Content

Appendix

I. The work of the Ombudsman in 2012

1. The Ombudsman's duties

It is the responsibility of the Ombudsman to investigate whether the public authorities, in the course of their dealings with the general public, have made errors or treated people unjustly, and to issue legal opinions on such matters. Almost all public bodies and most parts of the public administration can be investigated by the Ombudsman. Such investigations should include a review of whether the public authorities have respected and safeguarded human rights, and whether cases have been handled in accordance with good administrative practice.

Investigations are primarily launched in response to complaints from individuals, organisations or other legal entities. The Ombudsman is also authorised to launch investigations on his own initiative, i.e. without a complaint being lodged (see section 3 below with regard to such cases in 2012). The Ombudsman can issue opinions on the cases he examines, but cannot make legally binding decisions. However, in general the authorities tend to comply with the Ombudsman's opinions.

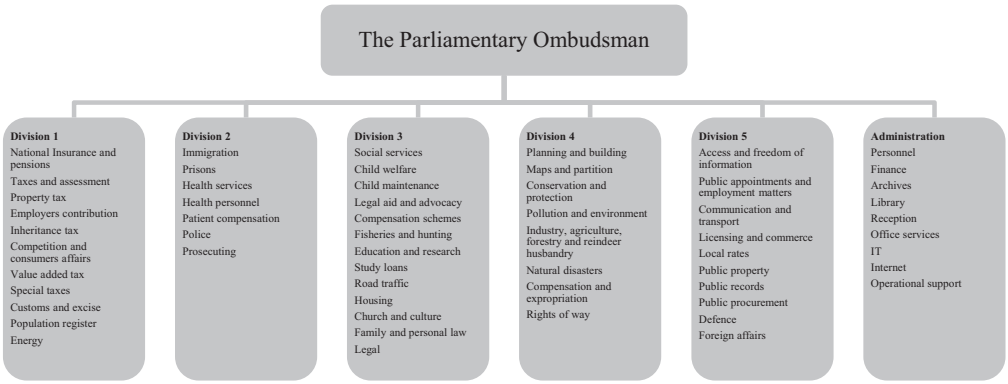
The Ombudsman not only reviews and re-examines the decisions of the public administration, but also the actions and omissions of public authorities, as well as any other matters linked to their activities. When the public administration fails to reply to written enquiries, or when the processing of a case takes a long time, the general public may complain to the Ombudsman. A complaint to the Ombudsman provides an opportunity to have the case investigated by a neutral and independent body. The Ombudsman's investigations can be a useful and practical alternative to the courts. It is also important that individuals can complain to the Ombudsman on their own initiative, without having to seek expert help from, for example, a solicitor.

At the end of 2012 my office comprised 37 lawyers and 12 administrative support staff. The office is organized into five divisions, each of which is responsible for particular subject areas. This breakdown into specialist divisions facilitates a continuous monitoring of the case portfolio, and provides a robust basis for allocating priorities and streamlining case resolution.

Complaints can be sent to the Ombudsman either in writing or by using an electronic complaint form found on the Ombudsman's website (www.sivilombudsmannen.no).

Norwegian Parliamentary Ombudsman Arne Fliflet

Figure 1.1 Overview of divisions and specialist areas.



2. Complaints in 2012 – complaints handling and outcome

A total of 3,011 complaints were received in 2012. This represents an increase of 16 complaints from 2011 and 52 complaints when compared to 2010.

Of the complaints received, 1489 were dismissed on formal grounds. The dismissals include complaints against bodies, institutions and other independent legal entities that are not part of the public administration and therefore fall outside the Ombudsman's jurisdiction. Another common reason for dismissal is where an appeal or complaint mechanism available within the public administration has not been used, or where a complaint has not been otherwise raised with the public administration on an earlier occasion. The reason for these dismissals is that the Ombudsman's examinations are intended to be retrospective, i.e. the public administration must first be given an opportunity to consider the matter and to make a decision on the issue to which the complaint relates. Complaints will also generally be dismissed if they arrive after the deadline for submitting a complaint to the Ombudsman. Complaints must be submitted, at the latest, within one year of the date on which the official action or the matter complained about took place or ceased.

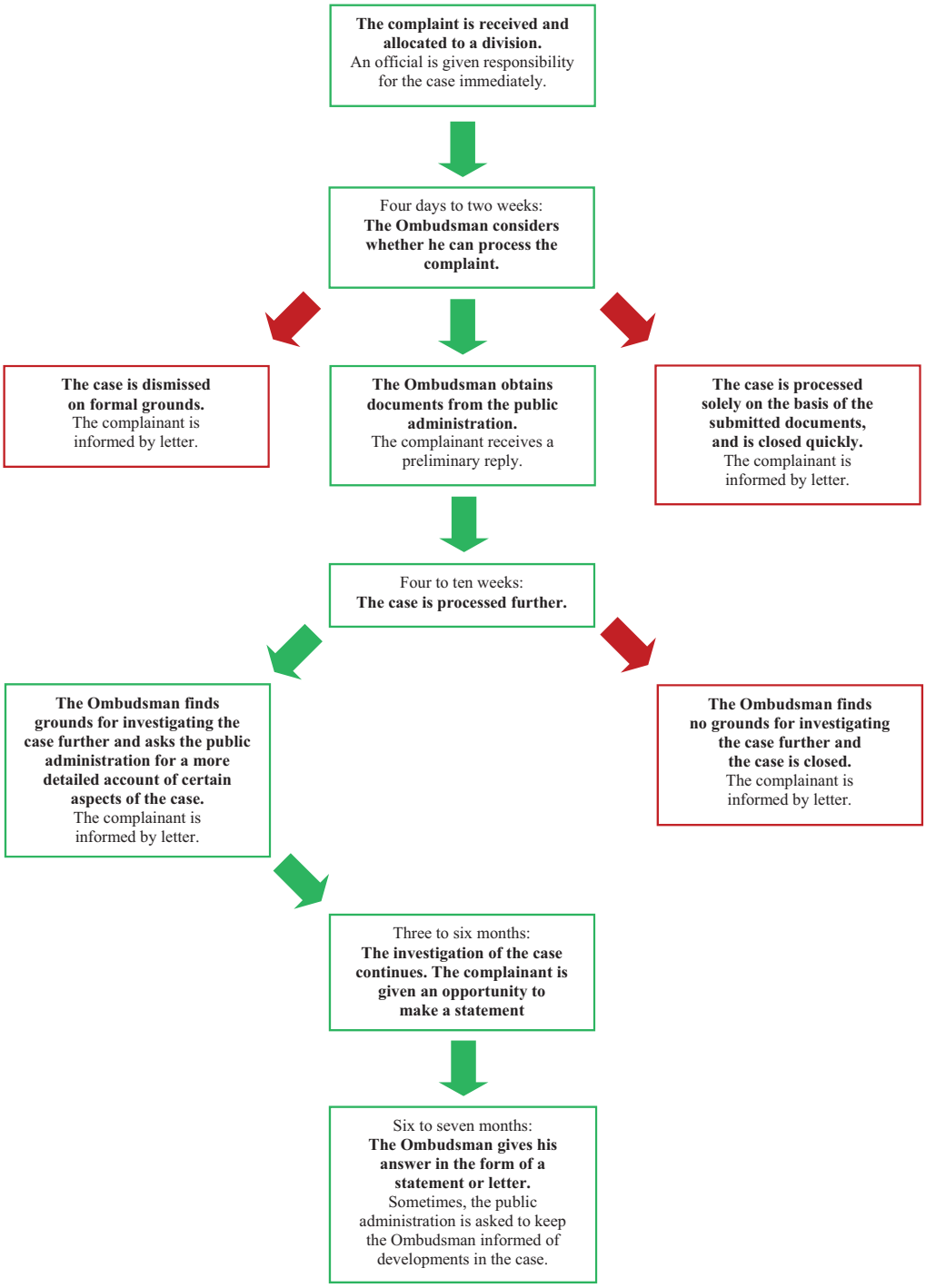
Of the cases that were investigated more closely in 2012, 1320 were closed after a review of the complaint and the case documents submitted by the public administration (these cases were not otherwise presented to or raised with the administration). In 862 of these cases, the review of the complaint and associated case documents revealed that there were insufficient grounds for proceeding with the complaint. In the other 458 cases, a telephone call to the public administration was sufficient to settle the matter. These latter cases primarily concerned long case-processing times or the public administration's failure to reply. Finally, 182 of the received complaints resulted in some form of criticism or request to the public administration. This number represents a small increase from 2011, when 163 cases resulted in action of this type.

It follows from section 10, first paragraph, of the Ombudsman Act that the Ombudsman is «entitled to express his opinion on matters which come within his jurisdiction». The Ombudsman can point out that an error has been made in the handling of a case or in the application of the law, and state that a decision is to be regarded as invalid, clearly unreasonable or in clear contravention of good administrative practice. Moreover, the Ombudsman may state that compensation should be paid, if the public administration has made an error for which such action would be appropriate. From a more practical viewpoint, the Ombudsman can point out when doubt is attached to matters that are important for the decisions which are being complained about. Such doubt can relate to both factual and legal circumstances.

When I believe that an error has been made or an injustice has been committed, I normally ask the public administration to reconsider or re-handle the case. Experience shows that the public administration will comply with such requests. In addition, the public administration normally accepts the opinions I express. My impression is that the public administration generally complies loyally with any request from the Ombudsman. When the public administration fails to comply with a request, the Ombudsman may advise the citizen to submit the case to the courts. The consequence of such a recommendation is that the citizen becomes entitled to free legal representation; see section 16, first paragraph, part 3, of the Legal Aid Act. There was one case during the year where I found reason to recommend such action. See Chapter IV for further details of cases where the public administration has failed to comply with the Ombudsman's opinion. Chapter IV also contains a discussion of cases and topics of general interest taken from my work in 2012. An overview and summaries of all opinions published on the internet are included as Chapter V of this report. Full-text versions of the individual opinions can be found on our website www.sivilombudsmannen.no, as well as on legal review sites such as www.lovdata.no and www.rettsdata.no.

There were no cases in 2012 about which I felt it necessary to alert the Storting in a special report, as I am permitted to do under section 12, second paragraph, of the Ombudsman Act.

Figure 2.1 Overview of case-processing by the Ombudsman and standard case-processing times.



3. Cases opened on our own initiative

In addition to dealing with complaints from citizens, the Ombudsman may open cases on its own initiative (known as own initiative cases or «ET cases»). All cases opened in this manner and which are not based on a complaint are regarded as ET cases. The reason for opening a case on my own initiative is usually that I become aware of administrative circumstances during the processing of a complaint which I think it may be beneficial to discuss separately. If many complaints are received about the same type of issue, it may be more practical to open the case with the public administration on a general basis rather than pursuing each case individually. It may also be the case that information from the public, or matters discussed in the media, give cause to open an own-initiative case in the absence of any specific complaint. Visits also count as cases taken up on our own initiative.

The office opened 35 new ET cases in the 2012 reporting year. Seventeen of these cases involved visits to different administrative bodies. A total of 25 ET cases were resolved in 2012. Three of these have been published on the internet under the general interest heading with a summary included in Chapter V of this Report. The case numbers and working titles of these cases are reported below:

Case 2012/1362	The Norwegian Labour and Welfare Administration's handling of cases concerning deferred paternity leave
Case 2012/941	The significance of claims for disability pension and appeals against rejected claims for disability pension on the right to work assessment allowances
Case 2010/2930	Visit to Ila Prison and Detention Institution in December 2010 – detention of persons with custodial sentences, mental illness, and isolation

4. Cases where the Ombudsman has made the public administration aware of deficiencies in acts, regulations or administrative case law

During work on complaints and cases opened on our own initiative, I have from time to time become aware of deficiencies in acts, regulations and administrative case law. Under section 11 of the Ombudsman Act, I am authorised to inform the relevant Ministry when I become aware of any such deficiencies. The intention is for the Ministry to take action to remedy the deficiency following my approach, by making the necessary changes to acts or regulations, or by changing its practice. Such cases must be detailed in my Annual Report to the Storting; see section 12, second paragraph, of the Directive to the Ombudsman.

An act or a regulation can be defective because an individual rule or set of rules conflicts with a legal rule on a higher level of legal authority. For example, all legal acts must be consistent with the Constitution, which takes precedence. It is also clear from section 3 of the Human Rights Act that conventions embodied therein take precedence over other legislation. Furthermore, provisions in regulations must not exceed the bounds set out in the acts adopted by the Storting. The Ombudsman may also notify the public administration if provisions at the same level of legal authority do not harmonise well, or if provisions are unclear, for example from a linguistic, legal or content perspective. However, the most common problem I encounter concerns cases either in which administrative practice and circulars appear to conflict with applicable legal rules, or where regulations are applied differently in different branches of the public administration.

The power to bring attention to deficiencies in acts, regulations and administrative case law is one example of the Ombudsman's ability to act not only as an investigator of individual cases, but also as an inspector of the whole system of public administration. I use the term «system audit» to describe the inspections I undertake in order to see whether there are general aspects of the public administration that breach standard principles of administrative law and that thereby cause it to fail repeatedly in its interaction with the general public, or that present a risk of such failures arising. In addition to notifying the public administration about deficiencies, my supervisory function is also exercised through a combination of my powers to open cases on my own initiative, to conduct systematic investigations, and to notify the Storting of common recurring problems in the public administration.

In the course of 2012, there were 24 cases in which I asked the public administration to consider changes or additions to acts or regulations, or to amend an administrative practice. Twenty of these cases have been published on our website at www.sivilombudsmannen.no/uttalelser. A summary is provided below of all cases in 2012 in which I have pointed out deficiencies in acts, regulations or case law.

Some cases relate to personal circumstances in which the privacy of the complainant has made it necessary to

anonymise names and locations - for example the name of the municipality or county governor has sometimes been omitted from the abstract. As can also be seen from the summaries, certain case numbers were changed in 2011[11]. Most cases discussed here are also detailed in Chapter V.

The Ombudsman's visit to Ila Prison and Detention Institution in December 2010 – detention of persons with custodial sentences, mental illness, and isolation

Case 2010/2930

There was a dispute between the Norwegian Correctional Service and the Public Prosecution Authority as to whether it was legally possible to grant leave to a person with a custodial sentence who was detained in custody pending final judgment in a case concerning the extension of the custodial period. The Ombudsman felt that the possibility to grant leave should be clarified. There was also concern that it may be difficult to transfer seriously mentally ill prisoners to 24-hour psychiatric care centres.

Permit to acquire a high-calibre revolver - rejection due to a prohibition issued in the form of a circular

Case 2011/486 (previously 2010/803)

The Firearms Act is designed so that it is somewhat unclear whether the act is based on a permit system or a system of rights. This should be clarified.

The National Police Directorate banned the purchase of certain types of high-calibre firearms in the form of a directive (circular 2008/003). However, a general prohibition must be adopted by the Ministry of Justice and Public Security. Thus, the Directorate exceeded its powers in this matter.

The practice of the release requirement when applying for Norwegian citizenship

Case 2011/490 (previously 2009/1535)

The immigration authorities have given a more limited scope to the exemption provision contained in the first paragraph of section 10 of the 2005 Norwegian Nationality Act in cases of release from previous citizenship than that which follows from a natural interpretation of the wording of the act. The Ministry of Children, Equality and Social Inclusion was asked to consider what should be done to establish greater consistency between the wording of the legislation and current practice.

Prolonged exclusion of an inmate from the community in Trondheim prison - justification and reporting

Case 2011/510 (previously 2010/2000)

Section 37, fourth paragraph, of the Sentencing Act was found to be insufficiently clear on the reporting obligations incumbent on the various agencies in the prison services at different times during a prolonged exclusion. The central administrative body of the Norwegian Correctional Service was advised that there seemed to be a need for a somewhat clearer regulation of reporting obligations, as

1. Some older cases were given a new case number in 2011 in connection with the Ombudsman switching to full electronic case-handling. For these cases, both the old and new case numbers are listed.

well as how cooperation between local and regional levels should take place.

Decision from the City Council about licensing hours – requirement of form of regulation

Case 2011/775

The County Governor found that a decision by the City Council regarding licensing hours, which was included in the municipality's alcohol guidelines, was neither to be regarded as an individual decision nor as a regulation. The Ombudsman concluded that the design of the guidelines and the way the granting of alcohol licenses had been practiced in the municipality indicated that the city council's decision involved a general regulation of licensing hours in the municipality. The Ombudsman pointed out that the preparatory works to the Alcohol Act made the assumption that any restriction or expansion of licensing hours that applied generally to the municipality must be laid down in a regulation. As the decision did not have the form of a regulation, the Ombudsman asked the County Governor to assess the validity of the decision.

Annulment of an examination at the Norwegian University of Science and Technology - the question of right to appeal

Case 2012/1824

The University Board of Appeal ruled in the first instance that a written examination should be annulled due to formal errors in the execution of the examination for all 290 candidates, and also that the students could not appeal against the annulment. The Ombudsman pointed out that in the preparatory works to the Public Administration Act it was assumed that exceptions to the general rule of appeal should be made in a particular Act, in this case the Act relating to universities and university colleges. In the absence of such a statutory exception, the Ombudsman requested that the candidates should be granted an opportunity to appeal the annulment.

Right to appeal in a case concerning travel cards

Case 2012/1871

In a case concerning the allocation of travel cards, the Ombudsman found that there were deficiencies in the municipality's practice of not allowing appeals against decisions on the allocation of travel cards. The Ombudsman also found a deficiency with regard to access to changes in the travel card regulation, as the provisions of this regulation did not adequately protect against arbitrary reductions of the services available to individual users.

Consideration of the best interests of a child when deciding on a sentence with electronic monitoring

Case 2011/2120

The Ombudsman concluded that a natural interpretation of section 7-3, fourth paragraph, final sentence of the Sentencing Regulation did not provide the discretion necessary when deciding on applications for sentencing of certain categories of convicted persons. The Norwegian Correctional Service's central administration body was asked to consider removing the provision such that the regulation was in accordance with the requirements of section 3, second paragraph, of the Sentencing Act as well as with article 3 of the UN Convention on the

Rights of the Child; see the Human Rights Act.

Deduction of children's living costs from child maintenance

Case 2011/3586

In a case concerning the deduction of children's living costs from child maintenance, the public administration relied on the maintenance provider's information regarding reduced living costs in relation to one question, but not in relation to another. The Ombudsman asked the Ministry to review a regulatory provision which contained mandatory provisions on the evaluation of evidence, in particular because the system was found to be in violation of the principle of free evaluation of evidence.

The burden of proof when imposing a 50% surcharge

Case 2011/871

The Tax Office had justified imposing a high rate surcharge by stating that it was «clearly probable» that the taxable entity had acted intentionally when it requested a refund of an amount to which it was not entitled. On the basis of new provisions in the Tax Assessment Act concerning the imposition of stricter supplementary taxation, general rules of evidence, and the presumption of innocence in article 6(2) of the European Convention on Human Rights, the Ombudsman concluded that it is the criminal procedure of proof «proven beyond any reasonable doubt» that must apply when the tax authorities assume an incriminating fact as in this case (intent). Following this pronouncement, the tax authorities have changed their practice for cases with surcharges in excess of 30%.

Supplement to import VAT

Case 2011/1145

The Norwegian Directorate of Customs and Excise had imposed a 5% supplement to the import VAT for failure to pay customs duty in a timely manner. On the basis of developments in case law and administrative practice, the Ombudsman concluded that the imposition of a 5% supplement to the import VAT constituted a fine and that the burden of proof must be clear probability. It was therefore likely that the practice of the Norwegian Directorate of Customs and Excise did not comply with the Human Rights Act, see article 6 of the European Convention on Human Rights.

Norwegian citizenship for a Somalian child - the requirement for clear identity of the child when uncertain about the identity of the father

Case 2011/1182

The immigration authorities have so far refused Norwegian citizenship for children of a parent with uncertain identity (derived identity doubt). The basis for this has been a desire to know who the applicant is and to prevent the establishment of dual identities etc. However, with respect to children from Somalia, it is very uncertain whether Norwegian citizenship can be misused in this way. The rules have now been changed.

Compensation for costs in accordance with section 36 of the Public Administration Act for lawyers' travel time in connection with committee meetings

Case 2011/1894

The Norwegian Immigration Appeals Board did not cover lawyers' travel time

in connection with committee meetings in accordance with section 36 of the Public Administration Act if the travel took place outside «normal working hours». This practice was changed after critical questions were raised by the Ombudsman, but the change was not given retroactive effect. In the opinion of the Ombudsman there was no support in the statutory provision for regarding the time of travel as a decisive circumstance. It is the parties' actual costs that are covered.

School transport and after-school care programme

Case 2011/2536

The Ombudsman found that the right to free school transport in section 7-1 of the Education Act must be interpreted so that the taking up a full place in an after-school care programme did not deprive a student of the right to transport to and from school on the days when the after-school care provision was not used. Furthermore, in the opinion of the Ombudsman the County Governor could not stipulate that the school transport had to be used on specific weekdays.

The burden of proof when imposing a 40% VAT surcharge and a discretionary calculation of the tax base for import VAT with the starting point in the sum of sales in Norway

Case 2011/2766

In this case, the burden of proof when imposing a 40% VAT surcharge on the import VAT was discussed with the Norwegian Directorate of Customs and Excise. During the course of the Ombudsman's handling of the case, the customs and excise authorities changed their guidelines in line with the Ombudsman's opinion of 24 January 2012 in Case 2011/871, so that the burden of proof in criminal cases would apply also with regard to the imposition of administrative sanctions in the customs and tax area for surcharges in excess of 30%.

Special allowance for major medical expenses on the grounds of chronic fatigue syndrome / myalgic encephalomyelitis (CFS/ME)

Case 2011/3293

In April 2012, the Ombudsman issued an opinion in four cases where the Directorate of Health had made a final decision to reject a request for a special allowance for major medical expenses incurred in treating chronic fatigue syndrome (CFS/ME) outside of the Norwegian public health system. The Directorate of Health acknowledged that the public health service's provision for people who have been diagnosed with ME was limited. The minutes of the Storting of an intercession in November 2011 also demonstrated that there was broad political consensus on the fact that the public health service's provision for ME patients in the period from 2007 to 2011 had been far from satisfactory. The Ombudsman found that the Directorate of Health had interpreted the rules too restrictively with regard to the particular requirements which in each case must apply to the public health service provision to fulfil the criteria of being an «equivalent offer» that precludes the taxpayer from obtaining a special allowance to cover the expenses of private medical treatment. The Ombudsman has not completed its follow-up of these cases with the Directorate of Health.

Procedures for monitoring postal items in prison

Case 2011/3541

Ringerike prison's procedures for monitoring the post sent by its inmates did not appear to be fully in accordance with section 30, sixth paragraph, of the Sentencing Act or the guidelines issued by the central administration of the Norwegian Correctional Service. A reminder of a prisoner's right to complain to the Ombudsman in a sealed letter was issued; see section 6, second paragraph, of the Ombudsman Act.

Question whether a decision regarding a place in a boarding school was an individual decision

Case 2012/460

A county did not regard the rejection of an application for a so-called enhanced boarding place in a secondary school as an individual decision. This meant that the decision could not be appealed. An appeal against the rejection was therefore dismissed by the county, as it was by the county's Board of Appeal. The Ombudsman concluded that the rejection of an application for a so-called enhanced boarding place in a secondary school was an individual decision that could be appealed.s

Case-processing at the Norwegian Labour and Welfare Administration International – defective procedures for following up complaints regarding rejections of claims for sickness benefit

Case 2012/861

Almost two years after the complaint was first sent, after many reminders, and after several inquiries from the Ombudsman, all enquiries to the Norwegian Labour and Welfare Administration (Nav) International remained unanswered.

This was accepted by Nav International who apologised for the errors in handling the case, and promised to consider the complaint within a week. The procedures for registering and following up complaints relating to family services and sickness benefits should now be reviewed and tightened.

The significance of claims for disability pension and appeals against rejected claims for disability pension on the right to work assessment allowance

Case 2012/941

The Ombudsman felt that there was reason to doubt whether the Norwegian Labour and Welfare Administration's (Nav's) circulars made it sufficiently clear that Nav had to assess independently whether applicants for disability pension were entitled to work assessment allowance in accordance with section 11-13, first paragraph, of the National Insurance Act. The Labour and Welfare Directorate thereafter aimed to include reference in the circular to sections 11-13 and 12-6 of the National Insurance Act, and likewise in its interface procedures and training material.

Case-processing time at the Norwegian Labour and Welfare Administration's Appeals Authority Oslo and Akershus - preliminary handling of an appeal to the National Insurance Court against a decision on reducing disability insurance

Case 2012/2065

The Ombudsman accepted that the preparation of an appeal for the National In-

surance Court in general can take longer than it takes to obtain a decision about a complaint in the same case, especially in confusing and complex cases. However, a case-processing time of about ten months from the appeal being lodged to the referral letter being sent to the National Insurance Court seemed excessive. The Norwegian Labour and Welfare Administration's (Nav's) Appeals Authority in Oslo and Akershus agreed that the preparation of the appeal in question for the National Insurance Court had not been in line with Nav's rules and procedures for case-processing.

5. Consultation submissions

In 2012 the Ombudsman received 114 requests for comments from the public administration concerning proposals for new or amended regulations. The starting point for the Ombudsman's investigations is the law as it currently applies, which means that evaluating proposals from legislators falls outside its mandate. With the exception of cases which directly concern the Ombudsman's office or matters which the Ombudsman has previously considered, the Ombudsman must therefore, as a matter of principle, be careful not to pre-empt legislative proposals. I made a total of seven consultative submissions in 2012, of which one related directly to the Ombudsman's office.

Starting in 2013, I will publish any consultative submissions on our website www.sivilombudsmannen.no on an ongoing basis. The purpose is to make these submissions more accessible. It will also reduce the need for special mention to be made in the annual report.

Optional Protocol to the UN Convention against Torture

An interdepartmental working group has considered the consequences related to Norway ratifying the Optional Protocol to the UN Convention against Torture (OPCAT). The Working Group has issued a report in which it recommended that the Ombudsman is nominated as a National Preventive Mechanism (NPM) in the event of ratification.[1]

In my consultation submission to the report I noted that I am pleased that the Ombudsman has been proposed as NPM. The Ombudsman's existing visiting activities are, however, limited to looking at the requirements in the OPCAT, and also have a slightly different objective than that of a NPM. The Ombudsman is currently making between four and six visits a year to what might be called closed institutions - primarily prisons, police detention centres, psychiatric institutions and internment centres for foreigners detained under the Immigration Act. Therefore, in my consultative submission, I stated that the mandate had to be extended if the Ombudsman was to meet the requirements in the OPCAT. In addition, I also pointed out that the frequency of visits had to be increased significantly.

Case workers and office managers in the Ombudsman's office have traditionally been lawyers. It was pointed out, however, that NPM visits should be performed by multidisciplinary teams, which implies, among other things, the need for my office to hire additional staff.

1. This recommendation was later followed up in Prop. 56 S (2012-2013).

In the event that the Ombudsman is appointed as NPM, I also indicated that I am prepared to establish an advisory committee with representatives from civil society who can contribute expertise, information, advice and input to the work that will be required.

It was also pointed out in the consultation submission that there will be financial ramifications if the Ombudsman is appointed as NPM.

Proposals for special rules for the implementation of mental health services in regional security departments, including a unit with a particularly high level of security

This consultation submission concerned a proposal for special rules for the implementation of mental health services in regional security departments. These are departments that investigate and treat patients with serious mental illness or suspicion of such illness, and where there is a risk of serious behaviour towards others. There are currently three regional security departments in Norway. The Ministry of Health and Care Services' proposal for a new chapter 4A to the Mental Health Care Act will mean a greater opportunity to implement various security measures in such departments. It was also proposed to establish a unit with a particularly high level of security and special rules relating to security measures in one of the regional security departments.

