were investigated. Criticism was expressed in 4 cases. 2 cases are referred below.

1. Request for postponement of the consideration of a complaint case

A tax payer lodged a complaint about his tax assessment with the National Tax Tribunal, but at the same time asked for the postponement of the case until the Customs and Excise Office had completed its consideration of whether criminal proceedings should be instituted against him.

The criminal court had assigned a counsel to the tax payer pursuant to Section 1, subsection (1) in Consolidate Act No. 489 of 19 September 1984 concerning access to defence assistance during an administrative taxation or duty case. The tax payer referred to Circular 1998-2 issued by the Central Customs and Tax Administration, but the National Tax Tribunal refused the request for postponement of the case on the grounds that the Circular did not apply as criminal proceedings had not yet been instituted. The Tribunal further found that the Circular's conditions for postponing the case had not been met as the decision on the case primarily depended on a legal appraisal. The Ombudsman took for the basis of his assessment of the case that as TSS Circular No. 1998-2 included a description of the practice followed in such cases by the National Tax Tribunal, the Tribunal cannot depart from the guidelines in the Circular to the disadvantage of the individual complainant. The Ombudsman stated that the application of the Circular must be based on an actual assessment of whether there is some likelihood that the present case will involve liability to punishment. In the actual case, the tax payer's request for postponement should have been considered pursuant to the guidelines in the Circular. However, overall the Ombudsman did not find grounds for criticising that the National Tax Tribunal had refused the tax payer's request for postponement of the consideration of his complaint case. (Case No. 2001-3851-209).

2. Heir's access to the files of a taxation and duty case concerning the administration of a deceased person's estate by the court

The party concept. Limitation of disclosure pursuant to special professional secrecy provision. Good administrative practice.

A citizen lodged a complaint because she had been refused access to documents concerning the taxation and duty settlement of her sister's estate. The refusal was made pursuant to both the Public Administration Act and the Access to Public Administration Files Act.

Although the citizen as the heir had considerable interest in the taxation and duty case relating to the estate, the Ombudsman found that her interest was indirect and secondary and not so significant that the citizen could be regarded as a party within the meaning of the Public Administration Act. The Ombudsman therefore did not criticise the authorities' refusal of disclosure pursuant to Administration Act.

The Ombudsman furthermore did not criticise the authorities' refusal of disclosure pursuant to the Access to Public Administration Files Act, as he agreed that all the documents in the cases contained information covered by the special professional secrecy provision in the Tax Administration Act.

On the background of the citizen's considerable, but indirect interest in the case, it would however have been desirable for the authorities to have contacted the trustee of the estate to clarify if the estate would agree to the citizen being granted access to the cases by the taxation authorities.

In the Ombudsman's opinion, it was regrettable that the Customs and Excise Office had failed to reply to the citizen's disclosure request within the ten day time limit. He also considered it regrettable that the Office had not obtained the documents of the case from the tax administration in connection with its consideration of the complaint case. (Case No. 2002-2059-201 and 2002-2513-201).

13. Ministry of Social Affairs

Of 399 cases closed in 2003, 231 were investigated. Criticism was expressed in 29 cases. 10 cases are referred below.

1. Interpretation of two Supreme Court test cases concerning social pension

Reconsideration of cases after court disallowance of practice

A woman lodged a complaint, partly about a social board's refusal to reconsider her early retirement pension case on the background of two Supreme Court decisions on test cases. In its refusal, the board argued that the pension authorities' change of practice following the Supreme Court decisions only affected cases where the applicant had already been granted early retirement pension. The woman's case was not covered by the change of practice, because she had not previously been granted a pension. The National Board of Social Appeal rejected the case

because the social board's decision did not conflict with the National Board's practice.

The Ombudsman made a general statement on certain interpretation issues in relation to the Supreme Court decisions. Among other things, the Ombudsman stated that there was no basis for construing the Supreme Court decisions as implying that the granting of a pension to the applicants would have affected the decisions or the examination undertaken. On the contrary, the decisions must be construed as implying that the same examination would have been undertaken and the same result would have been reached if the applicant had been refused a pension altogether.

On this background, the Ombudsman believed that the Board could not refuse to reconsider the case for the reasons given. The Board must undertake an actual assessment of the circumstances of the case in relation to court practice.

The Ombudsman further stated that when a decision on a case has been made according to a practice disallowed by the courts, a citizen may demand reconsideration of the case if it is likely that a different decision would now be made. As the National Board of Appeal had stated that it would be impossible to determine on the basis of general criteria which previously settled cases might be affected by the decisions, the Ombudsman could not comment on the authorities' failure to reconsider the relevant cases on their own initiative. The Ombudsman attached importance to the fact that the National Board of Social Appeal had informed the local authorities and the general public of the citizens' access to reconsideration of previously settled cases.

The Ombudsman forwarded the case to the National Board of Social Appeal, asking it to consider whether it had reason to reconsider the case in principle or in general. (Case No. 2001-3564-040).

2. Appointment of rent tribunal chairman

Discretion below rule. Giving of grounds. Guidance on appeal. Recourse

A candidate who had proposed himself for the post of rent tribunal chairman lodged a complaint with the Ombudsman because the Regional State Authority had appointed the person proposed by the local authority without assessing which candidate was best qualified.

The Ombudsman stated that in cases concerning the appointment of persons to public functions, an actual assessment of which candidate is best qualified must be undertaken, just as in regular appointment cases. In considering only the local authority's recommendation, the Regional State Authority had put its discretion 'below rule'. The Ombudsman considered it a matter for severe criticism that the Regional State Authority had not complied with an earlier decision on this by the recourse ministry. The appointment must be regarded as a decision within the meaning of the Public Administration Act. Inadequate grounds were given for the decision, which should have been accompanied by guidance on appeal.

In addition, the Ministry of Social Affairs, which had considered the case as sector supervising authority, should have considered the case as appeal authority. (Case No. 2002-3563-161.)

3. Refusal of dental treatment subsidy

Giving of grounds. Evidence

A woman lodged a complaint against the local authority and the social board, which had refused to subsidise dental treatment.

The Ombudsman criticised that the grounds given for the authorities' decisions did not fulfil the requirements in Section 24, cf. Section 22 of the Public Administration Act.

The Ombudsman also criticised the evidence in the case. The authorities had attached importance to the lack of proof that the woman's complaint was congenital, although this was clear from the specialist statements which the woman had obtained. The authorities had not explained why they could not accept these specialist statements.

The Ombudsman stated generally that if doubt exists about the validity of a significant fact, clarification of this doubt forms part of the procuring of evidence, so that it can be decided by an ordinary assessment of the evidence whether the fact in question can form the basis of the decision. Accordingly, the Ombudsman was of the opinion that the authorities should have examined the relevant information, if they had any doubts about the validity of the claims in the statements obtained concerning the congenital nature of the woman's complaint.

The Ombudman recommended that the board reconsider the case and (if it still considered this necessary) obtain its own specialist statement(s) to clarify the question of the congenital nature of the woman's complaint. (Case No. 2001-2458-051).

4. Consumption of own goods in spouse's loss-making company not income under Section 30 of the Assets Act

Hearing of parties. Notification of decision and giving of grounds

The National Board of Social Appeal regarded a greengrocer's private consumption of his own goods as income which must be deducted from his spouse's cash benefit, cf. Section 30, subsection (1) of the Assets Act, even though the company was run at loss. In a preliminary statement, the Ombudsman indicated his disagreement. The National Board of Social Appeal subsequently reconsidered the case and abandoned the view that consumption of own goods must be regarded as income. (Case No. 2000-3087-050).

5. Repayment of housing subsidy

A tenant lodged a complaint about the authorities' decision on repayment of housing subsidy because of undeclared earnings.

In a preliminary statement, the Ombudsman among other things said that on the available basis he regarded it as proven that the tenant had verbally informed the housing subsidy office of the change of income. Among other things, the Ombudsman attached importance to the fact that the tenant was given a partially completed form for declaring changes of income when he contacted the housing subsidy office in person.

At the same time, the Ombudsman stated that he considered the special formal requirements establis-

hed by the authorities for income change information to be regarded as received as unwarranted. The Ombudsman likewise did not agree that regard for the legal protection of the citizen warranted the establishment of such requirements. The Ombudsman attached particular importance to the fact that it was in the interest of the housing subsidy recipient to inform the housing subsidy administration about changed conditions relevant to the calculation of housing subsidy and that such information could be provided in the easiest and most convenient way possible.

On the available basis, it was the Ombudman's preliminary opinion that the authorities' case consideration had overall been so inadequate and open to criticism that he was inclined to recommend that the social board reconsider the case.

The social board subsequently rescinded its decision and at the same time changed the local authority's decision. In its new decision, the board ordered the local authority to revoke its repayment requirement and inform the tenant of its new decision.

On this background, the Ombudsman decided not to pursue the investigation. (Case No. 2001-0856-083).

6. Refusal of socio-educational free place in school leisure time arrangement

A local authority had previously granted a socio-educational free place to a boy for a limited period. At the end of this period, the local authority refused to extend the socio-educational free place. The social board later endorsed this refusal.

As a result of the complaint, the Ombudsman initiated an investigation and among other things asked the social board to state to what extent it had included the decision by the National Board of Social Appeal published in Social Announcements SM C-64-01 in its consideration of the case (in SM C-64-01 the National Board of Social Appeal considered it unwarranted to limit a payment exemption to a predetermined period).

The social board reconsidered the case and referred it to the local authority for reconsideration. The local authority subsequently decided that the mother should be refunded almost DKK 36,000. (Case No. 2002-2595-710).

