



# Annual report 2015/16

SUMMARY IN ENGLISH



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## Elisabet Fura

Chief Parliamentary Ombudsman

My supervisory area comprises the Prison and Probation Service, social insurance, the application of the Act concerning Support and Service for Persons with Certain Functional Impairments (LSS), the Armed Forces and a number of other authorities, including the National Board for Consumer Disputes, the Swedish Financial Supervisory Authority and the Swedish Competition Authority. In organisational terms, the OPCAT unit belongs to my division in an organisational respect, but the unit's inspections are carried out on the instructions of the Ombudsman supervising the authority to be inspected. A more detailed account of the OPCAT unit's activities is found at page 36.

During the fiscal year, 1,793 cases were received, which is an increase of 16 per cent compared to the previous year. It is mainly cases about the Prison and Probation Service and LSS that have increased. 1,791 cases were concluded during the year. 753 (42 per cent) of these cases were settled by delegated heads of division. Over the year, I have myself conducted four inspections. Three inspections have been conducted on my behalf by a head of division. One visit to an authority has been carried out. In addition to these, the OPCAT unit has conducted six inspections within my supervisory area. Due to observations made during inspections by the OPCAT unit, I have initiated three enquiries.

### **The Swedish Prison and Probation Service**

During the fiscal year, the number of complaints in the correctional area have continued to increase slightly. As with the previous fiscal year, I refrain from speculations about what this might be due to. When it comes to settled Prison and Probation Service cases, the frequency of criticism of decisions is at a level that is slightly higher than in the previous year. Nineteen decisions have been deemed to be of such public interest that they are referred to in the annual report. I wish to particularly emphasise the following three decisions.

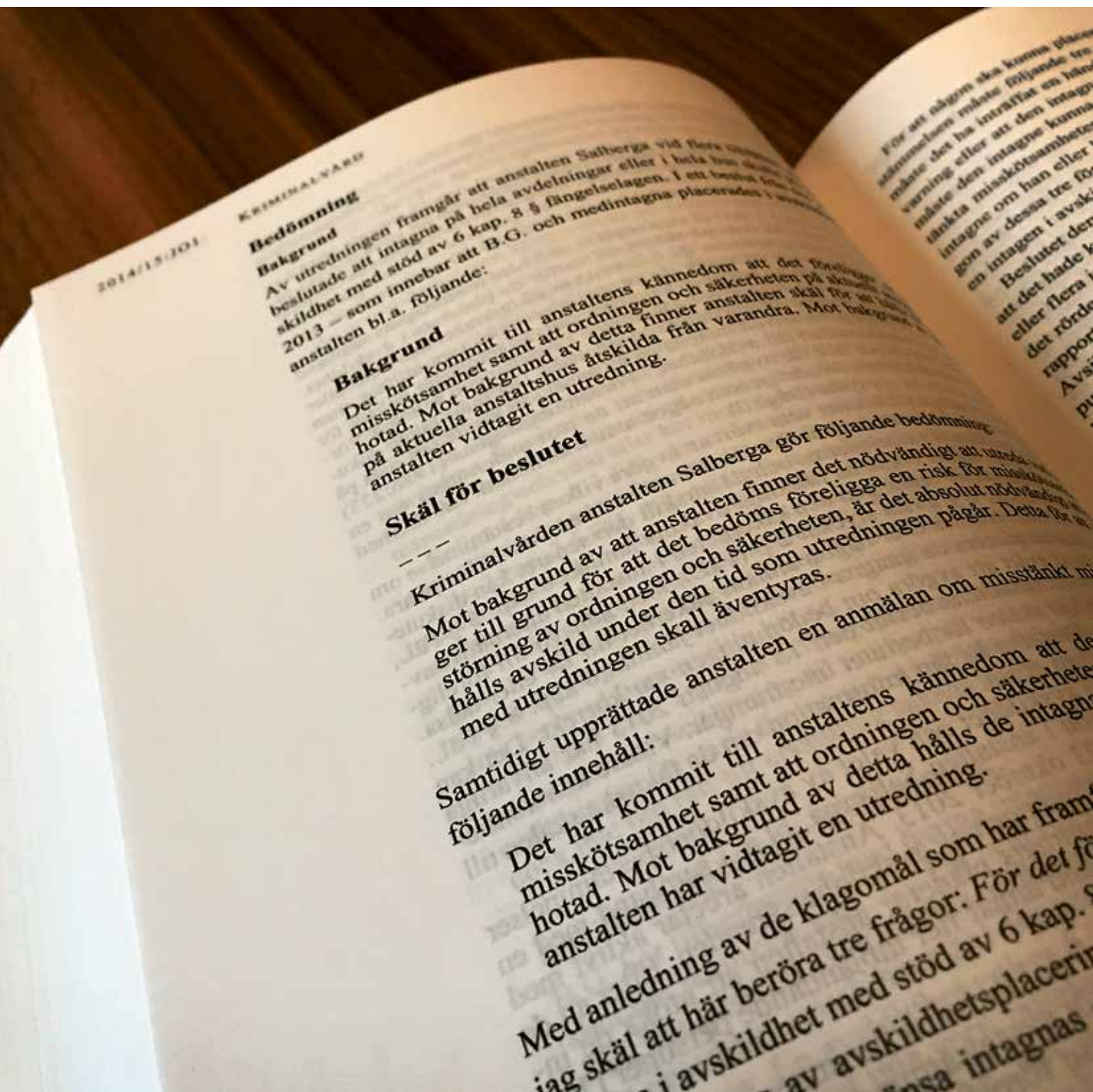
### Areas of responsibility

- The Armed Forces and other cases relating to the Ministry of Defence and its subordinate agencies which do not fall within other areas of responsibility
- The National Fortifications Agency.
- Prisons and probation service, the National Prison and Probation Board and probation boards.
- National insurance (health insurance, pension insurance, parental insurance and work injuries insurance, housing allowances and other income-related benefits, child allowances, maintenance advances etc.); the Social Insurance Inspectorate; the National Pensions Agency.
- Application of the Act on the Provision of Support and Service for Certain Individuals with Certain Functional Impairments (LSS).
- Public procurement, consumer protection, marketing, price and competition within industry and commerce, price regulation, cases concerning limited companies and partnerships, trade names, trade registers, patents, trademarks, registered designs, and other cases pertaining to agencies subordinate to the Ministry of Industry, Employment and Communications which do not fall within other areas of responsibility.
- The Agency for Public Management; the National Financial Management Authority; the Legal, Financial and Administrative Services Agency, the National Appeals Board, the National Claims Adjustment Board; the National Agency for Government Employers, the Arbitration Board on Certain Social Security Issues; the National Property Board; the National Government Employee Pensions Board, the National Pensions and Group Life Insurance Board; the Financial Supervisory Authority, the Accounting Standards Board; the National Institute of Economic Research; Statistics Sweden; the National Disciplinary Offense Board.
- The Equality Ombudsman; the Board against Discrimination.
- Cases that do not fall within the ambit of the Parliamentary Ombudsmen; documents containing unspecified complaints.

The first decision (ref. no. 1420-2014) concerns the Prison and Probation Service's "brottsofferslussar". For a few years the Prison and Probation Service has been working with "brottsofferslussar", a form of monitored meeting between offender and victim in which the latter's needs are put first, the task of which is to "protect victims of crime within the correctional system". The work with these meetings includes contact with the relatives of the inmates, investigating the conditions for the inmates' requests for visitation and telephone privileges, and if there are any risks to the relative associated with the granting of such a privilege. The operation means that prison staff have regular contact with the inmates' relatives. In my view, it must be possible to set high requirements for these victim/offender meetings and on their legal certainty, as these activities concern individuals who are outside the correctional system, and in some cases also skirt the boundaries of the Prison and Probation Service's mandate. A summary that the Parliamentary Ombudsmen has compiled shows that today there are major differences in how the country's victim/offender meeting activities carry out their brief. One of the reasons for this is that there is no centralised management of these activities. The major differences that exist today between the country's victim/offender meeting activities and the experience that the Parliamentary Ombudsmen has gained from previous reviews of these activities indicates, in my opinion, that similar cases are not handled in a uniform manner, a situation I consider unsatisfactory.



The second decision (ref. no. 6384-2014) concerns the Prison and Probation Service's use of its high security units, known as Fenix units. In accordance with provisions in the Act on Imprisonment, a prisoner may not be placed so that he or she is subjected to a more intrusive supervision and control than that which is necessary to maintain good order or security. The high security unit in Saltvik Prison has for a number of years been used for inmates who for various reasons are in need of protection. In the decision, I criticise the Prison and Probation Service for these placements, stating that this form of imprisonment of these inmates is more intrusive than necessary.



In the third decision (ref. no. 6050-20166), I express serious criticism of the Prison and Probation Service for not having designed procedures for checking that the basis for a deprivation of liberty still applies. The decision concerns a person who had been remanded in absentia and had then been sent to the remand prison in Göteborg. According to applicable regulations, a detention hearing should have taken place within four days of the detention order having been enforced. For unclear reasons a hearing was never held, and thus there were no legal grounds for keeping the inmate in custody after the four days had passed. Despite this, the inmate remained in custody for another six weeks. In its response to the Parliamentary Ombudsmen, the Prison and Probation Service stated that the authority has no formal responsibility to report to the prosecutor or court when a detention order has been enforced. Furthermore, the Prison and Probation Service stated that it is not possible for a remand prison to “take on routine monitoring responsibility for ensuring that all clients’ processing deadlines are kept”. What emerged in this case gave, in my view, the impression that the Prison and Probation Service does not want to assume the central role that the authority has when it comes to detaining people. By not doing this, the authority has also failed to establish procedures to ensure that the authority’s employees conduct the necessary checks to ensure that there are legal grounds for keeping a person locked up. This contributed to what happened at the remand prison in Göteborg.

### **Social Insurance**

During the fiscal year, 350 cases were received in the area of social insurance, which is a small increase (3 per cent) compared to the previous year. Thus, after several years of a decreasing influx of cases, the number of reports has increased again. It is difficult to say what this might be due to. My impression of the operations of Försäkringskassan (the Swedish Social Insurance Agency) and the Swedish Pensions Agency is still good. In this year’s annual report, I have chosen to include three decisions that all concern Försäkringskassan. I wish to particularly emphasise a decision concerning Försäkringskassan’s processing times in cases of individuals applying for compensation for healthcare overseas (ref. no. 3950-2014). Under a particular law, decisions on such compensation are to be made as soon as possible and no later than within 90 days from Försäkringskassan’s receiving a complete application. In the decision, I note that Försäkringskassan has exceeded the statutory period in over 2,000 cases, which is naturally not acceptable.

### **LSS – the Act concerning Support and Service for Persons with Certain Functional Impairments**

During the fiscal year, 113 LSS cases were received, which is an increase of 16 per cent compared to the previous year. In last year’s annual report, I expressed that the municipal handling of this case group exhibited a number of deficiencies in the application of central rules of general administrative law on matters including communication, documentation, reasoning and right to party insight. I must unfortunately note that my experience was the same this year. This year’s annual report includes three decisions concerning LSS. In one decision (ref. no. 6900-2014), I express that the municipalities lack the opportunity to make interim decisions in LSS cases. However, this does not mean that the individual



can be left entirely without assistance during the investigation period. In another decision (ref. no. 1972-2014), I criticise a municipality for having conducted a Lex Sarah investigation and ordered an assistance company to submit an action plan without having had authority to do so. The third decision (ref. no. 6948-2014) deals with questions of an administrator's opportunities to use a power of attorney to have someone else represent their client. In that decision, I note that a municipality has handled questions of administratorship and powers of attorney incorrectly in several different respects and that there is a general lack of knowledge on these questions at the municipality.

### **Swedish Armed Forces**

In the area of defence, very few complaints cases are now received by the Parliamentary Ombudsmen. In the current fiscal year, only sixteen were received. In one of these cases, I found reason to criticise the Armed Forces for having designed the conditions for an exercise in such a way that there had been an imminent risk of civilians becoming part of the exercise against their will. In connection with the exercise, a radio amateur was checked by military personnel when he found himself within the exercise area, which had not been announced by notice. The investigation revealed information that a captain, after conducting a conversation with the radio amateur, asked the radio amateur to withdraw from the site. Since the incident did not occur within a protection area, the captain did not have the authority to take this measure.

### **Other**

Besides the usual inspections of the Prison and Probation Service and Försäkringskassan, I have over the year conducted an inspection of the Swedish Financial Supervisory Authority (ref. no. 6096-2015), which had not been inspected by the Parliamentary Ombudsmen since the mid-1990s. My impression of the Swedish Financial Supervisory Authority's activities was very positive. I was able to note that the Authority writes well-reasoned and well-worded decisions and that the Authority works in a structured manner, with processes and methods that promote secure case processing. The inspection was also rewarding and instructive for me and my members of staff.

RIKETS STÄNDERS  
JUSTITIE  
OMBUDSMANS  
EMBETS-BERÄTTELSE

1810-1824.

R. H. ST. JUSTITIE  
OMBUDSMANS  
EXPEDITION

EXPEDITION  
OMBUDSMANS  
R. H. ST. JUSTITIE



## Lars Lindström

Parliamentary Ombudsman

My supervisory area comprises the Swedish courts, the Swedish Enforcement Authority, the planning and construction area, the land survey service, environment and health protection, the Swedish Tax Agency, the Chief Guardians and the communications area. During the fiscal year 1,754 complaints cases were received, which is an increase of 67 cases (10.5 per cent) compared to the previous year. 1,727 cases were concluded during the year. 547 of these cases were settled by delegated heads of division.

During the fiscal year I have inspected Södertörn District Court, Eksjö District Court and Lantmäteriet (land survey service), the head office in Gävle and the office in Falun. Head of Division Charlotte Håkansson has on my behalf inspected the Nature and Building Committee in Huddinge municipality and the Building Committee in Kungsbacka municipality. Head of Division Carina Sjögren has on my behalf inspected the Chief Guardians Committee in Sundbyberg municipality. The inspection records can be found at the Parliamentary Ombudsmen website [www.jo.se](http://www.jo.se).

In the following account, I will highlight some of the decisions that are described in this year's annual report, and account for certain other measures that I have taken this year.

### **The design of judgements and decisions in courts**

That judgements and decisions are reasoned is of fundamental importance, in terms of legal certainty and confidence in the courts. In a previous annual report (2013/14:JO1 p. 16), I briefly presented some comments on this question and referred to previous statements by the Parliamentary Ombudsman. This year's annual report contains two decisions concerning the reasoning of criminal judgements. They relate to the application of Chapter 30, Section 5, first paragraph of the Code of Judicial Procedure, where fifth point states that a criminal

## Areas of responsibility

- Courts of law, the Labour Court; Ground Rent and Rent Tribunals; the National Courts Administration.
- Administrative courts.
- The National Legal Aid Authority and National Legal Aid Board, the Crime Victim Compensation and Support Authority, the Council on Legislation; the Data Inspection Board, petitions for mercy submitted to the Ministry of Justice; other cases concerning the Ministry of Justice and its subordinate agencies that do not fall within other areas of responsibility.
- Cases concerning guardianship (i.a. Chief Guardians and Chief Guardian Committees).
- The Enforcement Authority.
- Planning and building, land survey and cartography agencies.
- Communications (public enterprises, highways, traffic, driving licences, vehicle registration, roadworthiness testing).
- Income and property tax, value added tax, fiscal control, with the exception, however, of the Taxation Authorities Criminal Investigation Units as laid down in the Act on the Participation of Taxation Authorities in Criminal Investigations [1997:1024] ); tax collection.
- Excise duties and price-regulating fees, road tax; service charges; national registration (including cases concerning names); other cases connected with the Ministry of Finance and its subordinate agencies which do not fall within other areas of responsibility.
- Environmental protection and public health; the National Environmental Protection Agency; the Chemicals Agency; other cases connected with the Ministry of the Environment and its subordinate agencies.
- Agriculture and forestry, land acquisition; reindeer breeding, the Sami Parliament; prevention of cruelty to animals; hunting, fishing, veterinary services; food control; other cases agencies subordinate to the Ministry for Rural Affairs and its subordinate agencies which do not fall within other areas of responsibility.

judgement must contain grounds providing information on what has been proven in the case.

In one case (ref. no. 380-2015), three people were prosecuted for robbing a fourth person in his residence and for kidnapping by conveying the injured party by car from Kallinge to Ronneby. These charges were dismissed, and the district court wrote in its reasoning only that the injured party's statements appeared to be very uncertain and that the investigation was otherwise not such that the prosecution was substantiated despite this. Thus, as regards the allegations of robbery, it was not stated whether the investigation showed that the defendants had been in the injured party's apartment and, if so, what happened there. As regards the allegations of kidnapping, it was not stated whether the defendants, according to what the investigation showed, had travelled by car to Ronneby with the injured party or what had been shown regarding the sequence of events during the journey.

In the other case (ref. no. 381-2015), a person was prosecuted for assault, which according to the prosecutor had consisted of her having taken a stranglehold around the throat of the injured party, and that the injured party sustained bruises, scratches and breathing difficulties. The defendant did not come to the district court's main hearing. During the preliminary investigation, she had confirmed that she had met the injured party on the evening in question, but said that as result of intoxication she had no memory of what is alleged to have happened. The district court reported these statements in its judgement. The

district court convicted the defendant of assault. In its reasoning, the district court stated only that the evidence referred to had established that the defendant had used such violence against the injured party as the prosecutor had claimed. It was thus not stated how the court's analysis of the evidence could lead to the court considering it proven that the defendant had taken a stranglehold even though she herself did not admit to this. As regards the injuries, it is true that the judgement stated that the injured party had presented scars, but it did not otherwise state how the court had concluded that a stranglehold had caused bruises, scratches and breathing difficulties.

In both these cases, it is in my opinion not possible to assess whether the verdicts are correct on the basis of the written judgements. For this reason, the grounds do not meet the requirements of Chapter 30, Section 5, first paragraph, point 5 of the Code of Judicial Procedure. The judges responsible are criticised.

It is not only the reasoning itself – the grounds of the judgement – which can be the subject of criticism. The judgement shall also contain a statement of the parties' petitions and the facts to which they refer. In simple cases, it is possible for the judgement to refer to an appendix for such particulars, generally the plaintiff's summons application or equivalent document. But this method must be used sensibly. It will not do to, just in case, append all the documents submitted in the proceedings and leave it to the reader to browse through the material to find what has been petitioned and referred to. Then the design of the judgement is not applicable to the law.

In the last annual report, I presented such a case (2015/16:JO1 p. 79). This concerned a default judgement in a civil case in which the court had referred to appendices in order to present the plaintiff's petition and the facts on which the petition was based. These appendices comprised a document addressed to the Swedish Enforcement Authority, along with copies of bank statements, invoices and giro payments. Several of the documents had been appended in duplicate. In that case, I stated that the objective should be to design a judgement so that it is understandable to all those reading it and so that unnecessary information is avoided. I found that the appendices in some respects contained entirely unnecessary information and made the judgement unwieldy and difficult to read. Furthermore, the district court's appending of several documents in duplicate was remarkable and indicated that the judge responsible had not read through the judgement before it was dispatched. The judge was criticised.

A similar case (ref. no. 3005-2015) is presented in this year's annual report. Here too, reference is made to appendices with so much unnecessary information that the reader cannot see the wood for the trees. The case concerned a criminal case in which the injured party had submitted a writ with a petition for damages to the court. She was petitioning for damages for aggrievement and for pain and suffering, and miscellaneous costs such as trips to the hospital. Appended to the writ were two invoices from the county council, a certificate of loss of income, two parking receipts, a receipt for a journey by public transport, a certificate from a counsellor, a medical certificate, medical records, five pages of diagrams (probably after ECGs) and a compilation of the results (heart rate, etc.) of cardiac stress tests. Altogether, the writ and appendices covered 20 pages. These 20 pages were attached as an appendix to the district court's judgement. In my



decision, I find that the appendix contains so much unnecessary information that it is difficult for the reader to discern what is the subject of the court's examination. This means that the judgement is designed in a manner that contravenes the law. In addition to this, the unnecessary information contains details of a personal and sensitive nature regarding the injured party which have thus been disseminated completely unnecessarily to those who have seen the judgement. The judge responsible is criticised.

### **The processing of custody cases in district courts**

In the last annual report (JO 2015/16 p. 38 and p. 86), I presented two decisions in which I criticised two district courts for the slow processing of cases concerning the custody of children. In these cases, the district courts had used the method of engaging a mediator. What the cases also had in common was that the district courts had not drawn up a timetable for its processing. When the cases were adjudicated, it had been three years and four months and two years and nine months, respectively, since their submission to the district court.

This year's annual report presents a similar case (ref. no. 6730-2014). A person who was a party in a custody case in a district court had reported the district court to the Parliamentary Ombudsmen for deficient processing. And I came to the conclusion that there were deficiencies. Just as in the two cases presented in the last annual report, the district court had engaged a mediator and neglected to draw up a timetable. When I issued my decision, it had gone two years and three months since the case's submission to the district court. This is an unreasonably long time for a case concerning the custody of children. The district court has not, as prescribed in the law, pursued its preparation with a focus on a quick ruling in the case. The main reasons why it has taken so long is the lack of a timetable and the inadequate supervision of how the mediator carried out their assignment. The district court is criticised.

### **The district courts' distribution of juvenile crime cases**

For several years, the courts have had great freedom to determine their own organisation. An exception applies to the general courts' processing of juvenile criminal cases. Through the Young Offenders (Special Provisions) Act (1964:167), the Riksdag (Swedish Parliament) has decided that criminal cases made against individuals under 21 years of age are to be handled by members of the bench and lay judges specially appointed by the court. During inspections of seven district courts in 2012–2015, I found that these district courts did not distribute the cases in the manner the Riksdag had decided, and I wrote in the inspection records that I presumed that the district courts would promptly take the measures needed to rectify this. In late 2015, I followed up this issue and found that two of the district courts reviewed were still not distributing juvenile crime cases in the manner prescribed by law (ref. no. 6615-2015 and 282-2016).

