



Annual Report

2013







THE DANISH
PARLIAMENTARY
OMBUDSMAN



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TO PARLIAMENT

In accordance with section 11(1) and (2) of the Parliamentary Ombudsman Act (consolidating Act no. 349 of 22 March 2013), I am hereby submitting my Annual Report for the year 2013.

Copenhagen, September 2014



JØRGEN STEEN SØRENSEN





2013 AT THE OMBUDSMAN INSTITUTION



Jørgen Steen Sørensen
Parliamentary Ombudsman

In my Annual Report for 2012 – my first year as Ombudsman – I outlined a number of ideas for modernising the institution. Many of those ideas were given more concrete expression and implemented in 2013, not least with regard to issues of structure, resources and efficiency. I will elaborate on this in more detail under the heading *Faster processing of citizens' cases*.

The year was also marked by the new Access to Public Administration Files Act. Under the heading *The new Access to Public Administration Files Act*, I will describe our cogitations and initiatives with regard to the new Act.

As in previous years, there were cases in 2013 which stood out and drew special attention. I will outline a handful of these under the heading *Special cases in 2013*, and finally, under the heading *The discussion on a 'shift in norms' in the Civil Service*, I will reflect on the debate which – starting in 2013 – has emerged in the wake of a number of much-discussed cases involving key government departments.

There were many other developments at the Ombudsman institution in 2013 which I am not able to go into in this article. Among other things, 2013 was the first whole year of operations for the new Children's Division; a new concept for our monitoring activities was implemented; and we took some important steps with regard to our international activities, not least in the form of collaboration agreements with central Chinese authorities. More details about these developments can be found elsewhere in this Annual Report.

FASTER PROCESSING OF CITIZENS' CASES

Long case processing times in the public administration are a general and significant problem – and are often the subject of criticism from the Ombudsman.

But long case processing times are also a problem for us here at the Ombudsman institution. We do conclude by far the majority of cases within a reasonable time, but we must recognise that we have problems especially when it comes to complex cases, where the case processing time may easily run into several months. It has therefore been important to us to focus on optimising case processes and, more generally, to focus on speed, efficiency and optimal resource usage – of course without lowering our professional, legal, standards in any way.

In 2013, we took a number of important steps in relation to these objectives. During the first six months of the year, a consultancy firm carried out a comprehensive analysis of the overall structure of the institution, our case processes and generally our work practices. This led to a large number of recommendations for, among other things, a new organisation structure, new financial and resource management procedures and new principles for operational control, case allocation and case processes.

Following the analysis carried out by the consultancy firm, we continued the process by ourselves, and towards the end of the year, we made an overall decision on important changes in our practical *modus operandi*. We decided, among other things, to divide the institution into a legal and an administrative department, to reduce the number of divisions, to introduce new principles for operational control and to implement a comprehensive concept for management by objectives and results. The aim is not only to shorten case processing times but also to free resources so that we may, among other things, raise more own-initiative cases – and generally to set an example to the public administration also in the practical-administrative field.

The practical implementation of the decisions has taken place gradually since 1 February 2014. These are comprehensive changes, and it will take time to fine-tune all aspects of our new *modus operandi*. But I have no doubt that the changes will mean genuine improvements of the Ombudsman institution's results in the long run.

THE NEW ACCESS TO PUBLIC ADMINISTRATION FILES ACT

One of the big legal policy issues in 2013 was the new Access to Public Administration Files Act which was passed in June 2013.

In the months leading up to the passing of the Act, there was a public debate of an intensity seldom seen on issues of legal policy. The debate focused in particular on the provisions in section 24 of the Act (the so-called rule on Civil

Service advice and assistance to government ministers) and section 27(ii) (the so-called rule on Civil Service advice and assistance to Members of Parliament). Did these new provisions represent sensible adjustments of the Act to changed structures and processes within the Civil Service, or were they gratuitous restrictions on a fundamental principle of free access to public records? There were many opinions on the issue, but the bill was passed without any amendments.

Obviously, it is not for an ombudsman institution to take positions on such fundamental political issues. We have, however, applied many resources on preparing the institution for the coming into force of the Act. This is because very few cases on access to public records are brought before the courts, and consequently, the Ombudsman is – and always has been – the central supervisory body in this field.

One of the aspects on which we used a lot of time was the matching of expectations with the relevant players, including the media: Which aspects of the Act would it make sense to have tested by the Ombudsman, and which issues were more or less decided with Parliament's passing of the Act? These were questions we discussed with the Danish Union of Journalists and the Association of Danish Media, among others.

This also gave us the opportunity to explain that we will give very high priority to cases involving the new Act, but that the Act also implies that the Ombudsman is not to apply an especially 'access-friendly' interpretation in individual cases. We must simply reach those conclusions which we must assume, based on our usual methodology, that Parliament has intended. However, this also implies that there are areas where it is to be particularly expected that we will 'test' the public authorities, for instance in questions regarding the use of the principle of increased access to files and in questions regarding rapid case processing.

We had similar discussions with key government departments and Local Government Denmark, and not least, we engaged in extensive teaching and seminar activities for a broad section of public authority employees. We also provided general assistance to public authorities with the preparation of guidelines etc. on the new Act.

Optimisation of our own administrative procedures in cases about access to public records played an important part in our preparations for the coming into force of the Act. It is a central message of the new Act that the public authorities must be very fast in deciding on requests for access to files, and though the Act – and its case processing deadlines – does not apply to the Ombudsman, we have made a point of matching the same demands to the greatest possible

extent. This means, among other things, that we aim to conclude our cases at the latest 20 working days from the time when they are ready for assessment (in complicated cases, our aim is 40 working days).

During the political negotiations about the new Act, it was agreed that three years after the coming into force of the Act, Parliament's Legal Affairs Committee would ask the Ombudsman to report on the practices of the public authorities regarding the provisions of section 24 and section 27(ii) of the Act. This gave rise to uncertainty in the media about the Ombudsman's actual role, and we emphasised that we are solely required to report on whether the practices of the public authorities are in accordance with the Act, and not whether the provisions of the Act are appropriate. The latter is a purely political issue, which is for Parliament and not the Ombudsman to decide.

SPECIAL CASES IN 2013

The brief summaries inserted here and there throughout this Annual Report reflect the diversity of issues which we deal with on a daily basis. In the following, I will outline some of the cases from 2013 which stood out in one way or another¹:

Many of our cases concern *foreign nationals (aliens)* in Denmark, and they provide an insight into the conditions for a group of vulnerable people.

In one case, *an HIV-infected woman from West Africa* was about to be deported from Denmark, but she asserted that she was in successful treatment which she feared would not be available in her home country (2013-25). However, the Ministry for Justice refused her application for a humanitarian residence permit without investigating whether treatment options were in fact available in the woman's home country. This was obviously a very serious matter – one might have doubts about the woman's future prospects – but the authorities had followed a detailed practice on when to investigate treatment availability in the applicant's home country, and we had to consider this practice to have been sanctioned by Parliament. In addition, the practice on this subject by the European Court of Human Rights is very restrictive, and consequently, we did not have grounds for criticising the authorities' practice. So we were unable to help the woman.

1) For a more detailed examination (in Danish only) of the legal aspects of selected Ombudsman statements published in 2013, see the article 'Udtalelser om almindelige forvaltningsretlige spørgsmål' ('Statements on general issues pertaining to administrative law') under 'Ombudsmandens beretning 2013' at www.ombudsmanden.dk.

We were, however, able to help in another case (2013-18), where a so-called '*visa penalty period*' was imposed on an only 11-month-old child, meaning that the child was banned from getting a visa to Denmark for a specific period of time. The child's mother came from Kosovo and had given birth during a visa stay in Denmark, but the visa had expired by the time she left Denmark. She was therefore given a visa penalty period, but so was the child, which meant, among other things, that for the next five years, the child was precluded from visiting his father in Denmark. This was an error on the part of the authorities, and as a result of the case, the authorities will in future explicitly state that a visa penalty period imposed on parents does not apply to underage children. This case shows that children have independent rights, also when it comes to visas.

Social sector cases are another category of cases involving people who live under difficult conditions. This therefore constitutes a very large case group for the Ombudsman institution, and luckily we are able to help in a number of cases. In one of those cases, an elderly upper secondary school teacher had been *refused early retirement benefit* because the authorities did not find that he fulfilled the requirement of being available for work (2013-11). However, it turned out that the teacher's circumstances had not been adequately investigated, and we recommended that the case be reopened. Our recommendation was followed, and the authorities recognised the teacher's right to early retirement benefit.

On a more general level, the 2012 Annual Report told of the issues in relation to municipalities' *combating of social benefit fraud*. There is no doubt that the municipalities experience problems in effectively targeting fraud and unwarranted payments while at the same time complying with fundamental legal principles.

This was also a focus area for us in 2013. Among others, we investigated a much-discussed case about a woman who was ordered to repay social benefits because, according to the authorities, she was not 'effectively single' and had therefore 'in bad faith' received too much in benefit payments (2013-4). The decision was based, among other things, on an anonymous tip-off, and we emphasised that such a tip-off may well give the authorities grounds for starting an investigation but it cannot in itself form part of the evidence in a case. The case also gave us the opportunity to sum up some fundamental principles which the authorities must pay special attention to, such as objective case elucidation, self-incrimination and the duty to provide guidance.

For that matter, the municipalities do seem to know that this issue causes problems, and throughout 2013, we had the opportunity to discuss the problems with a number of municipalities.

Another vulnerable social group consists of *children and juveniles placed in, for instance, 24-hour residential care facilities, accommodation facilities and foster families*. A number of monitoring visits revealed that various coercive measures are used without a clear legal basis towards the juveniles – such as having to submit a urine sample on suspicion of drug use, and restrictions on their access to mobile telephone, computer and Internet. We raised the issue in general terms with the Minister for Social Affairs, with the result that a committee was appointed to report on the problems and propose new legislation. A clarification of this difficult issue is needed, and it is also fundamentally right that Parliament gets the opportunity to take a position on the matter.

Cases involving *access to public files* were also a comparatively large part of our caseload in 2013.

A much-discussed case concerned the right of the Danish Union of Teachers to access to the documents of a working group tasked by the public employers with preparing for *the collective bargaining negotiations with the teachers* (2013-10). One of the reasons stated for denying the Union access was that the working group's documents had not been part of the preparations for the collective bargaining negotiations proper. This appeared surprising to us and caused us to say, among other things, that the case left the impression that plans might have been made and steps taken precisely with the aim to avoid having to give access to files. We pointed out that such 'creative thinking' to avoid giving access cannot ordinarily be considered unlawful, but that it is very unfortunate if it leads to inappropriate 'manoeuvres', such as not making sufficient use of relevant documents.

Another case on access to public files resulted in severe criticism of the Ministry of Taxation (2013-15). A journalist wanted *access to the 2013 production plan of the Danish Customs and Tax Administration*, and he wrote, among other things, to the Ministry of Taxation that the Ministry could expect to 'be saddled with an Ombudsman case' if he did not receive the entire plan asap. This caused the Ministry's special advisor to telephone the journalist and, among other things, say (while the journalist was recording the conversation) that the journalist had 'strongly provoked him' and that he perceived it as 'very aggressive' to be 'threatened' with an Ombudsman case. The special advisor left the overall impression that the journalist's approach could influence the future working relationship between the journalist and the Ministry of Taxation. In addition, the journalist never did get a reply to his request for access.

We characterised this as 'completely unacceptable conduct' towards a journalist who was using his right to seek access to public files and notifying the Ministry of his intention to use his right to complain to the Ombudsman. We

emphasised that a special advisor in a government department is basically a civil servant, who must observe the rules regulating the public administration. The Ministry of Taxation subsequently informed us that the Ministry would take various measures to ensure that special advisors understand their role.

A special category of cases concerns the so-called '*legal authority issues*'. Do the public authorities have a legal basis for the actions they take, and how strong must the legal basis be in varying situations? Two very different cases from 2013 illustrate these questions.

In one case, the Environmental Board of Appeal had *bought private legal assistance* (from the Legal Adviser to the Danish Government, Kammeradvokaten) for processing a backlog of appeals concerning livestock farming (2013-9). The Legal Adviser to the Danish Government did not at any time make final decisions in the cases – the Board did that – but did carry out consultations, among other things, and prepared drafts for decisions.

It is – or at least it was, until our statement in the matter – unclear if a public authority can leave case preparation to, for instance, private law firms in this way without statutory authority. We adopted a relatively pragmatic approach, emphasising among other things *that* the Legal Adviser to the Danish Government could not make final decisions in the cases (this would undoubtedly require explicit statutory authority), and *that* the involvement of private players in public authorities' case preparation could be in the best interest of citizens, for instance by resulting in faster case processing. But we also listed a number of important conditions which such arrangements must meet, based on the principle that an arrangement must never prejudice citizens' rights.

In another case, *an upper secondary boarding school had expelled a higher preparatory course student* because he had smoked cannabis on a night out during a weekend (2013-24). We took a detailed look at how far a school may go based solely on rules issued by the school in accordance with the Danish principle of implied powers, meaning the principle that a public institution may to a certain degree establish 'local rules' if these are necessary for the institution to function.

The student's cannabis intake had taken place during his leisure time and outside the school grounds. And there was no evidence that the student was subsequently under the influence of drugs within the school grounds. On that basis, we did not find that the school could expel the student – his expulsion was not necessary for the school to function. We recommended to the Ministry of Education that specific statutory authority be provided if the leisure-time behaviour of students were to be curtailed in this way.

THE DISCUSSION ON A 'SHIFT IN NORMS' IN THE CIVIL SERVICE

In 2013, the Civil Service was subject to severe criticism from the media and the general public because of a number of controversial cases involving key government departments which led to a more general debate: Are there problems in the administrative culture? Has the departments' daily routine become subject to spin tactics? Has political savvy become more important than professional expertise and objectivity?

The discussion on values in the Civil Service is important. This is where some of society's greatest power is concentrated, and a straight line can be drawn from decisions made in those central government departments to the daily routine in the furthest corners of the realm. The Civil Service is a pivot point in our democracy.

This is why the Civil Service must be kept on a leash and under control by, among others, Parliament, the National Audit Office and the Parliamentary Ombudsman. And so it is, and the Ombudsman institution uses many resources on government departments.

It is important, however, that discussions on a shift in norms are sober and balanced. It is a question of fairness, but it is also a question of not running down institutions without justification.

This is because our society is largely built on trust in the central institutions. Naturally, this trust should not be maintained if there is no basis for it. But neither should it be undermined without reason, as this would remove the foundations for that feeling of pride and commitment on the part of public servants which is just what to a large extent supports and stimulates daily observance of public service values. Such undermining will lead to a weakening of responsibility, a fear of making decisions and a lack of efficiency and quality.

At the Ombudsman institution, we process many and complex cases concerning the Civil Service, and relatively many of them give rise to criticism, sometimes even severe criticism (some examples are outlined above under the heading *Special cases in 2013*). But seen from our vantage point, at least, there is no evidence of a shift in norms in any meaningful sense. Basically, we have a good Civil Service.


When this is said, there are, however, some trends of development which – if we do not pay attention – may hold the risk of a shift:

The tasks of the Civil Service are among society's most complex, and conditions seem in some respects to become ever more difficult. The 24/7 society means that issues must be handled and resolved almost before they have arisen. The range in the tasks of the general Civil Service seems to be wider than ever. The pressure from the media is becoming ever more powerful. And the introduction of special advisors brings with it an information culture which can be useful and necessary, but which may also risk colouring the actual work.

This is probably a better starting point for a topical discussion on norms and values within the Civil Service, rather than picking out individual cases without any obvious interconnection. And maybe the verbalisation of basic public administration values has in recent years been a little overshadowed by media strategies, structural reforms, streamlining projects and a demand for quick answers to difficult questions. Maybe it has been more in vogue to talk about what needs to be reformed than what needs to be preserved.

Fortunately, the basic values are simple and well-known: legality, professionalism, a duty to tell the truth, and party-political neutrality. The content of these basic values is reasonably clear. And the tools to ensure compliance with the values are rather obvious: give the values a clear managerial focus and daily attention, particularly in difficult cases. Have the necessary competences available to ensure that they are observed. Clamp down on those who turn out not to play by the rules. And acknowledge and correct mistakes when they have been committed instead of taking the chance that they will not be discovered.

It is important to steer a clear course in these matters if we are to preserve a Civil Service with high standards also in the long run, and thereby maintain trust in the system. And at any rate, the daily work of the Civil Service must be kept under effective control. At the Ombudsman institution, this is one of our most important duties.



Case No. 13/04834

The Ombudsman had selected addiction treatment and prevention of violence and threats among users as themes for his monitoring visits in 2013. As part of the theme, two Ombudsman employees together with a medical doctor from DIGNITY – Danish Institute Against Torture visited a private treatment facility for addicts.

The treatment facility had few problems with violence and threats among the residents. One episode had resulted in the transfer of one resident to another facility.

Other subjects were also discussed during the monitoring visit; it turned out, for instance, that the facility did not have instructions on the use of coercive measures because, basically, coercion was not used towards the residents. At the end of the visit, the monitoring team recommended that the facility none the less draw up instructions on the use of coercion in order to ensure that the staff knew what to do in case a situation arose where coercion was necessary. The facility followed the recommendation.

The Ombudsman cooperates with DIGNITY and the Danish Institute for Human Rights on OPCAT monitoring visits, the purpose of which is to ensure that the UN rules against torture are observed. The visits may go to both public and private institutions.

Case No. 13/00989

A journalist at a weekly newspaper had for some time shown an interest in a report which was being prepared by a Government ministry. One day, he could read all about the now finished report in a daily newspaper, and he complained to the Ombudsman that the ministry had discriminated against him in favour of the daily newspaper which had been given access to the report. He wrote in his complaint that he had telephoned the ministry's press secretary and asked for the report as late as the day before the daily newspaper ran the story. The press secretary had just given him a noncommittal reply, even though the report had to have been finished at that stage.

The Ombudsman agreed that the ministry had a duty to treat journalists the same. But as the journalist from the weekly newspaper could not prove that he had asked for access to the report, and as the ministry could not remember his telephone call, the Ombudsman was unable to carry out a more detailed investigation.

In 2013, the Ombudsman received 107 complaints from journalists who wanted access to information for work purposes.

Case No. 13/03239

There had to be something wrong with the police measuring equipment, said a man who had been pulled over for speeding. The case was brought before the district court, where he was found guilty. He then petitioned the Appeals Permission Board for permission to have the case brought before the High Court, but was refused.

The man complained to the Ombudsman about the police fine, the district court's handling of his case and the refusal by the Appeals Permission Board, but the Ombudsman had to reject his complaint. According to the Ombudsman Act, the Ombudsman can consider neither complaints about matters that have been decided in a court of law, nor complaints about courts of law or court-like bodies, such as the Appeals Permission Board.

In 2013, the Ombudsman rejected a total of more than 400 complaints which fell outside his jurisdiction – for instance because they concerned courts of law.

Case No. 12/05051

A man in the Faroe Islands complained because he had not received a reply from the Administrative Officer (Chief of Police) in the Faroe Islands to a number of requests for access to, among other things, police reports and information preferred to the police. The Administrative Officer has the same powers as the Danish police commissioners.

On behalf of the complainant, the Ombudsman asked the Administrative Officer to prioritise the complaint, but a couple of months later, the man contacted the Ombudsman again because he still had had no reply. One of the Ombudsman's case officers now telephoned the Administrative Officer and was told that the Administrative Officer expected to reply to the complainant within a month. The Ombudsman informed the complainant of this and advised him at the same time that – if the case still dragged on – he could ask the Director of Public Prosecutions for help concerning his complaint about the case processing time of the Administrative Officer.

The complainant later received a decision from the Administrative Officer granting him partial access, and the Administrative Officer also expressed his regrets about the long case processing time.

The Ombudsman's jurisdiction extends to those matters pertaining to the Faroe Islands which fall under national authorities, meaning central authorities of the Realm. Authorities under the Faroese Home Rule are subject to the jurisdiction of the Faroese Parliamentary Ombudsman.

Case No. 13/05268

'She rarely seems happy and is often sul- len and withdrawn'. These were some of the things that were mentioned regarding a pupil in a report which a school sent to the municipality.

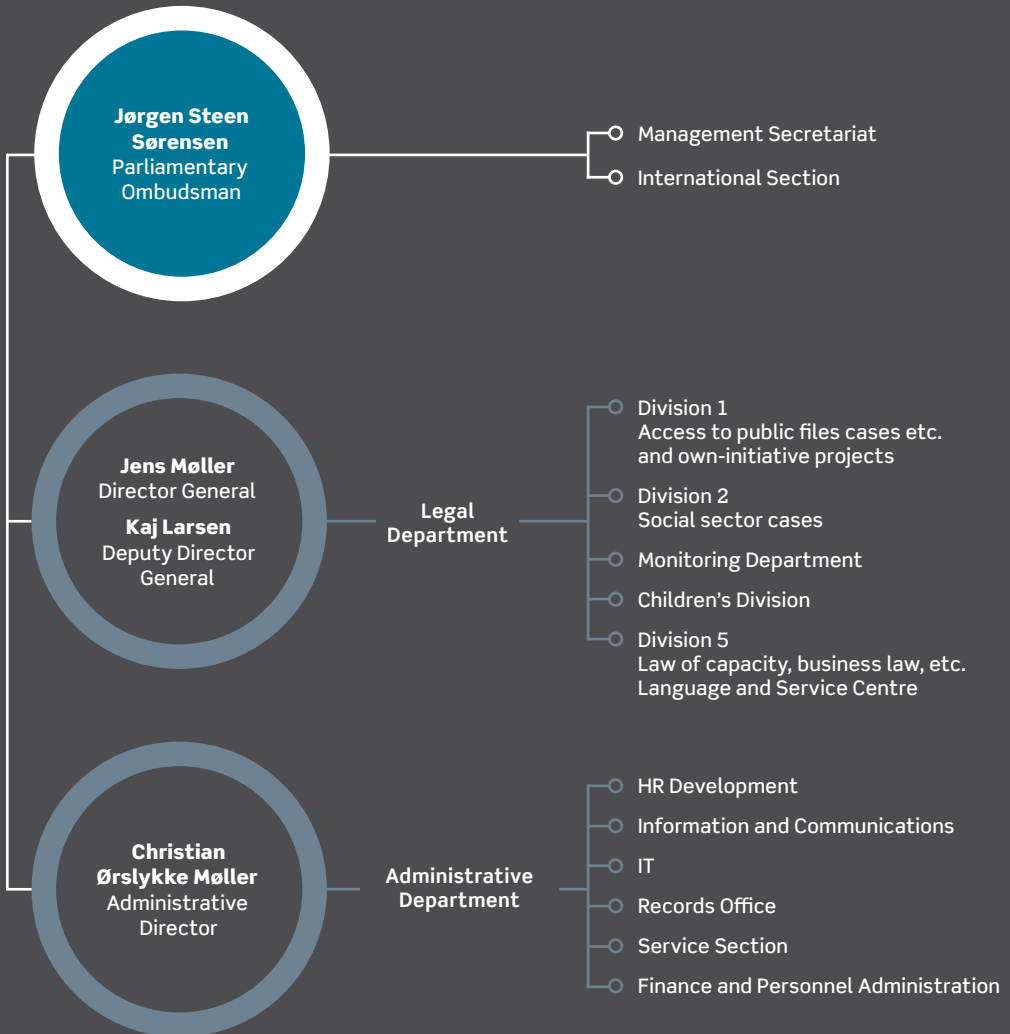
The girl's father found that the school's concern was baseless and that the report was not sufficiently substantiated. He therefore complained to the Ombudsman. However, the Ombudsman rejected the case on the grounds that he considered it unlikely that he would be able to criticise the school. The Ombudsman wrote to the father, among other things, that public servants have an increased duty to notify the municipality of, for example, children who need special support. Concerning the content of the report, the Ombudsman wrote that he had no possibility of checking whether the school's observations were correct, and nor could he make any evaluation of the school's professional assessment.

The Ombudsman is appointed by Parliament to consider legal issues. He cannot, however, consider issues which require other expert knowledge, such as the expertise to be able to assess whether a child is thriving and coping well in school.