7. Refusal of heating supplement with retroactive effect. Warranty

Start time for personal supplement. The socio-legal principle concerning prior application

A man applied for early retirement pension on 16 December 1997. He was granted a pension on 9 March 2000 with effect from 1 April 1998. On 28 March 2000, he applied for a personal supplement for among other things already incurred heating expenses with retroactive effect from 1 April 1998.

The local authority refused his application – a refusal endorsed by the social board.

In the Ombudsman's opinion, Section 17, subsection (5) of the Personal Pensions Act implies that personal supplements may be granted with effect from the time when the pension is granted, i.e. in the present case from 1 April 1998.

The Ombudsman stated that decisions on heating supplement must be made pursuant to Section 17, subsection (2.1) of the Personal Pensions Act.

In the Ombudsman's opinion, prior application could not be demanded in the present case. In this connection, the Ombudsman made a number of general statements on the socio-legal principle concer-

ning prior application, including the considerations behind it and the circumstances that might warrant exemption from it.

The Ombudsman recommended that the board reconsider the case and grant the man heating supplement for the period 1 April 1998 until 31 March 2000 (Case No. 2001-0928-042).

8. Misinformation about granting of pension was invalid

Invalidity/recall of decision

At a meeting of a rehabilitation and pension board, the board decided to endorse a local authority's refusal of early retirement pension. By mistake, the board sent the applicant a decision stating that he was granted ordinary enhanced early retirement pension. Three days after the applicant had received the decision, the board informed him of the mistake by telephone and on the same day forwarded the correct decision. The Ombudsman regarded the decision originally sent as invalid and believed that the board was entitled to send the applicant the correct decision about refusal of early retirement pension.

The National Board of Social Appeal had considered the case pursuant to the rules concerning 'recall of decisions'. The Ombudsman stated about the general subject of recall that recall of a decision is used when an otherwise valid decision is changed. The Ombudsman stated that several considerations strongly suggest that the authority should have very limited ability to recall granted pensions to the disadvantage of the citizen, beyond the situations listed in Section 44 of the Personal Pension Act. In its decision, the Board of Social Appeal had listed a number of criteria for recalling a decision. The Ombudsman stated that the outline of criteria given by the Board did not sufficiently accurately indicate the circumstances that must be considered when determining whether a decision could be recalled. (Case No. 2001-3387-040).

9. Change of outcome of early retirement case to the disadvantage of the complainant ('Reformatio in pejus')

A local authority granted a citizen enhanced ordinary early retirement pension. The citizen lodged a complaint with the social board, as she believed she was entitled to a higher pension. The social board changed the local authority's decision to the disadvantage of the citizen, as the board did not consider the complainant entitled to early retirement pension at all.

The National Board of Social Appeal endorsed the decision made by the social board and was furthermore of the opinion that the local authority was not obliged to state in its guidance of appeal that the board might change the decision to the disadvantage of the citizen.

The Ombudsman could not criticise the decision by the social board and the National Board of Social Appeal. The Ombudsman stated that it would be in keeping with good administrative practice to inform the citizen in connection with the appeal authorities' general information about the case process that the authority's decision might be to the disadvantage of complainant. To avoid the unintended effect of ma-

king citizens afraid of complaining, the Ombudsman considered it correct to state that a change to the disadvantage of the complainant is extremely rare. In addition, it might be explained that it only happens when the original decision is invalid. (Case No. 2001-2957-040).

10. Eviction from homeless accommodation

A family had been allocated homeless accommodation by the local authority pursuant to Section 66 of the Services Act. At the allocation, the family signed a declaration stating *that* the accommodation was only temporary, *that* the family was prepared to move when the local authority offered other accommodation, *that* the ordinary rules concerning three accommodation offers therefore did not apply, and *that* the rules of the Tenancy Act did not apply to the homeless accommodation.

When the local authority offered the family permanent housing, the family rejected the offer. The local authority then informed the family that it must vacate the homeless accommodation.

On the background of an analysis of the development in the legal basis of the Homeless Provision, the Ombudsman concluded that two High Court decisions of 1959 had established that allocation of homeless accommodation pursuant to the provision concerning homeless accommodation then in force did not constitute a tenancy within the meaning of the Tenancy Act.

In the Ombudsman's opinion, the subsequent amendments of the Homeless Provision had not changed the legal position established by the two High Court decisions.

The Ombudsman therefore agreed with the local authority and the social board that the legal position in connection with the allocation of accommodation pursuant to Section 66 of the Services Act is not covered by the rules of the Rental Act.

The Ombudsman accordingly found no grounds for criticising the local authority's decision to evict the family from the homeless accommodation as a result of the family's refusal of the offer of permanent housing. (Case No. 2002-0238-059).

14. Prime Minister's Office

Of 21 cases closed in 2003, 3 were investigated. Criticism was expressed in 2 cases. No cases referred.

15. Ministry of Transport

Of 47 cases closed in 2003, 22 were investigated. Criticism was expressed in 6 cases. One case is referred below.

1. Repair of private communal road

Hearing of parties. Postponement. Guidance

A local authority announced an inspection of a private communal road and some of those entitled to use the road subsequently asked the local authority for access to the files. They also asked for further information about the case and for a change of time for the road inspection, but the local authority refused this. After the road inspection, the local authority decided that the road must be repaired, and subsequently granted those entitled to use the road access to the files. They lodged a complaint with the Road Directorate, but the Directorate found no grounds for criticising the case consideration by the local authority, although the local authority should have replied to the disclosure request within ten days.

The Ombudsman stated that the rules concerning road inspections in the Section II of the Private Roads Act did not supersede the rules concerning hearing of parties in the Public Administration Act. The local authority should therefore have heard all those entitled to use the road. Before making the decision, the local authority should also have considered whether the decision should be postponed until every road user who had requested access to the files had seen them. In addition, the local authority should have given them certain further information about the case. Furthermore, the rules concerning the duty to make notes had not been observed. The Ombudsman did not criticise the local authority's refusal to change the date of the road inspection (Case No. 2002-2377-516).

16. Ministry of Foreign Affairs

Of 12 cases closed in 2003, 3 were investigated. Criticism was expressed in 1 case. No cases referred.

17. Ministry of Education

Of 44 cases closed in 2003, 12 were investigated. Criticism was expressed in 4 cases. 3 cases are referred below.

1. Dismissal of head of section on the grounds of unwillingness and inability to collaborate

Relocation. Hearing of parties. Notification of decision. Giving of grounds

A former head of section in the Ministry of Education lodged a complaint with the Ombudsman about his dismissal. He further complained about the events prior to the dismissal, which involved his initially being relocated to an administration under the Ministry with a probation period of six months. The conditions of the relocation was that if the administration after the probation period made a positive statement, the man would be allowed to stay in the administration on ordinary terms. If the administration's statement was negative, the Ministry of Education intended to dismiss him as he could not return to the department. When the administration at the end of the probation period did not wish to continue to employ the head of section because of his unwillingness and inability to collaborate, the Ministry announced its intention to dismiss him. Subsequently, a severance agreement was made between the head of section, his organisation and the Ministry.

With regard to the relocation to the administration, the Ombudsman stated that the relocation of the head of section involved such major changes to his previous employment conditions that it amounted to a transfer. Such an action is considered a decision within the meaning of the Public Administration Act. The transfer involved unsolicited dismissal of the head of section from his previous position. Before the decision to relocate the man, the Ministry of Education should accordingly have heard him in accordance with the non-statutory obligation to hear the parties in force pursuant to legal practice and Ombudsman practice for certain decisions on unsolicited dismissal of administration employees. In the Ombudsman's opinion, it was also regrettable that the head of section had not received a written decision containing detailed grounds for the unsolicited dismissal from his previous position, cf. Section 24 of the Public Administration Act, cf. Section 22.

With regard to the eventual dismissal from the Ministry of Education, the Ombudsman stated that the decision appeared to have been by agreement. A decision on unsolicited dismissal requires that the employee is given an actual decision which must be in writing. Thus the dismissal cannot happen automatically on the basis of an agreement. In the Ombudsman's opinion, it was regrettable that the head of section had not received a written decision concerning the eventual dismissal and therefore no detailed grounds for the dismissal pursuant to Section 24 of the Public Administration Act, cf. Section 22.

As the Ministry of Education had stated that it was prepared to give the head of section grounds for the relocation decision and the eventual dismissal decision, the Ombudsman asked him to contact the Ministry if he still wished to receive grounds for the decisions. (Case No. 2000-3309-813).

2. Dismissal after anonymous student evaluations

Ombudsman examination

A lecturer was dismissed from his job at a business and engineering college. The dismissal was based on anonymous student evaluations of the lecturer's teaching and information about the lecturer's recommendation for an adult education training course.

The Ombudsman made a general statement on the extent to which he would examine future cases such as the lecturer's, where a union had initiated an industrial procedure still in progress. The Ombudsman completed his consideration of the lecturer's case with regard to evidence, hearing of parties and giving of grounds.

It afforded the Ombudsman grounds for criticism that the anonymous student evaluations had formed part of the basis for the dismissal and that the college's basis of evidence concerning the completion of the adult education training course had been inadequate. In the Ombudsman's opinion, it was unfortunate that the college had assumed it was able to make a dismissal decision – which had major consequences for the lecturer – on the basis available to the college at the time of dismissal.

The Ombudsman had no grounds for taking steps with regard to the college's hearing of parties, but he criticised the grounds given with the decision. (Case No. 2000-3570-813).