In my decision with reference to this follow-up, I note that the rules regarding the concentration of juvenile crime cases have never had any real impact. The reasons for concentration have been questioned, and reforms of the city and district courts' external and internal organisation have meant that, in my view, there is now cause to abolish the rule regarding the concentration of juvenile crime cases. But for the present, the rule applies, and it is within my remit to ensure the courts apply it. I therefore decided to refer the case to the Govern-

ment Disciplinary Board for Higher Officials for examination of the question of disciplinary responsibility for the heads of the two district courts which were not distributing juvenile crime cases as prescribed by law.

On 17 May 2016, the Disciplinary Board decided not to take any action against any of the chief judges reported. I have decided not to proceed in the matter.

### **The Swedish Enforcement Authority**

Since taking office, I have on several occasions had reason to criticise the Swedish Enforcement Authority for the way in which it handles funds received (six decisions in 2012, two decisions in 2014 and three decisions in 2015). In one such case (ref. no. 3890-2014), the Enforcement Authority had in November 2013 decided to pay back SEK 1,609 to the debtor but paid the money to another person by mistake. The debtor only received their money ten months later. In another case (ref. no. 6248-2014), the debtor had deposited SEK 2,000 to the Enforcement Authority. On 13 March 2014, the whole of this amount was paid to the applicant. This was incorrect; the applicant was to receive SEK 1,953 while the remainder, SEK 47, was to be paid to the debtor. It was only on 2 April 2015, i.e. more than a year later, that the debtor received their money.

This year's annual report gives an account of yet another similar case (ref. no. 3029-2015). Of funds received, the Enforcement Authority was to pay SEK 600 plus interest to the applicant and SEK 5,000 plus interest to the debtor. By mistake, the Authority instead paid SEK 5,600 plus interest to the applicant. The debtor naturally wanted to have back his SEK 5,000, and when he did not receive it, he made a complaint to the Parliamentary Ombudsman. When the Enforcement Authority responded to the Parliamentary Ombudsmen, the debtor had not yet received his money. It had then gone almost nine months from the date when the Enforcement Authority became obligated to pay the money to the debtor and almost six months since the debtor visited the Authority and pointed out that there had been an error.

There are two problems for the Enforcement Authority with regard to the handling of funds received. Firstly, it appears that errors are made far too often. As I have pointed out in several decisions, the handling of funds is an important part of the authority's operations that can be of great importance to the individual. In order for the public to have confidence in the Enforcement Authority, it is important that this processing is correct. And secondly, as we have seen, it often takes a startlingly long time before individuals get back money that the authority has paid to someone else by mistake. In my opinion, there is reason for the legislator to review the Enforcement Authority's obligations in situations where funds received have been paid to the wrong person. The system of rules should guarantee that the right person receives their money without delay. I have therefore submitted a copy of my decision to the Ministry of Justice.

### **Cases pursuant to the Planning and Building Act and the Environmental Code**

Not infrequently, cases pursuant to the Planning and Building Act and the Environmental Code stir up strong feelings among those involved. For this reason, the municipal boards in charge of these issues have a great need for personnel

with diplomatic skills who can pour oil on these troubled waters. But sometimes the boards and their personnel also lose their temper. Two decisions in this year's annual report illustrate this.

One decision (ref. no. 6018-2015) involved an apparently complicated supervisory case concerning the application of a shoreline protection exemption. After his shoreline protection exemption had been revoked, the property owner was interviewed by the local press. With reference to the interview, the board wrote to him that the board perceived his statements in the interview to be a gross accusation and requested that he immediately present all the particulars that he had to substantiate the accusation. I note in my decision that it appears obvious that the board was requiring particulars from the property owner for a purpose other than that the provisions of the Swedish Environmental Code are intended for and that through this the board has violated the requirement of objectivity in Chapter 1, Article 9 of the Instrument of Government. The board is criticised.

The other decision concerns a person corresponding with a municipal board about a case of intervention on a neighbouring property under the Planning and Building Act. An administrator at the board wrote an e-mail message that was reported to the Parliamentary Ombudsmen. In the message, the administrator writes that the county administrative board had referred the case back due to a formal omission but if the county administrative board had not focused on the mistake, they would have surely found some other argument for annulling the decision. Furthermore, the administrator writes that he was surprised by the neighbours' reaction to a building permit, but that it became clear when he realised that the neighbours had ambitions to break the property owner financially and thereby force him to move.

In my decision, I find that the content of the e-mail message contravenes the requirement of objectivity in the Instrument of Government. The administrator is criticised.

### **Legislative referrals**

As in previous years, I have been given the opportunity to respond to a large number of legislative referrals of proposed bills. I have not been able to respond to all of these referrals, but as previously I have focused on the referrals that are more closely linked to the central themes of my supervisory area. Among the referrals that I have expressed an opinion on, I would like to mention the Swedish National Courts Administration's memorandum with a petition to amend the district court instruction, the memorandum (Ds 2015:49) Review of the penal provision on contact with children for sexual purposes, the National Board of Housing, Building and Planning's report (2015:32) Neglected land and derelict buildings, the report (SOU 2016:7) Privacy and penal protection, the memorandum Extended opportunities for migration courts to transfer cases, the memorandum (Ds 2016:5) More effective rent and tenancy tribunals and the memorandum (Ds 2016:17) Unlawful settlements.



## Cecilia Renfors

Parliamentary Ombudsman

My supervisory area comprises the Swedish Police and Prosecution Authorities, Swedish Customs, aliens and employment matters as well as certain matters relating to the Government Offices and municipal operations.

During the fiscal year, 2,353 complaints cases were received and 14 enquiries (including inspections) initiated within my supervisory area. The number of cases received has increased by almost 400 compared to the previous fiscal year. During the fiscal year, 2,428 cases were settled. Of these, about 25 per cent were settled through decisions by delegated heads of division.

The number of answered referrals is higher than previously, 40 compared to 29 the year before.

The greatest number of complaints was directed towards the Police. The number during the fiscal year amounted to 1,003 (966), which is about 40 more than last year but slightly fewer than the year before that. The number of complaints concerning prosecutors is lower than last year, 160 compared to about 190. There are considerably more complaints against the Swedish Migration Agency than previously, and during the fiscal year these amounted to 574, compared to 283 last year.

It is probably complaints about processing times, especially for residency on account of family ties, that are behind the marked increase in cases concerning the Swedish Migration Agency. During the fiscal year, I have had a follow-up meeting with representatives of the Migration Agency's management about its long processing times. I will return to these issues below.

I have also visited Arbetsförmedlingen (the Swedish Public Employment Service) and talked with the Director General and some of his closest colleagues about the challenges Arbetsförmedlingen is facing and the need to improve and

## Areas of responsibility

- Public prosecutors; the National Economic Crime Authority; The Taxation Authority's Criminal Investigation Units as laid down in the Act on the Participation of Taxation Authorities in Criminal Investigations.
- The Police force; The Swedish Commission on Security and Integrity Protection.
- Customs authorities.
- The Public Employment Service, the Work Environment Authority; unemployment insurance; other cases pertaining to the Ministry of Employment and agencies subordinate to it which do not fall within other areas of responsibility.
- The Swedish Arts Council, The Swedish National Heritage Board, Swedish National Archives; museums and libraries: The Swedish Broadcasting Authority; local music schools, other cases pertaining to the Ministry of Culture and agencies subordinate to it.
- Municipal administration not covered by special regulations.
- Cases involving aliens, not including, however, cases heard by migration courts; citizenship issues and cases relating to the integration of immigrants.
- Rescue services, applications of the regulations relating to public order; lotteries and gambling, licences to serve food or drink, car dismantling.
- Other cases dealt with by the County Administrative Boards that do not fall within other areas of responsibility.
- Housing and accommodation (supply of accommodation, home adaptation grants, accommodation allowances not included in the social insurance scheme); the National Board of Housing, Building and Planning; the National Housing Credit Guarantee Board.
- Cemeteries and burials, government grants to religious denominations.
- Government activities outside Sweden; the International Development Cooperation Agency; the National Board of Trade; the Swedish Institute; other cases pertaining to the Ministry for Foreign Affairs and agencies subordinate to it.
- The Riksdag Board of Administration, the Riksbank, the National Audit Board; general elections.
- Cases pertaining to the Prime Minister's Office and agencies subordinate to it which cannot be allocated to the areas of responsibility to which they pertain from the point of view of their subject matter.
- Other cases which do not fall within areas of responsibility 1–3

develop methods and procedures to achieve sound administration. It was a very rewarding meeting and I look positively on the development work in progress at the authority and its focus on matters of administrative law.

During the fiscal year, I have conducted an inspection of the Swedish Police Authority, local police area Umeå, and of the Swedish Prosecution Authority, Södra Skåne Public Prosecution Office in Malmö. I have also conducted a series of inspections of the country's border police sections focusing on the procedures to ensure that decisions on expulsion or refusal of entry are not enforced if there is an impediment to enforcement. With one exception, these inspections were led by a head of division.

### The Police Authority and the Prosecution Authority

In last year's annual report I mentioned a series of inspections focusing on the reasoning behind decisions on restraining orders. This year's report includes my decision regarding this review (ref. no. 2771-2015). It showed that the decisions were largely well founded, but that in 30–50 per cent of them the grounds for the restraining order were not clear. A restraining order is a significant constraint on individual privacy, and it is important to bring about an improvement. The



Swedish Prosecution Authority has taken the matter very seriously and has taken measures in response to what emerged. The Authority has previously started active work with follow-up and development of the prosecutors' application of the relevant legislation, and I naturally view this very positively.

Another question I have previously raised is the participation of the police in social media. In two new decisions, I have reviewed posts on the police's Facebook pages that I considered to be questionable with regard to the police's fundamental tasks (ref. no. 4626-2014 and 300-2015). One of the posts is particularly dubious as it might, in my opinion, undermine the confidence of private individuals in the police. The post gave a detailed description of a protracted police intervention against a man under the influence of narcotics and his irrational behaviour. It also contained photographs of the man. It is obvious that the individual in such cases might feel singled out and that others can identify him. Completely regardless of the risk of identification by outsiders, I argue that the police should refrain from publishing detailed descriptions or pictures of individuals in vulnerable situations. It is also inappropriate to use individuals as a deterrent. Those who for one reason or another come in contact with the police should not have to worry that any more or less detailed description of this will be posted on the police's Facebook pages.

Three decisions in this year's annual report deal with issues of access to a defence counsel. These are not new issues for the Parliamentary Ombudsmen and I do not establish any new principles on the right to a defence counsel in these three decisions. They are to instead serve as a reminder of the importance of suspects being given access to support and assistance from a defence counsel to which they are entitled and that police and prosecutors have an obligation to secure that right. At the same time, I also clarify that the interrogating officer has an obligation to inform and consult the preliminary investigator if questions arise regarding a suspect's access to a defence counsel during the investigation.

One of the decisions involved a 15-year-old who was suspected, among other things, of attempted gross assault and who was deprived of liberty due to these suspicions (ref. no. 2502-2015). A relatively detailed interrogation was held with him in connection with his apprehension. No defence counsel was present, but his parents were present. It should be a matter of course to the police not to have held the interrogation without a defence counsel and that this assessment could not be left to the suspect or his parents. In the same way, it should have been obvious to the interrogating officer in the second case (ref. no. 2943-2015) that a detailed interrogation regarding suspected arson should not have been held with the suspect, who was injured after the fire and was under hospital treatment, without a defence counsel. This applies regardless of what the suspect himself might have previously said and regardless of whether the defence counsel had approved the holding of the interrogation. It is the police and prosecutors who have the final responsibility for the right to a defence counsel being satisfied.

In the third case, an interrogation was held with a man detained on suspicion of theft without his defence counsel being informed of this (2470-2015). The interrogating officer stated a lack of time as the reason for her action and was criticised for having put the suspect's legal certainty at risk.

The long detention periods that occur in Sweden, often with restrictions, have been the subject of attention for a number of years. The European Committee for the Prevention of Torture has repeatedly raised the issue, and the Swedish Prosecution Authority has worked with this matter in various ways. The starting point is that restrictions are to be used restrictively. In practice, difficult trade-offs must be made between the interest of an investigation not being harmed and the strains that restrictions cause the individual. It is of great importance that prosecutors continuously consider whether restrictions are to be maintained and whether it is possible to grant some kind of relief or exemption. This issue is discussed in one of the decisions in the annual report (ref. no. 679-2015). A man was detained for about four months on suspicion of a particularly gross assault against his three-month-old twin sons. His restrictions included letters, visits and telephone calls and he was not allowed any contact with his wife during the investigation period. I found the restrictions in this respect to have been disproportionate intervention and that following disclosure of the preliminary investigation to the suspect it would have at least been possible to allow some letters and monitored visits. I also pointed to the importance of informing the detainee about the exact reasons for the restrictions.

In another decision, I had reason to give a reminder of the law concerning depriving young people of liberty. This means that it is only possible in exceptional cases for young people to be arrested and detained (ref. no. 6383-2014). I criticised two prosecutors due to a 15-year-old being under arrest for more than 24 hours on suspicion of attempted theft from a dressing room locker at a bathhouse. The circumstances were far from such that there were reasons to arrest a person who is only 15 years of age.

Finally, I mention a couple of decisions concerning the need to protect data on the injured party in a preliminary investigation report and its relationship to the suspect's right to read the basis for prosecution decisions (ref. no. 6673-2014 and 1136-2015). In one case, the injured party had a secrecy mark in the population register due to her need for protection against her former husband. During the preliminary investigation concerning a suspected offence against him, she changed her surname. When the preliminary investigation report was disclosed to the man, this stated her new surname, which entailed security risks for her. This processing was, however, correct since the preliminary investigation report must always state an injured party's name, and the suspect has an unconditional right to read the report. The reason for the rules being like this is that suspects need to know the identity of the injured party in order to defend themselves effectively. However, I was able to establish that when the identity is already known, there is no reason for the suspect to know the new name that the injured party has changed to during the investigation. I submitted my decision to the Ministry of Justice as I felt that consideration should be given to whether the current regulation should be changed on this point.

The other decision provides a reminder that information completely irrelevant to the criminal investigation should not be included in the preliminary investigation report and that this is particularly important to consider where sensitive information about the injured party is concerned. This case involved a large quantity of information from the injured party's mobile phone that was irrele-

vant to the investigation and, among other things, risked revealing her protected accommodation to the suspect.

### **Labour market**

Over the past two years, I have regularly addressed the deficiencies at Arbetsförmedlingen (the Swedish Public Employment Service) regarding procedures for documentation, communication of documents and data, and the reasoning behind decisions. These were among the issues discussed during the visit to Arbetsförmedlingen's head office that I mentioned initially.

One of the decisions in this year's annual report concerning Arbetsförmedlingen raises the deficiencies regarding communication and reasoning (ref. no. 2901-2015). Arbetsförmedlingen is criticised for revoking a training referral without giving the job seeker the opportunity to read and comment on the information on which the decision was based. Besides this, the decision was formulated in a deficient manner, it did not meet the basic reasoning requirements and it did not contain any notification of how to have the decision reviewed.

The case illustrates the need at Arbetsförmedlingen for training and development in administrative law and the fact that the work currently in progress is important.

### **Migration**

Processing times at the Swedish Migration Agency have continued to be the subject of a large number of reports, as have inadequate service and accessibility. I have previously criticised the Swedish Migration Agency in these respects.

Partly in light of the fact that there was reason to believe that processing times would increase further, I have followed developments and visited the Agency in April 2015 to gain a current picture of processing times, priorities and procedures. Among other things, it emerged that the Agency has produced an action plan for permit cases with the goal of stabilising processing times and achieving acceptable processing times for residency on account of family ties and labour at the end of 2015. However, reports concerning long processing times and inadequate service continued to come in, and the strong increase in migration in autumn 2015 changed the situation and entailed significant challenges to the Swedish Migration Agency.

At a further follow-up meeting in February 2016 with representatives of the Swedish Migration Agency, including the Agency's head of operations, I informed myself about the current situation regarding processing times in asylum cases and other permit cases, and about the measures taken or planned at the Agency.

In my decision of 23 June 2016 (ref. no. 2132-2015), I noted that processing times in asylum cases, which had previously been at a reasonable level, were now increasing and that procedures had changed in several respects. My decision stated that I will be reviewing the processing of asylum cases in the autumn. The purpose is primarily to monitor that processing is done with legal certainty.

As regards other permit cases, it is the situation for residency on account of family ties that appears to be the most worrying. Processing times were already



long and have now increased further due to the greater load on the Swedish Migration Agency. These long processing times hit individuals hard. My decision makes the assessment that the reasons why the situation has not improved are outside the Agency's control and that the Agency is not to be criticised once again.

However, it is serious that processing times have been very long for several years and that statutory time limits are regularly exceeded. The ultimate responsibility for the Swedish Migration Agency's opportunity to make decisions within a reasonable time lies with the Government and the Riksdag. I therefore submitted my decision to the Ministry of Justice.

In last year's annual report I wrote that a particular concern within the Swedish Migration Agency's area of responsibility is enforcement cases. I now have reason to repeat this, but from a different perspective. The Swedish Migration Agency has the main responsibility for expulsion decisions being enforced, but can transfer a case to the Swedish Police Authority if the person to be expelled cannot be found or if it can be assumed that coercive measures will be needed. In reviewing three cases, I have identified deficiencies in the legislation as regards the right of the police to use violence and coercive measures in these cases.

In the first case, the border police had fetched a woman and her two children who did not want to leave the country voluntarily and drove them to the airport (ref. no. 836-2015). However, the provision on which the decision to do so was based was not applicable in the current situation, and there was also in my opinion no other legal support for the intervention.

The decision noted that it is unclear how the provisions of the Aliens Act in these respects are intended to be applied, and I submitted my decision to the Ministry of Justice. I highlighted that it might of course be necessary to restrict a

person's freedom of movement to enable decisions on refusal of entry and expulsion to be enforced. It is equally natural that there must be statutory support for taking coercive measures.

In the other two cases, the border police had taken those expelled, against their will, to the embassies of their home countries so that certain documents required for the journey home could be issued (ref. no. 2488-2014 and 1548-2015). They had both been taken into custody and were thus deprived of liberty. It might appear reasonable for the police, in connection with depriving them of liberty, to have the right to visit an embassy, if the visit is a necessary condition for enforcing the expulsion decision. However, statements in the legislation's preparatory works actually speak against such an interpretation of the custody provision. It is unsatisfactory that neither the legal text nor the preparatory works clearly state which powers the police have in this regard.

It is in my view also questionable whether it is possible to maintain the secrecy for protecting the individual in an interview situation during an embassy visit.

In the case of the two expelled persons it was established that the police had used force to carry out the embassy visits. The person expelled, who was wearing handcuffs during the car journey, was resisting, and had to be carried into the embassy. I noted that it was unclear whether the provisions of the Police Act supported the use of force but that one of the provisions in the Penal Code's chapter on the grounds for exemption from criminal responsibility has granted the right to use force in the situation in question. However, in my opinion, it is questionable whether this means of carrying out an embassy visit is consistent with the police's regulation that enforcement is to be carried out in a humane and dignified manner. It was also questionable whether it was actually possible to achieve the intended purpose of the visit given that the person expelled had clearly expressed that he did not intend to participate in any way.

I found that the legislation should clarify these issues and also submitted these decisions to the Ministry of Justice.

### **Objectivity and impartiality**

Maintaining the requirements of objectivity and impartiality, and the strong protection of freedom of expression that is applicable in relation to the public institutions, can be difficult, not least in the area of culture, an area which often challenges the boundaries for what many people find unacceptable. A couple of the decisions I made during the fiscal year illustrate this.

The first decision criticises Linköping municipality for having cancelled a music group with reference to opinions expressed by group members, including some on a television programme (ref. no. 4602-2014). In my view, this decision contravened the principle of objectivity in Chapter 1, Article 9 of the Instrument of Government, especially with regard to the protection of freedom of expression in Chapter 2, Article 1.

Every summer, the municipality arranges a youth festival – Keep It Loud – in collaboration with some associations and a radio station. This also took place in 2014, and among those booked by the festival team organising the event was the group, Kartellen.



However, through an intervention by the mayor, Kartellen's booking was cancelled with reference to the group's history, which was not consistent with the municipality's core values. The reasons were developed in a press release and a debate article, with the mayor stating, among other things, that the group had been vague about their view on political violence as a method and had not distanced itself from such violence. During the investigation, mention was also made of security aspects as a reason for the cancellation, but the municipality drew attention neither to the risk of public disturbance nor to the risk of crimes being committed during the performance. The investigation instead gave a clear impression that the decisive reason for the cancellation was the opinions the group had expressed.

Rights and freedoms of private individuals must be respected by the public institutions, and measures of a sanctionary nature may not be taken due to someone having exercised the right to express their opinions. This means that, as a starting point, representatives of the public institutions are to accept that statements they do not share or even find inappropriate have been made by artists performing at municipal events.

The second decision concerned Gothenburg City Library, which rented an auditorium to an association for a lecture on immigration and cover-up (ref. no. 5221-2014). The matter generated debate, and the library decided to hold its own event at the same time as the lecture: a conversation about life as an undocumented migrant. Eventually, however, the library decided to terminate the auditorium rental contract with reference to the risk of public disturbance. A number of factors, however, gave the impression that the decision had been affected by the negative public opinion. These factors included, among other things, that there were no detailed considerations of public order and that the library held its own event. According to a statement in the media, this was a way for the library to step forward and let different voices be heard when it had become clear what the association was intending to offer.

The Culture Committee in Gothenburg was criticised for the library's way of handling the case, which had not met the Instrument of Government's requirement of objectivity. I found reason to point out that the constitutional principles of objectivity and freedom of expression might be undermined if authorities yield to temporary or durable opinions and allow the content of a presentation to affect decisions on, e.g. the rental of premises.



