The Swedish Parliamentary Ombudsmen

Report for the period 1 July 2009 to 30 June 2010

1. General information and statistics

During the period covered by the report, the following have held office as Parliamentary Ombudsmen: Mr. Mats Melin (Chief Parliamentary Ombudsman), Ms. Kerstin André, Ms. Cecilia Nordenfelt and Mr. Hans-Gunnar Axberger. The Deputy Ombudsmen Mr. Jan Pennlöv and Mr. Hans Ragnemalm have handled and decided cases of supervision during a number of shorter periods.

Mr. Melin has supervised the courts of law, the public prosecution services the police and the customs services, while Ms. Nordenfelt has dealt with i.a. matters concerning the prisons and institutions of detention, the armed forces, social insurance and chief guardians. Ms. André has supervised the fields of social welfare, public health and medical care, education and the administrative courts (except the immigration courts). Mr. Axberger, finally, has been responsible for the supervision of taxation and enforcement, building and construction, immigration, environmental protection, farming and protection of animals, administration of foreign affairs and labour market. Within his area of responsibility have also been all additional aspects of civil administration, not supervised by any other Parliamentary Ombudsman.

During the working year, 7 444 new cases were registered with the Ombudsmen; 7 310 of them were complaint cases (an increase by 581 [8,63 %] compared to the number during the previous working year) and 46 were cases initiated by the Ombudsmen themselves on the basis of observations made during inspections, of newspaper reports or on other grounds. 88 cases concerned new legislation, where the Parliamentary ombudsmen were given opportunity to express their opinion on inter alia bills.

7 727 cases were concluded during the period, a increase by 870 (12,69 %); out of them 7 567 were complaint cases, whereas 64 were cases initiated by the Ombudsmen themselves and 96 were cases concerning new legislation.

It should be noted that the schedules overleaf show cases concluded during the period, not all cases lodged.

This summary also comprises the full reports of three of the cases dealt with by the Ombudsmen during the period.

Schedule of cases initiated by the Ombudsmen and concluded during the period 1 July 2009–30 June 2010

Activity concerned	Closed without final criticism	Admonitions or other criticism	Prosecutions	Preliminary criminal investigation; no prosecution	Total
Courts of law	0	2	0	1	3
Administrative courts	0	3	1	0	4
Public prosecutors	0	6	0	0	6
Police authorities	1	14	0	0	15
Prison administration	4	5	0	0	9
Defence forces	1	0	0	0	1
Social welfare	2	2	0	0	4
Medical care	0	3	0	0	3
Social insurance	1	7	0	0	8
Labour market authorities	1	0	0	0	1
Planning and building	1	1	0	0	2
Taxation	0	1	0	0	1
Immigration, integration of immigrants	1	0	0	0	1
County boards; serving of alcoholic beverages	1	2	0	0	3
Chief guardians	0	2	0	0	2
Freedom of expression; Access to public documents	0	1	0	0	1
Total	**13**	**49**	**1**	**1**	**64**

Schedule of complaint cases concluded during the period 1 July 2009–30 June 2010

Activity concerned	Dismissed without investigation	Referred to other agencies or state organs	No critisism after investigation	Admonitions or other critisism	Prosecutions or disciplinary proceedings	Preliminary criminal investig. No prosecution	Guidelines for good administration	Correction during the investigation	Total
Courts of law	130	0	255	27	1	0	0	0	413
Administrative courts	64	0	36	6	0	0	0	0	106
Public prosecutors	127	1	162	33	0	3	0	0	326
Police authorities	293	17	361	57	2	0	0	0	730
Customs services	8	0	5	1	0	0	0	0	14
Armed forces	7	0	2	3	0	0	1	0	13
Prison administration	527	2	476	203	0	0	0	4	1 212
Social welfare	498	5	368	60	0	0	0	3	934
Medical care	211	0	57	7	0	0	0	0	275
Social insurance	563	0	197	108 *)	0	0	0	1	869
Labour market auth.	148	0	83	12	0	0	0	0	243
Planning and building	99	0	71	29	0	0	0	0	199
Enforcement	121	0	45	12	0	0	0	2	180
Municipal self-government	75	0	17	9	0	0	0	0	101
Communications	151	0	77	24	0	0	0	0	252
Taxation	110	0	51	10	0	0	0	1	172
Education	155	6	74	17	0	0	0	0	252
Culture	10	0	6	1	0	0	0	0	17
Chief guardians	29	0	33	14	0	0	0	1	77
Agriculture, environment, protection of animals	144	0	87	20	0	0	0	1	252
Immigration	88	0	37	16	0	0	0	1	142
County administrative boards, control of lotteries, serving of alcohol	24	0	13	2	0	0	0	0	39
Housing	7	0	2	0	0	0	0	0	9
Employment of civil servants etc.	98	0	11	9	0	0	1	0	119
Freedom of expression; Access to official documents	104	0	115	115	0	0	0	1	335
Administration of parliamentary and foreign affairs; general elections	21	1	2	7	0	0	0	0	31
Miscellaneous	73	0	35	17	0	0	0	0	125
Complaints outside jurisdiction, complaints of obscure meaning	130	0	0	0	0	0	0	0	130
Total	**4 015**	**32**	**2 678**	**819**	**3**	**3**	**2**	**15**	**7 567**

*) In addition, there were 160 complaint cases which were dismissed with reference to the initiative case no. 5564-2009 about continued delays and difficulties to access the Swedish Social Insurance Agency.

2. Reports of three individual cases

Disciplinary charges against a police officer for offensive behaviour when a crime was reported and using a fictitious name
(Reg. no. 3818-2008)

The complaint

A complaint submitted to the Parliamentary Ombudsmen on 15 July 2008 by Katarina H. concerned Inspector Morten Gunneng of the Västra Götaland police authority in the district of Alingsås. Her allegation contained the following. When she telephoned the police to submit a complaint she was treated in an unpleasant and scornful manner by a police officer. The officer also refused to give his name and not until her third request did he say that he was called Roger Hägg. When she asked for the name of his superior officer the response was that it was him. She telephoned the police station again on the following day to find out more about this remarkable and unprofessional conduct. She was then told that there was no police officer there named Roger Hägg. It later transpired that the police officer had used a fictitious name and title, and that his actual name was Morten Gunneng.