ORGANISATION

MANAGEMENT

DEPARTMENTS





Christian Ørslykke Møller
Administrative Director

Jørgen Steen Sørensen
Parliamentary Ombudsman

Kaj Larsen
Deputy Director General

Jens Møller
Director General

As at 1 May 2014



**MANAGEMENT SECRETARIAT AND
INTERNATIONAL SECTION**





Jon Andersen, Chief Legal Advisor
Jannie Svendsen, Executive Secretary
Jacob Berner Moe, Special Communications Advisor
Christian Ougaard, Special Legal Advisor
Jens Olsen, Director of International Relations

As at 1 May 2014

DIVISION 1
- ACCESS TO PUBLIC FILES CASES ETC.
AND OWN-INITIATIVE PROJECTS





Karsten Loiborg, Senior Head of Division
Lisbeth Adserballe, Head of Division
Lise Puggaard, Special Legal Advisor
Michael Gasbjerg Thuesen, Special Legal Advisor
Dennis Toft Sørensen, Legal Case Officer
Janne Lundin Vadmand, Legal Case Officer
Kirsten Broundal, Legal Case Officer
Mette Vestentoft, Legal Case Officer
Pi Lundbøl Stick, Legal Case Officer
Stine Marum, Legal Case Officer
Christian Nikolaj Søberg, Legal Student Assistant
Mikkel Lindberg Laursen, Legal Student Assistant
Professor Jan Pedersen, LLD, External Consultant,
Aarhus University

Core responsibilities

- Access to public files cases
- Taxes, duties and recovery thereof, etc.
- Market and consumer issues, companies, etc.
- Elections, registration of individuals, weapons, passports, permissions to appeal, etc.
- Transport, communication, roads, traffic, etc.
- Education and research
- Ecclesiastical affairs and culture
- Own-initiative projects
- Special professional tasks

As at 1 May 2014

DIVISION 2 - SOCIAL SECTOR CASES



Kirsten Talevski, Senior Head of Division
Susanne Veiga, Head of Division
Pernille Helsted, Deputy Head of Division
Elizabeth Bøggild Nielsen, Special Legal Advisor
Ann Thagård Gregersen, Legal Case Officer
Camilla Bang, Legal Case Officer
Karina Sanderhoff, Legal Case Officer
Linette Granau Winther, Legal Case Officer
Marjanne Kalsbeek, Legal Case Officer
Nina Melgaard Ringsted, Legal Case Officer
Peter Kersting, Legal Case Officer
Nina Mojaza, Legal Student Assistant
Trine Louise Mågård Hansen, Legal Student Assistant

Core responsibilities

- Social security and labour market law
- Public employment law

As at 1 May 2014



MONITORING DEPARTMENT



Morten Engberg, Senior Head of Department
Christina Ladefoged, Deputy Head of Department
Erik Dorph Sørensen, Deputy Head of Department
Rikke Ilona Ipsen, Special Legal Advisor
Camilla Schroll, Legal Case Officer
Klavs Kinnerup Hede, Legal Case Officer
Marta Warburg, Legal Case Officer
Sofie Hedegaard Larsen, Legal Case Officer
Ulrik í Hjöllum, Legal Case Officer
Anders J. Andersen, Disability Consultant, MA (Laws)
Jeanette Hansen, Senior Administrative Assistant
Adam Fussing Clausen, Legal Student Assistant
Rune Werner Christensen, Legal Student Assistant



The Department is in charge of the Ombudsman's monitoring activities, which include in particular:

- State prisons
- Local prisons
- Halfway houses under the Prison and Probation Service
- Detention facilities for intoxicated persons
- Psychiatric wards
- Social and social-psychiatric accommodation facilities
- Non-discrimination of persons with disabilities
- Forced deportations of foreign nationals

The Department especially processes specific cases involving:

- Sentence enforcement and custody
- Police and criminal cases
- Psychiatry
- Social care institutions

As at 1 May 2014

Bente Mundt, Head of Division
Mette Ravn Jacobsen, Deputy Head of Division
Irene Rønn Lind, Special Advisor on Children's Issues
Hanne Nørgård, Legal Case Officer
Mai Vestergaard, Legal Case Officer
Mette Kildegaard Hansen, Legal Case Officer
Morten Bech Lorentzen, Legal Case Officer
Anna Noushin Thestrup, Legal Student Assistant

The Division carries out monitoring visits to public and private institutions for children, such as:

- Social care institutions and privately run accommodation facilities for children placed in residential care
- Foster families
- Schools, including private schools
- Asylum centres
- Hospital wards and psychiatric wards for children
- Day-care facilities

The Division especially processes specific cases involving:

- Support measures for children and juveniles
- Social services for children
- Family law (visitation rights etc., child support and adoptions)
- Primary and lower secondary schools, continuation schools and private schools
- Institutions for children
- Other cases with a particular bearing on children's rights

As at 1 May 2014





DIVISION 5

- LAW OF CAPACITY, BUSINESS LAW, ETC.
- LANGUAGE AND SERVICE CENTRE



Johannes Martin Fenger, Head of Division
 Jørgen Hejstvig-Larsen, Deputy Head of Division
 Vibeke Lundmark, Deputy Head of Division
 Christoffer Bruus, Legal Case Officer
 Kresten Gaub, Legal Case Officer
 Kristine Holst Hedegaard, Legal Case Officer
 Lykke Leth Nielsen, Legal Case Officer
 Tina Andersen, Legal Case Officer
 Christian Degnboel Østergaard, Legal Student
 Assistant

Core responsibilities

- Environment and planning
- Business
- Municipalities
- Foreign nationals
- Health services except psychiatry
- The law of capacity, the law of names, foundations, trusts and the law of succession
- Courts of law, matters of private law, etc.

Language and Service Centre

Vibeke Lundmark, Deputy Head of Division
 Lisbeth Nielsen, Senior Language Officer
 Dorte Buttenschøn, Senior Language Assistant
 Gurli Søndergaard, Senior Language Assistant
 Marianne Anora Kramath Jensen, Senior
 Language Assistant

Core responsibilities

- Translation (English and German)
- Proofreading
- Contact to interpreters
- Production data
- Acknowledgement of complaints
- Coordination of visitors and meetings

As at 1 May 2014





Core responsibilities

- Annual report
- Finance and personnel administration
- Contracts and purchases
- HR development
- Organisational development
- Information and communications
- IT
- Service and maintenance
- Records and case management

Christian Ørslykke Møller, Administrative Director

HR Development

Lisbeth Kongshaug, Head of HR

Information and Communications

Karen Nedergaard, Head of Information and Communications

Eva Jørgensen, Senior Communications Officer

Julie Gjerrild Jensen, Senior Communications Officer

Birgit Kehlet-Hansen, Senior Library Assistant

IT

Seyit Ahmet Özkan, IT Administrator

Uffe Larsen, IT Officer

Sonny Manjit Singh, IT Student Assistant



Records Office

Carina Haar Hillbrandt, Head of Records
Lisbet Pedersen, Senior Records Officer
Denise Schärfe, Senior Records Assistant
Harriet Lindegaard Hansen, Senior Records Assistant
Olga Bardenshtein, Senior Records Assistant

Service Section

Jeanette Schultz, Head of Service
Flemming Wind Lystrup, Service Assistant
Niels Clemmensen, Service Assistant
Annitta Lundahl, Housekeeper
Charlotte Jørgensen, Housekeeper
Kirsten Morell, Housekeeper
Suphaporn Nielsen, Housekeeper
Susanne Pedersen, Housekeeper

Finance and Personnel Administration

Torben Frimer-Larsen, Head of Finance and Personnel
Mette Vestentoft, Legal Case Officer
Jeanette Schultz, Head of Service
Jannie Svendsen, Senior Personnel Officer
Lone Gundersen, Senior Personnel Officer
Neel Bjellekjær, Senior Administrative Assistant

As at 1 May 2014

Case No. 13/04866

A woman was acquitted of social benefit fraud in a criminal case, as the court did not agree with the municipality that she and her former spouse had had 'real joint finances'. Nevertheless, the municipality and the regional Social Tribunal refused to reopen the issue of whether the woman was to repay a number of social benefits – a total of more than DKK 150,000.

When he received the woman's complaint about the authorities' decision, the Ombudsman was puzzled; according to general rules of administrative law, a citizen has a right to a reopening of his or her case if, for instance, a court of law makes a decision which has a bearing on the case. In an e-mail to the National Social Appeals Board, which was now the appeal authority in such cases, the Ombudsman asked the authorities to take a position on the issue.

The National Social Appeals Board replied that the Board had decided to reopen the case, and the Ombudsman then decided to take no further action in the matter. The National Social Appeals Board subsequently changed the outcome of the case so that the woman would not have to repay the social benefits.

When requesting statements on a case from the authorities, the Ombudsman typically asks the authorities a number of questions in order to throw more light on the case. It happens that the authorities choose to reopen a case already when they receive the Ombudsman's critical questions.

Case No. 13/02045

During a monitoring visit to a local prison, the Ombudsman's monitoring team found the visiting room to be not very homely. The local prison was keen to support the inmates' relationship with their children, and in the Ombudsman's opinion, this was an added reason why it would be a good idea if the visiting room were to be made more homely.

The local prison management said that money for new furniture for the visiting room had already been applied for and granted. The management agreed with the Ombudsman's suggestion that the visiting room could be better decorated. Some months later, the Ombudsman read in a local newspaper that the walls of the visiting room had been beautifully decorated by an artist.

The Ombudsman's monitoring visits are not only about checking whether the rules and regulations are observed. The Ombudsman also endeavours to assess whether conditions are acceptable to the people who spend all or part of their lives at the institution.

Case No. 12/04364

No grounds were given when a manager of a youth club was dismissed after just one day's work. The manager complained to the Ombudsman, who tried, among other things, to identify the information on which the dismissal had been based.

After a longish correspondence with the municipality, it became clear that the background for the dismissal was a slightly older conflict between the complainant and some of the staff at a school. The Ombudsman then forwarded the case to the municipality so that the municipality could consider whether the dismissal had been justified. However, the complainant was satisfied with knowing, among other things, why he had been dismissed, and he did not want the municipality to take any further action in the case. Consequently, the case was closed without a new decision from the municipality.

In 2013, the Ombudsman received about 100 complaints regarding personnel matters.

Case No. 12/04705

The authorities had refused to extend a man's sickness benefit period, among other reasons because he did not have a sufficiently certain and specific medical prognosis for when he would be able to resume work. In order for the man to have a right to have his sickness benefit period extended, the doctor had to assess that the man would be able to resume work within two years.

After the refusal, the man obtained a supplementary medical statement, from which it appeared that the doctor had not previously been asked when the man would be well enough to work. In the doctor's assessment, the man would be able to resume work within the two-year deadline.

The man complained to the Ombudsman, who forwarded his complaint and the medical statement to the Employment Appeals Board. However, after a medical consultant had looked at all the medical information in the case, the Board upheld its decision to cease paying the man sickness benefit.

If new information of importance to a case turns up after the authorities have made a decision in the case, the Ombudsman will consider whether the authorities should have the opportunity of looking at the case again.

Case No. 13/03713

On a summer evening in 2013, at 20:00, 41 police personnel gathered at the Center Sandholm asylum centre to participate in the forced deportation of 18 Afghan men. Accompanying them on the journey were also a physician, an interpreter and a representative of the Ombudsman.

The group were transported to the airport in buses and cars and with police escort. The plane took off at 23:00. The flight to Kabul took just over eight hours, and water and sandwiches were served during the flight. At 7:45 the returnees started to leave the plane in Kabul and were received by Afghan authorities. When all the men had disembarked in Afghanistan, the plane returned to Denmark.

The Ombudsman representative afterwards described the trip as well-prepared and mostly characterised by a good atmosphere. The police did, however, have to use a restraint belt in three instances on the trip, and the Ombudsman representative deemed this to be necessary and reasonable in the circumstances.

The Ombudsman monitors that forced deportations of foreign nationals by the police are carried out with respect for the individual and without unnecessary use of force.



CHILDREN AND YOUNG PEOPLE NOW
LODGE THEIR OWN COMPLAINTS
WITH THE OMBUDSMAN



Bente Mundt
Head of Division,
Children's Division

'I just don't know what to do', a 17-year-old girl wrote to the Ombudsman's Children's Division. For a month and a half, the girl had tried to get in touch with her caseworker. She had made many phone calls and also sent several e-mails. Her contact person had tried as well. All of it in vain. It was easy to understand why the girl was worried. She had previously been placed in care and she was now living in a single room and had a contact person for support. She was about to turn 18, and what was going to happen then? Would she still be able to get help? Would so-called aftercare measures be a possibility? This was what she wanted to discuss with her caseworker, and obviously, it was urgent. She preferred making her own decision but she needed guidance.

Another girl lodged a complaint right after she had moved out of an accommodation facility where she had been placed for 18 months. 'I don't want anybody else going through what I have experienced', she wrote. She wrote that she had been subjected to coercion on numerous occasions and had been shocked to find out – in connection with moving to a new accommodation facility – that only five of these incidents had been reported. She believed that she had been subjected to many more incidents.

These are two examples of complaints from children and young people lodged with the Ombudsman's Children's Division. Since the opening of the Children's Division on 1 November 2012 and until the end of 2013, we have opened 62 cases following complaints lodged by children and young people themselves. This is approximately 10 per cent of the total number of complaints received by the Children's Division in this period of time. We have noted that we have received considerably more complaints from girls than from boys.

Before the opening of the Children's Division, we had a natural expectation that complaints pertaining to children and young people would primarily be lodged by adults. Therefore, we are pleased that 62 children and young people have found their own way to the Children's Division in its first 14 months – especially when looking at the content of the complaints. This is to say that as in the two cases mentioned above, the complaints from children and young people generally encompass substantively important issues. This goes for the children themselves but, as illustrated by the examples, the issues also go beyond the individual case.

TYPICAL COMPLAINT THEMES

An absolutely essential question for a child or young person is *'Where am I going to live?'* Most of our enquiries from children and young people have revolved around this question.

Typically, these children and young people have been placed in care but are not happy with the facility where they have been placed and therefore want to be moved to another facility. Or the authorities have decided to move a child or young person from an institution or a foster family against his or her wishes.

For instance, we have had an enquiry from a 16-year-old girl who lived in an accommodation facility but wished to move to another facility, for instance a hostel for young people. She needed to meet with her caseworker and she preferred bringing her parents and her primary welfare worker to the meeting. The girl explained that she had sent a number of e-mails to her caseworker but had not received a reply.

We have also received a complaint from one girl who had been living for three and a half years in an accommodation facility where she liked living. However, the municipality had decided that, after turning 18, she had to move to a shared living facility in another town. She did not want to do that. She did not feel ready to move into a place of her own, even though she was offered support. In the shared living facility, there would be many people she did not know, and she would be far away from her school and the people with whom she felt safe.

Another issue which we have come across several times is a child or young person wanting *more time with his or her parents* while being placed in a facility.

The case processing times of municipalities and problems getting in touch with case-workers are also recurrent issues of complaints from children and young people.

In *cases concerning the law of domestic relations* – typically conflicts between parents – children and young people may contact us and tell us which parent they want to live with or how much time they want to be able to spend with their mother and their father, respectively.

We have also had an enquiry concerning a girl's *subsistence basis*. Her parents had moved abroad and she could not support herself. The municipality had decided that she was not eligible for social security benefit because she was under the age of 18 and therefore had to be supported financially by her parents.

WE GO OUT OF OUR WAY TO HELP

Children and young people – especially those in difficult life situations – need to be met with understanding and in a way that makes them feel that their wishes and complaints are given weight and taken seriously. Therefore, each and every enquiry we receive at the Ombudsman's Children's Division is treated as an important case of significance to the child or young person.

We are not always able to help. First and foremost, the Ombudsman's Children's Division exists in order to resolve legal issues, for instance breaches of rules. However, whether we are able to provide concrete help in their specific case or not, we emphasise flexibility and dialogue-based communication with the children or young people when we process their cases.

By flexibility we mean that – to the widest extent possible – we communicate with the children/young people in the way they prefer. Only if it would be against the applicable rules, we cannot meet a wish to communicate in a certain manner. For example, the Ombudsman is not able to communicate via insecure e-mail about confidential matters. In our complaint form, we encourage children and young people to provide us with a telephone number and to let us know when we can contact them. Very often, we need to contact them because their complaints do not contain all the information necessary in order for us to move on with the case. Since secure e-mail cannot normally be used with children and young people, we need to be able to communicate with them on the telephone. In addition, a telephone conversation gives us the opportunity to tell them about our case processing procedure and what kind of help they can expect the Ombudsman to be able to provide.

Overall, our assistance often consists of us placing the complaint in a legal framework by formulating the child's or young person's wishes so they fit within the framework of legislation. Doing that, we are able to convey their wishes or complaints to the relevant authorities and we can keep an eye on whether the child/young person actually receives a reply. The latter is usually done by asking the authority for a copy of its reply to the child/young person.

WE CANNOT PROMISE CONFIDENTIALITY

Even though we endeavour to meet children and young people with understanding and sympathy, the Ombudsman's Children's Division cannot offer a place of confidentiality. The reason for this is that the Ombudsman is legally obligated to involve the authorities or private institutions to which the complaints pertain. If we speak with the children and young people, we bring this to their attention, and this information is also to be found on the Internet site of the Children's Division.

Furthermore, children and young people are subject to parental custody, so if we take a complaint from a child/young person further, for instance by contacting the authorities, the starting point is that we are legally obligated to inform the custodial parent about the case. In regard to conflicts between parents – typically cases about access and parental custody – we often see that the children get caught in the middle of the parental conflict. In such cases, it can be difficult to avoid a situation where the children get further involved in the conflict as a result of their enquiry to the Children's Division.

However, there are children and young people who make use of the possibility of contacting the Children's Division anonymously, either by telephone or on the chat function on the Internet site of the Children's Division, to have an informal talk about their situation and what is going to happen if they lodge a complaint. But we cannot help them with their complaint until we know their identity.

In our experience, the Children's Division is best able to help children and young people who make their own enquiries in cases pertaining to for instance authorities or institutions and not enquiries in regard to their parents. Other things being equal, public officials are better at handling criticism from a child/young person or at dealing with independent views and wishes which do not match their own.

HELPING TWO GIRLS

Before the opening of the Children's Division, we contemplated whether we would get many enquiries from children in a crisis – enquiries that would require psychological or social sector specialist knowledge and which we would have to send on. However, almost all the enquiries which we have received from children and young people have been about issues which fall within the core areas of the Ombudsman's activities, this meaning legal issues, for instance disputes about placement facilities or access. Likewise, long case processing times are a classic complaint theme for the Ombudsman's legal case officers, and in such cases, we are able to help in the same manner as with complaints lodged by adults. Still, our service and flexibility in our case processing is extended compared to when we deal with adults, who have to present their case with all relevant information to a greater extent.

It is early days yet for the Ombudsman's Children's Division. Therefore, we can only be pleased that so many children have already found their way to us, and not least that we have been able to make a difference for quite a few of them.

In the case of the 17-year-old girl who could not get in touch with her caseworker, we helped by forwarding her complaint to the municipality as a request from the girl that her caseworker contact her as soon as possible. In addition to that, we forwarded her complaint to the mayor as a complaint about the municipality's case processing. We drew the mayor's attention to the fact that – in accordance with the Social Services Act – a decision was to have been made six months prior to the girl turning 18 about which kind of help she might be entitled to after turning 18. We asked to be kept informed of the further progress of the case and to receive a copy of the mayor's reply to the girl. In his reply, the mayor expressed his regrets about the delay of the decision which the municipality was obligated to make. We were also informed that the girl had been granted aftercare after turning 18.

The complaint from the girl who complained about the use of coercion at her former accommodation facility, we forwarded to her residential municipality (the municipality which placed her at the facility). The residential municipality is obligated to consider complaints about violations of the rules in regard to coercion. Moreover, we asked the municipality to be informed of the further developments in the case. It turned out that more than half of the coercive measures taken in relation to the girl had not been reported as they should have been according to the rules. After we had forwarded the girl's complaint, the

municipality supervising the accommodation facility reprimanded the facility for its failure to report all coercive measures taken in relation to the girl. Similarly, the facility was asked to work out a procedure to ensure that all coercive measures taken were recorded and reported to both the supervisory authority and the municipality in charge of the placement.

Case No. 13/03344

A woman lived in a rented flat in a house which had formerly consisted of bedsits. The bedsits had now been converted into actual flats, and the woman lived in one of these flats on the ground floor. She had problems in getting her mail, as it was put in the wrong letter box. With the landlord's consent, she therefore asked the municipality to register her flat as 'ground floor r.' (r. meaning 'on the right').

However, the municipality did nothing about it, and the woman complained to the Ombudsman. The Ombudsman telephoned the municipality and subsequently forwarded the complaint to the municipality. Shortly afterwards, the municipality changed the address of the flat.

The Ombudsman may help complainants in many ways. In some cases, the best solution is a telephone call to the authority.

Case No. 12/04974

The Danish Security and Intelligence Service (PET) had postponed its reply to a citizen's request for access 19 times without giving any concrete reason for the long case processing time. All 19 times, the Service wrote to the citizen that it expected to be able to process the request within the next 30 days.

After reading about the case in a daily newspaper, the Ombudsman asked the Security and Intelligence Service and the Ministry for Justice for comments on the course of events. On the basis of the authorities' replies, the Ombudsman stated that the Service's handling of the citizen's request for access to files was in violation of the Access to Public Administration Files Act and therefore regrettable.

A month and a half after the Ombudsman had asked the authorities for their comments, the Security and Intelligence Service decided that the citizen could not be granted access to the files.

It is not unusual that the Ombudsman takes up a case on his own initiative which has come to his attention due to media coverage.

Case No. 13/02368

When a man asked not to receive the local parish magazine, the parish clerk replied that according to an agreement with the Ombudsman, parish magazines are considered public information and are therefore to be distributed to everybody. The man then wrote to the Ombudsman and said that he would like to see some documentation of this agreement.

The Ombudsman replied, among other things, that he cannot enter into agreements with public authorities regarding their work, and that the same applied to the issue described by the complainant.


The Ombudsman can express his opinion in statements which are not legally binding – possibly involving criticism of public authorities or a recommendation that an issue be reopened.

Case No. 13/05082

A 16-year-old girl had improved both academically and socially in the 2½ years she had been attending a small special needs school for young people with learning disabilities. She and her parents therefore wanted her to continue at the school for another year. But the municipality said no and instead referred the girl to an especially designed youth education programme at a special education centre. The parents appealed the decision, but the Appeals Board for Special Needs Education agreed with the municipality that the municipality's offer was more suited to the girl's needs, and the Board thereby concurred with the municipality's decision.

The parents complained to the Ombudsman, who reviewed the documents in the case but did not find any prospect of being able to criticise the result of the Board's decision. Consequently, he did not accept the case for investigation.

If, having reviewed the documents in a case, the Ombudsman sees no prospect of being able to criticise the authorities, he can close the case without asking the authorities for a statement on the case, pursuant to section 16(2) of the Ombudsman Act.



Case No. 13/04882

After a conviction for assault and battery, a man's application for a hunting licence was refused. The National Police wrote in its decision that the fact that the man had been given a suspended sentence of six months had weighed heavily in the refusal.

The Ombudsman reviewed the man's complaint about the refusal and noticed that the transcript of the judgment said 30 days suspended – not six months. The Ombudsman then asked the National Police to consider whether the error would give the police a different view of the man's application for a hunting license.

The National Police then reopened the case but the man's application was refused again. The new decision by the National Police also emphasised that the man had been convicted of assault and battery.

The Ombudsman investigates complaints based on the letters and other documents he receives from citizens. If some information is missing, he will ask the complainant or the authorities to send it to him.

Case No. 13/00006

A website tempted with two skincare products on special offer but the buyer's account was debited with the full price. The buyer could not find any physical address for the firm.

The buyer wrote to the Ombudsman, who could not help her, however, as her complaint concerned a privately owned enterprise.

The Ombudsman is tasked especially with processing complaints about the public administration.

A PLACE FOR EVERYTHING
AND EVERYTHING IN ITS PLACE



Lisbeth Adserballe
Head of Division,
Division 1

The Ministry of Foreign Affairs case in the autumn of 2013 about travelling rules in the organisation Global Green Growth Institute (GGGI) indicates how big the impact can be if an authority does not keep its affairs in order. The lacking registration of GGGI board meeting minutes led to Parliament being given the wrong information in regard to whether the Development Minister had approved travelling rules for the organisation and resulted in the Development Minister having to resign. Based on the case, the Ministry of Foreign Affairs made a thorough investigation of the chain of events, which resulted, among other things, in the Ministry deciding to speed up the implementation of a new electronic case and document management system which was designed to make it easier to identify case files and to advance an improved and more automatic registration of records.