3. Failure to fill a senior lectureship vacancy

Freedom of expression. The inquisitorial principle

A lecturer lodged a complaint with the Ombudsman because a university had not filled a vacant senior lectureship for which he had applied.

It appeared from the case that the lecturer had contacted a professorship selection committee after applying for the post and argued that one of the applicants – who was also the head of the institute where the lecturer had applied for the lectureship – might have acted in a scientifically dishonest way.

During a meeting between the university and the lecturer, the university stated that the lecturer could only be appointed if he gave the head of institute an unreserved apology and informed the professorship selection committee that he regretted his statement. As the lecturer failed to comply with the conditions imposed, the university refused to appoint him. As there were no other qualified applicants, the university left the position vacant.

The Ombudsman believed the lecturer's approach to the professorship selection committee was legal. The question was therefore whether the refusal to appoint him was warranted on the grounds of possible collaboration difficulties if he was appointed. In the Ombudsman's opinion, the university's conditions presupposed the existence of an objective basis for imposing these conditions and sufficient information to assess this. In the present case, this meant evidence that appointment of the lecturer was likely to involve a considerable risk of collaboration difficulties and that this risk would be significantly reduced if he complied with the conditions imposed.

In a preliminary statement, the Ombudsman wrote that imposing the said conditions might have been warranted if the university had first obtained a statement from the head of institute, who for acceptable

objective reasons had demanded this as a precondition of future collaboration with the lecturer.

The university subsequently informed the Ombudsman that it had had detailed discussions with the head of institute in order to clarify potential collaboration difficulties and that the said conditions had been imposed on this basis. The university had not made a note or notes of these discussions.

In his final statement, the Ombudsman criticised the university's failure to observe the duty to make notes pursuant to Section 6 of the Public Administration Act. However, on the available basis the Ombudsman did not have sufficient basis for assessing whether the university – following an overall assessment of the entire case process – had adequate objective grounds for not appointing the lecturer. (Case No. 2001-1246-810).

18. Ministry of Economic and Business Affairs

Of 49 cases closed in 2003, 11 were investigated. Criticism was expressed in 2 cases. No cases referred.

19. Local Authorities

Of 882 cases closed in 2003, 150 were investigated. Criticism was expressed in 50 cases. 4 cases are referred below.

1. Relocation by a compromise

The decision concept. Guidance

A local authority and a nursery school teacher agreed that the teacher would be relocated to another nursery school. The local authority had previously informed the teacher that unless she entered into such an agreement, the local authority would decide on her new workplace.

The Ombudsman regarded the relocation as a decision within the meaning of the Public Administration Act, so that the rules concerning hearing of parties and giving of grounds should have been observed. However, as the legal position was doubtful, the Ombudsman did not criticise the local authority.

During the Ombudsman's consideration of the case, the local authority stated that because the teacher had been a safety steward, it did not have full authority to make a unilateral decision on a change of workplace. The local authority had not previously informed the teacher of this fact. The Ombudsman regarded it as a matter for severe criticism that the local authority had obtained the teacher's agreement to the relocation by undue pressure and that it had failed to give the teacher correct and relevant guidance. (Case No. 2001-3412-891).

2. Resignation and change to other job of head of youth school

Unsolicited dismissal. The warning concept

A youth school prepared a workplace assessment showing serious problems in connection with the mental working environment at the school. As the employer, the local authority initiated an investigation of whether there were grounds for employment law measures against the head of the youth school, whose management style was criticised.

The head of the youth school was warned that she would be recommended for dismissal if her management style did not change significantly.

On the basis of the result of a questionnaire survey among the youth school staff, the head was later informed that she would be recommended for dismissal. However, the local authority had previously informed her that she could avoid dismissal by handing in her resignation. The dismissal was not implemented as the head of the youth school at her own suggestion was appointed to a consultancy post within the local authority. This post had no management responsibilities and was temporary, so that it would end one year before she would have retired with a pension.

The Ombudsman stated that the warning was in the nature of a 'discretionary warning', which was a decision within the meaning of the Public Administration Act. Accordingly, the head should have been heard as a party pursuant to Section 19 of the Public Administration Act and the non-statutory legal principle of extended hearing of parties. Good administrative practice might also warrant the hearing of parties in this context.

In the Ombudsman's opinion, the resignation of the head of the youth school and her appointment to the consultancy post should have been regarded as a unsolicited dismissal case in relation to the basis of evidence, including the hearing of parties. Before giving the head the choice between resigning herself or being recommended for dismissal, the local authority should accordingly have obtained enough evidence about the case to assess whether her unsolicited dismissal from the post was warranted, partly by hearing the parties.

The Ombudsman criticised the local authority's case consideration in several other respects, including its failure to observe the duty to make notes, its shredding of documents and its handling of disclosure requests from the head of the youth school. (Case No. 2000-2770-801).

3. Obligation to keep copies of letters sent out

Time limit for discarding

In connection with the Ombudsman's investigation of a case concerning collection of maintenance payments, a local authority informed the Ombudsman that it had sent demand letters, but that these letters could no longer be reconstructed. On his own initiative, the Ombudsman initiated an investigation of the question of inability to reconstruct the letters.

The Ombudsman stated that the local authority did not have the authority to choose not to make copies continuously of the demand letters it sent out. It was regrettable that the local authority had made that choice.

The Ombudsman also stated that copies of the demand letters may be discarded when there is no longer a legal or administrative need to keep them, i.e. when demands resulting from the case are definitely

out of time or definitely cannot be advanced as a result of death.

The Ombudsman recommended that the local authority take the necessary steps to fulfil the requirements relating partly to copying demand letters sent out, partly to keeping these copies until there is no a legal or administrative need for them.

As Kommunedata had among other things supplied the computer programme used to print out the demand letters, the Ombudsman informed the company of the case. (Case No. 2001-3911-609).

4. Warning following the forwarding of anonymised information to union and the obtaining of information from register

A local authority employee lodged a complaint because she had been given an official warning by the local authority. The reason given for the warning was that the employee for unprofessional reasons had obtained information about the local authority's labour market director and his family in a local authority register containing confidential information used for the assessment of the local tax payers. A second reason given for the warning was that the employee had forwarded anonymised information from a social case to her union.

The Ombudsman stated that the local authority could not regard the employee's forwarding of anonymised information from a social case to her union as misconduct or otherwise a matter for criticism. Her forwarding of the information therefore did not warrant the issuing of a warning by the local authority. On the other hand, the Ombudsman found no grounds for criticising the local authority's view that the employee had failed in her duty by obtaining information in the register about the labour market director and his family. On this background, the Ombudsman recommended that the local authority reconsider the case in order to assess whether the fact that the employee looked for information about the labour market director and his family in the register was in itself sufficiently serious to warrant the issuing of a warning to the employee. At the same time, the Ombudsman wrote to the local authority that in connection with its reconsideration of the case it should be aware that a warning may lose its significance if it is out of date. (Case No. 2001-2313-812).

PART 5

ARTICLE

Good Administrative Practice

By Jens Olsen, *Senior Legal Adviser, Office of the Danish Parliamentary Ombudsman*

Introduction

Ombudsmen and human rights commissions all over the world use the concept of good administrative practice.

In connection with the processing of specific complaint cases, the basis of assessment available to Ombudsmen and commissions in written or unwritten actual rules of law is often inadequate to evaluate and criticize censurable acts and decisions by the administration. In such situations, criticism and any recommendations for changed future practice are often based on the Ombudsman's or commission's concept of good administrative practice. Alongside the actual rules of law laid down for the work of the administration, which *ipso facto* can never be exhaustive, good administrative practice is thus a tool used by Ombudsmen and commissions to influence and develop the executive power's attitude to the relationship between citizen and administration. And the meaning of *good administrative practice* is continuously developed and refined by Ombudsmen and commissions.

This already suggests the primary characteristic of the concept. Good administrative practice is not developed in an abstract ethical, philosophical universe, but always in an actual historical, legal and ethical context, and for that reason the definition of good administrative practice will always vary in different countries and jurisdictions. There are wide variations ranging from the use of good administrative practice in connection with the assessment of the outcome of cases, which involves significant parts of the equality and proportionality principles as well as the abuse of power maxim and fairness evaluations, to definitions which like the Danish focus on the administration's case processing and contact with the citizens.

Because the concept is defined by its historical, ethical and legal context, good administrative practice is inherently dynamic. Good administrative practice naturally develops alongside that which it gauges – the ideal relationship between citizen and administration at the time and place in question.

The view of what an administration should do in relation to the citizens and serving them develops over time and unless the statements on good administrative practice made by Ombudsmen and commissions originate in generally accepted behavioral norms, they are unlikely to have much impact. This does not mean that Ombudsmen and other control bodies may not in certain situations have to make their own way in the wilderness of different opinions and interests in society and hazard an opinion on what should be decisive in complex cases.

Instead of trying to put forward an abstract definition of the concept of *good administrative practice*, which would in any case sooner or later be overtaken by developments, this article attempts to illustrate the evolution of the concept in Denmark and tries to get closer to its dynamic nature.

The Danish Ombudsman and Danish Administrative Law

As part of the 1997 amendment of the Ombudsman Act, the basis of assessment was described as follows in Section 21 of the Ombudsman Act:

"The Ombudsman shall assess whether any authorities or persons falling within his jurisdiction act in contravention of existing legislation or otherwise commit errors or derelictions in the discharge of their duties."

There has been no change to the application of the concept of good administrative practice, which is used in the same way as before.