The enquiry

The documents in police file K115798-08 were requested and examined. They contained the following information. On 13 July 2008 Katarina H. made a complaint to the police by telephone about an offence against the Act on Dogs and Cats and Jeopardising the Lives of Others. The complaint was recorded by Morten Gunneng and dealt with a dog fight. Katarina H complained that her dog, which was on a lead at the time, had been attacked by another dog that was not on a lead, even though leads were obligatory for dogs in the area in question.
An oral statement was taken from Morten Gunneng. This included the following information. At the time in question he was deputising for the station commander, which meant that he was in command of the police unit. Katarina H. rang the police and her call was connected to him. He answered by giving his name and his position. Katarina H. wanted to report an offence which she wanted to be classified as endangering the lives of others. Morten Gunneng told her that the offence did not meet the criteria for the use of this classification. Katarina H. insisted this classification of the complaint. Katarina H. also demanded that he should take certain investigative measures. He informed her that this was not one of his duties. The conversation became more bad-tempered on both sides. He gained the impression that Katarina H. was incredibly angry and also felt that she was some form of “barrack-room lawyer”. At this stage of the proceedings she wanted him to repeat his name. As he had previously experienced victimisation and was then advised by the police authority’s personnel protection unit to state his official number instead of his name, he gave Katarina H. his number but she was not satisfied with this. He also told her that his name would appear on the written copy of the complaint that she would receive in a few days’ time. In spite of this she insisted on being given his name and in the end he said she could ask for Roger Hall (not Hägg as Katarina H. thought: Parliamentary Ombudsman’s note) if she wanted to raise the matter later. This name is an alias he uses and is known to other police officers. On the same day Katarina H. came to the police station and asked for Roger Hägg. On this occasion he received her and she asked who his superior officer was and wanted an apology. He told her that he was in charge and that he had nothing to apologise for. She then left the police station. He had not treated Katarina H. unpleasantly or scornfully. He had been very explicit and tried to explain why the offence she was complaining about could not be classified in the way she wanted.

An oral statement was also taken from the acting head of the police unit, Jan Hellnevi, which included the following information. Morten Gunneng serves as an operational commander but sometimes as station commander, which means that he is in charge of the police unit outside office hours. Jan Hellnevi does not know whether Morten Gunneng's use of the name Roger Hall is common knowledge.

In the light of what had been disclosed the complaint to the Parliamentary Ombudsmen was referred to the police authority for information and an opinion on its contents.

The police authority (Chief Commissioner Ingemar Johansson) made the following appraisal.

It is indisputable in this case that Katarina H. intended in her telephone call to Morten Gunneng to report an offence to the police. The police authority can determine that no new circumstances have come to light to suggest that the complaint should not have been recorded in connection with this telephone call. The police authority can also determine that Morten Gunneng did in fact record a complaint on the same day, but that this had been preceded by a discussion between him and Katarina H. on whether the offence could be labelled as endangering the lives of others.

In view of what has come to light about the discussion that took place between Morten Gunneng and the complainant, the police authority considers it important to emphasise the importance of complaints being recorded in a way the enables the allegations of the complainant to be appraised in their original form in the subsequent investigation. Morten Gunneng was not required while receiving the complaint to make any assessment of what had occurred while making the record. Nor, in the opinion of the police authority, is a police officer who records a complaint required in principle at that stage to assess the accuracy of the classification ascribed to the offence by the complainant.

In their contacts with the police individuals have the right to adequate information to enable subsequent identification of the officers they have encountered. This information is particularly important in contexts where it is needed at some later stage to review the conduct of an officer (cf. Parliamentary Ombudsmen's decision 20 September 2005, reg. no. 4368-2004).

What has come to light in this case enables the police authority to determine that when Katarina H. reported the offence Morten Gunneng had not been ascribed a fictitious identity, either pursuant to the Act on Qualified Protective Identities or for any other reason known to the police authority. Nor was there any case pending relating to the security of any individual with the authority's personnel protection unit at the time.

The statement made by Morten Gunneng himself to the Parliamentary Ombudsmen makes it clear that he introduced himself with his real name and service number when he answered the telephone and also that he told the complainant that his real name would be found on the copy of the complaint to be sent to her a few days later. Morten Gunneng also states that offered Katarina H. his service number, which would later made it possible to identify who the complainant had been in contact with. In view of this, the reason given by Morten Gunneng for not wanting to give his real name when the complainant insisted on it seems irrational. The police authority has not, however, found anything to support the allegation that Morten Gunneng gave false information about his rank.

By and large, nothing that has come to light in this case can give the police authority any reason to establish that in the situation concerned Morten Gunneng had acceptable grounds for giving any other name than his own. The opinion of the police authority is therefore that Morten Gunneng should have responded to the complainant's question about his identity by providing his real name.

Morten Gunneng should also have understood that Katarina H. was asking for the name of his superior officer and explained that he was not on duty on a Sunday. Katarina H. seems however on the following day to have managed on her own initiative to get hold of the "acting police commander" (who should correctly be described as the temporary head of the police unit in Alingsås) and obtained clarification of certain issues.

It is important for the confidence of the general public in the police that officers behave in their contacts with individuals in a way that inspires their trust and respect. Morten Gunneng's own statements about the event in question prompt questions about whether his conduct in other respects when recording the complaint was of the kind that can reasonably be required of him according to the Police Ordinance.

The police authority regrets the treatment experienced by Katarina H. on 13 July 2008. In this context the police authority would like to point out that a national police project is under way to produce a joint value system which can be endorsed by police officers. The authority intends to continue with this endeavour to further raise the confidence of the general public in the police.

Katarina H. was offered an opportunity to submit a rejoinder to this official response.
The adjudication of 2 October 2009 by the chief Parliamentary Ombudsman *Mr Melin* included the following comments.