Until 1 January 2014, there were no general legislative provisions stating that administrative authorities were obligated to register their documents. However, it followed from statements from the Ombudsman that, according to good administrative practice, an authority must register incoming and outgoing post immediately after receipt or dispatch. In the new Access to Public Administration Files Act, which came into force on 1 January 2014, it is now determined that administrative authorities are obligated to register certain documents. Primarily, the objective is to support the Act's principle of free access to public records but registering documents also serves a number of other purposes, for instance control, documentation, preservation and the need to have a clear picture of one's own practice.

The GGGI case illustrates how relevant documents could not be identified because of lacking registration. At the Parliamentary Ombudsman's office, we often come across cases where lacking, inadequate or incorrect registration of documents or other kinds of disorder in authorities' cases cause problems in regard to observing the rules of administrative law.

Nowadays, most authorities are using electronic case and document management systems, which means that documents can no longer get lost in the same way as before. However, the practice of later years shows that many of the factors causing problems previously can cause problems in the electronic world, too.

ORDER AS A PREREQUISITE FOR PUBLIC ACCESS TO INFORMATION

In an older case, a journalist had requested access to documents of the DSB's (the Danish State Railways) about the DSB's rental of the ferries Ask and Urd (the 1993 Annual Report of the Parliamentary Ombudsman, Case No. 1993.294 – a summary in English is available in 'Summary of Annual Report 1993', Case No. 21-3). The DSB gave access gradually over four times. Following each time, a DSB shipping company manager stated that 'as far as he knew', the journalist had now seen all documents in the case. More documents were found only because the journalist kept insisting on the existence of more documents. The Ombudsman stated that from the very beginning, the DSB ought to have searched all offices where case documents might have been kept since there was not a central records office.

In a more recent case, the Ombudsman became aware that a municipality had possibly kept quiet about or denied the existence of documents to which a citizen had requested access (the 2001 Annual Report of the Parliamentary Ombudsman, Case No. 2001.598 – a summary in English is available in 'Summary Annual Report 2001', Case No. 19-7, on www.ombudsmanden.dk). During his investigation, the Ombudsman's suspicion was confirmed, and the case resulted in severe criticism. The municipality's failure to mention documents in its replies to access requests was viewed by the Ombudsman as 'a matter for extraordinary criticism'. In addition to this, the Ombudsman found that a reply (in another letter) from the municipality that no further case documents existed was 'a clearly unacceptable suppression and denial' of a document's existence.

Even though the right of access to information does not depend on whether documents have been registered, the cases illustrate that keeping records can prevent documents being forgotten or overlooked when a decision about access is to be made. In addition to this, keeping records helps to make sure that citizens who request access to information can check by consulting the list of documents that no documents have been suppressed or forgotten. It is important to keep in mind that the new provision in the Access to Public Administration Files Act that a request for access can be denied if 'the processing of the request will necessitate a disproportionate use of resources' cannot be applied if the use

of resources is due to the administrative authority not keeping the necessary records.

KEEPING RECORDS ENABLES DOCUMENTATION

Proper record keeping also gives the authority the opportunity to get an overview of the case process so far, and in cases of doubt, keeping records makes it possible to document whether incoming and outgoing post has been received and dispatched, respectively. In this respect, correct record keeping serves the same purpose as, for instance, the duty to take notes of significant case processing steps which do not appear from the case documents.

A person receiving housing benefit complained to the Ombudsman about a demand for repayment of benefit (the 2001 Annual Report of the Parliamentary Ombudsman, Case No. 2001.539 – a summary in English is available in ‘Summary Annual Report 2001’, Case No. 19-1, on www.ombudsmanden.dk). He explained that he had informed the social security office by letter about the raise in income which later led to the demand for repayment. The social security office claimed that it had not received the letter. The Ombudsman stated that it was a matter for criticism that the social security office had not consistently registered incoming post and in this connection entered all letters on the case log sheet. The question itself – whether the housing benefit recipient had informed the social security office about his raise in income – was a question of evidence which was not to be resolved by the Ombudsman.

ORDER AS A PREREQUISITE FOR CONTROL

In another case, a journalist had asked the Ministry of Foreign Affairs for access to the Ministry’s documents on involvement in Danish export promotions in Iraq in the time period 2000–2003 (the 2006 Annual Report of the Parliamentary Ombudsman, Case No. 2006.556 – a summary in English is available in ‘Summary Annual Report 2006’, Case No. 17-4, on www.ombudsmanden.dk). The relevant documents were not held in one single case but in various cases in the Ministry, and the Ministry gave access to only some of the documents. The journalist then asked for a list of all the documents covered by his request for access. The Ministry denied this with reference to the Ministry not having such a list and to the Ministry not as such being able to generate a list like that from its file registration system. The Ombudsman stated that the Ministry must be able to produce a list of all documents covered by the access request and provide an explanation for the instances where access had been denied.

The case shows that it can be difficult for, among others, the Ombudsman to look into the authorities' decisions if their systems do not support the generation of so-called document lists across cases.

A related problem was seen in a case from 2010 where a journalist requested access to material from the Government's so-called Vækstforum (a development plan between the Government and the Regions) concerning the Danish primary and lower secondary schools (Case No. 2010-2605-7010). The Prime Minister's Office and the Ministry of Education both had employees attached to Vækstforum's secretariat, and the journalist requested access to information from both Ministries. In the case, it was taken into account that Vækstforum was an independent authority. Therefore, Vækstforum's secretariat made a decision about access to the documents in Vækstforum's possession. Subsequently, the Ministry of Education also made a decision in the matter. The wording of the Ministry's decision suggested that the decision related not only to the Ministry's own documents but also to the documents in Vækstforum's posses-

Section 15 of the Access to Public Administration Files Act

'15 Documents which are received or dispatched by an administrative authority as part of administrative case processing in connection with its activities must be registered to the extent that the document is significant in a case or in the case processing otherwise. This also applies to internal documents which are available in their final form.

(2) A document covered by subsection (1) above which the administrative authority has received or dispatched must be registered as soon as possible after receipt or dispatch of the document.

(3) The record system must be organised in such a way that it holds the following information about the documents which are registered:

1) The date on which the document was received or dispatched

2) A brief thematic description of the document's content

(4) The obligation to keep records in compliance with subsections (1), (2) and (3) above applies to national administrative authorities covered by section 2 above and municipal and regional entities which may be regarded as part of the municipal and regional central administration.

(5) On the basis of negotiations with the Minister for Justice, the minister in question may lay down rules on the full or partial exemption of administrative authorities etc. which are covered by subsection (4) above from the obligation to keep records.

(6) On the basis of negotiations with the Minister for Justice, the minister in question may lay down rules that the obligation to keep records according to subsections (1) and (2) above is also to apply to municipal and regional entities and companies etc. not covered by subsection (4) above.'

(Unauthorised translation)

sion – on which a decision had already been made. All in all, the case history pointed towards a lack of distinct boundaries between the work of the Ministry of Education’s employees in the secretariat and the other work in the Ministry, and also suggested that it was not clear where the case documents belonged. Based on this, the Ombudsman had to give up investigating the case.

WHEN DOCUMENTS ARE NOT KEPT

In an unusual case, the Prime Minister’s Office failed to register an essential document. Two journalists requested access to the script which the then Prime Minister, Anders Fogh Rasmussen, brought with him on his first day after the formation of the Government in 2001, according to a portrait book (the 2005 Annual Report of the Parliamentary Ombudsman, Case No. 2005.474 – a summary in English is available in ‘Summary Annual Report 2005’, Case No. 15-2, on www.ombudsmanden.dk). The Prime Minister’s Office confirmed that the Prime Minister had handed in a large pile of papers to the permanent secretary but the material had never ‘been registered as received’ by the Ministry. The Ministry denied the access request on the grounds that the documents were nowhere to be found in the Ministry. The Ombudsman conferred with the Danish State Archives, which were of the opinion that the Ministry ought to have kept the documents in question. On this basis, the Ombudsman stated that the Ministry was obligated to keep the documents. He added that if, according to the archives legislation, a document may not be discarded, the authority must to the extent possible reconstruct the document when it is discovered to be missing.

In 2001, it would presumably have been good administrative practice to have registered the Prime Minister’s script, and today, the obligation to register the script would follow directly from the provision in section 15 of the Access to Public Administration Files Act. The fact that there are now actual statutory rules about the obligation to keep records will probably make the authorities pay more attention to the material that has to be registered and thereby kept in the cases.

This is also illustrated in another case (the 2008 Annual Report of the Parliamentary Ombudsman, Case No. 2008.399 – a summary in English is available in ‘Summary Annual Report 2008’, Case No. 18-3, on www.ombudsmanden.dk), which the Ombudsman took up on his own initiative: In connection with the structural reform, where the country’s 14 State Counties were merged into five Regional State Administrations, new guidelines for discarding were made.

According to the guidelines, social sector cases were to be discarded one year after they were opened. The Ombudsman stated that it was a mistake when the Regional State Administrations discarded social sector cases on the basis of their age by opening year. The Ombudsman based his view on a statement from the State Archives according to which the case age is to be calculated from the year of the closing of the case. In addition, the Ombudsman stated that it is basically insufficient to keep case documents for one year only, because original case documents can only be discarded when there is no longer a legal or administrative need for them.

RECORD SYSTEMS REQUIREMENTS

In section 15 of the Access to Public Administration Files Act, it is stipulated that record systems must be designed to hold information about the date of receipt or dispatch of the documents plus a brief thematic entry about the content of each individual document. Beyond this, there are no further requirements in regard to the layout of record systems or rules about the details of the organisation of the record keeping.

However, the Ombudsman has previously stated that a record system must help to ensure that cases are processed, and this within a reasonable space of time. That was not the case when the National Board of Industrial Injuries registered a complaint to the wrong case (the 2012 Annual Report of the Parliamentary Ombudsman, Case No. 2012-4 – a summary is available in the English-language version of the Report on www.ombudsmanden.dk). As a result of the mistake, the complaint was not processed in the correct case for almost one year. Instead, the complaint was processed as a request for resumption in another citizen's case.

The organisation of the record system was also a problem in another case, where a university was only able to search for cases by using the applicant's civil registration number. Among other things, it was not possible to search for cases by a specific subject or a specific provision in the legislation on the State Education Grant and Loan Scheme (the 2006 Annual Report of the Parliamentary Ombudsman, Case No. 2006.390 – a summary in English is available in 'Summary Annual Report 2006', Case No. 12-1, on www.ombudsmanden.dk). Since the university was not able to find comparable cases as such, the Ombudsman stated that it might be difficult to adhere to the administrative law principle of equality.

WHEN THE TAMIL CASE WENT MISSING

As seen above, authorities' lack of order is not just a bad habit but also a problem which can make it difficult to comply with regulations and good administrative practice. We could mention many more examples, and in addition to that, there are with great certainty many more which never come to the Ombudsman's attention. But how about the Ombudsman institution itself? Are we always on top of things here?

Of course, it is no good just saying yes to this question because it happens regularly that calls go out among the Ombudsman staff for older paper cases, which – usually – reappear.

A prominent example of such a case is the Tamil case, where the Ombudsman concluded his investigation in 1989. However, when the impeachment trial had finished in 1995, all of the most significant documents in the Ombudsman case were missing. The papers were sought for high and low within the institution until they reappeared suddenly, several years later. In 2012, the Ombudsman institution implemented a fully digitalised case and document management system so this kind of mistake is not likely to happen again. Nevertheless, as shown in several of the cases mentioned above, it is not enough to have an electronic case and document management system. Keeping the system in order also requires a high standard of data discipline from the employees. Systems are no better than what we put into them!

The Ombudsman's summary paper on public sector IT solutions

The Ombudsman has in recent years processed a number of cases in which IT has played a central role and where, regrettably, it had to be concluded that IT solutions had not measured up to the requirements of administrative law. On the Ombudsman's website, there is a summary paper which gives an overview of the problems within this area which the Ombudsman's practice has revealed.

The central message is that the requirements of administrative law apply no matter how an administrative authority solves a task in purely administrative-technical

terms. Thus, the usual rules which the authority is to abide by still apply when computers replace paper. Another important point is that it is the designated authority's responsibility that its solutions live up to the requirements of administrative law – and the authority has this responsibility even if it has chosen a standard solution which turns out to be insufficient. This applies also if suppliers of IT solutions do not at all offer a solution which meets the demands.

The summary paper can be found on <http://en.ombudsmanden.dk/publikationer/>.



Case No. 13/00835

People with severe mobility problems may be granted individual disability transportation pursuant to section 11 of the Public Transport Act. An interest group informed the Ombudsman that a municipality had deprived citizens of the right to individual disability transportation because they possessed a car for disabled drivers.

The Ministry of Transport had previously issued a guiding statement listing the categories of disabled people included in the scheme, and the Ombudsman therefore asked the Ministry to look into the matter. The Ministry issued a new guiding statement, which said that municipalities are not allowed to take a citizen's possession of a car for the disabled into account when they assess whether or not to grant individual disability transportation. The Ministry referred to the fact that the legislative proposal for the Public Transport Act was significantly changed on this point during Parliament's reading of the bill.

In 2013, the Ombudsman received 4,769 complaints from citizens, enterprises, organisations, etc. about what they perceived to be errors made by public authorities.

Case No. 13/01215

A newspaper article about a citizen's tax case caused one of the newspaper's readers to react. He wrote an e-mail to the journalist behind the article and sent it cc to a number of Members of Parliament and to the Ombudsman.

The Ombudsman replied that he understood the e-mail to have been sent to him for his information and that he would consequently take no further action in the matter. The Ombudsman also asked the newspaper reader to state his postal address or to send a so-called secure e-mail, for instance via the digital post box on www.borger.dk (official online self-service portal), if he wrote to the Ombudsman in future.

The Ombudsman's replies to complainants are usually confidential and are therefore sent through the post or as secure, encrypted e-mails.

Case No. 13/01558

When employees of the Ombudsman's Children's Division visited a residential institution in Western Jutland, a 12-year-old girl asked whether she could have more time with her mother. A short time previously, her time with her mother had been reduced because the girl had told of worrying episodes during her last visit to her mother. The girl also wanted more time with her father, and preferably without supervision.

In a letter the Ombudsman asked the municipality to consider the girl's wishes. The municipality therefore made a new assessment of the girl's access arrangements with her parents, based, among other things, on talks with the girl. However, the municipality reached the conclusion that there was no reason to change the present access arrangements.

When the Ombudsman's staff pay a monitoring visit to a residential institution, time has been set aside in the programme for residents to have a talk with them. The talks may be about the institution but they may also concern the case processing by a public authority.

Case No. 13/04560

When a foreign inmate, due to be released on parole in May, was still in prison in October, he conferred written authority on a prison spokesperson to complain to the Ombudsman on his behalf. The Ombudsman forwarded the complaint to the Department of Prisons and Probation and asked to receive a copy of the Department's reply to the inmate. The Department decided that the inmate could apply for compensation because he had not been released on parole at the correct time.

The decision was sent to the prison spokesperson who had complained on behalf of the inmate. The inmate himself had now been expelled from Denmark, and the Department did not know whether he was in contact with the spokesperson. At the request of the Ombudsman, the Department translated the decision and sent it to the former inmate so that he would be able to cancel the authority and apply for compensation himself.

A number of citizens confer written authority on another person to complain to the Ombudsman on their behalf. The authority is usually valid until the Ombudsman has concluded the case, unless the authority is cancelled before then.

Case No. 13/05369

A divorced father thought that his son's municipal caseworker had taken the mother's side in an e-mail correspondence. He therefore complained to the Ombudsman.

The e-mails mentioned in the complaint concerned the fact that the son had told his school that his mother beat him. The mother had therefore written to the municipality that she would like assurance that the case notes included the son's later retraction of his statement. The caseworker had confirmed this but also informed the mother that a notification cannot be retracted.

The Ombudsman wrote to the father that he would not investigate the case in more detail as the caseworker's information in the relevant e-mails 'was solely in the nature of information and guidance'. In addition, the case presented no information which gave the Ombudsman occasion for starting an investigation of the caseworker's impartiality or alleged breach of her duty of confidentiality.

In 2013, the Ombudsman processed 34 cases concerning impartiality. Only one of them gave occasion for a more detailed investigation.

Case No. 13/00052

On a Friday in January, one of the Ombudsman's legal case officers was called down to the reception, where a man was waiting with a handwritten complaint and a big bag with various binders and papers. The man explained that he wished to move away from the institution where he lived but that the municipality did not want to help him do so. Based on the man's information, the case officer concluded that the man wished to complain about the municipality's treatment of him.

During the conversation and in a subsequent letter, the man was informed, among other things, that he had to complain to the municipality before the Ombudsman could consider his case.

Citizens can appear in person at the Ombudsman office and have a face-to-face talk with a legal case officer. The office is open for enquiries in person all workdays between 10:00 and 14:00.

OUR COLLABORATION WITH THE MINISTRY
OF FOREIGN AFFAIRS NOW OFFERS A
WIDER RANGE OF POSSIBILITIES



Jens Olsen
Director of International Relations,
International Section



Christian Ougaard
Special Legal Advisor,
International Section

Since the inception of the Danish Ombudsman institution, the Danish Parliamentary Ombudsmen and their staff have been very active in spreading the knowledge of the institution, its purpose and its philosophy on an international basis. Some of these efforts have been formalised in a collaboration agreement between the Ministry of Foreign Affairs and the Ombudsman. Our collaboration on international activities was first formalised in a general agreement in 2000. The agreement covered a period of three years and has been extended and adjusted on a regular basis since then.

In March 2013, a newly formulated collaboration agreement was signed. This agreement offers considerably more flexibility than the previous agreements as the Ombudsman institution now has the possibility of contacting countries where there may be a need to promote the agreement's objective of securing human rights and democracy and establishing or strengthening existing democratic institutions.

The agreement enables the Ministry to utilise the Ombudsman's expertise in connection with development aid to establish and maintain democratic institutions, good governance and good administrative practice, especially in the world's poorest countries. In addition, the Ombudsman must be proactive in relation to possibilities for involvement in the Ministry's work.

The collaboration agreement thus provides a wide framework for activities which we have experienced to cover a broad range, from dialogue with decision-makers about the independence of institutions to practical assistance with the

establishment and running of an office (preparation of manuals, development of working methods, etc.)

These activities are funded partly by the Ministry, with just under a million Danish kroner. The funding is particularly aimed at projects where no agreement has been made already on an independent support project funded by the Ministry in relation to the institution(s) in question. By virtue of its knowledge and experience from international work, the Ombudsman institution is expected to proactively identify and approach the Ministry about possible initiatives.

FROM DIALOGUE WITH DECISION-MAKERS TO PRACTICAL ASSISTANCE

In 2013, we took full advantage of the new and flexible possibilities offered by the collaboration agreement.

Following contact with particularly two Chinese government institutions – the State Bureau for Letters and Calls and the Ministry of Supervision – we accepted an invitation to visit Beijing. In this connection, we signed two *Memoranda of Understanding* on our continued collaboration. In October 2013, a delegation from the State Bureau for Letters and Calls paid us a visit where the topic was confidence-inspiring administrative practice.

We also established contact with the Iranian Government Inspection Organization, and we arranged a visit from the Organization here in Copenhagen in August 2014. In addition to this, we held joint working seminars with the CHRAGG (the Commission for Human Rights and Good Governance) in Tanzania, and we are discussing an extended collaboration with the Inspectorate of Government in Uganda.

These proactive activities cover the entire spectrum from dialogue with decision-makers to practical assistance in connection with the consolidation of complaints institutions: from conversations with Chinese ministers and other high-ranking decision-makers about strategy and about the planning of an extended collaboration on, especially, trustworthy institutions and anti-corruption efforts – to Tanzania, where the development of a general process of administrative practice, work through own-initiative projects and IT use were among the topics of two two-day working seminars.

SEMINARS BASED ON CASES

As part of the collaboration agreement, we also receive a large number of visits to our office. These visits fall into two main categories: short visits, typically of a duration of two to three hours, with a lecture followed by questions and comments, and actual working visits, where a delegation visit Copenhagen to participate in a programme with a practical focus.

A working visit typically has a duration of three to five working days. The visitors are usually from other ombudsman institutions which have been established already and have perhaps even been functioning for a number of years. It is the same type of working visits we often use when visiting institutions around the world with which we cooperate.

We attach great importance to these working visits – whether they take place at our office or in the countries with which we cooperate, for instance Tanzania,

The Ombudsman's international work

Since the inception of the Danish Ombudsman institution in 1955, the Danish Parliamentary Ombudsmen and their staff have also worked internationally, among other things to spread the knowledge of the institution, its purpose and its philosophy. Since 2000, the Ombudsman has had a collaboration agreement with the Danish Ministry of Foreign Affairs, which has provided extra means for the activities.

The international work takes place at various levels and in various fora:

We provide assistance in other countries

The Ombudsman and his staff travel around the world for the purpose of informing about the Danish ombudsman concept. A number of these trips are related to actual collaborations with, for instance, other ombudsman institutions or ministries abroad.

We receive visitors

Every year, we receive delegations and other visitors from abroad. These visits may

be proper study visits which we plan here in Copenhagen and in which we very often involve state and municipal authorities. They may also be briefer visits where institutions or other groups of visitors have asked for a presentation of the Ombudsman office and the work of the Ombudsman.

The EU

The ombudsmen of the EU Member States and other representatives from their offices meet regularly in a network headed by the European Ombudsman.

The International Ombudsman Institute (IOI)

The Danish Parliamentary Ombudsman is a member of the International Ombudsman Institute (IOI), which is an organisation of ombudsmen from over 140 ombudsman institutions at local, regional and national level. The IOI is a well-known forum for collaboration and exchange of experience among the world's ombudsmen.

Uganda or Burkina Faso. This working method enables us to use specific cases as our starting point, which may contribute to providing a joint frame of reference for our institutions – that may differ widely with regard to working methods and conditions.

The objective is typically to gain an insight into how ombudsmen can work in a goal-oriented manner in practice, and therefore the topics cover a wide field. For instance, representatives from the Albanian ombudsman office, which had established a new unit to be in charge of international work, paid us a visit in 2013. We also received a visit from a delegation from the newly established ombudsman institution in Serbia, who wanted an insight into communication strategy and IT utilisation at the Danish Ombudsman's office.

These seminars represent a forum where collaboration may lead to definite changes/improvements. It goes without saying that the learning process is intended to go both ways. We use examples based on practice as an approach to debate and exchange of experience – i.e. cases received and handled by ombudsman institutions: how we handle the cases and how we can contribute to the development of legal protection guarantees and the administrative culture.

When we approach institutions abroad – like Tanzania and Uganda in 2013 – this is also our preferred working method since both parties benefit the most and gain the most insight through working with actual cases.

Finally, it has to be mentioned that the collaboration agreement with the Ministry of Foreign Affairs also enables us to assist Danish embassies around the world. By way of example, we were contacted in May by the Danish embassy in Mexico City and asked whether we could give a lecture at a conference on anti-corruption which the embassy had been involved in planning. Of course we accepted the invitation. Likewise, we always try to enter into close collaboration with the Danish embassies in the countries with which we collaborate – the latest example of such collaboration being the embassy in Beijing. In this connection, we would like to emphasise that Danish embassies have always given us inestimable help and advice, which is essential to our work.



Case No. 12/00509

Can a school expel students because of their behaviour during their leisure time and outside the school's grounds? The Ombudsman investigated this issue when a higher preparatory course student complained because he had been expelled from both his day and boarding school.

The student had smoked cannabis during a night out on the town on a weekend, and this was against the school's house rules. However, there was no evidence that the student had been visibly affected on his return to the school or that his behaviour had in any other way inconvenienced the school. For this reason, among others, the school had no authority to expel the student, said the Ombudsman.

The Ombudsman's statement, which also took a position on various other questions of fundamental importance, can be read in full (in Danish) on www.ombudsmanden.dk, Case No. 2013-24.

The Ombudsman has published 28 selected statements and reports which are to be regarded as part of the 2013 Annual Report of the Parliamentary Ombudsman because he finds them to be of significant and fundamental importance. Before a statement or report is made public, the Ombudsman decides which personal information is to be removed from the text.

Case No. 13/02929

The Danish Broadcasting Corporation, the DR, did not agree with a man's criticism of the physical setting for the Corporation's TV news, and the man therefore complained to the Ombudsman. In the man's opinion, the lighting and graphics in the studio could make it difficult to concentrate on the contents of the programmes and it was consequently obstructing the DR's public service obligation.

The Ombudsman replied that he would not investigate the complaint because he, in his capacity of Ombudsman, did not have any expertise regarding the communication of news programmes. The Ombudsman had replied the same to the man's two previous complaints about the DR's news programmes. Therefore, the Ombudsman added this time that any future complaints from the man about lighting and graphics in the DR's news programmes would be read but not answered, unless they contained new and significant information.