The consultation deadline was set at three weeks and was thus exempt from the normal consultation deadlines set out in section 5.2 of the Reporting Directive. In my submission, I pointed out that the proposal contained rules of a radical character with regard to patients subject to compulsory mental health care, and that in the interests of the legal rights of such patients it was important that both the content and the design of the regulations were considered carefully, including taking account of input from consultative bodies. I noted that such a short consultation deadline in the case of such an extensive bill was unfortunate. Furthermore, I explained the experiences we had obtained from a case in my office that concerned unauthorised security measures at the Brøset Department (St. Olav's Hospital) and the regional security department there. I expressed the opinion that the proposed changes to the act would probably authorise some, but not all, of the procedures that had been practiced at Brøset. In my consultative submission I assumed that the measures proposed to establish legal provision would be sufficient to cover the needs of the regional security department, so that the risk that of illegal practices involving unauthorised security measures would no longer exist.

Queries related to communication between the Ombudsman and patients subject to compulsory mental health care and the Ombudsman's unobstructed access to public administration offices were also raised in the consultation submission. It was pointed out that the Ombudsman's monitoring role for those institutions where persons are deprived of their liberty is of great significance for the rule of law. I found reason to emphasise the importance of a patient's right to unmonitored communication with the Ombudsman and the Ombudsman's unobstructed access to the relevant departments/units, as is clearly set out in the regulations. It was stated that on certain points the proposed act seemed to establish arrangements for the Ombudsman's monitoring of operations that will be difficult to accept.

I also pointed out that the consultation document contained little in-depth discussion of Norway's obligations under the European Convention on Human Rights (ECHR). It is assumed that in the forthcoming proposal the Ministry will give a more detailed assessment in the light of Norway's commitments in the areas of human rights, and specifically with regard to articles 3, 5 and 8 of the ECHR.

Finally, I have made comments on some of the specific provisions in the consultation draft. Among other things my comments related to rules concerning the examination of a patient's body, room and belongings, the examination of visitors and objects, contacts with the outside world, decisions on the transfer of a particularly high level of security to a unit, and requirements for employees to provide a police statement.

NOU 2011:19 New Firearms Act «Review of current firearms legislation and proposals for a new firearms act»

This consultation submission concerned the review of current firearms legislation by the Firearms Act Committee, and its proposals for a new Firearms Act. In section 16 of the proposed act the Committee had set out detailed requirements for personal suitability for those who want to acquire, own and possess a firearm etc. A mechanism by which the police can impose a ban if the person was not considered to meet the suitability requirements was also proposed. The proposal concerning a ban was backed up on the grounds that it would give the individual a certain advance notification. No legal basis for the imposition of a ban was given in section 30 of the proposed act concerning revocation of a firearms license etc.

In my consultative submission to the Ministry of Justice and Public Security, I found reason to emphasise that in several of its cases the Ombudsman has seen examples of how the police, even under the current rules, have come forward with a more or less concrete formulation of a ban in connection with a decision to revoke a license. I pointed out that consideration of advance notification is also important for citizens in cases of revocation. Against this background, I questioned whether there is an appropriate legal basis for the imposition of a ban in these cases, such as was proposed for the applicant's case. In this regard, I showed that in practice the police already operate a ban in many cases, and that therefore it was likely to be an advantage to bring order to the process.

NOU 2012:5 Improved protection of child development

This consultation submission concerned the Ministry of Children, Equality and Social Inclusion's invitation to consult on NOU 2012:5 «Improved protection of child development», which contains an assessment of the biological principles employed within child welfare. The Committee made a number of evaluations and proposals for amendment, including a proposal concerning case-processing procedures in the assessment of foster care placement at individuals with close ties to the child (specifically foster parents who are related to the child). It was suggested that it must be stipulated in an act or regulation that a decision on acceptance or refusal of approval of a child's foster care with close family members or others who have close ties to the child, must be justified by the rules concerning individual decisions. The Committee also considered whether it should be possible to appeal the approval

of foster care, but did not suggest this as a general rule.

In my consultation submission, I gave support to the Committee's assessment that the interests of the child dictate that the child welfare services must make a thorough assessment of the issue of approval, especially when the child already has some connection to the person or persons who are proposed as foster carers. A tightening of the requirements surrounding an approval decision therefore appeared to be correct. With regard to two specific complaints here, concerning decisions on the approval of foster care and which were also mentioned in the Committee's report, I stated that I wanted the Committee to make a more detailed assessment of the question whether the decision in general or in individual cases should be considered to be an individual decision. Furthermore, I sensed that the Committee was not taking a position on this question and that its evaluation of case-processing rules concerning approval of foster parents seemed to be somewhat lacking, as its assessment appeared to be exclusively related to the rights of the child. The interests of the prospective foster parents should also be discussed when considering the question of right to appeal. This question was central to my review of the two aforementioned cases, where one concerned a grandparents' desire to be foster parents and the other concerned approval of a private placement with an older brother. In the first case mentioned I stated that «situations will arise when just this aspect of the care issue will be of major significance for determining whether rules concerning individual decisions - including those of complaint - should be followed. A practical case is where the location which is determined in connection with the assumption of care has not been executed or enforced, with the result that a child has had to stay with persons other than his or her parents - for example with grandparents - for a certain period of time, and where there is a subsequent desire to have this relationship formalised in the form of approved foster care. There is good reason in such cases to follow the rules concerning individual decisions.»

Proposed amendments to the Children Act - supervision during visitation

This consultation submission concerned proposed changes to the rules on supervision during visitation contained in the Children Act. The Ombudsman had dealt with a specific complaint concerning the Norwegian Directorate for Children, Youth and Family Affairs' decision on the appointment of a supervisor in connection with child visitation following a court order; see section 43, third paragraph, of the Children Act, and regulation no. 1360 of 7 December 2006 on the appointment of a supervisor, etc. The case revealed problems related to the Directorate's belief that the court's appointment was contrary to the regulations. I considered it appropriate to make the Ministry of Children, Equality and Social Inclusion aware of this in connection with the hearing. A copy of the Ombudsman's opinion in the case was sent to the Ministry.

INFOFLYT - Committee report

This consultation submission concerned a report from the INFOFLYT (information flow) Committee appointed by the Ministry of Justice and Public Security in 2010. The topic for the Committee was the exchange of information between the Norwegian Police and the Norwegian Correctional Service in cases of serious crime and high risk. The Committee suggested a clearer legal basis for INFOFLYT as well as measures to ensure that

information exchange between the two agencies occurred in an effective manner. The proposal included rules for inmates' right of disclosure. One reason for the establishment of the committee were critical comments and questions from the Ombudsman (Case 2007/2274 and others).

In my submission to the Ministry, I pointed out that the Ombudsman was not listed as a consultative body, and that the hearing had arisen through other channels. The Ministry was asked to ensure that in future the Ombudsman received a hearing notice for relevant areas.

I went on to express satisfaction with the Committee's extensive work to map the use of INFOFLYT and the need for regulatory changes so that in future the system was better able to safeguard issues such as legal sufficiency, policy, and notoriety surrounding the registration of personal information. The report showed that such a review was required. The Committee was found to have considered most of the questions raised by the Ombudsman.

I gave my support to the proposal to give INFOFLYT a special legal regulation alongside the general rules on the handling of personal data by the Norwegian Correctional Service (new chapter 1a in the Sentencing Act). The information in INFOFLYT can be particularly intrusive and sensitive and may have major consequences for the convicted person/inmate. This issue will require particularly careful consideration with regard to various aspects of the scheme. I stressed the importance of the conclusion that the Norwegian Correctional Service must also make a specific assessment of applications concerning parole, transfer and other issues for inmates who are registered in INFOFLYT.

Proposal concerning amendments to the Public Administration Act – digital communication as a main rule

The hearing concerned the proposal to amend the Public Administration Act with a view to achieving the government's objective that digital communication should become the main rule for contact between the government and citizens. In accordance with sections 16 and 27 of the Public Administration Act, the recipient must have expressly accepted that advance notifications and information about individual decisions can be given by means of electronic communication. The Ministry of Government Administration, Reform and Church Affairs wanted to replace the requirement for consent to receive electronic communication with a system where the individual is given an opportunity to opt out of receiving electronic communications from the public sector.

In my consultative submission to the Ministry, it was necessary to emphasise that from the Ombudsman's perspective it appears to be a crucial prerequisite in any amendment of the Act that individual citizens are given sufficient information about the scheme, including what is going to replace a system of consent to receive information from the public sector in a purely electronic form, and how to opt out of such a system. Furthermore, I emphasised that a stronger requirement should be placed on the public administration's responsibility to ensure that any given electronic communication actually reaches the intended recipient. In the event of any change being made, it is incumbent on the public administration to have a special obligation to make sure

that no individuals are less able to protect their interests than before the change.

6. Work on human rights and international issues

The Ombudsman's human rights seminar – New visiting body for the prevention of torture

The Ombudsman helps to ensure that the public administration «respects and safeguards human rights»; see section 3 of the Ombudsman Act. In addition to the other work that I perform in this area, it is important to highlight the Ombudsman's human rights mandate by organising an annual human rights seminar. The theme of this year's seminar, which was held on 27 November 2012 at the House of Literature in Oslo, was «New visiting body for the prevention of torture in detention. Optional protocol to the UN Convention against Torture (OPCAT)».

The seminar was attended by approximately 130 delegates from government, NGO's, academia, the legal profession, the judiciary and the Storting.

The background to the seminar was the government's efforts aimed at ratification and implementation of a new Optional Protocol to the UN Convention against Torture (OPCAT). The objective of the protocol is to prevent torture and other cruel, inhuman or degrading treatment or punishment through regular visits to places of detention by an independent body. In April 2012, an inter-departmental working group submitted a report in which it recommended that the Ombudsman be appointed as such a visiting body, also called a National Preventive Mechanism (NPM). My consultation submission concerning the report is further discussed in section 5 above.

On 14 December 2012 the government decided to put forward a proposition to the Storting on the ratification of the OPCAT; see Prop. 56 S (2012-2013). The Government proposed that the Ombudsman should be appointed as a NPM.

At the seminar, representatives from the Ministry of Foreign Affairs and the UN Committee against Torture presented information about the OPCAT and the purpose of the protocol. A representative from the Ministry of Justice and Public Security then explained what a possible ratification of the Protocol would mean as applied to the creation of the new national visiting body. Two of my colleagues gave a presentation about existing inspection and oversight arrangements within the public administration as well as on the Ombudsman's visits to closed institutions. Representatives from both the Danish and Swedish Parliamentary Ombudsmen shared their experience with their work as NPM in their respective countries.

The seminar concluded with a panel discussion where the National Institution for Human Rights, the Ombudsman for children, the psychiatric organisation We Shall Overcome, the Supervisory Board for the Police Immigration Detention Centre at Trandum, and Juss-Bus (the Law Students' Free Legal Aid Organisation) were represented. This led to many good suggestions for further work on establishing a NPM in Norway.

The Ombudsman's human rights seminar, 27 November 2012

Participation in international networks

I actively participate in several international networks, including the global network of the International Ombudsman Institute (IOI). I was also a member of the IOI board until November 2012.

In January I attended the board meeting of IOI Europe in Paris. There were also a meeting of the world board in Hong Kong in May. In April, I hosted a board meeting in Oslo. There was a board meeting in Barcelona in September.

An IOI world conference is held once every four years. The tenth IOI world conference took place in November 2012 in Wellington, New Zealand. The topic for the conference was «Speaking Truth to Power. The Ombudsman in the 21st Century». Issues related to the general public and disclosure were the topic of several sessions. I presented on «Developments in FOI (Freedom of Information) and Ombudsmanship - Norway & USA» and took part in a discussion entitled «Complementary or conflicting? Benefits and disadvantages to being both an Ombudsman and a FOI Commissioner» together with fellow ombudsmen from all over the world. In addition, I was responsible for carrying out the election of new board members to the European IOI Board. All presentations given during the conference have been made available on the organiser's website.

Northern Ireland's Ombudsman Tom Frawley, the Catalan Ombudsman Rafael Ribo, and the Polish Ombudsman Irena Lipowicz together with Norwegian Ombudsman Arne Fliflet

The Ombudsman is a member of the EU ombudsman network. One of my staff members attended a seminar organised by the European Ombudsman in Strasbourg in June.

A meeting of Nordic ombudsmen was held in the Faeroe Islands in May. I hosted the West Nordic ombudsman meeting in Oslo in September.

The public administration's response to international judgements and decisions

Another aspect of the Ombudsman's mandate on human rights is to contribute to the public administration's follow-up to judgements against Norway in the European Court of Human Rights (ECHR). This mandate is particularly important when the ECHR's decisions require Norwegian regulations or administrative practices to be adjusted to avert future violations of the European Convention on Human Rights.

The ECHR ruled against Norway in three cases in 2012. In the case of Butt v. Norway, the ECHR determined that it would be a violation of article 8 of the European Convention on Human Rights if the siblings Abbas and Fozi Butt were deported from Norway. In the case of Lindheim and others against Norway (which dealt with land leases), the ECHR ruled that the authorities had not struck a reasonable balance between the interests of lessees and the property rights of landowners, and concluded that article 1 of protocol 1of the European Convention on Human Rights had been violated. In the case of Antwi and others against Norway, the ECHR ruled that a violation of article 8 of the European Convention on Human Rights had not occurred. These cases have not prompted a follow-up by the Ombudsman. In 2012 the ECHR also dismissed the cases of Shala against Norway, Abdollahpour against Norway, Ali against Norway, and X against Norway.

Opinions by the Ombudsman concerning international human rights standards

The subject of human rights came up in a number of cases in 2012, and I issued nine opinions in matters where Norway's human rights obligations were particularly in focus. These cases are also discussed in Chapter V of this report. Some of the cases are also mentioned in point 4 above.

The burden of proof when imposing a 50% surcharge (24 January 2012, Case 2011/871)

The case concerned the burden of proof when imposing a 50% surcharge. The Tax Office had justified imposing a high rate surcharge by stating that it was «clearly probable» that the taxable entity had acted intentionally when it requested a refund of an amount to which it was not entitled.

On the basis of new provisions in the Tax Assessment Act concerning the imposition of stricter supplementary taxation, general rules of evidence, and the presumption of innocence in article 6(2) of the European Convention on Human Rights, I concluded that the burden of proof in criminal cases, i.e. «proven beyond any reasonable doubt», must apply when tax authorities rely on such a widely-incriminating fact as in this case. The Tax Office was therefore asked to reconsider the case. The Norwegian Tax Administration has since changed its practices in accordance with my recommendation; also see Case 2011/2766 mentioned below.

Supplement to import VAT (8 February 2012, Case 2011/1145)

The Norwegian Directorate of Customs and Excise had imposed a 5% supplement to the import VAT for failing to pay customs duty in a timely manner. On the basis of developments in case law and administrative practice, the Ombudsman concluded that imposition of a 5% supplement to the import VAT constituted a fine and that the burden of proof must be

clear probability. It was therefore likely that the practice of the Norwegian Directorate of Customs and Excise did not comply with the Human Rights Act, see article 6 of the European Convention on Human Rights.

Transfer of sentenced persons to their home country – case-processing and relationship to human rights (19 March 2012, Case 2011/516)

The case concerned a decision to transfer A to finish serving his sentence in his home country following a criminal conviction in Norway. The transfer was decided upon even though A believed that his life or health would be at risk due to possible retaliation from other inmates. He also believed that his health status would not be properly monitored. The central question in the case was what specific investigations and assessments were made prior to the transfer, and whether the relevant assessments had been expressed to a sufficient extent in the decision. Furthermore, the case raised questions regarding the importance of Norway's obligations under article 3 of the European Convention on Human Rights.

The Ombudsman criticised the Ministry of Justice and Public Security for its inadequate investigation of the case prior to the transfer decision. Furthermore, the critical assessments had not been expressed clearly in the decision, and it was concluded that the decision was inadequately reasoned. There was no evidence that the obligations under the European Convention on Human Rights had been violated in the transfer case, but the Ministry's decision was nevertheless considered to be invalid due to the procedural errors that were uncovered.

Determination of maintenance when the maintenance provider has moved to a low-cost country (16 May 2012, Case 2011/3165)

A parent with a maintenance obligation had resigned from his position as a doctor in Norway, and had established himself in the same profession in a so-called low-cost country. With regard to the provision in the EEA Agreement on the free movement of labour, the Norwegian Labour and Welfare Administration's (Nav's) Appeals Authority set the maintenance so low that the maintenance recipient thought that an unfair displacement of the maintenance obligation had occurred.

The Ombudsman concluded that there was reasonable doubt on several points in the case - these concerned the basis for the discretionary evaluation, the importance of the EEA Agreement, the consideration of the best interests of the child in accordance with the UN Convention on the Rights of the Child, and the clarification information of the case respectively. Against this background, the Ombudsman requested that the case be reconsidered.

Consideration of the best interests of a child when deciding on a sentence with electronic monitoring (7 June 2012, Case 2011/2120)

The case concerned the rejection of an application for sentencing with electronic monitoring. The Norwegian Correctional Service's handling of the case raised questions about whether section 7-3 of the Sentencing Regulation was in violation of article 3 of the UN Convention on the Rights of the Child because the regulations did not allow for discretion in the appellant's case.

The Ombudsman concluded that a natural interpretation of section 7-3, fourth paragraph, final sentence of the Sentencing Regulation did not provide the discretion necessary when deciding applications for sentencing of certain categories of convicted persons. The Ombudsman shared the view put forward by the central administration of the Norwegian Correctional Service (KSF) in its reply to the Ombudsman, namely that the provision must be interpreted less restrictively than its wording if it is to comply with the requirements of legislation of a higher dignity. In the opinion of the Ombudsman there was a need for clarification in line with KSF's submission, but this should most appropriately be done by changing the regulation and not just through revision of the guidelines such as KSF had initiated. No grounds were found for levying objections against the rejection of the complainant's application for a sentence with electronic monitoring.

Restriction of patient's right to external contact (29 June 2012, Case 2011/248)

The case concerned several decisions whereby a patient's freedom of speech and right to external contact were restricted; see section 4-5 of the Mental Health Care Act. The patient, who had been committed to compulsory mental care after a murder, escaped from the institution and the hospital found the situation during the following few weeks chaotic. The restrictions concerned monitoring of conversations with and visits from the mother and brother for security reasons and a ban on contacting the media.

The Ombudsman concluded that the decisions concerning the monitoring of conversations with and visits from family members were flawed. It was also doubtful whether there was legal support for the restrictions, particularly with regard to the monitoring of telephone calls. The ban on contacting the media, which lasted for about three weeks, was far-reaching and legally questionable. The Ombudsman also referred to article 10 of the European Convention on Human Rights and article 19 of the International Covenant on Civil and Political Rights (ICCPR).

Norwegian citizenship for a Somalian child - the requirement for clear identity of the child when uncertain about the identity of the father (17 July 2012, Case 2011/1182)

The case concerned the rejection by the Norwegian Immigration Appeals Board of an application for Norwegian citizenship by a Somalian child born in Norway. The application was rejected because there was deemed to be doubt about the child's identity as a result of uncertainty linked to the identity of the father (derived identity doubt). The mother had obtained Norwegian citizenship. The complainant could not see any valid reason to be denied Norwegian citizenship and stated that he could not be registered in any formal system in Somalia.

The immigration authorities' strict practices surrounding identity were perceived to be due to a fear of abuse through the establishment of dual identities, etc. The Ombudsman felt that it was highly uncertain whether granting Norwegian citizenship to the applicant could lead to such abuse of identity. There were grounds for doubt concerning the Norwegian Immigration Appeals Board assessment and conclusion in the case, which were contrary to strong legal policy considerations. The Board was asked to look into the matter again, even though the ru-

les had recently been changed. The Ombudsman also asked the Board to consider the question of the scope of the UN Convention on the Rights of the Child as it applies in the case, in particular with regard to the best interests of the child (article 3).

The public administration's own reversal of invalid decisions (22 November 2012, Case 2012/1080)

Two and a half years after the complainant's car was approved in accordance with the Road Vehicle Regulation, the road authorities found that the approval must be deemed invalid, and reversed the decision to the detriment of the complainant.

The Ombudsman found that too much time had passed before the approval was reserved. The complainant was entitled to have his civil rights and obligations determined within a reasonable period of time; see article 6 of the European Convention on Human Rights. The remaining issues in the case were, to a large extent, not sufficient for the decision to be reversed to the detriment of the private party. The Ministry of Transport and Communications was asked to reconsider the case.

The burden of proof when imposing a 40% VAT surcharge and a discretionary calculation of the tax base for import VAT with the starting point in the sum of sales in Norway (23 November 2012, Case 2011/2766)

Among other issues, the case concerned the calculation of the VAT base and the imposition of a 40% VAT surcharge in connection with the importation of horses for resale in Norway. One central question was the burden of proof for imposing a 40% surcharge.

In the case report, the Directorate announced a change in practice with effect from 1 January 2012 whereby the burden of proof in criminal cases should apply with regard to the imposition of administrative sanctions in the customs and tax area for surcharges in excess of 30%. The change is in line with the Ombudsman's opinion of 24 January 2012 in Case 2011/871; see above. The Directorate stated that it would reconsider the VAT surcharge in this case based on the changed practice.

Efforts to strengthen human rights in China

In addition to an adequate regulatory framework, knowledge of human rights within law enforcement is an important prerequisite for the respect of human rights in all countries. Since 2005 the Ombudsman has enjoyed regular cooperation with the Chinese Judicial and Prison Authorities, with an emphasis on mutual visits and seminars to strengthen the level of expertise of the law enforcement officers in China. Particularly the issues of criminal justice and good governance have received most focus.

Implementation of all bilateral collaboration between the Ombudsman and Chinese institutions has been suspended since 2010. As in 2011, it has been stressed from the Chinese side that the suspension did not include cooperation with the Ombudsman in international forums.

During the year, the Ombudsman received two invitations from the Supreme People's Procuratorate of China (SPP) to participate in the «4th IAACA Seminar on Anti-Corruption» in China and the «6th IAACA Annual Conference and

General Meeting» in Malaysia respectively. China's current Procurator General has been elected as the president of IAACA (International Association of Anti-Corruption Authorities) since 2010. The organisation was established in 2006 with China as the key supportive country. The objective for IAACA is to strengthen the implementation of UNCAC (the United Nations Convention against Corruption). As of December 2012, the Convention had been ratified by 165 countries including Norway and China. One of my legal staff with specialist knowledge of the Chinese language and Chinese society represented me and attended both events. The theme of the seminar held in China in June was «Asset Recovery» UNCAC chapter 5. A total of 400 representatives from 73 countries, including Norway, Denmark, USA, Canada, France and the UK, as well as representatives from international organisations, participated in the event.

At the conference, my colleague had a conversation with Director of the Supreme People's Procuratorate about the possibility to implement the planned cooperation activities between our two institutions in the near future. During a meeting in Beijing with a representative from China's Ministry of Foreign Affairs, my colleague exchanged information about the relationship between Norway and China in the wake of the 2010 Nobel Peace Prize.

The theme for the «6th IAACA Annual Conference and General Meeting» in Kuala Lumpur, Malaysia, in October 2012 was «Technical Assistance and Information Exchange»; see chapter 6 in UNCAC. A total of 900 representatives from 107 countries and international organisations including Interpol, OECD, OLAF, Transparency International, UNDP, UNODC and the World Bank, took part.

Other activities relating to work with human rights and international issues

In February, one of my colleagues attended a Constitutional Symposium in Bergen, where the topic was the proposal for a new chapter on human rights in the Norwegian Constitution. In April the Storting's Scrutiny and Constitutional Affairs Committee arranged a hearing on the same subject, and I participated in the debate.

In May, one of my colleagues attended an anti-corruption conference in Hong Kong on the topic «Fighting Corruption in a Changing World». I also met one of my colleague's fellow representatives from the Council of Europe's Convention on Action against Trafficking in Human Beings (GRETA) when the committee visited Norway in May.

One of my colleagues participated in a seminar arranged by Transparency International at the House of Literature in June. In June I hosted the Latvian Ombudsman and his delegation. Prevention of torture and respect for human rights of people in detention in Norway were the themes of the visit. Visits to the Police Immigration Detention Centre at Trandum, Dikemark Hospital, and the central detention centre in the Oslo police district were organised.

In August I was invited to Kazakhstan where I took part in celebrations to mark the anniversary of their ombudsman. Two of my colleagues represented the Ombudsman at the 25th anniversary of the Norwegian Centre for Human Rights in August.

In September the National Institution for Human Rights held a debate at the House of Literature about its report on the use of isolation in Norwegian prisons. The head of the relevant specialist division in the Ombudsman's office participated in the panel discussion.

I gave a presentation on the subject of human rights in the Norwegian Constitution at the Norwegian Bar Association's Conference on the Rule of Law in October 2012.

In November 2012 one of my colleagues attended a meeting of the inter-departmental working group to assess changes in the National Institution for Human Rights, including the establishment of a new national institution with another organisation and structure. The meeting was briefed on the Ombudsman's human rights mandate and how cooperation with the National Institution has worked in the past. The working group will evaluate different models for a future National Institution for Human Rights in Norway. It is yet to adopt a position on the question of the choice of model, and I have so far refrained from commenting on the various models which the working group is considering.

7. Meetings, visits and lectures

My colleagues and I have held meetings with various organisations and public agencies during the 2012 reporting year. These meetings allow for exchanges of opinions and information and provide useful insights into the public administration's work as well as a better basis for handling the complaints we receive.

My engagements in 2012 included seven visits to closed institutions, twelve visits to other administrative bodies, and nineteen lectures. My colleagues and I also attended twelve different representational functions outside Norway, and welcomed eleven delegations to my office. A summary of meetings, visits, and trips during 2012 is included as Appendix 4 to this report.

Visit to the Finnmark Estate Agency, Lakselv 19 April 2012. With senior advisor Jon Meløy (on the left)

Visit to the Norwegian State Educational Loan Fund. Director of Department Liv Simonsen (third from left) flanked by the Ombudsman's colleagues from Division 3

Visit to the County Governor in Sør-Trøndelag, 21 March 2012

The Ombudsman with staff in front of artwork in Halden prison, 12 April 2012

II. Statistics

1. Introduction

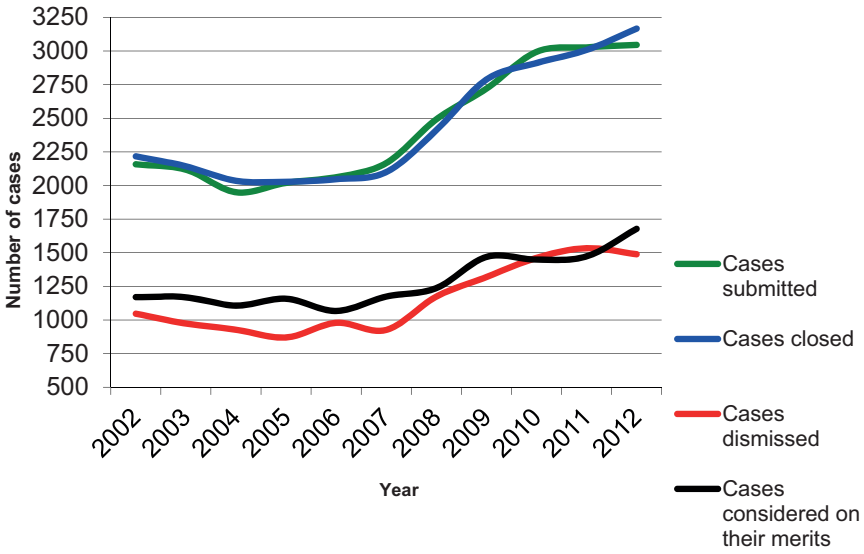
This chapter covers the new cases that came in and the cases that were processed by the Ombudsman 's office during 2012, including the cases that were dismissed and those that were admitted. The numbers are compared with the registered number of cases in the previous ten years. An overview of cases pending, the outcome of cases, and how the cases are distributed both geographically and by sector, including the administrative body and the subject matters of the cases, is presented.

A total of 23,171 documents were registered during the course of 2012. Of these, 10,761 were incoming documents and 12,410 were outgoing documents. That the number of outgoing documents was higher than those incoming tallies with the data shown in Figure 1.1, where the plots for processed and accepted cases show a marked upswing compared with the plots for incoming and rejected cases.