Before the Public Administration Act and the Access to Public Administration Files Act came into force on 1 January 1987, general guidelines for the activities of the administration were to a large extent established through the development of unwritten legal principles in relation both to the administration's treatment of the citizens and their cases and to the legality and correctness of its decisions. In a close collaboration of the courts, the Ombudsman and the administration itself, the principles evolved from an apparently common normative basis.

The courts rarely considered the actual case processing by the administration and therefore mainly contributed to the development of legal principles relating to the substance of the requirements: proportionality, equality, abuse of power etc. The Ombudsman's statements contained several contributions to the establishment of what must be regarded as current administrative law outside the area of actual authority issues. Where the practice of the courts left questions about the legal position, the Ombudsman from the mid-1970s increasingly used the concept of good administrative practice to pick up and develop general principles.

Good Administrative Practice – Argumentation and Development

Guidance on Appeal – an example

In 1973 a lawyer wrote to the Ombudsman in connection with the Ministry of the Environment's refusal to consider his complaint about a local authority's compulsory purchase decision. The local authority had not given guidance on appeal and in its grounds the Ministry had merely noted that the statutory time limit for appeal had been exceeded. The Ombudsman recommended that the Ministry submit the complaint to an actual investigation as in his opinion it followed from "good administrative practice that the citizens should as far as possible be given information and guidance on available appeal options, especially in cases where the appeal rules are laid down in the law and where specific time-limits for lodging an appeal have been fixed …". This case was only the fourth time the concept of good administrative practice was used in the written practice of the Ombudsman office.

Previously this criterion had merely been used sporadically in the following three cases: in 1957 about the privatization of bus routes, where the Danish State Railways (DSB) had made no attempt to correct an actual misapprehension by the competent authority in the case; in 1963, where the Ombudsman stated that the Ministry of Education's failure to respond to reminders from the party in a very protracted case was contrary to good administrative practice; and finally in 1973, where the Ombudsman informed a County Tax Council that in accordance with good administrative practice its communication to a citizen about a projected tax increase should have included information about the opportunity to comment on the basis for the decision before the Council made its ruling.

In the early years, it was not possible to isolate *good administrative practice* from the many other concepts that the Ombudsman used as criteria. The concept was not used consistently and several different expressions were often used in cases with the same problem and the same assessment. Thus the Ombudsman Report for 1973 includes another case concerning guidance on appeal and calculation of time-limits and here the Ombudsman says that it would have been *most correct* if the National Tax Tribunal had given the complainant accurate guidance (1973). In the same way, the Report for 1974 uses the term that it would have been *best* if the authority had given guidance on appeal.

In the early reports, the Ombudsman's choice of words and concepts in cases involving criticism was mainly based on the key concepts of errors and derelictions: *it was an error* is used as a standard term. This is not strange, since the Ombudsman Act explicitly uses the terminology *errors and derelictions* to describe the basis of assessment. But *errors and derelictions* soon proved to be too crude when assessing the work of the administration. It was necessary to describe undesirable or inappropriate actions by the administration, which could not be characterized as actual errors or derelictions. For these, the Ombudsman used numerous terms and concepts, of which the most common were:

It would have been natural (1958), *the nature of the matter* (1957), *practical considerations* (1958), *should* (1955, 1959, 1956), *not unwarranted* (1956), *would have been advantageous* (1956), *very unfortunate* (1956, 1959), *desirable* (1956, 1974), *administratively unfortunate* (1959) – and then the quite central and frequent *in principle* (1961 and 1960), *on grounds of principle* (1955, 1956, 1959 and 1961), *wrong in principle* (1971), *points of principle of procedural law* (1971), *general principles* (1957), *follows from general legal principles* (1955 and 1959) and *a matter of administrative principle* (1956). Hearing of parties is justified by *general principles of procedural law* (1956 and 1959). *General principles of administrative law* are adduced in 1975 and as the basis of assessment in connection with an interpretation issue in 1960. *In accordance with administrative legal practice* is used in 1961 and about hearing of parties it is said for instance in 1972 that *there is, however, a tendency towards hearing of parties and hence this would have been in accordance with good administrative legal practice*. *Good administrative legal practice* also appears in 1974.

Before the Public Administration Act there were no general rules obliging the authorities to give guidance on appeal, but several ad hoc acts included provisions about it. The Danish Public Administration Act now contains the following provision in Section 25:

"Guidance on Appeal

25. Any decision delivered in written form where appeal lies to another administrative authority shall be accompanied by written guidance on the right to
appeal, stating where to appeal and informing of the procedure or lodging of ... "

The particular issue of guidance on appeal in connection with decisions which may be brought before the courts, now regulated by Section 25(2) of the Public Administration Act, was discussed by the Ombudsman for instance in the cases FOB 1956.150 and FOB 1956.159. Here he stated that a chief constable *should* have advised a citizen of the possibility of bringing a confiscation case before the courts under the Administration of Justice Act and that it was an *error* that a regiment in its decision on a national serviceman did not observe the provisions in the Army Administration of Justice Act concerning active guidance on appeal. Here the dividing line between *error* and *should* is very clear. The regiment's error was that they had failed to give statutory guidance on appeal.

In a case from 1973, which refers to good administrative practice in connection with guidance on appeal, there are traces of the foundation stones on which the good administrative practice argumentation was built in this early period. In previous statements concerning guidance on appeal, the Ombudsman had outlined the current legal position: there was no general rule concerning guidance on appeal in Danish law, but the ad hoc legislation included provisions obliging the authorities to give guidance on appeal in connection with decisions which did not fully sustain the citizens' claims. In 1964, the Ombudsman quoted a couple of acts containing guidance on appeal requirements and added that even without such rules of law, guidance on appeal was given in certain cases. A general guidance on appeal re-

quirement could be justified by legal protection considerations and the Ombudsman stated that it would be in accordance with administrative legal practice to give guidance on appeal. Since guidance on appeal was a recurrent problem, he asked the Ministry of Justice to include the issue in the considerations concerning the need for general rules on the giving of grounds to be made by a committee set up in 1964.

The committee's subsequent report of 1972 outlines current law and administrative practice. The report pointed out that the Public Administration Commission of 1946 also touched on the problem in its Seventh Report (pp. 31–32) and stated as the committee's opinion that in principle it was most correct to inform applicants of any appeal options in cases where the right to appeal was laid down in the law.

In other words, the idea of imposing a general obligation on the authorities to give guidance on appeal in cases which did not fully sustain the citizens' claims was not new and Report No. 657 showed that the Ombudsman's point of principle, which he repeated several times, was based on opinions and practice already existing to a certain extent in the culture of the administration.

In 1975, however, the concept of *good administrative practice* fell into place as a consistent term in connection with the guidance on appeal issue and the way was paved for carrying over the good administrative practice to the guidance on appeal provisions in the Public Administration Act. The Ombudsman said about the matter: "In my opinion it follows from good administrative practice that the citizens should as far as possible be given information and guidance on available appeal options, especially in cases where the appeal rules are laid down in the law and where specific time-limits for lodging an appeal have been fixed. In this connection, I refer to pp. 52–60 in Ministry of Justice Report No. 657/72 concerning the giving of grounds for administrative decisions and administrative recourse etc, and to the views I have expressed in several earlier cases, included the case described in my Report for 1973, pp. 386-390. The issue of general legislation covering the administration's case processing, including administrative right to appeal and guidance on appeal, is currently being considered by the Ministry of Justice on the basis of the above-mentioned Report. The comments on the Ministry of Justice's bill to amend the Access to Public Administration Files Act introduced in the Folketing on 26 February 1975 (bill concerning deferment of amendments to the Act from the sessional year 1975/76 to 1976/77) show that the Ministry believes that the result of its own considerations about general legislation covering the administration's case processing (including guidance on appeal) and the work of the Ministry of Justice's Committee on Amendment of the Access to Public Administration Files Act should probably in due course be combined into a Public Administration Act bill ..."

The wording was repeated in 1978, and in 1979 the Ombudsman then stated: "In accordance with these *[his earlier statements concerning guidance on appeal and good administrative practice]*, an administrative practice has developed – especially in recent years – where the predominant basic rule seems to be that authorities making decisions that may be appealed give guidance on appeal options along with the decision ..."

The circle had thus been closed. First the Ombudsman deduced that it would be in keeping with tendencies and principles in the administration's practice to give guidance on appeal. Report No. 657/1972 confirmed this tendency and in 1973 the concept of good administrative practice achieved independent existence as a basis of assessment in connection with guidance on appeal issues. In 1979 the Ombudsman observed that this good administrative practice was generally followed and this was explicitly expressed in for instance FOB 1983.83, where the Permanent Under-Secretary of State for Customs agreed with the

views of the Ombudsman and stated that in future the customs authorities would give individual guidance on appeal. The Department of Inland Revenue came to the same conclusion in 1984.

In 1988, Sections 25 and 26 of the Public Administration Act took over the substance of the good administrative practice as a basis of assessment. In his decision, the Ombudsman wrote: "Section 25, subsection (1) of the Public Administration Act stipulates the following for giving guidance on appeal *[quoting Section 25]*. As mentioned above, the obligation to give guidance on appeal does not apply if the decision fully sustains the citizen's claim ..."

The provisions in Sections 25 and 26 largely correspond to the legal position, which the Ombudsman characterized as good administrative practice before 1987. However, as the above-quoted preliminaries of the Public Administration Act show, the intention was that actual general rules of law concerning guidance on appeal should make it easier for the courts to draw legal conclusions when they were disregarded. In the Ministry of Justice Guide to the Public Administration Act, Item 144, the legal effect of failure to give guidance on appeal is explained: "Failure to give guidance on appeal cannot result in rendering decisions invalid. However, failure to give guidance on appeal may mean that the complaint cannot be rejected solely on the grounds that a time-limit for appeal has been exceeded or a prescribed procedure for lodging an appeal has not been followed ..."