The Ombudsman usually replies by letter or e-mail to all inquiries he receives. However, as part of his prioritising of tasks, the Ombudsman may choose to restrict his replies to citizens who contact him repeatedly with the same complaint.

Case No. 13/05368

Gang and biker affiliated inmates in Danish prisons are placed in special units with more restrictive conditions than those of other inmates. A young man was registered as a member of a gang in Copenhagen and had therefore ended up in a special unit. He wrote a briefly worded complaint to the Ombudsman, who asked the Department of Prisons and Probation for a loan of the case documents.

Some weeks later, the Department telephoned the Ombudsman and said that a new security assessment of the inmate had now been carried out which showed that he no longer had any gang affiliations and therefore could be moved to an ordinary prison unit. The Ombudsman consequently took no further action in the case.

The Ombudsman sets no special requirements as to the form, volume or language of a complaint.

Case Nos. 13/03165 and 13/03938

In a much publicised case, the Danish Security and Intelligence Service (PET) had briefed the Ministry for Justice concerning a Member of Parliament. A journalist asked the Ministry for access to the briefing, and he would also like access to information about the time when the briefing was given – for instance in the form of entries in appointment books.

The Ministry for Justice replied that the briefing had been given verbally and that there was consequently no document to be given access to. The Ministry also wrote to the journalist that there were no written notes as to when the briefing had been given.

This puzzled the journalist, and he complained to the Ombudsman about the Ministry's refusal of his request for access. The Ombudsman rejected his complaint because the Ministry had stated that there were no documents to give the journalist access to.

The Ombudsman does not normally have the possibility of questioning witnesses but processes complaints on the basis of the information he receives from complainants and public authorities. The Ombudsman will often have to give up on getting to the bottom of a case if the parties disagree on the veracity of the information.

NEW FRAMEWORK FOR
THE OMBUDSMAN'S
MONITORING VISITS



Morten Engberg
Senior Head of Department,
Monitoring Department

For many years, the Ombudsman's monitoring activities were conducted within a clearly defined framework, but at the end of 2012, our monitoring activities were modified in a number of ways.

Basically, the Ombudsman decided to give a higher priority to essential and serious issues during monitoring visits, with special focus on general issues. In this connection, we also decided to use the term 'monitoring visits' instead of 'inspections'.

At the same time, a new Children's Division was established at the Ombudsman's office. Since monitoring visits to institutions for children and young people are considered one of the main tasks of the Children's Division, the establishment of the Division greatly affected the Ombudsman's monitoring activities.

But what topics does the Ombudsman concentrate on during monitoring visits following the new monitoring concept? At the beginning of 2013, the Ombudsman decided that monitoring visits were to focus on the following topics:

1. Forcible measures and other restrictions (including isolation), disciplinary measures and informal initiatives
2. Interpersonal relations, including relations between staff and inmates and other users of services and facilities as well as relations among users
3. Work and leisure time
4. Health issues
5. User safety
6. Education
7. Transfers between different sectors, for instance between the Prison and Probation Service and the psychiatric treatment system

The importance of the various focus points differs between institutions. For instance, education is of particular importance at institutions for children and young people. The focus points were selected because together they give a clear picture of whether residents at an institution are treated in a dignified and considerate way and in compliance with their rights. But several of the focus points are also of importance when it comes to assessing whether authorities and institutions comply with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This was given weight because the Ombudsman has been appointed to prevent violation of the Convention in Denmark.

Monitoring visits in 2013 in figures

The Ombudsman concluded 85 monitoring cases in 2013.

- 5 cases were concluded with criticism and formal recommendations.
- 49 cases were concluded with informal, verbal recommendations etc.
- 28 cases were concluded without any comments.
- 3 cases were closed in other ways. The Ombudsman discontinued one case because criminal proceedings were opened against employees at the institution, while 2 cases related to unannounced visits which could not be carried out for practical reasons.

Institutions for adults

In 2013, the Ombudsman carried out monitoring visits to 60 different institutions. During some of these visits, the Ombudsman visited 2 or more independent sections within the same institution. All visits were announced.

The Ombudsman's monitoring teams had conversations with 264 users (inmates, patients, residents, etc.).

The Ombudsman concluded 9 cases related to the Monitoring Department's activities

which had been opened on the Ombudsman's own initiative. No criticism was expressed in any of the cases.

In addition, the Ombudsman concluded 39 cases about attempted suicides and deaths at institutions of the Prison and Probation Service. Criticism was expressed in 2 cases.

On 5 occasions, Ombudsman staff informed foreign ombudsmen and/or national preventive mechanisms about the OPCAT work, and experiences were shared.

Institutions for children

In 2013, the Ombudsman carried out monitoring visits to 12 different institutions etc. for children and young people. During some visits, the Ombudsman visited 2 or more independent sections within the same institution. All visits were announced.

The Ombudsman's monitoring teams had conversations with 45 children and young people.

The Ombudsman concluded 3 cases related to the Monitoring Department's activities which had been opened on the Ombudsman's own initiative. Criticism was expressed in one of these cases.

Every year, the Ombudsman selects one or more themes which, in addition to the permanent focus points, will be given special priority during the year's monitoring visits to institutions for adults. By doing so, we can make sure that current topics and issues can be investigated during monitoring visits. In 2013, we selected two themes: treatment of alcohol and drug abuse and prevention of violence and threats among users of facilities.

The Ombudsman did not specifically select any general themes for monitoring visits to institutions for children and young people. However, the Ombudsman chose to concentrate the majority of his monitoring visits in 2013 on children and young people placed at social care institutions, at accommodation facilities or in foster families. When deciding which institutions and accommodation facilities to visit, we especially focused on those with in-house schools.

EXPERTS PARTICIPATE IN MONITORING VISITS

Our monitoring visits are carried out according to a standard framework. In a few cases, we will visit an institution without any prior notification, but usually, we will notify the institution's management well in advance of our visit. By doing so, we can be confident that the people we wish to speak to will be present, and we will be able to receive the large amount of information of various types that we need to prepare our visit. In addition, we can ask the management to inform the residents of the possibility of speaking to the Ombudsman's monitoring team during our visit. The disadvantage of announcing a visit in advance is, of course, that it is easier for the management to hide issues which they do not want the Ombudsman's monitoring team to know about. We do not, however, consider this to be a serious problem. It is my impression that at most institutions, the management do not have any wish to hide anything but are pleased to show their institution to the Ombudsman's monitoring team.

The Ombudsman himself participates in some of the monitoring visits, but usually, the monitoring team consists of two legal case officers from the Ombudsman's office. On visits to institutions for children, they are accompanied by the Ombudsman's special advisor on children's issues. In addition, representatives of DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights participate in a number of our monitoring visits. DIGNITY – Danish Institute Against Torture is a private organisation which – as the name implies – aims to prevent torture. It is a medically based organisation which has gained considerable knowledge about matters relating to prisons, among other things, which is very useful to us as legal case officers. The Danish Institute

for Human Rights has a comprehensive knowledge about human rights issues. Consequently, both organisations are able to provide valuable input – both on general issues and during individual monitoring visits. Our co-operation with DIGNITY and the Danish Institute for Human Rights began in 2009 when the Ombudsman was appointed ‘National Preventive Mechanism’ in Denmark pursuant to the UN Convention against Torture.

As mentioned above, our co-operation with DIGNITY and the Danish Institute for Human Rights is not limited to specific monitoring visits. For instance, the decision regarding the focus points listed above was made in consultation with DIGNITY and the Danish Institute for Human Rights. Our annual themes are also selected in consultation with our two cooperative partners.

VERBAL RECOMMENDATIONS

A monitoring visit always begins with a meeting with the management of the institution where we discuss focus points and annual themes in relation to the institution. After the meeting – which often takes several hours – the monitoring team will walk around the institution in order to take a closer look and talk to residents. Afterwards, we will have individual conversations with staff members in order to hear their opinion about the functioning of the institution. If possible (and if relevant), we will also have conversations with residents’ relatives. Furthermore, the monitoring team will of course have conversations with residents who have expressed a wish to speak to the monitoring team.

The monitoring visit ends with another meeting with the management of the institution. During this meeting, we will discuss the considerable amount of information we have obtained in the course of the day, and in many cases, the monitoring team will recommend implementation of specific changes, or that the management consider whether there is a need for certain changes.

As will appear from the above, the Ombudsman’s monitoring visits are based on verbal discussions. This provides a better opportunity of establishing a genuine dialogue between the monitoring team and the management of the institution, and in addition, it requires fewer resources than a written dialogue. Verbal discussions are also more effective because the issues are discussed at a time when they are still fresh in our memory. It is not infrequent for the management to initiate changes immediately based on the monitoring team’s comments, including comments about information we have obtained from residents.

Recommendations by the Ombudsman’s monitoring team may refer to a wide variety of issues. Sometimes recommendations concern general issues, while at

other times, they are related to very specific issues. For instance, at an accommodation facility for young people, we asked why some of the young residents' rooms were situated in the basement. As a result, the accommodation facility, on its own initiative, established rooms for the residents on the first floor instead.

In certain cases, we assess that the case cannot be concluded through verbal dialogue alone. In these cases, we ask the institution to forward a written statement to us after our visit, and subsequently, we will state our opinion of the case in writing. For instance, the Ombudsman asked for a written statement in a

The basis for the Ombudsman's monitoring visits

The Ombudsman carries out the following types of monitoring visits in accordance with the Parliamentary Ombudsman Act:

- Visits to public institutions in order to assess whether the institutions comply with the law and good administrative practice. The Ombudsman's monitoring visits may include universal human and humanitarian considerations.
- Visits to public and private institutions where persons are or may be deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment (the Ombudsman has been appointed 'National Preventive Mechanism' in accordance with the OPCAT Protocol – the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).
- Visits to public and private institutions for children, among other things in order to ensure that the rights of children are observed.

These types of monitoring visits can be combined.

Within the OPCAT field, the Ombudsman carries out his task as National Preventive Mechanism in collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights. DIGNITY

and the Danish Institute for Human Rights contribute to the collaboration with special medical and human rights expertise. Thus, for instance, staff with expertise in these fields participate on behalf of the two institutions in planning, carrying out and following up on monitoring visits.

The managements of the Ombudsman, DIGNITY and the Danish Institute for Human Rights meet at least once a year to discuss and organise the general framework for the OPCAT work. This collaboration is called *the OPCAT Council*.

Each of the three institutions has appointed staff members to participate on a permanent basis in the ongoing work in connection with the actual monitoring visits, the preparation of reports, etc. Members of the Ombudsman's staff act as secretariat and have the general responsibility for the planning of the work. This element of the collaboration is called *the OPCAT Work Group*.

In 2013, DIGNITY participated in 27 monitoring visits and the Danish Institute for Human Rights participated in 15 monitoring visits.

The Ombudsman's special advisor on children's issues participates in monitoring visits to institutions for children.

For more information (primarily in Danish), see www.ombudsmanden.dk.

case about forcible measures against a nine-year-old boy. He was at the playground of the Bispebjerg Psychiatric Centre for Children and Young People, and he refused to come inside to attend classes at the in-house school. Consequently, two staff members took hold of the boy and dragged him indoors in spite of the boy's resistance. The Ombudsman concluded the case with a report in which he expressed severe criticism that forcible measures had been taken against the boy.

UNCLEAR AGREEMENTS AT INSTITUTIONS OFFERING TREATMENT FOR ALCOHOL AND DRUG ABUSE

As mentioned above, treatment of alcohol and drug abuse was a general theme in 2013. Therefore, we visited 13 institutions working with treatment of alcohol and/or drug abuse. A recurring issue was the institutions' implementation of various restrictions against residents for treatment purposes. For instance, the majority of institutions had laid down rules allowing staff to search residents' rooms and to demand that residents provide urine samples or take an alcohol test. Many institutions had introduced rules restricting residents' access to a mobile telephone or a computer, and at one institution, the residents' access to television was considerably restricted. A number of institutions had also imposed restrictions on personal liberty, meaning, for instance, that residents were not allowed outside the institution until they had been off drugs for 30 days, and at the beginning only when accompanied by an employee. There was no legislative authority for these restrictions. Many of the institutions explained that they had entered into a voluntary agreement with the residents that the institution was allowed to impose these restrictions, and the residents we spoke to were generally aware of the restrictions which could be imposed on them. In a number of cases, however, there was uncertainty among the residents whether they themselves had agreed that the institution could impose these restrictions. Consequently, the monitoring team recommended – at the relevant institutions – that the institutions should set up clear, written agreements with each individual resident, prior to the resident's moving to the institution, as to which restrictions could be imposed on him or her. The consequences in case of breach of the agreement should also appear from the agreement, for instance that treatment might cease.

We also visited two accommodation facilities for children and young people with drug/alcohol abuse problems in consequence of our selecting treatment of alcohol and drug abuse as a theme for our visits in 2013 to institutions for

adults. Some of the legal issues related to treatment of children and young people for alcohol and drug abuse, for instance provision of urine samples, differ from those related to treatment of adults because institutions cannot enter into an agreement with children/young people. The Ombudsman has brought this issue to the attention of the Ministry of Children, Gender Equality, Integration and Social Affairs. Consequently, a committee has been set up in order to look at the rights of children and young people placed in care. To read more about the committee and the background to its establishment, see the 2012 Annual Report of the Danish Parliamentary Ombudsman, pages 67-69.

We also encountered a problem with regard to drug abuse treatment for remand prisoners. According to the law, remand prisoners must have access to drug abuse treatment free of charge. However, in practice, none of the local prisons visited by our monitoring staff offered any treatment other than motivational treatment, which is aimed at motivating drug abusers to enter into treatment. The local prisons informed us that the lack of other options was due to practical problems, among others that the local prisons did not know how long remand prisoners would be placed at the prison. This made it difficult to set up a treatment plan. We shall soon discuss this issue with the Prison and Probation Service.

INSTITUTIONS WITHOUT A POLICY OF VIOLENCE

As mentioned earlier, the other theme of our monitoring visits to institutions for adults was prevention of violence and threats among residents or inmates. We took up this theme since it is of course a terrible experience being, for instance, assaulted during imprisonment. Unfortunately, the Prison and Probation Service has in recent years noted an increase in the extent of violence and threats among inmates. Our monitoring visits revealed that many institutions are very aware of preventing violence and threats among residents or inmates, but nevertheless, a specific policy of violence determining what exactly is to be done at the individual institution in order to prevent violence and threats among residents or inmates was not in place at all institutions. Thus, we recommended that a policy of violence was implemented at the institutions where it was deemed relevant. Incidentally, it was not only during monitoring visits that we gave attention to issues of violence and threats among residents or inmates: In 2013, the Ombudsman took up a case on his own initiative based on press coverage of a violent attack on an inmate in a closed prison (Statsfængslet i Ringe).

HEALTH INFORMATION

During a monitoring visit, the monitoring team may also look into issues which are not related to our focus points or annual themes if there is a specific reason for doing so. In 2013, for instance, we started gathering information about the forms used in local prisons when inmates give their consent to information about their health being passed on to other institutions. Our monitoring teams had become aware that the forms differed widely; and there were doubts whether the forms were in compliance with the law. After having gathered various forms, the Ombudsman took up the issue in 2014 during one of our regular meetings with the Department of Prisons and Probation. The Department will now prepare a standard form which is in accordance with the law.

Sometimes it is necessary to seek an amendment to an Act in order to solve problems which are revealed during monitoring visits. For instance, during visits to psychiatric wards, the Ombudsman uncovered a problem for underage patients which we have subsequently discussed with the Ministry of Health: The legal protection guarantees of the act on coercion in psychiatry do not apply to underage psychiatric patients if their parents have given their consent that force may be used in connection with treatment of their disorder. They are, for instance, unable to complain about being subjected to forced treatment. The Ministry of Health has promised to introduce a bill to give these patients better legal protection.

The reorganisation of the Ombudsman's monitoring activities is described in detail in 'Report on the Monitoring Activities Carried out by the Danish Parliamentary Ombudsman'. The report is used as a daily working tool in connection with our monitoring visits. It is available in Danish at www.ombudsmanden.dk. An English version will follow at a later date.

What were the outcomes of the monitoring visits?

The Ombudsman has various options available for action when a monitoring team become aware of a problem or a possible problem during a monitoring visit.

Examples of important steps taken by the Ombudsman in 2013:

Verbal recommendations made to institution managements

Medicine management: A number of institutions have been recommended to draw up guidelines on how staff are to manage and hand out medicine. Several institutions have also been recommended to arrange for staff to take a course in medicine management. In addition, more specific recommendations have been made with regard to medicine management, for instance to register when a staff member hands out headache pills.

Forcible measures: A number of institutions have been recommended to draw up guidelines for the use of force. It has also been recommended that institutions ensure that children and young people in care and their custodial parents are informed about the provisions of the executive order on the use of force, including the provisions about the possibilities of complaining and of appealing against decisions. Recommendations to consider a course in the use of forcible measures have also been made.

Considerateness: At some institutions, the management has been recommended to remind staff to knock on the door before entering inmates' cells.

Documentation: Some institutions have been recommended to give inmates copies of their requests for, for instance, an appointment with a social worker.

Follow-up visits

Interpersonal relations and health: After a visit to 'Pensionen Lyng' under the Prison and Probation Service, the Ombudsman assessed that a follow-up visit was required. DIGNITY – the Danish Institute Against Torture participated in the follow-up visit, which concentrated on interpersonal relations and health issues. The case was concluded with recommendations.



Mentally ill inmates: After a visit to Vestre Hospital, the hospital wing of the state prison Vestre Fængsel, the conditions for mentally ill inmates gave rise to questions. Consequently, the Ombudsman, the Danish Institute for Human Rights and DIGNITY visited the prison again. The Ombudsman subsequently asked the Department of Prisons and Probation and Copenhagen Prisons for a statement on the conditions for mentally ill inmates. The case is pending.

Discussions with key authorities

Consent forms: Local prisons use different consent forms to obtain and pass on health information about inmates. The issue was taken up during our annual meeting with the Department of Prisons and Probation, which undertook to draw up a standard form of consent.

Medicine management: During our annual meeting, the Ombudsman asked the Department of Prisons and Probation whether it would be advisable to lay down guidelines for the management of medicine at halfway houses. The Department will follow up on the matter and inform us about the outcome at our next meeting.

Own-initiative cases and requests for statements

Drug abuse treatment: After a number of visits to local prisons, the Ombudsman took up a case on his own initiative about inmates' right to drug abuse treatment in local prisons. The case is pending.



Restrictions: Visits to institutions where adults are treated for drug/alcohol abuse have given rise to a general Ombudsman investigation of institutions' possibilities of imposing restrictions on residents. Examples of restrictions are rules that for a period of time, residents are not allowed to leave the institution on their own, that their rooms may be searched for smuggled-in drugs or that residents have to hand over their mobile telephones on arrival. The case is pending.

Action plans: In connection with a monitoring visit to a foster family, the Ombudsman became aware that the action plans for two of the five children placed in care were extremely insufficient. The Ombudsman took up the case on his own initiative and concluded the case with criticism towards the municipality.

Handcuffs: The Ombudsman asked 'Pensionen Lyng' and the Department of Prisons and Probation for statements about a report on the use of handcuffs at the institution. The case is pending.

Education: After a number of monitoring visits to facilities providing in-house schools for children, the Ombudsman has asked for further information about the minimum number of lessons and which subjects the in-house schools offer. The cases are pending.

MONITORING VISITS IN 2013 – ADULTS

Date	Institution	Type and target group
8 January	The local prison at Slagelse	Local prison, especially for remand prisoners during investigation of their case
15 January	The local prison at Ringsted	Local prison, especially for remand prisoners during investigation of their case
22 January	'Abildparken' at Frederikshavn	Old people's home for, among others, persons with a diagnosis of dementia
23 January	Psychiatric bed unit N7 at Frederikshavn	Open general psychiatric bed unit for mentally ill adults
24 January	'Hedebo' at Brønderslev	Accommodation facility for adults with mental disorders
20 February	'Kysten' at Nysted	Accommodation facility for adults with learning disabilities who have been sentenced to placement in an institution
22 February	'Sønderbjerggaard' at Stenlille	Accommodation facility for adults with a drug or alcohol addiction, especially for adults with a double diagnosis (a mental disorder and alcohol/drug abuse)
27 February	The local prison at Odense	Local prison, especially for remand prisoners during investigation of their case
27 February	The detention facility at Odense	Especially for persons who are unable to take care of themselves due to intoxication and have been encountered by the police in a dangerous situation
27-28 February	The state prison 'Statsfængslet i Vridsløselille' at Albertslund	Closed prison, especially for inmates serving a long sentence
11 March	'Lokalpsykiatri Fredericia'	Outpatient psychiatric treatment facility for adults
12 March	'Marielund' at Kolding	Social-psychiatric accommodation facility for adults with psychiatric disorders
13 March	Psychiatric ward at Kolding	4 adult psychiatric bed units and psychiatric emergency unit

Date	Institution	Type and target group
14-15 March	'Kofoedsminde' at Rødby	Special institution for adults with learning disabilities who have been sentenced to treatment at an open or secure unit
20 March	'Fonden Klippen' at Slagelse	Accommodation facility for adults which offers treatment for alcohol or drug abuse
20 March	The local prison at Herning	Local prison, especially for remand prisoners during investigation of their case
21 March and 3 October	'Pensionen Lyng' at Stakroge	Prison and Probation Service institution for, among others, inmates in a social re-entry phase, inmates serving alternatively and inmates sentenced to treatment
3 April	'Damkjærgaard/Sida' at Børkop	Accommodation facility for, among others, persons with learning disabilities who have a sentence and adults with psychiatric problems
4-5 April	'Nørholm' at Herning	Accommodation facility for, among others, adults with learning disabilities who have a sentence and adults with mental problems
8 April	'Psykiatrien Vest' at Slagelse	Secure unit V1 for patients older than 18 years, psychiatric emergency unit and outpatient treatment of psychiatric disorders which fall under the community mental health services
9 April	'Østergården' at Rude	Social-psychiatric accommodation facility for adults with mental challenges
11 April	'Bo- og Støttecenter Saxenhøj' at Sakskøbing	Accommodation facility for, among others, mentally ill adults and persons with a diagnosis of dementia
16 May	'Kongens Ø Munkeup' at Dronningmølle	Accommodation facility for adults which offers treatment for drug abuse
16 May	The hospital wing, Vestre Hospital, unit VH2, of the state prison 'Vestre Fængsel', Copenhagen	Local prison unit especially for mentally ill remand prisoners during investigation of their case
22 May	'Hedegaard' at Skjern	Accommodation facility for, among others, young people/adults with learning disabilities

Date	Institution	Type and target group
23 May	'Sødisbakke' at Mariager	Accommodation facility for, among others, adults with impaired function and a sentence
24 May	'Ørum Bo- og aktivitetscenter' at Ørum Djurs	Accommodation facility for, among others, adults with psychiatric disorders and for persons with learning disabilities who have a sentence
27 May	The local prison unit of the state prison 'Statsfængslet i Jyderup'	Local prison unit especially for remand prisoners during investigation of their case
30 May	'Alfa-Fredensborg' at Fredensborg	Accommodation facility for adults and for children and young people aged 15 to 18 years – offers treatment for alcohol and drug abuse
18 June	The local prison at Silkeborg	Local prison, especially for remand prisoners during investigation of their case
19 June	'Midtgården' at Bramming	Accommodation facility for adults which offers treatment for alcohol and drug abuse
20 June	The detention facility at Esbjerg	Especially for persons who are unable to take care of themselves due to intoxication and have been encountered by the police in a dangerous situation
1-2 July	The state prison 'Statsfængslet Renbæk' at Skærbæk	Open prison for sentenced inmates
27 August	'Regionspsykiatrien', including emergency treatment facility, Silkeborg	Outpatient treatment facility for adults with mental disorders
28 August	'Hinge' at Kjellerup	Social-psychiatric accommodation facility for adults with psychiatric problems
29 August	The institution for convicted persons at Tasilaq, Greenland	Institutions for convicted persons in Greenland are used for persons who have been sentenced to placement or are detained while their case is investigated
30 August	The detention facility at Tasilaq, Greenland	Detention facilities in Greenland can be used for intoxicated persons, arrestees and detained or convicted persons