Appraisal

Treatment of individuals reporting a crime
In this case it has been disclosed that Katarina H. and Morten Gunneng disagreed among other things about the classification of the event she wanted to complain about: a dog fight. – As the police authority points out, the Parliamentary Ombudsmen have pointed out on a number of previous occasions that in principle the police authority is required to record notifications of offences. The main rule is that the police must accept such notification without delay. Notification may be submitted orally or in writing to any police authority. There are grounds here for pointing out in particular that no appraisal of what has occurred should be made in connection with the filing of a complaint. This assessment should be made instead during the ensuing assessment of whether a judicial enquiry should be launched or not. In the initial stages the police should also in principle accept the statements made about the classification of the crime by the complainant (cf. Parliamentary Ombudsmen 1989/90 p. 64). Morten Gunneng should therefore properly have recorded the complaint that Katarina H. wished to make without starting a discussion of whether the requisite criteria in a particular provision were fulfilled or not. This is an appraisal to be made by the investigating officer in subsequent analysis of the complaint.
It seems very probable that the conversation between Katarina H. and Morten Gunneng would not have become so heated if he had not challenged her information and ended up in a legal discussion about various criteria for classification of the crime.
I find that Morten Gunneng cannot avoid criticism of his actions in this respect.
Using a fictitious name
To begin with I would like to point out that the enquiry into this case has confirmed the allegation in Katarina H's complaint that when asked what he was called Morten Gunneng gave a fictitious name. It is also equally clear that no decision had been made to give Morten Gunneng what is termed "high-level protective identity".
My understanding is that Morten Gunneng gave a fictitious name because he had previously been victimised and been advised by the personnel security unit in Göteborg to give his service number is situations of this kind. When Katarina H. insisted on being given his name he stated instead that he was called Roger Häll, which he regards as an alias familiar to his fellow police officers. (Parenthetically it can be mentioned that Police Inspector Roger Häll is the name of a character in the Swedish film called *I lagens namn [In the name of the law]* from 1986.)
The enquiry does indeed reveal that in November 2005 Morten Gunneng was the subject of a case concerning personnel security because of certain threats but that this case was closed after only a few months as the threats were no longer considered serious. I would also like to point out here that nothing in this case suggests that Katarina H. behaved threateningly to Morten Gunneng, even though she was perhaps heated and angry.
As stated by the police authority, Morten Gunneng's conduct – on the basis of the motives he has described – was moreover irrational. I can fully agree with this judgement. He should also of course, as the police authority also points out, have given the name of his superior officer

when this was requested, understanding that he was not the person referred to, and also explained to Katarina H. that his superior was not on duty on the day in question.
It is not at all unusual for the police to encounter individuals who are challenging, assertive and irascible. In situations like this it is, of course, very important for individual police officers to show restraint and curb any frustration they may feel. If the public are to feel confidence in the police, it is important for officers to act in their contacts with individuals in a way that inspires trust and respect. In addition police officers are to behave politely, considerately and firmly and also demonstrate restraint and avoid what could be considered outbreaks of hostility or pettiness (Section 1 of Chapter 4 of the Police Ordinance). In my opinion the contacts of police officers with individuals should also be characterised as far as possible by frankness, which means that they should – unless special circumstances prevail because, for example the situation is threatening –give their names when asked and not hide behind service numbers and definitely not behind invented aliases.
To sum up, Morten Gunneng has in my opinion – in giving the complainant a fictitious name – disregarded the obligations incumbent on him in a way that constitutes the kind of misconduct that pursuant to Section 14 of the Act on Public Employees should lead to a disciplinary penalty. For this reason I am referring the case to the Staff Disciplinary Board of the National Police Board for its review.
Finally I note that the police authority regrets this occurrence

The judgement of the National Police Board's Staff Disciplinary Board

In a decision of 15 December 2009 the Staff Disciplinary Board of the National Police Board issued a disciplinary penalty to Morten Gunneng Emilsson in the form of a reprimand.

In stating its reasons the Staff Disciplinary Board declares that Morten Gunneng did not comply with the regulations on the conduct of officers in the execution of their duties and that his actions were surprising and had impaired public confidence in the police.

Pronouncements on the right to defence counsel – criticism of police officer because a detainee was not allowed to contact a defence counsel etc.

(Reg. no. 5684-2008)

The complaint

Per Stadig, an attorney, submitted a complaint about the police authority in the county of Uppsala. According to the complaint, after the arrest of Per Stadig's client, P.P., he was not allowed to have his defence counsel present during his interrogation or to contact him. In addition Per Stadig was not allowed to get in touch with P.P. because the police claimed that he had not been appointed by the court to defend him in the case. According to Per Stadig, however, a previous appointment had been made.

The enquiry

The documents on file at the local Uppsala office of the Regional Public Prosecution Agency (case no. AM-157850-08), Uppsala District Court (case no. B 5597-08) and the police authority (case nos. K34533-08 and K35616-08) were requested and examined. They contained the following information.

On 11 October 2008 a complaint was made against P.P. for gross violation of the integrity of a woman or, alternatively, assault (K34533-08). He was arrested, questioned and remanded in custody. He was released from detention on 13 October. During the period of his remand Per Stadig was appointed by the court as his public defence counsel and, according to the record sheet at the police cells, spoke to his client on two occasions.

On 19 October 2008 a new complaint was made against P.P. alleging assault and unlawful threats concerning the same person (K35616-08). A warrant was issued for the arrest of P.P. on 20 October and he was apprehended on the same day. He was questioned on 20 and 21 October. No lawyer was present at these interviews. According to the record sheet, P.P. did not at any time request to be allowed to speak to a lawyer but there is a note on the document saying "we do not know who his lawyer is". On 23 October P.P. was remanded in custody by the district court.

Stefan Wallin was the lawyer appointed as public defence counsel for P.P. on 22 October. At the remand hearing on 23 October P.P. was represented by the lawyer Eva Kornhall. After Per Stadig had contacted the court at the end of October, Eva Kornhall was relieved of her position and P.P. was represented by Per Stadig from that time onwards.

An oral statement was taken from Inspector Jan Bihlar who reported as follows. On 21 October he questioned P.P. Before the interview P.P. stated that Per Stadig had previously been his public defence counsel and he wanted him to act in this capacity again. As far as he could see, neither Per Stadig nor any other lawyer had been appointed as P.P's public defence counsel. He informed P.P. of how the questioning was to take place and that P.P. could opt to terminate it whenever he wished. He also asked whether P.P could agree to being questioned without the presence of a lawyer, which he accepted. P.P. expressed a desire to get in touch with Per Stadig. He rejected this request on the grounds that Per Stadig had not been appointed as his public defence counsel. On the day before the remand hearing, 22 October 2008, he found out that Stefan Wallin had been appointed to act as public defence counsel. During the afternoon he telephoned Stefan Wallin, who promised to contact P.P.

The police authority was requested – after the police officers involved had been heard – to provide information and a statement on the allegation in the complaint to the Parliamentary Ombudsmen that P.P. had not been allowed to contact Per Stadig or to have him present while being questioned.

The response of the police authority (Chief Commissioner Erik Steen) included the following.

Background

The file on this case shows that P.P. was arrested on 20 October 2008 for gross violation of the integrity of a woman. He was remanded in custody during the period 20-22 October 2008.

The record sheet from the police cells shows that on 21 October 208 P.P. requested to be allowed to speak to his lawyer. On this occasion the officers on duty contacted the station commander to find out whether a public defence counsel had been appointed for P.P. As no lawyer had been appointed for P.P. for this charge, he was given this information.

P.P. has stated in his own complaint to the Parliamentary Ombudsmen that he was denied the right to have his defence counsel present or alternatively to speak to his defence counsel while he was being questioned on 21 October 2008.