There has been a steady increase in the number of documents over the period 2007-2012. The number of documents registered in 2012 was 3.4% higher than in 2011 (22,416) and 35.7% higher than in 2007 (17,070).

1,575 general inquiries were received over the phone. This is significantly lower than in 2011, when a total of 1,890 general inquiries were registered.

The Ombudsman received 2,383 requests for access to information in 2012, of which 1,136 were granted, 999 were declined, and 248 were partially granted. Refused requests generally concerned a situation where the Ombudsman was required to keep a document confidential because it concerned personal circumstances; see section 9, second paragraph, first sentence of the Ombudsman Act. No access was given to documents which the Ombudsman obtained from the public administration pursuant to section 7 of the Ombudsman Act.



2. Cases dealt with in 2012

The Ombudsman can open a case either following a complaint or on his own initiative; see section 5 of the Ombudsman Act. Only a very small number of cases are opened on my own initiative - the main basis of the Ombudsman's work is complaints from citizens (Table 2.1). In both 2012 and 2011, cases opened on my own initiative amounted to 1.1% of the total number of cases. The number of cases filed has remained stable at approximately 3,000 during the period 2010-2012, with a marginal increase each year (2,994 cases in 2010 and 3,028 cases in 2011).

Case settlement in 2012 increased compared to 2011 (Table 2.2). There was also a significant decrease in the case inventory. Cases in which the complainant has complained to my office a second time after the Ombudsman closed the case with a letter or opinion, as well as cases where the Ombudsman follows up on an earlier case, are counted as «closed cases».

Table 2.1 Total number and type of cases

	2011	2012
Complaints and enquiries	2995	3011
Cases opened on own initiative	33	35
Total	3028	3046

Table 2.2 Case settlement

	2011	2012
Cases closed as per 31/12/2012	3007	3167
Cases still pending as per 31/12/2012	536	419

The vast majority of complaints are made by Norwegian citizens resident in Norway (Table 2.3). Some complaints come from citizens living abroad or in institutions such as prisons and psychiatric institutions. Other complaints are anonymous or come only with an e-mail address. These are entered under the category «other». The numbers also include cases which the Ombudsman opened on his own initiative.

Table 2.3 Geographical distribution of cases opened in 2012

County	Number of cases	Cases %	Population % 01.01.2012
Østfold	171	6.8	5.6
Akershus	281	11.2	11.2
Oslo	475	19.0	12.3
Hedmark	66	2.6	3.9
Oppland	55	2.2	3.8
Buskerud	80	3.2	5.3
Vestfold	102	4.1	4.7
Telemark	80	3.2	3.4
Aust-Agder	65	2.6	2.2
Vest-Agder	82	3.3	3.5
Rogaland	143	5.7	8.9
Hordaland	290	11.6	9.8
Sogn og Fjordane	49	2.0	2.2
Møre og Romsdal	113	4.5	5.1
Sør-Trøndelag	119	4.8	6.0
Nord-Trøndelag	46	1.8	2.7
Nordland	126	5.0	4.8
Troms Romsa	110	4.4	3.2
Finnmark Finnmárku	46	1.8	1.5
Svalbard	1	0	0
	2500	100	100
Other	546		
Total	3046		

3. The outcome of cases

In 2012, 47% of complaints to the Ombudsman were dismissed and 53% considered on their merits (Table 3.1). The cases considered on their merits include cases where the Ombudsman has found that no grounds for rejection exist - such grounds may, for example, be that the complainant has not exhausted the possibilities for complaint or because the complaint falls outside the Ombudsman's mandate (typically judicial decisions). The distribution of reasons for rejection is illustrated graphically in Figure 3.2. Many complaints are received about government agencies not responding to enquiries or taking too long to handle a case. When a case has been sorted out for the complainant, for example by a telephone enquiry to the administrative agency, the case is counted as having been dismissed. Of the cases processed, 11% ended with a criticism or a recommendation to reconsider the case (see Figure 3.3). Most of these cases involve the actual decision, i.e. the material content of the decision (see Figure 3.4).

The public administration normally follows the opinions of the Ombudsman. In cases which ended with criticism or where the administrative body is asked to examine the case on its merits etc., the result of the renewed handling of the case will often only be available after the end of the reporting year. Information about what is happening in the complainant's case is continuously updated and published on www.sivilombudsmannen.no.

Table 3.1 Distribution of cases dismissed and cases considered on their merits

	2011	2012
Cases dismissed	1534	1489
Cases considered on their merits	1473	1678
1. Unnecessary to obtain a written statement from the public administration		
a) Case settled by a telephone call	383	458
b) The letter of complaint, possibly supplemented by relevant case documents, showed that the complaint could not be brought forward	749	862
2. Written statement obtained from the public administration (submission)		
a) Case settled without it being necessary for the Ombudsman to issue a final opinion	67	67
b) Case closed without criticism or recommendation, meaning that complaint did not succeed	111	109
c) Cased closed with criticism or recommendation for the case to be reopened, and any detrimental effects remedied	163	182

Figure 3.2 Cases dismissed (47%)

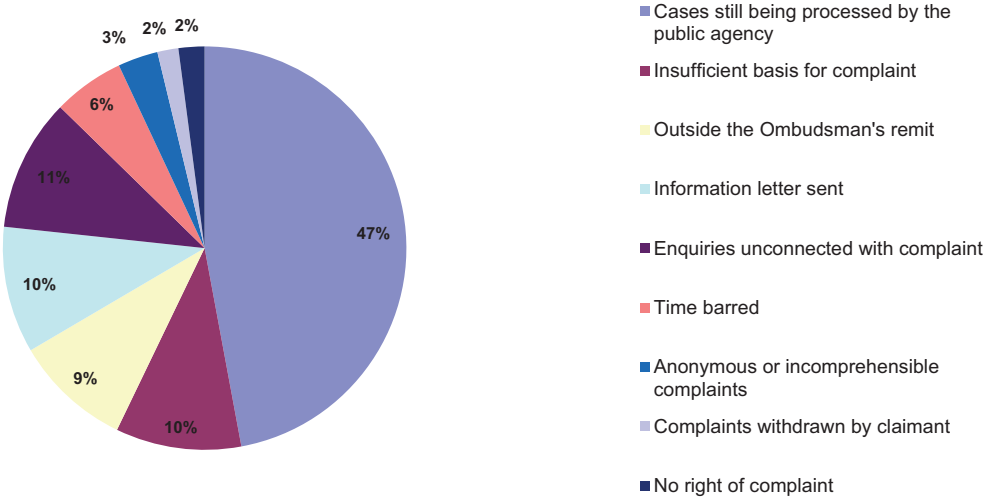


Figure 3.3 Cases considered on their merits (53%)

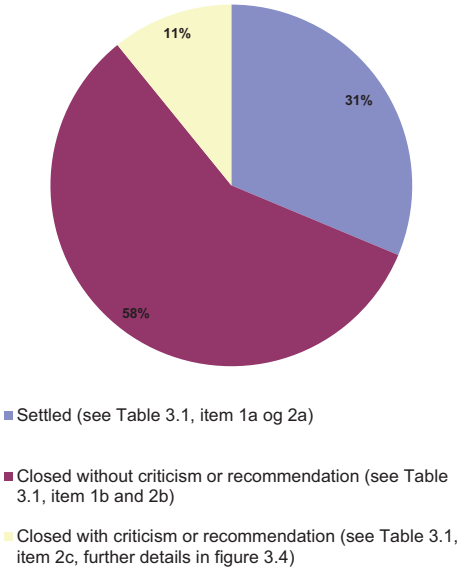
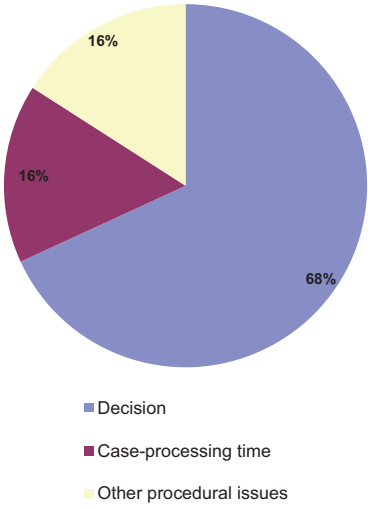


Figure 3.4 Further details of cases closed with criticism or recommendation (11%)



4. Allocation of handled cases by administrative body and subject area

Tables 4.1 and 4.2 show the allocation of cases handled in 2012 by administrative body and subject area. From the numbers in Table 4.1 it can be seen that 77.7% of complaints in 2012 were aimed at government bodies. Of these, 17.6% were complaints against County Governors. 17% were complaints against local government administration, and only 1.6% related to the regional administration. 3.1% of the complaints were in the «other» category. Examples of these are complaints where the administrative body is unspecified, a state-owned corporation (e.g. Norsk Tipping AS, Fjellinjen AS) or a complaint by the Ombudsman.

Table 4.1 Distribution of cases by public agency

	Total	Rejected	Heard	Criticism
The Office of the Prime Minister	2	1	1	-
The Ministry of Labour	9	5	4	1
The Norwegian Labour and Welfare Administration (Nav)	696	279	417	35
The Norwegian Labour Inspection Authority	9	5	4	-
The Norwegian Public Service Pension Fund	8	4	4	-
The National Insurance Court	39	15	24	-
The Ministry of Children, Equality and Social Inclusion	10	5	5	-
The Norwegian Directorate for Children, Youth and Family Affairs	4	2	2	1
The County Social Welfare Boards	1	1	-	-
The Consumer Disputes Commission	1	1	-	-
The Equality and Anti-Discrimination Tribunal	4	1	3	-
The Ombudsman for Children	2	1	1	-
The Ministry of Finance	8	2	6	1
The Financial Supervisory Authority	4	2	2	-
The Tax Administration (including the Population Register)	146	65	81	8
The Customs and Excise Authorities	20	5	15	2
The Norwegian National Collection Agency	9	7	2	-
The Financial Services Appeal Board	1	1	-	-
Statistics Norway	1	1	-	-
The Ministry of Fisheries and Coastal Affairs	7	4	3	-

The Norwegian Directorate of Fisheries	5	3	2	1
The Norwegian National Coastal Administration	2	1	1	-
The Ministry of Government Administration, Reform and Church Affairs	7	-	7	3
The Norwegian Data Protection Authority	4	1	3	-
The Norwegian Government Building Office, Statsbygg	1	-	1	-
The Church of Norway	8	5	3	-
The Government Administration Services	1	-	1	-
The Ministry of Defence	5	1	4	-
The Norwegian Armed Forces	2	-	2	-
The Norwegian National Security Authority	1	1	-	-
The Ministry of Health and Care Services	11	4	7	-
The Norwegian Patient Compensation System/Patient Injury Compensation Board	11	3	8	1
The Norwegian Directorate of Health	17	1	16	4
The Norwegian Board of Health Supervision / County Offices	5	2	3	1
Hospitals and health institutions	22	12	10	2
Inspection Commissioner	2	1	1	1
Regional Health Care Enterprises	2	2	-	-
The Norwegian Medicines Agency	1	-	1	-
The Norwegian Appeal Board for Health Personnel	3	1	2	-
The Norwegian Health Economics Administration, HELFO	10	7	3	-
The Norwegian Registration Authority for Health Personnel	6	2	4	-
The Norwegian Radiation Protection Authority	2	2	-	-
The Norwegian Health and Social Services Ombudsman	1	-	1	-
The Ministry of Justice and Public Security	25	13	12	3
The Norwegian Police Directorate	32	3	29	2
The Norwegian Directorate of Immigration	69	39	30	3
The Norwegian Immigration Appeals Board	104	41	63	3
The Norwegian Correctional Service	117	59	58	11
The Police and Public Prosecuting Authorities	91	62	29	1
Enforcement Officers and Bailiffs	16	14	2	1
Courts of Law	31	30	1	-

The Justice Remuneration Committee	2	2	-	-
The Norwegian Civil Affairs Authority	13	2	11	1
The Criminal Cases Review Commission	1	-	1	-
The Supervisory Council for Legal Practice	2	2	-	-
The Compensation Board for Victims of Violent Crime/ Norwegian Criminal Injuries Compensation Board	5	-	5	1
The Directorate for Emergency Communication	1	1	-	-
Disciplinary Board for Lawyers	6	1	5	-
Solicitors' licensing committee	2	-	2	-
22 July Commission	5	-	5	-
Norwegian Criminal Injuries Compensation Board	3	3	-	-
The Ministry of Local Government and Regional Development	10	2	8	-
Norwegian State Housing Bank	5	4	1	-
The Ministry of Culture	8	5	3	-
Norwegian Broadcasting Corporation	4	4	-	-
Norwegian Gaming and Foundation Authority	2	1	1	-
Norwegian Media Authority	2	-	2	-
Norwegian National Archive	1	1	-	-
Language Council of Norway	1	1	-	-
The Ministry of Education and Research	1	1	-	-
Research Council of Norway	1	1	-	-
State Education Loan Fund	20	6	14	-
Universities and university colleges	35	18	17	3
Norwegian Directorate for Education and Training	5	2	3	-
The Ministry of Agriculture and Food	3	-	3	1
Norwegian Agricultural Authority	10	4	6	-
Norwegian Food Safety Authority	10	6	4	-
Reindeer Husbandry Authority	11	7	4	2
Statskog SF - the Norwegian state-owned land and forest enterprise	3	2	1	-
Norwegian Natural Disaster Indemnity Fund	1	-	1	-
The Ministry of the Environment	15	5	10	2
Norwegian Directorate for Nature Management	3	1	2	-

Norwegian Climate and Pollution Agency	4	3	1	-
Norwegian Mapping Authority	6	4	2	-
Norwegian Polar Institute	1	-	1	-
The Ministry of Trade and Industry	11	4	7	1
Innovation Norway	1	-	1	-
Brønnøysund Register Centre	3	2	1	-
The Ministry of Petroleum and Energy	20	8	12	2
Norwegian Water Resources and Energy Directorate (NVE)	4	4	-	-
Statnett	1	1	-	-
The Ministry of Transport and Communications	12	5	7	1
The Norwegian National Rail Administration	4	1	3	-
The Norwegian Public Roads Administration	33	21	12	1
The Norwegian Post and Telecommunications Authority	1	-	1	-
The Norwegian Civil Aviation Authority	1	-	1	-
The Air Passenger Complaint Handling Board	1	1	-	-
Avinor	1	1	-	-
The Norwegian State Railways (NSB)	2	2	-	-
Posten Norge AS	5	3	2	-
The Ministry of Foreign Affairs	6	5	1	-
County Governors	558	194	364	35
County Administrations	51	33	18	2
Local Councils	556	303	253	45
Other	99	95	4	-
Total	3167	1489	1678	182

Table 4.2 Distribution of cases by subject area

	Total	Rejected	Heard
Working life, education, research, culture, lotteries, intellectual property rights, language in the civil service			
Isolated case-processing issues:			
Case-processing time, failure to reply	36	16	20
Freedom of information, confidentiality, access to documents	26	16	10
Legal costs, compensation	3	1	2
Appointments	124	51	73
Employment and service matters	61	30	31
Working environment, safety provisions	12	6	6
Other employment related issues	11	6	5
Primary schools	39	23	16
Upper secondary education in schools	13	6	7
Upper secondary education in business	3	2	1
Universities and university colleges	30	13	17
Approval of educational material	1	1	-
Public certification of professionals	20	9	11
Financing of studies	22	7	15
Other education-related issues	5	5	-
Research	1	1	-
Language in the civil service	2	2	-
Culture	4	4	-
Lotteries	4	3	1
Other employment related issues etc.	8	3	5
Health and social services, national insurance, family and personal matters			
Isolated case-processing issues:			
Case-processing time, failure to reply	318	85	233
Freedom of information, confidentiality, access to documents	39	14	25
Legal costs, compensation	21	2	19
Approval of offers	12	4	8

Treatment, compulsory measures, complaints about personnel, patient injury	87	45	42
Issues related to medical records etc.	13	5	8
Payment for accommodation, refunds, patient resources	15	10	5
Financial assistance	71	43	28
Social services outside institutions	39	22	17
Other issues concerning health and social services	33	19	14
Membership of the National Insurance Scheme	5	1	4
Benefits related to childbirth, adoption, child maintenance	47	22	25
Unemployment benefits	34	23	11
Sickness benefits	377	118	259
Retirement pension, survivor's pension	62	23	39
War service pension	1	1	-
Other issues related to National Insurance	40	23	17
Child support, partner support	107	38	69
Adoption	4	2	2
Child welfare, child care	97	68	29
Day care facilities	10	6	4
Guardianship, supporting guardian	22	14	8
Marriage, separation, divorce	4	2	2
Other issues concerning family and personal matters	11	8	3
Other	14	11	3
Resource and environmental management, planning and construction, expropriation, outdoor recreation			
Isolated case-processing issues:			
Case-processing time, failure to reply	99	26	73
Freedom of information, confidentiality, access to documents	18	8	10
Legal costs, compensation	3	-	3
Energy	27	14	13
Environmental protection	60	32	28
Waste collection, chimney sweeping	7	3	4
Water supply and wastewater discharge	28	14	14

Other issues concerning resource and environmental management	3	-	3
Maps and partitioning issues	14	9	5
Planning matters	122	48	74
Exemption from plans, shoreline zones	89	24	65
Other building matters	236	93	143
Processing fees	4	2	2
Other issues concerning planning and construction	20	10	10
Expropriation	7	6	1
Outdoor recreation	6	1	5
Other	12	4	8
Business and industry, communications, regional development fund, the Norwegian State Housing Bank, competition, prices			
Isolated case-processing issues:			
Case-processing time, failure to reply	35	11	24
Freedom of information, confidentiality, access to documents	28	16	12
Legal costs, compensation	4	2	2
Fishing, trapping, hunting	18	11	7
Agriculture, forestry, reindeer husbandry	77	36	41
Industry, crafts, trade	5	2	3
Shipping, aviation	4	-	4
Tourism, hotels and restaurants, licensing	6	1	5
Transport licenses, motor traffic in wilderness areas	6	4	2
Other issues related to business and industry	7	6	1
Transport (roads, railways, ports, airports)	35	20	15
Postal services	5	2	3
Telephone, broadcasting	11	6	5
Road traffic (driving licence, parking permits, etc.)	62	26	36
Public transport	3	3	-
The Norwegian State Housing Bank, etc.	9	4	5
Competition, prices	3	1	2
Other	8	3	5

Taxes, fees			
Isolated case-processing issues:			
Case-processing time, failure to reply	31	8	23
Freedom of information, confidentiality, access to documents	4	2	2
Legal costs, compensation	3	-	3
Assessment of taxable income	77	29	48
Tax remissions and relief	6	5	1
Other tax-related issues	80	39	41
Customs	8	4	4
VAT, investment tax	18	4	14
Special taxes	23	8	15
Other issues concerning taxes and fees	3	2	1
Administration of justice, and immigration cases			
Isolated case-processing issues:			
Case-processing time, failure to reply	123	56	67
Freedom of information, confidentiality, access to documents	32	17	15
Legal costs, compensation	3	-	3
Parliamentary Ombudsman (complaints against)	1	1	-
Courts of Law	22	22	-
Police, Public Prosecuting Authority	106	63	43
The Norwegian Correctional Services	115	57	58
Legal aid	22	15	7
Privacy	7	3	4
Enforcement, debt repayment	22	20	2
Registration	6	4	2
Public compensation schemes	21	8	13
Other issues related to administration of justice	19	17	2
Foundations	1	-	1
Asylum cases	54	25	29
Visas	14	11	3
Residence and work permits	76	32	44
Deportation, expulsion	12	9	3
Citizenship	16	6	10
Other issues related to immigration cases	15	10	5

Other issues concerning the legal system, foundations and immigration cases	3	3	-
Public registers, public procurements, public property, the Armed Forces, foreign affairs			
Isolated case-processing issues:			
Case-processing time, failure to reply	9	5	4
Freedom of information, confidentiality, access to documents	19	4	15
Parliamentary Ombudsman (complaints against)	1	1	-
Public registers	21	6	15
Public procurements	7	5	2
Government property	6	4	2
The Armed Forces	4	1	3
Foreign affairs	5	4	1
Other	19	8	11

III. The Ombudsman's internal activities in 2012

1. Case-processing times

The time it takes to process complaints in the Ombudsman's office varies according to the subject matter of the case, its size and complexity, and the type of investigation required to obtain sufficient factual background.

If the complaint has to be dismissed on formal grounds, this is generally clarified within a short period of time. The complainant normally receives a preliminary reply within one to two weeks of a complaint being received by the Ombudsman. If there are reasons for investigating the case in more detail and for raising the matter with the public administration, more time may pass before the case is closed. This is because the relevant administrative body in the case must be given an opportunity to set out its own views on the complaint. The reply from the public administration is then sent to the complainant for comments, which the administrative body is then invited to remark on. The time required to handle such cases can be long, due both to the need to provide opportunities for both sides to present arguments, and to the need to ensure the greatest possible clarity in the case. However, processing times are shorter in cases concerning access to case documents in the possession of the public administration. It should also be mentioned that there are a number of complainants who come back with new enquiries after the complaint is closed - these require a considerable amount of time and resources that are not covered by the current statistics. This is discussed further in chapter II above.

Table 3.1 Average case-processing times at the Ombudsman's office

	2012	2011	2010
Cases dismissed	16 days	17 days	15 days
Cases closed without being raised with the public administration	46 days	47 days	39 days
Cases closed after being raised with the public administration	210 days	183 days	170 days

The table shows that the time it takes cases to be processed has decreased for cases that are rejected and cases that are closed without being raised with the public administration. This is a positive development. The table also shows that the time it takes to close cases after they are raised with the public administration has increased. However, this increase is not alarming, and should be seen in the context that 160 more cases were closed during the current year than in the previous reporting year.

It is difficult to provide clear and certain reasons why it has taken longer to conclude cases raised with the public administration in the current reporting year. It

is reasonable to assume that the increase is due to a number of interacting factors. One factor may be the greater number of cases being handled. Both the number of cases that have been closed solely on the basis of the submitted documents, and the number of cases that have been raised with the public administration, have increased in 2012 compared to the previous reporting year. The number of cases that ended with a criticism has also increased. This shows that productivity in the office has increased. Work on individual cases is both time- and resource-intensive, and those cases which are raised with the public administration are often those which require the most time and resources. Prioritising between handling new incoming cases and closing those cases already being handled will also impact on case-processing time. It should also be mentioned that there has been a significant turnover of staff during 2012.

It is important that the Ombudsman is able to complete cases in a timely manner. We are aiming for greater streamlining of our case handling procedures. However, since we have to ensure fair and correct handling of each complainant's case, our objective remains that each case will be handled in a thorough and proper manner.

2. The Ombudsman's 50th year. Celebration of the anniversary

2012 marked the fiftieth anniversary of the year when the Ombudsman Act was adopted and the first Ombudsman elected. This anniversary was celebrated in several different ways. On 22 June, the date of the 50th anniversary of the Act, an event was held for employees with a lecture on the history and activities of the Ombudsman. This year, the annual office seminar was held in Svalbard as part of the celebration.

The main celebration of the anniversary was held in the Lagtingssal (a chamber of the Storting) on 30 October. The institution organised a seminar on the theme of the Ombudsman and state powers for over 100 participants from various public agencies and some private agencies both at home and abroad. The celebration ended with an anniversary dinner at the Grand Hotel.

3. Future development of the organisation

Along with everyone else, the Ombudsman is concerned about whether the role and tasks are being met, and whether the scheme is working in a rational way. One question is whether the organisation of the office and its work is appropriate and effective. This will be further evaluated in a separate project in 2013. Another matter of consideration is the Ombudsman's role in society at large: is there a need for such a system of control in today's society - is it relevant? The experiences gained after 50 years suggest that the institution continues to be both necessary and relevant. However, the Ombudsman will obviously remain responsive to critics, and especially to signals from the Storting concerning performance of the assignment.

Three generations of Ombudsmen; Erling Sandene on the left, Audvar Os in the middle, and Ombudsman Arne Fliflet.

4. The Ombudsman and language

The Act of 11 April 1980 No. 5 on the use of language form in public service (the Language Act), which governs the relationship between the use of New Norwegian (Nynorsk) and Standard Norwegian (Bokmål) in the public administration, does not apply to the Ombudsman - see section 2a of the Act. Nevertheless, the Ombudsman has considered it appropriate and important to follow the provisions of the Act. In practice, this means that anyone who applies to the Ombudsman will receive a reply in the same Norwegian language form as is used in the application. Furthermore, the Ombudsman's opinions will be issued in the same language form which the complainant has used. I intend to continue with this practice.

Letters to municipalities or counties are written in the same language form which the authority concerned has decided to use, if they have adopted such a resolution. State bodies or municipalities which have not adopted a position on the matter are considered «language neutral». For such bodies, the language form chosen will vary.

There are times when I receive enquiries from complainants who do not speak Norwegian. This is particularly true in immigration cases and cases from the Norwegian Correctional Service, but also in cases concerning taxes and fees. A majority of these letters are written in English.

The Ombudsman strives to respond in a language that the complainant understands. It is important and necessary that the scheme is available to everyone, and not just to those who understand Norwegian. As a general rule, letters in a foreign language are answered in English. When necessary, my office uses authorised translators to translate both incoming and outgoing letters.

Regardless of language and language form, it is important that the Ombudsman's letters and opinions are clear and understandable. This applies in relation to both complainants and the public administration.

It is important to avoid technical terms that can be difficult for many complainants to understand. However it is hardly possible - nor desirable - for such expressions to be avoided completely. The challenge is to combine the correct legal technical terms with clear everyday lan-

guage, while at the same time expressing oneself in a way that the individual complainant can understand.

When the Ombudsman scheme was established, it was highlighted that it should provide a personal corrective to the more impersonal face of the public administration. It is therefore an objective that this is also reflected in the letters and opinions issued from the Ombudsman's office.

5. The Ombudsman's communication work

The cases handled by the Ombudsman often arouse interest in the press and broadcasting media. There were about 1,500 press articles about the Ombudsman during 2012. The interest may arise in connection with a complaint that is submitted to the Ombudsman. The press will then want to know what the Ombudsman is going to do with the case. Thereafter, interest is linked to the Ombudsman's final opinion. The Ombudsman is also often mentioned in connection with someone considering filing a complaint.

The cases where the Ombudsman receives the most media attention are often those cases which have already gained public attention. This typically applies to cases concerning large planning regulations or concessions for major developments in natural areas. An example is the case concerning the choice of route for the 420 kV power line in Sogn og Fjordane.

Most of the Ombudsman's cases which are reported in the media are of more local interest, and about 70% of the media coverage has been in what can be considered as the local press. It must therefore be assumed that the local media is well aware of the existence of the Ombudsman, and is concerned about the cases which the Ombudsman is handling to the extent that their local community is affected. Coverage in the local media also serves as an indicator of how the Ombudsman's activities are perceived in society at large.

On those occasions when the Ombudsman delivers his opinion in the media, this must be justified on professional grounds. It is important that the Ombudsman's actions are politically and professionally independent, which requires a certain degree of level-headedness. Furthermore, the Ombudsman's handling of individual cases is always subsequent, which means that he should not comment on a specific case before the public administration has been given the opportunity to comment on the issues raised by the case. In contrast to a number of other Norwegian Ombudsman institutions, the Parliamentary Ombudsman shall not represent any specific groups or have a role in promoting individual interests or questions. This framework sets certain limitations on what the Ombudsman can and should comment on in the media.

The Ombudsman is currently considering what can be done to better inform the public about the institution. An aim for the Ombudsman's information work is to spread accurate and comprehensive knowledge about the complaints handling procedure and to avoid creating false beliefs and expectations about its possibilities. The reputation of the Ombudsman could be damaged if he provides a misleading and inaccurate view of what his office is able to do.

However, the question remains as to whether the Ombudsman is sufficiently well known among the general population and whether he has a high enough media profile. A public opinion survey in 2012 showed that many people were either unaware of the existence of the Ombudsman or lacked an opinion about the institution in either a positive or a negative way. However, approximately 25% of those aware of the existence of the Ombudsman had a positive impression of the institution.