This is in keeping with the Ombudsman's views as expressed in 1978, when he stated about the calculation of time-limits that the time limited for appeal can only be calculated from the moment when the complainant is informed not only of the decision itself, but also of the appeal authority and the appeal time-limit. However, an actual assessment of the error is required, as seen for instance in 1990, when the Danish Supreme Court disregarded the failure to give guidance on appeal under Section 26 because of the citizen's passivity.

Nonetheless, there is still room for good administrative practice as an independent basis of assessment in connection with guidance on appeal. In the Ministry of Justice Guide, Item 143, it is highlighted as good administrative practice to advise the citizens of the possibility of bringing a case before the courts in situations where legal proceedings immediately suggest themselves. Similarly, the Ombudsman has stated that although it is not obligatory to advise that decisions cannot be appealed to a higher authority, such negative guidance on appeal may be considerate to the party in the case and to the authority which risks receiving an appeal. If the citizens themselves ask, the situation is explicitly covered by the duty to give guidance on appeal in Section 7 of the Public Administration Act.

The guidance on appeal must be accurately worded. In 1994, the Ombudsman considered taking up a case on his own initiative in connection with an authority stating in its guidance on appeal that it generally was not possible to appeal the relevant decision. The authorities agreed that this wording was too imprecise and the own-initiative investigation therefore was not instigated.

Good Administrative Practice in Denmark

It is natural to try to collect the various cases concerning good administrative practice from the Ombudsman's practice into general categories. An article by the Danish professor at Copenhagen University Bent Christensen introduced this method. Bent Christensen analyzed the Ombudsman's basis of assessment before the concept of *good administrative practice* was systematically recognized. He divided the basis of assessment into two main categories: traditional administrative law and something else. This second category measures the administration's activity by other

criteria than the strictly legal ones, for instance requirements relating to staff behavior (including the requirements of decorum and qualification); case processing time, the provision by the administration of extensive and adequate information externally, the examination and correctness of the basis of decisions, internal planning, efficiency and finally consideration towards the citizens.

When former Ombudsman Lars Nordskov Nielsen in 1983 in a lecture systematized *The Citizens' Requirements of the Administration*, he used three categories: requirement of friendliness and consideration, requirement of openness and requirement of trust in the administration. In Report No. 1272 of 1994 concerning amendment of the Ombudsman Act, the headlines are: consideration, case processing time, guidance and extension of the rules of the Public Administration Act.

As Bent Christensen noted, any categorization must rest on a good deal of authorial interpretation. On the basis of Lars Nordskov Nielsen's categories, the requirements of good administrative practice are in the subsequent section systematized as requirements relating to friendliness and consideration towards the citizens, openness, the creation of trust and the planning of the administration's work in such a way that cases are processed quickly, thoroughly and with as few errors as possible.

The discussion includes cases which do not explicitly use the expression good administrative practice. As described, the concept was only systematized during the 1970s and the use of the concept in the Ombudsman's statements is still not entirely fixed. He still uses different terms: the administration *should*, it was *desirable that*, it was *best* or *most* correct etc, and it is probably symptomatic of the development that the indexes of the Ombudsman Reports did not include good administrative practice as a search topic until 1992.

Requirement that the Administration Should be Friendly and Considerate

It is good administrative practice to be friendly and considerate towards the citizens. The need to show understanding and courtesy towards the citizens for humanitarian reasons emerges in many of the inspections undertaken by the Ombudsman over the years. One example is FOB 1976.434, where the Ombudsman characterizes the structure of Nyborg State Prison as antiquated and unsatisfactory from treatment and humanitarian points of view. In 1988 about an inspection of Psychiatric Department 0 at the State University Hospital, the Ombudsman found it desirable for measures to be taken to provide the patients with a minimum of privacy, limit the number of moves between wards and offer more than one common room. It was completely unsatisfactory that the patients did not have the opportunity to get out into the fresh air at least once a day. Another example is FOB 1965.147, which dealt with the issue of prisoners' access to participate in services. The humanitarian principle also appears in ordinary complaint cases: thus a refusal of residence permit to a Polish woman should have emphasized the *human consequences* (1977).

The requirement of friendliness and consideration sets limits to the staff's behavior towards the citizens:

A female senior teacher was very displeased that the drivers on DSB's coaches between Ålborg and Frederikshavn allowed people to smoke in the front part of the coach, which was reserved for non-smokers. She had complained to one of the drivers and been treated impolitely; it is not stated how, but one can imagine the driver replying to the respectable teacher in a certain way. The driver admitted that his behavior might not have been sufficiently polite. He was severely reprimanded and the teacher received an apology (1955).

An elderly woman was arrested after a raid in Copenhagen's underworld and was to be taken to the

police station. She was not given the opportunity to put on outdoor clothes and waited on the pavement outside her home in her dressing gown, flannel nightgown and slippers for fifteen minutes before she was taken to the station. The Ombudsman could not find any circumstances justifying such treatment and expressed criticism (1956).

The behavior of the citizens may necessitate limiting their access to public offices and properties, but when these institutional powers are used, it must be on an objective basis and with due regard to courtesy and friendliness:

In 1958, a director was refused access to the Danish National Bank. He was told either to write or send a representative. The Ombudsman did not express criticism of the National Bank and in this connection attached importance to the director's behavior. It probably played an important part that the bank expressed itself with consideration and care when notifying the director of its decision. The case later resurfaced and 1959 shows that the relationship between the bank and the director had been normalized.

In 1990, the Ombudsman endorsed the Ministry of the Interior's assessment of a case where a young man was partly refused access to a local government office, but in 1978 the Ombudsman disagreed with a decision to expel a disabled person from a centre on the grounds of subversive activities.

When the administration writes to the citizens, the letters must be easy to understand and the language as far as possible adapted to the specific situation: see Ministry of Justice Guide to the Public Administration Act, Item 214, which among other things emphasises that the addressees of the text must be able to read and understand it easily. In accordance with this, the Ombudsman in 1980 pointed out the importance of making an application form for completion by senior citizens as simple as administratively acceptable.

But the requirement of friendliness also applies when the administration writes letters. It would have been desirable for the authorities not to address a subpoena to *a convict* in prison (1981). In the following examples, the Ombudsman expressed criticism of the wording of the letters:

"When you are not receiving wages or social security benefit, you should not start 'conning' money off your mother. I can see no other solution than for you to be kept by your male acquaintances." (1983).

"Referring to the above, we hereby seek to make you understand ... without otherwise examining your layman's legal reflections more closely ... that libelous accusations of this nature will not be tolerated in future ..." (1990).

"Finally, we would inform you that your threats and libelous allegations in no way influence the Ministry's consideration of your case. We would recommend – in your own interest that you choose more suitable language – especially when you as a foreign national address the Danish Minister of Education." (1998).

The administration must consider its language carefully, but of course also ensure that the letter is sent to the correct person and avoid situations such as the one in 1990, where a letter was sent to a deceased man and opened by his widow. The requirement of friendliness also applies to the letters written by the authorities to their staff. A director acknowledged that it was not particularly friendly to write to a subordinate: "If you are employed by the Inspectorate next year ... ", when the person in question had no plans to leave at the time of writing (1957). A decision in a disciplinary case was unfortunate because it was phrased in "very general, imprecise and – it seemed to me – partly rather 'emotive' (almost 'scolding') terms: 'irrational', 'without real justification', 'irresponsible' ..." (1982).

In line with this, it is good administrative practice to avoid unnecessarily denouncing or exposing the

citizens. A number of statements relate to the police and police procedures. The ideas are naturally closely connected with the fundamental principles behind the rules of professional secrecy and passing on of confidential information:

The Criminal Investigation Department used an open form to summon a man for examination as a witness in a murder case. The man, who suffered from nerves, lived with his fiancée. It was his fiancée who found the summons, which merely stated that the examination was about the murder case. With no explanations and the open form, the woman was naturally easily left in doubt about the man's role in the murder case. (1966).

A young man had informed the army medical board that he suffered from incontinence. The police had to summon his father and sister as witnesses in connection with the case. Again they were. summoned *for examination* using an open card with no further explanation of the reason. (1961).

The media revealed that the police had tried to arrest a teacher at his school to bring him before the bailiff's court. It later turned out that the teacher had been mistaken for another person. The case attracted the Ombudsman's attention, because there are police rules stating that citizens may only be arrested at their place of work if all other possibilities have been tried. (1972).

The police investigated a bookseller's circumstances, but the case was dropped. In connection with the investigation, the police had summoned a witness and mentioned the nature of the charge in the subpoena. The witness had subsequently tried to exploit his knowledge in relation to the bookseller. The Ombudsman recommended that witnesses should only be informed of charges when this was essential. (1955).

In two letters from prisoners, the prison authorities had included a leaflet, which showed the recipient that the letters came from prisoners. The authorities later regretted this procedure in a statement to the Ombudsman (1955).

But the principle not only applies to the police. Along the same lines as the above-mentioned cases is for instance FOB 1991.185, where a local authority had produced particularly noticeable envelopes for debt collection and a particularly conspicuous van to drive around to bad payers.