The opinion of the police authority

Section 3a of Chapter 21 of the Procedural Code lays down that a public defence counsel is to be appointed if a suspect so requests. In addition, Section 8 of the same Chapter states that the defence counsel for someone who has been arrested or is on remand may not be refused the right to meet the client. The right to meet a defence counsel may, however, be restricted under certain circumstances.

The Parliamentary Ombudsmen have declared in an adjudication issued on 12 September 2008 that the possibility of not allowing consultation with a defence counsel may only arise in extremely few cases after an individual assessment and on objectively justifiable grounds.

With regard to the refusal of the police authority to allow P.P. to contact the lawyer Per Stadig during the time he was in custody the following has come to light.

The record sheet shows that at 4.30 p.m. on 21 October 2008 P.P. requested to be allowed to speak to a lawyer. Whether P.P. then specifically said that he wanted to speak to Per Stadig has not been shown by the written records or the interviews with the staff on duty and the station commander. The authority's routine procedure is, however, always to ensure that contact is established without delay when detainees request to speak to their public defence counsel, if one has been appointed. In cases where no public defence counsel has been appointed, suspects are informed that they may at their own expense contact a defence counsel and that a request for the appointment of a public defence counsel should be submitted as soon as possible to the district court. The enquiry has not disclosed, however, whether the authority's routines were followed in this case, as the relatively long period that has elapsed means that the officers on duty have been unable to offer any more detailed account of the circumstances.

Since 8 December 2008 responsibility for the police cells has been taken over by the National Prison and Probation Administration. As a result, new routines have been introduced to ensure that the right of suspects to defence counsel is respected. The National Prison and Probation Administration's local manager has informed us that an entry is made in the record sheet when a suspect requests a defence counsel and the police authority is then informed.

Moreover, P.P. claims that he was refused the right to speak to his defence counsel when he was questioned on 21 October 2008 beginning at 6.31 p.m. The authority's enquiry reveals the following. The interrogating officer in this case was Detective Inspector Jan Bihlar. He denies refusing P.P's request to be allowed to speak to his public defence counsel in connection with the questioning. What P.P. could have considered a refusal of his request to do so may, according to Bihlar, be the information that no public defence counsel had been appointed on his behalf in the case in question. The enquiry has not disclosed whether P.P. said specifically that he wanted to speak to Per Stadig or any other specific defence counsel. If this had been the case, Bihlar says that according to the routine in force he would have informed P.P. that he was able to do so at his own expense. Bihlar states that there was no reason to refuse P.P. the possibility of speaking to his defence counsel.

With regard P.P's allegation that he was not allowed to have his defence counsel present when he was questioned on at 6.31 p.m. on 21 October 2008, Bihlar states at the beginning of an interrogation he routinely asks the suspect if he wants a defence counsel to be present and that he did so on this occasion as well. P.P. is said to have waived the possibility of having counsel present. Bihlar states that he then asked P.P. if he wanted

any specific defence counsel at a potential hearing in the district court, upon which P.P. is said to have declared that he wanted Per Stadig as his public defence counsel. This has also been noted in the interrogation record.

As the interrogating officer, in the morning of 22 October 2008 Bihlar then contacted the Regional Prosecution Office to ensure that a public defence counsel would be appointed for P.P. Stefan Wallin was appointed on the same day. During the morning it was brought to Bihlar's attention that the public defence counsel had not been in contact with P.P and as a result, although he was off duty, he contacted Wallin to make sure that P.P would be able to contact his public defence counsel as P.P. had expressed the wish to meet his counsel before the impending remand hearing which was to take place on the following morning.

To sum up, the authority does not consider that P.P. was denied the possibility of speaking to his public defence counsel or to have him present during the interrogation. With regard to P.P's claim that he was refused the right to speak to his defence counsel while he was remanded in custody, the enquiry has not been able to determine whether the authority's routines were complied with or not. The transfer of responsibility for the police cells to the Prison and Probation Administration has resulted in new routines being laid down concerning how written records of requests for defence counsel are to be kept.

Because of the attention drawn by the Parliamentary Ombudsmen to the right of suspects to legal assistance, the authority has also launched internal training to raise, if possible, awareness of their right to contact their defence counsel.

Per Stadig was offered an opportunity to submit a rejoinder to this official response.
The adjudication of 9 April 2010 by the chief Parliamentary Ombudsman *Mr Melin* included the following.

Appraisal

In view of what has been submitted by the police authority on the question of the legal regulations, I would like to start by pointing out the following.
The defence counsel for someone who has been detained or remanded may not be denied the chance to meet them. Those who have been appointed as public defence counsel also have an unconditional right to speak to their clients in private (first paragraph of Section 9 of Chapter 21 of the Procedural Code).
On the other hand the right of defence counsel to be present when suspects are questioned is subject to the provisions of the fourth paragraph of Section 10 of Chapter 23 of the Procedural Code, which lays down that this is permitted if it will not be detrimental to the investigation. The possibility of denying defence counsel the right to attend during questioning of a suspect is, however, extremely restricted. This possibility can only exist in exceptional cases, i.e. if it must be assumed that the behaviour of the defence counsel will disturb the interrogation or even render it impossible to conduct it in an orderly manner. This presumes, however, the refusal of the defence counsel to comply with the instructions of the interrogating officer concerning the right to speak during the interrogation (Parliamentary Ombudsmen 1956 p. 96, in particular p. 116 f and Parliamentary Ombudsmen 2009/10 p. 68).
The legal doctrine is that, on the whole, defence counsel have an unconditional right to attend when their clients are questioned (cf. Ekelöf et al. *Rättegång V* [*Trials V*], 7th ed., p. 133 and Fitger, *Rättegångsbalken [The Procedural Code]*, vol.2, p. 23:45). Fitger also offers an additional example to the one above of when defence counsel may refused permission to attend, which is when the individual employed by the suspect is generally unsuitable.
In a number of adjudications the European Court of Human Rights has considered the question of whether refusing defence counsel the right to attend initial police interrogations is in conflict with Articles 6.1 and 6.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In a judgment issued after the adjudication in Parliamentary Ombudsmen 2009/10 p. 68, the Grand Chamber of the court has called renewed attention to the importance of access to legal advice and that this right is particularly

important when serious charges are involved. The court points out that Article 6.1 means as a rule that the suspect should already have been provided with access to defence counsel during initial police interrogation, unless it can be shown that in view of special circumstances there were compelling reasons for limiting the right of the suspect in a specific case. The court also declared that even if these compelling reasons exist, no such restriction – whatever its justification – may unduly prejudice the suspect's rights and that an irredeemable prejudice of this kind arises if, without access to defence counsel, the suspect makes statements under interrogation on which a conviction can be based (judgment of the European Court of Human Rights in Salduz v Turkey, 27 November 2008). The court has admittedly considered that a suspect may waive the right to the assistance of defence counsel provided that this is explicit and voluntary. Such a waiver must, however, take place in an unequivocal manner and be safeguarded by minimum guarantees that correspond to its importance (Yoldas v Turkey, judgment issued 23 February 2010).