## Stefan Holgersson

Parliamentary Ombudsman

The issues within my supervisory area concern social services, health and medical care and the education system. My predecessor, Lilian Wiklund, retired at the beginning of the year, and in the intervening period it was mainly the department's deputy ombudsmen who served. I took up my duties on 1 April 2016, and I will therefore also discuss my predecessor's decisions where there is reason to do so.

From 1 July 2015 to 30 June 2016, 1,975 cases in my supervisory areas were received. The influx of cases is very high and is surpassed only by the fiscal year 2014/15 when 2,062 cases were registered. In the current fiscal year, nine enquiries, including inspections, were initiated. Although some inspections have been carried out, the work has thus had a clear focus on handling complaints. However, inspections have had to take second place due to the influx of complaints, the change of Parliamentary Ombudsman and a conscious effort to keep case balances down. The closing balance is 225 cases, compared with an opening balance of 273 cases. Work with referrals has been extensive. A small number of preliminary investigations have been initiated.

### Health and medical care

During the year, 329 complaints concerning health and medical care have been received. The annual report refers to six decisions in the area, and I give particular attention to four of these below. Two concern psychiatric care, while two concern patients under the Care of Abusers (Special Provisions) Act (LVM).

Before turning to these decisions, I would like to say a few words about the general handling of complaints in the area of health and medical care. The Parliamentary Ombudsmen's supervisory activities are usually described as being extraordinary in the sense that individuals in the first instance turn to a court

### Areas of responsibility

- Application of the Social Service Act, the Act on Special Regulations on the Care of the Young (LVU) and the Act on the Care of Substance Abusers in Certain Cases (LVM).
- The Children's Ombudsman.
- Health and medical care as well as dental care, pharmaceuticals; forensic medicine agencies, forensic psychology agencies; protection from infection.
- Other cases pertaining to the Ministry of Health and Social Affairs and agencies subordinate to it which do not fall within other areas of responsibility.
- The school system; higher education (including the Swedish University of Agricultural Sciences); student finance; the National Board for Youth Affairs; other cases pertaining to the Ministry of Education and agencies subordinate to it which do not fall within other areas of responsibility.

with their complaints or to the ordinary supervisory authorities. The ordinary supervision of health and medical care is performed by the Health and Social Care Inspectorate, IVO. The way in which IVO handles complaints is naturally of primary significance to the individual, but also to some extent to the Parliamentary Ombudsmen. Complaints about IVO's activities are fairly frequent at the Parliamentary Ombudsmen. The issue of IVO's long processing times has been the subject of JO's attention in many cases (see, among others, the Parliamentary Ombudsmen's decision of 28 October 2015 in case, ref. no. 5787-2014, etc.). It is obvious that IVO has a strained work situation. On 12 June 2014, the Government decided on a review of the current handling of complaints against the healthcare system and its personnel (ToR 2014:88). The work was presented in the interim report *Sedd, hörd och respekterad – ett ändamålsenligt klagomålssystem i hälso- och sjukvården* (SOU 2015:14) and in the final report *Fråga patienten! Nya perspektiv i klagomål och tillsyn* (SOU 2015:102). The interim report made some proposals on how to make the handling of complaints more effective, and the final report made proposals on how a new complaints system should be designed. The reports are currently being studied at the Government Offices. The Parliamentary Ombudsmen has submitted comments on the proposals, and my hope is that the handling of complaints by the ordinary supervisory authority will eventually be improved.

One case that is interesting in several respects concerns a patient who had outpatient psychiatric care (ref. no. 5705-2014). The case resolves into two main issues. The first is the importance to be assigned to a drug test in the form of a quick test by means of screening. The second, and perhaps most interesting issue from a rights perspective, is the requirements that should be set in order for a consent to care to be considered to exist. Among the conditions for the outpatient forensic psychiatric care, the patient was to abstain from drugs and submit to drug tests. During a visit to the clinic, the patient provided a urine sample that showed a positive result upon screening. The patient was then faced with the choice of either remaining at the clinic voluntarily until the urine sample had been verified, or a responsible doctor making a decision to convert the outpatient care to inpatient forensic psychiatric care. The patient was only released after seven days when the test result proved to be incorrect, and was also denied being outdoors during this period. In a report to the Parliamentary Ombuds-

men, the patient complained about the senior consultants involved and stated that he had been deprived of his liberty as he did not stay at the clinic voluntarily.

My decision dwells initially on the importance that should be attached to a single screening test. My conclusion, which is also in line with what is expressed by the National Board of Health and Welfare, is that a quick test by means of screening is not so reliable that an intrusive decision against an individual should be based solely on such a test result.

As regards the issue of whether or not the patient's stay at the clinic was voluntary, I state that the possibility for consent to be the basis for admission requires the voluntariness to be real. A care intervention based on voluntariness may not be performed under duress. The patient should also have received information about the available options before an informed consent can be given. In a situation such as the one outlined here, where the patient clearly finds himself in a state of dependence on the doctors, it is my view that particularly high standards must be set to ensure that actions are voluntary. The information the patient received in the case did not meet the requirements of clarity, objectivity and completeness necessary for him to make a well-founded decision. Notes in the medical journal gave the impression that the patient could not have understood that he had any other option than to stay at the clinic. The patient also made clear his dissatisfaction, and it must have also been clear to medical personnel that there was no real consent to voluntary care under the Health and Medical Services Act. Under these conditions in which the patient had reason to believe he must follow the doctors' demands, it is my view that genuine consent was not provided. The healthcare system's handling deprived the patient of his right to have the matter examined by a court. In this respect, I therefore directed serious criticism towards the senior consultants concerned. The decision also directed criticism towards one senior consultant for not complying with a request to ask the laboratory to prioritise the sample.

The second case that I would like to highlight concerns a person who was the subject of compulsory psychiatric care under the Compulsory Psychiatric Care Act, LPT (ref. no. 3112-2015). The problem in this case was that the hospital delayed in forwarding documents that the administrative court had faxed to a patient under the hospital's care. Cases covered by LPT must be handled speedily by the courts, and the deadlines are short. Patients under care by virtue of LPT are in a vulnerable situation, and it is important that they have the opportunity to exercise their rights in an acceptable manner while under care. A prerequisite for this is that notices and application documents from a court are handed over to the patient without delay, in order for him or her to have the opportunity to prepare for a forthcoming hearing in court. It is also important that the patient quickly receives the judgment once they have been admitted to hospital, so that he or she is best able to exercise their right to appeal. Since the hospital delayed in handing over notices and judgments from the administrative court to the patient, it was criticised for this. In my view, it would be appropriate to note in the patient's records when documents of this nature are handed over to a patient. Where it is not possible or appropriate to hand over such documents

to the patient without delay, the assessments made on this matter should also be documented in the records. As there is no explicit provision regarding the care provider's responsibility to document this information, I chose not to criticise the hospital for the lack of documentation in this respect. However, from a legal safety perspective, there may be cause to consider whether a provision should be introduced regarding the responsibility to document details of when the patient has received court documents. I have therefore sent the ministry concerned a copy of the decision for information purposes.

The last decisions I would like to highlight were made by Parliamentary Ombudsman Wiklund (ref. no. 5720-2014) and Deputy Parliamentary Ombudsman Ragnemalm (ref. no. 6667-2014). Under Section 24 LVM, if a substance abuser wishes to leave the healthcare facility, the operational manager of a healthcare unit has an obligation to make the decision that the abuser be prevented from doing so for the period required for the abuser to be transferred to an LVM home. The hospitals' handling is criticised for such decisions not having been made and for the patients being able to leave the healthcare facilities despite the hospitals' obligation to detain them having arisen.

### **Public access to official records and secrecy, and freedom of expression and freedom of the press**

Issues about public access to official records and secrecy, and about freedom of expression and freedom of the press, are common in my supervisory areas. Reports concerning handling by authorities when private individuals and journalists have requested the disclosure of official documents are frequent. This year, the Freedom of the Press Act celebrates its 250th anniversary. Given the legislation's age and its central importance, one might think that it should be simple to apply its provisions and that good procedures should have been established and settled. Unfortunately, the reality is rather that the application of the provisions on disclosing official documents is still a cause of concern in many quarters. Many making a complaint to the Parliamentary Ombudsmen state that the disclosure of documents is slow, that they are juggled around the authority, that responses are delayed, and that it can be difficult to obtain an appealable decision. Regrettably, decisions containing criticism following this type of report are so common that the annual report cannot give them the commensurate space. During the year, 199 reports concerning public access to official records and secrecy have been received in my supervisory areas, while reference has only been made to three of them. This obviously does not mean that the Parliamentary Ombudsmen views these deficiencies less seriously but, where applicable, the decisions contain clear criticism and directions even though they are not included in the annual report.

In the decisions referenced, my predecessor Parliamentary Ombudsman Lilian Wiklund and Deputy Parliamentary Ombudsman Cecilia Nordenfelt have raised some issues concerning public access to official records and secrecy and concerning freedom of expression and freedom of the press and modern technology. The first decision deals with the opportunities of social services to send confidential information by e-mail (ref. no. 1376-2013). The second raises some issues related to social services having made video recordings in the context of an approved intervention. The issues that the decision treats in more detail relate

to the legal status of the recordings and the opportunity to cull the material (ref. no. 7041-2013). The third decision discusses questions raised through the publication of documents containing confidential information on a municipality's website. According to the Parliamentary Ombudsmen, the masking of information that had been done was not done with sufficient care (ref. no. 4768-2014). The decisions are interesting in themselves, but it is also noteworthy that the principles laid down more than 250 years ago still have a relevance and bearing in our modern information society.

### **The Social Services Act**

During the year there were 1,048 reports concerning assistance and child cases, while 1,059 such cases have been concluded. Social services conduct good and important work in many respects. In many investigations, it is also gratifying to note that this work has been conducted in a formally unobjectionable manner. At the same time, it is obvious that social services in many municipalities are very hard pressed, and it cannot be ignored that this affects the quality of investigations and decisions. Identifying a single factor to explain this is not easy. It is probably true that resources, expertise and workload play a role, at the same time as the number of cases appears to be more complex in nature than previously.

A number of complaints about social services concern handling in connection with custody investigations. The general obligation of social services to act impartially and not to take extraneous factors into account is complemented by an obligation to ensure the child's best interests. This means that a guardian who does not share social services' assessment in a custody investigation often criticises a lack of objectivity in the investigation. Complaints of this kind are often difficult to investigate as a custody investigation is often based on pure assessment and because the cases often are very inflamed.

Another recurring question concerns the conditions for social services to interview children in their investigations. The annual report presents four decisions concerning the conditions for such interviews. One of these cases concerns the appropriateness of the board's officers interviewing children in school during a child welfare investigation (ref. no. 4225-2014). Another case concerns whether the framework of such an investigation gives the social welfare board's officers the right to visit the child's preschool to observe the child without the consent of guardians (ref. no. 6547-2014). Connecting issues have concerned whether the social welfare board has the right to interview children without the consent of guardians for a preliminary assessment (ref. no. 3891-2014) and, where the child was to be interviewed in the context of a custody investigation, whether an officer could refuse the child to make an audio recording of the interview (ref. no. 2595-2015). These decisions can hopefully provide guidance for the future work of social services.

In the case where the social welfare board visited the child's preschool without the guardian's consent, I came to the conclusion that the measure did not fall within the provisions of the Social Services Act entitling the board to obtain information or interview children without the guardian's consent (ref. no. 6547-2014). The measure therefore appears sensitive, and my understanding is that there might be a risk that the public's confidence in the board could be damaged





if the board is perceived to be “spying” on private individuals. Another case concerns, as mentioned, the conditions for social services to interview children in school during a child welfare investigation (ref. no. 4225-2014). There are often practical reasons for interviews to be held in school. I am, however, somewhat concerned that a practice may have developed whereby child interviews are routine and held in school solely for practical reasons. As I see it, social services should always make an assessment in the individual case of whether and, if so, where an interview is to be held. This assessment should also take into account the risk that the child might be harmed by the attention caused by social services visiting the school. For an adult, an unannounced visit to a workplace by an authority would undoubtedly often be seen as a major invasion of privacy. Even though the situation of interviews in school are not directly comparable, there may in my opinion be a need for the legislator to consider various issues regarding the social welfare board’s investigation activities relating to children. I have therefore drawn the attention of the Ministry of Health and Social Affairs to the issue.

One factor with a strong impact on the activities of social services is the greatly increased flow of refugees in autumn 2015. One of the issues that has received a lot of attention in connection with this is the situation of unaccompanied married children. In November and December 2015, 25 unaccompanied children aged 15–18 came to the municipality of Malmö. The children reported that they were married to an adult. Following a protection assessment, one of the children was placed in a home for care or residence. The remaining children accompanied their spouses. The children's placing with their spouses was reported to JO (ref. no. 394-2016, 476-2016 and 692-2016). One question I asked myself was if social services in Malmö had failed in their responsibility to investigate the married children's need for protection or support.

In the decision, I noted that the social welfare board has a far-reaching responsibility for investigations concerning children who might be in need of protection or support. When an unaccompanied child arrives in Sweden and information emerges that the child is married to an adult, the social welfare board should therefore generally initiate an investigation under Chapter 11, Section 1 of the Social Services Act. As far as possible, the investigation needs to clarify factors including the child's outlook and opportunity to make their own choice. To ensure that the child's rights are not violated, there must also be requirements on the thoroughness of the social welfare board's investigations. In the present case, I requested a number of files concerning unaccompanied married children, and after reviewing these files found no reason to direct any criticism towards the social welfare board for its processing of these cases. However, in my view, it is important for the issue of unaccompanied married children to be followed up by the authorities immediately responsible. I have therefore drawn the attention of the Ministry of Health and Social Affairs to the issue.

I can also mention that after the decision now referenced, we have received reports concerning situations where social services have not placed spouses together. I will have to return to this in a later context.

A recurring question concerns social services laying down requirements for drug tests in their activities. Under Chapter 2, Article 6 of the Instrument of Government, RF, every citizen shall be protected in their relations with the public institutions against any physical violation. The term physical violation also refers to more minor interventions, such as vaccinations and blood tests as well as similar phenomena that are often designated a body search, such as breathalyser tests or similar alcohol testing. According to statements in several JO decisions, the taking of urine samples is also an intervention that falls under the constitutional provision.

Under certain circumstances, protection from physical violation may be restricted by law (Chapter 2, Articles 20 and 21 RF). A decision by Deputy JO Ragnemalm criticised a social welfare board that required parents to undergo drug testing before being granted access to their son (ref. no. 38-2015). The decision stated that an intervention is coerced if the public institutions dispose over powers to enforce the measure. It might also be coerced if the individual's resistance is broken through the threat of a sanction. The rule should be interpreted so as to also establish protection against office holders behaving in a man-

ner that gives individuals reason to believe they must submit to the intervention. This might involve implicit or explicit pressure of various kinds (on the issue of consent, see also ref. no. 5705-2014, covered under the heading Health and medical care). In the present case, the decision to limit access made by the social welfare board's executive board stipulated the condition that the parents were to submit to a drug test. There is no provision in either LVU or other legislation which gives the social welfare board the right in a case such as this to require a drug test. The decision thus found that the social welfare board's decision has no legal basis. In this connection, I can add that one of my own decisions criticised a social welfare board that required a drug test in order to provide assistance under the Social Services Act (ref. no. 749-2014). Here too, the measure had no legal basis.

A decision with the opposite outcome concerned a report against a social welfare board that required regular drug tests of residents at a support home (ref. no. 6442-2014). In this latter case, I found that the requirement for drug tests had a voluntary basis and could therefore not be considered coerced. The reason for this included the fact that an individual is not entitled to a given intervention from the social welfare board, and if he or she does not want to provide a urine sample, assistance can be granted in the form of an intervention other than in the support home in question.

### **The Care of Young Persons Act (LVU)**

The number of compulsory care cases under LVU has increased sharply in recent years, which has also affected the number of reports to the Parliamentary Ombudsmen. This year's annual report refers to six decisions concerning care under LVU.

The criticism I encounter often involves the quality of investigations. This not only encompasses dissatisfaction with the conclusions of social services, but those making the report often feel that their very assessment methodology has shortcomings as there has not been sufficient thoroughness or objectivity. In this respect, the criticism is very much similar to what I presented in connection with my observations under the heading The Social Services Act. It is natural that guardians complain but also relatively common for other adults in the child's network to complain, for example, that children are moved around different placements, and that the board does not provide information or allow access for grandparents. A number of reports have also been received from persons close to the child who believe that notifications of concern have not been handled properly. Even if we think we see that errors might have been made, investigations often contain such a large measure of pure assessment of the individual case that it is difficult to have opinions from a Parliamentary Ombudsmen perspective. For this reason, such cases are often motivated by there not being sufficient grounds to initiate an investigation. However, as mentioned, this need not mean that the complaints are without substance.

An example of when an investigation has been initiated and concluded with criticism is a decision by Parliamentary Ombudsman Lilian Wiklund from July 2015 (ref. no. 6223-2013). This decision criticised the board for individual and family care for deficient handling in several different respects. This involved



both the limiting of a guardian's access to a child and also that a formal decision on this had been made and that the board delayed in initiating an investigation following a request for the LVU care to cease. The board was also criticised for failing to make a decision to place the child in a family home. The Parliamentary Ombudsmen's decision was concluded with a statement that the board's response indicated gaps in its knowledge of regulations in the area.

A recurring problem previously highlighted by Parliamentary Ombudsman Lilian Wiklund is that of queues to homes provided by the National Board of Institutional Care (SiS). The problem is not new but it is obviously very serious if young people in need of care and protection cannot be offered suitable accommodation. As I understand it, the problems that previously existed have become greater due to the increase in young asylum seekers. The issue may require further attention.

The above indicates that there are problems finding secure residential homes for young people in need of LVU care. This year's cases, however, also have examples of the opposite, i.e. that young people have been kept locked up or secluded in a way that the legislation does not allow. To illustrate this, it can be mentioned that an official within social services was criticised for having enforced a judgment concerning care under LVU despite the fact that the judgment was not allowed to be enforced before it had become final (ref. no. 3864-2013).

Another case raising the issue of unlawful deprivation of liberty concerns a 17-year-old boy who was placed in a secure unit at a residential home for young people (ref. no. 228-2013). The decision to take the boy into care did not make clear if the boy was in care because of his domestic situation (Section 2 LVU) or because of his own behaviour (Section 3 LVU). The residential home for young people was criticised by Parliamentary Ombudsman Lilian Wiklund for reasons including the boy having been placed in a secure unit without having made this clear (ref. no. 228-2013). Such a placement is only permitted in the case of placement under Section 3. In the decision, the Parliamentary Ombudsmen noted that the fundamental error in the case was that the city district board's decision to take the boy into care had been formulated in a deficient manner. Since the Parliamentary Ombudsmen's supervisory activities have on several occasions noted similar deficiencies in other cases, there might be reason also to raise the question in this context.

### **The Care of Abusers (Special Provisions) Act (LVM)**

In around forty decisions during the year, the Parliamentary Ombudsmen has dealt with questions related to the handling of cases under the Care of Abusers (Special Provisions) Act, LVM.

In this context, I would like to highlight a decision by Deputy Parliamentary Ombudsman Ragnemalm concerning the issue of an LVM home having been too passive as regards preventing residents unlawfully leaving the home (ref. no. 7163-2014). The decision was not concluded with criticism but nevertheless deserves mention as it shows the – in some cases – difficult considerations that may need to be made in connection with unrest at an LVM home.

Finally, in this area, I would like to discuss a case concerning whether a social welfare board, when ordering immediate care by virtue of LVM, made a suffi-

ciently critical examination of whether a consent to care was realistic (ref. no. 4157-2013). In this case, a man had been taken into immediate care no less than three times in three months by virtue of Section 13 LVM. Parliamentary Ombudsman Wiklund found that it must have been obvious that the man's consent on the third occasion was not realistic. According to Parliamentary Ombudsman Wiklund, the processing in the case suggested that the board either lacked knowledge on what should be required so that consent is able to form the basis for care, or that the board did not conduct a sufficiently critical examination of whether consent was realistic.

### **The education system**

Under the section on health and medical care, I touched upon the supervision by the ordinary supervisory authority, IVO. Also in the area of education I am able to note that the ordinary supervisory authority, the Swedish Schools Inspectorate, is hard pressed. Besides processing times, this can be seen in the Inspectorate's dismissal of cases on new grounds. I have thus in several cases seen that the Swedish Schools Inspectorate has dismissed cases without investigation if the pupil is no longer at the school where the reported incident occurred and if an investigation would therefore have no effect on the pupil's current situation. Although this new ground for dismissal is used with discernment, a stricter complaints practice at the ordinary supervisory authority affects the opportunity of citizens to obtain responses to complaints and also to some extent the Parliamentary Ombudsmen's work situation.

A general reflection I otherwise make, after a relatively brief acquaintance with complaints in the education area, is that many complaints concern a school not having tackled bullying early and appropriately and that parents experience a passivity on the part of the school in satisfying pupil needs for special support. According to several reports, this is the cause of their children's low school attendance.

During the year there were 269 reports in the education area and 285 cases have been concluded. The annual report refers to three cases. Two of these cases involve the dissemination of political information in school.

In the first decision (ref. no. 5001-2014), Parliamentary Ombudsman Wiklund directed criticism towards upper secondary schools for having contravened the principle of objectivity in Chapter 1, Article 9 of the Instrument of Government, RF. Before the 2014 Riksdag election, the parliamentary parties had been invited to schools to hold a so called book table, while a youth association had been completely refused the opportunity to provide political information. Parliamentary Ombudsman Wiklund found that this action contravened RF's principle of objectivity, and also made some general statements about the involvement of political parties in the education system's societal information based on RF's principle of objectivity and how this has been interpreted by the Supreme Administrative Court and in previous decisions by the Parliamentary Ombudsmen.

The question of the education system's stance on political information has been subsequently studied by a Government-appointed inquiry chair in the report *Politisk information i skolan – ett led i demokratiuppdraget* (SOU 2016:4).