It is good administrative practice to try to empathize with the citizen and imagine how the other side may experience the actions of the administration:

In connection with a renewed petition for mercy from a life prisoner, the Ministry of Justice initiated a psychiatric examination of the prisoner. Referring to the medical assessment, the Ministry rejected the petition,. but the Minister of Justice had already talked to the media about the case. He had spoken in favour of mercy on the radio, but later in the day rejected it. With his first statements the Minister had created an expectation of mercy and the Ombudsman stated as a general rule that it would have been good administrative practice to notify the party of the decision before informing the public (1995).

Foster families are not parties to cases about the return of foster children to their natural parents. The authorities are therefore not legally obliged to involve the foster family in such cases. However, it is good administrative practice to inform the foster family well in advance of the return (1995).

In continuation of this, the authorities should be aware whether the citizens should be given the status of an actual party to the entire case or during particular phases of the case:

In connection with the appointment of a vicar, a parish council was divided into a majority and a minority each supporting its own candidate. The minority later lodged a complaint with the Ministry of Ecclesiastical Affairs and the Ombudsman. The Ombudsman did not express criticism of the Ministry for failing to treat the minority as a party to the case, but

in the present circumstances it would nonetheless have been in accordance with good administrative practice if the Ministry had heard the minority before making its decision (1989).

The authorities are responsible for ensuring that misunderstandings do not arise:

The chairman of a tribunal had had a conversation with an applicant for a post. The applicant subsequently alleged that the chairman had bullied him into withdrawing his application because he favored another candidate for the post. There was no proof, but the Ombudsman stated that the chairman should have realized that the conversation he had with the applicant might result in the latter withdrawing his application and therefore should not have had it (1971).

The requirement of friendliness applies to the administration generally and therefore also in relation to the staff. In 1977, the Ombudsman thus stated in a case concerning the extension of a teacher's probation period that the wish for hearing of parties found some support in Section 20 and Section 31(1) of the Public Servants Act and various other legal provisions, but another reason to hear the parties was the obligation of public authorities to pursue *considerate personnel administration*.

A lieutenant appointed on a contractual basis was discharged as a result of homosexual relationships with two privates. A later criminal case was dropped because of the state of the evidence. Although the discharge was based on considerations of principle, the Ombudsman found many indications that the authority tried to find the mildest possible decision. Referring to the lieutenant's long period of service and the fact that there had been no basis for instituting criminal proceedings, the Ombudsman considered it reasonable that the Ministry of Defense attempt to find suitable civilian work for the lieutenant (1955).

The principal of an approved school dismissed a permanently employed engineer. The Ombudsman stated that it would have been reasonable to issue a warning first (1956). In 1957, the Ombudsman gave a general outline of his views on warnings.

A DSB employee was downgraded from grade 17 to grade 10 because of misconduct. The man was approaching sixty and although the Ombudsman could not state that DSB was obliged to warn the employee of the proposed downgrading, it would have been appropriate to inform the man, thus enabling him to resign in order to avoid or limit the downgrading, so that his misconduct did not affect his pension (1978).

The requirement of a considerate personnel policy appeared in the following case when the Ballet Union at the Royal Theatre complained because a former artistic director was engaged as a guest producer of a ballet he had previously successfully staged. The complaint was signed by 47 of the company's 63 dancers and related to complaints some years earlier about, among other things, the artistic director's *relationships with several of the female dancers* and the subsequent institution of an official investigation, which was closed when the artistic director left the country. The theatre management argued, among other things, that the problems must be overcome for art's sake and did not conceal that it needed a success. The Ombudsman stated: "It is understandable that the case may have caused concern among the members of the Ballet Union. However, all things considered, I have to conclude that the theatre management in engaging the artistic director as a guest producer has not made a decision which I can criticize as unreasonable in relation to the ballet company and the public." (1958).

The theme is mentioned in a preliminary statement from 1999, where the Ombudsman says that the management naturally has the right to decide for instance which doctors to appoint at a hospital, but that it would be most in keeping with the principles of good public administration for the management to have involved the doctor who would be the head of

those appointed in the decision process. In 1998, he states that it is neither in accordance with good administrative practice nor reasonable expectations of public sector personnel policy to let a matter have consequences for an employee when there is doubt about what has been communicated in a superior-subordinate relationship.

Conversely, considerate personnel administration must obviously have its limits. In 1959, a disciplinary investigation should have been instituted in a case involving a high-ranking diplomat, and in 1957 the Ministry of Education should similarly have instituted an ordinary investigation as soon as it learned that a senior staff member had borrowed large sums from two temporary employees at the National Museum of Cultural History. In connection with a media story about an engineer in the Ministry for Greenland taking two years holiday with pay, the Ombudsman stated that as a general rule caution should be shown in appointing public servants with less than two years service to positions with a higher basic salary than the one indicated in Section 6(5) of the Public Servants Act (1956).

Requirement that the Administration Should be as Open as Possible

The issue of openness in the administration is controversial. The media themselves have a keen desire that disclosure applications should be processed quickly and the number of rejections limited to a minimum. In several cases, the Ombudsman has pointed out the possibilities of giving increased access to the files and in various ways supported the desire for a more open administration. In relation to the issue of continuing access to the files, the Ombudsman stated that continuing access may be granted within the terms of Section 4(1), second sentence, of the Access to Public Administration Files Act (1993). Among other things, openness around the problems and deliberations of public authorities is a prerequisite of the public involvement and social debate sometimes called for. In 1977, the Ombudsman thus stated his wish that the authorities, in this case the Danish Arts Foundation, "provide the public with information about the basis of decisions whose 'correctness' is questioned or contested in the public debate, as such information may contribute to a better foundation for that debate."

A journalist was refused access to the customs authorities' database list of possibly asset-stripped companies. The refusal was made on the wrong legal basis and the Ombudsman wrote: "However, it follows from good administrative practice that caution should be shown in refusing media requests for access to examine all cases of a particular nature or cases logged during a particular period. Unless otherwise stipulated by the rules concerning. professional secrecy ..." (1995).

This starting point was followed up in FOB 1998.403 in a case concerning disclosure of an accident register in the Danish Medicines Agency, where the Ombudsman states: "In assessing whether a journalist should be given access to the files even though the cases have not been identified, cf. Section 4(3) of the Access to Public Administration Files Act, it may in my opinion also be taken into account whether finding the cases or documents would present significant difficulties or considerable administrative inconvenience."

The relationship between the administration and the media has occasioned several questions:

An employers' association lodged a complaint against a branch manager of the Danish Working Environment Service, who had made critical comments to the media about a particular company and the trade generally. The Ombudsman stated that as a starting point the authorities are entitled to publish cases which may be disclosed under the rules of the Access to Public Administration Files Act. The authorities are not generally precluded from trying to in-

fluence the citizens and those subject to law through the media (1996).

A principal was dismissed after an official investigation. The press later published an article based on an interview with the social services director. It was difficult to distinguish between actual quotes and the words of the journalist and the headline was, for instance, *Religious fanaticism behind principal's dismissal*. During the interview, the social services director should have made it plain that the principal's religious persuasion had nothing to do with the dismissal (1970).

In connection with a major bank case, the director of the bank made incorrect statements about the bank's situation. The Government Inspectorate of Banks and Saving Banks reprimanded the director for this, but in addition the Ombudsman believed it would have been most correct if the Inspectorate had publicly denied the inaccurate information about its approval of the bank's activities (1958).

Some statements to the press about a late county highway surveyor had been unfortunately phrased, as the wording suggested that the inspector had either been dishonest or failed to act in the economic interest of the public. The statements were even more regrettable as a police investigation had established that the inspector had not committed any offence (1957).

A musician lodged a complaint because the police had made condescending and incorrect allegations against him during a press conference. The Ombudsman drew attention to the importance of ensuring that statements to the press. are made in such a way that misunderstandings and ambiguities are avoided (1955).

About the administration's information to the media about cases which had been or were being considered, the Ombudsman in 1978 said: "Both the nature and extent of this information activity – which is thus outside the scope of the administration authorities' obligations under the Access to Public Administration Files Act – must largely be at the discretion of the individual authority. This also applies to the question of which level of the administrative hierarchy should undertake the above-mentioned service-style information activity in relation to the media ..."

In 1977, the Ombudsman recommended that the Ministry of the Interior consider the desirability of establishing rules for the health and social services concerning for instance patients' right to talk to the press while hospitalized.

An open administration is characterized by its will actively to inform and advise externally in relation to the citizens and internally in relation to other parts of the system. Before Section 7 of the Public Administration Act came into force, the obligation to give the citizens adequate guidance appeared in numerous cases.

In 1957, the Ombudsman thus stated that Randers County had made an error during a negotiation of conditions by failing to inform the couple that visiting rights agreements were not binding on the authorities.

As there was public interest in easy access to the police regulations, the Ombudsman asked the Ministry of Justice to consider the possibility of not only publishing the regulations in the Danish Legal Gazette, but also having them printed at the public expense for sale to private individuals (1959).

Although the Ombudsman could not criticize the National Board of Health's view on the case, the complainant had had reasonable cause to raise the question of the Board's obligation to give guidance to a doctor's patients about various preparations (1959).

In 1976, the Ombudsman recommended that the Ministry of Justice advise guest workers who were granted residence permits that the permit would automatically lapse if they remained abroad for more than six months.

Similar cases are found in 1978 about guidance in connection with confirmation grants, in 1978 about guidance to pensioners and in 1977 about guidance on the sick pay system.

A more general formulation is found in 1977, where the importance of adequately informing applicants is stressed. 1976 and 1977 contain cases concerning the importance of the authorities advising of the risk of *reformatio in pejus* in complaint cases. FOB 1978.340 and FOB 1978.422 stress the importance of giving guidance to the courts of first instance.