In addition I have pointed out that the fact that a lawyer has not been appointed to act as public defence counsel is not an acceptable reason for denying him or her the right to attend during questioning. If a suspect wants the assistance of a lawyer, it does not matter whether the lawyer has been appointed to act as public defence counsel or represents the individual on a private basis (Parliamentary Ombudsmen 2009/10 p. 68).

To sum up, therefore, a defence counsel for someone who has been detained or remanded in custody has an unconditional right to meet the client and the scope for refusing to allow defence counsel to attend when the suspect is questioned is extremely restricted.

The complaint to the Parliamentary Ombudsmen mainly alleges that when P.P. was deprived of his liberty on 20 October 2008 he was not allowed to contact Per Stadig, who was also denied the right to attend when P.P. was questioned on the following day. The reason for this is said to have been that Per Stadig had not been appointed to act as public defence counsel, which was incorrect.

The enquiry shows that Per Stadig was appointed as P.P's public defence counsel during the first half of October 2008. Consequently, a public defence counsel had been appointed for P.P. when the complaint to the police that gave rise to this detention was made. I would like to point out, therefore, that appointment as a public defence counsel is not restricted to the offences for which it has been made. Such an appointment should be considered to include offences which the client may be suspected of later during the investigation. The appointment should also include acts that become the subject of new investigations, if it is intended to bring charges for these acts within the framework of the same criminal hearing (Fitger, *Rättegångsbalken [The Procedural Code]*, vol.2, p. 21:33 and SvJT 1971 ref. p. 40).

With regard to the first allegation that P.P. was not allowed to contact Per Stadig, as far as can be shown in this case, it has not been established at what stage P.P. expressed this desire and to whom it was addressed. The complaint to the Parliamentary Ombudsmen claims that he had already made this clear on 20 October but the record sheet contains the note that P.P. requested to be allowed to speak to a lawyer on the afternoon of 21 October. The possibility that P.P. expressed this wish on repeated occasions cannot be excluded.

Irrespective of the circumstances in this regard, it seems that the police officers involved were unaware that Per Stadig had already been appointed to act as P.P's public defence counsel. In his oral statement to the Parliamentary Ombudsman, Jan Bihlar declared that he did not know that a public defence counsel had been appointed for P.P. In my opinion this is remarkable. P.P. had, after all, been held in custody by the police only a week earlier and had then had contact with Per Stadig, who is identified on the record sheet as his public defence counsel. In the subsequent complaint to the police reference is made to the previous case. A rapid review of the case should reasonably already have made the correct circumstances clear and therefore enabled the police to ensure that P.P. was able to contact his defence counsel when he

requested to do so. – It goes without saying that it is of fundamental importance for the legal rights of those who have been deprived of their liberty for the police to ensure that they have the correct information about whether a public defence counsel has been appointed on their behalf. I am critical of the failure to do so.

When later P.P. is alleged to have been denied the right to have Per Stadig present while he was questioned on 21 October it can be observed that the interrogation record contains the note that P.P. was informed of his right to defence counsel and also that if the case came to trial he wanted Per Stadig. Jan Bihlar has stated that he routinely asks suspects whether they want a defence counsel to be present while they are questioned and that he did so in this case as well. He has also stated that P.P. agreed to be questioned without the presence of a lawyer.

The enquiry discloses that on at least one occasion before the interrogation began P.P. requested to be able to contact his defence counsel. For this reason in particular I consider that, irrespective of any attitude P.P. may have expressed while being questioned, the interrogation should never have been held without allowing the suspect the possibility of legal assistance. I also assume that if the police had complied with P.P's earlier request to be able to contact his defence counsel, this would have ensured that P.P. had legal advice during the interrogation. There are therefore grounds for criticising the police officer in this respect as well.

No other circumstances that have come to light prompt any statement from me.

Finally it can be mentioned that in another adjudication today I have expressed an opinion on the right to defence council of a suspect who had not yet reached the age of 18 (see reg. no. 3741-2008, this adjudication is available on www.jo.se).

Violation of the freedom of expression of an employee

(Decision of the Parliamentary Ombudsman Mr Axberger issued 25 September 2009, reg. no. 149-2009.)

Summary of the decision: An employee of the Migration Board was reassigned to a subordinate position. The measure was judged to be the result of opinions on political questions published by the employee on the Internet. The protection offered by the constitution to freedom of expressions means, among other things, that the public administration may not invoke reprisals against individuals who have availed themselves of this freedom. In this case there were no grounds for any exception from this prohibition. The reassignment was therefore unconstitutional.

Background and enquiry

According to an article in Dagens Nyheter the Migration Board had sacked the head of a unit, Lennart Eriksson, because of a blog he had written about the conflict between Israel and Palestine (Dagens Nyheter, 8 January 2009). The article included information from a judgment in a labour market dispute between the board and the head of the unit. The Parliamentary Ombudsman asked for a copy of the judgment (issued by Mölndal District Court on 10 November 2008 in case number T2187-07). Two complaints were submitted to the Parliamentary Ombudsmen, one from Allan Stutzinsky, the lawyer who had represented the head of the unit in the labour market dispute. He attached a number of documents.

The Migration Board was asked to submit an opinion on what had occurred and its deliberations, in particular with respect to an individual's freedom of opinion and expression. The enquiry disclosed the following.

Lennart Eriksson began to work for the Migration Board in the 1980s. In 2002 he became the head of a unit. After taking a sabbatical year he returned to his post in the autumn of 2007. A new operational manager, Eugène Palmér, had been appointed and had a number of discussions with Eriksson. He then decided not to allow Eriksson to return to his post as head of a unit but reassigned him. Eriksson began proceedings against the Migration Board on the grounds that the reassignment should be considered a dismissal and should then be declared invalid. Mölndal District Court found that the reassignment involved such a major change in Eriksson's employment that it should be considered a dismissal, a view which in the opinion of the court was supported by its actual intention, which was to persuade Eriksson to terminate his employment. The Migration Board had acknowledged that there were no objective grounds for dismissal. The conclusion of the district court was therefore that the board was in breach of the Employment Protection Act. Eriksson's claim for damages was granted. As the Migration Board did not maintain there were objective grounds for the dismissal, the circumstances that had given rise to the measures adopted by the board were not subject to review. The judgment gained legal force.