The report proposes that the Education Act introduce an explicit regulation to

enable a school to limit the number of parties it invites according to certain objective grounds. The inquiry chair also proposes, in line with the the Parliamentary Ombudsmen's decision now referenced, that if political parties have been invited, pupils should, as part of their education, also be given opportunity to receive information from other political parties that have expressed an interest in participating.

The second case involving the dissemination of political information in school concerns a principal who did not allow a pupil to distribute flyers at school and also stated that he would exercise prior scrutiny of information that pupils wanted to distribute (ref. no. 5069-2015). I found that this action contravened the prohibition of obstacles to dissemination in Chapter 1, Article 2 of the Freedom of the Press Act. Among other things, the decision points out that a school's management may prevent the dissemination of printed materials there, but only if this is done for reasons of order.





## Opcat activities

Over the five fiscal years that the Parliamentary Ombudsmen has served as national preventive mechanism under OPCAT, the protocol supplementing the UN Convention Against Torture, 134 inspections have been carried out as part of these activities. The ombudsmen have decided to initiate 27 enquiries with reference to these inspections.

The special OPCAT unit assisting the ombudsmen's mission works to develop methods for implementing and following up preventive efforts and retains its thematic focus. In 2016, the unit's thematic focus has been on information about the rights of those deprived of liberty. A starting point for this work is previous decisions and statements by the Parliamentary Ombudsmen, including Parliamentary Ombudsman Renfors' decision of 18 June 2014 concerning if, when and how inmates in a police cell are informed of their rights and the meaning of enforcement (JO 2014/15 p.104, ref. no. 2572-2013). The recommendations that were submitted after the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Sweden in 2015 also form part of the the Parliamentary Ombudsmen's work to identify and monitor risk elements in places of detention (CPT/Inf [2016] 1).

During the fiscal year the OPCAT unit has conducted several outreach activities. Particular mention can be made of a seminar on 1 October 2015 for Riksdag members, government agencies and organisations about the experience of the Parliamentary Ombudsmen and other actors regarding the prevention of torture and other cruel, inhuman or degrading treatment. There was a great interest in the seminar and the event has had a positive effect on highlighting the Parliamentary Ombudsmen's mission as national preventive mechanism.

The OPCAT unit also has international contacts, and its involvement has included a regular exchange of factual and methodological issues with the ombudsman institutions in Denmark, Norway and Finland, all of which, like JO, serve as national visiting bodies under OPCAT.

### OPCAT inspections during the fiscal year

During the past fiscal year, 18 inspections were conducted (of which six were in supervisory area 2, two in supervisory area 3 and ten in supervisory area 4). This number is lower than the previous year. The number of inspections varies from year to year depending on the focus of activities for the fiscal year and the choice of inspection objects. During the year, a total of 24 days has been used for inspections. The composition of inspection teams has varied and been dependent on factors such as the size and the security classification of the institution. The majority of inspections were announced in advance.

In 2015, OPCAT activities focused on the theme of women deprived of liberty. This work has prioritised inspections of the Prison and Probation Service's women's institutions and of psychiatric institutions. The results will be presented in a special report. The inspections of women's institutions prompted Chief Parliamentary Ombudsman Fura to initiate three enquiries. The cases concern the opportunity for separating inmates by category, for making security and risk assessments in connection with outdoor stays and transports as well as the situa-

tion of inmates with accompanying children and pregnant inmates.

During the year, several follow-up inspections were conducted at institutions for which the Parliamentary Ombudsmen had previously expressed a need for change, e.g. the remand prison in Östersund and the police cell in Umeå (see below).

### OPCAT inspections of the Swedish Prison and Probation Service

On behalf of Chief Parliamentary Ombudsman Fura, the OPCAT unit inspected three of the Prison and Probation Service remand prisons and one women's institution over the fiscal year.

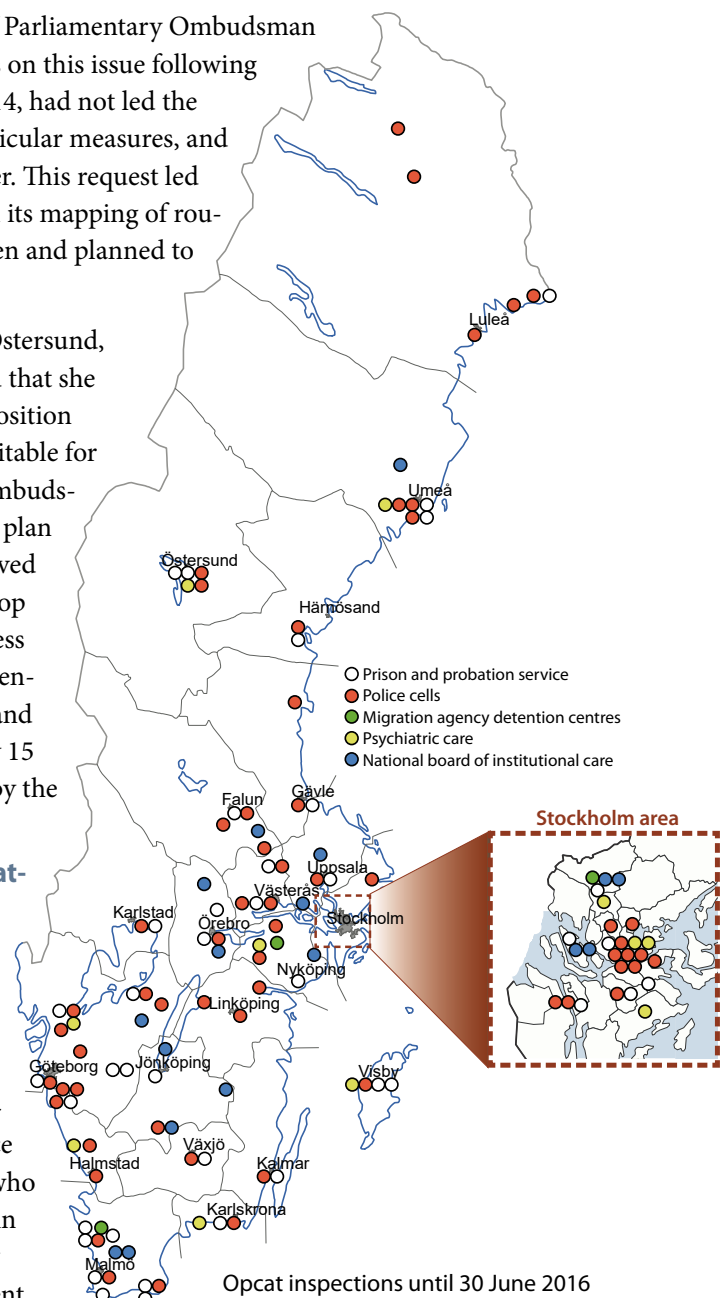
The inspection at Ljustadalen Prison noted that it had a procedure which entailed a body search of visitors without a decision based on an individual assessment made in the particular case. Chief Parliamentary Ombudsman Fura pointed out that her previous statements on this issue following OPCAT inspections, e.g. at Ljustadalen in 2014, had not led the Prison and Probation Service to take any particular measures, and requested the Service to respond in this matter. This request led the Prison and Probation Service to report on its mapping of routine searches of visitors and the measures taken and planned to rectify the deficiencies (ref. no. 3458-2015).

After an inspection at the remand prison in Östersund, Chief Parliamentary Ombudsman Fura stated that she found no reason to reconsider her previous position from 2013 that the premises are directly unsuitable for detention operations. Chief Parliamentary Ombudsman Fura argued that regardless of whether a plan for a new remand prison is adopted, she believed that the Prison and Probation Service must stop placing detainees in the present premises unless immediate measures are taken. Chief Parliamentary Ombudsman Fura requested the Prison and Probation Service to respond with a report by 15 January 2017 presenting the measures taken by the Service (ref. no. 872-2016).

### OPCAT inspections of compulsory psychiatric care and forensic psychiatric care

During the fiscal year, two psychiatric clinics were inspected, Karsudden Regional Hospital outside Katrineholm and Brinkåsen outside Vänersborg.

The inspection of Karsudden Regional Hospital revealed that it had chosen not to introduce a general access control, but that all patients who had been out on their own, or who had been in the hospital's activity building, were still body searched when they returned to the department. Parliamentary Ombudsman Wiklund recalled that







decisions on body searches in such cases must be made in the individual case before the search is carried out and stated that she assumed that future body searches would be in accordance with the regulations. Furthermore, questions were raised regarding how the hospital's practical handling of patients in long-term seclusion related to applicable legislation. Parliamentary Ombudsman Wiklund did not specifically comment on these questions, but pointed out that there may be reason for the Parliamentary Ombudsmen to return to questions including seclusion in a more integrated way (ref. no. 6308-2015).

#### **OPCAT inspections of police cells and Migration Agency detention centres**

During the fiscal year, nine police cells and one detention centre were inspected. Five of the inspections of police cells were follow-ups to previous inspections (Umeå, Västerås, Östersund, Helsingborg and Sollentuna).

At the inspection of the police cell in Umeå, Parliamentary Ombudsman Renfors noted that it had been more than four years since the Parliamentary Ombudsmen drew attention to the police cell having no exercise yard, and that there was also no other arrangement for satisfying the inmates' right to periods outdoors. Parliamentary Ombudsman Renfors stated that the Swedish Police Authority must promptly develop a permanent solution for satisfying the inmates' right to periods outdoors and that she would continue to monitor the issue (ref. no. 3301-2015). After the inspection of the police cell in Västerås, Parliamentary Ombudsman Renfors stated that it is not acceptable for a police cell to lack procedures to ensure compliance with the Swedish Police Authority's new regulations (PMFS 2015:7, FAP 102-1) on matters including the communication of information about inmate rights (ref. no. 6445-2015).

With reference to the fact that inmates at the Migration Agency's detention unit in Flen did not receive any written information about their rights, Parliamentary Ombudsman Renfors stated that this deficiency should be addressed immediately (ref. no. 843-2016).

## International cooperation

One of the Parliamentary Ombudsmen's overriding goals is to promote international dissemination of the idea of legal scrutiny through independent ombudsmen. In its work towards this goal, the Parliamentary Ombudsmen has carried out the following operations during the fiscal year.

The Parliamentary Ombudsmen has received 20 visits in connection with which it has provided information about its activities. One of these visits was from the OSCE (Organisation for Security and Co-operation in Europe) Office for Democratic Institutions and Human Rights (ODIHR). Our visitors were interested in the Parliamentary Ombudsmen's supervision of the issue of freedom of assembly and the Parliamentary Ombudsmen's handling of complaints in this area. Another visit was from the ombudsman institution in Kosovo, as part of the Council of Europe project, Support to the Implementation of European Human Rights Standards and the Reform of the Ombudspersons Institution Implemented in Kosovo. The purpose of the visit was to learn about the Parliamentary Ombudsmen's structure, mandate and working methods.

Furthermore, the Parliamentary Ombudsmen and officials at the Parliamentary Ombudsmen have actively participated in conferences and seminars overseas. Among others, Chief Parliamentary Ombudsman Fura and senior legal adviser Svensson participated in the annual cooperation seminar for Baltic ombudsmen in Tallinn, Estonia.

In December 2015, Chief Parliamentary Ombudsman Fura and International Coordinator De Geer Fällman carried out a visit in Colombia arranged by the Embassy of Sweden in Bogotá. The visit included participation in the VII National Assembly of the local ombudsmen's (Personeros) central organisation, FENALPER (Federation national de Personeros de Colombia) in Bogotá and Cartagena. Visits were also made to a women's prison in Bogotá and a local women's organisation for peace work (Narrar para Vivir) in San Juan Nepomuceno, Cartagena. There were also meetings with the national ombudsman and civil society representatives.

In conclusion it is worth mentioning that, in her capacity as board member and together with International Coordinator De Geer Fällman, Chief Parliamentary Ombudsman Fura has participated in the work conducted by the International Ombudsman Institute (IOI) as well as its Board of the European Region. The IOI is a global collaborative organisation for independent, mainly parliamentary, ombudsman agencies. The collaboration involves 155 ombudsman agencies from more than 90 countries, representing all the continents.

## Summaries of individual cases

The following is a selection of summaries of cases dealt with by the Ombudsmen during the period

### The armed forces

**Criticism of the Swedish Defence Forces, Skaraborg regiment (P4), for the way in which an exercise was carried out etc.**

In this decision, the Swedish Defence Forces, Skaraborg regiment (P4), were criticised for planning the conditions for an exercise in such a way that there was a considerable risk of civilians being part of the exercise against their will. In connection with the exercise, a radio amateur was confronted by military personnel when he was in the training area, which was not fenced off. The investigation revealed that a captain, after having a conversation with the radio amateur, asked him to leave the place. Since the event did not take place inside a protection zone, the Chief Parliamentary Ombudsman states that the captain did not have the authority to take this action. (5822-2014)

### Courts

#### Public courts

**Criticism of a judge at the Stockholm District Court for failure to supplement an investigation in a custody case with information obtained after the main hearing, and then supplementing the judgement in the case without the support of the law**

After the main hearing in a custody case, the chair of the court received a call from the municipality. During the call, the representative from the municipality explained that they could arrange much more visitation support than what had been said at the main hearing. The court judge is criticised for not adding the new information to the investigation of the case. The judge was also criticised for the handling of a matter of completion of the judgement in accordance with Chapter 17 Section 15 second paragraph in the Code of Judicial Procedure. (5504-2014)

**Criticism of Blekinge District Court for the slow processing of a case concerning custody of a child, etc. Criticism is also directed at one of the District Court judges for the design of a decision on a stay of proceedings**

A case concerning custody of a child, etc. has been ongoing at Blekinge District Court for two years and three months, and is still pending. JO's decision states that it is an unreasonably long time for a case concerning the custody of children. The main reasons why it has taken so long is the lack of a timetable and the inadequate supervision of how an appointed mediator handled their assignment. The District Court is criticised for its handling of the case. In the decision, a judge is also criticised for having designed a decision on a stay of proceedings that is so flawed that its meaning could be misunderstood. (6730-2014)

**Criticism of a judge at Blekinge District Court for inadequate formulation of the court findings in a criminal case**

The district court formulated its decision so poorly that it is not possible to assess whether the judgement is correct. The chair of the court is criticised. (380-2015 and 381-2015)

**Criticism of a judge at Gävle District Court for their formulation of a criminal court judgment**

In a criminal court judgment, Gävle District Court reported the petition for damages by referring to an appendix 20 pages long. The Parliamentary Ombudsman establishes that the appendix contains so much unnecessary information that it is difficult to understand what exactly is the subject of the court's examination and that the judgment is therefore formulated in a way which is in contravention of the regulations in Chapter 30, Section 5 of the Code of Judicial Procedure. Furthermore, among the unnecessary information are details of a personal and sensitive nature regarding the injured party which have thus been disseminated to those



who have seen the judgment. The judge responsible is criticised. (3005-2015)

#### **District and city courts' distribution of youth cases – enquiries initiated following inspections**

In accordance with Section 25 of the Young Offenders (Special Provisions) Act (1964:167), cases made against individuals under 21 years of age are to be handled by members of the bench and lay judges specially appointed by the court. In connection with inspections, the Parliamentary Ombudsman has looked at the distribution of juvenile crime cases at eight city and district courts.

The Parliamentary Ombudsman establishes that the rules regarding the concentration of juvenile crime cases have never had any real impact. The reasons for concentration have been questioned, and reforms of the city and district courts' external and internal organisation have meant that, in the Parliamentary Ombudsman's view, there is now cause to abolish the rule regarding the concentration of juvenile crime cases. The Parliamentary Ombudsman therefore submits a copy of its decision to the Ministry of Justice.

For the present, however, the rule regarding the concentration of juvenile cases applies, and it is within the Parliamentary Ombudsman's remit to ensure the courts apply it. The Parliamentary Ombudsman's examination has shown that two of the courts inspected – Gotland District Court and Haparanda District Court – still do not distribute juvenile crime cases in the prescribed manner, despite observations made during inspections. According to the Parliamentary Ombudsman, the chief judges of these district courts have therefore neglected the obligations of their posts in such a way that this constitutes misconduct of the magnitude that should entail disciplinary action. The Parliamentary Ombudsman therefore submits the case to the Government Disciplinary Board for Higher Officials for examination of the matter of disciplinary responsibility for both chief judges.

Södertörn District Court also does not distribute juvenile cases in the manner prescribed in the law. The District Court has not previously received any observation from the Parliamentary Ombudsman regarding this. The Parliamentary Ombudsman is now criticising the District Court for not distributing the juvenile cases in accordance with the law and presumes that the District Court will take the necessary measures to rectify this as soon as possible. (6615-2015, 282-2016)

## **Administrative courts**

### **Complaint against the administrative court in Falun for failure to examine an objection of conflict of interest on the part of the deciding authority**

The Board of care in a municipality decided to give a trading company a warning under the Alcohol Act. The company appealed against the decision, claiming that a member of the Board had a conflict of interest. Instead of taking a standpoint on the objection of conflict of interest, the administrative law court set aside the appealed decision and sent the case back to the municipality for processing.

Administrative law contains no provisions on how the court should act in issues of errors in procedure with the deciding authority which has taken the decision being appealed. In the opinion of JO, the Code of Judicial Procedure should act as a guide in matters concerning procedural errors in administration courts too. The administrative law court should not have referred the case back to the municipality due to the objection of conflict of interest. The administrative law court should have assessed whether the member had a conflict of interest. If this had taken place, the court should have taken a standpoint on whether the appealed decision would be set aside and the case sent back to the Board.

The applicable law is not completely clear in the statute book or other legal sources. As a result, there are insufficient reasons to criticise the administrative law court. (695-2015)

### **Serious criticism of the Administrative Court in Linköping for the slow processing of a case under the Names Act**

A case under the Names Act was opened at the Administrative Court on 4 March 2013. The case was fully prepared on 9 April of the same year but was not settled until 20 February 2015, i.e., almost two years after the case was received by the court. Serious criticism is directed at the Administrative Court for the long processing time. (39-2015)

## **Chief guardians**

### **Criticism against the Joint Chief Guardian Board in Skellefteå Municipality regarding a decision and subsequent contact, where an administrator was instructed to conduct a specific measure within the framework of the administrator role**

An administrator was to consider if he should terminate the client's rental agreement. In a decision, a telephone call and e-mail, the Chief Guardian Board formulated itself in such a

way that the board must be considered to have instructed the administrator to terminate the agreement. However, due to regulations in the Children and Parents Code, the board could not decide what the administrator was to do with the rental agreement. By ordering the administrator to terminate the agreement, the Chief Guardian Board acted in conflict with the legality principle in Chapter 1, Section 1 of the Swedish Instrument of Government. The Chief Guardian Board is criticised. (4295-2015)

## Education and research

### **Criticism of the Swedish Schools Inspectorate for giving the school management too short a time to reply to a notification case**

In a report to JO, an education administration body complained that the Swedish Schools Inspectorate has generally shortened the response time for school management from three to two weeks in notification cases, and that the Child and School Student Representative (BEO) in one particular case requested an opinion with a response time of three days, and supplementary opinions with a response time of two days and one day respectively.

JO has no objection to school management being given a response time of two weeks in “normal” notification cases, but assumes that weekends and holidays are taken into account when the response time is decided.

The Schools Inspectorate processes notification cases that are considered to be particularly serious using a special handling procedure, and the objective there is for a decision to be taken within a month in general. In these cases the Schools Inspectorate decides on faster response times. JO considers that a reasonable starting point is that the response time should not be shorter than 5 days, but the time must of course be determined by the circumstances of each individual case.

The matter that JO has examined was processed under the special handling procedure. Although the case involved serious humiliation of a young student, JO does not consider that the circumstances reasonably justified requesting an opinion within three days. The response times requested for the supplementary opinions were also too short, according to JO. The Schools Inspectorate cannot avoid criticism for the short response times. (6786-2013)

### **Criticism of upper secondary schools in Karlstad Municipality for having acted in contravention of**

### **the principle of objectivity in Chapter 1, Section 9 of the Instrument of Government**

The Communist Party of Sweden's Youth League was, in connection with the parliamentary election of 2014, denied access to Karlstad's municipal upper secondary schools to organise a book stand. The municipality argued that it would only allow parties with representation in parliament to visit the schools to disseminate political information.

According to JO, there was no legal obstacle to the upper secondary schools in question, on their own initiative, inviting only those parties that were represented in the Riksdag to the schools. However, according to what emerged during JO's inquiry, the schools had not offered the Communist Party's Youth League any alternative way to provide their information. To completely exclude the Youth League from participating in activities in this way is in conflict with the Instrument of Government's principle of objectivity. The upper secondary schools are therefore criticised for their actions.

The decision also contains some general statements about how JO views issues regarding political parties' participation in the school's societal information. (5001-2014)

### **Criticism of the Head Teacher at Gullviveskolan school in Gislaved's municipality for having prevented a pupil from distributing leaflets**

A student was not permitted to hand out leaflets with political content at his school. The leaflet was signed by a political party and the Head Teacher justified his decision by saying that he had the right to deny outsiders access to the school in which to spread printed matter. The Head Teacher also stated that any information that students wanted to distribute at the school had to be approved by him.

The management at a school may prevent printed material from being distributed, but only if this is down to reasons of orderliness. As in this case it was a pupil distributing leaflets at the school, the fact that the school is not to be considered a public place has no significance.