In Innst. 10 S (2012-2012) the Storting requested the Ombudsman to provide, in his annual report, an assessment of measures to make the institution better known.

The Ombudsman intends, with external assistance, to further analyse the current situation and to propose measures as to how his office can become better known among the general population. This work will be undertaken in 2013. A number of measures are already under consideration, such as the Ombudsman's presence in social media, changes to the website, and the work that the public administration needs to do to inform the public about the Ombudsman.

Several reports have also been obtained from the Nordic Ombudsmen about their media and communications strategies and the measures and methods they have used to become better known. Among the measures highlighted by the Nordic Ombudsmen are restructuring of their annual reports and new designs for their websites.

6. Organisation, personnel and finances

As of 31 December 2012 the Ombudsman's office had 47 full-time equivalent employees, inclusive of the Ombudsman, six Heads of Division, and one Head of Administration. The office had 27 full-time equivalent employees for legal case-processing and 12 connected to the administration. An additional legal position is funded by the Ministry of Foreign Affairs. The latter person is working with human rights issues in China.

The organization of the Ombudsman's legal staff into five divisions and the composition of the administration group are set out in the list of personnel in Appendix 1. The subject areas for each division and the work tasks of the administration group are presented in Appendix 3.

The Ombudsman's budget covers staff salaries and the general operation of the office. The approved budget for the reporting year was NOK 52.2 million. In addition, about NOK 2.5 million was carried over from the previous year, so that available funds totalled approximately NOK 54.7 million. Total expenses amounted to approximately NOK 52 million. See Appendix 5.

Some of the employees of the Ombudsman's office

7. Gender equality and anti-discrimination efforts

A chart summarising the gender equality statistics for the Ombudsman's office is enclosed as Appendix 2 to this report.

Appointments structure and salary policy

The Ombudsman's office has an appointments structure and salary policy that ensures all staff members have equal opportunities for pay rises and advancement. Of our legal case workers 1 was special advisor (female), 18 were senior advisors (3 males and 15 females), 10 advisors (4 males and 6 females), and 2 higher executive officers (2 males). Our administrative team was comprised of 1 senior advisor, 3 advisors, 1 head of archives, 1 higher executive officer, and 5 senior executive officers, all of whom were female. Our office managers were made up of 3 men and 3 women, while the executive management team as a whole consisted of 4 men and 4 women.

Working hours

The Ombudsman's office has no standardised part-time positions, but reduced working hours were distributed as follows:

	Full-time	Reduced working hours
Legal case workers:		
Female:	15	7
Male:	8	1
Administration:		
Female:	11	0
Male:	0	0

	Number of overtime hours
Total	529
Legal case workers:	
Female:	275
Male:	244
Administration:	10

7.1 Measures to increase gender equality and eliminate discrimination

The Ombudsman's office has a unified salary policy and appointments structure. All employees have equal opportunities for skills development and training. Working hours and practices allow flexibility for both male and female employees. The same applies for permission to go on care leave or undertake career development. There are no barriers due to ethnicity or disability in the Ombudsman's office, as long as the requisite qualifications are met. The Ombudsman welcomes and provides for employees from different backgrounds and functional ability.

IV. Specific topics

1. Introduction

A level of trust from the public administration is a prerequisite for a properly functioning Ombudsman institution. My impression is that this trust is in place. The public administration normally complies with the Ombudsman's requests, whether they concern access to documents, statements regarding cases, or new assessments of complex cases or practices in particular areas. The public administration's follow-up of the Ombudsman's opinions, including recommendations to complainants about actions to be taken in cases where the public administration did not follow the Ombudsman's view, is discussed in more detail in section 2.

«A level of trust from the public administration is a prerequisite for a properly functioning Ombudsman institution. My impression is that this trust is in place.»

The Ombudsman's supervision of the Norwegian Labour and Welfare Administration (Nav) has been an issue in previous annual reports. Section 3 provides an account of the Ombudsman's work in this area during 2012. We continue to receive numerous written complaints about this agency, and these often concern complaints about long case-processing times.

The annual report usually contains an account of case-processing times in different sections of the public administration, based on cases of complaints as well as the Ombudsman's general experience in this matter. A brief account of case-processing times in other individual public bodies in 2012 is also included; see section 4.

The final topic in this chapter deals with active and demanding complainants. Some complainants are so active in their own case that they differ markedly from most other complainants, and others may have a poorly suited form of communication. The challenges that each creates for the Ombudsman and the public administration will be discussed in section 5, along with a brief account of the legal framework for the handling of atypical enquiries. Some individual priority issues will also be further discussed.

2. The public administration's follow-up of opinions issues by the Ombudsman

2.1 General impression

The public administration normally follows the advice and recommendations of the Ombudsman. Nevertheless, there are instances where the public administration does not comply with the Ombudsman's view because it disagrees on a question of law. In such cases the Ombudsman can recommend that the complainant brings the case to the courts for clarification. The complainant will be granted free legal aid in such a case.

In one case a municipality had officially reprimanded an employee because it was alleged that she had breached the applica-

ble provision on working hours (Case 2011/3300, also see Chapter V). The Ombudsman concluded that the conditions for a reprimand were not met. The municipality was asked to consider withdrawing the reprimand, but did not do so. The Ombudsman then asked that a record of his opinion be placed in the employee's personal file, as this would show that he had not shared the municipality's opinion about the reprimand. The municipality confirmed that this would be done.

«The public administration normally follows the advice and recommendations of the Ombudsman. Nevertheless, there are instances where the public administration does not comply with the Ombudsman's view because it disagrees on a question of law.»

The annual report for 2011 contained some comments on cases where the public administration had not followed the Ombudsman's advice and recommendations (Chapter I, section 6). These comments originated in some specific cases handled by the Ombudsman, including a construction project (Case 2011/720). The Ombudsman stated that the authorities could not, by acting in violation of the law, create a new set of circumstances that changed the material legal basis to the disadvantage of the applicant. The actual case concerned a part of a new municipal plan that was to the disadvantage of the applicant. Bodø municipality rejected the applicant's case with reference to the plan, and this rejection was upheld by the County Governor of Nordland after an appeal. The case was then brought before the Ombudsman.

The County Governor accepted the Ombudsman's legal opinion that the rejection should be overturned, and granted the planning application. The commutation decision was appealed to the Ministry of Local Government and Regional Development. The Ministry revoked the County Governor's decision and disagreed with the Ombudsman's interpretation of the law. It thus concluded that the County Governor's original decision should stand. The decision from the Ministry of Local Government and Regional Development has been appealed by the developer, and the appeal will be processed in the normal manner.

2.2 The Ombudsman's recommendation to bring a case to court

The annual reports for 2010 and 2011 both mentioned Case 2009/343 concerning compensation for legal costs in accordance with section 36 of the Public Administration Act, in which the Norwegian Labour and Welfare Administration's (Nav's) Appeals Authority had overturned a rejection of an application for disability benefits by a lower authority. Nav also rejected the claim for compensation for legal costs associated with the case. The Ombudsman found cause to criticise this rejection and asked Nav's Operation and Development division to reconsider the matter. In a subsequent letter to the solicitor, Nav confirmed the rejection with reference to a statement on the matter from the Ministry of Justice's legal department in 2009 which the Ministry of Labour supported. The Ombudsman found that the level of ambiguity surrounding the matter was somewhat unsatisfactory, and that clarification was required. In a letter dated 22 March 2012 the complainant was advised to take the matter forward to a court of law. The district court has issued a sum-

mons for the case, although a hearing date is yet to be scheduled.

During the Storting's discussion of 14 June 2012 on the Scrutiny and Constitutional Affairs Committee's stance on the Ombudsman's Annual Report for 2011, the leader of the committee stated that:

> «If the Ombudsman's opinion is not followed, his last resort is to recommend that a complainant brings the matter to court. Such a recommendation means that the plaintiff's own costs are compensated, but the system has the weakness that there is no compensation for the opposing party's legal costs, were one to lose the case, despite the fact that the Ombudsman has recommended legal action. As a consequence of this, many complainants are reluctant to take the state to court because the financial risks of the process are too high. The cases where the Ombudsman has recommended that a complainant take a case to court are often matters of principle.
>
> If the trend going forward is that the public administration will increasingly choose to ignore the Ombudsman's opinions, both I and the Progress Party take the view that the Ombudsman is meticulous and will discuss this in his future annual reports, and possibly put forward suggestions for measures to rectify such a development.»

In accordance with section 16, first paragraph No. 3, of the Legal Aid Act, the applicant should be granted legal aid in cases where the Ombudsman has recommended that legal action is taken. This provision corresponds to section 19 No. 3 of the revised act of 2005 (legal amendment No. 17 of 15 April 2005). This provision was new when the Legal Aid Act came into force on 1 January 1981, and in the opinion of the Justice Committee was justified by the inherent importance of cases where the public administrative body does not follow the Ombudsman's opinion and which are finally resolved by the courts; see Innst.O.no. 15 (1979-80), and Ot.prop.no 35 (1979-1980) p. 78. The Ministry of Justice pointed out at the time that the Ombudsman had only recommended legal aid for complainants on two previous occasions.

«The Ombudsman has shown no reluctance to use the system to recommend legal action in relevant cases»

The figures show that from 1981 to 2012 the Ombudsman has recommended legal action in 11 cases. It is immediately apparent that the number of recommendations is low, but it also shows that the system is not used «prematurely». Moreover the number indicates, in most cases the Ombudsman's opinions are followed. The Ombudsman has shown no reluctance to use the system to recommend legal action in relevant cases.

It is up to the individual complainant to decide whether he or she will accept the offer of free legal aid when the Ombudsman has recommended that legal action should be taken. As in any other type of case, if the complainant decides to take legal action he or she runs the risk of losing the case. The Ombudsman makes the complainant aware of this fact. A lost case entails free legal aid only to the extent that a complainant's costs for his or her own solicitor are covered. In accordance with the general rule in section 20-2, first paragraph, of the Dispute Act, the opposing party is entitled to full compensation for its legal costs from the losing party, unless one of the exemptions in the Act applies. In the long run some complainants are probably reluctant to follow the recommendation to take legal

action due to the risk of having to pay the opposing party's legal costs.

I have therefore asked the Ministry of Justice and Public Security to make an addition to the circular concerning free legal aid which states that the opposing party's legal costs will be covered when the Ombudsman has recommended that legal action is taken, regardless of the complainant's financial situation. I am waiting for the Ministry's feedback on this matter.

3. The Ombudsman's supervision of the Norwegian Labour and Welfare Administration (Nav) during 2012

In 2012 the Ombudsman received nearly 700 written complaints concerning the Norwegian Labour and Welfare Administration (Nav and the Labour and Welfare Directorate). This represents a marked increase on 2011, when fewer than 600 complaints were received. As in previous years, enquiries concern all kinds of social security benefit and a large number of Nav offices. The user's grounds for complaint is usually either due to the decision in the case, long case-processing time, other case-processing matters, or several of these grounds in combination.

Many of the enquiries to the Ombudsman which complain about a full or partial rejection of a social security benefit, have to be rejected because the user has contacted my office without first having utilised the opportunity to appeal to the National Insurance Court. The number of complaints to the Ombudsman about rulings from the National Insurance Court remains fairly constant at less than 40. In many cases the National Insurance Court has medical and/or occupational rehabilitation experts sitting alongside legal experts. None of the rulings from the National Insurance Court that were investigated by my office in 2012 gave cause for criticism.

«The user's grounds for complaint is usually either due to the decision in the case, long case-processing time, other case-processing matters, or several of these grounds in combination.»

In December 2011, Nav introduced a scheme for complaining about the level of service with the aim of simplifying complaints to Nav's Appeals Authority when the user claimed to have experienced a fault in a Nav office's handling of a specific case. A continual stream of enquiries arriving here concerning this type of complaint, without a service complaint first being sent to the Nav Appeals Authority, seems to suggest that users are not sufficiently aware of the service complaints scheme.

Well over 400 of the enquiries to the Ombudsman with a complaint about the Norwegian Labour and Welfare Administration still merited further investigation. Of these, more than 50% were either sorted out or promised to be settled within a specified time frame, as a result of the Ombudsman taking the matter up with the relevant Nav office. The cases settled in this way were mainly those where the reason for the complaint was long handling time. Approximately 5% of all cases that were examined more closely ended with a criticism from the Ombudsman.

The number of complaints about case-processing time at Nav increased significantly in 2012, from approximately 180 in 2011 to approximately 270. Nearly 200 of these complaints concerned handling time, and a significant proportion of these also concerned the lack of a preliminary reply in cases of sickness benefit. There were a particularly large number of complaints, approximately 120, about Nav's handling time in cases concerning disability pensions. The bulk of the latter complaints was directed either against Nav Pensions or Nav's administrative units and was received during the first few months of 2012. It seems reasonable to assume that a significant part of this can be explained by the fact that at the end of 2011/start of 2012 the task of calculating and coordinating disability pensions, as well as sending out notifications of decisions to the user, was transferred from Nav Pensions to Nav's administrative units. Upon closer examination, it has also become apparent that the reallocation of tasks within Nav was given as the main reason why handling time had dragged on in these cases, without the user being warned about this fact. This possibly suggests that the reallocation of tasks was not planned well enough before being implemented.

«The number of complaints about case-processing time at Nav increased significantly in 2012 ... There were a particularly large number of complaints ... in cases concerning disability pensions.»

The Ombudsman continues to receive a relatively large number of complaints about case-processing time at Nav International. The Ombudsman is aware that in 2011 Nav International introduced measures to improve case resolution. Although the body has implemented important improvement measures, there is still reason to raise questions about whether Nav International has sufficient resources to fulfil the office's extensive and often difficult tasks in a satisfactory manner.

«The Ombudsman continues to receive a relatively large number of complaints about case-processing time at Nav International.»

Employees from the Ombudsman's office visited Nav Administration Bergen in December 2012. The meeting was chaired by the county director of Nav in Hordaland. The reason for the visit was an impression from the complaints we received of a difficult working situation in the Bergen office. The account from Nav confirmed this impression, while at the same time many measures that had been put in place seemed to have contributed to significant improvements. A clear positive trend in case resolution and case-processing also concurs with the Ombudsman's recent experience with complaints about Nav Administration Bergen.

Long case-processing times at the Norwegian Labour and Welfare Administration were also discussed in the annual reports for 2010 and 2011.

4. Case-processing time in the public administration

4.1 General information about case-processing time

Pages 44-47 of the annual report for 2011 (pages 49-54 of the English version of the report) provided a review of the Ombudsman's experiences related to case-processing time in the public administration, and the significance of case-processing time for the citizens. Some developments in certain parts of the public administration were also noted. Case-processing time in the public administration has also been a recurrent theme in enquiries to the Ombudsman during 2012. After having been stable for a number of years, 2012 saw a marked increase in the number of cases that concerned case-processing time or a lack of response. 628 such complaints were received in 2012 compared with 537 cases in 2011.

«After having been stable for a number of years, 2012 saw a marked increase in the number of cases that concerned case-processing time or a lack of response.»

In some cases, the organisational structure of the public administration can result in a long overall case-processing time even when handling time in each body or department is acceptable in its own right. From the citizens' perspective, there is usually little importance attached to the actual reason why it takes a long time before their case is finally clarified. It is therefore important that the public administration is aware that it must keep the total handling time for each case at an acceptable level. This is particularly relevant for large and complex administrative bodies where cases may need to be handled in several departments, such as for example in Nav or the immigration administration. It is also important that cases which are suspended for whatever reason are prioritised when the reason for the suspension is removed.

«From the citizens' perspective, there is usually little importance attached to the actual reason why it takes a long time before their case is finally clarified.»

The public administration must be aware of total case-processing time when dealing with complaints. It is important that complaints are prepared and submitted to the relevant appeals body quickly. It will certainly be an advantage for the lower level of agencies if they are able to process cases while they are still fairly fresh in the memory. In a situation where the first stage of a case has taken an inordinate amount of time, the appeals body should look to address this through case prioritisation.

For a brief discussion of some of last year's cases concerning case-processing time in the public administration, see Chapter V. Some developments based on the Ombudsman's handling of complaints and other enquiries in the past year are discussed below.

«In a situation where the first stage of a case has taken an inordinate amount of time, the appeals body should look to address this through case prioritisation»

4.2 The Norwegian Labour and Welfare Administration (Nav)

The number of complaints relating to case-processing time at the Norwegian Labour and Welfare Administration (Nav) has been high in recent years. After a slight decrease in 2011, the number of cases in this area increased markedly in 2012 (see section 3 above).

4.3 The Norwegian Directorate of Immigration

Case-processing time within the Directorate of Immigration has become an increasingly recurrent issue for the Ombudsman, and the topic has been discussed in the two previous annual reports. Recently the Directorate seems to have had a particular focus on streamlining case-processing procedures and reducing case-processing time. Handling time has been reduced in some case areas as a result. This particularly applies to cases concerning asylum, permanent residency, and citizenship. This is reflected in the number of complaints to the Ombudsman, which has shown a decline in 2012 compared with previous years. It is positive that the Directorate's website provides good, up-to-date information about predicted case-processing times. For example, it appears that 80% of cases concerning family immigration, which has been an issue for the Ombudsman on several previous occasions, are now handled within six months.

«It is positive that the Directorate's website provides good, up-to-date information about predicted case-processing times»

During a transitional period, the Directorate's restructuring of case-processing procedures in an area may mean that people who submit an application after the cut-off time for the new routine will get their cases dealt with before those who submitted an application prior to that date. Many applicants perceive this to be unfair, and such an arrangement violates the general principle that cases should be handled in the order they are received. I have not made a detailed assessment about whether in the circumstances it is justifiable that new arrangements for case-processing have such effects. In the meantime it can hardly be acceptable that case-processing time is significantly longer for applications that were received before a certain date when compared with those received after this date.

The Directorate of Immigration's case-processing time for complaints, and the time taken from a complaint being received to when it is sent to the Norwegian Immigration Appeals Board, still appears to be too long in many cases. This problem was taken up with the Norwegian Directorate of Immigration in 2010, see Case 2010/2788 which is referred to on pages 56-57 of the annual report for 2011 (page 68 of the English version of the report). The Ombudsman will continue to monitor developments in this area.

«In situations where the case-processing time is longer than should be expected ... it is important that the public administration keeps applicants informed about handling time on their own initiative.»

In situations where the case-processing time is longer than should be expected, as seen for example on the basis of information about case-processing time on the Norwegian Directorate of Immigration's website, it is important that the public ad-

ministration keeps applicants informed about handling time on their own initiative. In 2011 I presented an asylum case to the Norwegian Directorate of Immigration in which case proceedings had been halted pending clarification of the tense situation in the foreign national's home country (Case 2011/2101). The total case-processing time (which was over three years) was criticised at the end of the case. In addition, I stated that:

«On the basis of the provisions that follow from the Public Administration Act as well as good administrative practice, the Directorate will in some situations be obliged to keep the applicant informed about decisions of importance for the handling of the case. For example this could be relevant in a situation where it has made a decision to halt the handling of cases in a specific area, and where the delay is significant for case-processing time in the case at hand. Against this background, it appears that it would be an advantage if the Directorate had prepared procedures to keep those affected informed about decisions in the present case.»

4.4 The Norwegian Immigration Appeals Board

The Ombudsman has also previously received some complaints about case-processing time at the Immigration Appeals Board. In 2012, however, there was a marked increase in enquiries about this body. The information provided by the Appeals Board on its own website also indicates that case-processing times have risen. However my impression is that the Appeals Board wants to reduce case-processing time and is actively working to achieve this. The Ombudsman will continue to monitor developments in case-processing time at the Immigration Appeals Board.

5. Challenging complainants

5.1 Introduction

All citizens will have experience of managing cases in public administration, be it permits, public orders, or cases concerning benefits or services. Many citizens will have been active in their own case, and a good number will have appealed a decision. Public bodies are obliged to take account of suggestions and views about case-processing procedure. This applies even if the requests are perceived as unnecessary and time consuming by the body concerned, or arrive in a form that is somewhat unsuitable.

«Public bodies are obliged to take account of suggestions and views about case-processing procedure.»

The Ombudsman has extensive experience with complainants who may be perceived as challenging. Such persons are in the minority. It is nevertheless advisable to highlight this aspect of our work and to outline some principles for their proper handling both by the Ombudsman and the public administration. The focus will primarily be on complainants who are particularly active. This topic is highly relevant for the public administration, and presumably to some extent also for the Storting. Challenging complainants are also an international phenomenon which has been discussed in various fora.

Section 5.2 below describes some of the challenges which such complainants present for both the Ombudsman and the public administration. Section 5.3 addresses how the public administration should act towards citizens so that any contact is

appropriate, while Section 5.4 reviews the main features of the public administration's legal framework for handling enquiries. Section 5.5 describes the Ombudsman's own practices in this area. Some priority issues are also discussed briefly. Some concluding remarks then follow in Section 5.6.

5.2 Description of the situation - some challenges

Some particularly active complainants submit a number of comprehensive enquiries by letter and e-mail about their case without anything particularly new coming to light. The Ombudsman has registered hundreds of documents in cases that cannot be brought forward. Other complainants may have many different cases going at once. For example, in 2012 one person put forward 63 complaints to the Ombudsman in various case areas. Keeping track of the numerous cases and the large amount of correspondence involved can be very demanding, both for archive staff and case workers. Extensive correspondence can also lead to errors in case-processing, for example when new circumstances are not considered or where significant information «disappears» in a sea of words. Such errors can be difficult to avoid, both for the public administration and the Ombudsman.

«Keeping track of the numerous cases and the large amount of correspondence involved can be very demanding, both for archive staff and case workers.»

Some complainants may perhaps have previous experience of a failure of some kind in their dealings with the public administration and are unable to lay that experience aside. They keep returning with a number of enquiries about the same issues for many years, even though the case is closed.

Some individuals may complain about many different circumstances over a long period of time and are thus perceived as a challenge. To illustrate this problem, one person had close to 100 different cases in the Ombudsman's office over a ten year period, with multiple enquiries in a number of the cases. The vast majority of the complaints were unfounded.

Some complainants may also use an unusual form of communication. Their letters may be extremely wordy and incoherent, perhaps tens of pages long, and come with a number of attachments. When such letters are written in indistinct handwriting they offer additional challenges. Some letters are emotional and may include derogatory statements about the complainant's workplace or case worker, and may threaten to «go to the press», file a report, or take the matter to court. Police reports may be filed, and likewise direct threats may be made against individuals. Aggressive behaviour during meetings can also be a particular challenge, and some complainants will not leave when their meeting is over.

Some of the most active and demanding complainants exhibit behaviour that may indicate a mental illness or deviant condition, and communication can be characterized by a very subjective understanding of reality. Threats of suicide may be made. Phone calls can be frequent and intense without any possibility of normal communication.

The digital world provides new opportunities for those who want to spread a message or pursue their case. Again this

raises a series of new challenges: How should an enquiry be handled when the Ombudsman is just one of a number of different addressees? And how should we handle a number of e-mails from the same sender arriving on a daily or weekly basis - should each one be recorded and then handled as part of the case?

«The digital world provides new opportunities for those who want to spread a message or pursue their case.»

The challenges within an organisation are also felt at many levels, including archiving technology, the issue of capacity, and organisational efficiency and the working environment. The professionalism of staff and their attitude towards fellow human beings can also be challenged. And last but not least are the issues surrounding priority, as the handling of challenging complainants may come at the expense of other activities: cases are not handled as quickly as they would otherwise be, waiting times at the switchboard become longer, and the organisation is more pressurised at all levels.

5.3 How should the public administration act?

Do public bodies contribute to the inappropriate behaviour of some citizens, and can steps be taken in order to prevent such a development from occurring? These are questions that every public body should ask themselves. Some complainants have mentioned the errors and neglect they have experienced when dealing with an administrative body. Working actively to prevent errors is obviously important from this perspective. Moreover, public bodies must be professional and accommodating in their contacts with citizens. An experience of being taken seriously should be central to most people's meetings with the public administration.

«An experience of being taken seriously should be central to most people's meetings with the public administration.»

When errors are committed, the public administration must take action. Mitigation of the error where possible, an appropriate apology, and taking the initiative to remedy the inappropriate practice etc., can all help to resolve a case. This was discussed on pages 52-53 of the annual report for 2011 (pages 61-63 of the English version of the report). And the opposite also applies: a lack of professionalism, a failure to acknowledge mistakes, and a lack of willingness to remedy inappropriate conditions can all contribute to an individual pursuing a case for a long time.

«Regardless of the reason, it is important that public bodies are aware of the phenomenon of challenging complainants.»

For some complainants, their life situation may contribute to their behaviour - this could include illness, social exclusion, and forced placement in institutions. Regardless of the reason, it is important that public bodies are aware of the phenomenon of challenging complainants.

5.4 Summary of the public administration's legal framework for handling enquiries

A citizen shall have the unimpeded opportunity to contact a government body in his or her own case. Correspondence should be examined, and in principle letters shall be answered by the public administration. In accordance with the Public Administration Act, the citizen shall also have the opportunity to speak with a public official. Certain limitations apply, in that the right only extends «insofar as it is compatible with a proper performance of public duties» and the party must have «due cause» (Section 11d). Notwithstanding this, the public administration has the right to put limits on such conversations.

If the case has been settled and no new circumstances have arisen, a complainant is not entitled to have his or her case reconsidered (Section 28, third paragraph, of the Public Administration Act). Neither is the complainant entitled to a conversation or meeting with a public official. However, good administrative practice requires that correspondence continues to be examined and in principle be replied to. This applies even if the complainant is very active and the case still cannot be brought forward. However, the specific content of any such reply must be carefully considered. Depending on the circumstances it may be enough to simply confirm that the letter has been registered and examined.

When a case is closed, there is also scope to prioritise replies to enquiries about other tasks. However, it is not permissible to downgrade a new case initiated by a particularly active complainant purely on the basis of previous experience. This could constitute an unfair discriminatory practice. However at the same time it may be that the nature of the case and previous experience handling the same or a similar matter can justify setting a low priority. This must be specifically assessed.

5.5 The Ombudsman's practice and some questions concerning prioritisation

Some archiving procedures

Some particularly active complainants require a considerable amount of resources including archiving. Such resources include receipt, questions about registration, clarification of legal matters in situations where the complainant has many cases to be handled, questions about splitting cases because different factors may need to be addressed etc. It may be desirable that the various enquiries from the same person are collected together in one case file, as this will give better control and will mean that less time is spent overall. On the other hand, it may also be appropriate to distinguish different types of cases from each other.

Some unintelligible e-mails are classed as so-called spam (e-waste) and not recorded. For example, this applies to various expressions of opinion sent by e-mail to a large number - often dozens - of government agencies and organisations. However, in most cases unclear and wide-ranging e-mails will be attributed to a case and recorded or archived. It should also be considered whether it is possible for enquiries to be combined. We have created specific sub-folders in mail reception for some particularly active complainants, where both e-mails and faxes can be collected and examined by the case worker on a regular basis. This type of

handling ensures better control and improved task prioritisation in the archive.

Handling of new enquiries and new cases

All enquiries are examined by the Ombudsman, regardless of their length, form and number. Attachments are also examined to the extent necessary to make a decision about the case. Generally a lot of time is spent sorting out information and arguments in correspondence.

«Generally a lot of time is spent sorting out information and arguments in correspondence.»

Unlike the public administration, which must deal with all complaints from people with a legal entitlement to complain, the Ombudsman determines «whether a complaint gives sufficient reason for investigation». Each year the Ombudsman rejects many complaints in accordance with section 6, fourth paragraph, of the Ombudsman Act. This also applies to cases raised by particularly active complainants.

If grounds exist to investigate the case further, case documents will be obtained from the public administration and further investigative steps considered. In this assessment, the fact that the complainant is perceived as challenging and may perhaps have lodged many previous complaints with the Ombudsman is not taken into consideration.

Case-processing in the event of submissions in closed cases

If the complainant makes a submission in a closed case, any new arguments will be evaluated. The Ombudsman will decide whether the case should be investigated further, or whether more guidance or a better explanation should be provided. Further guidance and a more detailed explanation may be important for the complainant, and it may also prevent further enquiries that may not lead to a different outcome. This can present considerable pedagogic challenges. The Ombudsman's personal signature on a new letter can sometimes help the complainant come to terms with the outcome of his or her case.