Of course there were also limits to the obligation to give guidance before Section 7 of the Public Administration Act. A police sergeant had advised an advertising agency about the taxation rules. That was not a success. The advice was incorrect and the police took steps to prevent a repetition of the mistake (1958). In a press statement about a cod-fishing ban, the Danish High Commissioner for Greenland had incorrectly implied that the necessary legal basis for the ban existed (1980). In 1980, the Ombudsman stated that it would have been desirable for the social authorities to have advised a parent couple about the relevant rules in relation to the custody issue, but found no grounds for taking further action as it must be taken into account that a lawyer had represented both parties during the case.

Cases after the Public Administration Act came into force include FOB 1990.240 concerning the authorities' obligation to translate an important letter to a Turkish guest worker. In 1989, the Ombudsman criticized the National Board of Industrial Injuries for failing to inform a complainant about obvious possibilities of getting compensation under the Compensation Liability Act and in 1989 and 1991, the Ombudsman demanded that the authorities provide the name of caseworkers at the citizens' request. In FOB 1989.168, the Ombudsman touches on the consequences of guidance errors in connection with a young woman's attendance at the social services department.

Requirement that the Administration Should Create Trust

Trust between citizen and administration is based on a wide range of circumstances. It is surely beyond any practical doubt that the administration will solve its tasks in the best way and the citizens are in a better position if a relationship of trust is created. Numerous factors, general and particular, may affect the trust between citizen and administration. In 1982, a local authority had allowed construction activity to start before the necessary permissions had been granted and in 1980, the Ombudsman recommended that DSB introduce rules similar to those existing for the police concerning the sale of unclaimed lost property.

FOB 1978.631 reports a case involving council staff' s prior claim to day care in local authority institutions, and FOB 1992.222 reports a case concerning slowness to acknowledge errors made in the system. The Ombudsman stated that by its slowness to acknowledge some circumstances pointed out by the complainant, the authority failed to meet the requirements of good administrative practice.

The principle of trust often appears together with one of the other fundamental considerations: friendliness or openness:

A prison had included a leaflet in letters from the prisoners. The leaflet enabled the recipient to see that the letters came from prisoners (1955).

In a maintenance assessment case, the police had appeared at the complainant's residence to question him about his finances. The complainant had not been given advance warning of the visit (1957).

A local authority wished to make its collection of arrears more efficient. It had a special car painted in conspicuous colors with the text *debt collection*.

Envelopes for debtors were clearly marked in the same way. Among other things, the Ombudsman stated that as a general principle, public authorities must act correctly and considerately in every kind of case (1991).

Of course the behavior of the staff can increase or reduce the trust in the administration. The staff should therefore for instance remember to telephone if they have promised the citizen to do so (1957).

In a case concerning the tying-up of an inheritance, the Ombudsman stated that factual considerations dictate that the heir should not be contacted about the confirmation of tying-up provisions during the testator's lifetime (1958).

The qualification rules partly originate in considerations of trust, but various situations cannot be picked up by the rules. Here the requirements of good administrative practice are far-reaching:

A police sergeant paid the fine of a former informant. Such *positive* actions can also impair trust (1955).

FOB 1955.151 considers whether a university teacher may accept cigars from the students 'in not insignificant numbers' (1955).

Without considering the case in detail, the Ombudsman emphasized the correctness of investigating a case concerning the integrity of the police with particular seriousness – especially as any negligence might endanger road safety (FOB 1956.118).

In FOB 1979.97, the Ombudsman stated that public employees using the authorities' letterhead for private correspondence must make it unequivocally clear to the recipient that the letter in question was private.

Obtaining proof and avoiding doubt about what has been done and said in a case also create trust:

In a case concerning waiting times for prisoners wanting to speak to the prison staff, the Ombudsman touched on the obligation to obtain proof if the prisoners withdrew complaints or applications. He referred to the possibility of asking the prisoners to sign a note confirming the withdrawal request (FOB 1977.288).

A National Tax Tribunal employee had had oral communication with a taxpayer about a case. Eight months then passed with new investigations, including oral questions to other authorities. It would have been most correct if the employee had made notes of his conversations with the other authorities about his proposed recommendation for the decision (FOB 1958.216).

It was impossible to establish retrospectively when the National Tax Tribunal had handed over a case to the General Commissioners of Taxes. It was regrettable that not even a brief note had been made in the case about some negotiations conducted with the Commissioners and that it was impossible to say when the case had been handed over (FOB 1959.47).

In FOB 1989.138, the Danish Environmental Protection Agency acting as the secretariat of a fund had failed to make a note of a call to the complainant about suspending the case pending further information from him. The Ombudsman stated that the duty to make notes under Section 6 of the Access to Public Administration Files Act is a manifestation of a general legal principle obliging public authorities to make notes of all significant transactions in a case, which do not appear from the file.

Entirely in line with this case are several subsequent statements, for instance FOB 1994.424, where the Ombudsman criticized the Ministry of Foreign Affairs for its failure to make a note of informing the complainant during a conversation that he was unlikely to receive a reply to his disclosure request within the ten-day deadline.

During the Minister of Taxation's Thursday reception, the complainant and his lawyer had been given the impression that a final decision on their case would not be made until a new meeting had been held and the Minister had had time to study the case. That did not happen – a decision was made and the

Ombudsman referred to Section 12 of the Access to Public Administration Files Act then in force, corresponding to the provision in Section 21 of the current Public Administration Act (1981).

Involving the citizens in the case as much as possible creates trust. It is therefore good administrative practice to involve the citizens and especially the parties to the case. This viewpoint was expressed in several Ombudsman statements before actual rules about it were laid down in Sections 19-21 of the Public Administration Act. The principle is seen for instance in 1980 in a case concerning a father's access to his children. The Ombudsman took it for granted that a psychiatrist's statement about the father, which formed the basis of the decision, must not be based solely on observations of the mother and one of the children. This was *unreasonable* treatment.

In 1955, the hearing of parties principle is related to the inquisitorial principle: in the case of a Ministry of Foreign Affairs employee, the Commission should have questioned the employee and put before him the entire background before making a recommendation: "This was the only way to make completely sure the Commission did not take its decision on the basis on incomplete evidence."

The connection with the inquisitorial principle is maintained in several cases, including FOB 1956.133, FOB 1956.177 and FOB 1959.41. FOB 1961.75 touches on the principle corresponding to the current provision in Section 21 of the Public Administration Act: on grounds of principle it would have been most correct for the customs authorities to meet an importer's request for a discussion

of a customs case, even though this definitely would not have changed the decision.

In 1977, the expression *good administrative practice* is used in connection with the hearing of parties principle. It is phrased as follows: "In several cases I have expressed the opinion that I consider it most in keeping with good administrative practice for an authority to inform the complainant or applicant of factual information of significant importance to the final decision received during the processing of a complaint or application, if the latter is not already aware that the authority has received this information ...". The wording is repeated in 1979. In 1980, hearing of parties is connected with the information obligation and the Ombudsman stated: "The special duty which an authority in my opinion has to ensure that this information is correct may be met in other ways than by making a survey. It could for instance be done by putting the evidence before the person who as applicant or complainant is a party to the case (contradiction)." The Ombudsman added that in numerous cases he had stated that it was *most correct* to hear the parties if the conditions were present. In 1982 (p.133), the term good administrative practice finally disappeared from the hearing of parties' argumentation. Now the Ombudsman said that in several instances he had stated as his conception of law that in some cases the authorities must hear the party. In 1986, he states that the hearing of parties rules of the Public Administration Act are essentially simply a codification of an existing accepted legal principle concerning hearing of parties. This, possibly debatable, point of view was repeated for instance in FOB 1987.89.

In 1977, the Ombudsman speaks in favor of the need to hear the parties before making a decision with delaying effect on a complaint. In 1978 and 1987, the Ombudsman discussed the hearing of parties issue in connection with dismissals. FOB 1993.348 deals with hearing of parties in cases, which are not decision cases, but nonetheless informed by a need to involve the parties. FOB 1992.312 concerns information and hearing of applicants about the composition of a selection panel. Similarly, it is good administrative practice to inform citizens that an investigation has been instituted as soon as the need for concealment no longer applies (1997).

Trust is also created for instance by obtaining consent to important transactions even if it is not legally required:

In 1991, the Inland Revenue Department had charged back a wrongly paid out sum by arrangement with the Savings Banks Association, but without involving the citizen. The authorities could have informed the citizens affected and fixed a date for voluntary payment. If the money was not repaid, the case could then be consigned for collection.

In 1997, the Ombudsman commented on the authorities' non-statutory right to extend the scope of a complaint case. The Unemployment Benefit Committee had extended a complaint case and among other things obtained file information about the complainant without his consent – precisely what he wanted to avoid. The Ombudsman stated that in general consent must be obtained before the authorities procure information about a complainant's private affairs.

Trust is also consolidated by giving the citizen broad access to being represented or assisted by others:

On behalf of the National Board of Health, three doctors were to investigate the quality of a particular kind of hip operation. Former patients were summoned for the investigation and allowed to bring one of their *nearest*. A case resulted and the authorities argued that Section 8 of the Public Administration Act did not apply at all as it was not a decision case. The Ombudsman replied that it is a fundamental principle of Danish administrative law that a party to a case may at any time be represented or assisted by others (1997).

Requirement that the Administration Should be Efficient, with Good Routines etc.