The fact that the leaflet contained political information was crucial to the Head Teacher's decision in not allowing it to be distributed. The Head Teacher's statement on the preliminary examination could, according to the Parliamentary Ombudsman in this context not be perceived otherwise than as a restriction to the constitutionally protected freedom of the press. The action of the Head Teacher, in the Parliamentary Ombudsman's view, therefore is in

violation of the prohibition against distribution obstructions as set out in Chapter 1, Section 2, second paragraph of the Freedom of the Press Act. The Head Teacher is criticised for this action. (5069-2015)

## The Enforcement Authority

### **Criticism of the Enforcement Authority for an improper payment to a plaintiff and for delaying a repayment to the defendant**

In a criminal conviction, Gothenburg District Court ordered the defendant to pay SEK 5,600 plus interest to the plaintiff. The accused paid the money to the Swedish Enforcement Authority. The Court of Appeal then lowered the damages to SEK 600. When the Court of Appeal's judgement had gained legal force on 4 December 2014, the Enforcement Authority should therefore have repaid SEK 600 plus interest to the plaintiff and paid back the rest of the money, i.e. SEK 5,000 plus interest, to the accused. Mistakenly the Swedish Enforcement Authority instead paid the full amount of SEK 5,600 plus interest to the plaintiff. The accused visited Swedish Enforcement Authority on 4 March, 2015, and pointed out the error.

The accused should consequently be repaid SEK 5 000 plus interest. He reported to the Parliamentary Ombudsman that he had not received the money. The Parliamentary Ombudsman's decision discussed how the Enforcement Authority should react in similar situations. The Parliamentary Ombudsman states that for individuals that have lost their money it is, of course, less interesting as to which legal arrangements are employed. The important thing is that people get their money repaid quickly.

At the time specified for the Enforcement Authority's to respond to the Parliamentary Ombudsman had passed on 27 August, 2015 the accused had not yet received his money back. It had then been nearly nine months since 4 December, 2014, when the Enforcement Authority's obligation to repay the money came into force through the sentencing judgement, and almost six months since 4 March 2015, when he first pointed out the error to the Enforcement Authority.

The Parliamentary Ombudsman states that it is not reasonable that an individual has to wait so long for their money when the Enforcement Authority is at fault. The Enforcement Authority is criticised for the erroneous payment to the injured party and for the delay in paying the

money back to the accused.

In the Parliamentary Ombudsman's view, there is a reason for the legislature to review the Enforcement Authority's obligations in circumstances where the funds received have been paid to the wrong person. The regulatory system should ensure that the right person receives their money without delay. The Parliamentary Ombudsman has therefore submitted a copy of the decision to the Ministry of Justice. (3029-2015)

## Environmental and health protection

### **Criticism of the Building and Environment Board in Överkalix municipality for an unannounced inspection**

The Building and Environment Committee in Överkalix visited a property by virtue of Chapter 28, Section 1 of the Environmental Code. The Parliamentary Ombudsman criticises the Committee for not notifying the property owner of the visit in advance. (2545-2015)

### **Criticism of Environmental and Planning Board in Västervik for not having respected the requirement for objectivity pursuant to Chapter 1, Section 9 of the Constitution**

The Environmental and Planning Board had completed a supervisory matter pursuant to the Environmental Code by withdrawing a dispensation for shoreline protection. According to an article in the local press, the property owner then stated that officials at the environmental and planning office had told him that in order to get shoreline protection dispensation he has to indicate in the application that he plans to open a business. For this reason, the Board sent a letter to the property owner. The letter stated, among other things, that the Environment and Planning Board considered the property owner's claim as a serious accusation and requested that the property owner immediately present all the information he had to substantiate the accusation.

The Parliamentary Ombudsman's decision stated that it seems obvious that the Board had demanded details from the property owner for a purpose other than that intended by the Environmental Code. The Parliamentary Ombudsman states that as a result the Board had breached the requirement for objectivity in Chapter 1, Section 9 of the Constitution. (6018-2015)

## Health and medical care

### **Criticism of Region Östergötland for misleading information to the public regarding the possibility of paying fees with cash**

Following a complaint against Region Östergötland, JO has examined the design of the region's information on the payment of patient fees.

Through a ruling from the Supreme Administrative Court, it is clear that a county council cannot refuse to accept a cash payment of patient fees. In the information on the payment of patient fees previously used by Region Östergötland, it was not indicated that it was possible to pay with cash. Since the region was informed that this was in contravention of the Sveriges Riksbank Act, the region has modified the information. According to JO, both the old and new information is misleading and incomplete. The region is criticised for this.

JO adds: There is nothing that prevents a county council from informing the public that it is preferable for patient fees to be paid in ways other than by cash. However, this must be formulated in such a way that there is no doubt that it is possible to also pay with cash. (4956-2014)

### **Some criticism of a doctor at Region Jämtland Härjedalen for the handling of a patient's request to record a conversation with the doctor**

A patient complained that a doctor had not permitted him to document a conversation with the doctor using an audio recording device.

According to JO, it should usually be assumed that an individual has acceptable reasons for documenting a conversation with a doctor, for example, to go through the doctor's advice afterwards, or to replay the conversation for a family member. The general rules should therefore be that it should be possible for a patient to make an audio recording of a conversation with a doctor when the patient himself is participating in the conversation. There are of course situations when it is appropriate to prohibit an individual from recording a conversation, for example, if confidential sensitive information relating to another person will be discussed during the conversation or if there is reason to suspect that the recording is intended to be used in a, as JO previously put it, provocative manner or in a way that would ridicule the official. However, there must always be an assessment of the circumstances in the individual case before a ban on recording is communicated.

The doctor in this case cannot escape some

criticism for their handling of the patient's request to record the conversation. (5043-2014)

Serious criticism against a senior consultant at the Forensic Psychiatry Clinic at Säter Hospital and a senior consultant in psychiatry at Östersund Hospital, for the treatment of a patient placed under forensic psychiatric care as an outpatient

A patient was being treated under forensic psychiatric care as an outpatient, on the condition that he would refrain from taking drugs and undergo drug testing. At one visit to the clinic, the patient provided a urine sample that screened positive for amphetamines. As a result, it was suspected that the patient had used drugs in violation of the terms for his care. The patient was informed that he could either remain at the clinic voluntarily until the urine sample had been verified, or a decision would be made to convert the outpatient care to inpatient forensic psychiatric care. The patient stayed on the unit for seven days. The screening sample had then been tested and showed a negative result.

In a report to the Parliamentary Ombudsman (JO), the patient complained about the senior consultants involved and stated that he had been deprived of his liberty as he did not stay at the clinic voluntarily.

JO begins by stating that a result provided during a screening test should be used with caution, as the result is not sufficiently reliable. As a positive result may be false, actions against a patient should not be taken based on one such test. JO criticises the senior consultants involved and believes that the basis for their decision was incorrect; that it was a given that the patient was to receive inpatient care until the drug test had been verified. Instead, it would have been better to employ a cautionary principle and thoroughly evaluate whether other less invasive measures would have sufficed.

JO expresses further criticism towards one senior consultant for not requesting that the sample be prioritised. The results of the analysis were decisive to whether or not he should remain under inpatient care.

Regarding the question of the voluntary nature of the patient's stay at the clinic, JO states the following: For consent to form the basis for a medical procedure, there must be substantial evidence that consent is voluntary. A medical procedure may not be performed under duress. The patient must have received information on any alternatives available. It is only then that the patient may give their informed consent.

The same reasoning may be applied to matters of admission to inpatient care according to the Health and Medical Service Act (HSL). In a situation such as the one outlined here, where the patient clearly found himself in a state of dependence on the doctors, high standards must be set to ensure that actions are voluntary. JO's assessment is that the content of the information provided to the patient did not meet the requirements for clarity, objectivity and completeness necessary for the patient to make a well-founded decision. Notes in the medical journal also suggest that the information was provided in such a way that the patient could not have understood that he had any other option than to stay at the clinic. JO therefore considers that, under these conditions in which the patient had reason to believe he must follow the doctors' demands, genuine consent was not provided. The patient also clearly expressed his discontent. It must have been clear to medical staff that it [consent] had not been given.

The health care service should therefore have decided whether the conditions for readmission for in-patient forensic psychiatric care were fulfilled and, that being the case, should have applied to the administrative court or made an interim order for such care.

Through its handling, the health care service deprived the patient of his right to have his case reviewed by a court of law. In this respect, the Parliamentary Ombudsman is seriously critical of the chief medical officers concerned.

In conclusion, the ombudsman addresses the fact that the patient was not allowed any time outside the clinic while the test results were waiting to be verified. This, of course, is inconsistent with the supposition that this was a case of voluntary care. As the patient had not been admitted for in-patient forensic psychiatric care, there were no grounds for preventing him from leaving the clinic. The ombudsman is critical of the chief medical officer who made the decision in this case.

According to the ombudsman, the chief medical officers who handled the case failed to fulfil their obligations in several respects and their handling entailed an infringement of the patient's freedom of movement which was not legally justified. The ombudsman takes a very serious view of this. (5705-2014)

**Criticism of Sunderby Hospital, Norrbotten County Council, for having not prevented a patient, who was undergoing compulsory care**

**under the Care of Abusers (Special Provisions) Act, LVM, from leaving the hospital**

Compulsory care under LVM is considered to begin when the addict, due to a decision on immediate custody-taking or compulsory care, has turned up at a hospital or similar facility (Section 20 of LVM). This means that the compulsory care starts immediately when the addict comes to the hospital, and it is irrelevant whether the addict is registered or not. The head of the hospital unit where the addict is staying has a duty to make a decision to prevent an addict who wishes to leave the hospital from doing so during the time needed to ensure that the addict can be brought to an LVM home (Section 24 of LVM).

Sunderby Hospital has on two occasions allowed an addict who should be treated pursuant to LVM to leave the hospital. The addict was registered at the hospital on the second occasion, but not the first. In both cases, the hospital is criticised for having failed to make a decision to prevent the addict from leaving the hospital.

Upon contact with a deputy department director at an LVM home, Social Services received information that erroneously gave the impression that the compulsory care had not begun at the right time because the addict had not been registered at the hospital, and that the LVM home therefore could not receive her. The deputy department director cannot escape criticism for having provided this incorrect information. (5720-2014, 6667-2014)

**Serious criticism of an official at the Forensic psychiatric regional clinic in Sundsvall following the lack of courtesy shown in a telephone call with an individual**

A woman phoned a department at the Forensic psychiatric regional clinic in Sundsvall on a multitude of occasions. During one of the phone calls, an employee at the clinic responded in a way that is not acceptable. The official used an expletive and said that health professionals would "call the police for assistance for the woman if she did not stop calling." The Parliamentary Ombudsman has perceived the official's tone as condescending and that the official was looking to make fun of the woman in front of other staff who were listening to the conversation.

The Parliamentary Ombudsman states in its decision that it is part of the role of civil servants to act properly towards those who make contact with an authority. Even when an individual be-



haves in a way that is perceived as troublesome, an official has to handle the situation professionally and maintain a good tone.

The actions of the official concerned during the phone call have violated the requirement for objectivity pursuant to Chapter 1, Section 9 of the Constitution. The Parliamentary Ombudsman aimed severe criticism towards the official for the lack of courtesy in the telephone conversation. (678-2015)

**Criticism of Sahlgrenska University Hospital (Psykiatri Affektiva) for a delay in forwarding documents that the administrative court had faxed to a patient being cared for at the hospital by virtue of the Compulsory Psychiatric Care Act (LPT)**

Patients subjected to compulsory psychiatric care are in a vulnerable situation and must be provided with good opportunity to exercise their rights during the period of care. Cases covered by LPT must be handled speedily by the courts, and the deadlines are short. It is therefore of great importance that summons and application documents are delivered to a patient under compulsory psychiatric care without delay, as they must be afforded the opportunity to prepare for a hearing. In the same way, it is important that the patient quickly receives the judgment once they have been admitted to hospital, so that he or she is best able to exercise their right to appeal.

The hospital cannot avoid criticism for delay in handing over summons and judgments from the administrative court to a patient being cared for at the hospital by virtue of LPT.

According to the Parliamentary Ombudsman, when documents of this nature are handed over to a patient, a note should be made in the patient's records. Where it is not possible or appropriate to hand over such documents to the patient without delay, the assessment made on this matter should also be documented in the records. As there is no explicit provision regarding the care provider's responsibility to document this information, the Parliamentary Ombudsman is not criticising the hospital for the lack of documentation in this respect.

From a legal safety perspective, there may be cause to consider whether a provision should be introduced regarding the responsibility to document details of when the patient has received court documents. The Parliamentary Ombudsman has therefore found reason to send a copy of the decision to the Ministry of Health and Social Affairs for their information. (3112-2015)

## Labour market authorities/institutions

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**Criticism against Arbetsförmedlingen, the Swedish Public Employment Agency, that has, inter alia, failed with its communication and motivation requirements in a matter regarding the cancellation of an assignment for labour market training**

Arbetsförmedlingen issued an official letter to G.A.A. containing a response to a complaint that he had made and a decision to cancel his assignment for labour market training.

The cancellation decision was made without G.A.A. having previously obtained the documents forming the basis of the decision and without providing the opportunity for him to comment upon them. No circumstances have come to light that have meant that communication could have been omitted. Arbetsförmedlingen is criticised for their failure in this regard.

Furthermore, JO ascertains that it is unclear whether the official letter sent to G.A.A. contains a decision. Nor does it state which regulation formed the basis of the decision. Therefore the official letter is difficult to understand and the basic requirements for motivating a decision have not been met. Arbetsförmedlingen is criticised for this. The agency is also criticised for not informing G.A.A. of what to do in the event he was unhappy with the decision and wanted it to be reassessed.

The investigation shows that the way Arbetsförmedlingen managed the case for cancellation of G.A.A.'s assignment has failed to meet its communication obligation as well as its obligation to provide its motivation and information. The matter highlights the importance of Arbetsförmedlingen ensuring the implementation of the rules and principles of administrative law in its operations. JO looks positively on the focus the matters have generated within the agency and emphasises that the ongoing work to strengthen employment officers' knowledge of administrative law management is important. (2901-2015)

## Migration

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**Statements regarding the Police Authority's possibilities to employ coercive measures when implementing a refusal of entry or expulsion order under Chapter 12, Section 14 of the Aliens Act**

Subsequent to the Swedish Migration Agency deciding to deport a woman seeking asylum and her children who are minors, the case was



handed over to the former Police Authority in Stockholm County for enforcement. On the morning of the departure, the Police Authority performed a search of the woman's residence where they found her and the children. They were driven to the police station and then to the airport. Chapter 9, Section 9 of the Aliens Act was given as the basis for the decision for collection by the Police Authority.

The decision ascertains that the provision forming the basis of the Police Authority's collection was not applicable in this case. As there was also no other legal support for the action, the Police Authority is criticised for having implemented the measures. In the decision, JO states that the Aliens Act should be clarified so it is clear which coercive measures the Police are entitled to use when enforcing a refusal of entry or expulsion order. The decision has therefore been submitted to the Ministry of Justice. (836-2015)

**Statement regarding the Police Authority's possibility to conduct a visit with a detainee to his country's embassy**

Subsequent to the Swedish Migration Agency deciding to deport an asylum seeker, the case was handed over to the former Police Authority in Gävleborg County for enforcement. The Police Authority detained the man pursuant to Chapter 10, Section 1 of the Swedish Aliens Act in order to prepare and conduct the deportation. As the man did not have the necessary travel documents for implementing the decision for deportation, the Police Authority transported him to his country's embassy. The travel and visit at the embassy took place against the man's will. According to the Police Authority, the provision regarding detainees provides support for the transportation of a detainee to their country's embassy.

The decision notes that the definition of a detainee is not specified in detail in the legislation. According to JO, it is unsatisfactory that neither the wording of an act nor legislative history provide a clear account of the authority held by the Police to enforce a refusal of entry or expulsion order. As the coercive measures available to the Police within the framework for a detainee should not simply follow interpretations of the provision in Chapter 10, Section 1 of the Aliens Act, the decision has been submitted to the Ministry of Justice. JO also doubts that confidentiality in the protection of the individual can be maintained when visiting an embassy.

Taking into account the uncertainties in implementing the legislation, no criticism is

directed at the Police Authority for conducting the visit to the embassy. (2488-2014)

**Statements regarding the Police Authority's possibility to use force to conduct a visit with a detainee at his country's embassy**

A man who had his application for asylum rejected and who had been convicted of crime was to be deported from Sweden. It was the responsibility of the Police Authority to enforce the man's deportation order. The man was detained pursuant to Chapter 10, Section 1 of the Swedish Aliens Act in order to prepare and conduct the deportation. The airline company the man was to fly with required a "letter of acceptance" to carry him as a passenger on board the plane and so the man was taken against his will to his home country's embassy where they would issue such a document. When the man resisted, the police used force against him to carry out the transport and visit.

In a separate decision to this, JO has stated that it is unclear what legal support the Police Authority has to conduct a visit to an embassy against the will of the detainee, and the Aliens Act should clarify which coercive measures can be taken by the Police (ref. no.: 2488-2014). The basis is the same in this decision. JO further states that once a person who is to be deported expresses that they will not cooperate with an embassy visit in any way, the Police must thoroughly evaluate the decision of whether the visit is to be carried out regardless, or if the deportation decision can be realised in another way. If a visit is nevertheless conducted, this is to be conducted in a humane and dignified manner and the general needs and proportionality principles stated Section 8 of the Police Act must be adhered to.

In terms of the legality of the force used against the detained man, it can be ascertained that Section 10 of the Police Act does not provide full support for this. However, pursuant to Chapter 24, Section 2 of the Swedish Penal Code, the Police were entitled to use certain force against the man to maintain order during transportation and the embassy visit.

JO does not see grounds for the conclusion that the Police used more force than permitted during the embassy visit, however JO questions if the approach met with the requirement for enforcement to be conducted in a humane and dignified manner.

The fact that the Police Authority uses force in certain cases to carry out embassy visits provides a further basis to JO's understanding that the Aliens Act should be clarified. The decision

has therefore been submitted to the Ministry of Justice. (1548-2015)

**Criticism of the Swedish Migration Agency for having determined an asylum seeker's age before the final decision in the case was pronounced**

In January 2013, M.S. sought asylum in Sweden, stating that he was 16 years old. In an initial age assessment, the Migration Agency found no reason to question the stated age and registered his birth month as January 1997. The Migration Agency rejected his application in July 2013 and decided to deport him. In the decision, the agency's assessment was that M.S. had not provided satisfactory evidence of his age, and in conjunction with the decision he was registered as having turned 18.

A migration court reversed the Migration Agency's decision in September 2013 and remanded the case to the latter for further processing. The justification for the decision was that there was insufficient information in the case on which to make an assessment of M.S.'s age. The Migration Agency continued the processing of M.S.'s case, but did not change M.S.'s age; he remained registered as an adult. After further investigation on the matter of M.S.'s age, the Migration Agency rejected his application in June 2014.

The Parliamentary Ombudsman has previously stated that when assessing whether an applicant is to be considered an adult or a minor, the premise should be that the assessment is conducted in conjunction with a decision being made in the asylum case. Up to this point, the age stated by the applicant at the time of application should be accepted, unless it is clearly evident that the information is incorrect. According to the Parliamentary Ombudsman, the Migration Agency should have changed M.S.'s registered age to the one he provided once the agency's decision had been reversed and the processing of the asylum case continued.

The Migration Agency is criticised for having essentially determined M.S.'s age before a final decision was made on the asylum case, by means of not re-registering him as a minor. (539-2015)

**Follow up of, inter alia, long processing times for permit cases at the Swedish Migration Board**

For several years people have approached JO with complaints of long processing times at the Migration Board and that it is difficult to come into contact with Board case officers.

JO has conducted a general investigation into these matters. In two decisions dated 17

September 2014, the Migration Board received criticism for their long processing times for matters pertaining to, inter alia, residence permits due to family ties and employment, and for insufficient service and accessibility.

JO has since continued to monitor these matters through a specific follow-up of the measures undertaken by the Migration Board to address these processing times and to improve service for applicants.

The follow-up shows that processing times in cases pertaining to residence permits due to family ties have further increased, despite actions taken by the Migration Agency.

JO concludes that reasons for these continued long processing times are predominantly beyond the control of the Migration Agency and therefore does not direct any criticism towards the Board itself. Nevertheless, the situation is critical. The ultimate responsibility for the Migration Board's ability to issue decisions within a reasonable time frame and statutory deadlines lies with the Swedish Government and Riksdag. JO therefore submits a copy of its decision to the Ministry of Justice.

Throughout the follow-up period, the Migration Board has continually worked to improve service and access for applicants. JO takes it for granted that the Agency will continue to develop and follow up on these matters. JO finds no grounds to make any further statement about the Board's service and accessibility. (2132-2015)

## Other municipal matters

**Criticism of the Municipal Board in Linköping Municipality and the Municipal Board's chairperson for cancelling a music group for a youth festival in contravention of the Instrument of Government**

The Culture and Recreation Board in Linköping Municipality arranged a music festival for young people on 16 August 2014. On the initiative of the chairperson of the Municipal Board of Linköping Municipality, one of the hired music groups was cancelled on the grounds that the group has a well-documented history that is not consistent with Linköping Municipality's core values. In a press release and in a debate article by the Municipal Board's chairperson, the considerations that formed the basis of the decision were expounded on. Here it was stated, inter alia, that the cancellation was a result of the group having provided vague statements about their views on violence as a political method, and that the group members had not explicitly renounced political violence, but instead had

glorified such violence. In the Municipal Board's statement to JO, it was stated that it was mainly an issue of the music group having glorified political violence rather than distancing themselves from such violence that had led to the cancellation decision, even if security aspects were also given as a reason for the decision.

In its decision, JO states that all decisions taken by a municipality must - in accordance with the provisions of the Instrument of Government - rest on objective grounds. A municipality that participates as an organiser of a music festival, however, obviously has great freedom to decide which direction the festival will take, the kind of music that will be performed and the artists that are wanted. As regards the musical and artistic choices, the principle of objectivity rarely constitutes any limitation. If the municipality is considering cancelling a booked artist, the principle of objectivity may be appropriate to a greater extent. The decision must not be arbitrary and it may not, for example, be based on the views of the artist. To reduce the risk of conflict with the principle of objectivity, municipalities should follow established routines and regular decision procedure.