For complainants who continue with their correspondence, letters will be examined and answered after a certain period of time. Preferably, reference will be made to the fact that the case is closed. Some complainants will also be informed that further correspondence in the case will be registered and evaluated, but not answered. In some cases, however, following a specific assessment the Ombudsman will decide to re-examine the entire case material.

It is believed that the Ombudsman's handling of challenging complainants helps to relieve both the public administration and also to some extent the Storting.

The Health, Safety & Environment perspective

It is important to recognise the fact that, as mentioned, some complainants can be perceived as challenging. The Ombudsman strives for internal transparency about such matters and the various measures which may be appropriate.

One step is to evaluate whether employees need to be protected or replaced, especially in situations where a single case worker handles all enquiries from a challenging complainant. This is particularly important for the continued professional handling of enquiries. Training of new

employees also aims to include training in dealing with difficult phone calls and meetings with complainants.

«One step is to evaluate whether employees need to be protected or replaced, especially in situations where a single case worker handles all enquiries from a challenging complainant.»

The practice of placing clear limits on visits is implemented. Our institution also has certain procedures to handle security challenges, and these will be further developed.

Questions concerning prioritisation

Even if they are few in number, challenging complainants require a lot of resources. Time expenditure can be calculated not in terms of weeks worked, but rather as full-time equivalents. It is clear that the time spent handling these complainants affects other complainants and other tasks. It is therefore important to ask whether the Ombudsman's practice is appropriate, or whether the prioritisation should be somewhat different.

«Even if they are few in number, challenging complainants require a lot of resources. Time expenditure can be calculated not in terms of weeks worked, but rather as full-time equivalents.»

Everyone has the right to turn to the Ombudsman with their own experiences of injustice. Many of the particularly active complainants may also be exposed to «injustice» in terms of the Ombudsman Act, such as a failure to reply, inadequate case-processing, or an incorrect decision. The Ombudsman will not reject an enquiry purely on the grounds that the complainant has previously submitted a large number of unfounded cases, or because the letter of enquiry has an inappropriate form. As already mentioned, the institution is there for everyone, including frustrated inmates, desperate citizens, vulnerable patients, and other marginalised groups - any of whom may have a form of communication that at times may be somewhat unsuitable.

There is however room to reject complaints to a greater extent than today if the Ombudsman finds no grounds for further handling - even though an «injustice» in the legal sense may have happened. This may refer to a failure to reply or a minor error in case-processing that has not had an impact on the outcome of the case. Given the way my mandate is understood, cost-benefit analyses have so far only found a modest place in the work of the Ombudsman's office. Furthermore, it is possible to assign multiple enquiries in completed cases an even more restrictive priority, particularly in cases where a thorough review has already been performed.

During the course of 2013, the Ombudsman will undertake a project to review its organisation. Among other things, this project will consider whether it is appropriate to establish a screening system in order to better distinguish between complaints which should be dealt with thoroughly and those which should be subjected to a simplified handling process.

5.6 Termination

Some citizens challenge the professionalism of government offices on many levels. It is important to be prepared for this in terms of good organisation, good routines, proper training of new employ-

ees, and the ongoing attitude at work. Acknowledging the existence of the challenge is a good starting point. Handling enquiries from citizens of this type is part of ordinary administrative work in the office. It seems as though in the current digital world the challenges presented by particularly active complainants are growing.

The public administration may be tempted to limit contact with some citizens in various ways. However, there are certain legal barriers to what is possible, both in terms of archiving legislation, administrative legislation, and the non-statutory principles of good administrative practice. For example, all citizens should be treated with respect and professionalism. However, there is still room for manoeuvre even within this framework. First and foremost a friendly, welcoming and self-critical attitude is important, as this can prevent the development of less appropriate patterns of behaviour. Secondly, however, a certain degree of firmness may also be necessary. This is a great challenge for the Ombudsman as well other public authorities.

The ideal that everyone should be treated properly and should receive a reply to all enquiries, irrespective of how many are made and how they are formulated, can be limited by the desire for an effective and sound public administration. There is also an important socioeconomic impact that should not be misappropriated. Nobody benefits when some particularly challenging complainant ties up a significant amount of resources within the public administration simply by taking advantage of the principles of good administrative practice.

«The Norwegian public administration, and not least the Ombudsman, has to live with some particularly active, or otherwise especially challenging, individuals.»

The starting point remains clear: everyone, regardless of circumstances and form of communication, has the right to actively work on their own case. The Norwegian public administration, and not least the Ombudsman, has to live with some particularly active, or otherwise especially challenging, individuals.

V. Overview of cases of general interest in 2012

In accordance with section 12 of the Directive to the Ombudsman, the Annual Report must include «an overview of the handling of those cases which the Ombudsman considers to be of general interest.» Cases are selected for inclusion in this report on the basis of whether a case is regarded as representative of a specific type of case, whether it is a relevant example of an error in case-processing, whether the case involves a matter of principle and serves to clarify legal issues, and whether the case concerns issues relating to the legal protection of individuals.

The cases have largely been anonymised. This is partly due to provisions regarding the duty of confidentiality and partly out of regard for the complainants. Given that summaries of the cases are published and made available to the general public, the names of the complainants are always omitted. Cases which are of a particularly private or personal nature and which cannot be adequately anonymised are not included in the report.

The cases listed below are cited by title and abstract[1]. The dates of the Ombudsman's opinions are also stated. The cases are classified into different legal areas, and the cases which relate to questions regarding general administrative law are referred by way of introduction. An account of what the relevant public administrative body or public official has stated about the complaint can be seen in the opinions that are regularly published in full text on the Ombudsman's website (www.sivilombudsmannen. no) as well as on Lovdata (www.lovdata. no). Rettsdata publishes cases annually (www. rettsdata.no).

My ongoing work with individual cases and my contact with the public administration allows me to form a general opinion about the state of the public administration and the effectiveness of its procedures. There is always a risk that my work on individual cases may give a distorted impression of the way in which the public administration normally handles cases of this type. After all, it should not be forgotten that complaints arise from situations where citizens feel that they have been wrongly and unjustly treated. In view of the contact that I otherwise have with the public administration in the form of visits and inspections, it is my impression that on the basis of the above criteria, the cases I have included in this report are representative.

General administrative law

Case-processing times for complaints concerning disability benefits

9 February 2012 (Case 2011/425)

The case concerned the case-processing time relating to a complaint of 15 January 2010 regarding the rejection of a claim for 50% disability benefit. The Norwegian Labour and Welfare Administration (Nav) Administration Bergen only closed the

1. Some older cases were given a new case number in 2011 in connection with the Ombudsman switching to full electronic case-handling. For these cases, both the old and new case numbers are listed.

case on 31 August 2011, after several communications both from the lawyer to the user and from the user and this office. Nav Administration Bergen had also taken an excessive time to reply to the Ombudsman and only provided an appropriate reply after several reminders.

After studying the explanations provided by Nav Administration Bergen about its handling of the case, the Ombudsman found that the case-processing time had been excessive and gave cause for criticism.

Transfer of sentenced persons to their home country – case-processing and relationship to human rights

19 March 2011 (Case 2011/516)

The case concerned a decision to transfer A to finish serving his sentence in his home country following a criminal conviction in Norway. The transfer was decided upon even though A believed that his life or health would be at risk due to possible retaliation from other inmates. He also believed that his health status would not be properly monitored. The central question in the case was what specific investigations and assessments were made prior to the transfer, and whether the relevant assessments had been expressed to a sufficient extent in the decision. Furthermore, the case raised questions regarding the importance of Norway's obligations under article 3 of the European Convention on Human Rights.

The Ombudsman criticised the Ministry of Justice and Public Security for its inadequate investigation of the case prior to the transfer decision. Furthermore, the critical assessments had not been expressed clearly in the decision, and it was concluded that the decision was inadequately reasoned. There was no evidence that the obligations under the European Convention on Human Rights had been violated in the transfer case, but the Ministry's decision was nevertheless considered to be invalid due to the procedural errors that were uncovered.

Award of a 40% operating grant to a physiotherapist in private practice – bias, clarification of the case, evaluation of qualifications, etc.

10 April 2012 (Case 2011/501)

A municipality awarded a 40% operating grant (operating agreement) to a physiotherapist in private practice. The operating agreement was tied to a particular institute in the municipality of which the applicant receiving the grant was already a part-owner and managing director. The second applicant appealed the decision on the grounds that the municipality was guilty of several procedural errors, including not calling him to an interview and attaching importance to the view of one of the employees of the institute. The second applicant also stated that the assessment of the first applicant's qualifications was defective and that importance had been attached to irrelevant circumstances.

The Ombudsman concluded that the municipality had committed multiple errors in its handling of the case. The Ombudsman stated that the award process was characterised by lack of knowledge of the relevant rules and deficient procedures for handling cases of such nature. Neither the administrative authority nor the appeals body had fulfilled their obligations with regard to the clarification of the case, and the municipality had attached significant importance to the views of the institute, which should have been disregarded in this case, due to bias. Moreover, the comparative evaluation of the ap-

plicants' qualifications was deemed insufficient. Importance had also been attached to irrelevant circumstances. The Ombudsman did not have cause to state which one of the two applicants was best served to receive, and should have been awarded, the grant, but stated in any event that the complainant had not been treated fairly during the award process. It therefore asked the municipality to consider how this could potentially be resolved.

It was the municipality's opinion that the errors committed did not necessarily mean that the wrong applicant had received the operating grant, and that the municipality did not wish to «provide compensation for procedural errors that did not have an impact on the final result». The Ombudsman took this under advisement.

Claim for compensation of legal costs in accordance with section 36, first paragraph, of the Public Administration Act

11 April 2012 (Case 2011/374)

The Ministry of Agriculture and Food rejected a claim for compensation for legal costs on the basis of section 36 of the Public Administration Act, stating that in a binding judgment regarding the underlying circumstances, neither of the parties had been awarded compensation for legal costs.

The Ombudsman found that the judgement did not prevent claims for legal costs on the basis of section 36 of the Public Administration Act. The Dispute Act did not change the legal situation on this point. The Ministry was asked to reconsider the claim for compensation.

The Ministry reconsidered the claim and concluded that the decision to reject it was based on an error in law and should be revoked. The case was referred to the Norwegian Agricultural Authority for handling.

Permit to acquire a high-calibre revolver - rejection due to a prohibition issued in the form of a circular

17 April 2012 (Case 2011/486)

The case concerned the rejection by the police authority of a permit to acquire a Smith & Wesson calibre .500 magnum revolver. The police rejected the application without providing the details of its reasoning. Reference was made to a general prohibition on high-calibre guns and revolvers adopted by the National Police Directorate in the form of a circular (circular 2008/003). The decision to deny a permit was upheld by the Directorate, which processed the complaint.

The Ombudsman concluded that the National Police Directorate had exceeded its powers in formulating the circular. In effect, the application had not been tried appropriately in two instances, and the Ombudsman found cause to inform the Ministry of Justice and Public Security about the matter.

The Enforcement Office's case-processing time in a case concerning changes in the settlement of a debt

4 May 2012 (Case 2012/761)

The case concerned the case-processing time of a Law Enforcement Office in a case regarding changes in the settlement of a debt.

The Ombudsman found that there was cause to criticise the case-processing time in the matter in question. The case-processing time had been excessive and the Law Enforcement Office had not been able to provide an explanation. There was also doubt about the archiving procedures in the Office. The Ombudsman found cause to inform the National Police Directorate and the Norwegian National Archive about the matter.

Award of an operating grant to a physiotherapist in private practice – clarification of the case, evaluation of qualifications, irrelevant circumstances, etc.

28 June 2012 (Case 2010/2546)

A municipality awarded a 40% operating grant (operating agreement) to a physiotherapist. The operating grant was part of a collaboration between three municipalities relating to physiotherapy services, and was associated with a private mutual practice. One of the applicants submitted a complaint to the Ombudsman. She stated that the municipality was guilty of procedural errors, as well as errors in evaluating the qualifications of the applicants. One example was that the municipality had failed to interview the applicants.

The Ombudsman found that the award process did not inspire confidence. The municipality had not ensured that sufficient information had been provided as support for its decision, nor had it carried out an adequate comparative analysis of the applicants' qualifications. Furthermore, it was not fully clear whether the award had to some extent been based on irrelevant circumstances. However, the Ombudsman did not have sufficient grounds to express with certainty whether the errors had meant that the complainant had been overlooked.

Case relating to fences in the beach zone - requirement of legal justification

2 July 2012 (Case 2011/2142)

The case concerned the removal of fencing in the beach zone in Bergen municipality. With reference to the Outdoor Recreation Act the municipality ordered one of the property owners to remove signs, hedges and fences etc. The County Governor of Hordaland revoked the municipality's order. The neighbours submitted a complaint to the Ombudsman regarding the revocation.

It did not seem clear what the legal basis for the County Governor's decision was. The Ombudsman concluded that there were reasonable grounds to doubt whether the decision complied with the requirements in the Public Administration Act on providing the legal grounds for a decision. Hence, the County Governor was asked to reconsider the case.

Partial exclusion from community and transfer of a sentenced person to a detention unit - requirement of written notification

6 July 2012 (Case 2011/494)

The case concerned the partial exclusion of an inmate from the community in Tromsø prison, and a resultant stay in the prison's detention unit. A key issue was which requirements were applicable in relation to written notifications to the inmate in connection with exclusion measures. The case also gave rise to the issue whether a continued stay in the detention unit amounted to an infringement of a

prisoner's rights, which required a separate decision.

The Ombudsman found cause to criticise the Norwegian Correctional Service for not having notified the inmate in writing when the exclusion measure against him expired. However, there was not cause to raise important legal objections against the failure to make a separate decision in connection with the subsequent stay in the detention unit.

Legal right to appeal in a licensing matter

24 July 2012 (Case 2011/487)

A appealed against a decision by the Main Committee for Development and Culture in Skien municipality, whereby B was granted licence to acquire property X. Both the municipality and the County Governor rejected the appeal stating that A did not have a legal right to appeal. A submitted a complaint to the Ombudsman.

The Ombudsman found that A had a legal right to appeal and asked the County Governor to reconsider the case. After reviewing the general background to the analysis of the legal right to appeal in such a matter, it was expressly considered that the licensing authority's decision could have implications for inheritance tax and that the committee's decision was not reasoned in accordance with the provisions of the Public Administration Act. The decision was of a nature that should admit a right to appeal.

The County Governor of Telemark then reopened the case and issued a new decision, stating that the appellant was deemed to have a legal right of appeal.

Case concerning taxation of a holiday cottage in Råde municipality

7 August 2012 (Case 2010/2979)

The case concerned the taxation of a holiday cottage in Råde municipality.

The Ombudsman concluded that the Property Tax Office's preparation and facilitation of the appeal to the Property Tax Appeals Board did not appear to comply with the requirements of reasonable case-processing and good administrative practice. It was not unlikely that faults and errors during the handling of the case had had an impact on the tax determined by the Property Tax Appeals Board, and the municipality was asked to reconsider the case. The Ombudsman also made some general comments regarding the municipality's use of standardised values as a basis for property taxation.

Annulment of a university examination - the question of right to appeal

14 August 2012 (Case 2012/1824)

A group of students appealed against an examination at the Norwegian University of Science and Technology (NTNU) on the grounds that the written examination in question was identical to an examination given the previous year. The students alleged that the candidates who had familiarised themselves with the previous examination, and possibly also with the solutions, had had a significant advantage. The NTNU Board of Appeal shared this view and found that a formal error had been committed and that the examination should be annulled in relation to all candidates. The candidates were not given the opportunity to appeal the decision of the Board of Appeal, on the grounds of certain statements in the pre-

paratory works to the Act relating to universities and university colleges.

The Ombudsman found that there was no legal support for limiting the candidates' general right to appeal the decision in accordance with section 28 of the Public Administration Act. A limitation of the right to appeal must be set out in law, in this case in the Act relating to universities and university colleges. The Ombudsman asked NTNU to reconsider the issue of the right to appeal.

The Board of Appeal at NTNU reconsidered the case and decided to revoke the decision to annul the examination.

Case relating to legal costs in accordance with section 36 of the Public Administration Act – necessity criteria

17 August 2012 (Case 2011/2482)

In a matter concerning a pupil's change of school, the municipality and the County Governor found that because of the time at which the solicitor had become involved in the matter, the costs incurred had not been necessary in bringing about a change to the decision.

The Ombudsman concluded that the administration's justification would not hold up legally, since the party's subjective understanding of whether it was necessary to consult a solicitor or not was of decisive importance. A requirement of causality could not be made, since that would amount to the same thing as basing the decision on an objective rule. The County Governor was asked to reconsider the case.

After reconsidering the case, the County Governor changed his previous decision and awarded compensation for legal costs.

Child maintenance - failure to observe the procedure of contradiction when estimating income

27 August 2012 (Case 2011/2926)

In a child maintenance case relating to estimating the income of the maintenance provider, the appeals office obtained information by telephone from the maintenance provider's employer. The issue was whether this information should have been submitted to the maintenance provider before the decision was made.

The Ombudsman took the view that the appeals office should have given the maintenance provider an opportunity to comment on the information, and that for this reason the contradictory procedure had not been observed in relation to information of importance to the case.

When the case was reconsidered, the maintenance provider was informed about the information and afforded an opportunity to comment. The Norwegian Labour and Welfare Administration's Appeals Authority upheld its assessment that the maintenance provider did not have reasonable grounds for a low income, and did not overturn its decision.

The County Governor's duty of information in connection with cases pursuant to the Planning and Building Act

27 August 2012 (Case 2012/230)

During the handling of a neighbour's appeal against planning permission, the County Governor of Oslo and Akershus requested further information from Eidsvoll municipality in relation to evaluati-

ons it carried out. The appellant was not informed about the municipality's response to the County Governor. In the complaint to the Ombudsman, the appellant stated that the County Governor therefore had violated his duty of information.

The Ombudsman found that by not informing the appellant of the information in the municipality's response, the County Governor had breached its duty to provide information in accordance with section 17, third paragraph, of the Public Administration Act. However, after a specific assessment, the Ombudsman found that there was reason to assume that the error could not have had a decisive effect on the content of the decision (see section 41 of the Public Administration Act), and he therefore took no further action.

Reduction of surveying fee - the self-cost principle

12 September 2012 (Case 2011/1789)

The case concerned the self-cost principle as a limit on surveying fees when establishing a new property. Tromsø municipality rejected an application for a discretionary reduction of the surveying fee relating to 20 land parcels. The rejection was confirmed by the Troms County Governor.

The Ombudsman found that there were doubts as to whether the case had been sufficiently clarified when the County Governor made his decision. In cases where it is alleged that a fee contravenes the self-cost principle, the administration has the burden to prove that this is not the case. In the case at hand, the Ombudsman found that neither the municipality nor the County Governor had provided enough documentation to prove that the self-cost principle had been observed. Hence, the County Governor was asked to reconsider the case.

Proceedings in the Ministry of Justice and Public Security in a case relating to the transfer of a sentenced person to Norway - use of time and follow-up with foreign authorities

12 September 2012 (Case 2011/2970)

The case concerned the Ministry of Justice and Public Security's handling of an application for transfer of a sentenced person from Greece to Norway. When the complaint was submitted to the Ombudsman, more than three years and three months had passed since the application had been submitted to the Ministry. It emerged from the appeal that the Ministry had waited over a year for a reply from the Greek authorities before sending a reminder.

The Ombudsman criticised the Ministry of Justice and Public Security for failing to follow up the case properly with the Greek authorities. Furthermore, the Ombudsman found cause to criticise the internal processing of the case within the Ministry, stating, in particular, that the Ministry did not seem to have prioritised the case despite the earlier delay.

Case concerning right to appeal against a decision on legal costs - the Board for Pioneer Divers

30 September 2010 (Case 2011/554, previously Case 2009/2941)

The Board for Pioneer Divers overturned the rejection of a claim concerning compensation for survivors of British divers. The solicitor, who had raised the issue of reversing the decision, claimed compensation for legal costs in accordance with section 36 of the Public Adminis-

tration Act. The solicitor appealed the Board's decision to reject the claim for compensation to the Ministry of Labour, who in turn dismissed the appeal on the grounds that the Board's decision was not eligible for appeal.

The Ombudsman found that several circumstances indicated that a decision relating to legal costs should be eligible for an appeal to the Ministry, even though the actual compensation decisions were not eligible for appeal. The Ministry was asked to reconsider the case, but rejected the request, stating that it was not within its power.

After a full assessment of the case, the Ombudsman concluded that he did not have cause to further examine the decision relating to legal costs.

Compensation for costs in accordance with section 36 of the Public Administration Act for lawyers' travel time in connection with committee meetings

17 October 2012 (Case 2011/1894)

The case concerned a claim for compensation for legal costs relating to a solicitor's travel costs in connection with a meeting with the Norwegian Immigration Appeals Board. The decision by the Norwegian Directorate of Immigration was reversed in the favour of the party, and the party was awarded compensation for solicitor's costs in accordance with section 36 of the Public Administration Act. However, the Immigration Appeals Board would not compensate the three hours' travel cost invoiced by the solicitor in connection with the meeting, on the grounds that the solicitor had travelled outside «normal working hours». According to the Immigration Appeals Board, the solicitor had not suffered any loss of earnings during this time.

After the Ombudsman had criticised the decision, the Board changed its practice in this regard but the appellant's claim for compensation for costs relating to the travel time was rejected. The Ombudsman thereafter stated that the time of the day at which the solicitor had been travelling could not be significant in relation to whether the party's cost for invoiced travel time should be deemed necessary in accordance with section 36 of the Public Administration Act. The Immigration Appeals Board was asked to reconsider the case. After reconsidering the case the Board awarded compensation for the travel costs.

The Norwegian Correctional Service's handling of a parole application - duty to investigate

19 October 2012 (Case 2010/2745)

The case concerned the rejection by the Norwegian Correctional Service of A's application for parole after serving 2/3 of the sentence.

Whilst the Ombudsman criticised certain aspects of the correctional service's handling of the case, including aspects relating to the clarification of the case, he did not find cause to levy any significant legal criticism against the actual decision to reject A's application for parole.

The handling of a case concerning the return of a sentenced person to a high security department – documentation of information and requirement of reasoning

19 October 2012 (Case 2011/514)

The case concerned A's return from the day-release department to the high security unit at Bodø prison.

The Ombudsman criticised the Norwegian Correctional Services for not having documented important information provided verbally by the police. Furthermore the decision by the correctional services did not include fully sufficient grounds, since it was not clear whether importance had been attached to information that the inmate had not been privy to. However, the Ombudsman did not find cause to levy any significant criticism against the conclusion to return A to a high security unit.

Question whether a decision regarding a place in a boarding school was an individual decision

26 October 2012 (Case 2012/460)

An application for a so-called enhanced place in a boarding school belonging to a high school was rejected because the county was not considered to have made an individual decision, which meant that there was no right of appeal. The appeal against the decision was therefore dismissed, as it was by the county's Board of Appeal.

The Ombudsman concluded that the rejection of an enhanced place in the boarding school was an individual decision.

Case concerning a new 420 kV power line through Bremanger municipality – requirement of reasoning from the Appeals Authority

29 October 2012 (Case 2012/640)

The case concerned the Ministry of Petroleum and Energy's choice of route through Bremanger municipality for a new 420 kV power line on the section from Ørskog in Møre og Romsdal to Sogndal in Sogn og Fjordane. The Ministry decided that the power line would not go through Førdedalen, as the Norwegian Water Resources and Energy Directorate had decided, but rather further north through Myklebustdalen.

It was unclear how the Ministry had evaluated and balanced the various different considerations in route selection, and why it had reached the conclusion that it had. As the ministry chose an option that was not accompanied by professional reports, particularly stringent requirements must apply in relation to the reasoning. The Ombudsman concluded that there was reasonable doubt concerning circumstances of importance to the case. The Ministry was therefore asked to reconsider the matter, and in particular the justification given for the choice of route.

A letter from a customs region was considered to be an individual decision because it determined that two products were liable for tax in accordance with the Chocolate and Confectionery Duty

29 October 2012 (Case 2012/1205)

A letter from a customs region to an ice cream manufacturer stated in the form of a decision that two products used as ingredients in ice cream were taxable in accordance with the Chocolate and Con-

fectionery Duty. The Norwegian Directorate of Customs and Excise failed to process a complaint about this letter because it did not consider it to have been an individual decision.

When, following an assessment of product samples, the customs region stated in the form of a decision that the two products were taxable, this meant, in the

Ombudsman's view, that it was the duty of the ice cream manufacturer to calculate and pay the duty when these products were used in the production. The Ombudsman concluded that the letter was an individual decision and asked the Directorate to handle the complaint on its merits.

The Directorate considered the complaint after receiving the Ombudsman's opinion, and overturned the customs region's decision.

The public administration's own reversal of invalid decisions

22 November 2012 (Case 2012/1080)

Two and a half years after the complainant's car was approved in accordance with the Road Vehicle Regulation, the road authorities found that the approval must be deemed invalid, and reversed the decision to the detriment of the complainant.

The Ombudsman found that too much time had passed before the approval was reserved, and that the remaining issues in the case were, to a large extent, not sufficient for the decision to be reversed to the detriment of the private party. The Ministry of Transport and Communications, which was asked to reconsider the case, upheld the original approval.

Case concerning case-processing time at the Norwegian Labour and Welfare Administration's Appeals Authority Oslo and Akershus - preliminary handling of an appeal to the National Insurance Court against a decision on reducing disability insurance

26 November 2012 (Case 2012/2065)

Complainant A thought that the Norwegian Labour and Welfare Administration's Appeals Authority Oslo and Akershus had taken an unnecessarily long time to prepare and submit his appeal to the National Insurance Court.

The Ombudsman accepted that the preparation of an appeal for the National Insurance Court in general can take longer than it takes to obtain a decision about a complaint in the same case, especially in confusing and complex cases. However, a case-processing time of about ten months from A's appeal being lodged to the referral letter being sent to the National Insurance Court seemed excessive. The Ombudsmanwas also critical that, in its preliminary reply to A, the Appeal Authority's info rmation about the expected case-processing time appeared to be unrealistic.

Order concerning correction of unlawful conditions - the municipality overturned its own decision on preliminary handling of appeals and the County Governor's later decision became the decision of first instance to which the right of appeal applied

4 December 2012 (Case 2012/823)

The case raised questions about whether Larvik municipality had used its authority to change its own decision in a case of appeal or whether it had only forwarded the matter to the County Governor

for processing with a recommendation to take the appeal into account.

The Ombudsman's interpretation was that the municipality had reversed its earlier decision on the basis of the appeal. Since the final decision of the municipality had not been appealed, the County Governor's subsequent decision should be considered as the decision of first instance in the case, to which a right of appeal applied. The County Governor of Vestfold was asked to reconsider the question of its decision-making powers, including quest ions regarding right of appeal.

Solicitors

Solicitor's fees in a case relating to the Universities and University Colleges Act

13 February 2012 (Case 2011/1883)

A solicitor assisted a student in a case concerning aptitude. The University College reduced the solicitor's fees, so that the hourly rate was restricted to the official rate of remuneration. It was evident from the Universities and University Colleges Act that the University College should cover legal costs, while the limitation to the official rate of remuneration was set out in a circular.

The Ombudsman concluded that in order for a limitation of this type to be binding, it must be decided in an act or regulation. It was requested that the case be reconsidered. On reconsideration, it was found that the Ombudsman's understanding of the rules applied and that the solicitor's fees were not limited to the official rate of remuneration.

Children

Granting of child allowance as the basis for a retroactive change

20 February 2013 (Case 2011/1793)

The question in this case was whether a decision to grant child allowance in accordance with the National Insurance Act constituted sufficient grounds to retroactively change child maintenance; see section 74 of the Children Act.

The Ombudsman concluded that there were doubts relating to the Norwegian Labour and Welfare Administration Appeals Authority East's understanding of the regulations and its assessment of whether the conditions for a retrospective change existed; see section 74, second paragraph, of the Children Act. It was requested that the case be reconsidered.