The reasons for the reassignment of Lennart Eriksson have been described in various ways. In the labour market dispute in Mölndal District Court the Migration Board cited what was described as an official written record made by Eugène Palmér. In it he presents his reasoning in the following manner:

Reassignment of Lennart Eriksson

At the moment Lennart Eriksson has the post of head of asylum application review unit 1 in Göteborg. I intend to make the decision that he is no longer to occupy this post. These are my reasons:

1. Lennart Eriksson has a home page in which he gives the Israeli side in the Palestine conflict his unqualified support. In view of the fact that the conflict gives rise to asylum applicants from the

Palestine side, public support for the Israeli side is incompatible with a position as head of an asylum application review unit at the Migration Board. In spite of my comments Lennart Eriksson has not removed or modified the contents of his home page.

2. In the same home page Lennart Eriksson expresses his admiration of General Patton: today best known for his actions in Italy during the final phase of the Second World War when he disobeyed explicit orders and continued his advance northwards. Lennart Eriksson's admiration of an individual famous for his lack of allegiance to his superiors has a negative impact on my confidence in Lennart Eriksson.

3. Asylum application review in Göteborg has historically never been successful. Fundamental changes have to be made in this area. Lennart Eriksson's capacity to implement these changes is restricted to no small extent by his need to give public expression to his private and in no way uncontroversial opinions on various issues

4. Lennart Eriksson has cited two referees in support of his managerial capacity. They have both stated spontaneously that they would never themselves, for instance, have appointed Lennart Eriksson to a managerial position.

5. I had no preconceived ideas when I initiated my discussions with Lennart Eriksson. The dialogue that has resulted from our talks has been remarkable. During my years as manager I have been called on to cooperate and conduct discussions with at least two hundred senior employees. Never before have I encountered such unreasonableness and lack of desire to reach a solution to a problem that can be acceptable to both parties. This impression inspires in me grave concerns about Lennart Eriksson's ability to deal with conflicts of interest among those subordinate to him.

These reasons have led me to the conclusion that I lack confidence in Lennart Eriksson's capacity to lead a unit involved in asylum application review and it is therefore unthinkable for me to have him as a subordinate manager.

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During the Migration Board's enquiry in preparation for its response to the Parliamentary Ombudsmen Eugène Palmér made the following statement.

The actual events and the grounds for my standpoint are made clear in the judgment of Mölndal District Court. In addition I would like to submit the following:

During the period Lennart Eriksson was head of the unit in Göteborg, asylum review in Göteborg developed in a very negative direction. Productivity was extremely low and the working climate insalubrious. When I took over as head of asylum application review operations in the summer of 2007 things had come to such a pass that I was recommended to close down operations in Göteborg.

Lennart Eriksson's personal qualities make him unsuitable as a manager. This is a fact that nobody during these proceedings has called into question.

For the head of one of the Migration Board's asylum application review units to actively and publicly profess a one-sided and forceful opinion on a conflict that generates flows of refugees to Sweden seriously jeopardises the confidence of the general public and of applicants in the capacity of the board to review their applications impartially. Failure to realise this is proof of poor judgement. It is not possible to discharge the duties of a manager in an acceptable manner with this degree of poor judgement.

With my managerial responsibilities, I cannot accept actions by one of my subordinate managers that directly damage our employer and the work we undertake.

Lennart Eriksson has, of course, the right to whatever opinions he likes. Naturally he is also entitled to propound these opinions without restraint. This applies to Lennart Eriksson just as it does to anyone else. But when one's opinions injure one's employer and the confidence of those around us in the employer's ability to operate, as an individual one is faced with a choice. I believe that nearly everybody experiences this conflict to some extent and that everybody realises that a choice has to be made between one's own and one's employer's interests and then take responsibility for one's actions.

As can be seen, it was not Lennart Eriksson's blog that led me to adopt my standpoint. His lack of judgement and his negative managerial qualities were the decisive factors. But there is naturally a link. I believe the link can be illustrated with the following example. During the first discussion I had with Eriksson he asked me if he could retain his position as head of the unit if he removed his blog. If my intention had been merely to get rid of the blog it would have been simple for me to respond to his question by saying yes. But I did not. On the other hand the lack of insight into the inappropriateness of his own behaviour startled me.

The Migration Board claimed, judging from its submission to Mölndal District Court, that the reassignment of Lennart Eriksson was based on the lack of mutual trust that had developed between Eugène Palmér and Lennart Eriksson after their discussions. The written record kept by Palmér discloses, according to the board, that the measure was due to lack of confidence in Eriksson as head of the unit. In its judgment the court quotes the board as stating that "no other grounds for the reassignment decision than those contained in these official records, such as Lennart Eriksson's political affiliation, have existed" (Mölndal District Court judgment, p. 10).
In its submission to the Parliamentary Ombudsmen the Migration Board, referring to Eugène Palmér's description, states that the reassignment of Lennart Eriksson was the result of lack of managing qualities. At the same time the board claims that in his written record Palmér should have expressed this more explicitly and that there has been a unfortunate confusion of Eriksson's opinions and his managing shortcomings.
The board's submission also makes it clear that Lennart Eriksson's employment was terminated after the district court had issued its judgment. This decision was made by Eugène Palmér. Eriksson received standardised damages, as laid down in the Employment Security Act. The documents reveal that altogether, as a result of the various decisions made by Palmér, the Migration Board paid out almost SEK 1.5 million to Eriksson in the form of damages, including interest, and compensation for trial costs.