JO notes that it may be objectively justified to cancel an artist for order and security reasons. Order considerations may not, however, be used as an excuse. Based on the information provided by the municipality, it is, according to JO, difficult to see that order and security reasons would be the real reason for the cancellation. Instead, the municipality highlights that the basis for the cancellation decision is the opinions expressed by the group members. In light of this, the decision, according to JO, is in conflict with the principle of objectivity in Chapter 1, Section 9 of the Instrument of Government, especially with regard to the protection of freedom of expression as stipulated in Chapter 2, Section 1. The manner in which the Municipal Board, and in particular the Municipal Board's chairperson, has handled the decision process in this matter further supports this conclusion. (4602-2014)

**Criticism of the Cultural Committee of the City of Göteborg due to the city library in Göteborg having handled a matter involving the rental of the library's auditorium**

An association had booked the auditorium of the city library in Göteborg for a lecture on the topic of immigration and cover-up. Critical voices were raised against the lecture, and the library decided to, in conjunction with the

lecture, arrange a conversation with, among others, a migrant, about life as an undocumented migrant. The Library Director explained in an interview that it was important for the library to clarify that the association's lecture was not organised by the library. She also stated further that the library's own event was a way for the library to provide a platform for different voices to be heard when it became apparent what the association was going to present. According to JO, it is hard to draw any other conclusion than that the library, through their own event, wanted to highlight their dissociation from the expected content of the lecture. A few days later, the library decided to terminate the agreement with the association with respect to the risk of public disturbance. The basis for this decision was, however, limited. The library's own event was carried out as planned.

According to JO, the circumstances give the impression that the content of the lecture and the negative public opinion influenced the library's decision to terminate the agreement with the association. The Cultural Committee of the City of Göteborg, which is responsible for the library's activities, is criticised for the library not adhering to the Instrument of Government's requirements concerning objectivity in the handling of this matter. (5221-2014)

**Criticism of the Election Committee in Järfälla Municipality for deficiencies in the execution of the general elections in 2014**

One person was not permitted to vote in the general elections of 14 September 2014 as she was already ticked off on the electoral register at the polling station. The investigation shows that the most likely explanation for this is that the ballot worker who made the markings on the electoral register earlier on election day had ticked off the wrong voter. At the same polling station, a person got to vote in the parliamentary election even though he lacked the right to vote in that election. In several cases, documentation was also missing on how voters' identity is checked. The Election Committee in Järfälla Municipality is criticised for these shortcomings. The decision underlines the importance of accuracy and order when general elections are held. (5245-2014)

## Planning and building

**Criticism of the Environmental and Building Board in Kramfors Municipality for delays in processing a referred building permit case etc.**

The Board is criticised initially for the slow processing of a case concerning a building permit under the old Planning and Building Act.

In a case regarding a building permit under the current Planning and Building Act, the County Administrative Board's Committee decision was repealed and the case was referred to the Board to undergo new processing. When a case regarding a permit or prior notification has been referred back to the Board by a higher court, the Board shall re-examine the case and decide on the application. The Board shall then apply the deadlines stipulated under Chapter 9, Section 27 of the Planning and Building Act. If the application is complete when the case comes back to the Board, the Board shall normally announce its decision within ten weeks. A referred case should also always receive priority in processing. The Board can therefore also be criticised for having failed to meet the statutory deadlines when processing the case. (2641-2014)

**Criticism of the Construction and Environment Committee in Partille municipality for the handling of a referred case and criticism of an official for the content of an e-mail message**

In February 2013, the County Administrative Board referred a case regarding an intervention under the Planning and Construction Act to the Construction and Environment Committee. According to an investigation by the Parliamentary Ombudsmen (JO), the Board has not yet settled the case and has been criticised for it. An official was also criticised for an e-mail, whose content was contrary to government requirements for objectivity. (4398-2014)

## **Cases involving police, prosecutors and custom officers**

**Criticism of a police officer at the then Södermanland County Police Department, inter alia, because he has provided too much detailed information about an intervention against an individual in a post on the Police Facebook account**

JO has examined a post made on one of the Police Facebook accounts. The post contained a detailed description of an intervention against a man, and it stated, among other things, that he was suspected of narcotics crime. Connected to the text was a picture of the man lying on the ground and being taken into custody by ambulance staff.

The police officer responsible for the post is criticised partly because there was some risk

that the man who was the subject of the intervention could be identified, and partly because the picture showed the man in a vulnerable situation. The police officer has, according to JO, also jeopardised the credibility of the police's objectivity and impartiality through the post expressing his opinion on the costs of intervention.

In the decision, JO also comments how the police should behave with regard to descriptions of individuals in social media. It is noted that if a person who has been taken into custody by the police or has had any contact with the police runs the risk of this being described – in more or less detail – by the police in social media, confidence in the police may be undermined. This is especially true when it comes to incidents that are of a sensitive or intrusive nature for the individual. However, assuming that individual's personal integrity and private life is respected, there is, according to JO, nothing to prevent the police, in general terms and without details regarding individuals, talking about its operations in social media with regard to a specific intervention or any other incident.

In JO's view, this reviewed post is a clear example of a post that describes an individual in a vulnerable situation, and which contains excessively detailed information about the intervention. With regard to confidence in the police, posts of this kind are not suitable for publishing in social media. (4626-2014)

**Statements about a post on the Police Authority account on Facebook, where a police officer has, inter alia, expressed his personal opinions and reflections**

JO has reviewed a post made on the Police Facebook account, where a police officer presents his views on the fact that he and other officers are often called racists. According to JO, it is difficult to see how the post is relevant to the purpose of the police presence in social media – to reduce crime and increase safety. There is no crime prevention message and it does not provide any direct information about police work. Against this background, there is a risk of the police not being perceived as objective. The decision also highlights that the individual writing on behalf of the police in social media is representing the authority and that it is not appropriate for individual officers to present their personal views in this context. JO also has some comments on the mode of expression in the post. (300-2015)

**Criticism of a local police chief at the now defunct Police Authority in Stockholm County for having disclosed classified information regarding a person being suspected of a crime to an education department and a school**

A local police chief disclosed classified information to a school and other parties regarding a person under their employ being suspected of a drugs offence. The information was disclosed after a balancing of interests in accordance with the “general clause” in Chapter 10, Section 27 of the Public Access to Information and Secrecy Act.

One condition for disclosing the information was that the recipient had a need of the information and that the interest in disclosing it clearly took precedence over the interest that the secrecy was intended to protect. According to the Parliamentary Ombudsman, a point of departure when weighing interests must be that the reasons for the secrecy that acts as a protection for the crime suspect are of great importance.

In the case in question, there was nothing to suggest that the offence affected the pupils at the school or other children and young people. Nor were there any indications that the suspect had committed an offence within the area of the school or that the offence he was suspected of entailed any concrete risk that the pupils at the school would come to harm. Under these circumstances, there were insufficient grounds to disclose information on the criminal suspicions.

The local police chief is criticised for disclosing the information. (6290-2014)

**Statements about the detention times in matters concerning judicial assistance under the Care of Abusers (Special Provisions) Act**

JO has examined the detention times in matters concerning judicial assistance under the Care of Abusers (Special Provisions) Act (LVM) and has requested that the Police Authority report the time in custody for the people who have spent more than 24 hours in police custody. During the review time period (18 months), the Police Authority has reported about 80 cases where the detention time exceeded 24 hours. According to the Police Authority, the long detention times in many cases are due to the Prison and Probation Service's transport service not having sufficient resources to carry out the transports that the Police Authority has ordered. JO points out in the decision that it is not acceptable that the time in custody amounts to several days, and that transports are delayed because the transport service cannot perform them.

The decision states that the transport of an

individual who is subject to judicial assistance under LVM should generally commence no later than the day after he or she has been found. Furthermore it is noted that it is unfortunate that the division of responsibility between the Police Authority and the Prison and Probation Service regarding the transport of detainees has not yet been regulated in statute. The Police Authority is reminded that, within the framework of the current regulation, it has ultimate responsibility for the transport being carried out within a reasonable time. (6293-2014)

**Statement on the pre-requisites to conduct a search of premises due to the suspicion of personal use of narcotics**

B.F. was stopped by a police patrol outside his flat. The police conducted a body search as they suspected that he had been using narcotics.

They also decided to search his premises as they suspected that he had narcotics inside his flat.

The ombudsman's investigation concerned the question of whether there were legal grounds to conduct a search of his premises. As the investigation understands it, the grounds for the decision to search the premises was that B.F. showed signs of being intoxicated by narcotics and that he had just left his flat. In the ombudsman's view, these circumstances could, per se, constitute grounds for the suspicion that the person had used narcotics in his flat immediately prior to the intervention. Depending on the general circumstances, this kind of a concrete situation could also be a reason to suspect that narcotics were inside his flat. For this reason and with respect to the discretionary margin that exists in this type of case, in the ombudsman's view there is no reason to be critical of the police for the decision to search the premises. The police are, however, reminded of the importance of documentation in cases of coercive measures. (971-2015)

**Report made against the former Swedish Police Authority in Dalarna County for including confidential information about an injured party's name in the preliminary investigation report**

Whilst a preliminary investigation was ongoing, the injured party changed her surname. Her personal details were to be kept confidential, owing to the suspect. The new surname was provided in the preliminary investigation report and was revealed to the suspect.

In the decision, JO ascertains that the suspect has an unconditional right to obtain the details included in the preliminary investigation report. As a provision in the public notice of the

preliminary investigation stated that the injured party's name was to be included in the preliminary investigation report, JO believes it is not possible to withhold the name from the suspect.

JO states that it is of fundamental importance that a suspect is aware of the injured party's identity in order to be able to effectively defend themselves. If the identity is already known to the suspect, however, there is usually no reason, with regard to the suspect's legal security, to reveal a name that the injured party changed to during the preliminary investigation period. According to JO, changes to the existing regulations should be considered, with the aim of increasing confidentiality for an injured party in such a situation. The decision has therefore been submitted to the Ministry of Justice. (1136-2015)

**If a suspect has a defence counsel who is entitled to attend the interrogation, the police must always notify the defence counsel that the hearing is to be held**

The Parliamentary Ombudsman's inquiry has concerned the matter of whether a detained person's right to defend himself has been compromised by the hearing being conducted without a public defence counsel being present and not being notified that the hearing was to be held.

The decision states that if a suspect has a defence counsel that is entitled to attend a hearing, he or she is to be notified as to the time and place of the hearing. This applies regardless of the suspect's attitude to allowing himself to be questioned without a defence counsel being present. It is essential that the defence counsel is notified so that he or she is able to safeguard the suspect's rights by either attending the hearing or at least consulting with the suspect.

The Parliamentary Ombudsman also states that it is primarily the head of the preliminary inquiry that is responsible for a suspect's right to counsel being respected. The action to notify a public defence counsel for the hearing to be held by an individual in custody may normally be regarded as a routine operation to be performed by the head of the interrogation without any specific directive from the head of the preliminary inquiry. It is therefore solicitous that the head of the interrogation notifies the head of the preliminary inquiry whether he or she, for any reason, considers that he must depart from this routine.

It is the view of the Parliamentary Ombudsman, it is remarkable that the head of the interrogation in this case had not notified the public

defence counsel that the hearing was to be held. In light of what has been revealed, she did not address the issue of whether the interrogation could be implemented without the suspect's defence counsel being present with the head of the preliminary inquiry. The head of the interrogation is criticised for jeopardising the suspect's legal rights through her actions. (2470-2015)

**Statements including the right to a defence counsel when questioning a suspect who is under 18 years**

JS, who was 15, was arrested on suspicion of, among other things, attempted aggravated assault. In connection with the arrest, the police held an interrogation without him having a defence counsel present. The Parliamentary Ombudsman's inquiry relates to the issue of JS's right to defend himself being thereby compromised.

The decision states that the area to hold an interrogation on the merits of the case - i.e. a more comprehensive interrogation than a hearing - with a suspect who is under 18 without a defence counsel is generally very limited. If the young person is also detained, there should in principle never be a hearing on the merits without a defence counsel being present. This is now explicitly clear in the Prosecutor General's guidelines on young people's right to a defence counsel.

Given that JS was only 15 years old, that he was in custody and that the criminal allegations concerned a serious crime, according to the opinion of the Parliamentary Ombudsman it was obvious that he should have been advised by a defence counsel during the hearing. If a defence counsel was unable to attend, the interrogation should have been limited to hearing the served criminal allegations and his attitude towards them and to indicate whether he would like the presences of a defence counsel.

According to the Parliamentary Ombudsman, the circumstances were therefore such that the hearing following an objective judgement should not have been held without a defence counsel being present. In such cases, the assessment of the need for a defence counsel is not transferred to the suspect or his or her guardian, but it is the police and prosecutors who have the ultimate responsibility for a suspect being given access to a defence counsel when needed. It is primarily the head of the preliminary inquiry who is responsible for a suspect's right to a defence counsel being respected. In order for the head of the preliminary inquiry to be able to



assume responsibility for these issues as part of the inquiry work, it requires that the head of the interrogation communicates and consults with the head of the preliminary inquiry.

Given what has emerged in the case, the Parliamentary Ombudsman has emphasised the importance of information on the right to access to a defence counsel being provided in such a way that it does not risk being perceived as pressure on the suspect to waive his right to a defence counsel.

The then Örebro County Police Authority can be criticised for the initial interrogation of JS being carried out without access to a defence counsel. (2502-2015)

**Statements including the right of access to a defence counsel during questioning on suspicion of a serious crime**

MK was suspected of arson and was himself injured in the fire. His medical care lasted a long time in hospital. During his hospital stay, a relatively extensive interrogation was held, at which MK's public defence counsel was not present. The Parliamentary Ombudsman's inquiry relates to the issue of MK's right to defend himself being thereby compromised.

The decision noted that the hearing was thorough and the allegations directed at MK were serious. He himself was badly injured, and moreover there was a fear that he was not mentally stable at the time of questioning. Against this background, it is in the Parliamentary Ombudsman's view clear that MK would have been advised by a defence counsel during the hearing.

According to the Parliamentary Ombudsman, the conditions were therefore such that the hearing following an objective judgement should not have been held without a defence counsel being present. In such cases, the assessment of the need for a defence counsel is not transferred to the suspect or the defence counsel, but it is the police and prosecutors who have the ultimate responsibility for a suspect being given access to a defence counsel when needed.

It is primarily the head of the preliminary inquiry who is responsible for a suspect's right to a defence counsel being respected. As part of the decision, the Parliamentary Ombudsman makes certain statements about the division of responsibility between the head of the interrogation and the head of the preliminary inquiry in the matter of a defence counsel's presence at the hearing.

The Parliamentary Ombudsman also states that the head of the preliminary inquiry in this

case was entitled to assume that the defence counsel was present at the hearing. The head of the interrogation did not address the issue of the presence of the defence counsel with the head of the preliminary inquiry before she decided to conduct the hearing with MK without a defence counsel. The head of the preliminary inquiry can not be held responsible for the interrogation being conducted in the manner it took place. The interrogator is criticised for not respecting MK's right of access to a defence counsel at the hearing.

In the decision, the Parliamentary Ombudsman highlights that the right to a defence counsel is fundamental to a suspects' right to defend himself. It is therefore pertinent that in such matters qualified assessments are made and that they are factual. The Parliamentary Ombudsman also stresses the importance of any waiver from a defence counsel taking place in a legally secure manner. (2943-2015)

**Criticism of the now defunct Police Authority in Skåne for delaying in the reporting of the arrest of a fifteen-year-old to the prosecutor, as well as criticism of two prosecutors for the fact that the fifteen-year-old was taken into custody**

Y.F., who was 15 years old, was arrested as a suspect of attempted theft from a locker in the changing rooms of a swimming baths. Almost five hours after the arrest, the interrogation of Y.F. began in accordance with Chapter 24, Section 8 of the Code of Judicial Procedure. Another hour later, the prosecutor was informed of the arrest and decided that Y.F. would be held. The Parliamentary Ombudsman establishes that the matter of whether a young person shall be deprived of liberty is such that it can often be dubious or difficult to assess. If the individual arrested is under 18 years of age, it is therefore especially important that the prosecutor be informed of the arrest as soon as possible. It may in such cases often be appropriate for this to take place prior to interrogation of the suspect. The Parliamentary Ombudsman's opinion is that the police's handling of the matter of notification to the prosecutor and the interrogation of Y.F. was not consistent with the requirement for speedy processing in Chapter 24, Section 8, second paragraph of the Code of Judicial Procedure. The possibility cannot be ruled out that the police authority's actions have had an impact on the duration of Y.F.'s deprivation of liberty. The now defunct Police Authority in Skåne is criticised for the delay.

When a young person is suspected of a crime,

a number of rules of law must be taken into consideration which in combination entail that young people can only be arrested and taken into custody in exceptional cases. The Parliamentary Ombudsman considers the offence which Y.F. was suspected of was not sufficiently serious to be considered proportional to arresting him, irrespective of how strong the risk of tampering with evidence was deemed to be. Of the same thrust is the fact that a penalty involving deprivation of liberty could not be expected to be applicable for Y.F. According to the Parliamentary Ombudsman, the circumstances were far from such that there existed exceptional reasons for detention, and there were therefore insufficient grounds for custody. The prosecutor is criticised for the decision to take Y.F. into custody.

The prosecutor that was assigned the case thereafter should have immediately revoked the custody and released Y.F. As the sequence of events actually unfolded, Y.F. was instead deprived of liberty for more than 24 hours in total. The prosecutor is criticised for the way in which he handled the continued deprivation of liberty.

The Parliamentary Ombudsman has serious concerns that a person as young as Y.F. has been detained on insufficient grounds. (6383-2014)

**Criticism of a former prosecutor for providing a suspect with details of sensitive information extracted from a mobile telephone, despite the fact they lacked significance to the crime investigation**

In the decision, JO makes statements regarding the suspect's right to access preliminary investigation material and, with reference to secrecy, the possibilities to limit this right of access. JO provides an account of the different views on the matter that have been expressed in legislative history, practice and doctrine, and ascertains that the law applicable in this case is that the suspect's access right can be restricted, pursuant to Chapter 10, Section 3, first paragraph of the Swedish Public Access to Information and Secrecy Act (OSL). According to JO, there are good grounds for such an order. The legal grounds upon which this access right is based cannot be considered to require that the suspect is to have an unconditional right to access all information that has come to light during the preliminary investigation. This includes information that is of no significance to the criminal investigation. Naturally however, the right of access may not be restricted to such an extent, or relate to such information, that it jeopardises or infringes the suspect's ability to fully safeguard

their rights or prepare their defence.

In the preliminary investigation in question, information was extracted from the injured party's mobile telephone. The entire record of the extraction was included in the provisional preliminary investigation report issued to the defence, despite the fact that information of no significance to the criminal investigation is not to be included in a preliminary investigation report. According to JO, an injured party should be able to assume that the law enforcement agencies undertake the relevant measures to avoid the dissemination of private information. The prosecutor responsible has been criticised for insufficient control over what information extracted from the telephone was included in the preliminary investigation report. Furthermore, this led to information, which most likely could have been kept confidential as per Chapter 10, Section 3, first paragraph of OSL, being revealed to the suspect. (6673-2014)

**Criticism of a prosecutor for a detainee not having been granted greater relaxations of restrictions regarding visits and correspondence**

H.B. was detained due to a suspicion of an especially serious aggravated assault offence. The injured parties were his two sons. Restrictions regarding access sessions, letters or other correspondence, visits and telephone calls were imposed on H.B. for a period of approximately four months.

The Parliamentary Ombudsman has found no reason to question the imposition of restrictions on H.B., as the risk of tampering with evidence in the case was considerable. The investigation conducted by the Parliamentary Ombudsman has concerned the prosecutor's decision regarding relaxations of the restrictions in terms of visits and correspondence.

According to the Parliamentary Ombudsman, H.B. has not been granted adequate relaxations of the restrictions, especially considering that he was not permitted to have any contact with his wife throughout the entire crime investigation. This has meant that the restrictions were disproportionately intrusive in relation to her. According to the Parliamentary Ombudsman, once H.B. was served with documentation of the preliminary investigation, he should at least have been permitted some correspondence and monitored visits. The Parliamentary Ombudsman's investigation has in any case not found sufficient reasons to not allow such relaxations of the restrictions.

In the decision, the Parliamentary Ombuds-

man emphasises the importance of the detainee not being subjected to restrictions to his freedom which are in excess of what is absolutely necessary. Naturally, restrictions must never be routinely imposed on suspects. It is also important that prosecutors are not unnecessarily restrictive in allowing various relaxations or exemptions from the restrictions. The Parliamentary Ombudsman also points out that it can be important for the detainee to receive information on the exact reasons for the restrictions. This may increase the chance that he or she will accept the restrictions, or at least understand the reasons for them. It is therefore important, according to the Parliamentary Ombudsman, that prosecutors fulfil their obligations in regard to notification and documentation. (679-2015)

#### **Review of how decisions to issue a restraining order have been justified**

Parliamentary Ombudsman Renfors has noted in the supervision work that in decisions where a restraining order is issued, the reasons stated in these decisions are not sufficiently individualised. She has therefore ordered inspections of five local public prosecution offices, where decisions in cases regarding a restraining order have been reviewed. The starting point for the review has been the requirement in Section 12 of the Restraining Orders Act stipulating that such a decision must be in writing and state the reasons that have determined the outcome.

During the inspections it has emerged that in 30–50 per cent of the decisions, the justification did not include clear grounds on which the restraining order is based. The decisions, on the other hand, have essentially appeared to be well-founded in and of themselves.

JO notes that a restraining order can be a significant restriction of the individual's personal integrity and freedom of movement. It is therefore important that the reasons are evident from the decision and that it is clear to the person being issued a restraining order what the prosecutor has based the decision on. It is a basic prerequisite for legal certainty that this requirement is fulfilled, and it is, according to JO, vital that improvements be made. (2771-2015)

### **Prison and probation service**

#### **Serious criticism of the Prison and Probation Service for deficiencies in the authority's victim/offender meetings**

For a few years the Prison and Probation Service has been working with "brottsofferslussar", a

form of monitored meeting between offender and victim in which the latter's needs are put first, the task of which is to "protect victims of crime within the correctional system". The work with these meetings includes contact with the relatives of the inmates, investigating the conditions for inmates' requests for visitation and telephone privileges, and if there are any risks to the relative associated with the granting of such a privilege. The operation means that prison staff have regular contact with inmates' relatives.