Date	Institution	Type and target group
31 August	The detention facility at Kulusuk, Greenland	Detention facility without constant police surveillance Detention facilities in Greenland can be used for intoxicated persons and arrestees, among others
31 August	The detention facility at Nuuk, Greenland	Detention facilities in Greenland can be used for intoxicated persons, arrestees and detained or convicted persons
1 September	The institution for convicted persons at Nuuk, Greenland	Institutions for convicted persons in Greenland are used for persons who have been sentenced to placement or are detained while their case is investigated
2-3 September	The institution for convicted persons at Aasiaat, Greenland	Institutions for convicted persons in Greenland are used for persons who have been sentenced to placement or are detained while their case is investigated
3 September	The detention facility at Aasiaat, Greenland	Detention facilities in Greenland can be used for intoxicated persons, arrestees and detained or convicted persons
3 September	The institution for convicted persons at Kangerlussuaq, Greenland	Institutions for convicted persons in Greenland are used for persons who have been sentenced to placement or are detained while their case is investigated
3 September	The detention facility at Kangerlussuaq, Greenland	Detention facilities in Greenland can be used for intoxicated persons, arrestees and detained or convicted persons
3 September	The local prison at Nykøbing Falster	Local prison, especially for remand prisoners during investigation of their case
12 September	The local prison at Viborg	Local prison, especially for remand prisoners during investigation of their case
13 September	The local prison at Randers	Local prison, especially for remand prisoners during investigation of their case
17 September	'Behandlingscentret Hammer Bakker' at Vodskov	Accommodation facility for adults with impaired mental function, including persons with a sentence
18 September	Psychiatric bed unit N8, Thisted	Open general adult psychiatric unit

Date	Institution	Type and target group
19 September	The detention facility at Aalborg	Especially for persons who are unable to take care of themselves due to intoxication and have been encountered by the police in a dangerous situation
28 October	'Springbrættet' at Janderup in Western Jutland	Accommodation facility for adults which offers treatment for drug abuse
28 October	'Stenild Omsorgshjem' at Hobro	Accommodation facility for adults, among others persons with a double diagnosis (a mental disorder and alcohol or drug abuse)
29 October	'Slusen' at Oksbøl	Accommodation facility for adults which offers treatment for drug abuse
29 October	'Chiligruppen' at Lystrup	Accommodation facility for, among others, adults with learning disabilities who have a sentence
30-31 October	The state prison 'Statsfængslet i Sdr. Omme'	Open prison for sentenced inmates
12 November	'Vesterled' at Horsens	Accommodation facility for adults which offers treatment for alcohol and drug abuse
13 November	'Højløkke Q' at Horsens	Accommodation facility for adult women which offers treatment for alcohol and drug abuse
9 December	'Toftehuset' at Ribe	Accommodation facility for adults which offers treatment for alcohol and drug abuse
10 December	'Stien' at Vojens	Accommodation facility for adults which offers treatment for alcohol and drug abuse
11 December	'Sydgården' at Haderslev	Accommodation facility for adults which offers treatment for alcohol and drug abuse

MONITORING VISITS IN 2013 – CHILDREN

Date	Institution	Type and target group
15 January	'Tippen', including the in-house school, at Ansager	Residential institution for children and young people aged up to 18 years who need, for instance, special educational support, treatment and care In-house school, year 0-10
6 February	'Nødebogård', including the in-house school, at Fredensborg	Treatment and education facility, day care and 24-hour residential care facility for children and young people with contact difficulties, anxiety and mental disorders In-house school, year 0-10 (year 11 also available)
7 March	'Norddjurs Børnecenter', the residential and respite care facilities, at Grenå	24-hour residential care facility for children aged 0-12 years who have, for instance, been exposed to child neglect or suffer from mildly impaired mental function Respite care facility for children and young people aged 0-18 years
13 March	Foster family, Municipality of Lolland	Foster family
3 April	Foster family, Municipality of Tønder	Foster family
4 April	'Børnecenter Døgn' at Esbjerg	24-hour residential care facility, including emergency section, for children aged 0-13 years
7 May	'Bagsværd Observationshjem' at Bagsværd	Day care and 24-hour residential care facility for children aged up to 8 years, family care
15 May	'Døgncentret for børn og familier' at Aarhus	24-hour residential care facility for children and young people aged up to 17 years and families with infants
1 October	'Brovst Asylcenter' at Brovst	Centre for asylum seekers, including children ¹⁾
2 October	'Den Sikrede Institution Kompasset' at Brønderslev	Secure residential institution with in-house school for children and young people, typically aged 15-17 years, who, for instance, serve a surrogate prison sentence or have been placed at the institution as part of a youth sanction
22 October	'Fonden Tagkærgaard', including the in-house school, at Christiansfeld	24-hour residential care facility for young boys (aged 14 to 23 years) with drug abuse problems or drug abuse-related behavioural problems In-house school
23 October	'Behandlingsstedet Bjerget', including the in-house school, at Vissenbjerg	24-hour residential care facility for young girls (aged 14 to 23 years) with drug or alcohol abuse problems or behavioural problems In-house school

1) The visit focused on conditions for children and young people.

MONITORING VISITS IN 2013
WITHIN THE DISABILITY FIELD

At the request of Parliament, the Ombudsman monitors developments regarding equal treatment of persons with disabilities and in this connection, among other things, carries out monitoring visits of physical accessibility for persons with disabilities.

During these monitoring visits, the Ombudsman's monitoring staff check that the rules intended to ensure that public buildings are accessible to all are observed. The Ombudsman's monitoring staff bring along measuring equipment to check, for instance, whether ramps for wheelchair users have a degree of inclination which is in accordance with building regulations. An Ombudsman employee who is a wheelchair user participates in the monitoring visits.

Furthermore, the Ombudsman cooperates with the Danish Institute for Human Rights and the Danish Disability Council in order to facilitate, protect and monitor the implementation of the UN Convention on the Rights for Persons with Disabilities.

More information about the Ombudsman's work on equal treatment of persons with disabilities can be found (in Danish only) at www.ombudsmanden.dk/handicap.

Date	Institution	Type
22 May	Copenhagen University Hospital ('Rigshospitalet'), the Capital Region of Denmark	Hospital
19 November	'Lindeskovskolen', Municipality of Guldborgsund	School – used as polling station on the day
19 November	'Nordfalster Idræts- og Kulturcenter', Municipality of Guldborgsund	Sports hall – used as polling station on the day
19 November	'Kalbyrisskolen', Municipality of Næstved	School – used as polling station on the day
19 November	'Herlufsholm Hallen', Municipality of Næstved	Sports hall – used as polling station on the day

The list will be updated in the digital (Danish-language) version of the Annual Report at www.ombudsmanden.dk as cases are concluded.

MONITORING OF FORCED
DEPORTATIONS IN 2013

Since April 2011, the Ombudsman has monitored the forced deportations of citizens from third countries (non-EU countries) without legal residence in Denmark carried out by the Danish National Police.

The Ombudsman must especially ensure that the deportations are carried out with respect for the individual and without unnecessary use of force. Thus, the Ombudsman assesses whether the police act in accordance with applicable law, including EU law and international human rights conventions, together with good administrative practice.

The Ombudsman's monitoring is particularly focused on forcible measures, unity of the family, vulnerable groups, prior contact and information, the security assessment, aborted deportations and the deportation report.

As can be seen from the table on the following pages, the Ombudsman did not express criticism of the work of the police in 2013. The deportations were carried out with respect for the individual and without unnecessary use of force.

In 2013, we also reviewed 741 deportation cases from 2012 for the purpose of, among other things, identification of all cases involving forcible measures. We selected 76 cases out of the 741 cases for a closer assessment, including 9 cases from which it appeared that forcible measures had been used. We have found that in a number of cases, the documentation does not comply with the recommendations of the international and national guidelines on forced deportations. Moreover, in several respects the police have not complied with the non-statutory principle on the obligation to take notes. Consequently, the Danish National Police initiated a number of measures in 2013 in order to improve the documentation of the various administrative procedures in connection with deportation cases.

For more information (in Danish only) about the Ombudsman's monitoring of forced deportations, see www.ombudsmanden.dk/udsendelser.

Date	Destination	Number of persons	Forcible measures taken?	Deportation completed?
4 February	Afghanistan (escorted ¹⁾)	1	Yes	Yes
12 March	Serbia (monitored)	5	No	Yes
19 March	Serbia (escorted)	55 (including several families with children)	No	Yes
1 May	Iran (escorted)	1	Yes	No
14 May	Serbia (escorted)	106 (including several families with children)	No	Yes
27 May	Iran (escorted)	1	Yes	No
24 June	Iran (escorted)	1	No	Yes
26 August	Afghanistan (escorted)	18	Yes	Yes
13 November	Belarus (escorted)	1	No	Yes
20 November	The Cameroons (escorted)	1	No	Yes

- 1) The deportation of foreign nationals who do not depart voluntarily can either be carried out through a *monitored departure*, where the departure is monitored by the police, for instance when the foreign national boards a plane or a ship, or through an *escorted departure*, where the police escort the foreign national out of the country to his or her home country or a third country where the foreign national is entitled to take up residence.

Comments

The police took forcible measures in the form of immobilisation and use of a restraint belt. The use of force was necessary due to the foreign national's violent behaviour. The forcible measures were proportional to the situation and only lasted as long as necessary.

The forced deportees were two married couples and the adult son of one of the couples.

The forced deportation was a so-called chartered flight, where the police had chartered a plane for the occasion. In addition to an interpreter, a medical doctor was present for the sake of the foreign nationals' safety. The medical doctor's assistance was not required. The atmosphere was calm and relaxed and the parents took care of the children present.

The police took forcible measures in the form of immobilisation and use of a restraint belt and plastic strips. The use of force was necessary due to the foreign national's fierce behaviour. The deportation was aborted by the captain due to the foreign national's fierce behaviour.

The forced deportation was a so-called chartered flight, where the police had chartered a plane for the occasion. In addition to an interpreter, a medical doctor was present for the sake of the foreign nationals' safety. The medical doctor's assistance was not required. The atmosphere was calm and relaxed and the parents took care of the children present.

The police took forcible measures in the form of immobilisation and use of a restraint belt, plastic strips and a soft helmet. The use of force was necessary due to the foreign national's fierce and violent behaviour. The police aborted the deportation prior to boarding after having received a request from the UN Human Rights Committee to abort the deportation.

The forced deportee was an adult man. Upon presentation of the deportee's documents, the Iranian authorities granted him entry into Iran. The man was received by his mother at the airport.

The forced deportation was a so-called chartered flight, where the police had chartered a plane for the occasion. In addition to an interpreter, a medical doctor was present for the sake of the foreign nationals' safety. The medical doctor's assistance was not required. The police took forcible measures towards three foreign nationals in the form of immobilisation and use of plastic strips and restraint belts. All forcible measures were necessary due to the foreign nationals' behaviour.

The forced deportation was only partly monitored by an Ombudsman employee since monitoring only covered the time from when the police picked up the foreign national until boarding at the airport.

The forced deportation was only partly monitored by an Ombudsman employee since monitoring only covered the time from when the police picked up the foreign national until boarding at the airport.

Date	Destination	Number of persons	Forcible measures taken?	Deportation completed?
2 December	Afghanistan (escorted)	1	No	Yes
17 December	Italy (monitored)	1	No	Yes
18 December	Afghanistan (escorted)	1	No	Yes
19 December	Serbia (monitored)	1	No	Yes

Comments

The forced deportation was only partly monitored by an Ombudsman employee since monitoring only covered the time from when the police picked up the foreign national until boarding at the airport.

The forced deportee was a Nigerian citizen with a residence permit for Italy. The deportee wished to return to Italy.

The forced deportation was only partly monitored by an Ombudsman employee since monitoring only covered the time from when the police picked up the foreign national until boarding at the airport.

The forced deportee was an elderly woman. The forced deportation was originally planned as an escorted deportation, but was changed into a monitored deportation shortly prior to departure since the police, with the woman's consent, allowed her son to accompany her back to Serbia.

Case No. 13/00255

A foreign national did not speak Danish and therefore complained to the Ombudsman in English: He had been an inmate in a Danish prison and had asked in vain for an English translation of the rules for release on parole, both from the prison and from the Department of Prisons and Probation.

The Ombudsman wrote to the Department of Prisons and Probation and received a reply immediately. The Department could not see that it had received any enquiries from the man about the rules for release on parole, but an English version would now be sent to him. When the Ombudsman had received a copy of the Department's letter with the translation, he wrote to the man – in English – that he would now take no further action in the case.

In 2013, the Ombudsman received approximately 13,000 letters and e-mails – the vast majority in Danish.

Case No. 13/02812

May the chimney sweep clean people's chimneys without notice when they are not at home? A man was of the opinion that pursuant to the Due Process of Law Act, he was to have at least 14 days' notice, and he complained to the Ombudsman because the chimney sweep came unannounced.

The Ombudsman forwarded the complaint to the Danish Energy Agency. While the Agency was working on its reply to the complainant, it came to the Agency's attention that the executive order on chimney sweeps contained provisions which might give the impression that chimney sweeps carried out regulatory tasks. The Agency would therefore set up a working group to look at the chimney sweep system.

Thus, the man's complaint to the Ombudsman caused the authorities to take a closer look at the rules pertaining to chimney sweeping.

Sometimes, a citizen's complaint to the Ombudsman may serve to draw a public authority's attention to fundamental problems with regard to the authority's practices or the rules according to which it operates.

Case No. 13/02938

A small grassy area on the bank of an inlet had been used for years by the members of a boating guild for parking and for laying up boats. But in connection with a property boundary assessment, the majority of the area was conferred on the adjoining site, which was owned by a private person. However, the boating guild was of the opinion that the members of the guild had acquired a prescriptive right by using the site through many years and that, consequently, the boating guild ought to have the right to continued access to it.

The property boundary assessment was approved by the Danish Geodata Agency in 2009, and the boating guild received the last refusal to reopen the case in 2011. As the Ombudsman received the boating guild's complaint in 2013, he had to reject it because the guild had exceeded the Ombudsman's one-year deadline for lodging a complaint.


Citizens who wish to complain to the Ombudsman must do so within a year of the decision or event which is the cause of the complaint. In 2013, the Ombudsman had to reject 162 complaints because they were lodged too late.

Case No. 13/01800

Three ministries rejected an attorney's request for access to a number of documents in a case of grievous bodily harm resulting in death. The attorney complained to the Ombudsman and wrote, among other things, that he had not had the opportunity to inform the ministries, before the decisions were made, of the considerations which favoured the granting of access.

The Ombudsman replied that he would not investigate the case before the authorities had taken a position on the attorney's arguments.

The Ombudsman cannot investigate a complaint if the channels of administrative appeal have not been exhausted. Therefore, it is the Ombudsman's practice not to investigate a case until the authorities have had the opportunity to consider the issue which the complainant wishes the Ombudsman to comment on.



Case No. 12/04693

A woman had for years received too little in housing benefit because the municipality had made an error when entering information about her income into the system. When the error was finally discovered, the woman thought that the municipality must owe her the shortfall in benefit. But the municipality replied that according to the Housing Benefit Act, it was the woman's own duty to check the information on which the municipality based its calculation.

The woman complained to the Social Tribunal about the municipality's reply but the Tribunal agreed with the municipality. The Social Tribunal wrote that the housing benefit had been calculated on the basis of the original information and that the woman should herself have informed the municipality that the information should be changed.

The woman now complained to the Ombudsman. In her opinion, the municipality and the Tribunal should address the fact that it was the municipality's input entry error which was to blame for the wrongful calculation.

After assessing the case, the Ombudsman asked the Social Tribunal on the woman's behalf to address her points of view. On the basis of the Ombudsman's request, the Tribunal reopened the case.

It happens that a public authority will reopen a case and make a new decision after the Ombudsman has forwarded a complaint about the original decision to the authority. The fact that the authority reopens the case does not, however, necessarily mean that the case will have a different outcome.

Case No. 13/05402

A mother and father contacted the Ombudsman in frustration because the municipality had not yet decided whether their son could be placed in a treatment facility. The parents did not live together but they both felt that they were not able to cope with looking after the son at home. They had great problems with the boy, who had been diagnosed with several psychiatric disorders.

The Ombudsman forwarded the parents' complaint to the municipality as a request from them that the case be resolved soon. At the same time, the Ombudsman informed the National Social Appeals Board of the case, and the Board enquired about the case with the municipality.

After 1½ month, the municipality refused the parents' application to have the son placed at a treatment facility. The municipality was of the opinion that the boy's mother was good at giving him the support he needed and that he should therefore live with her.

The Ombudsman may sometimes be able to help a complainant by sending a so-called expediting request to the authority on behalf of the complainant if a case has come to a standstill. The Ombudsman may also draw a higher authority's attention to the situation.





THE YEAR IN FIGURES

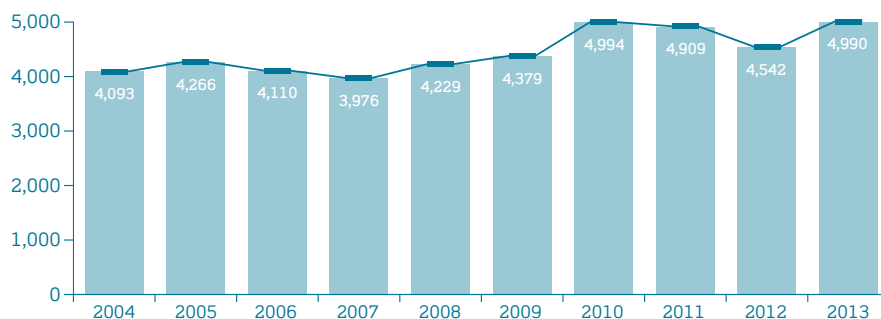
The following pages present some key figures related to the cases processed by the Ombudsman in 2013. More information about the Ombudsman's work and the rules governing the Ombudsman's activities can be found on the Ombudsman's website, www.ombudsmanden.dk.

NEW CASES

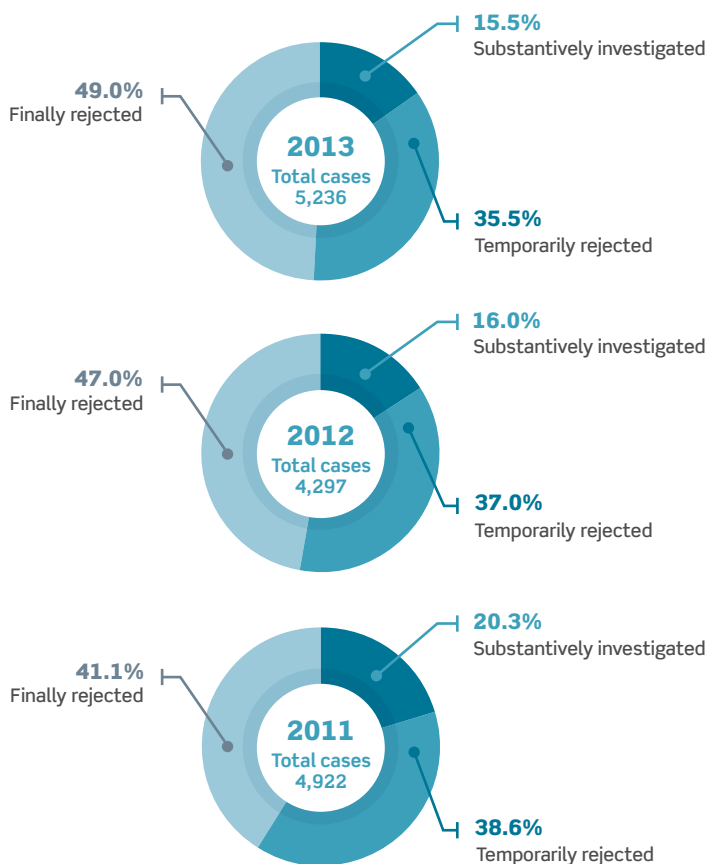
Cases opened in 2013 ¹	
Complaint cases	4,769
Cases opened by the Ombudsman on his own initiative	109
Monitoring cases opened in pursuance of section 18 of the Ombudsman Act	25
OPCAT cases ²	20
Combined OPCAT and section 18 monitoring cases	49
Deportation cases ³	18
Total	4,990

- 1) The total number of cases does not include administrative cases, for instance cases concerning requests for access to documents of Ombudsman cases and cases connected with international collaboration.
- 2) Cases opened in connection with OPCAT (the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), i.e. monitoring visits according to UN rules. See www.ombudsmanden.dk for further information (primarily in Danish).
- 3) Cases opened in relation to the Ombudsman's monitoring of forced deportations of foreign nationals. See www.ombudsmanden.dk/udsendelser for further information (in Danish). In 2013, the Ombudsman also received 741 specific deportation cases for review pursuant to section 30 a(3) of the Aliens Act. These cases are not included in the total number of cases.

Developments in the number of cases opened



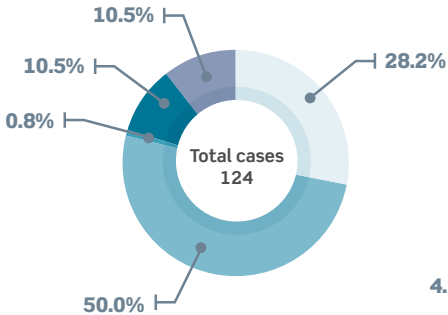
CASES CONCLUDED¹



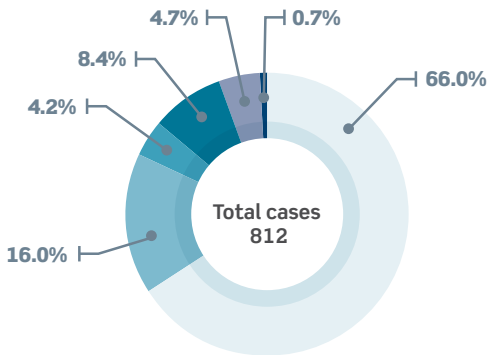
1) When the Ombudsman receives a complaint, he may subject it to either a full or a shortened substantive investigation (for more information, see page 112, note 2). Cases opened by the Ombudsman on his own initiative, monitoring cases, etc. are also classified as substantively investigated cases. The Ombudsman may also reject the case, temporarily or finally, either because he is not permitted to investigate the case or because he chooses not to do so (see pages 114-115 for further information).

What did our cases concern in 2013?

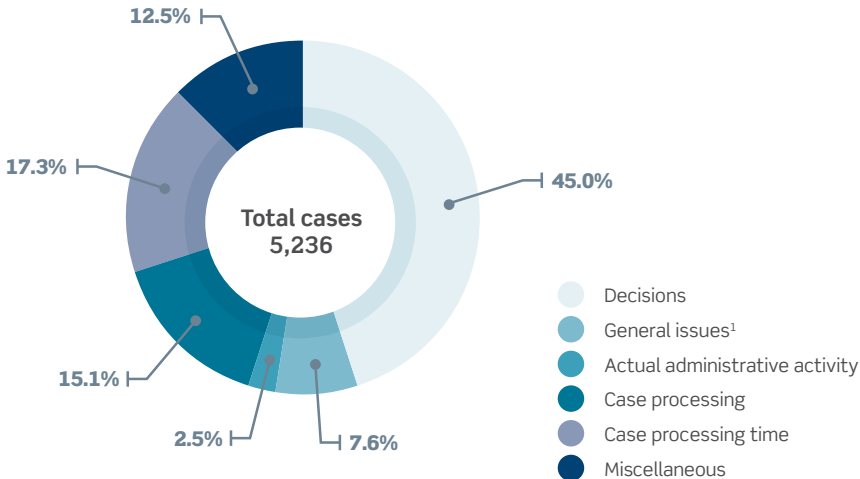
Cases with criticism, formal or informal recommendations, etc.



Substantively investigated cases



All cases



- Decisions
- General issues¹
- Actual administrative activity
- Case processing
- Case processing time
- Miscellaneous

1) Monitoring cases are typically classified under 'General issues'.

Outcome of cases in 2013 by authorities etc.

Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc. ³	Without criticism, formal or informal recommendations, etc.		

A. Central authorities (within the Ombudsman's jurisdiction)

a. Ministry of Employment

Department of Employment	2	2	19	23
ATP Appeals Board	0	1	21	22
ATP (Danish Labour Market Supplementary Pension Scheme)	0	1	11	12
National Labour Market Authority	0	0	10	10
National Board of Industrial Injuries	1	4	42	47
Danish Working Environment Authority	0	1	1	2
The OECD's Contact Point in Denmark	0	0	1	1
Board of Equal Treatment	0	5	7	12
Employees' Guarantee Fund	0	0	6	6
Danish Agency for Labour Retention and International Recruitment	0	0	6	6
Total	3	14	124	141

b. Ministry of Business and Growth

Department of Business and Growth	0	1	8	9
Danmarks Nationalbank (the Danish central bank)	1	0	1	2
Danish Business Authority	0	0	5	5
Danish Financial Supervisory Authority	0	0	3	3
Danish Consumer Ombudsman	0	1	0	1
Danish Competition and Consumer Authority	0	1	4	5
Danish Patent and Trademark Office	0	0	3	3
Revisorkommissionen (commission administering the legislation regarding state authorised and registered public accountants)	0	1	0	1
Danish Safety Technology Authority	0	0	1	1
Danish Storm Council	0	0	1	1
Danish Maritime Authority	0	0	1	1
Danish Growth Fund	0	1	0	1
Total	1	5	27	33

Outcome of cases in 2013 by authorities etc.

Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc. ³	Without criticism, formal or informal recommendations, etc.		

c. Ministry of Finance

Department of Finance	4	2	13	19
Working group regarding analysis of working hours in primary and lower secondary schools and in general upper secondary schools	0	0	1	1
Agency for Digitisation	0	0	4	4
Agency for the Modernisation of Public Administration	3	1	6	10
Agency for Governmental Administration	0	0	3	3
Total	7	3	27	37

d. Ministry of Defence

Department of Defence	1	5	16	22
Emergency Management Agency	0	0	1	1
Danish Defence Estates and Infrastructure Organisation	0	0	1	1
Danish Defence Personnel Organisation	0	1	9	10
Defence Command	0	0	3	3
Home Guard Command	0	0	2	2
Army Home Guard districts	0	0	3	3
Compulsory military service tribunal	0	0	2	2
Total	1	6	37	44

e. Ministry for Justice

Department for Justice	7	41	156	204
Local prisons	2	4	9	15
Local prison regional managers	6	0	5	11
Civil Affairs Agency	0	1	15	16
Data Protection Agency	0	0	9	9
Independent Police Complaints Authority	0	0	5	5
Department of Prisons and Probation	1	58	59	118
Criminal Injuries Compensation Board	0	7	5	12
Prison and Probation Service in Greenland	0	0	1	1
Prison and Probation Service institutions	0	0	4	4
The police	2	1	73	76
Danish Security and Intelligence Service (PET)	1	1	2	4
Danish Medico-Legal Council	0	0	1	1
Director of Public Prosecutions	0	3	19	22
National Police	3	13	51	67
Prosecution Service	1	25	38	64
State prisons	1	14	30	45
Immigration Appeals Board	4	10	20	34
Immigration Service	0	2	54	56
Total	28	180	556	764

Outcome of cases in 2013 by authorities etc.

Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc. ³	Without criticism, formal or informal recommendations, etc.		

f. Ministry of Climate, Energy and Building

Department of Climate, Energy and Building	0	1	0	1
Energy Board of Appeals	0	2	0	2
Energinet.dk	0	0	2	2
Danish Energy Agency	0	0	1	1
Danish Energy Regulatory Authority	0	0	3	3
Total	0	3	6	9

g. Ministry of Culture

Department of Culture	0	1	3	4
Anti Doping Danmark	0	1	0	1
DR (Danish Broadcasting Corporation)	0	0	16	16
Royal Danish Theatre	0	1	6	7
Open Air Museum	1	0	0	1
Danish Agency of Culture	0	1	6	7
State Archives	0	0	1	1
Total	1	4	32	37

h. Ministry of the Environment

Department of the Environment	0	0	13	13
Danish Geodata Agency	0	0	5	5
Environmental Protection Agency	0	1	7	8
Environmental Board of Appeal	0	17	41	58
Nature Agency	0	0	23	23
Total	0	18	89	107

i. Ministry of Housing, Urban and Rural Affairs

Department of Housing, Urban and Rural Affairs	0	1	5	6
Total	0	1	5	6

Outcome of cases in 2013 by authorities etc.

Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc. ³	Without criticism, formal or informal recommendations, etc.		

j. Ministry of Science, Innovation and Higher Education

Department of Science, Innovation and Higher Education	2	1	1	4
State Education Grant and Loan Scheme Board of Appeal	0	8	3	11
Danish Agency for Science, Technology and Innovation	0	0	1	1
Danish Agency for Higher Education	0	5	30	35
Danish Committees on Scientific Dishonesty (DCSD)	0	3	3	6
Universities etc.	1	4	24	29
Total	3	21	62	86

k. Ministry of Food, Agriculture and Fisheries

Department of Food, Agriculture and Fisheries	0	1	7	8
Food and Veterinary Complaints Board	0	5	4	9
Danish Veterinary and Food Administration	0	0	5	5
Danish AgriFish Agency	0	0	12	12
Total	0	6	28	34

l. Ministry for Gender Equality and Ecclesiastical Affairs

Department for Gender Equality and Ecclesiastical Affairs	0	1	8	9
Parochial church councils	0	0	1	1
Parishes	0	0	3	3
Dioceses	0	0	7	7
Total	0	1	19	20

m. Ministry of Health

Department of Health	0	0	21	21
Psychiatric Appeals Board	0	1	0	1
Danish Mental Health Patients Complaints Board	0	2	10	12
National Agency for Patients' Rights and Complaints	1	8	51	60
National Institute of Radiation Protection	0	0	2	2
SSI (Statens Serum Institut)	0	0	1	1
Danish Health and Medicines Authority	0	0	18	18
Disciplinary Board of the Danish health care system	5	26	14	45
Total	6	37	117	160

Outcome of cases in 2013 by authorities etc.

Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc. ³	Without criticism, formal or informal recommendations, etc.		

n. Ministry of Taxation

Department of Taxation	3	2	21	26
The civil ambassador of the Ministry of Taxation	0	1	2	3
National Tax Tribunal	1	8	34	43
Danish Customs and Tax Administration (SKAT)	0	5	124	129
Regional tax appeals boards	0	0	3	3
Regional assessment appeals boards	0	0	1	1
Total	4	16	185	205

o. Ministry of Social Affairs, Children and Integration

Department of Social Affairs, Children and Integration	2	7	14	23
Danish National Board of Adoption	0	0	3	3
National Social Appeals Board ⁴	10	179	470	659
Danish Supervisory Board of Psychological Practice	0	0	2	2
Danish National Centre for Social Research	0	0	1	1
The State Administration ⁵	0	0	27	27
Udbetaling Danmark (institution responsible for benefit payments)	0	4	61	65
Total	12	190	578	780

p. Prime Minister's Office

Department of the Prime Minister's Office	1	1	8	10
Total	1	1	8	10

q. Ministry of Transport

Department of Transport	1	7	14	22
Danish National Railway Agency	0	1	2	3
Danish State Railways	0	1	3	4
Kommissarier (authorities administering the legislation concerning compulsory acquisition of land)	0	0	1	1
Danish Coastal Authority	0	0	1	1
Danish Transport Authority	0	4	20	24
Road Directorate	0	6	12	18
Total	1	19	53	73

Outcome of cases in 2013 by authorities etc.

Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc. ³	Without criticism, formal or informal recommendations, etc.		

r. Ministry of Foreign Affairs

Department of Foreign Affairs	1	0	12	13
International Press Centre	1	0	0	1
Total	2	0	12	14

s. Ministry of Education

Department of Education	1	6	8	15
Upper secondary schools etc.	0	1	3	4
Appeals Board for Special Needs Education	0	2	3	5
Adult vocational training centres	0	0	3	3
Total	1	9	17	27

t. Ministry of Economic Affairs and the Interior

Department of Economic Affairs and the Interior	0	4	13	17
The State Administration ⁶	1	23	165	189
Total	1	27	178	206

Central authorities, total**72****561****2,160****2,793**

B. Municipal and regional authorities (within the Ombudsman's jurisdiction)

Municipalities	23	97	1,431	1,551
Regions	11	19	98	128
Special municipal or regional entities	0	0	2	2
Joint municipal or regional enterprises	0	2	5	7
Municipal and regional authorities, total	34	118	1,536	1,688

C. Other authorities etc. within the Ombudsman's jurisdiction⁷

Other authorities etc. within the Ombudsman's jurisdiction	18	9	17	44
Total	18	9	17	44

Outcome of cases in 2013 by authorities etc.				
Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc. ³	Without criticism, formal or informal recommendations, etc.		
D. Authorities etc. within the Ombudsman's jurisdiction, total⁹				
Central authorities, total (A)	72	561	2,160	2,793
Municipal and regional authorities, total (B)	34	118	1,536	1,688
Other authorities etc. within the Ombudsman's jurisdiction, total (C)	18	9	17	44
Total	124	688	3,713	4,525
E. Institutions etc. outside the Ombudsman's jurisdiction				
1. Courts etc. ⁹	0	0	97	97
2. Dispute tribunals ¹⁰	0	0	11	11
3. Other institutions, companies, businesses and persons outside the Ombudsman's jurisdiction	0	0	272	272
Total	0	0	380	380
F. Cases not relating to specific institutions etc.				
	0	0	331	331
Grand total (A-F total)	124	688	4,424	5,236

- 1) The cases in Section A of the table have been classified under the ministries existing at the end of the year. Similarly, as a general rule, cases relating to authorities closed down or reorganised during the year have as far as possible been classified under the ministerial areas where the cases would have belonged at the end of the year.
- 2) Cases which the Ombudsman has concluded with a statement about the issue(s) raised. In general, a substantive investigation is carried out on the basis of a consultation, where the authorities are given the opportunity to make a statement to the Ombudsman about the case. If, however, the Ombudsman assesses that it is unlikely that a case will result in criticism or recommendations, the Ombudsman may subject it to what is referred to as a shortened substantive investigation, where he does not obtain statements from the authorities. The category of cases subjected to a shortened substantive investigation includes cases opened by the Ombudsman on his own initiative where he decides on the basis of the replies which he receives from the authorities not to take any further action. Cases subjected to a shortened substantive investigation (totalling 476 in 2013) are governed by section 16(2) and section 17(1) of the Ombudsman Act. Cases reopened by the authorities following a request from the Ombudsman for a statement (14 cases in 2013) have also been classified as substantively investigated cases, as in practice, the effect is the same as if the Ombudsman had recommended that the authorities reconsider the cases.
- 3) As from 1 January 2013, the Ombudsman now records when recommendations etc. of a more informal nature, as opposed to actual criticism or formal recommendations, are made in connection with monitoring visits. Cases resulting in such informal recommendations are included under this heading.

- 4) The figures include cases relating to the former Social Tribunals and Employment Appeals Boards. It is not possible to provide breakdowns by area of expertise or by division within the National Social Appeals Board.
- 5) The figures comprise cases which the case officer has classified under the Ministry of Social Affairs, Children and Integration on their conclusion based on their substantive content. With the registrations which are made in the Ombudsman's electronic case and document management system, it is not possible to provide further breakdowns.
- 6) The figures comprise cases which the case officer has classified under the Ministry of Economic Affairs and the Interior on their conclusion based on their substantive content. The figures include cases relating to the State Administration in its capacity of supervisory authority. With the registrations which are made in the Ombudsman's electronic case and document management system, it is not possible to provide further breakdowns.
- 7) The figures include accommodation facilities, independent institutions, transport authorities and any other institutions which fall within the Ombudsman's jurisdiction, for instance in pursuance of OPCAT or in the children's field.
- 8) In 2013, the Ombudsman made no decisions in pursuance of section 7(4) of the Ombudsman Act that his jurisdiction was to extend to a company, an institution, an association etc. which was covered administratively by the Public Administration Act, the Access to Public Administration Files Act or the Public Authorities' Registers Act.
- 9) Cf. section 7(2) of the Ombudsman Act.
- 10) Bodies covered by section 7(3) of the Ombudsman Act.

Grounds for rejection – 2013

	Rejected cases, total	Of which municipal and regional cases
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1. Final rejections

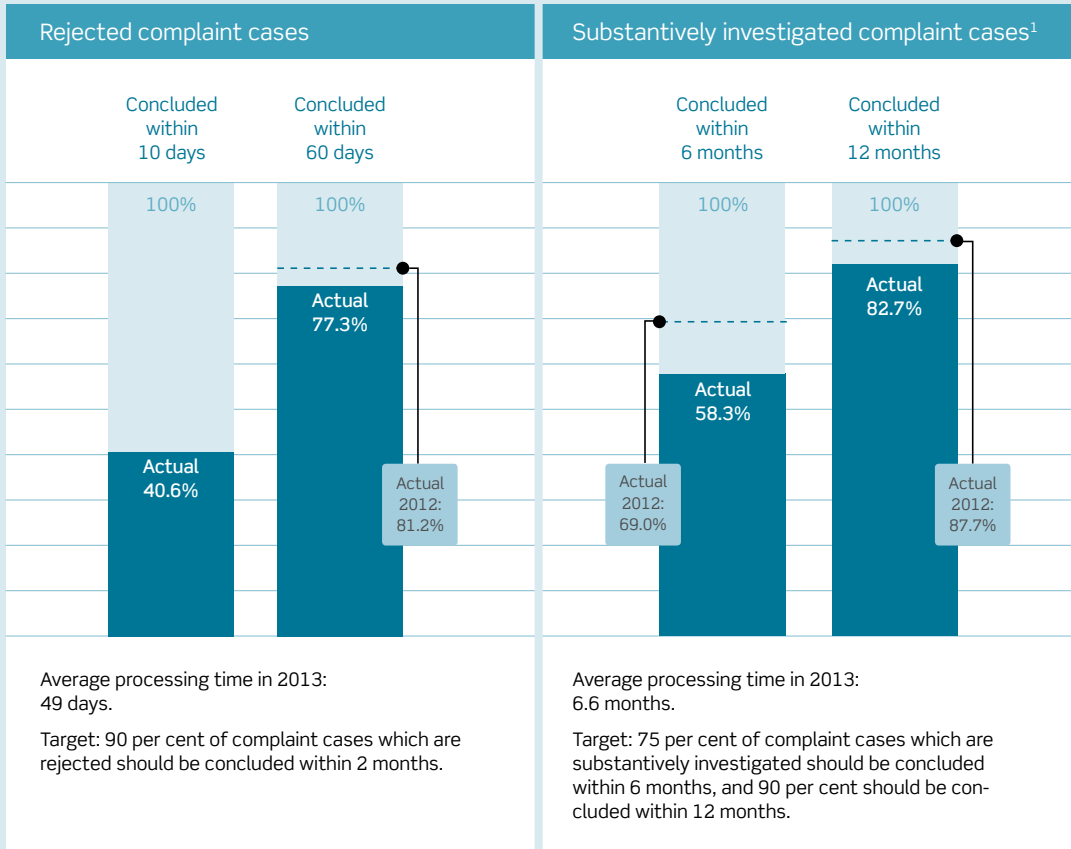
1. Complaints which were submitted too late (Section 13(3) of the Ombudsman Act provides for a limitation period of one year)	162	48
2. The administrative case processing options had not been exhausted and were no longer available (section 14 of the Ombudsman Act)	66	32
3. Complaints which related to courts, judges or matters on which a court had made or was expected to make a decision – and which were thus outside the Ombudsman's jurisdiction (section 7(2) of the Ombudsman Act)	138	9
4. Complaints about matters relating to Parliament, including legislative issues, which were thus outside the Ombudsman's jurisdiction (cf., a contrario, especially section 7(1) of the Ombudsman Act)	49	0
5. Complaints which related to other matters outside the Ombudsman's jurisdiction, including private legal matters and the like (cf., a contrario, especially section 7(1) of the Ombudsman Act)	252	4
6. Complaints which were not clarified sufficiently to enable investigation and complaints which were withdrawn	420	95
7. Enquiries etc. without actual complaints	221	84
8. Anonymous approaches (section 13(2) of the Ombudsman Act)	23	3
9. Complaints which the Ombudsman decided not to investigate (section 16(1) of the Ombudsman Act)	1,233	424
Final rejections, total	2,564	699

2. Temporary rejections

The administrative case processing options had not been exhausted (section 14 of the Ombudsman Act) ¹	1,860	785
Temporary rejections, total	1,860	785
Total (1+2)	4,424	1,484

- 1) The Ombudsman is not permitted to enter a case until all administrative complaint/appeal options have been exhausted (section 14 of the Ombudsman Act). In cases where there are still complaint/appeal options available in the administrative system, the Ombudsman will either forward the case to the relevant authority or authorities or ask the complainant to use his or her complaint/appeal options. The Ombudsman also forwards cases to authorities for other reasons, for instance in order that an authority may consider the specific content of a citizen's complaint to the Ombudsman or give a citizen more detailed grounds for a decision. In 1,185 (63.7 per cent) of cases which were rejected temporarily, the Ombudsman forwarded the complaint (for various reasons) to the relevant authorities. In the cases rejected temporarily by the Ombudsman, the vast majority of complainants had the option to return to the Ombudsman if they remained dissatisfied with the authorities' decision and/or processing of their case.

PROCESSING TIMES



1) See page 112, note 2, for an explanation of the term 'substantively investigated case'.

OTHER FACTS

The Ombudsman declared himself **disqualified** in seven complaint cases in 2013. Parliament's Legal Affairs Committee assigned these cases to Mr Henrik Bloch Andersen, High Court Judge. The Ombudsman's office provided secretariat assistance in connection with the processing of the cases.

The Faroese Lagting (the Parliament) asked the Ombudsman to act as **ad hoc ombudsman** for the Faroese Parliamentary Ombudsman in one case in 2013. Likewise, the Ombudsman was asked by the Inatsisartut (the Parliament of Greenland) to act as ad hoc Ombudsman for the Ombudsman for Inatsisartut in one case.

STATEMENT OF REVENUE AND EXPENDITURE – 2013

The Ombudsman's ordinary activities

DKK

Revenue

Subsidy from Ministry of Foreign Affairs	765,000
Other revenue	0
Total revenue	765,000

Expenditure

Wages and salaries, pension costs	51,304,000
Rent	3,854,000
Staff and organisation, including staff welfare	176,000
Continuing training/education	284,000
Books and library	140,000
Specialist databases	907,000
Newspapers and journals	216,000
Communication	489,000
IT – central equipment, network and client equipment	816,000
IT – systems and programs	874,000
IT – consultancy services	252,000
Telephony and broadband	558,000
Premises – repairs and maintenance	366,000
Furniture, fixtures and fittings	517,000
Cleaning, laundry and refuse collection	251,000
Heating and electricity	529,000
Premises – other expenditure	173,000
Travel	626,000
Entertainment and meals	150,000
Staff lunch arrangement	234,000
Contribution to financial support scheme for trainees	402,000
Stationery and office supplies	181,000
Postage	151,000
Other goods and services	816,000
Total expenditure	64,266,000
Total expenditure (net)	63,501,000
Government appropriation	63,800,000
Result for the year	299,000

Public service pension payments

	DKK
Pension payments for former public servants	1,248,000
Public service pension contributions	-5,060,000
Public service pension payments, total	-3,812,000

SUMMARIES OF SELECTED CASES

A. MINISTRY OF EMPLOYMENT

No cases concluded in 2013 were selected for publication as part of the Annual Report.

B. MINISTRY OF BUSINESS AND GROWTH

The following case concluded in 2013 was selected for publication as part of the Annual Report:

2013-14. REFUSAL BY THE DANISH CENTRAL BANK TO GIVE ACCESS TO DOCUMENTS CONCERNING THE SETTING OF THE CIBOR REFERENCE RATE

A journalist complained to the Ombudsman because the Danish central bank (Danmarks Nationalbank) had refused him access to documents pertaining to the setting of the CIBOR reference rate. CIBOR (the Copenhagen Interbank Offered Rate) is a reference rate for liquidity offered on an uncollateralised basis for one week up to one year to creditworthy banks.

As grounds for its refusal of access, the Danish central bank had referred to the 'catch-all provision' in section 13(1)(vi) of the Access to Public Administration Files Act. In this connection, the Danish central bank had attached conclusive importance to the regard for its confidential relationship/dialogue with the banks.

The Ombudsman found that the Danish central bank's use of the very limited exemption clause in section 13(1)(vi) of the Access to Public Administration Files Act must in reality have been based on a general practice that (all) information exchanged between the Danish central bank and the banks on the setting of the CIBOR rate could be exempted from access. The Ombudsman did not find that the Danish central bank was entitled to establish a general practice like that.

Furthermore, the case gave the Ombudsman cause to comment on the obligation to extract from documents and provide information which is not exempt from access in relation to the documents which the Danish central bank had exempted in accordance with section 7 of the Access to Public Administration Files Act on internal work documents.

The Ombudsman recommended that the Danish central bank reopen the case and make a new decision.

C. MINISTRY OF FINANCE

The following cases concluded in 2013 were selected for publication as part of the Annual Report:

2013-6. ACCESS TO AN AUTHORITY'S INTERNAL GUIDELINES FOR THE PROCESSING OF CERTAIN CASE TYPES

A journalist complained that the Ministry of Finance had denied him access to a number of documents and various information regarding the Credit Package.

The case raised several questions in regard to the exemption clauses of the Access to Public Administration Files Act. Thus, for instance, the case caused the Ombudsman to make a statement about the understanding of section 8(iv), read with section 7, of the Access to Public Administration Files Act, regarding the right of access to an authority's binding internal guidelines. The Ombudsman found that the journalist was entitled to access to, for instance, a mandate in the case because the mandate established binding guidelines for the internal case processing procedure within an independent authority.

2013-10. REFUSAL OF ACCESS TO INTERNAL DOCUMENTS ON PREPARATIONS FOR COLLECTIVE BARGAINING NEGOTIATIONS WITH THE DANISH UNION OF TEACHERS

The Danish Union of Teachers complained to the Ombudsman because the Union had been denied access to internal documents prepared by a working group appointed by the Government. The task of the working group was to

analyse working hours in primary and lower secondary schools and in general upper secondary schools for the purpose of preparing for the forthcoming collective bargaining negotiations. Around the time at which the collective bargaining negotiations started, the working group discontinued its work because according to the Ministry of Finance it was no longer relevant. The Ministry of Finance also stated that the working group's documents had remained internal within the meaning of the Access to Public Administration Files Act since they were not part of the authorities' subsequent preparations for the collective bargaining negotiations.

After investigating the case, the Ombudsman concluded that based on the information from the Ministry of Finance, there were no legal grounds for criticising the refusal of access to the documents.

However, the case caused the Ombudsman to make some general statements about 'creative thinking' in regard to the provisions on access to internal documents of the Access to Public Administration Files Act.

2013-13. INCLUSION OF CONSIDERATIONS OF VALIDITY IN DECISION TO DENY INCREASED ACCESS TO PUBLIC RECORDS

Three journalists complained independently of each other to the Ombudsman because the Agency for the Modernisation of Public Administration had denied them access to the public procurement database.

Since the journalists had requested access to a database, and since no data extracts etc. from the database existed, the Ombudsman agreed with the Agency that the journalists were not entitled to access pursuant to the Access to Public Administration Files Act. However, the Ombudsman did point out that to the extent the public procurement database contained environmental information, the question of access must be considered pursuant to the Environmental Information Act, which – unlike the Access to Public Administration Files Act – also applies to environmental information contained in a database.

While processing the case, the Agency had also considered giving increased access to the public procurement database but had not found grounds to do so. The grounds given by the Agency for denying increased access was that it would not be possible to guarantee the validity of the information.

The Ombudsman found that the Agency's inclusion of considerations of the validity of the information as grounds for denying increased access raised a fundamental and unresolved question which caused considerable doubt. On this basis, and in view of the ongoing process of drawing up a new Access to Public Administration Files Act, the Ombudsman found that the correct thing to do was to inform the Ministry for Justice about the case so that the Ministry could consider a legislative clarification of the issue. Furthermore, the Ombudsman informed Parliament's Legal Affairs Committee about his processing of the case.

2013-17. INFORMATION ABOUT NemID WAS NOT EXEMPT FROM ACCESS ON THE GROUNDS OF CONSIDERATIONS WITH REGARD TO NATIONAL SECURITY

A journalist complained because the Ministry of Finance and the Agency for Digitisation had exempted information when he was given access to two system revision certificates for NemID (common secure login on the Internet).

The authorities had exempted the information in accordance with section 13(1)(i) of the Access to Public Administration Files Act on important considerations in regard to the security of the State or the defence of the realm.

Overall, the Ombudsman agreed that information of significance to the security in relation to NemID could be of such a nature that access could be restricted with reference to necessary protection of important considerations in regard to the security of the State or the defence of the realm.

However, on going through the specific information which had been exempted from access, the Ombudsman did not agree that the conditions for exempting this information with reference to the security of the State were fulfilled. The Ombudsman did not find that the authorities had explained in detail how such adverse effects could occur which are a prerequisite for the provision in section 13(1)(i) of the Access to Public Administration Files Act to be applicable. On this basis, the Ombudsman recommended that the Ministry of Finance reopen the case and make a new decision.