Adjudication

Certain premises for the Parliamentary Ombudsman's adjudication

The Parliamentary Ombudsman's decision focuses on Eugène Palmér's decision that Lennart Eriksson was no longer to be head of a unit but would be reassigned to a less senior post. There are indications that the discussions to which Palmér summoned Eriksson before this decision were prompted by Eriksson's publications on the Internet. These initial discussions are, however, of subordinate interest in relation to the measure later adopted by Palmér. They give rise to no opinion from me other than the obvious statement that a public agency is not entitled to try to prevent employees from making use of their freedom of expression.
The decision of the Migration Board after Mölndal District Court had issued its judgment to terminate Eriksson's employment is currently the subject of court proceedings as Eriksson brought a case against the board asking for the decision to be declared invalid. A parallel review by the Parliamentary Ombudsmen would be inappropriate and therefore I will not express an opinion on this issue. The other aspects of the complaint – such as the arguments circulated by representatives of the Board through the mass media and in internal information – take second place to the main issue and therefore will not be included in my judgement.
No more detailed information about the contents of Lennart Eriksson's home page has been offered in the presentation of the background. There is no reason to do so as this case deals with a question of principle, an employee's freedom of expression. In this connection it should be noted that the opinions to which attention was drawn did not involve disclosure of circumstances regarded by the Migration Board as confidential or in any way internal. Nor does the issue touch on the relationship between obligations of loyalty and the right to criticise. What has to be appraised concerns the right of an employee to express an opinion on

general political issues vis-á-vis the restraint that a public agency may require from a member of its staff in this respect.
My judgement begins with an account of the protection offered by the constitution for freedom of expression and the prohibition of reprisals against anyone who avails themselves of this protection. On account of the arguments referred to by representatives of the Migration Board, I discuss in particular the scope open to an agency for intervention against an employee whose opinions, in the view of the agency's representatives, impair confidence in its operations. It is against this background that the measures invoked against Lennart Eriksson are considered.

The basic legal provisions

The constitution lays down – in the first section of Article 1 of Chapter 2 of the Instrument of Government – that all citizens are guaranteed freedom of expression in their relations with the public administration. This individual freedom, as is also laid down in the constitution, cannot be restricted other than under certain specified conditions and then in accordance with legislation enacted by the Riksdag.
Those who avail themselves of their freedom of expression in any of the forms specifically provided for in the Freedom of the Press Act (FPA) and the Fundamental Law on Freedom of Expression (FLFE) may not be subject to any sanctions by the public administration other than those explicitly permitted in these constitutional enactments. What is known as the prohibition of reprisals, which has a long tradition, has found expression in judicial praxis and in a number of decisions by the Parliamentary Ombudsmen and the Chancellor of Justice. Offences against the prohibition of reprisals laid down by the FPA and the FLFE can be penalised as misuse of office. (The prohibition of reprisals has recently been subject to review in the legislative context, see SOU 2009:14. For a general description see Thomas Bull, "Offentligt anställdas yttrandefrihet och repressalieförbudets räckvidd" [The scope of the freedom of expression of employees and the prohibition of reprisals], in JO – *lagarnas väktare [the Parliamentary Ombudsmen – guardians of the law]*, 2009.)
The provision in the first section of Article 1 of Chapter 2 of the Instrument of Government means that a comparable approach must be adopted when viewing the way in which individuals have availed themselves of their freedom of expression in ways other than those laid down in the FPA and FLFE. Protection against reprisals is therefore offered within the framework of the Instrument of Government even when the FPA and FLFE cannot be applied. What is prohibited is made reasonably clear by the very wording of the reprisals concept. Not every measure adopted by a public agency that is linked to what has been expressed by an individual need be unlawful. The measure must be one which can be seen as a punishment or reprimand of the individual who used this freedom of expression. A negative change in a civil servant's employment conditions offers a typical example of a measure of this kind.

Measures taken by public authorities as a result of the public expression of opinions by an employee

One of the implications of the provision of freedom of opinion and expression is that the public administration may not intervene on the issue of what opinions employees hold and how they avail themselves of their freedom to express them. A public employer may not, therefore, demand that members of its staff refrain from expressing values of any kind. This applies even when they may seem to deviate entirely from the values upheld by the employer. Any requirement from a public authority that its employees should embrace certain values is in conflict with the constitutional provision on an individual's freedom of opinion and expression. Confidence in an authority is not maintained by superintendence of its employees'

opinions but through the exercise of its undertakings in compliance with the law and ensuring that this is the case.
In principle, therefore, the opinions of a public employee – even those expressed publicly – are a private concern. Public officials are expected to have to capacity to be objective and not to allow themselves to be influenced by irrelevant considerations, such as personal opinions, irrespective of the nature of these opinions. This is a requirement that ultimately derives from Article 9 of Chapter 1 of the Instrument of Government, which lays down that those performing functions in the public administration shall observe in their work the equality of all persons before the law and shall maintain objectivity and impartiality. If it transpires in any individual case that a public official has failed to comply with this requirement the employer may, naturally, invoke measures. But they are then based in this context on the autonomous circumstance that the employee has failed to discharge his duties correctly. This means that the measure is not the result of the employee's opinions or their expression, which should be excluded from any appraisal, but intended to remedy the wrongful use of office.
It is probably impossible to maintain the principle that the publicly expressed opinions of a public official are a private concern with no exceptions whatsoever. One must expect that for instance a decision maker, whose personal opinions have attracted attention may in the eyes of the public appear less suitable to deal with issues of a certain kind and that this may sometimes entitle a public authority to adopt measures. This is a matter of preventing any impairment of confidence of the kind that it would risk through accusations of impartiality. As is well known, impartiality can arise when anyone making a decision may be seen to have the kind of link to what is being determined that is likely to give rise to doubts about their objectivity in the parties involved or the general public. Measures may therefore be justifiable even when there exist no actual grounds in themselves for believing that the official concerned lacks the ability to disregard his own private convictions.
The impartiality of the public authorities is, like the protection for freedom of expression, enshrined in the constitution. These are, therefore, two equally important constitutional provisions that have to be balanced against each other if they are in conflict. If the outcome of such an appraisal is that an official's public statements should lead to any action by the authority, this action must, of course, be limited to what is absolutely necessary to deal with the conflict of interest that has arisen. It should be observed that in the rare cases when such conflicts arise there probably exists scope for their resolution through agreement between the official and his or her managers within the framework of their conditions of employment and without this solution appearing to be a reprisal.
To the best of my knowledge there are no precedents that show that the adoption of measures against an employee's freedom of expression have been accepted through reference to an authority's obligation to uphold confidence in the impartiality of its operations. On the other hand, there are examples in which measures comparable with those adopted in this case were not considered justifiable. In a judgment of the Swedish Labour Court, AD 1991 no. 106, in a case that was in principle very like this one, arguments similar to those advanced here were rejected. The case concerned an officer in a detention centre who had publicly declared support for xenophobic opinions. The National Prison and Probation Administration, which wanted to reassign the officer, considered that confidence in the correct treatment of those incarcerated at the centre at which he worked could be impaired by the opinions he had expressed. The Labour Court rejected the grounds adduced by the National Prison and Probation Administration and found that there were no legal grounds for the reassignment of the officer. A later case, AD 2007 no. 20, concerned a police inspector who had sent private e-mails with xenophobic contents to a local councillor and others. The contents of these messages became public and the inspector was dismissed. In the opinion of the Labour Court the grounds adduced by the employer for this dismissal were the statements and the

impairment of confidence in the police force they gave rise to. The Labour Court did not accept these grounds and did not find any objective grounds for dismissal. There is also a decision from the Chancellor of Justice issued on 7 August 2008, reg. no. 7068-06-21 etc., which dealt with a trainee at an embassy who belonged to a “extreme-right” organisation. The common factor in the cases cited is that the impairment of confidence that the authorities believed they risked were of a general nature and could not be related to concrete operational problems. They provide support for the initial claim, i.e. that any desire an authority may have for its staff to desist as private individuals from expressing certain types of values for the sake of the authority’s reputation is in conflict with freedom of opinion and expression.