According to the Chief Parliamentary Ombudsman, it must be possible to set high requirements for these victim/offender meetings and on their legal certainty, as these activities concern individuals who are outside the prison system, and in some cases also skirt the boundaries of the Prison and Probation Service's mandate. A summary that JO has compiled shows that today there are major differences in how the country's victim/offender meeting activities carry out their brief. One of the reasons for this is that there is no centralised management of these activities.

The major differences that exist today between the country's victim/offender meeting activities and the experience JO has gained from previous reviews of these activities indicates, according to the Chief Parliamentary Ombudsman, that similar cases are not handled in a uniform manner within the authority. The lack of a common structure has given rise to difficulties for responsible officials when determining the limits of the authority's mandate. The lack of structure also makes it difficult for inmates to understand the activities. By allowing each institution to be individually responsible for the development of each operation concerning victim/offender meetings, it can, according to the Chief Parliamentary Ombudsman, be questioned whether the Prison and Probation Service has acted in a manner consistent with the ambitions behind the merger of the local prison and probation authorities into one authority.

According to the Chief Parliamentary Ombudsman, the current system is unsatisfactory, and it is necessary to urgently formulate

- the mission of these victim/offender meeting activities
- how these activities shall approach this mission in their work.

According to the Chief Parliamentary Ombudsman, the Prison and Probation Service should have formulated a central mission statement already in conjunction with the start of the

experimentation with victim/offender meetings. These operations handle a lot of very sensitive issues that also affect third parties. This fact, combined with other information that has emerged, entails, according to the Chief Parliamentary Ombudsman, that serious criticism be directed at the Prison and Probation Service for allowing these operations to develop and continue without centralised management. (1420-2014)

**Criticism of the Prison and Probation Service's transport service and the former Police Authority in the county of Södermanland for delaying the transport of a detained person**

On the same day as a person was remanded in custody, the former Police Authority in Södermanland county ordered transport for the detainee to the remand prison by the Prison and Probation Service's transport service. Under the main rule of the Code of Judicial Procedure, a person who has been detained must be sent without delay to the remand prison. Despite this rule, it took three days for the transportation service to revert with information to the police authority that transport could not be arranged until two days later. The arrested person was forced to spend five days in police custody.

The decision states that transport of an arrested person to the remand prison should be arranged on the same day that he or she was arrested, as a rule. In exceptional cases it may be acceptable that the transport is delayed until the following day. Furthermore, it is stated that there is no obligation for the transport service of the Swedish Prison and Probation Service to assist the Police Authority with the transport of a detained suspect from police custody to a remand prison. However, for a long time the transport service has taken the major responsibility for carrying out other authorities' transport needs and is given a budget allocation for this activity. Other authorities have adapted their activities to the situation and the transport service providing transport has thus become a prerequisite for the operation of other authorities.

The absence of a formal structure that clearly defines which authority is responsible for transport means that individuals risk being caught in the middle. As long as the legislator does not clarify legislation on this point, a great responsibility rests on the Prison and Probation Service to compensate for this shortcoming. This means that the transport service must immediately reply to the ordering authority if the transport

service assesses that the transport cannot be performed within the prescribed time period. The transport service is criticised for taking too long to inform the police that the transport could not be carried out promptly. The Police Authority is also criticised for not taking measures sooner to implement the transport when it was clear that the transport service had certain obstacles. The decision also contains statements regarding the need to clarify in the relevant legislation which authority is responsible for the transport of persons held in custody. Both the Riksdag and the government have been notified of this need. (3315-2014)

**Criticism of the Swedish Prison and Probation Service, Kalmar Prison, for the slow processing of a case regarding belongings taken into custody**

In the prison's study premises, Lärcentrum, the prison's inspection group found several folders with documents pertaining to several inmates. The folders were taken into custody so that the prison could investigate whom they belonged to. The complainant claimed that the folders belonged to him. Despite this, it took two and a half weeks before the prison – at a meeting with the complainant – could clarify that the folders really belonged to him. JO states in its decision that a formless taking into custody of material to investigate the information it contains and who it belongs to should be very brief. According to JO, the prison should have promptly found out who the material belonged to, and if he or they had permission to possess it, in order to be able to return the material or take charge of it pursuant to Chapter 5, Section 2 of the Prisons Act (2010:610). The prison is criticised for the delay.

When the prison determined that the material belonged to the complainant, he requested to obtain parts of the material. It was then over six weeks before the complainant received the material. The prison is criticised for the long processing time. Furthermore, a prison inspector is criticised for the content of the written response he gave to the complainant when the complainant expressed his dissatisfaction with the prison's examination of ownership taking so long. (5899-2014)

**Criticism of the Swedish Prison and Probation Service for having used the authority's high security units for the placement of inmates not covered by Chapter 2, Section 4 of the Act on Imprisonment**  
In accordance with Chapter 2, Section 1 of the Act on Imprisonment, a prisoner may not be placed so that he or she is subjected to a more intrusive supervision and control than that

which is necessary to maintain good order or security. The Prison and Probation Service's high security unit in Saltvik Prison has for a number of years been partly used for inmates who for various reasons are in need of protection. In the decision, the Chief Parliamentary Ombudsman directs criticism towards the Prison and Probation Service for these placements, stating that this form of imprisonment of the inmates concerned is more intrusive than necessary. (6384-2014)

**Criticism of the Prison and Probation Service, Vänersborg Probation Authority, for inadequate documentation of an oral "report due to concern"**

Vänersborg Probation Authority filed a report according to Chapter 14, Section 1, first paragraph of the Social Services Act (2001:453) regarding concern for the son of a convicted person who had applied for intensive supervision with electronic monitoring. The "report due to concern" was made orally, and it was documented in the convicted party's journal; when the report was made, the child it related to and who received the report. However, it did not indicate the information on which the report was based or the information provided to the Social Services. In the decision, JO states that as a rule, reports due to concern should be made in writing. If such a report is nonetheless made orally, the Prison and Probation Service must document in the convicted party's journal that an oral report has been made. According to JO, the Prison and Probation Service must also note the main features of the reasons behind the report. It must indicate how the Prison and Probation Service knows that a child is in jeopardy or what it is that makes the authority suspect that the child is in jeopardy. It must also indicate the information that has been communicated to the Social Services. JO concludes that the Probation Authority's notes do not meet the requirements for what is to be documented when a report due to concern is made orally. The Probation Authority is criticised for the lack of documentation. (6591-2014)

**Criticism of the Swedish Prison and Probation Service, Västervik Norra Prison, for deficiencies in the documentation of issues regarding 'arrival calls', a lack of information on visitation and inadequate opportunity for inmates to have monitored visits**

According to Chapter 3 of the Prison Ordinance (2010:2010), an inmate has the right, in conjunction with he or she being admitted to the institution, to be given an opportunity to inform relatives about where he or she is, unless there

are specific reasons for not doing so. The same applies when the inmate has been moved from one prison to another. Such communication is often called arrival calls. The complainant claims that her partner was not permitted to inform her when he arrived at Västervik Norra Prison. JO's investigation shows that there is no documentation of the complainant's partner having been asked if he wants to make a so-called arrival call. Nor is there any record of such a call having been made, or of whether the institution determined that special reasons prohibited it. In its decision, JO states that a prison should note down that the inmate has been asked if he or she wants to notify a relative, and whether such a call has been made. The prison should also document its position in the case of an inmate wanting to notify a relative and the prison finding there to be special reasons for denying this. JO criticises the prison for not having documented if and how the so-called arrival calls have been handled in the case in question. (6877-2014)

**Initiative on the possibility for inmates on remand to look at their surroundings through the windows of residential rooms, etc.**

The decision found that the possibility for inmates in detention centres or prisons to see out the window of their living quarters and get an idea of the surroundings may contribute to a stay in a detention centre or prison not being as stressful as is perceived, and thus counteract the negative consequences of freedom deprivation. For that reason it should, according to the Chief Parliamentary Ombudsman, be described as a fundamental right of inmates to be placed in living quarters where the window enables normal daylight for the season to enter the space, and for the inmates to be able to view the surroundings. It should also be considered a fundamental right for inmates to independently control the influx of daylight in their living quarters. In the same way, this also relates to the inmates opportunity to view their surroundings from an exercise yard.

These rights may be restricted if the Prison and Probation Service finds that, due to order and security reasons, it is necessary in the individual case. If an inmate is obliged to stay in an environment where these rights are restricted, the Prison and Probation Service must take measures to reduce the negative impact of the restrictions and ensure that their stay in such environments is as short as possible.

In the decision, the Chief Parliamentary



Ombudsman also provides an opinion on the measures that individual detention centres have taken to try to prevent inmates from unwanted communication through the windows of the living quarters, protect inmates' personal integrity and prevent a view into other agencies' premises. (7173-2014)

**Complaints against the Prison and Probation Service, the detention centres in Saltvik, Salberga and Umeå, alleging that inmates have not been permitted to make "arrival calls"**

Two individuals who were remanded complained that they did not get to notify their relatives when they arrived at the Salberga detention centre. JO's investigation shows that the individuals were detained on suspicion of a crime and they had been moved to the Salberga detention centre from other detention centres.

In JO's decision it was found that there was no constitutional obligation for the detention centre to notify the detained parties' relatives. The JO therefore does not direct any criticism at the Prison and Probation Service. In the decision, JO refers to previous statements in issues relating to the notification of relatives or loved ones of detainees (ref. no. 1944-2013). In its statement to JO in this case, the Prison and Probation Service indicated that the authority intends to develop common procedures for how issues relating to the notification of relatives should be dealt with. JO will monitor the Prison and Probation Service's work with developing common procedures.

JO is also forwarding a copy of the decision to the Ministry of Justice and the Riksdag's Committee on Justice for information purposes. This is because JO finds it difficult to see that there would be an objective justification for the difference in notification obligations with regard to persons detained on suspicion of criminal offences and persons detained on other grounds, see Chapter 24, Section 21a of the Code of Judicial Procedure and Section 3 of the Detention Ordinance (2010:2011). (62-2015, 63-2015)

**Complaint against Swedish Prison and Probation Service, Norrtälje prison, that the inmates are not offered outdoor time in conjunction with separate confinement**

All inmates in a department at Norrtälje prison were placed in separate confinement and were not offered outdoor time (walking) in conjunction with the confinement. The prison called in extra staff to prepare housing to which some of the inmates in separate confinement could be moved, so that separate confinement of the

other inmates could be cancelled.

It was stated in the decision that one hour's daily walk is a fundamental right which inmates can only be refused if there are exceptional reasons. This means that the Prison and Probation Service had to actively take measures to deal with the situation that resulted in prisoners not being offered the opportunity of a daily walk. Such a measure could be that the authority calls in extra staff to allow inmates to walk. The staff could also be used to speed up an investigation of suspected misconduct, and thus shorten the time spent in separate confinement. Which part of its activities the prison authorities chose to give priority to must be determined from case to case. However, it is important in such an extraordinary situation that requires placing a large number of prisoners in separate confinement that special measures must be taken either to offer inmates a period outdoors, or to return them to normal confinement together as soon as possible.

The Chief Parliamentary Ombudsman has no objection to prison authorities in Norrtälje choosing to let extra staff give priority to measures to speed up the lifting of certain separate confinement sentences instead of offering the inmates one hour's daily outdoor walk. The most important aspect is that the prison has taken measures to resolve the acute situation.

The decision also contains certain statements on the documentary obligation of the Swedish Prison and Probation Service and separate confinement under Chapter 6 Section 5 of the Imprisonment Act. (282-2015)

**Criticism of the Swedish Prison and Probation Service, Gävle Prison, for having contacted social services despite the inmate having withdrawn his consent**

An inmate had applied for permission to make a phone call to his girlfriend, and had verbally consented to the prison contacting social services to investigate the relationship between him and the girlfriend and the need of contact. Despite the inmate later withdrawing his consent, the prison and social services held discussions regarding the inmate's reasons for having contact with his girlfriend. The Parliamentary Ombudsman establishes that the investigation does not support the conclusion that the prison disclosed confidential information concerning the inmate to social services. The Parliamentary Ombudsman is however critical of the fact that the discussions were held. According to the Parliamentary Ombudsman, it was inappropriate

ate to hold the discussions after the inmate had withdrawn his consent. In assessing the appropriateness of these actions, the Parliamentary Ombudsman takes into account that this was a case initiated by the inmate and that he had applied for a privilege. It was therefore in his interest for the prison to receive the information necessary to make a decision on the matter. It is difficult to see how the prison would have any interest of its own in investigating the relationship between the inmate and his girlfriend. According to the Parliamentary Ombudsman, it is therefore remarkable that the inmate's negative attitude to contact between the authorities was not respected.

In its decision, the Parliamentary Ombudsman also states that consent from an individual to waive probation confidentiality should normally be submitted in writing. (670-2015)

**Serious criticism of the Prison and Probation Service and Salberga prison authorities for acting outside their commission**

At the request of the Enforcement Authority, the Prison and Probation Service at Salberga prison shared information on inmates' assets and investigated their indebtedness by anonymously contacting the Enforcement Authority. The information was subsequently passed on to the Enforcement Authority, which decided to seize certain property. In the decision it was stated that there was no impediment to the Prison and Probation Service disclosing information at the request of another authority, provided that the Prison and Probation Service finds by review that the conditions in the so-called general clause (Chapter 10 Section 27 in the Information and Secrecy Act) are met.

The decision states that the Salberga prison authorities, in their contacts with the Enforcement Authority, disclosed the information without a prior review of whether the conditions of the general clause were met. Furthermore, the prison staff carried out tasks not covered by the mission of the Prison and Probation Service when they examined the inmates' indebtedness at the request of the Enforcement Authority. The Prison and Probation Service has not explained why the prison staff chose to remain anonymous in their contacts with the Enforcement Authority. The Chief Parliamentary Ombudsman declares that she may have some understanding for the inmates when they believe the prison authorities tried to conceal their involvement in the seizure of property in this way.

One of the missions of the Prison and Probation

Service is to prevent recidivism. According to the Chief Parliamentary Ombudsman, an important prerequisite for the success of this mission is to maintain trust and respect between the prison staff and the inmates. Through the actions of Salberga prison authorities, the Chief Parliamentary Ombudsman finds a clear risk that this trust has been damaged and thus impedes work to prevent recidivism. It is for this reason that the prison authorities have been seriously criticised for their actions. (987-2015)

**Serious criticism of the Swedish Prison and Probation Service, Färingsö prison, for handling pepper spray in an unsatisfactory manner**

In November 2014 the staff in Färingsö prison found a can of pepper spray (OC spray) in a storage box from a cabinet which had previously been used for the storage of the spray cans. When the spray was found, the storage box had been placed unlocked for a long time in a space which the inmates in the prison reception department had access to. Because the prison could not excluded the possibility that there were more cans of pepper spray somewhere in the department, the inmates were put into separate confinement while the department was checked.

The Chief Parliamentary Ombudsman aims serious criticism at the fact that the inadequate management of pepper spray resulted in prison authorities losing control over it and that the deficiencies had far-reaching consequences for a number of prisoners. Since one can of pepper spray had been kept in a place that the inmates had access to for a long time, the Chief Parliamentary Ombudsman also finds that there was a risk it could have fallen into the wrong hands. Staff and inmates have thus been put in danger. The staff at Färingsö Prison are given serious criticism for this.

The decision also contains certain statements on the application of Chapter 6 Section 5 of the Imprisonment Act. (1096-2015)

**Serious criticism of the Swedish Prison and Probation Service for deficiencies in connection with the placement of inmates in isolation**

When JO carried out a visit to Swedish Prison and Probation Service, Saltvik Prison, it was noted that three inmates were placed in isolation. Since it appeared that there was some confusion as to why the inmates were placed in isolation, the Chief Parliamentary Ombudsman decided to investigate the matter in a case initiated by JO. The decision found that two of the inmates had been placed in isolation without

grounds existing for doing so. The investigation also shows that there have been shortcomings in the handling of the third inmate, and in the design of the institution's isolation decisions. Since this has been an issue regarding a restriction of a fundamental right, the Prison and Probation Service receives serious criticism for these shortcomings. (1510-2015)

**Criticism of the Prison and Probation Service for flaws in the design of a decision regarding the reconsideration of the placement of inmates in a security unit. Follow-up of JO 2014/15 p. 243 (ref. no. 2311-2013)**

In JO 2014/15 p. 243 (ref. no. 2311-2013), JO investigated the Prison and Probation Service's handling of the placement of inmates in a security unit. In its response, the Prison and Probation Service stated, *inter alia*, that the authority had initiated a review of the handling of these cases. In her decision, the Chief Parliamentary Ombudsman stated that she intended to follow up the issue after one year.

In a statement to JO, the Prison and Probation Service has presented a process description for the handling of security unit placements. The Chief Parliamentary Ombudsman states that there a review of this process is necessary in order to create a more legally secure, predictable and comprehensible system. According to the Chief Parliamentary Ombudsman, the Prison and Probation Service's process description appears on an overall level to be appropriate. Applied correctly, it will strengthen the inmates' legal security but also contribute to greater predictability.

The review highlighted that the Prison and Probation Service, in an initial decision on placement in a security unit, has referred to a circumstance that cannot be used as the basis for such a placement. The decision was made before the Prison and Probation Service submitted a statement in JO 2014/15 p. 243, and it has therefore not been affected by the authority's subsequent work with security unit placements. However, the Chief Parliamentary Ombudsman points out that the Prison and Probation Service has not found any reason to amend the initial decision in a number of review decisions taken after JO 2014/15 p. 243. In all decisions, the Prison and Probation Service has concluded that the authority does not find reason to make any assessment other than what was made in the initial decision. The Chief Parliamentary Ombudsman points out that the Prison and Probation Service has, through this formulation,

confirmed the erroneous circumstance in the initial decision and thus used it as the basis for a continued placement. In these circumstances, the Prison and Probation Service should have instead corrected the deficiencies in a review decision, and thus receives criticism for having not done this.

Finally, the Chief Parliamentary Ombudsman criticises the Prison and Probation Service for the monthly review decisions still being meaningless. (3021-2015)

**Criticism of the Prison and Probation Service at the remand prison in Gothenburg, for a male prison officer who made a body search of a female inmate without support in the law**

A male prison officer conducted a clothed body search of a female inmate in connection with her return from leave outside the remand prison in Gothenburg. According to the remand prison, the action was taken with the support of Chapter 4 Section 4 of the Act on Detention. Under that provision, in comparison with Section 7 paragraph 1 in the same chapter, a male officer may search a female inmate for weapons and other dangerous objects if it is necessary for reasons of safety.

According to the Chief Parliamentary Ombudsman, through this provision the legislator intended to enable the Prison and Probation Service to deal with imminent situations where there are no female staff available and where demands of safety make it unreasonable to wait for a body search. The female inmate was searched in connection with her re-entry of the remand prison. The remand prison is a security centre with general entrance controls, and according to the Chief Parliamentary Ombudsman this is a case of a routine activity that the remand prison was able to plan. The remand prison can also anticipate the need for female prison officers that can body search female inmates.

Thus, the situation regarding the body search did not arise in such a hasty fashion as referred to in Chapter 4 Section 4 of the Act on Detention. The measure instead took place under Chapter 4 Section 3 paragraph 2 of the Act on Detention, and it is not permissible for male prison officers to body search a female inmate under this provision. The remand prison in Gothenburg is criticised for having taken a coercive measure without support in the law. (3844-2015)

**Complaint against the Prison and Probation Service, Skänninge Prison, that a visitor was subjected to random superficial body searches**

An inmate has complained that his wife, in conjunction with visiting him at the Prison and Probation Service, Skänninge Prison, has been subjected on several occasions to “naked visits” (superficial body search). On each occasion, the staff has stated that it is a random inspection. The staff also stated that such inspections, according to the prison’s procedures, are to be conducted on the basis of random selection.

In her decision, the Chief Parliamentary Ombudsman states that a superficial body search may only be conducted when it is considered necessary for security reasons in the individual case. Skänninge Prison has stated that it is not documented when a visitor has undergone such an inspection, and as a result it has not been possible to answer to the number of times the complainant’s wife has been inspected in this way.

The Chief Parliamentary Ombudsman notes that a superficial body search is a very intrusive security measure. If the measure is documented, it can contribute to the responsible staff clarifying – both for themselves and for the individual – why such an inspection is considered necessary before it is performed. This entails that body searches not be conducted routinely or randomly. If the measure is documented, it also ensures that the staff informs the individual that the security measure is voluntary and explains the consequences of refusing such an inspection. Proper documentation thus also functions as a security measure for the staff, should discussions arise afterwards regarding, for example, whether the visitor was given correct information in conjunction with the inspection.

For these reasons, the Chief Parliamentary Ombudsman is of the opinion that the Prison and Probation Service should introduce a procedure which entails that the country’s prisons and detention centres document this type of security measure.

In the decision, the Chief Parliamentary Ombudsman also notes that there is no justification to direct criticism or implement any other action based on the findings of the investigation. (5186-2015)

**Criticism of the Prison and Probation Service, the prisons in Färingsö, Sagsjön and Ystad, for having implemented measures which lack legal support regarding mail items sent to inmates**

The Prison and Probation Service, the prisons in Färingsö, Sagsjön and Ystad, has applied procedures which have meant that the prisons have implemented measures with the inmates’

mail. In Färingsö Prison, the staff have scraped off or cut out stamps from the mail items, while the staff in the other two prisons have taken into custody or thrown away the envelopes that the mail items came in. The procedures have the common goal of, inter alia, preventing the inmates from accessing prohibited items (drugs), and these have been applied routinely without any assessment of the individual case. The Chief Parliamentary Ombudsman criticises the prisons for implementing procedures that have lacked the necessary legal support.