The Ombudsman was later informed that the Agency for Digitisation had made a new decision which gave the journalist full access to the two system revision certificates for NemID.

D. MINISTRY OF DEFENCE

The following case concluded in 2013 was selected for publication as part of the Annual Report:

2013-22. COMPLETELY UNACCEPTABLE CASE PROCESSING TIME BY THE MINISTRY OF DEFENCE IN CASE ABOUT ACCESS TO DOCUMENTS REGARDING IRAQ

A journalist complained to the Ombudsman about the processing time of the Ministry of Defence in a case about access to information regarding special incidents in relation to detainees reported by the Danish forces in Iraq to the Army Operational Command and the Defence Command.

The Ombudsman stated that the Ministry's processing time of approximately 1 year and 7 months was completely unacceptable. In the particular case, it could not be ruled out that the Ministry's processing time in itself had kept the journalist from gaining access to the information. The Ombudsman had to consider this a substantially aggravating circumstance.

The Ombudsman found no grounds for determining deliberate protraction by the Ministry in order to avoid giving the journalist access. However, the Ombudsman had to consider it very unfortunate that, as a result of its long case processing time, the Ministry of Defence had got into a situation where the question of deliberate protraction could arise at all – especially in a case like this.

The Ombudsman also stated that it was very regrettable that, according to the information available in the case, the Ministry did not inform the journalist about the status of his case after its initial e-mail acknowledging receipt of his request for access.

The Ombudsman found grounds for notifying Parliament's Legal Affairs Committee and the Minister of Defence of the case in accordance with section 24 of the Ombudsman Act on errors or derelictions of major importance. In this connection, the Ombudsman also notified Parliament's Defence Committee.

E. MINISTRY FOR JUSTICE

The following cases concluded in 2013 were selected for publication as part of the Annual Report:

2013-18. THE MINISTRY FOR JUSTICE WRONGLY IMPARTED A VISA REFUSAL, WITH THE RESULT THAT A CHILD WAS BANNED FROM ENTERING DENMARK FOR FIVE YEARS DUE TO HIS MOTHER'S EXCEEDING A PREVIOUS VISA'S EXPIRATION DATE

In 2011, the Danish Immigration Service and the Ministry for Justice refused to issue a visa to a resident man's wife and their son, who was less than a year old. The wife was refused a visa because she had remained in Denmark beyond the expiration date of her visa during a previous stay. For the same reason, a penalty period was imposed which meant that she could not under normal circumstances get a new visa for five years from the date of her leaving Denmark in March 2011. The son, who was born during the wife's previous stay in Denmark, was also refused a visa as a consequence of the refusal to the wife.

The husband appealed to the Ministry for Justice, which upheld the decision by the Immigration Service. Contrary to the Immigration Service, the Ministry wrote to the husband that the penalty period also applied to the son, so that he could not obtain a visa for five years either. Following the husband's request for reopening of the case, the Ministry upheld its decision in 2012.

The husband complained to the Ombudsman, who, among other things, asked the authorities whether the son was to blame for the wife's previous unlawful stay in connection with the expiration of her visa at the time. He also asked the Ministry whether there were any exceptional reasons which would mean that the five-year penalty period would not apply to the child.

The Ministry for Justice then reopened the case and expressed its regret that the Ministry's decision had included the son in the penalty period though he was not to blame for not leaving Denmark before the expiry of his mother's visa. The Ministry also expressed its regrets that the error had not been corrected in 2012 in connection with the husband's request for reopening of the case.

The Ombudsman concurred with the Ministry's expression of regret. In addition, the Ombudsman noted that in similar situations in future, the Immigration

Service would – in accordance with the authorities’ established practice – expressly state that a decision on a visa penalty period does not apply to any accompanying underage children.

The Ombudsman did not find grounds for criticising that the wife had been refused a visa and given a five-year penalty period.

2013-19. RIGHT OF ACCESS TO INFORMATION ABOUT TRANSFER FROM OPEN TO CLOSED PRISON. THE CASE CONCEPT

A state prison decided that an inmate was to be excluded from association with other inmates and transferred from an open to a closed prison. Furthermore, the state prison withdrew the inmate’s right to temporary leave. The inmate’s lawyer then asked for access to all case files. The state prison gave the lawyer access to the files concerning the decision to withdraw the inmate’s right to temporary leave but not to the files concerning his exclusion from association and his transfer to a closed prison. The Department of Prisons and Probation concurred.

In the Ombudsman’s opinion, the decision to withdraw the inmate’s right to temporary leave was a separate case from those of the decisions to exclude him from association and to transfer him from an open to a closed prison. As these decisions were covered by section 9(4) of the Public Administration Act, there were no grounds for criticising the authorities’ decisions concerning access to the files.

2013-23. FAMILY REUNIFICATION WITH SPOUSE WITH TWO CHILDREN IN DENMARK FROM A PREVIOUS RELATIONSHIP

A Danish man complained because the Immigration Service and the Ministry for Justice had refused his wife a residence permit because he had not provided financial security as required by section 9(4) of the Aliens Act. The authorities had also refused his wife residence under EU regulations.

In Denmark, the man had visitation rights to his two underage children from a previous relationship, who were eight and ten years old at the time.

The Ombudsman noted that the authorities had not found any exceptional reasons for dispensing from the requirement of providing financial security as a condition for reunification of spouses, cf. section 9(4) of the Aliens Act. Therefore, the Ombudsman asked the authorities, among other things, how they had assessed the man's actual access to exercising his visitation rights in relation to Article 8 of the European Convention on Human Rights on the right to a family life if – as a consequence of the authorities' refusal to grant family reunification to his wife – he was relegated to living his family life in his wife's home country and exercising his visitation rights to his children living in Denmark from his wife's home country.

The Immigration Appeals Board resumed the case and referred it back to the Immigration Service for renewed consideration. Consequently, the Ombudsman decided not to continue his investigation of the case.

The Immigration Service subsequently informed the Ombudsman that it had granted the man's wife a residence permit.

2013-25. REFUSAL OF HUMANITARIAN RESIDENCE PERMIT FOR WOMAN WITH HIV

In 2012, the Ministry for Justice refused to grant a residence permit on humanitarian grounds to a West African woman with HIV. The Ministry did not find that the woman was suffering from a disease of a particularly grave nature which in itself could justify granting a residence permit on humanitarian grounds, as this was not a very advanced HIV infection with a considerably increased risk of developing into AIDS. In accordance with the Ministry's practice, as laid out in a practice memorandum on the granting of residence permits on humanitarian grounds pursuant to section 9 b(1) of the Aliens Act, neither did the Ministry therefore find cause for obtaining information about the treatment options in the woman's home country. Furthermore, the Ministry did not find that the information about the state of her health combined with the other information in the case could provide grounds for granting a humanitarian residence permit. In 2013, the Ministry twice refused to resume the case.

The woman's lawyer complained to the Ombudsman and argued, among other things, that when processing the case, the Ministry for Justice had omitted to take significant criteria into consideration, including regard for Article 2 of the European Human Rights Convention on the right to life and the Convention's

Article 3 on the right not to be subjected to torture or to inhuman or degrading treatment or punishment. The lawyer stated that deporting the woman to her home country would constitute a violation of these Articles if she could not receive adequate treatment in that country.

The Ombudsman did not see any prospect of being able to criticise the result of the original decision by the Ministry for Justice or the decisions to refuse to resume the case. Consequently, the Ombudsman chose to close the case without submitting it to the Ministry for a statement.

The Ombudsman emphasised that the practice defined in the memorandum on the standard practice for granting a residence permit on humanitarian grounds – including when to obtain information about treatment options in the applicant's home country – had been submitted to Parliament, and that the Ombudsman had to consider the practice to have been sanctioned by Parliament.

In the Ombudsman's opinion, it would therefore require very strong arguments to contest the Ministry's practice for granting a residence permit on humanitarian grounds, including the point when information on treatment options in the applicant's home country is obtained. The Ombudsman did not see any prospect of finding such very strong arguments in the case. Thus, he did not find that he had the grounds required for presuming that the Ministry's refusal to grant a humanitarian residence permit without investigating the woman's treatment options in her home country was in violation of Article 2 or Article 3 of the European Human Rights Convention.

F. MINISTRY OF CLIMATE, ENERGY AND BUILDING

No cases concluded in 2013 were selected for publication as part of the Annual Report.

G. MINISTRY OF CULTURE

No cases concluded in 2013 were selected for publication as part of the Annual Report.

H. MINISTRY OF THE ENVIRONMENT

The following case concluded in 2013 was selected for publication as part of the Annual Report:

2013-9. LEGAL DELEGATION OF CASE PREPARATION TO LAW FIRM

In connection with the processing of a specific case, the Ombudsman became aware that the Environmental Board of Appeal had received assistance from the Legal Adviser to the Danish Government (Kammeradvokaten), a private law firm, with processing appeals in a number of specific cases on livestock farming. There was no statutory authority for the Environmental Board of Appeal to delegate tasks in connection with the processing of specific cases in this field to private firms. The Ombudsman therefore opened a case on his own initiative to investigate whether the arrangement had been legal.

After investigating the case, the Ombudsman concluded that the assistance which the Legal Adviser to the Danish Government had given to the Environmental Board of Appeal in connection with the processing of the specific cases was in compliance with the general principles of administrative law on the delegation of the exercise of authority to private firms.

In his statement, the Ombudsman listed some of the most important conditions which must be met before a public body can legally delegate tasks in connection with case preparation in cases involving decisions to private firms without explicit statutory authority.

I. MINISTRY OF HOUSING, URBAN AND RURAL AFFAIRS

No cases concluded in 2013 were selected for publication as part of the Annual Report.

J. MINISTRY OF SCIENCE, INNOVATION AND HIGHER EDUCATION

The following case concluded in 2013 was selected for publication as part of the Annual Report:

2013-8. QUESTION OF IMPARTIALITY AMONG MEMBERS OF THE COMMITTEES ON SCIENTIFIC DISHONESTY

A scientist complained to the Ombudsman about the processing by the Danish Committees on Scientific Dishonesty (DCSD) of two cases about her. In both cases, the DCSD had come to the conclusion that she had acted in a scientifically dishonest way. In the scientist's opinion, some of the members of the DCSD should have been disqualified from processing her cases. She based her opinion particularly on the allegation that three of the DCSD members, by virtue of their employment at the same university as the two persons who had complained about her to the DCSD, had such a close connection to the two complainants that they should not have taken part in the decision.

The Ombudsman did not find that he had any prospects of being able to criticise the DCSD's decision not to consider the persons in question disqualified from processing the cases. In the Ombudsman's opinion, the mere fact that they were employed at the same university did not give grounds for considering them to be disqualified – it takes more than that. Among other things, the Ombudsman emphasised that, according to the available information, none of the three committee members had such connections to any other persons involved in the case that there were such circumstances as would, according to existing practice, be likely to lead to any doubt about their impartiality (the Public Administration Act, section 3(1)(v)). He pointed out, among other things, that there was no information about any close friendships between any of the three DCSD members and the two university employees who had brought the cases before the DCSD. Nor was there any information indicating such personal antagonism between any of the DCSD members and the scientist that this might point to a conflict of interest.

It did not give the Ombudsman cause for comment that the DCSD had dismissed the suggestion that there was a conflict of interest in the DCSD because one of the two petitioners had been a deputy member of the DCSD for part

of the period when the scientist's cases were investigated. The Ombudsman emphasised the DCSD's statement that the person in question had at no time participated in the investigation of the scientist's cases.

The Ombudsman consequently concluded the case without carrying out a full investigation.

K. MINISTRY OF FOOD, AGRICULTURE AND FISHERIES

No cases concluded in 2013 were selected for publication as part of the Annual Report.

L. MINISTRY FOR GENDER EQUALITY AND ECCLESIASTICAL AFFAIRS

No cases concluded in 2013 were selected for publication as part of the Annual Report.

M. MINISTRY OF HEALTH

No cases concluded in 2013 were selected for publication as part of the Annual Report.

N. MINISTRY OF TAXATION

The following cases concluded in 2013 were selected for publication as part of the Annual Report:

2013-15. SPECIAL ADVISOR'S CONDUCT TOWARDS JOURNALIST

A journalist complained to the Ombudsman about the way in which the Ministry of Taxation had handled a request for access to the Danish Customs and

Tax Administration's (SKAT) production plan for 2013. The journalist had written to the Ministry that the Ministry would be using illegal methods if the Ministry were to split the production plan up when giving the media access to it, that he wanted access to the entire production plan and that the Ministry would be 'saddled with an Ombudsman case' if his request for access were denied.

Subsequently, a special advisor from the Ministry of Taxation made a telephone call to the journalist. The journalist recorded the telephone conversation, and when he complained to the Ombudsman, he included an audio file of the conversation.

Firstly, the Ombudsman noted that the Ministry had not considered and made a decision on the journalist's request for access to the production plan. The Ombudsman found this to be very regrettable.

Furthermore, the Ombudsman stated, based on the audio file of the telephone conversation between the journalist and the special advisor, that the reaction of the Ministry of Taxation (by the special advisor) on the telephone to the journalist's request was completely unacceptable.

In this connection, the Ombudsman attached importance to the fact that during the telephone conversation, the special advisor had made remarks about what had 'provoked' him, what he had perceived as 'aggressive', what he had 'experienced' other journalists doing in regard to 'demanding things in that specific manner' and how he experienced being 'threatened' with an Ombudsman case. In addition to this, the special advisor's remarks were likely to give the impression that the journalist's request might affect the future working relationship between the Ministry and the journalist. In the Ombudsman's opinion, there seemed to be a very disturbing lack of understanding as to what a special advisor's role is (and specifically is not) in a situation such as this.

In view of the Ombudsman's assessment of the reaction of the Ministry of Taxation (by the special advisor) on the telephone, the Ombudsman found cause, pursuant to section 24 of the Ombudsman Act, to notify Parliament's Legal Affairs Committee and the Minister for Taxation of the case. Furthermore, the Ombudsman found cause to notify Parliament's Fiscal Affairs Committee.

The Ombudsman asked the Ministry of Taxation to inform him of any general actions which his statement might cause the Ministry to take.

2013-16. REIMBURSEMENT OF EXPENSES FOR PREPARATION OF FINANCIAL STATEMENT

On behalf of a client, a tax advisor applied to the Danish Customs and Tax Administration (SKAT) for reimbursement of the client's expenses for assistance received from the tax advisor in connection with a National Tax Tribunal case. However, SKAT only approved part of the expenses as reimbursable because part of the work for which reimbursement was sought ought to have been carried out when the taxpayer's income tax return was prepared.

The National Tax Tribunal upheld SKAT's decision on the grounds that expenses cannot be deemed reimbursable if they are deductible in connection with the calculation of the taxpayer's taxable income. According to the National Tax Tribunal, the taxpayer would have been entitled to deduct part of his expenses for the tax advisor at the time at which his financial statement etc. for the assessment year in question was prepared.

After investigating the case, the Ombudsman found cause to comment on the grounds given by the National Tax Tribunal for its decision. Nevertheless, on going through, among other things, the explanatory notes to the provisions on reimbursement of expenses, the Ombudsman found no grounds for criticising the National Tax Tribunal's decision that the taxpayer was to be only partly reimbursed for his expenses for assistance received from the tax advisor.

O. MINISTRY OF SOCIAL AFFAIRS, CHILDREN AND INTEGRATION

The following cases concluded in 2013 were selected for publication as part of the Annual Report:

2013-1. INDUSTRIAL INJURIES AUTHORITIES SHOULD HAVE CONSIDERED THE ISSUE OF TEMPORARY COMPENSATION FOR LOSS OF EARNING CAPACITY

A woman who had suffered an industrial injury while carrying out her job as a legal secretary complained to the Ombudsman because the authorities had not made a temporary decision on compensation for loss of earning capacity when,

some years after her injury, she had gone off sick and work-testing had been initiated as a result of an aggravation of the consequences of her injury.

It followed from section 31(4) of the Act on Protection against the Consequences of Industrial Injuries that a temporary decision on loss of earning capacity could be made if the occupational situation of the injured person had not been clarified. This could be the case if, for instance, the injured person was undergoing vocational retraining or work-testing as a result of the consequences of the injury.

Despite the fact that at the end of 2007, the National Board of Industrial Injuries had decided itself to reconsider the question of loss of earning capacity, and despite the fact that the woman provided the Board with regular updates on her occupational situation, the case was at a virtual standstill until June 2010, when the Board made a decision that the woman had not suffered a permanent loss of earning capacity. At the time of the decision, the woman was again employed as a legal secretary.

In the Ombudsman's opinion, the National Board of Industrial Injuries should have considered – at least at the time when it became aware that work-testing had been initiated – whether there was a basis for making a temporary decision on compensation for loss of earning capacity. The Ombudsman found it regrettable that this did not happen. Furthermore, the Ombudsman was of the opinion that it was unfortunate that the National Social Appeals Board had not addressed the issue.

The Ombudsman therefore recommended that the National Social Appeals Board reopen the case for the purpose of establishing whether the woman was entitled to such a compensation.

2013-4. REPAYMENT OF SOCIAL SECURITY BENEFITS

A municipality received an anonymous tip-off that a woman who received various social security benefits as 'effectively single' lived in a marriage-like relationship. As a result of the tip-off, the municipality investigated the woman's situation. In this connection, the municipality got the woman's consent to obtain a substantial number of bank statements from her bank in order to investigate her financial circumstances further. This resulted in the bank charging the woman a fee of DKK 500.

After investigating the woman's situation further, the municipality made a decision that she had to repay ordinary and extra child benefit as well as housing benefit for a period of time, and subsequently, the municipality also decided that she had to repay overpaid pension for the same period. The Social Tribunal upheld these decisions. The grounds given by the authorities for their decisions were that they assessed that the woman had not been effectively single during the period in question and that she had received too high amounts of benefits in bad faith.

The Ombudsman agreed that the concept of 'single' was to be understood in the same manner in the Child Benefit Act and the Act on Social Pensions. However, he found it unfortunate that the decisions left the impression that the authorities had to make the same assessment in order to determine whether the conditions for ordering repayment under the Child Benefit Act and the Housing Benefit Act, respectively, were met. After investigating the case, the Ombudsman stated that he considered it a mistake that the municipality had not been alert to complying with the provisions of section 10(3) of the Act on Legal Protection in Connection with the Administration's Use of Compulsory Intervention and Duties of Disclosure. He also assessed that the woman had not received sufficient guidance in connection with the case. In addition, the Ombudsman made a number of comments concerning a few of the specific considerations to which the authorities had given importance, including their use of the anonymous tip-off. The Ombudsman further found that the course of events of the case gave rise to reasonable doubt whether the woman had received the benefits 'in bad faith'. Finally, he was of the opinion that the municipality did not have a sufficient legal basis for demanding that the woman pay the bank fee.

2013-5. TRANSITION TO EARLY RETIREMENT BENEFIT – CESSATION OF PERSONAL WORK INVOLVEMENT MORE THAN TEMPORARY

A man applied for early retirement benefit as of 16 January 2009, which was two years after his 60th birthday, when he had received his early retirement certificate. The man had practised as a self-employed dentist for a number of years.

The Employment Committee of the National Social Appeals Board ruled that the man could not go on early retirement benefit until 28 April 2009 at the earliest because that was the date on which the man's personal work involve-

ment in his business must be considered to have ceased more than temporarily. The Employment Committee emphasised that until that date, the man had in effect been able to carry out work himself, as the dentistry equipment, which must be considered to be essential work equipment, was still in his possession. The dentistry equipment was sold in February 2009 but was not dismantled and collected by the buyer until 28 April 2009.

In the Ombudsman's opinion, an interpretation whereby solely the actual possibility of carrying out work decided whether or not an individual could be considered to have ceased personal work involvement more than temporarily was not in accordance with the provision in section 74 c(1) of the Unemployment Insurance Act, including the provision's text, purpose and explanatory notes.

The Ombudsman was of the opinion that all the available facts of the case must be specifically assessed. On this basis, it had to be assessed whether the man had not only discontinued his business but had also had a sufficient intention to cease his personal work involvement.

It was the Ombudsman's overall opinion that the Employment Committee of the National Social Appeals Board had not carried out a sufficiently specific assessment of the available case facts, which, *prima facie*, seemed to indicate with considerable certainty that the man's personal work involvement had ceased on 16 January 2009. The Ombudsman recommended that the Employment Committee reopen the case.

2013-7. GUIDANCE ON THE POSSIBILITIES OF REOPENING INDUSTRIAL INJURY CASES PURSUANT TO BOTH STATUTORY AND NON-STATUTORY RULES

The Ombudsman opened an own-initiative case concerning the guidance given by the industrial injuries authorities on the possibilities of reopening industrial injury cases. The reason was that the Ombudsman had become aware – while processing a specific case – that the guidance given by the industrial injuries authorities was not true and fair.

In the Ombudsman's opinion, guidance on the possibilities of reopening a case (as with guidance on any appeal options) is intended to ensure that the citizen receives the information he or she needs in order to safeguard his or her own

interests. It is therefore important that the guidance given by the industrial injuries authorities on the possibilities of reopening a case is both correct and relevant in relation to the individual case.

The Ombudsman found that correct and relevant guidance on the possibilities of reopening a case should include guidance on both any statutory rules as well as the general non-statutory rules pertaining to the possibilities of reopening a case. Furthermore, correct and relevant guidance must be tailored to the individual case. Consequently, the Ombudsman did not consider it correct or relevant to the specific case to give guidance on the possibilities of reopening rejected industrial injury cases when the case concerned an injury which had been recognised as an industrial injury.

The fact that the guidelines of the National Board of Industrial Injuries were located in an electronic system of standard texts which made it difficult and expensive to tailor guidance to the individual case could not in the Ombudsman's opinion lead to any other conclusion, as the use of standard texts requires that the authority assesses whether or not the content of the standard text is true and fair in each individual case.

The Ombudsman notified the National Board of Industrial Injuries and the National Social Appeals Board of his opinion, adding that he assumed that correct and relevant guidance would in future be given on the possibilities of reopening a case.

2013-11. AVAILABILITY REQUIREMENT AT THE TIME OF EARLY RETIREMENT

A man had received half-time disability pension for just over two years while working as an upper secondary school teacher with reduced hours when he applied for early retirement benefit with effect from his 60th birthday. At the time of his application, the man had worked as a teacher at the same upper secondary school for more than 30 years and had apparently not at any time received unemployment benefit.

The man's application was refused because the authorities did not find that he fulfilled the requirement of being fully available for work at the time of his 60th birthday.

The grounds given by the authorities were that due to the man's health problems, it was not sufficiently likely that he could be available for full-time work under normal conditions of employment and pay.

In May 2011, the Employment Committee of the National Social Appeals Board referred the case back to the then National Directorate of Labour, particularly with reference to the fact that the medical expert opinion on which the decision was based did not concern the man's general ability to work but his ability to work as an upper secondary school teacher. It was therefore the Employment Committee's opinion that the medical expert opinion did not in itself establish that the man was not available for work in other fields.

However, a new medical expert opinion had not been obtained when the Employment Committee made a new decision in the case in March 2012.

The Ombudsman did not find the case to have been adequately investigated, as in his opinion, more medical information should have been obtained together with other information which could serve to throw light on the man's general availability for work, including further information about which jobs the man thought he could manage. Consequently, the Ombudsman recommended that the Employment Committee of the National Social Appeals Board reopen the case.

The Ombudsman stated that the Employment Committee's duty to obtain other information relevant to the availability assessment was more rigorous because the man was working at the time when he wanted to go on early retirement benefit, as the availability issue consequently could not be clarified through information on job searching and completed activation measures, etc. The Ombudsman added that the authorities have a general obligation to ensure that individuals who are still working at the time at which they want to go on early retirement benefit are not placed in a poorer legal position than individuals in the activation system.

2013-27. REPAYMENT OF SOCIAL SECURITY BENEFITS

A municipality received an anonymous tip-off that a woman and a man who both received social security benefits as 'effectively single' lived in a marriage-like relationship. As a result of the tip-off, the municipality investigated the woman's and the man's situations.

The municipality subsequently made a decision that the woman had to repay day care subsidy as well as ordinary and extra child benefit for a period of time. The municipality likewise decided that the man had to repay ordinary and extra child benefit for the same period of time. The Social Tribunal upheld these decisions. The grounds given by the authorities for their decisions were that they assessed that the woman and the man had not been effectively single during the period in question and that they had received the benefits without being entitled to them and in bad faith.