The original decision was upheld following reconsideration, but with a different justification. The decision will be appealed to the Labour and Welfare Directorate.

Determination of child maintenance when parents are in education

20 April 2012 (Case 2011/2918)

The Norwegian Labour and Welfare Administration's Appeals Authority found that a father's decision to start a four-year education programme was «reasonable grounds» for not having an income when calculating child maintenance. He had not previously completed education beyond high school, and it was therefore found that he was in «normal education», which is accepted as a reason for not having an income. He had over 20 years'

experience in another profession and had earned a good income in recent years.

The Ombudsman concluded that the Norwegian Labour and Welfare Administration's Appeals Authority had interpreted the rules incorrectly by failing to consider individual circumstances, such as the age and previous work experience of the maintenance recipient, in its assessment of whether he had reasonable grounds for not having an income. Against this background, the Ombudsman requested that the case be reconsidered.

The Norwegian Labour and Welfare Administration's Appeals Authority reconsidered the matter and concluded that the maintenance recipient had reasonable grounds to be without income.

Determination of maintenance when the maintenance provider has moved to a low-cost country

16 May 2012 (Case 2011/3165)

A parent with a maintenance obligation had resigned from his position as a doctor in Norway, and had established himself in the same profession in a so-called low-cost country. With regard to the provision in the EEA Agreement on the free movement of labour, the Norwegian Labour and Welfare Administration's (Nav's) Appeals Authority set the maintenance so low that the maintenance recipient thought that an unfair displacement of the maintenance obligation had occurred.

The Ombudsman concluded that there was reasonable doubt on several points in the case - these concerned the basis for the discretionary evaluation, the importance of the EEA Agreement, the consideration of the best interests of the child in accordance with the UN Convention on the Rights of the Child, and the clarification of the case respectively. Against this background, the Ombudsman requested that the case be reconsidered.

Nav's Appeals Authority reconsidered the case and issued a new decision where the maintenance provider's income was estimated at approximately NOK 225,000. Nav Appeal's Authority emphasised that the estimated income meant that the maintenance provider would be able to cover a fair share of the children's living costs.

Deduction of children's living costs from child maintenance

23 October 2012 (Case 2011/3586)

The Norwegian Labour and Welfare Administration's Appeals Authority granted the maintenance recipient's application for an amendment of maintenance where the maintenance recipient alleged that the maintenance provider did not fulfil the obligations under a custody agreement from 2001. Under the agreement the children were going to live with the maintenance provider for a time equivalent to class 03. However, he admitted that they only lived with him for a time that was equal to class 02. The Appeals Authority found «clear» evidence that the agreement was being not fulfilled, and reduced the deduction for children's living costs to Class 0 in accordance with section 9, third paragraph of the Settlement Regulation. The maintenance provider complained to the Ombudsman that he should be granted a deduction, since the children were still living with him part of the time.

The Ombudsman concluded that the Appeals Authority's decision was in accordance with applicable regulations. Nevertheless, there were general objections to the provision on evidence in section 9,

third paragraph, which deviated from the principle of free evaluation of evidence, and it was found that there were grounds to ask the Ministry of Children, Equality and Social Inclusion to review the relevant provision.

Compensation

Case concerning the compensation scheme for children formerly in care

13 March 2012 (Cases 2011/2002, 2011/2004 and 2011/2010)

The cases concerned the interpretation of the Statutes of the compensation scheme for children formerly in care. In accordance with section 5, eleventh paragraph, a discretionary deduction in the compensation sum can be made if the application relates to the «same conditions» for which it had previously paid compensation or damages. X municipality believed that this provision was applicable in the case of compensation for abuse and neglect in a foster home that the municipality had approved, as the applicant had already received compensation from a similar scheme in Y municipality as a result of abuse and neglect during placement in a children's home in Y.

The Ombudsman concluded that the application to X municipality did not refer to the «same conditions» for which Y municipality had already paid compensation, and that X municipality had failed to correctly understand the statutes. Furthermore, X municipality's handling of the case was criticised on the basis of provisions in the Public Administration Act concerning the requirement for case information and the justification for a decision, as well as the provision on legal competence in section 40, third paragraph sub-section c, of the Local Government Act.

The municipality reconsidered the case and awarded compensation in accordance with the municipal system.

Case concerning compensation for legal costs on the basis of tort law

28 August 2012 (Case 2011/3014)

Company A had purchased two all-terrain vehicles (ATVs) for use in its business. Tax auditors raised questions about whether the ATVs were operational equipment. A therefore received notification concerning a recalculation of VAT, change of assessment, and change of the basis for employers' contribution, without the other tax and fee related consequences of Tax South's view of the facts being considered. The taxpayer claimed compensation for legal expenses related to efforts to respond to the notification.

The Ombudsman felt that there was support for the view that, prior to the notification, the case worker should have been aware that business income would be reduced if the ATVs could not be considered as operational equipment. It was difficult to see that such a lack of a comprehensive understanding of the basic rules in the law on tax and fees was excusable. The Ombudsman also referred to employer responsibilities and rules on anonymous and cumulative error. He asked the Tax Directorate to reconsider the question of compensation.

Family and personal

Appointment of a supervisor during visitation with children

20 September 2012 (Case 2012/2)

The district court had ordered the Norwegian Directorate for Children, Youth and Family Affairs (Bufetat) to appoint a supervisor prior to an overnight visitation. Taking into account the fact that it was not empowered to impose supervision of this nature, Bufetat refused to follow this court order. Following appeal the Directorate believed that it could appoint a supervisor, but with a different form than in the court order.

The Ombudsman concluded that the Directorate's decision could hardly be said to involve an adjustment of the court order. As the court's business fell outside the Ombudsman's mandate, it could not issue an opinion on the court's application of the rules. The Ombudsman therefore made a general comment on the Directorate's understanding of the rules.

Fisheries and hunting

Fine for violation of the Aquaculture Act

17 August 2012 (Case 2011/2718)

A company in the aquaculture industry was fined NOK 210,768 because it failed to seek permission for the relocation of its moorings at a fish farm facility. The company gained no profit from its change of mooring, which the Directorate of Fisheries deemed to be necessary after a storm had damaged the original mounting points.

The Ombudsman found that there were deficiencies in the Directorate's decision to impose the fine for violation; see section 25 of the Public Administration Act. The Directorate should have considered whether the fine for violation could be regarded as a «penalty» and whether its imposition was compatible with section 96 of the Constitution. After reconsidering the case, the Directorate concluded that the use of this provision in the regulation did not provide sufficient authority to impose a fine for violation. The fine was therefore set aside.

Fine for violation of the salmon allocation regulation

23 November 2012 (Case 2011/518)

In an earlier opinion, the Norwegian Directorate of Fisheries was asked to reconsider its decision on the imposition of a fine for violation of section 29 of the Salmon Allocation Regulation; see section 30, first paragraph, of the Aquaculture Act and section 11 of the Aquaculture Response Regulation. The change was made before authorisation for the fish farm was obtained. The Ombudsman concluded that the size of the fine was not consistent with the regulations since no specific investigation about the company's profit due to the violation had been made. The new decision upheld the Directorate's earlier ruling.

The Ombudsman concluded that there were still doubts as to whether all relevant factors had been considered, and the Directorate was asked to reconsider its assessment of the fine for a second time.

Health

Restriction of patient's right to external contact

29 June 2012 (Case 2011/248)

The case concerned several decisions whereby a patient's right to external contact was restricted; see section 4-5 of the Mental Health Care Act. The patient, who had been committed to compulsory mental care after a murder, had escaped from the hospital and the hospital found the situation during the following few weeks chaotic. The restrictions concerned the monitoring of conversations with and visits from the mother and brother for security reasons and a ban on contacting the media.

The Ombudsman concluded that the decisions concerning the monitoring of conversations with and visits from family members were flawed. It was also doubtful whether there was legal support for the restrictions, particularly with regard to the monitoring of telephone calls. The ban on contacting the media, which lasted for about three weeks, was far-reaching and legally questionable.

Award of an operational grant to a physiotherapist in private practice - the importance of the opinion of the remaining physiotherapist

23 July 2012 (Case 2011/2038)

The case concerned a municipality awarding a 100% operational grant to a physiotherapist in a private practice linked to a particular institution. The owner of the institution, who was very active in the awards process, wanted an applicant who was a locum in the institution. She was eventually given the grant. The complainant believed that he or she had the best professional aptitude for the job, and maintained that the municipality had mistakenly attached decisive importance to the institute owner's viewpoint.

The Ombudsman was critical of the fact that the remaining physiotherapist (the owner of the institute) had played an active role in the awards process. It was doubtful whether the operating grant had been awarded to the person with the best professional aptitude for the job, but there were no grounds for reaching a clear conclusion about who should have been awarded the operating grant. The Ombudsman stressed the municipality's responsibility to allocate scarce resources such as operational grants and said that ideological preferences in the municipality should not be decisive in this regard.

Communication

Order from Posten Norge AS concerning placement of mailboxes in a collective stand

29 June 2012 (Case 2011/2933)

In the autumn of 2009, the Post Office decided to implement a stricter interpretation of its own guidelines, including the Post Office's right to direct the placement of mailboxes

«up to a distance of 100 meters from the gate/driveway». A constituency association submitted a complaint about such an instruction to the Ombudsman.

The Ombudsman concluded that the Post Office had the right to impose collective stands in urban areas, and that the use of the authorisation order was not unreasonable.

Correctional services

Procedures for monitoring postal items in prison

16 April 2012 (Case 2011/3541)

The case concerned Ringerike prison's procedures for monitoring the post sent by its inmates to some specific groups of recipients, where access supervision is limited.

The Ombudsman felt it was unfortunate that it was unclear whether the prison's internal procedures were fully in accordance with the Sentencing Act and its associated guidelines. The prison was asked to review its internal guidelines and to bring their content more into line with the wording of legislation in the area.

Prolonged exclusion of an inmate from the community in Trondheim prison - justification and reporting

29 May 2012 (Case 2011/510)

The case concerns the Norwegian Correctional Service's exclusion of A from the community in Trondheim prison for a period of approximately 110 days. The exclusion raised questions relating to the assessments that were made in connection with the relevant decisions as well as about various aspects of the handling of the case. The Ombudsman felt that the reasoning behind the decisions should have been more detailed. The Norwegian Correctional Service was also criticised for several violations of provisions in the Sentencing Act that concern reporting to the executive body during prolonged exclusion of prison inmates. Neither the prison nor the region had complied with their reporting obligations.

However the Ombudsman did not find grounds for decisive criticism of the decisions to exclude A from the community.

In a letter to the regional directors of the Norwegian Correctional Service, the country's prison managers, and the Correctional Service's Training Academy, the Correctional Service's central administrative body (KSF) approved the

Ombudsman's opinion of the case. The letter also specified which reporting procedures were to be followed in exclusion cases and stated that the Ombudsman's report would be considered in connection with KSF's ongoing work on the revision of the guidelines to the Sentencing Act.

Consideration of the best interests of a child when deciding on sentencing with electronic monitoring

7 June 2012 (Case 2011/2120)

The case concerned the rejection of an application concerning sentencing with electronic monitoring. The Norwegian Correctional Service's handling of the case raised questions about whether section 7-3 of the Sentencing Regulation was in violation of article 3 of the UN Convention on the Rights of the Child because the regulations did not allow for discretion in the appellant's case.

The Ombudsman concluded that a natural interpretation of section 7-3, fourth paragraph, final sentence of the Sentencing Regulation did not provide the discretion necessary when deciding applications for sentencing of certain categories of convicted persons. The Ombudsman shared the view put forward by the central administration of the Norwegian Correctional Service (KSF) in its reply to

the Ombudsman, namely that the provision must be interpreted less restrictively than its wording if it is to comply with the requirements of legislation of a higher legal order. In the opinion of the Ombudsman there was a need for clarification in line with KSF's submission, but this should most appropriately be done by changing the regulation and not just through revision of the guidelines such as KSF had initiated. No grounds were found for levying objections to the rejection of the complainant's application for a sentence with electronic monitoring.

The Ombudsman's visit to Ila Prison and Detention Institution in December 2010 – detention of persons with custodial sentences, mental illness, and isolation

23 November 2012 (Case 2010/2930)

An important issue during the Ombudsman's visit to Ila Prison and Detention Institution on 21 December 2010 was the situation of mentally ill and poorly-functioning inmates. The Ombudsman wanted more information about the use of isolation for this group. Furthermore, the Ombudsman also wanted a report on an inmate with a custodial sentence who was held in detention after the expiry of the custodial sentence period pending a binding judgment. The inmate lost his access to short-term leave for treatment during this time. Statements were obtained from the Norwegian Correctional Service's northeast region and later from the Norwegian Director of Public Prosecutions.

The Ombudsman stated that there was concern that it may be difficult to transfer seriously mentally ill prisoners to 24-hour psychiatric care centres. However, it was not considered proper for the Ombudsman to investigate this further. Irrespective of this, the prison governor and the health service must take action if a continued stay in the facility is inadvisable because of extensive isolation or other conditions. The Norwegian Public Prosecution Authority's role in the timing of cases concerning parole and extension of the custodial period were illuminated in a letter from the Oslo Public Prosecutor's Office and the Norwegian Director of Public Prosecutions. With regard to inmates receiving leave from custody, the Ombudsman stated that the right to such leave should be clarified.

The central administrative body of the Norwegian Correctional Service was informed of the Ombudsman 's view of this and the investigation as a whole.

Agri culture, forestry and reindeer husbandry

Branding reindeer - the condition of «public interest» in section 75, first sentence, of the Reindeer Husbandry Act

5 July 2012 (Case 2011/575)

Reindeer owner A complained to the Reindeer Husbandry Board that the district board of his reindeer grazing district performed an unlawful practice in connection with the branding of reindeer. The Reindeer Husbandry Board's reply stated that it did not handle

«individual matters concerning internal private circumstances within a reindeer grazing district». A submitted a complaint regarding the matter to the Ombudsman. The Ombudsman concluded that there was a public interest in bringing any unlawful situation to an

end; see section 75, first sentence, of the Reindeer Husbandry Act. The reindeer husbandry authorities were therefore asked to make an assessment of whether the district's branding practices were consistent with the regulations in the Reindeer Husbandry Act.

The reindeer husbandry authorities have initiated an investigation of branding practices in the district concerned.

Business and industry, licences, permits and concessions

Withdrawal of driving license

14 December 2012 (Case 2012/1748)

In a case concerning withdrawal of authorisation to transport passengers for a fee, there was a question whether this should have been decided by the courts or whether it could be done administratively by the police. Questions regarding the suitability assessment and the duration of the license withdrawal were also investigated.

The Ombudsman concluded that it was permissible for the driving license to be withdrawn administratively. He also made some general related comments, such as asking that the National Police Directorate be made aware of his conclusion. The Ombudsman made no specific comments about the suitability assessment that was performed or the issue of the duration of license withdrawal.

Freedom of information and disclosure

Case concerning disclosure of an investigation into the working environment

20 February 2012 (Case 2011/2826)

A municipal report complained about a decision by the County Governor of Oslo and Akershus which confirmed Bærum municipality's refusal to grant access to documents regarding an investigation into the working environment in the municipality. The refusal was based on section 14, first paragraph, of the Freedom of Information Act. The complainant believed that the external company which had performed the investigation into the working environment should not be regarded as part of the municipality, but rather as a contractor. The municipal report also complained that the case was not clarified sufficiently, as the County Governor only had access to a fraction of the documents and the public disclosure assessment was inadequate.

Following an assessment of the circumstances in the case, the Ombudsman

concluded that there was no basis for criticising the County Governor's assessment that the relevant documents were internal. The Ombudsman criticised the County Governor's public disclosure assessment, which was linked to just one single report, since the assessment could be very different for the different units within the municipality. The public disclosure assessment was

therefore not sufficient to fulfil either the investigation obligation (see the principle in section 17 of the Public Adminis-

tration Act) or the requirement for a specific and independent assessment (see section 29 of the Freedom of Information Act). The County Governor was asked to perform another public disclosure assessment which fulfilled these requirements.

With the exception of a few reports, the County Governor performed an entirely new public disclosure assessment of the investigation into the working environment. On the assumption that the County Governor had also been sent the remaining reports, the

Ombudsman did not find that any further action was required, as the new assessment showed that the County Governor had undertaken an independent and specific evaluation of the documents that it had been sent.

Case-processing time in connection with a request for access to hospital application lists

1 March 2012 (Case 2012/157)

A complained about X hospital's failure to draw up and submit application lists.

The Ombudsman concluded that the hospital's explanation for the total amount of time spent handling the request, which was nearly six weeks, could not be justified. The Ombudsman noted that the calculations of time limits in accordance with the Freedom of Information Act concerned «work days» and that therefore only the public holidays during the Christmas period were relevant for the calculation in this case. Beyond public holidays, public administrative bodies are normally required to prioritise their tasks in a prudent manner.

The Ombudsman also stated that in accordance with the Freedom of Information Act and in relation to the progress of case-processing, it is neither relevant to consider who has requested access to information nor the way in which the information may be subsequently used. Therefore, neither A's previous actions nor the hospital's concern regarding how A would be able to use the information, were regarded as factors that the hospital was entitled to consider. It is solely the considerations of the Freedom of Information Act which a body is entitled to consider when handling a request for access to information under the terms of this Act.

Appeal against the rejection of a request for access to information - the obligation of the lower body to forward the appeal to the appellate body

27 April 2012 (Case 2011/2408)

A prison inmate complained that the prison had dismissed his appeal against the rejection of a request for access to information, rather than passing it on to the superior body for handling. Although the prison had allowed the complainant to read through the desired document, he

requested a copy of the document and for his appeal against the rejection to be handled by the regional authority.

The Ombudsman stated that the lower body is obliged to forward the case to the appellate body (see section 33, fourth paragraph, first sentence, of the Public Administration Act) when the rejection of a request for access to information is appealed and the subordinate body upholds the rejection. The prison's dismissal of the appeal against the rejection of the request for access to information was therefore in violation of the Act. Release of the document for reading did not fully

comply with the inmate's right of access to information, which meant that he still had a legal interest in having his appeal against the refusal to disclose heard. Notwithstanding this, the complainant had the right for his appeal against the rejection to be heard; see section 28, first paragraph, and section 2, third paragraph, of the Public Administration Act. The Ombudsman also considered that it was a clear breach of the general requirement for good administrative practice that the prison had waited three months before it gave the complainant written feedback about his appeal against the rejection.

Case concerning access to health information - the appellate body's right to have documents sent over by the subordinate body

29 June 2012 (Case 2010/2557)

The Norwegian Institute of Public Health rejected access to a number of documents relating to the side effects of vaccination against swine flu. The rejection was appealed to the Ministry of Health and Care Services which upheld the refusal.

A stated to the Ombudsman that it was only the confidential information that should be exempt, and that access should have been given to the other parts of the documents.

In connection with the Ombudsman's handling of the case, it emerged that the Ministry handling the appeal had not received all the documents to which the access request referred. This was based on the fact that, in accordance with the Personal Health Data Filing System Act, documents containing health information were not permitted to be handed over to the Ministry. The Ombudsman could not see any basis for such an interpretation of the regulations, and therefore asked the Ministry to reconsider handing over the relevant case documents, so that A's request for access to the documents could be handled in two instances.

The Ministry complied with the Ombudsman and was sent the documents. The case was then reconsidered, but the Ministry came to the same conclusion as in its original decision.

Access to documents concerning the Norwegian State Calendar

20 August 2012 (Case 2012/435)

These cases concerned the Ministry of Government Administration, Reform and Church Affairs' rejection of a request for access to documents related to the closure of the Norwegian State Calendar.

The Ombudsman asked the Ministry to reconsider the question of access to information as it was difficult to see that the Ministry had made the assessment and balanced interests, as required by section 11 of the Freedom of Information Act.

The Ministry reconsidered the freedom of information issue and gave the complainant access to document 13 in the cases.

Access to information in Oslo city council under municipal parliamentarianism

7 September 2012 (Case 2011/3431)

The case concerned the question of public access to documents submitted to the city council and agendas for council meetings under municipal parliamentarianism.

The practice for the city council in the municipality of Oslo was that case pre-

sentations with attachments and agendas were exempt from public disclosure (i) until the city council convention had adopted a position in cases where the city council was delegated as the decision making authority, or (ii) until the city council meeting had adopted a recommendation in cases where the city council made recommendations to the city board. The Ombudsman concluded that this practice did not comply with the provisions of the Freedom of Information Act, and asked to be informed of the municipality's further handling and follow-up of this opinion.

Access to information in Bergen city council under municipal parliamentarianism

7 September 2012 (Case 2011/3432)

The case concerned the question of public access to documents submitted to the city council and agendas for council meetings under municipal parliamentarianism.

The practice for the city council in the municipality of Bergen was that case presentations with attachments and agendas were exempt from public disclosure (i) until the city council convention had adopted a position in cases where the city council was delegated as the decision making authority, or (ii) until the city council meeting had adopted a recommendation in cases where the city council made recommendations to the city board. The Ombudsman concluded that this practice did not comply with the provisions of the Freedom of Information Act, and asked to be informed of the municipality's further handling and follow-up of this opinion.

Planning and building

Exemption from zoning plan

21 December 2011 (Case 2011/268)

The case concerned exemption from current zoning plans. The municipality rejected the application, but the County Governor overturned the decision and granted an exemption.

The Ombudsman stated that a prerequisite for granting an exemption under section 7 of the 1985 Planning and Building Act is that there must be specific, clear reasons why an exemption should be granted. It is not sufficient that the County Governor believes that the objectives behind the planning regulation are not compromised.

The County Governor's legal opinion left «reasonable doubt» about matters of importance to the case (see section 10 of the Ombudsman Act), and the County Governor was asked to reconsider the case.

After reconsidering the case, the County Governor found no reason to reverse his decision. After a complete re-evaluation, the Ombudsman found no reason to proceed with the case, but stressed that this did not mean that he supported the County Governor's legal understanding of the matter.

Municipal zoning plan for Frogn 2005 – 2017: reconsideration of planning decisions

6 January 2012 (Case 2011/799, previously Case 2008/434)

The municipal zoning plan for Frogn 2005 - 2017 was approved without documents relating to the environmental im-

pact assessment being presented to the public for scrutiny. The Ombudsman asked the municipality to reconsider the case. The documents were then presented to the public for scrutiny, after which the municipal board passed municipal planning resolution of 20 September 2010 on the basis of the Planning and Building Act No. 77 of 14 June 1985. A complained again and stated that the new Planning and Building Act No. 71 of 27 June 2008 with its associated regulation for an environmental impact assessment should have been the basis for the new municipal planning decision.

The Ombudsman felt that the Planning and Building Act of 2008 should have been used, and recommended that the municipality review its handling of the case accordingly.

Legal basis for an order concerning an amendment of door width

6 February 2012 (Case 2011/591)

The County Governor of Rogaland confirmed Stavanger municipality's order for an amendment of door width in project Y. At least one door to the room for permanent habitation, and at least one door to the bathroom/toilet, was ordered to have a width of 0.9 meters. The County Governor believed that the legal basis for the order was Regulation No. 33 of 22 January 1997 concerning requirements for Building Work and Products for Building Work, hereinafter referred to as TEK 1997.

The Ombudsman concluded that TEK 1997 did not provide legal basis for the order, and requested the County Governor to reconsider the case. It was emphasised that neither the wording of TEK 1997 nor the guidance to the regulation supported a specific requirement for a door width of 0.9 m. The Ombudsman stated that an amendment order can be burdensome and costly for project owners, and that the legal basis in such cases should be clearer than in the present situation.

The County Governor overturned its decision and rescinded the municipality's order for amendment of the doors.

Rejection of application with reference to circumstances of civil law

17 February 2012 (Case 2011/237)

A applied to extend a floating dock on his property, but a neighbour raised objections to this and stated that it was unclear where the boundary between their properties was. The County Governor of Hordaland rejected the application with reference to the uncertainties raised. In the complaint to this office, it was alleged that the County Governor had no basis for rejecting the application.

The Ombudsman concluded that the County Governor did not have legal grounds for rejecting the application. It is the obligation of the building authorities to check whether a measure is inconsistent with the provisions laid down in or pursuant to the Planning and Building Act; see section 95 No. 2 of the 1985 Planning and Building Act . This includes the requirement for a minimum distance to neighbours of four meters; see section 95 No. 2 of the 1985 Planning and Building Act. Since the Planning and Building Act imposes such a requirement, which the building authorities are required to monitor, the building authorities must assess whether or not the requirement is met.

In response to the Ombudsman's opinion, the County Governor reviewed the case and concluded that the Ombuds-

man's legal interpretation should apply. The County Governor overturned its decision and the case was sent back to the municipality for reconsideration.

Exemption in accordance with section 19-2 of the 2008 PBL from the distance requirement in section 70 No. 2 of the 1985 PBL

1 March 2012 (Case 2011/1023)

The case concerned an exemption from the distance rule in section 70 No. 2 of the 1985 Planning and Building Act (PBL) for a veranda built 2.1 metres from the boundary of the property. The neighbour claimed that the veranda led to a lack of privacy and a feeling of being overlooked, and that the conditions for granting an exemption were not met.

The Ombudsman stated that the ban on building closer than four meters from the boundary of a property means that the legislature has attempted to balance the interests of property owners and neighbours. Restraint must therefore be exercised when granting an exemption. The fact that the inconveniences which the neighbour will experience are modest is not sufficient argument for granting an exemption in accordance with section 19-2 of the 2008 PBL. The developer must be able to demonstrate relevant benefits of the exemption. Any such benefit must be adequately specified and clearly indicated, and it must lie within the framework set by the Planning and Building Act. On this basis, the Ombudsman concluded that there were grounds for reasonable doubt surrounding the exemption assessment which had been made. The County Governor was therefore asked to reconsider the case.

The County Governor's decision was upheld after reconsideration of the case, although on new grounds. The Ombudsman found no grounds to proceed with the case.

Rejection of a retrospective application concerning measures on someone else's land– circumstances of civil law

13 March 2012 (Case 2011/1482)

Oslo municipality handled a retrospective application for substantial repair of a garage, situated on someone else's property. The landowners and developers disagreed about rights under civil law. The landowners complained to the County Governor of Oslo and Akershus, who concluded that the developer's application should be dismissed. The developer maintained that his rights under civil law were sufficiently clear, that the County Governor had no legal basis to dismiss the application, and that regardless of this the outcome was unreasonable.

The Ombudsman found no reason to criticise the outcome that the County Governor had reached. The County Governor had made a limited but adequate investigation of the conditions in civil law. Furthermore, his starting point had been the guidelines that stated that unless the developer has demonstrated that it is probable that he has the right under civil law to undertake a measure on someone else's land, the application should be rejected. The County Governor had also considered whether there were circumstances which suggested that there should be exceptions to this starting point. Rejection of the application was thus in line with the state of the law under the 1985 Planning and Building Act.

Preliminary assessment of a zoning plan in connection with an appeal of a general permit for the erection of boat houses

13 March 2012 (Case 2010/2823)

A applied for a general permit for the erection of five boat houses. The application was approved by the municipality. The County Governor made a preliminary assessment of the zoning plan, which it had been alleged was applicable, and concluded that the plan was invalid because of significant changes to it in 1992, which had been made without adhering to the correct procedures. Therefore it was not possible to rely on this zoning plan. The County Governor refused the planning application on the grounds that the measure was in violation of the applicable zoning plan. A complained to the Ombudsman, alleging, among other things that the planning decision could only be set aside in accordance with the rules on reversal in section 35 of the Public Administration Act.

With regard to this case, the Ombudsman has previously stated that it is doubtful whether the changes to the zoning plan could be regarded as significant. The distinction between what is regarded as significant or insignificant changes to a zoning plan will depend on discretion and local political considerations. In a preliminary assessment the County Governor should have good evidence before concluding that the municipality's own assessment of the question is incorrect. The Ombudsman found that the zoning change in 1992 could possibly only be regarded as a contestable decision, and that the applicant must be able to rely on the plan until it is reissued. The County Governor was therefore asked to reconsider the case.