Good administrative practice is not only directed at the administration's relationship with the citizens; it also covers requirements relating to the internal conditions of the administration, and good case processing routines for instance help to meet the requirements accruing from the legal principle that cases must be adequately elucidated before a decision is made. Similarly, orderly conditions in the administration make it easier for everyone to decide on any disclosure issues which might arise.

It is therefore good administrative practice to have orderly conditions, including efficient routines: in FOB 1967.102, 1959.67, 1959.199 and 1961.178 the Ombudsman recommended efficient procedures serving to reduce waste of time during the case processing. He based his recommendation on the Arrears Control Order from the Prime Minister's Office of 11 January 1951.

In 1956, the Ombudsman suggested using temporary staff during scheduled holidays. FOB 1957.197, FOB 1958.158 and FOB 1982.101 contain examples of unnecessary case processing steps. The Ministry of Justice Guide, Item 202ff, now covers such unnecessary procedures.

Proper records should be kept; in 1974, the Ombudsman stated: "In my opinion good administrative practice dictates that as far as possible incoming mail should be logged immediately after receipt (the same or the following day) and thus before the relevant documents are passed on for processing." This point of view is followed up for instance in 1993. The issue of logging and good administrative practice has been touched on repeatedly in Danish administration history. The first instance was in a directive of 22 August 1740 in connection with cases that had disappeared in the Exchequer. Logging and orderly conditions were also themes in the Administration Commission's Report of 1923, in the work of the Public Administration Commission from 1946 and again in the Administration Committee of 1960. The Danish National Archives followed up with rules and guidelines for establishing archives and logging systems.

Registers of unprocessed cases must be carefully kept. A letter from a member of parliament to the Minister of the Interior about the appointment of a county head of department was destroyed immediately after it had been read. The letter should have been added to the file (FOB 1980.242).

Manifest errors must naturally be avoided: see for instance FOB 1971.142, 1958.177, 1959.23 or FOB 1956.134 where a letter by an oversight was not sent. In 1982, the Danish State Education Grant and Loan Scheme Authority sent a reminder even though it had previously prolonged the time limit until a complaint case had been processed. FOB 1983.93 deals with a situation where outstanding tax became due as a result of an error made by the taxation authorities. The Ombudsman recommended that the authorities apply the provision in Section 37 of the Tax Act, allowing whole or partial tax remission, even though remission is normally granted only in straitened circumstances.

A publicly advertised meeting may not be summarily cancelled.

Careless work must be combated and cases may not be thrown out. If a case has disappeared and the party asks about it, the authorities should admit that the case could not be found.

The problems caused by erroneous shelving internally and in relation to the citizens are mentioned several times, for instance in FOB 1958.38, 1955.21, 1957.213 and 1958.246. Letters may not be returned unopened, but must be answered.

Shelving of cases must be announced. Other important decisions must likewise be communicated to the citizen. Similarly, it is in accordance with good administrative practice to inform the citizen if the authority is not prepared to wait any longer for various actions or information.

In many cases, the administration should adopt decisions and communication in writing and signatures should be accompanied by a signature stamp (FOB 1959.201), which refers to a Circular from the Prime Minister's Office of 14 November 1949. The Circular was reissued on 25 June 1960. This again illustrates how good administrative practice to a great extent bases its argumentation on norms already existing in the administration.

The authorities must prioritize efficiently and it may be necessary to remind staff of generally prevailing routines in the authority. Conversely, there is. a general aversion to unnecessary red tape. Naturally, efficiency must not impair the guarantee that the decisions made are right and factually correct.

Numerous routines help safeguard the other principles on which good administrative practice is based, cf. above concerning friendliness, trust and openness. As a starting point, enclosures should be returned to the party, especially if this has been repeatedly requested. The authorities are also expected to reply to reminders. The Ombudsman has commented on this issue in numerous cases, including FOB 1996.129. Previously he could refer to the Circular from the Prime Minister's Office of 12 October 1973; now the reference is to the Ministry of Justice Guide, Items 206-208, which is the equivalent of this view. In continuation of this, good administrative practice dictates for instance that the party is informed if a case is making slow progress. This is another area where good administrative practice is derived from attitudes already existing in the administration. In 1983, the Ombudsman referred to Circular No. 221 from the Prime Minister's Office of 11 September 1978 concerning notification when cases are making slow progress.

It would also have been best if the Inland Revenue Department had informed a lawyer that his request for oral procedure in a case had been filed too late (1980). The authorities are expected to keep track of the cases themselves, which includes sending reminders when there has been no reply to submissions etc.

Conclusion

The Ombudsman has not created the substance of good administrative practice, but systematized and developed it on the basis of already existing norms. It is rooted in values fundamental to the citizens of a democratic society.

The concept is dynamic. Thus some elements of good administrative practice became actual rules of law with the Access to Public Administration Files Act and the Public Administration Act of 1987. Good administrative practice has spread and in this country the development of good practice is continued not only by the Ombudsman, but also by the National Audit Office, the Data Supervision Authority and many others.

PART 6

GENERAL INFORMATION

Principal Features of the Development of the Danish Ombudsman Institution

By Jon Andersen, *Deputy Permanent Secretary, Office of the Danish Parliamentary Ombudsman*

The Early Years of the Institution

(1955-1962)

The Danish Ombudsman institution started its activities on 1 April 1955. The first Danish Ombudsman, Stephan Hurwitz, thereby began his important work for the Danish institution and for the dissemination of the concept to the rest of the world. During this period, the office was organised, the authority of the institution was clarified, case processing routines were established, the institution's role as a respected constitutional authority was developed and the Ombudsman became known to the Danish public. The Annual Report to Parliament began to obtain the status of a body of administrative law decisions. The first inspections of prisons, hospitals, military barracks, etc. started. During this period, awareness of the institution was also disseminated through articles and lectures abroad.

Stabilisation

(1962-1971)

On 1 April 1962, the Ombudsman's authority was partially extended to cover local authorities. During this period, the position of the Ombudsman institution within the Danish constitutional system was consolidated. The influence from other countries' interest in this type of control continued and led to the establishment of Ombudsman institutions in New Zealand, Tanzania and the UK.

Further Development

(1971-1981)

Hurwitz' successor, Lars Nordskov-Nielsen, was Ombudsman from 1971 to 1981. During this period, the institution's position in Danish administrative law was cemented and extended. The number of cases grew considerably, the number of staff increased, the Ombudsman's own case processing was changed in a more judicial direction. Everyone in the country became aware of the Ombudsman. At the start of the period, the first Danish Access to Public Administration Files Act came into force, which was to affect the work of the Ombudsman institution. During this period, the Danish administration system was completely reorganised and major changes were made to the sharing of responsibilities between central and local authorities. New areas such as environmental law and social law began to play a larger role than before. Especially social cases became more prominent than before. The number of inspections increased and their content changed. Denmark's entry into the EU in 1972 did not play any major part, just as the international collaboration generally was less important.

Transition to the Public Administration Act

(1981-1987)

The third Ombudsmand, Niels Eilschou Holm, took up the position when almost fifty years' discussion about the introduction of a Public Administration Act ended and a Public Administration Bill was prepared. This period was dominated by the repeated and lengthy readings of the Bill in Parliament, until it

was finally passed in 1985. It became a transitional period which did not allow much Ombudsman activism within administrative law. By contrast, the Access to Public Administration Files Act of 1970 provided the basis for a number of significant and fundamental statements on the citizens' right of access to files. The European Human Rights Convention became part of the Ombudsman's basis of decision. The Ombudsman indicated that he would not include EU law in his consideration of individual cases because an institution such as this dit not have the option of preliminary presentation of cases to the European Court. The Annual Report to Parliament was revised and made more accessible.

The First Years after the Introduction of the Public Administration Act

(1987-1997)

In 1987, Hans Gammeltoft-Hansen became the new Ombudsman. The Public Administration Act came into force at the same time as the change of Ombudsman and the institution became engaged in interpreting and amplifying the relatively brief and generally worded provisions of the Act. The number of cases increased and the institution grew. In particular, the institution received an ever increasing number of complaints from foreigners about decisions on residence in the country. A single case – the Tamil Case, which was initiated in 1988 and ended in 1994 when the then Minister of Justice was given a four months' suspended prison sentence by the High Court of the Realm for his involvement in the case – had a significant bearing on the institution's general position and reputation in society. The continuing decentralisation of the administration reduced the Ombudsman's control for jurisdiction reasons and among other things resulted in fewer inspections. A new method of investigation – own-initiative investigations – was developed. A major language project, comprising both the individual letters and the Annual Report, was initiated. The institution's advisory function in relation to citizens and other authorities was systematised and increased. The collaboration with foreign organisations and institutions also prospered.

The Period after the New Ombudsman Act

(1997-2004)

In January 1997, a new Ombudsman Act came into force. This Act resolved a number of legalistic problems and gave the Ombudsman the same powers in relation to local authorities as he had in relation to other administration authorities. The Ombudsman's authority in relation to the Refugee Appeals Board was reduced. It was clarified that the Ombudsman must assess cases on the basis of existing law in its entirety, including EU law. A legal assumption that the Ombudsman will undertake systematic inspections of county gaols was established and the own initiative investigations were given statute form. All this resulted in a major increase in the institution's workload and an increase and reorganisation of the staff. The Ombudsman's use of law was influenced by the significant increase in the number of administrative law cases brought before the courts and the continuing internationalisation of the sources of law. Digital technology was introduced throughout the public sector, which was to affect the Ombudsman's activities generally. The Parliamentary Legal Committee's meeting on the Annual Report was opened to the public. The international collaboration became more extensive and assumed new forms.