The woman and the man both complained to the Ombudsman, who closed their cases stating that in his opinion, the relevant appeals body should have the opportunity to consider a few specified circumstances relating to the basic issue of their entitlement to the benefits and consequently also the issue of repayment. The Ombudsman forwarded their complaints to the Social Tribunal as a request from the woman and the man that the relevant appeals body consider the circumstances specified and inform them of the outcome. The Ombudsman asked to be notified of the replies to the woman and the man.

The Ombudsman was subsequently informed by the National Social Appeals Board – which had in the meantime become the appeals body for decisions within the areas in question – that the Board had reopened and made a new decision in both cases, changing the decisions of the municipality and the Social Tribunal. The National Social Appeals Board found that there was not sufficient information to render it probable that the woman and the man, respectively, lived in a marriage-like relationship and maintained a joint household with the other person during the period in question. Thus, the municipality and the Social Tribunal did not have adequate evidence to make decisions on repayment of the benefits.

P. PRIME MINISTER'S OFFICE

No cases concluded in 2013 were selected for publication as part of the Annual Report.

Q. MINISTRY OF TRANSPORT

No cases concluded in 2013 were selected for publication as part of the Annual Report.

R. MINISTRY OF FOREIGN AFFAIRS

The following case concluded in 2013 was selected for publication as part of the Annual Report:

2013-20. REFUSAL OF INTERNATIONAL PRESS CENTRE TO ACCREDIT JOURNALIST PRIOR TO STATE VISIT

The Danish Union of Journalists complained to the Ombudsman because the International Press Centre (IPC) had refused to accredit a journalist prior to a state visit from South Korea in May 2011.

Prior to its refusal, the IPC had obtained a security assessment from the Danish Security and Intelligence Service (PET), which stated that it could not recommend accreditation. Subsequently, the IPC refused accreditation without knowing the grounds for PET's recommendation, and thus without making an individual assessment of the circumstances of the journalist and the case. The Ombudsman found this to conflict with the principle that decision-makers who have a duty to exercise discretion cannot restrict that discretion by automatically applying guidance or policy.

Furthermore, it is evident from the case information that as grounds for not recommending accreditation, PET had given weight to factors from several years before, among other things a sentence for violence. The Ombudsman considered whether these factors could have justified refusal of accreditation at all if the IPC had weighed up the information – as it ought to have done. Based on the information available, the Ombudsman did not find that these factors could have constituted sufficient grounds for refusal of accreditation.

The Ombudsman also considered the IPC's processing of the case.

In the Ombudsman's opinion, the IPC's decision on refusal of accreditation and its processing of the case were characterised by serious errors. The Ombudsman found this to be very regrettable.

The Ombudsman asked the IPC to inform him about any measures which his statement might cause it to take. The Ombudsman asked the IPC to send its reply via the Ministry of Foreign Affairs, thereby giving the Ministry an opportunity to consider the issue as well.

S. MINISTRY OF EDUCATION

The following case concluded in 2013 was selected for publication as part of the Annual Report:

2013-24. STUDENT ON HIGHER PREPARATORY EXAMINATION COURSE EXPELLED FROM DAY AND BOARDING SCHOOL FOR LEISURE-TIME BEHAVIOUR

A student on a higher preparatory examination course complained because he had been expelled from his day and boarding school. The reason for his expulsion was that – on a night on the town during a weekend – he had smoked cannabis.

The school expelled the student with reference to the day and boarding school's study and house rules, which clearly stated that any form of possession or use of euphoricants would result in expulsion.

In his complaint to the Ombudsman, the student argued that the decision to expel him from both the day and boarding school was unwarranted because the study and house rules did not give the right to expel a student based on his or her behaviour during leisure hours and outside the geographical area of both the day and boarding school.

Firstly, the Ombudsman looked into the question of the legal basis for the study and house rules. Though the Ombudsman found it doubtful whether the rules of the boarding school could be issued under the authority of the written rules on the establishment of study and house rules, he also found that house rules for the boarding school itself could be established based on its institution status, meaning a public institution's authority to establish such rules as are necessary for the institution to function. In other words, the Ombudsman was of the opinion that house rules could be established which applied for the boarders when they were inside the boarding school's perimeters, also during their leisure time, and when they were outside this area in contexts related to the boarding school.

The Ombudsman then considered whether the house rules could also be applied to students' behaviour during their leisure time. In this context, the Ombudsman found that, without a clear statutory authority, it was unwarranted that the student was expelled as a result of behaviour during his leisure time and without evidence that he had been (visibly) drug-affected when he returned to the boarding school or that he had smoked cannabis in a context in which he was identified with the day or boarding school. Based on these circumstances, the Ombudsman found that it could not be established that the student's leisure-time behaviour had had such an impact on the day or boarding school's functioning that it could warrant expulsion.

Lastly, the Ombudsman was of the opinion that the Ministry of Education had to provide specific statutory authority if the Ministry found that also the boarding school should be covered by the written rules on the establishment of study and house rules, or if, both in relation to the day school and the boarding school, it should be possible to apply sanctions as a result of the behaviour of students outside school hours and outside the perimeters of the day and boarding school.

T. MINISTRY OF ECONOMIC AFFAIRS AND THE INTERIOR

The following case concluded in 2013 was selected for publication as part of the Annual Report:

2013-26. UNJUSTIFIED REFUSAL PURSUANT TO SECTION 12(1)(II) OF THE ACCESS TO PUBLIC ADMINISTRATION FILES ACT OF ACCESS TO PRICE ESTIMATE FROM TELECOMMUNICATIONS COMPANY

In 2011, a municipality received a letter from a telecommunications company with a proposal for what the company considered to be a reasonable price/rent level within the municipality. The proposal concerned rent in respect of land and buildings for digital telecommunications infrastructure. In its proposal, the telecommunications company questioned the municipality's present price structure, which the municipality had decided upon in 2008, and which had resulted in a twofold increase of the rent level. By virtue of his job, an advisory consultant in the field gained knowledge of the existence of the letter, to which he subsequently requested access from the municipality.

The municipality refused him access – completely initially. After the consultant had brought the case to the Regional State Administration of Copenhagen, the municipality allowed him access to the letter from the telecommunications company. However, the municipality had blanked out the amounts stated in the letter (referred to below as 'the price estimate'), with reference to the statement from the Regional State Administration of Copenhagen as the supervisory authority for the municipality.

The Ombudsman agreed with the Regional State Administration of Copenhagen that by virtue of its nature, the price estimate was covered by section 12(1)(ii) of the Access to Public Administration Files Act (information on operating or business procedures). On the other hand, the Ombudsman did not find, based on the information available, that the municipality had proved on a balance of probabilities that granting access to the price estimate would have any significant financial implications for the telecommunications company. Therefore, the Ombudsman recommended that the case be resumed and a new decision be made.

The Regional State Administration resumed the case and agreed with the opinion expressed by the Ombudsman. Furthermore, the Regional State Administration asked the municipality for information about the steps which the municipality intended to take in the matter. Subsequently, the Ombudsman informed the consultant that, based on the information currently available, he would take no further action on the matter.

U. MUNICIPAL AND REGIONAL AUTHORITIES

The following cases concluded in 2013 were selected for publication as part of the Annual Report:

2013-2. SCHOOL PRINCIPAL'S DECISION ON TEMPORARY INDIVIDUAL TEACHING WAS AN ADMINISTRATIVE DECISION. THE DECISION WAS IMPLEMENTED WITH TOO SHORT NOTICE

The father of a boy complained to the Ombudsman that the boy's school had decided with short notice that the boy, then in his first year, would no longer be taught in his class but would instead receive so-called temporary individual teaching for 10 hours a week. The temporary individual teaching would continue until a suitable educational option was found for the boy.

In the Ombudsman's opinion, the school's letter to the parents about the implementation of temporary individual teaching of their son was a decision within the meaning of the Public Administration Act, and the letter should consequently have included a reference to the rules of law according to which the decision had been made. According to the rules, a school's decision to implement temporary individual teaching of a pupil must be approved by the municipal council, but the Ombudsman had to assume that the municipality had not approved the decision. In the Ombudsman's opinion, that was an error. On the other hand, the Ombudsman did not find that there were grounds for rejecting the school's assessment that it was necessary to implement temporary individual teaching of the boy.

The boy's parents were notified on a Thursday of the school's decision to transfer their son to temporary individual teaching, starting on the following Monday.

The Ombudsman stated that the notice had been too short. In his opinion, it would have been most compliant with good administrative practice if the school had fixed a slightly later starting date. He found that it would have served the welfare of the boy better if the school had given a slightly longer notice. In this context, the Ombudsman referred to Article 3(1) of the UN Convention on the Rights of the Child.

2013-3. REPAYMENT OF OVERPAID SALARY

For almost a year, a kindergarten teacher without any work experience was erroneously paid a salary supplement for respectively six and ten years' work experience. The kindergarten teacher discovered the error himself and informed his employer. His employer stopped future payments of the supplement and at the same time demanded that the erroneously paid amount of a little over DKK 20,000 be repaid. The kindergarten teacher's union complained on his behalf to the Ombudsman about the repayment claim.

The Ombudsman found no grounds for criticising the employer's specific decision to demand repayment. In this context, the Ombudsman emphasised that he could not criticise the case investigation, including the fact that the employer had not considered the decision to demand repayment to be a decision within the meaning of the Public Administration Act.

2013-12. INVALID EXEMPTION FROM PARTICIPATION IN HOUSEHOLD RUBBISH COLLECTION SERVICE

A couple complained to the Ombudsman because their municipality had informed them that an exemption from participation in (and payment for) the household rubbish collection service provided by the municipality which they were granted in 1989 by their former municipality (before the local government reform) could not be maintained. The couple still did not wish to participate in, nor pay for, the rubbish collection service.

In the Ombudsman's opinion, the original exemption granted to the couple by their former municipality was invalid. The Ombudsman therefore agreed with the decision of the couple's current municipality that the exemption could not be maintained.

However, the Ombudsman also stated that the current municipality's conception of the law in relation to rubbish collection services, including the municipality's understanding of some of the provisions of the Environmental Protection Act, was not correct in all respects.

2013-21. THE USE OF GPS TRACKERS AND OTHER PERSONAL ALARM AND TRACKING SYSTEMS FOR ADULTS WITH MENTAL DISABILITIES

A father complained on behalf of his adult son, for whom he was also the guardian, because a municipal accommodation facility had not consistently used the GPS tracker which could be used for his son according to a decision by the municipality.

Pursuant to section 125(1) of the Social Services Act, the municipality decided on the use of coercive measures towards the son in the form of using, among other things, a GPS tracker. The permission to use the GPS tracker was given for a period of eight months.

In his complaint to the Ombudsman, the father claimed that the municipal accommodation facility was henceforth obliged to use a GPS tracker consistently for his son. This was in contrast to the municipality's view that the decision to permit the use of a GPS tracker for the son did not imply an automatic obligation to use it.

The Ombudsman noted that – pursuant to the provision in the Social Services Act and its explanatory notes – the use of a GPS tracker and other personal alarm and tracking systems was to be regarded as an infringement of the right to self-determination and as a coercive measure.

Furthermore, the Ombudsman pointed out that – also pursuant to the statutory framework and its explanatory notes – a decision on the use of coercive measures must always be in reasonable proportion to the intended result, just as the use of coercion must be as gentle as possible and for the shortest possible period of time. This also implies that it must be assessed on an ongoing basis whether the conditions for allowing the use of coercion are still present.

Overall, the Ombudsman did not therefore find grounds for criticising the municipality's conception of the law according to which a decision on a coercive measure in the form of the use of a GPS tracker does not imply an automatic obligation to use the GPS tracker in the time period covered by the permit.

V. OTHER AUTHORITIES ETC. WITHIN THE OMBUDSMAN'S JURISDICTION

The following case concluded in 2013 was selected for publication as part of the Annual Report:

2013-28. USE OF FORCE AT SOCIO-EDUCATIONAL ACCOMMODATION FACILITY

During a monitoring visit to a private socio-educational accommodation facility for children and juveniles, the Ombudsman's monitoring team were informed, among other things, that the facility used force to make juveniles sit on a sofa – a therapeutic technique called reflection time, which is a 'time-out' imposed on the juveniles if they will not follow the rules of the facility.

According to the provisions of the Social Services Act, the use of physical force is acceptable when a juvenile is in danger of harming him- or herself or others. But staff are not allowed to use force in order to make a juvenile accept a particular therapeutic measure, such as reflection time.

The accommodation facility did not think that it constituted use of force when a juvenile was led to a sofa by a member of staff placing a hand on the juvenile's shoulder. The facility's management thought that it was not a forcible measure until staff used a 'certain amount of physical force to make a person do, refrain from doing or physically accept something'. The Ombudsman did not agree. His conclusion was that the facility's understanding of the use of forcible measures was not sufficiently precise, as the child's or the juvenile's resistance is also a significant criterion for deciding whether a measure is an expression of care or actual physical use of force.

The ombudsman asked the facility to consider how it may ensure that the children and juveniles are motivated to accept the socio-educational therapy, support and care, in order to reduce the number of conflict situations.

NEWS PUBLISHED ON THE OMBUDSMAN'S WEBSITE IN 2013

All news can be read in full (in Danish only) on www.ombudsmanden.dk.

11 January

Ombudsman raises questions regarding the rights of children and juveniles

Is it legal for an accommodation facility to restrict young peoples' use of and access to mobile telephones or computers? Can an accommodation facility demand that a young person submits a urine sample? And how is the sample to be submitted?

These are some of the general questions which the Ombudsman is currently discussing with the Ministry of Social Affairs and Integration.

22 January

Ombudsman increases number of monitoring visits

The Parliamentary Ombudsman does not only receive complaints but is increasingly to be found on monitoring visits around the country. The Ombudsman has recently merged most of his monitoring activities in a new specialised monitoring department.

2 February

Busy start for Ombudsman's Children's Division

The Ombudsman's Children's Division opened on 1 November 2012, and since then the Division has opened more than 100 cases based on complaints from both adults and children.

19 February

Ombudsman addresses restrictions on unhealthy food at psychiatric secure unit

Several media have reported the introduction of restrictions on the patients' free choice of food, sweets and soft drinks at the psychiatric secure unit of the Nykøbing Sjælland Psychiatric Hospital, which is a secure forensic psychiatric facility under the Region Zealand.

Based on the media reports, the Ombudsman has decided to take up the matter as an own-initiative case.

25 February

Extraordinary circumstances led to long waiting times at Citizen Service Centre of Immigration Service

Extraordinary circumstances were to blame for waiting times of up to 10 hours at the Citizen Service Centre of the Immigration Service during the summer of 2012, says a report which the Ombudsman has received from the Immigration Service.

26 February

Not enough time allowed to say goodbye to classmates

It constitutes a major change in a child's life to be taken out of his or her class at school in order to receive individual teaching. The child must therefore be allowed time to say goodbye properly to classmates and time to adjust to the new situation. This is the essence of a new statement from the Ombudsman.

14 March

New criticism from Ombudsman in benefit fraud case

In continuation of a much-discussed case from the spring of 2012, the Ombudsman again criticises the way in which a municipality and a social tribunal have processed a benefit fraud case. In his statement, the Ombudsman outlines a number of important rules and principles designed to ensure that citizens are treated fairly.

18 April

Police to rectify incomplete documentation in deportation cases

When police deport an alien staying illegally in Denmark, information about the deportation must be documented. Following the Ombudsman's discovery that some of the documentation was incomplete when he reviewed 42 deportation cases from 2011, the National Police will now implement a series of measures in order to live up to this fundamental administrative principle.

23 April

Ombudsman enquires into publication of medical negligence data

For how long after being criticised by the authorities must a doctor or other health staff accept that the criticism is publicly available? This is the essence of questions which the Parliamentary Ombudsman has just put to the authorities.

24 April

Ombudsman cannot investigate complaint from ballet dancers

In January 2012, a number of dancers in the Royal Danish Ballet were fired. The management gave demands for budget cuts as grounds for the dismissals. On behalf of some of the dismissed dancers, the Union of the Royal Danish Ballet complained to the Ombudsman about various matters concerning the round of job cuts. However, the Ombudsman cannot consider the complaint as it was submitted too late.

24 April

Acceptable to keep preparations for collective bargaining negotiations secret – but Ombudsman questions concept of ‘creative thinking’ in regard to rules on access to information

The Danish Union of Teachers was denied access to the majority of documents from a working group preparing for the collective bargaining negotiations for the public employers.

In a statement on the case, the Ombudsman concludes that the decision is in agreement with the Access to Public Administration Files Act.

30 April

Ombudsman's role in evaluating new Access to Public Administration Files Act

Referring to the addition to the political agreement of 3 October 2012 between the Government, the Liberal Party and the Conservative Party on a new Access to Public Administration Files Act which was made public today, Ombudsman Jørgen Steen Sørensen says:

'(...) According to the agreement, the Ombudsman is, however, only to assess whether the authorities' practice is in accordance with certain provisions in the new Act (the so-called ministerial advice and assistance provision and the so-called parliamentary politician provision). The assessment must be based on those cases which the Ombudsman has processed during the first three years following the coming into force of the new Act. (...)'

13 May

PET (the Danish Security and Intelligence Service) denies giving journalists silence orders

In the autumn of 2012, the national newspaper Politiken published a feature article entitled 'The Media Cover Up PET's New Secrecy'. The feature article stated, among other things, that PET provides journalists with secret briefings which the journalists are not allowed to write about. However, PET now denies this in a statement to the Ombudsman.

4 June

Severe criticism of Ministry of Taxation because of special advisor's conduct

In a new statement from the Parliamentary Ombudsman, the Ombudsman calls the Ministry of Taxation's handling of an approach from a journalist 'completely unacceptable'. The journalist's approach was handled by a special advisor in the Ministry of Taxation.

6 June

Ombudsman to participate in People Meeting (Denmark's Political Festival) on island of Bornholm

Ombudsman Jørgen Steen Sørensen is going to debate the monitoring of the public administration with the Public Accounts Committee and the Auditor General when these public watchdogs are grilled by interviewer Hans Engell.

11 June

Ombudsman: Authorities must comply with rules on access to information

When the new Access to Public Administration Files Act comes into force, Parliamentary Ombudsman Jørgen Steen Sørensen will ensure that the media get the information they are entitled to under the Act, and, in particular, that they get the information fast. He states this in a feature article published in the national newspaper Politiken today.

17 June

An end to municipality placing children and juveniles at hotel

Slagelse Municipality used to have a practice of placing children and juveniles aged 15 to 18 at a local hotel as emergency overnight accommodation in certain cases. The Municipality has now informed the Ombudsman that this practice will be changed.

26 June

Parliamentary Ombudsman enters into agreement with Chinese authorities

The Parliamentary Ombudsman has just signed an agreement to collaborate with two Chinese ministries on how public administration culture may be developed.

4 July

Visit from Ombudsman leads to establishment of committee on coercion against children and juveniles

A new government committee is to report on the challenges of using coercion against children and juveniles in 24-hour residential care facilities, accommodation facilities and foster families. In addition, the committee is to propose new regulations, if relevant.

30 July

Children stuck at overcrowded crisis centre

More than two years at a crisis centre without any kind of clarification has been the reality for some of the most vulnerable children in Esbjerg Municipality, where the crisis centre has been overcrowded for an extended period. This emerged recently when the Parliamentary Ombudsman was on a monitoring visit at the crisis centre.

6 August

Ombudsman pleased with clearer legal status for adopted children

Adopted children who had an actual family life with their biological parents before coming to Denmark can now rejoice in the fact that their rights have become clearer. So says the Parliamentary Ombudsman, who agrees with the conclusions of a statement from the Division of Family Affairs of the National Social Appeals Board.

14 August

Acceptable for board to buy legal assistance from law firm

For a period of time, a law firm helped the Environmental Board of Appeal process appeals in cases about livestock farming. Among other things, the law firm carried out consultations and prepared drafts for decisions, but at no point did the law firm make any actual decisions. This is one of the most essential reasons why the Parliamentary Ombudsman now approves the arrangement after investigating it on his own initiative.

23 August

Ombudsman looks into waiting times in disability pension cases

Copenhagen Municipality has informed 216 citizens that they cannot expect a decision in their disability pension cases until December 2013 or January 2014. According to the media, this means that some cases will end up with a processing time of up to 14 months.

10 September

Severe criticism of Ministry of Defence in case about access to information in documents regarding Iraq

'Completely unacceptable'. This is how the Ombudsman characterises the fact that the Ministry of Defence took 1 year and 7 months to consider a journalist's request for access to information in documents regarding detainees in Iraq.

11 September

Ombudsman forwards residents' complaint about Metro to Environmental Board of Appeal

Residents around the Marble Church in Copenhagen have asked the Ombudsman to investigate why the Environmental Board of Appeal declined to consider their appeal about the lack of an environmental impact assessment in connection with the extended working hours on the Metro construction project.

17 September

New report on Parliamentary Ombudsman's work in the field of equal treatment of persons with disabilities

The Parliamentary Ombudsman has just published his annual report on his monitoring of developments regarding equal treatment of persons with disabilities.

1 October

Everyone must be treated in accordance with the rules

As a citizen in Denmark, you are to be treated in accordance with the rules, whether you are a nationally known potential government minister or a recipient of social security benefits living alone. This is evident from two central cases in the 2012 Annual Report of the Parliamentary Ombudsman, which has just been published.

9 October

Young people cannot be forced to accept 'reflection time'

Young people in care cannot be made to accept socio-educational measures, for instance so-called 'reflection time', by means of force, says a recently published report from the Parliamentary Ombudsman following a monitoring visit to the accommodation facility 'Fonden Kanonen'.

10 October

Ombudsman asks for explanation of free tickets for government officials

The Danish Broadcasting Cooperation (DR) recently celebrated the radio channel P3's anniversary at a party at the Three Crowns Naval Fortress. According to the national newspaper Ekstra Bladet, the DR gave away a number of anniversary party tickets to officials in the Agency for Palaces and Cultural Properties. The article states that the tickets were given away before the agreement with the Agency about the rental of the fortress was concluded.

14 October

Criticism of refusal of early retirement benefit to upper secondary school teacher

After more than 30 years as an upper secondary school teacher, a man was refused early retirement benefit because the authorities did not consider him to be available for work.

The Parliamentary Ombudsman has reviewed the case, and in his statement, he points out several problems in the authorities' processing of the teacher's case.

5 November

Incorrect guidance kept family with disabled child from asking municipality for help in finding housing suitable for persons with disabilities

'It is essential that municipalities guide citizens correctly. Otherwise, there is a distinct risk that citizens miss out on the help they are entitled to'. These are the words from Ombudsman Jørgen Steen Sørensen after concluding a case about a family with a severely disabled child living in a flat not suitable for persons with disabilities.

6 November

Ombudsman initiates investigation of conditions for psychiatric patients at Holstebro Regional Hospital

The Parliamentary Ombudsman has just asked the Central Denmark Region a number of questions regarding conditions for psychiatric patients at the Holstebro Regional Hospital. The background to this is an article in a local newspaper from which it appears that the hospital had to accommodate forensic psychiatric patients at short notice.

20 November

Improved information in cases concerning visa for children

In future, the immigration authorities will explicitly state that a decision on a so-called 'visa penalty period' does not apply to accompanying underage children. This is the result of a case in which a visa penalty period was imposed on an 11-month-old child by mistake.

29 November

Electronic surveillance of persons with mental disabilities must not be carried to excess

A father complained because a municipal accommodation facility would not consistently use a GPS tracker for his son, who had a mental disability. The father wanted his son found quickly if he left the accommodation facility, and cited the son's inability to negotiate traffic on his own.

However, Ombudsman Jørgen Steen Sørensen states that the use of GPS trackers must be restricted as much as possible.

4 December

Ombudsman pleased with initiatives for children and juveniles in care

Based on a suggestion from the Ombudsman, a commission is presently investigating whether the rights of children and juveniles in care are sufficiently protected. In three instances, however, swifter action is required. Following the Ombudsman's approach, the Ministry of Social Affairs, Children and Integration has consequently initiated three changes in legislation.

12 December

Ombudsman notes shorter waiting times at Immigration Service

The average waiting time at the Citizen Service of the Immigration Service was markedly shorter in the summer of 2013 compared with the summer of 2012, a recently completed Ombudsman investigation shows.

21 December

Doubling of complaints concerning children in Children's Division's first year

The Ombudsman's Children's Division has received 520 complaints during the Division's first year. This is double the number of similar complaints received by the Ombudsman the previous year.

27 December

Wrong to expel student for cannabis smoking

A boarding school student on a higher preparatory examination course was expelled from his day and boarding school because he had smoked cannabis on a night out on the town during a weekend. But the school management was not allowed to do that, says the Parliamentary Ombudsman in a new statement.





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