In reconsidering the case, the County Governor relied on the Ombudsman's legal opinion, according to which the zoning change could not be disregarded as a nullity on the basis of the County Governor's preliminary assessment as to whether or not it was significant. However, the County Governor revoked the municipality's decision on different grounds.

Transitional provisions for planning cases in the new Planning and Building Act

26 March 2012 (Case 2011/2155)

The case concerned crossover between the handling of zoning plans in the 1985 and the 2008 versions of the Planning and Building Act. Flora municipality adopted the zoning plan on the basis of the 1985 Planning and Building Act in accordance with the proposal. The County Governor of Sogn og Fjordane had raised objections. The case was therefore submitted to the Ministry of the Environment for a final decision. The Ministry rejected the proposed plan and partly justified this decision with reference to provisions in the 2008 Planning and Building Act. It was argued in the complaint to the Ombudsman that the Ministry made a mistake in handling the case in accordance with the 2008 Planning and Building Act.

The Ombudsman concluded that the Ministry of the Environment was not legally entitled to use the 2008 Planning and Building Act when considering the proposal as the plan was presented to the public for scrutiny before the Act entered into force. He therefore asked the Ministry to reconsider the case.

The Ministry found that there were no grounds on which to reconsider the case. The Ombudsman upheld the opinion.

Zoning plan for Lillehammer town centre – question whether the county's right of objection was restricted

18 April 2013 (Case 2011/595)

Based on the fact that certain buildings were not designated as being worthy of preservation in a proposed zoning plan, the county filed an objection to the plan. The Ministry of the Environment concluded that the county's right of objection was not restricted. In the complainant's view, the objection could have been made in connection with the preceding municipal sector plan, which included cultural heritage issues.

The Ombudsman found no reason to raise legal objections to the Ministry of the Environment's conclusion.

Requirement of reasoning in decision concerning exemption in accordance with section 19-2 of the Planning and Building Act

15 May 2012 (Case 2011/2812)

The case concerned exemption from the purposes of land use in the municipal master plan. Volda municipality granted exemption from the LNF (agricultural, nature and recreational) purposes to allow for an extension of a holiday home. The decision was affirmed by the County Governor of Møre og Romsdal. The neighbours complained to the Ombudsman in relation to the exemption decision, referring, inter alia, to the fact that the holiday home was situated in the middle of an operating agricultural area.

The Ombudsman stated that a fundamental requirement for a reasoned exemption decision in accordance with section 19-2 of the Planning and Building Act, is that it shall be clear that each of the cumulative criteria in the Act has been assessed and which conclusions have been drawn from this assessment. It was not clear from the County Governor's decision whether both criteria had been assessed and found to be fulfilled. Therefore, the Ombudsman reached the conclusion that the decision pronounced by the County Governor was invalid.

The County Governor reconsidered the case. When reconsidering the case, the County Governor assessed both the cumulative criteria in the exemption provision and affirmed the decision by the municipality. The County Governor's reconsideration of the case did not give rise to any further comments from the Ombudsman.

Application for exemption after entry into force of the 2008 Planning and Building Act

6 June 2012 (Case 2011/2413)

The County Governor of Telemark revoked a decision by Fyresdal municipality where exemption was granted to split properties for house building and referred the case back for reconsideration. In connection with the reconsideration of the case, the land owner amended his application for exemption, including the size and boundaries of the new properties to which the application related. The County Governor processed the application for exemption in accordance with the 1985 Planning and Building Act, regardless of the fact that amendments in the application for exemption had been submitted after a new version of the Plan-

ning and Building Act had entered into force.

After a specific assessment, the Ombudsman concluded that the amendments of the application were of such a nature that it would be natural to view it as a new application. The exemption application should therefore be assessed in accordance with the 2008 Planning and Building Act. The County Governor was asked to reconsider the matter on the basis of the correct legislation. The Ombudsman also expressed reservations with regard to the arguments relied on by the County Governor as grounds for its assessment in accordance with the Act from 1985.

The County Governor reconsidered the case after the Ombudsman had provided its observations. The application for exemption was assessed in accordance with the 2008 Planning and Building Act in line with the observations by the Ombudsman

. After an assessment of the circumstances in the case, the County Governor concluded that the criteria for an exemption had been met.

Appeal over a zoning plan decision - Leitet in Fusa municipality

12 June 2012 (Case 2011/666)

Question whether the case had been clarified sufficiently when the County Governor adopted the municipality's zoning plan.

The Ombudsman concluded that the case should have been better clarified.

The County Governor's granting of an exemption without an application for exemption and without municipal proceedings

19 July 2012 (Case 2011/2256)

The case concerned exemption from the provision in the Planning and Building Act regarding the minimum distance to the neighbour for a terrace, garden wall and wind break which had been erected less than two meters from the boundary of the neighbouring property. The County Governor of Rogaland had granted an exemption without an application having been submitted and without the question being considered by the municipality. The neighbour complained to the Ombudsman.

The Ombudsman found that the County Governor had relied on an incorrect interpretation of his right to grant exemption. Moreover, the exemption assessment itself was flawed. Against this background, the County Governor was asked to revoke his decision and refer the case back to the municipality for renewed handling.

After reconsidering the case, the County Governor stated that his previous decision had been invalid in accordance with section 35, first paragraph, sub-section c, of the Public Administration Act. The municipality's decision was revoked and the matter referred back for further handling.

Zoning plan for Lian and Kystadmarka - question whether the zoning plan was justified on objective grounds, and also about unjustified discrimination, the relationship with the European Convention on Human Rights, and insufficient reasoning

20 December 2012 (Case 2011/40)

A zoning plan meant inter alia that a number of cottages in a «tumbledown»state (in the words of the municipality) had been established as a recreational area without a right for the owners to claim redemption.

The Ombudsman felt it was doubtful whether the zoning plan was justified on objective grounds and concluded that the zoning plan could not be upheld in relation to the properties in question. The decision by the County Governor also appeared flawed and insufficiently reasoned. The County Governor was asked to reconsider the case.

Social services

Right to appeal in a case concerning TT-card (transport services)

19 December 2012 (Case 2012/1871)

The appellant was approved as a TT-kort user by Oslo municipality. He was allocated a red TT-card for ordinary TT-card users, but alleged that he was entitled to a white TT-card for special needs users. The application was not successful and the complainant was denied the right to appeal, since the municipality believed that this was an organisational decision and not an individual decision.

The Ombudsman found that not only the approval as TT-card user, but also the allocation of different cards, constituted a form of right, for which there must be a right to appeal. The Commissioners were informed of the errors in this regard and the errors in the municipality's TT-card regulations. The Ministry of Transport and Communications was informed by a separate letter.

Tax, tax assessment, customs, charges and property tax

The burden of proof when imposing a 50% surcharge

24 January 2012 (Case 2011/871)

The case concerned the burden of proof when imposing a 50% surcharge. The Tax Office had justified imposing a high-rate surcharge by stating that it was «clearly probable» that the taxable entity had acted intentionally when it requested a refund of an amount to which it was not entitled.

On the basis of new provisions in the Tax Assessment Act concerning the imposition of stricter supplementary taxation, general rules of evidence, and the presumption of innocence in article 6 (2) of the European Convention on Human Rights, the Ombudsman concluded that the burden of proof in criminal cases, i.e. «proven beyond any reasonable doubt», must apply when tax authorities rely on such a widely incriminating fact as in this case. The Tax Office was therefore asked to reconsider the case.

Supplement to import value-added tax (VAT)

8 February 2012 (Case 2011/1145)

The case concerned the imposition by the Norwegian Directorate of Customs and Excise of a 5% supplement to the import VAT for failing to pay customs duty in a timely manner, and in this regard whether the supplement constituted a penalty in accordance with section 6 of the European Convention on Human Rights, the burden of proof, and the interpretation of the negligence criteria in section 16-10 of the Customs Act.

On the basis of developments in case-law and administrative practice, the Ombudsman concluded that imposition of a 5% supplement to the import VAT constituted a fine and that the burden of proof must be clear probability. The Ombudsman further found that it was «clearly probable» that company A had breached section 16-10 of the Customs Act in a negligent manner and that the Norwegian Directorate of Customs and Excise could not be criticised for choosing to impose the supplement on A, rather than the transporter.

Case concerning property taxation of agricultural land where the land owner had moved away

14 March 2012 (Case 2011/556)

The case concerned a municipality's evaluation of agricultural land for property taxation purposes. The land was valued at NOK 3,950,000. The land owner had moved away from the property because the house on the land was not habitable. The municipality had not provided any specific grounds for the taxation, other than that it covered the main building and two jetties with several boat houses.

The Ombudsman had many objections to the administrative procedure and decisions in the municipality. There was cause for doubt as to whether the property had been taxed on the basis of the special rules applying to property taxation of agricultural land. Furthermore, the municipality did not seem to have carried out a separate evaluation of the value of the house. Five of the boat houses and one jetty belonged to some holiday properties that had previously been separated from the agricultural land. The property tax relative to these buildings should have been issued to the owners. The owners had a perpetual right to use the jetty and boat houses on the agricultural property. It could not be correct that the value of the land pertaining to the jetty and boat houses would lead to an increased property tax for the agricultural property. In the event the land value should be taxed, it should probably be taxed in conjunction with the buildings. The Ombudsman also commented on the municipality's handling of claims of unjustified discrimination. The municipality was asked to re-tax the property, which it did.

1) Residence for tax purposes in 2008 – question whether to use the transitional provisions to the 4-year rule.
2) Question whether the dismissal of an application for amendment of a tax assessment for 2003 was clearly unreasonable

23 April 2012 (Case 2011/2067)

The case primarily concern ed the question whether the tax payer was entitled to have his appeal of the tax assessment for 2008 considered in accordance with the transitional provisions issued when the former 4-year rule in section 2-1, fourth paragraph of the Tax Act was repealed with effect from the income year 2004.

Alternatively, the question was raised whether Tax East's failure to reconsider the 2003 Tax Assessment relating to the tax payer was clearly unreasonable.

After assessing all the circumstances of the case, the Ombudsman found that Tax East, when dismissing the tax payers request to have his tax assessment for 2003 reconsidered, had relied significantly on the time element. In other respects, the Ombudsman did not find legal grounds to criticise Tax East's view that a question regarding the tax payer's emigration in 2003 could not be relevant to the tax assessment for 2008, but would have to be assessed in connection with the tax assessment for 2003. This presumed that the tax assessment for 2003 would be reconsidered.

After reconsidering the appeal, Tax East decided to review the tax payer's tax assessment for 2003. The tax payer's tax assessments for the years 2003 to 2010 (inclusive) were amended.

Case concerning special allowance for major medical expenses on the grounds of chronic fatigue syndrome / myalgic encephalomyelitis (CFS / ME)

24 April 2012 (Case 2011/3293)

The Norwegian Directorate of Health had rejected A's request for a special allowance for major medical expenses incurred in connection with the private treatment of ME for his wife and three children who had all been diagnosed with the disease.

The Ombudsman found that the Norwegian Directorate of Health had interpreted section 6-83 second paragraph of the Tax Act too restrictively with regard to the particular requirements which in each case must apply to the public health service provision to fulfil the criteria of being an «equivalent offer» that precludes the taxpayer from obtaining a special allowance to cover the expenses of private medical treatment.

Double taxation treaty with Brazil - question of time limit for presenting a case to the competent authority

27 August 2012 (Case 2011/2114)

In the double tax ation treaty with Brazil, a tax payer's right to present his case to the competent authority is regulated in article 26(1). According to the wording of the provision, no time limit applies to this right. The Tax Directorate rejected a request to take steps to conclude a mutual agreement with a competent authority in Brazil with reference to the 10-year time limit in section 9-6 of the Tax Assessment Act.

After a specific analysis of all the aspects of interpretation associated with the double taxation treaty with Brazil, the Ombudsman found that the wording and principle of article 26(1) must be supplemented by the 10-year time limit in section 9-6 of the Tax Ass essment Act.

Case concerning compensation for procedural costs in accordance with section 9-11 of the Tax Assessment Act

11 September 2012 (Case 2011/2238)

Tax South carried out a tax audit of A, a small, recently established company. It found, among other things, that (the company) A had paid a food allowance to the company's only employee without fulfilling the formal eligibility criteria in the allowance regulations. As a consequence A had to pay increased employer's charges, even though there was no doubt that the food allowance otherwise was

documented and lawful. With the help of a solicitor, the Tax Appeals Board found in favour of A, and stated that the eligibility provisions in question must be deemed as fulfilled, thereby removing the recalculation of tax. A's claim for compensation for legal costs was rejected.

The Ombudsman found that A had had good reason to seek the advice of a solicitor and that, when all circumstances were taken into account, it would be unreasonable for tax payers to have to pay the legal costs themselves.

The burden of proof when imposing a 40% VAT surcharge and a discretionary calculation of the tax base for import VAT with the starting point in the sum of sales in Norway

23 November 2012 (Case 2011/2766)

The case concerned the burden of proof and principles for calculating the tax base in connection with the importation of four horses for resale in Norway.

During the course of the Ombudsman's handling of the case, the Norwegian customs and excise authorities changed their guidelines in line with the Ombudsman's opinion of 24 January 2012 in Case 2011/871, so that the burden of proof relative to criminal sanctions should also apply to the imposition of administrative sanctions in the customs and tax area for surcharges in excess of 30%. The Directorate stated that it would reconsider the VAT surcharge in this case based on the changed practice.

The customs authority calculated the VAT base with reference to the provision on alternative customs values in the current section 8 of the regulations on customs values, which is now part of section 7-15 of the Customs Act. The provision for an alternative customs value shall be applied when other methods for calculating a value in sections 2-7 of the regulations on customs values are not directly applicable.

In this case, the customs authorities established an alternative customs value in accordance with section 8 on the basis of the sum of sales in Norway, without further considering the principles for determining customs values in section 6 of the regulations, which contained a separate method for calculating the customs value on the basis of the sum of sales in Norway. In the Ombudsman's view, the customs authorities should have considered the calculation principles in section 6 of the regulations on customs values, even though they are not directly applicable when determining values in accordance with section 8.

Schools

School transport and after-school care programme

23 March 2012 (Case 2011/2536)

The case concerned a pupil's right to transport to and from school on days when after-school care was not used. The pupil lived at a distance away from the school that meant he was entitled to free school transport to and from school, but not to after-school care. The parents' application for their son to use the school bus free of cost on days when he did not need to use after-school care was rejected because the parents did not specify fixed days on which the pupil would use the school bus.

The Ombudsman found that the County Governor of Oslo and Akershus, by requiring that the school bus should be used on fixed dates, had based his interpretation of the provisions in the Education Act regarding right to free school transport on incorrect grounds. The County Governor was asked to reconsider the case. The Ombudsman also found reason to inform the Ministry of Education and Research about its interpretation of the provisions on school transport and asked the Ministry to consider amending the regulations.

After reconsidering the case, the County Governor revoked the decision and asked the bus operator, Ruter, to reach a new decision that would guarantee the pupil's right to transport.

Appointments, public employment and operating agreements

Prosecution due to alleged breach of confidentiality and employment duties

12 January 2012 (Case 2011/545)

Employees of a municipality's child and family agency reacted to the closure of a child protection institution by sending a letter to the municipality's Committee for Health and Social Affairs to highlight a censurable situation. The municipality took the view that the complainants' collection of information and sending of the letter constituted a breach of confidentiality obligations to which they were bound in accordance with their service agreement and the law respectively. The complainants were therefore prosecuted on the basis of their service obligations.

The Ombudsman found that the response in the matter was such that it required strict observation of clarity and security in relation to both the factual circumstances and the legal starting points. In the light of this, the grounds for the prosecution left doubts both as to the underlying principles on which the restrictions were based and of what actual circumstances could be of importance. The municipality was therefore asked to reconsider the case.

The Board of Appeal reconsidered the case, but did not find cause to amend the decision.

Reprimand for breach of working time provisions

7 June 2012 (Case 2011/3300)

The employee of a municipality complained that she had received a reprimand for breaching the working time regulations applicable in the municipality. The issue that was examined further was whether the employee had breached the regulations relating to notice of leave of absence in accordance with section 12-3, second paragraph, of the Working Environment Act in conjunction with section 12-7, since she had not explained to the municipality that she might have to take leave of absence at short notice, because her family wished to take on a foster child.

The Ombudsman found that the employee did not have any legal duty to inform the municipality of her family's plans before such time as the family formally confirmed to the child protection service that it was prepared to receive a foster child. Therefore, the criteria for issuing a reprimand had not been observed and the municipality was criticised for having issued a reprimand on such grounds. The municipality was asked to consider re-

tracting the reprimand, and to keep the Ombudsman informed of its actions in the matter.

The municipality reconsidered the matter, but did not retract the reprimand.

The Ombudsman asked that his observations should be filed with the employee's personal file, so that it was clear that the Ombudsman did not share the municipality's view that the reprimand was justified.

Written warning to employee - question whether distributing an e-mail was grounds for a written warning

24 August 2012 (Case 2011/2740)

The head of an agency was given a written warning after distributing an e-mail message to all participants at an internal meeting held the day before. The employer believed that the contents were grounds for a written warning.

The Ombudsman found that the e-mail message in question was within the scope of what the complainant had a right to comment on in the given circumstances and that the employer's response to send a written warning had not been justified.

Support person - employee or contractor?

24 August 2012 (Case 2011/3397)

The case concerned the question whether a support person should be considered an employee or a contractor.

After a specific assessment the Ombudsman found that the support person in the relevant case must be considered an employee. For this reason, the municipality was asked to re-evaluate the terms of employment in the light of the Ombudsman's comments, and to correct any errors that had arisen as a consequence of the support person being treated as a contractor.

The municipality thereafter re-evaluated A's employment on the basis that she was considered an employee. The errors that had been committed as a consequence of her being treated as a contractor were rectified.

Temporary reassignment of a civil servant

24 August 2012 (Case 2012/306)

The case concerned the question whether it was in the employer's man agerial power to temporarily reassign a civil servant from one workplace to another.

The Ombudsman concluded that the applicable employment agreement limited the managerial powers. By reassigning the civil servant the employer had exceeded its managerial powers and violated the provisions of the employment agreement. Against this background, the employer was asked to consider measures to remedy the injustice that the appellant had suffered due to the breach of the employment agreement.

The Ombudsman found cause to criticise the fact that written advance notice had not been given in the case.

The employer took the Ombudsman's legal opinion under advisement and apologised for the procedural errors committed. The employer also stated that the appellant's costs for legal assistance in connection with the case would be covered and that the remaining claim for compen-

sation had been referred to the regional instance for further handling.

Administrative proceedings to elect a head teacher in connection with the merger of two schools

26 September 2012 (Case 2011/605)

Two schools were merged and the head teachers were competing over the position as head teacher for the new school. A was not awarded the position and appealed on the grounds of having been overlooked, that the seniority principle had been violated, and that the election was based on incorrect factual information. The question was also raised whether the case was handled in compliance with the rules on delegation applicable to the municipality.

The Ombudsman found that there were doubts concerning parts of the municipality's decision. The doubts concerned the aspects to which the municipality had attached weight, and how the seniority principle had been weighed against other principles.

Written correction - retaliation in connection with notification of censurable conditions

23 November 2012 (Case 2012/279)

The case concerned the question whether an employee had made a notification regarding censurable conditions in the workplace and whether a subsequent written correction constituted retaliation in connection with such notification.

The Ombudsman concluded that the correction constituted an unlawful retaliation in connection with the notification of censurable conditions. The municipality was asked to reconsider the case, including the right to financial compensation.

Appointment of two internal teachers - administrative proceedings

10 December 2012 (Case 2012/1240)

A municipality advertised two temporary teaching positions. Only two internal applicants at the school were called to interview. The municipality admitted to the Ombudsman that the application process could have been handled better. The Ombudsman stated that the administrative proceeding gave cause for criticism.

Appointment of a church warden - requirements on the clarification of the case and evaluation of qualification

17 December 2012 (Case 2012/1827)

There were two applicants for one position. The person who was appointed was well-known by the appointment authority. The appellant, who was not appointed, seemed to have more relevant education and experience. When assessing her application, information from one of the referees she had provided regarding her (lack of) «church activities» was given significant weight. The referee in question and the applicant were members of the same congregation. The appellant stated that she had not had the opportunity to respond to the information.

The Ombudsman found that there were reasonable grounds to doubt that the case had been clarified sufficiently by the appointing authority. Moreover, the Ombudsman found that there were doubts relating to the evaluation of the appellant's qualifications, as the appointing authority seemed to have put disproportionate weight on experience and previous

knowledge of the applicant who was appointed.

Welfare and Pension

Case concerning the significance of claims for disability pension and appeals against rejected claims for disability pension on the right to work assessment allowances

26 June 2012 (Case 2012/941)

On a general basis, and on its own initiative, the Ombudsman's office asked the Labour and Welfare Directorate what the effects would be on the right to work assessment allowance if the users claimed disability pension or appealed a decision to reject an application for disability pension.

The Ombudsman reached a different conclusion than the Labour and Welfare Directorate stating, among other things, that there was reason to doubt whether the Norwegian Labour and Welfare Administration's (Nav's) circulars made it sufficiently clear that Nav had to assess independently whether applicants for disability pension were entitled to work assessment allowance in accordance with section 11-13, first paragraph, of the National Insurance Act.

The Labour and Welfare Directorate thereafter aimed to include reference in the circular regarding sections 11-13 and 12-6 of the National Insurance Act, and likewise in its interface procedures and training materials.

The Norwegian Labour and Welfare Administration's handling of cases concerning deferred paternity leave - parental allowance

7 September 2012 (Case 2012/1362)

The Labour and Welfare Directorate's follow-up of a letter from the Ministry of Children, Equality and Social Inclusion regarding the handling of cases concerning entitlement to deferred paternity leave, including reconsideration of closed cases, was discussed with the Directorate on general grounds. The Labour and Welfare Directorate gave a presentation of how its views were followed up in practice and the measures initiated to prevent the loss of entitlement to paternity leave.

The Ombudsman took note of the presentation and observed that the Directorate had started using a new and clearer version of the information letter sent to fathers.

Immigration

The practice of the release requirement when applying for Norwegian citizenship

25 June 2012 (Case 2011/490)

The case concerned the immigration authority's rejection of A's application for Norwegian citizenship on the grounds that the requirement of release from a different citizenship was not fulfilled.

The Ombudsman found it unfortunate that the immigration authorities had based its interpretation and application of section 10, first paragraph, last sentence

of the Norwegian Nationality Act on the preparatory works and not on what can be deemed a natural understanding of the Act's wording. Based on support in the preparatory works and case law, the Ombudsman found that the Norwegian Immigration Appeals Board should not be criticised for basing its decision on the fact that section 6-1 of the Norwegian Nationality Act was exhaustive, and that situations not covered by its wording must be assessed in accordance with the exemption rule in section 19 of the Act. However, in order to establish greater congruity between the word ing of the legislation and case law, the Ombudsman found cause to inform the Ministry of Children, Equality and Social Inclusion about the matter. Furthermore, the Ombudsman made comments relating to the possibility of making a factual assessment about an application after expiry of the notice period and the immigration authorities' handling of the case. The Ombudsman found that the case had not been clarified sufficiently for the Immigration Appeals Board and requested the Board to assess what would be the most suitable action towards A.

The Immigration Appeals Board thereafter reopened the case and made a new decision to grant the appellant Norwegian citizenship. The Board also changed its standard template for use in release cases to include new information to the applicants stating that an application for citizenship may be assessed on a factual basis, even where release is obtained after the expiry of the notice period. Moreover, the Ministry of Children, Equality and Social Inclusion informed the Ombudsman that the Ministry was preparing a directive to the Norwegian Directorate of Immigration relating to the interpretation of section 10, first paragraph, in conjunction with section 6-1 No.5 of the Norwegian Nationality Regulation. The Ministry is also preparing a hearing to amend the wording of the mentioned provision.

Norwegian citizenship for a Somalian child - the requirement for clear identity of the child when uncertain about the identity of the father

17 July 2012 (Case 2011/1182)

The case concerned the rejection by the Norwegian Immigration Appeals Board of an application for Norwegian citizenship by a Somalian child born in Norway. The application was rejected because there was deemed to be doubt about the child's identity as a result of uncertainty linked to the identity of the father (derived identity doubt). The mother had obtained Norwegian citizenship. The complainant could not see any valid reason to be denied Norwegian citizenship and stated that he could not be registered in any formal system in Somalia.

The immigration authorities' strict practices surrounding identity was perceived to be due to a fear of abuse through the establishment of dual identities, etc. The Ombudsman felt that it was highly uncertain that granting Norwegian citizenship to the applicant could lead to such abuse of identity. There were grounds for doubt concerning the Immigration Appeals Board assessment and conclusion in the case, which were contrary to strong legal policy considerations. The Board was asked to look into the matter again, even though the rules had recently been changed.

Appendix 1

The Ombudsman ’s office - staff list

As per 31 December 2012 the Ombudsman’s office had the following divisional structure and comprised the following staff. The specialist subject areas for the divisions are set out in Appendix 3.