The measures adopted against Lennart Eriksson

The document in which Eugène Palmér accounts for his considerations leading to the decision to reassign Lennar Eriksson lists five reasons. The fourth point presents laconic, generally worded and not easily interpreted assessments from anonymous referees; I consider that in this context I may disregard its contents. The fifth point contains the conclusions Eugène Palmér came to after his discussion with Eriksson. Taken together with what is noted in the three initial points, the fifth point can only be understood as a reference to Eriksson’s willingness to cooperate on a solution to the problem that Palmér considered Eriksson’s statements to pose.

The statement later submitted by Eugène Palmér in the context of the enquiry by the Migration Board, refers to the extremely negative development of Lennart Eriksson’s unit. The way in which this was due to Eriksson, who had then been absent from its operations during his “sabbatical”, is not made clear other than in the general assessment that Eriksson’s personal qualities made him unsuitable as a manager. This view is linked in its turn directly to Eriksson’s “active and public profession of a one-sided and forceful opinion on a conflict that generates flows of refugees to Sweden”. Because, according to Palmér, this seriously damaged the confidence of the public and of applicants in the capacity of the Migration Board to assess applications for asylum impartially, expression of these opinions testified to bad judgement.

Eugène Palmér has not, therefore, adduced any other concrete grounds for his measures than those based on the adoption by Lennart Eriksson, while at the same time head of a unit at the Migration Board, of a particular standpoint on what were considered to be politically controversial issues. Palmér seems to claim that it was not the opinions or their expression he objected to but the lack of judgement that Eriksson – given his position at the Migration Board – revealed through failing to bridle his personal freedom of expression. The one cannot, however, be kept separate from the other. To say that an employee is entitled to express an opinion but not to display the lack of judgement that one considers this expression to involve is merely another way of describing a prohibition against expression of the opinion. The measures adopted and the reasons given for doing so clearly show, therefore, that the Migration Board through Eugène Palmér took action against Lennar Eriksson that stemmed from what he had expressed in a context unrelated to his post. The Migration Board labelled its removal of Eriksson as a reassignment. Subsequently, in a judgment that has gained legal force, this was considered to be a dismissal and an unlawful one as well. As has been demonstrated above a negative change in the terms of employment of a public employee is a typical example of a reprisal.

All that remains to determine is whether the measures, due to the circumstanses in this case, were nevertheless lawful.

In making this appraisal there is reason to consider in more detail what was recorded in the judgement of Mölndal District Court about Lennart Eriksson’s competence as an “executive officer”. According to the description in the judgement an executive officer is supposed to

investigate, manage and make decisions pursuant to the Aliens Act. Eriksson was assessed by the Migration Board as "a very skilful" and "particularly qualified executive officer" that the board wanted to retain in this very capacity. It is also clear that Eugène Palmér considered Eriksson capable of being an executive officer through his decision to reassign him to such a position. No other conclusion can be drawn from this but that Eriksson was viewed as having a sound capacity to decide on issues objectively and impartially in accordance with current law. In the opinion of Palmér and the Migration Board, in other words, Eriksson was able to distinguish between official requirements and private opinions and also there was no reason to feel any doubts about him in these respects.

Eugène Palmér has, however, claimed that Lennart Eriksson's opinions on the conflict in the Middle East seriously jeopardised the confidence of the public and applicants in the capacity of the Migration Board to assess applications for asylum from individual who came from this region. No concrete circumstances to support this assumption have been submitted. The lack of more detailed specification may be interpreted as meaning that the underlying reasons for the measure adopted were at a more general level, i.e. that generally speaking it would impair confidence in the Migration Board if it had a head of a unit who gave public expression to opinions of the kind voiced by Eriksson. The desire to uphold public confidence in an authority cannot, however, as has been shown, be cited in support of reprisals against employees who have availed themselves of their individual freedom of expression in a context which is totally separate from their position.

There exist, therefore, no legally acceptable grounds for the measure Eugène Palmér decided to invoke. It was not merely unlawful from the point of view of labour law, as determined by Mölndal District Court, but also in breach of the constitution.

It may be added that the grounds for the assumption that Lennart Eriksson's private assertions could have impaired confidence in the Migration Board are in themselves questionable. Freedom of opinion and expression are firmly rooted in Swedish society. There is probably widespread awareness that those who work in the public administration are entitled to their private opinions and that these need not be representative of the authority in which they serve. The Migration Board has thousands of employees and there are many managers working at the same level as Eriksson. It is unlikely, in other words, that the existence on the Internet of the opinions he had expressed could have resulted in the serious harm for the Migration Board that its representatives feared, nor has any evidence for this been found.

Conclusion

The appraisal presented here is based on the reasons submitted by Eugène Palmér to support his measures and the fact that the allegations about Lennart Eriksson's managerial shortcomings lack concrete substance. The conclusion is that the measures were ultimately and mainly prompted by statements published by Eriksson. It should, however, be pointed out that if there had been any justification for labour law measures against Eriksson as head of a unit, it would nevertheless have been impermissible to include in that context reference to expression of his opinion as a private individual.

In addition to the general requirements of objectivity in Article 9 of Chapter 1 of the Instrument of Government, it is also laid down that in making appointments to public office only objective considerations may be taken into account, such as merit and competence (second paragraph of Article 9 of Chapter 11 of the Instrument of Government, see also Holmberg et al., *Grundlagarna [Constitutional Law]*, 2006, p. 503 f.). This must also be the basis when making any alteration in a public official's terms of employment. Any reference to an individual's privately expressed opinions on general political issues when assessing her or his suitability for a managerial position should, in view of the protection offered to individual freedom of expression, in principle be considered irrelevant. I note that the

Migration Board considers in its submission to the Parliamentary Ombudsmen that “an unfortunate confusion” was made between Eriksson’s opinions and his managerial qualities. This is correct. Eriksson’s opinions should never have been taken into account at all when his reassignment was considered.