Division 1:	
Head of Division:	Bjørn Dæhlin
Deputy Head of Division:	Annicken Sogn
Senior Advisor:	Ingvild Lovise Bartels
Senior Advisor:	Jostein Løvoll
Advisor:	Maria Bakke
Advisor:	Martine Refsland Kaspersen
Advisor:	Solveig Moe
Higher Executive Officer:	Harald Krogh Ankerstad
Division 2:	
Head of Division:	Eivind Sveum Brattegard
Deputy Head of Division:	Camilla Wohl Sem
Senior Advisor:	Elisabeth Fougner
Senior Advisor:	Kari Bjella Unneberg
Advisor:	Stine Elde
Advisor:	Harald Søndenå Jacobsen
Advisor:	Lene Stivi
Division 3:	
Head of Division:	Berit Sollie
Deputy Head of Division:	Bente Kristiansen
Senior Advisor:	Eva Grotnæss Barnholdt
Senior Advisor:	Marianne Lie Løwe
Senior Advisor:	Torbjørn Hagerup Nagelhus
Division 4:	
Head of Division:	Lisa Vogt-Lorentzen
Senior Advisor and acting Deputy Head of Division:	Marianne Guettler Monrad
Senior Advisor:	Thea Jåtog
Senior Advisor:	Audun Bendos Rydmark
Senior Advisor:	Ingeborg Sæveraas
Advisor:	Marianne Aasland Gisholt
Advisor:	Mathias Emil Hager
Advisor:	André Klakegg
Higher Executive Officer:	Johan Vorland Wibye

Division 5:

Head of Division:	Annette Dahl
Deputy Head of Division:	Arnhild Haugestad
Senior Advisor:	Therese Stange Fuglesang
Senior Advisor:	Siv Nylenna
Senior Advisor:	May-Britt Mori Seim
Senior Advisor:	Ingeborg Skonnord
Advisor:	Edvard Aspelund

Others:

Head of Division:	Harald Gram
Special Advisor:	Yeung Fong Cheung[1]

Administration:

Head of Administration:	Solveig Antila

Finance, Personnel, General Operations:

Senior Advisor:	Solveig Torgersen

Office and Reception Services:

Senior Executive Officer:	Torill H. Carlsen
Senior Executive Officer:	Nina Olafsen
Senior Executive Officer:	Mette Stenwig
Higher Executive Officer:	Mary Anita Borge

Archives, Internet and Library:

Head of Archives:	Annika Båshus
Advisor:	Liv Jakobsen Føyn
Advisor:	Elisabeth Nordby
Advisor:	Anne-Marie Sviggum
Senior Executive Officer:	Anne Kristin Larsen
Senior Executive Officer:	Kari Partyka

The following members of staff were on leave as per 31 December 2012:

Senior Advisor:	Øystein Nore Nyhus
Senior Advisor:	Heidi Quamme Kittilsen
Senior Advisor:	Johan Nyrerød Spiten
Senior Advisor:	Cathrine Opstad Sunde
Advisor:	Jan Gunnar Aschim
Advisor:	Signe Christophersen
Advisor:	Dagrun Grønvik
Senior Executive Officer:	Tina Hafslund

1. Staff member funded by the Ministry of Foreign Affairs to work for the Ombudsman.

Appendix 2

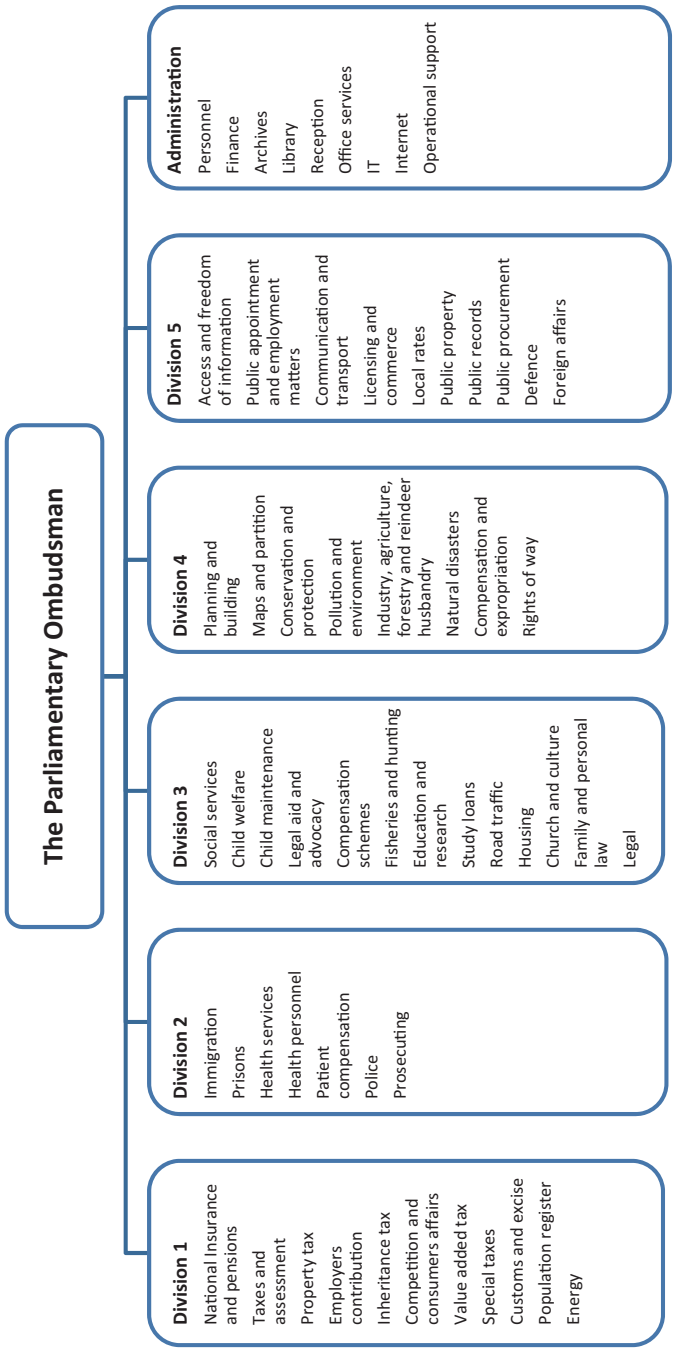
Gender equality summary

		Gender ratio			Salary	
		Men %	**Women %**	**Total**	**Men average monthly salary**	**Women average monthly salary**
Total in workforce	2012	26 %	74 %	100 %	48 858	49 693
	2011	33 %	67 %	100 %	48 540	43 671
Executive management[11]	2012	43 %	57 %	100 %	83 958	81 070
	2011	57 %	43 %	100 %	79 348	73 917
Senior Advisors	2012	15 %	85 %	100 %	46 669	55 700
	2011	21 %	79 %	100 %	42 966	50 755
Advisors	2012	31 %	69 %	100 %	41 730	42 167
	2011	37 %	63 %	100 %	39 796	33 210
Higher Executive Officers	2012	67 %	33 %	100 %	36 475	37 716
	2011	33 %	67 %	100 %	33 700	34 562
Senior Executive Officers	2012		100 %			39 200
	2011		100 %			34 916
Paid by the hour	2012		100 %			
	2011		100 %			
Part-time	2012	4 %	14 %			
	2011	6 %	10 %			
Medically certified sick	2012	1,5 %	3,9 %			
	2011	1,7 %	7,8 %			

1. The Ombudsman himself is not included in the Executive Management team.

Appendix 3

Overview of divisional structure and specialist subject areas



Appendix 4

The Ombudsman's lectures, meetings, visits and trips in 2012[1]

Lectures

8-9 January	Lecture on Human Rights at the Wadahl Seminar for law students, Vinstra*
12-13 January	Lecture on remand prisoners and convicted criminals at the KROM Conference 2012, Storefjell*
18 January	Lecture to the Personnel Conference HR Norway, Lillehammer
6 February	Lecture to the Norwegian Association of Municipal Engineers, Tromsø
7 February	Lecture to the JUS course in Administrative Law - news and updates, Oslo
27 February - 2 March	Lectures on a course on good administrative practice, University of Bergen*
8 March	Lecture on a course on reindeer husbandry rights, Kautokeino
19 April	Lecture to the Norwegian Immigration Appeals Board about the Ombudsman, Oslo
19-20 April	Participant in the organising committee for the annual trade conference of the Forum for Planning and Building Law, Geilo
5 June	Lecture to the Norwegian Civil Affairs Authority, Oslo
6 June	Lecture on the Ombudsman's role in relation to local and regional authorities at the conference organised by the Forum for inspection and supervision, Trondheim
19-20 June	Lecture on selected parts of the Freedom of Information Act for the Ministry of Children, Equality and Social Inclusion, Oslo
5 September	Lecture to the Norwegian Union of Municipal and General Employees' training event for archive staff, Oslo
13 September	Lecture to the National Conference in Planning and Building Law under the auspices of the Ministry of Local Government and Regional Development and the Ministry of the Environment, Drammen
11 October	Lecture for local lawyers organised by the Lawyers Association, Stavanger*

1. The list applies to the activities of Arne Fliflet and/or employees in his office. Activities in which Arne Fliflet has personally participated are marked with an asterisk (*).

18 October	Lecture to the Conference on the Rule of Law concerning Human Rights in the Constitution organised by the Norwegian Bar Association, Oslo *
4 November	Lecture at the conference for employees of county governors organised by the Norwegian Board of Health Supervision, Oslo
22 November	Lecture to the course for legal aid lawyers, Sandefjord *
27 November	The Ombudsman's Human Rights Seminar 2012, Oslo *

Meetings and visits in Norway

3 January	Visit by Juss-Buss (the Law Students' Free Legal Aid Organisation), here
11 January	Trade seminar organised by the Ombudsman, Oslo*
1 February	Participation in Working Days, University of Oslo
10 February	Information meeting on the hearing from Norway in Geneva 16 February on implementation of the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), SMR
16 February	Participation in Working Days, University of Tromsø
16-17 February	Constitutional Symposium organised by the University of Bergen, Bergen*
1 March	Open hearing on the Language of the Constitution, Scrutiny and Constitutional Affairs Committee, the Storting*
13 March	Meeting with representatives from SOLVIT, Ministry of Trade and Industry, here*
20 March	Visit to the Directorate of the Norwegian Labour Inspection Authority, Trondheim*
21 March	Visit to the County Governor of Sør-Trøndelag, Trondheim*
26 March	Launch of the Yearbook of human rights in Norway 2012, SMR, Oslo*
11 April	Meeting with the Norwegian Data Protection Authority, Oslo
12 April	Visit to Halden prison, Halden*
16 April	Open hearing on Human Rights in the Constitution, Scrutiny and Constitutional Affairs Committee, the Storting*
17 April	Presentation for the Scrutiny and Constitutional Affairs Committee on the Annual Report for 2011, the Storting*
18-19 April	Visit to the Finnmark Estate Agency, Lakselv*
24 April	Visit to the Norwegian Labour and Welfare Administration's Appeals Authority Oslo and Akershus, Oslo
24 April	Debate on social rights in the Constitution organised by Juss-Buss (the Law Students' Free Legal Aid Organisation), Oslo
2 May	Visit to Norwegian Labour and Welfare Administration Collection in Bjørnevatn, Kirkenes*

3 May	Visit to the Norwegian Criminal Injuries Compensation Authority, Vardo*
3 May	Participation in Working Days, University of Bergen
14 June	Participation in a launch seminar at the House of Literature organised by Transparency International Norge, Oslo
16 June	Present at the Nobel Prize presentation to Aung San Suu Kyi, Oslo*
26 June	Visit to Bergen prison, Bergen
27 June	Visit to the Hordaland police district, Central Detention Centre, Bergen
7 August	Visit by Juss-Buss (the Law Students' Free Legal Aid Organisation), here
10 September	Participation in panel discussion on the use of administrative isolation in Norwegian prisons organised by SMR, Oslo
25 September	Participation in the seminar organised by the University of Bergen on the Constitution and municipal self-government, Bergen*
25 September	Participation at the 20th anniversary conference of the Local Government Act organised by KRD, Oslo
26 September	Participation at the conference organised by the FAFO Institute on inclusion of the Roma people, Oslo
26 September	Participation in the Transparency Parliament, award of the Flavius prize to police chief Arnstein Nilssen, Oslo
11 October	Visit to the Rogaland police district, Central Detention Centre, Stavanger*
16 October	Visit to the County Governor in Sogn og Fjordane, Sogndal*
17-18 October	Visit to the Reindeer Husbandry Authority, Alta
23 October	Meeting about follow-up from the UN 's women's discrimination committee (CEDAW), the Ministry of Children, Equality and Social Inclusion, Oslo
30 October	The Ombudsman's anniversary seminar and dinner in association with the 50th anniversary of the Ombudsman office, Oslo*
9 November	Participation in the Partner Forum Conference about the Freedom of Information Act, Oslo
20 November	Visit to the Norwegian State Educational Loan Fund, Oslo
21 November	Visit to the Police's Immigration Detention Centre, Trandum
22 November	Visit to the Labour Court of Norway, Oslo
22 November	Meeting with the Norwegian Data Protection Authority, Oslo
4 December	Visit to the Norwegian Labour and Welfare Administration's Bergen Administration, Bergen
4 December	Visit to Skatt vest (Tax West), Bergen
10 December	Present at the award of the Nobel Peace Prize 2012*

12 December	Visit to Trondheim prison, Trondheim
13 December	Visit to Sør-Trøndelag police district, Central Detention Centre, Trondheim

International meetings and visits hosted by the Ombudsman:

17 April	Delegation Visit, Burundi ombudsman, here*
24-25 April	Board meeting International Ombudsman Institute (IOI) Europe, here *
26 April	Delegation Visit, Parliamentarians from Mongolia, Storting*
9 May	Meeting with the head of the NGO in Venezuela, Humberto Prado, about prisons and prisoners' rights in Norway, here
15 May	Delegation Visit, judges from Uzbekistan, here
21 May	Delegation Visit, representatives from the Council of Europe's Convention on Action against Trafficking in Human Beings (GRETA), here
31 May	Meeting with representatives from the International Ombudsman Institute (IOI) Europe to prepare for the next election to IOI Europe, here*
4-8 June	Delegation visit from the Latvian Ombudsman and his staff, Oslo
3-4 September	West Nordic ombudsmans' meeting here*
10 September	Meeting with the Danish public expert on the Nordic project for comparison of public legislation, here*
21 September	Delegation Visit organised by SMR, visiting scholars from China, Vietnam and Indonesia, here
2 October	Delegation Visit, Scrutiny and Constitutional Affairs Committee from the Icelandic Parliament, here*
17 October	Delegation Visit, Estonian ombudsman, here
14 November	Delegation Visit from Egypt, Members of Parliament, here
28 November	Delegation Visit from Belarus, Moldova and Ukraine, organised by UNHCR, Oslo
17 December	Delegation Visit from Lithuania (Transparency International Lithuania), here

Meetings and visits abroad, participation in international conferences, etc.

17 January	Board meeting of the International Ombudsman Institute (IOI) Europe, Paris*
18 January	Reception in the Danish Parliament to mark the retirement of the Danish Ombudsman Hans Gammeltoft-Hansen, Copenhagen*
5-10 May	Board meeting of the International Ombudsman Institute (IOI) World, Hong Kong*

9-11 May	ICAC Symposium, Fighting Corruption in a Changing World (anti-corruption), Hong Kong
22-25 May	Nordic ombudsmen's meeting, Faroe Islands*
24-26 June	8th Liaison Seminar of the European Network of Ombudsmen, Strasbourg
25-28 June	4th IAACA seminar in Dalina, China
27-31 August	Participation at the 10th anniversary of Kazakhstan's Ombudsman, Astana*
27-28 September	Board meeting of the International Ombudsman Institute (IOI) Europe, Barcelona*
4-7 October	The 6th IAACA Annual Conference and General Meeting 2012 (anti-corruption), Malaysia
11-12 November	Board meeting of the International Ombudsman Institute (IOI),World and European region, New Zealand*
13-16 November	The 10th World Conference of the International Ombudsman Institute (IOI), New Zealand*

Appendix 5

Budget and accounts for 2012

(in NOK 1000s)

Chap.	Item		Budget adopted 2012	Budget with transfers	Accounts 2012
43	01	Salaries and benefits	34 775	37 240	35 306
	01	Goods and services	17 425	17 455	16 734
		Total expenditure	**52 200**	**54 695**	**52 040**
3043	16	Reimbursement of parental allowance			637
		Total income			**637**

The Ombudsman's budget and accounts are audited by the Auditor General.

Appendix 6

The Constitution of the Kingdom of Norway

Article 75 litra 1:

It devolves upon the Storting to appoint a person, not a member of the Storting, in a manner prescribed by law, to supervise the public administration and all who work in its service, to assure that no injustice is done against the individual citizen.[1]

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1. Addendum by Constitutional provision dated 23 June 1995 no. 567.

Appendix 7

Act of 22 June 1962 No. 8 concerning the Storting's Ombudsman for Public Administration (the Ombudsman Act)

Title and certain provisions last amended by Act of 2 December 2011 No. 46 (entered into force 1 January 2012).

§ 1.

Election of Ombudsman.

After each General Election the Storting shall elect an Ombudsman for Public Administration, the Civil Ombudsman. The election is for a period of four years reckoned from 1 January of the year following the General Election.

The Ombudsman must satisfy the qualifications prescribed for appointment as a Supreme Court Judge. He must not be a member of the Storting.

If the Ombudsman dies or becomes unable to discharge his duties, the Storting shall elect a new Ombudsman for the remainder of the term of office. The same applies if the Ombudsman relinquishes his office, or if the Storting decides by a majority of at least two thirds of the votes cast to deprive him of his office.

If the Ombudsman is temporarily prevented by illness or for other reasons from discharging his duties, the Storting may elect a person to act in his place during his absence. In the event of absence up to three months the Ombudsman may empower the Head of Division to act in his place.

If the Presidium of the Storting should deem the Ombudsman to be disqualified to deal with a particular matter, it shall elect a substitute Ombudsman to deal with the said matter.

§ 2.

Directive.

The Storting shall issue a general directive for the functions of the Ombudsman. Apart from this the Ombudsman shall discharge his duties autonomously and independently of the Storting.

§ 3.

Purpose.

The task of the Ombudsman is, as the Storting's representative and in the manner prescribed in this Act and in the Directive to him, to endeavour to ensure that injustice is not committed against the individual citizen by the public administration and help to ensure that the public administration respects and safeguards human rights.

§ 4.

Scope of Powers.

The scope of the Ombudsman's powers embraces the public administration and all persons engaged in its service. Nevertheless, his powers do not include:

a) matters on which the Storting has reached a decision,
b) decisions adopted by the King in Council of State,
c) the functions of the Courts of Law,
d) the activities of the Auditor General,
e) matters which, as prescribed by the Storting, come under the Ombudsman's Board or the Ombudsman for National Defence and the Ombudsman's Board or the Ombudsman for Civilian Conscripts,
f) decisions which, as provided by statute, may only be made by the municipal council or the county council itself, unless the decision is made by the municipal board of aldermen, county board of aldermen, a standing committee, the municipal executive board or the county executive board pursuant to § 13 of the Act of 25 September 1992 No. 107 concerning Municipalities and County Municipalities. Any such decision may nevertheless be investigated by the Ombudsman on his own initiative if he considers that regard for the rule of law or other special reasons so indicate.

The Storting may stipulate in its Directive to the Ombudsman:

a) whether a particular public institution or enterprise shall be regarded as public administration or a part of the state's, the municipalities' or the county municipalities' service according to this Act,
b) that certain parts of the activity of a public agency or a public institution shall fall outside the scope of the Ombudsman's powers.

§ 5.

Basis for acting.

The Ombudsman may proceed to deal with cases either following a complaint or on his own initiative

§ 6.

Further provisions regarding complaints and time limit for complaints.

Any person who believes he has been subjected to injustice by the public administration may bring a complaint to the Ombudsman. Any person who is deprived of his personal freedom is entitled to complain to the Ombudsman in a closed letter.

The complaint shall state the name of the complainant and must be submitted not later than one year after the administrative action or matter complained of was committed or ceased. If the complainant has brought the matter before a higher administrative agency, the time limit shall run from the date on which this authority renders its decision.

The Ombudsman shall decide whether there are sufficient grounds for dealing with a complaint.

§ 7.

Right to obtain information.

The Ombudsman may demand from public officials and from all others who serve in the public administration such information as he requires to discharge his duties. To the same extent he may demand that minutes/records and other documents be produced.

The Ombudsman may require the taking of evidence by the courts of law, in accordance with the provisions of § 43 second

paragraph of the Courts of Justice Act. The court hearings shall not be open to the public.

§ 8.

Access to offices in the public administration.

The Ombudsman shall have access to places of work, offices and other premises of any administrative agency and any enterprise which come under his jurisdiction.

§ 9.

Access to documents and pledge of secrecy.

The Ombudsman's case documents are public. The Ombudsman shall have the final decision with regard to whether a document shall be wholly or partially exempt from public access. Further rules, including the access to exempt documents from public access, are provided in the Directive to the Ombudsman.

The Ombudsman has a pledge of secrecy with regard to information he becomes party to during the course of his duties concerning matters of a personal nature. The pledge of secrecy also applies to information concerning operational and commercial secrets, and information that is classified under the Security Act or a Secrecy Order. The pledge of secrecy continues to apply after the Ombudsman has left his position. The same pledge of secrecy applies to his staff.

§ 10.

Termination of a complaints case.

The Ombudsman is entitled to express his opinion on matters which come within his jurisdiction.

The Ombudsman may point out that an error has been committed or that negligence has been shown in the public administration. If he finds sufficient reason for so doing, he may inform the prosecuting authority or appointments authority what action he believes should be taken accordingly against the official concerned. If the Ombudsman concludes that a decision rendered must be considered invalid or clearly unreasonable, or that it clearly conflicts with good administrative practice, he may say so. If the Ombudsman believes that there is justifiable doubt pertaining to factors of importance in the case, he may draw the attention of the appropriate administrative agency thereto.

If the Ombudsman finds that there are matters which may entail liability to pay compensation, he may, depending on the circumstances, suggest that compensation should be paid.

The Ombudsman may let the matter rest when the error has been rectified or an explanation has been given.

The Ombudsman shall notify the complainant and others involved in the case of the outcome of his handling of the case. He may also notify the superior administrative agency concerned.

The Ombudsman himself shall decide whether, and if so in what manner, he shall inform the public of his handling of a case.

§ 11.

Notification of shortcomings in statutory law and in administrative practice.

If the Ombudsman becomes aware of shortcomings in statutory law, administrative regulations or administrative

practice, he may notify the Ministry concerned to this effect.

§ 12.

Report to the Storting.

The Ombudsman shall submit an annual report on his activities to the Storting. The report shall be printed and published.

If the Ombudsman becomes aware of negligence or errors of major significance or scope he may make a special report to the Storting and to the appropriate administrative agency.

§ 13.

Pay, pension, other business.

The Ombudsman's pay and pension shall be determined by the Storting. The same applies to remuneration for any person appointed to act in his place in accordance with § 1 fourth paragraph, first sentence. The remuneration for any person appointed pursuant to the fourth paragraph, second sentence, may be determined by the Storting's Presidium. The Ombudsman's pension shall be determined by law.

The Ombudsman must not hold any public or private appointment or office without the consent of the Storting or the person so authorized by the Storting.

§ 14.

Staff.

The staff of the Ombudsman's office shall be appointed by the Storting's Presidium upon the recommendation of the Ombudsman or, in pursuance of a decision of the Presidium, by an appointments board. Temporary appointments of up to six months shall be made by the Ombudsman. The Presidium shall lay down further rules regarding the appointments procedure and regarding the composition of the board.

The pay, pension and working conditions of the staff shall be fixed in accordance with the agreements and provisions that apply to employees in the Civil Service.

§ 15.

1. This Act shall enter into force 1 October 1962.

2. --.

Appendix 8

Directive to the Storting's Ombudsman for Public Administration

22 June 1962 No. 8 concerning the Storting's Ombudsman for Public Administration (the Ombudsman Act).

§ 1. *Purpose.*

(Re § 3 of the Ombudsman Act.)

The Storting's Ombudsman for Public Administration – the Civil Ombudsman – shall endeavour to ensure that injustice is not committed against the individual citizen by the public administration and that civil servants and other persons engaged in the service cf. § 2, first sentence, of the public administration do not commit errors or fail to carry out their duties.

§ 2. *Scope of Powers.*

(Re § 4 of the Ombudsman Act.)

The scope of the Ombudsman's powers embraces the public administration and all persons engaged in its service, subject to the exceptions prescribed in § 4 of the Act.

The Select Committee of the Storting for the Scrutiny of the Intelligence and Security

Services shall not be regarded as part of the public administration pursuant to the Ombudsman Act. The Ombudsman shall not investigate complaints concerning the Intelligence and Security Services which have been dealt with by the said

Select Committee.

The Ombudsman shall not deal with complaints concerning the Storting's Ex Gratia Payments Committee.

The exception concerning the functions of the courts of law prescribed in the first paragraph, litra c, of § 4 of the Act also embraces decisions which may be brought before a court by means of a complaint, an appeal or some other legal remedy.

§ 3. *The form and basis of a complaint.*

(Re § 6 of the Ombudsman Act.)

A complaint may be submitted direct to the Ombudsman. It should be made in writing and be signed by the complainant or someone acting on his behalf. If the complaint is made orally to the Ombudsman, he shall ensure that it is immediately reduced to writing and signed by the complainant.

The complainant should as far as possible state the grounds on which the complaint is based and submit evidence and other documents relating to the case.

§ 4. *Exceeding the time limit for complaints.*

(Re § 6 of the Ombudsman Act.)

If the time limit of one year pursuant to § 6 of the Act is exceeded, the Ombudsman is not thereby prevented from taking the matter up on his own initiative.

§ 5. *Terms and conditions for complaints proceedings.*

If a complaint is made against a decision which the complainant has a right to submit for review before a superior agency of the public administration, the Ombudsman shall not deal with the complaint unless he finds special grounds for taking the matter up immediately. The Ombudsman shall advise the complainant of the right he has to have the decision reviewed through administrative channels. If the complainant cannot have the decision reviewed because he has exceeded the time limit for complaints, the Ombudsman shall decide whether he, in view of the circumstances, shall nevertheless deal with the complaint.

If the complaint concerns other matters which may be brought before a higher administrative authority or before a special supervisory agency, the Ombudsman should advise the complainant to take the matter up with the authority concerned or himself submit the case to such authority unless the Ombudsman finds special reason for taking the matter up himself immediately.

The provisions in the first and second paragraphs are not applicable if the King is the only complaints instance open to the complainant.

§ 6. *Investigation of complaints.*

(Re §§ 7 and 8 of the Ombudsman Act.)

A complaint which the Ombudsman takes up for further investigation shall usually be brought to the notice of the administrative agency or the public official concerned. The same applies to subsequent statements and information from the complainant. The relevant administrative agency or public official shall always be given the opportunity to make a statement before the Ombudsman expresses his opinion as mentioned in the second and third paragraphs of § 10 of the Ombudsman Act.

The Ombudsman decides what steps should be taken to clarify the facts of the case. He may obtain such information as he deems necessary in accordance with the provisions of § 7 of the Ombudsman Act and may set a time limit for complying with an order to provide information or submit documentation etc. He may also undertake further investigations at the administrative agency or enterprise to which the complaint relates, cf. § 8 of the Ombudsman Act.

The complainant has a right to acquaint himself with statements and information given in the complaints case, unless he is not entitled thereto under the rules applicable for the administrative agency concerned.

If the Ombudsman deems it necessary on special grounds, he may obtain statements from experts.

§ 7. *Notification to the complainant if a complaint is not to be considered.*

(Re § 6 fourth paragraph of the Ombudsman Act.)

If the Ombudsman finds that there are no grounds for considering a complaint, the complainant shall immediately be notified to this effect. The Ombudsman should as far as possible advise him of any other channel of complaint which may exist or himself refer the case to the correct authority.

§ 8. *Cases taken up on own initiative.*

(Re § 5 of the Ombudsman Act.)

If the Ombudsman finds reason to do so, he may on his own initiative undertake a close investigation of administrative proceedings, decisions or other matters. The provisions of the first, second and fourth paragraphs of § 6 shall apply correspondingly to such investigations.

§ 9. *Termination of the Ombudsman's proceedings.*

(Re § 10 of the Ombudsman Act.)

The Ombudsman shall personally render a decision on all cases proceeding from a complaint or which he takes up on his own initiative. He may nevertheless authorise

specific members of his staff to terminate cases which must obviously be rejected or cases where there are clearly insufficient grounds for further consideration. The Ombudsman renders his decision in a statement where he gives his opinion on the issues relating to the case and coming within his jurisdiction, cf. § 10 of the Ombudsman Act.

§ 10. *Instructions for the staff.*

(Re § 2 of the Ombudsman Act.)

The Ombudsman shall issue further instructions for his staff. He may authorise his office staff to undertake the necessary preparations of cases to be dealt with.

§ 11. *Public access to documents at the office of the Ombudsman*

1. The Ombudsman's case documents are public, unless pledge of secrecy or the exceptions in Nos. 2, 3 and 4 below otherwise apply. The Ombudsman's case documents are the documents prepared in connection with the Ombudsman's processing of a case. The Ombudsman cannot grant public access to the Administration's case documents prepared or collected during the course of the Administration's processing of the case.

2. The Ombudsman's case documents may be exempt from public access when there are special reasons for this.

3. The Ombudsman's internal case documents may be exempt from public access.

4. Documents exchanged between the Storting and the Ombudsman and that refer to the Ombudsman's budget and internal administration may be exempt from public access.

5. Right of access to the public contents of the register kept by the Ombudsman for the registration of documents in established cases may be demanded. The Public Records Act (Norway) dated 4 December 1992 No. 126 and the Public Records Regulations dated 11 December 1998 No. 1193 apply similarly to the extent that they are applicable to the functions of the Ombudsman.

§ 12. *Annual Report to the Storting.*

(Re § 12 of the Ombudsman Act.)

The annual report of the Ombudsman to the Storting shall be submitted by 1 April each year and shall cover the Ombudsman's activities during the period 1 January to 31 December of the preceding year.

The report shall contain a survey of the proceedings in the individual cases which the Ombudsman feels are of general interest and shall mention those cases where he has drawn attention to shortco-

mings in statutory law, administrative regulations

or administrative practice or has made a special report pursuant to § 12 second paragraph of the Ombudsman Act. The report shall also contain information on his supervision and control of public agencies to safeguard that the public administration respect and ensure human rights.

When the Ombudsman finds it appropriate, he may refrain from mentioning names in the report. The report shall on no account contain information that is subject to pledge of secrecy.

Any description of cases where the Ombudsman has expressed his opinion as mentioned in § 10 second, third and fourth paragraph of the Ombudsman Act, shall contain an account of what the administrative agency or public official concerned has stated in respect of the complaint, cf. § 6 first paragraph, third sentence.

§ 13. *Entry into force.*

This Directive shall enter into force on 1 March 1980. From the same date the Storting's Directive for the Ombudsman of 8 June 1968 is repealed.