Furthermore, it has emerged that the prisons in Sagsjön and Ystad have returned the seized envelopes in conjunction with the inmate’s release, despite the suspicion that they are laced with drugs. The Chief Parliamentary Ombudsman states that, in the event of suspicion, the Prison and Probation Service should report the suspected narcotics offence to the Police Authority. If this is not done, the Prison and Probation Service risks facilitating a relapse into drug abuse, the combating of which is one of the authority’s designated missions. According to the Chief Parliamentary Ombudsman, this appears contradictory. (5255-2015)

**Serious criticism of the Prison and Probation Service for having not established procedures for checking that the grounds for detention persist**

A person who had been remanded in absentia was sent by police to the detention centre in Göteborg. According to applicable regulations, a detention hearing should have taken place within four days of the detention order having been enforced. For unclear reasons a hearing was never held, and thus there were no legal grounds for keeping the inmate in custody after the four days had passed. Despite this, the inmate remained in custody for another six weeks.

In its response to JO, the Prison and Probation Service has stated that the authority has no formal responsibility to report to the prosecutor or court when a detention order has been enforced. Furthermore, the Prison and Probation Service has stated that it is not possible for a detention centre to “take on routine monitoring responsibility for ensuring that all clients’ processing deadlines are kept”.

The Chief Parliamentary Ombudsman emphasises that the action of detaining an individual is one of the most intrusive forms of exercised authority. As the authority effecting such decisions, the Prison and Probation Service has a central role in the detention process. As the Prison and Probation Service is the author-

ity that physically controls the detainee, the authority is also well placed to detect and sound the alarm if an inmate has “been forgotten” by any of the other actors in the process.

For these reasons it is, according to the Chief Parliamentary Ombudsman, entirely reasonable to require the Prison and Probation Service to take responsibility for ensuring that its operational centres not only conduct the initial verification of the grounds for detention, but also monitor to ensure that these grounds persist throughout the entire period of detention. If it was accepted that the Prison and Probation Service does not need to take such responsibility, there is, according to the Chief Parliamentary Ombudsman, a significant risk that the incident in the detention centre in Göteborg will happen again. This is completely unacceptable in a state governed by law.

What has emerged in this case gives the Chief Parliamentary Ombudsman the impression that the Prison and Probation Service does not want to take on the responsibilities that come with the central role assumed by the authority when it comes to detaining people. By not doing this, the authority has also failed to establish procedures to ensure that the authority’s employees conduct the necessary checks to ensure that there are legal grounds for keeping a person locked up. This shortcoming has resulted in the incident in the detention centre in Göteborg and, for this, the Prison and Probation Service deserves serious criticism. (6050-2015)

#### **Criticism of the Swedish Prison and Probation Service, Österåker Prison, for hearing a case on deferred conditional release**

In the provisions in Chapter 26, Section 6 of the Penal Code, the general rule applies that the offender is conditionally released when two thirds of a fixed-term sentence or at least one month has been served. If there are any exceptional reasons against conditional release, it must be deferred. It is the Swedish Prison and Probation Service that determines on deferred conditional release (Chapter 26, Section 9 of the Penal Code). Issues concerning deferred conditional release must be settled promptly as specified in Chapter 12, Section 3 of the Prison Act (2010:610).

The question of deferred conditional release is of particular importance to the inmate. It is important that the Swedish Prison and Probation Service in good time ahead of the conditional release and in line with the general rule, should be deciding on a possible deferred conditional

release to ensure that the inmate has the option of requesting a review and appeal. That decisions are taken in good time before the conditional release is also relevant for the planning of any transition, and to ensure that other release preparations are not hampered.

In the case in question, an inmate had been sentenced to a prison term of one year and six months. The inmate had been told by a client administrator in the prison that the issue of deferred conditional release is normally admissible one month before the date of the conditional release. However, the case of deferred conditional release was only initiated two days before the conditional release was to take place and decisions on deferred conditional release were therefore taken the day before the conditional release would otherwise have taken place. The supporting documentation that formed the basis for the decision on deferred conditional release related to a number of incidences of misconduct that had occurred from the beginning of the enforcement and onwards.

According to the chief Parliamentary Ombudsman, the prison must have been able to rule on deferring the conditional release in good time before the deadline for conditional release. The prison is criticised for initiating the case of deferred conditional release only two days before the conditional release was to take place. (6923-2015)

#### **Public access to documents and secrecy as well as freedom of expression and the press**

##### **Complaint against Arbetsförmedlingen for documents having been destroyed during an ongoing review of the question of disclosure; as well as the issue of backup copies of an e-mail account having been deleted incorrectly**

In a complaint to JO, it was argued that Arbetsförmedlingen had disposed of documents during the period of an ongoing judicial review of the question of whether the documents would be released. The investigation into the matter shows that the internal e-mail communication that was requested had been deleted by Arbetsförmedlingen through the closure of an e-mail account, which occurred long before the request was made. When the documents were requested, the e-mail communication was not found in the agency’s regular information processing systems, but rather only as backup copies. In the decision it is concluded that there is therefore no basis for suggesting that Arbetsförmedlingen



has disposed of the requested documents during the ongoing judicial review.

The decision also addresses the question of whether Arbetsförmedlingen should have kept backup copies of the e-mail account during the period of the ongoing judicial review. JO concludes that the investigation of the matter does not provide any support for the conclusion that the e-mail communication was deleted in an incorrect way when the e-mail account was closed. There is therefore no reason to criticise Arbetsförmedlingen for backups of email account deleted in accordance with the authority's practices despite ongoing legal challenge if disclosure of e-mail communication in the account. (434-2015)

**Criticism of an official in the Prison and Probation Service, Ringsjön Prison, for having not immediately initiated the disclosure of public documents**

During a visit to the Prison and Probation Service, Ringsjön Prison, a person requested access to the sentencing decisions for the inmates located in the prison at the time. The facility's acting prison inspector notified the individual that the request could not be handled directly, but that the prison could send the requested documents. Alternatively, the individual could return at a later date when the decisions had been printed and were available.

The Prison and Probation Service has stated that the prison does not have a dedicated office and that it was therefore the prison inspector who had to deal with the request. When the request was made, there was 40 minutes left of the prison inspector's work day. Thus, he would probably not have had the time to print the documents requested before the end of the work day. He also had other duties that he could not be expected to put aside.

The Chief Parliamentary Ombudsman notes that the request to access public documents related to at most 14 decisions that were not subject to confidentiality. Although it required some administrative work to print the decisions, it was not a matter involving extensive material. The Chief Parliamentary Ombudsman considers that a matter of document disclosure must be handled with certain priority by an authority. The Prison and Probation Service has not provided details on the duties that the prison inspector felt the need to prioritise above the document disclosure. According to the Chief Parliamentary Ombudsman, it cannot be interpreted as anything other than being work duties of a more general nature. In such circumstances,

the prison inspector should have prioritised the request for document disclosure.

According to the Chief Parliamentary Ombudsman, there was no obligation for the prison inspector to stay late after the work day was over in order to meet the request. However, there was 40 minutes remaining of the work day when the request was made. The prison inspector should therefore, according to the Chief Parliamentary Ombudsman, have begun working to meet the request.

The Chief Parliamentary Ombudsman notes that the request has been made at a small secluded facility without its own administrative office. The official in charge was temporarily appointed. These circumstances combined have resulted in the Chief Parliamentary Ombudsman having some understanding regarding the improper handling of the request. However, the prison inspector cannot escape criticism for the inadequate handling of the matter. (3725-2015)

**Criticism of the Swedish Prison and Probation Service, Visby Prison, for having delayed in disclosing copies of official documents**

In accordance with Chapter 35, Section 15, second paragraph of the Public Access to Information and Secrecy Act, secrecy in accordance with the first paragraph in the same enactment (probation confidentiality) does not apply to decisions made by the Prison and Probation Service. In the decision, the Parliamentary Ombudsman speaks about the possibility for the Prison and Probation Service to classify certain information in the authority's decision with the support of another provision in the Public Access to Information and Secrecy Act (Chapter 21, Section 3). The Parliamentary Ombudsman criticises the Prison and Probation service for the slow handling of a request for copies of certain decisions concerning sentences. (5158-2015)

**Complaint against Limhamn-Bunkeflo District Administration (now Stadsområde Väster) in Malmö Municipality; matter of whether classified information has been able to be sent by e-mail**

A father complained that a social worker, during a child care investigation, had sent e-mails with information about the investigation to him and his wife.

JO *inter alia* states the following: If the individual wants the authority to communicate with him or her by e-mail, this should be possible under certain conditions. When an e-mail message contains sensitive information, special security measures are required to ensure that the right

person has access to the information and that it is transferred in a secure manner (e.g. using encryption). However, e-mails of a simpler nature that do not contain personal information that is sensitive from a privacy point of view should be sent without encryption or the like. If, on the other hand, the individual does not wish to be contacted by e-mail, this should be respected. That being said, there may be occasions when such contact will still be acceptable, for example, if the matter is urgent and Social Services has made several unsuccessful attempts to get hold of the individual in another way.

JO is understanding of the fact that the administrator in this case contacted the parents in the way that was done, and no criticism is directed at the administration. (1376-2013)

**Complaint against the Social Services Department in Karlskrona Municipality alleging that video recordings made within the context of an approved measure have been deleted**

One parent complained that the Social Services had destroyed video recordings that had been made when the parents had access time with their children.

It appeared from JO's inquiry that the parents, after completion of a child care investigation, had been granted assistance under the Social Services Act in the form of family support within the Social Services Department's non-institutional care programme. As part of the family treatment, two occasions of access time with the children were recorded on video. The recordings were erased after the parents had watched the videos together with the family support team and had received feedback on their parenting.

According to JO's view, it is more obvious to assume that the video recordings were made in the context of so-called actual action at the Social Services Department, and that they were therefore not related to any case. The videos were saved by the department prior to the upcoming treatment date, and information on them was noted in the journal. The recorded material seems to have not been intended for processing, but was in its final state already when the department stopped recording. JO is of the opinion that the video recordings therefore must be considered as having been produced in the sense conveyed in the Freedom of the Press Act. I.e. that they were public documents.

There is no support in any sorting provisions for the destruction of the video recordings. The questions regarding the legal status

of the recordings and the possibility of deleting the material are, however, not easy to answer, and the responsibility for considering whether a document is public ultimately rests on the courts. JO therefore refrains in this case from criticising the department for destroying the material. (7041-2013)

**Serious criticism of the Social Welfare and Labour Market Committee in Ale Municipality for classified documents being published on the municipality's website**

A municipality published documents containing confidential sensitive information on its website. The documents were anonymous but could nevertheless be linked to certain people because their names had been published in the media. The blacking out of data by the municipality was therefore not done with sufficient care. The municipality receives serious criticism for the documents being published on the municipality's website. According to JO, it is positive that the authority strives to be as open as possible towards the public. However, the authority must make careful considerations when it comes to what is published on a website. For such a publication to be authorised, the provisions of the Public Access to Information and Secrecy Act and the Personal Data Act must be followed. (4768-2014)

**Criticism of the Chief Guardian Administration in Lessebo for the handling of a request for disclosure of public documents**

On 9 August 2015, the complainant requested to obtain a number of documents from the Chief Guardian Administration in Lessebo Municipality. In a responding letter on 13 August 2015, the Chief Guardian Administration stated that the municipality was represented by two insurance companies that would respond to the complainant's request as soon as possible. JO's decision criticises the Chief Guardian Administration for having transferred the task of answering the complainant's request to the municipality's representatives, and for having not yet ruled on this. (4634-2015)

## Social insurance

**Question of how the Social Insurance Agency's examination should be carried out when additional documents are submitted after the application has been refused on the grounds of incomplete information**

In a notification to JO, a complaint was made against the Social Insurance Agency for its processing of an application for housing allowance.

In an examination of the case in question, it emerged that the application had been rejected on the basis of incomplete information, but that the Social Insurance Agency had then received supplementary information and had duly initiated a process to amend the previous decision with the support of the special provision for changes in Chapter 113 Section 3 of the Social Insurance Code. JO notes that the Social Insurance Agency applied the provision too widely in the case in question, but that the situation which arose was solved in a way that was to the benefit of the individual and in accordance with legal administration practice. JO does not find any reason to criticize the Social Insurance Agency's procedure in this respect. The Social Insurance Agency is criticised for slow processing of the change in the case and for poor record-keeping.

In its decision, JO states that in a situation where an application is rejected on the basis of incomplete information there are good reasons to assume that the person who subsequently provides additional documents or information to the Agency wants the benefit which he or she originally requested. Whether supplementary information is submitted together with an explicit request for reconsideration or not, it must be assumed that the individual wants the most complete review possible. In many cases, the right to retroactive compensation depends on when an application is submitted to the Social Insurance Agency. This applies to housing allowances, for instance, which as a rule are not backdated more than the month of the application. In situations where supplements are submitted within the review period, the Social Insurance Agency should decide on its own initiative whether an application can be reviewed on the basis of the information received if the individual has not explicitly opposed such a review. The individual is then given an opportunity of obtaining a complete review of the application that had previously been rejected. (2962-2014)

**Criticism of the Social Insurance Agency for slow processing of applications for reimbursement of costs incurred through healthcare in another country within the EEA**

The law on compensation for costs incurred through healthcare in another country within the EEA came into force on 1 October 2013. The law covers both planned and necessary healthcare, including private healthcare providers in other countries, and enables the reimbursement of costs for healthcare, dental care, medicines,

etc. By law, the decision on compensation shall be taken as soon as possible and no later than ninety days from the submission of a complete application has been filed with the Swedish Social Insurance Agency.

In the decision it is stated that in over 2000 cases the Social Insurance Agency has exceeded the statutory time limit of 90 days. The Social Insurance Agency has explained that the long processing times have collaborative reasons, such as an initial misjudgement of how many applications would be received and the difficulty of obtaining useful opinions from the county councils concerned. In the decision, JO states that it is not acceptable for the processing times to become so extended when the legal text explicitly states that the Social Insurance Agency shall make a decision within 90 days, and JO thus criticises the Agency for its long processing times. (3950-2014)

## Social services

### Social Services Act

**Complaints against Malmö regarding the handling of cases involving unaccompanied minors who are married**

In November and December 2015, 25 unaccompanied children arrived in Malmö municipality that were aged between 15 and 18 years who reported that they were married to an adult. Following a security assessment, one of the children was placed in a care home or accommodation. The remaining children came with their spouses. The question is whether social services in the municipality of Malmö have failed in their responsibility to investigate the married children's need for protection or support.

When it comes to children who may be in need of protection or support, the Social Welfare Board is charged with far-reaching investigative responsibility. When an unaccompanied child arrives in Sweden and information emerges that the child is married to an adult, the Social Welfare Board should therefore, in the view of the Parliamentary Ombudsman, generally initiate an inquiry pursuant to Chapter 11, Section 1 of the Social Services Act. The inquiry's needs for clarification include the child's attitude and their ability to make their own choices as far as possible. To ensure that a child's rights are not violated, there must be a prerequisite ensuring the thoroughness of the Social Welfare Board's inquiries. One or two conversations upon arrival to Sweden can, in the Parliamentary Ombudsman's view, in most cases, not be considered as

adequate. The child must receive personal and relevant information about its rights and opportunities to protection in Sweden. Only after a careful and thorough inquiry can the Social Welfare Board, in the view of the Parliamentary Ombudsman, have a sufficiently good basis for determining whether the child has a real opportunity to express a desire to live with its spouse and if the child is in need of protection or support.

Social resource management has stated that an individual protection assessment has been made for all the children in question but that an inquiry has not always been initiated. Management is aware that there have been shortcomings in the handling of cases in terms of it not launching inquiries. Against this background and taking into account the measures that management has already taken, including the reports of concern to the children's hosting municipalities, the Parliamentary Ombudsman finds no grounds to direct any criticism at the Social Welfare Board for examining the cases in question.

In the Parliamentary Ombudsman's view, it is important that the issue of unaccompanied married children is immediately followed up by the responsible authorities. A copy of the decision has therefore been sent to the Ministry of Social Affairs. (394-2016)

**Criticism of the Social Welfare Board in Säfte municipality for hearing a case on income support; including the question concerning requirements for urine testing as a condition for financial assistance**

An individual applied for financial assistance for support. In connection with this, he made an agreement with social services to provide urine samples three times a week. The purpose of the agreement was to support him in his abstinence as part of the process of making him self-sufficient. On certain occasions when the individual did not provide urine samples or if he left a positive urine test, social services made a deduction from his income support. The question that the Parliamentary Ombudsman is to consider in the matter is if the Social Welfare Board can deny a person assistance because he or she does not submit a drug test as agreed.

Each citizen in relation to the public is protected from enforced physical intervention (Chapter 2, Section 6 of the Constitution). This protection may, under certain circumstances, be restricted by law. An intervention is enforced if the public has leverage to enforce the measure,

or if the individual's resistance is broken by the threat of a sanction.

There is no legal basis to require that a person seeking financial assistance must submit a drug test. The Social Welfare Board cannot therefore require that anyone submits urine samples as a condition for financial assistance. Such a requirement is contrary to the protection specified in the regulation in Chapter 2, Section 6 of the Constitution. The Parliamentary Ombudsman expressed criticism at the Social Welfare Board. (749-2015)

**Report made against the Social Welfare Committee of Värmdö Municipality regarding compulsory urine testing for residents in assisted living facilities**

A person was granted economic support in the form of a placement in a drug-free assisted living facility. The placement was voluntary. However, to be able to be placed in an assisted living facility, the individual was required to adhere to the rules at the facility. These included regular compulsory urine samples and breathalyser tests. The matter in question is whether these drug tests comply with the protection against invasive body searches afforded in Chapter 2, Article 6 of the Swedish Instrument of Government.

Every citizen has protection against forced physical intrusion (Chapter 2, Article 6 of the Instrument of Government). The law permits limitation of this protection under certain circumstances. An intrusion is forced if the authority disposes over instruments to enforce the measure or if the individual's opposition is broken down via a threat of sanction.

The requirement for a person applying for economic support to submit a urine sample or any other drug test has no support within the Swedish Social Services Act. To conduct such tests therefore requires that the individual gives their voluntary consent.

JO *inter alia* states the following: When choosing an intervention, it is important that the individual receives clear information and really understands the conditions for the measure and the options that are available to them. From the individual's perspective, requiring a urine sample and breathalyser test can be interpreted as intrusive as the individual cannot receive the intervention in question or must leave the facility if they do not undergo drug testing in accordance with the rules at the facility. However the individual does not have any unconditional right to a particular intervention

by social services. If they do not want to provide a urine sample, support can be provided in another form. Discharge and the offer of other accommodation, which may be the consequence of not providing consent, can therefore not be interpreted as a sanction entailing that the requirements for drug testing are to be viewed as invasive. JO therefore does not direct any criticism at the administration. (6442-2014)

**Complaint against the Social Welfare Board in Sollentuna municipality; question of the appropriateness of a Board officer talking with children in school as part of a child protection inquiry**

During a child protection inquiry pursuant to Chapter 11, Section 1 of the Social Services Act, SoL, a social welfare officer talked with two children without the guardians' consent as supported by the provisions in Chapter 11, Section 10 third paragraph of SoL. The talks were conducted at the child's school.

The appropriateness of holding talks in the school can be discussed. When the Social Welfare Board officer contacts a child in school, it is inevitable that persons other than the child concerned become aware of the incident. Information on the child's contacts with social services, information that is typically protected by confidentiality, risks becoming known outside the circle of those most affected. Together with the reactions and discomfort this may cause the child, this contact in the school risks violating the child's integrity.

When social services consider hearing a child in the child's school, the benefits of speaking with the child must be set against the child's need for protection of their integrity. It is therefore important that social services make an assessment in each case as to whether the needs of social services to hear the child in the inquiry outweigh the risk of harming the child by the attention caused by social services visiting the school.

Based on information that has emerged in the cases involving conversations with children and that has been raised with the Parliamentary Ombudsman, it seems normal that social services hold conversations with children at the child's school. The Parliamentary Ombudsman views with some concern that a practice may have developed whereby social service conversations with children that take place without the consent of the guardian as more or less routine and that are based solely on the practical aspects, are held at the school.

In the case in question, there was significant

interest in the social welfare officers speaking with the children. In light of what has emerged, there is no reason for the Parliamentary Ombudsman to direct any criticism at the Social Welfare Board for the conversations held at the school. In the Parliamentary Ombudsman's view, there is a need for the legislator to consider various issues relating to the Social Welfare Board's activities when it comes to children, especially those associated with children's conversations. A copy of this decision has therefore been sent to the Ministry of Social Affairs. (4225-2014)

**Criticism of the Social Welfare Board in Hörby municipality to the Board's officers within the context of the inquiry having visited a children's nursery to observe the child without the consent of the guardians**

During a child protection inquiry pursuant to Chapter 11, Section 1 of the Social Services Act, SoL, social welfare officers visited a child at the child's preschool to observe the child. Social welfare officers then also held a conversation with the child at the preschool. The observation and the conversation were carried out without the consent of the guardians.

The Parliamentary Ombudsman states that because children in preschool are very young, a visit by Social Welfare Board officers to the preschool arouses less attention than a similar visit to a children's school. The risk of an unnecessary intrusion into the child's integrity is significantly less when it comes to contact with a child in preschool than for children that are older.

The conversation with the child was held in such a way that there are no grounds for the Parliamentary Ombudsman to criticise the Social Welfare Board for holding the conversation at the preschool.

When the Social Welfare Board administrators meet the parents and the child, for example, at a home visit, the administrator may make some observations concerning, among other things, parental care of the child and the child's behaviour. The findings may be such that they are to be considered in the inquiry. In some cases it may also be necessary for the social welfare administrators to arrange their own observations of the child. However, an inquiry measure in the form of a specially arranged "observation" has been proposed, which in the view of the Parliamentary Ombudsman, is a sensitive measure. There is a risk that public confidence in the social services is harmed if the board is perceived as "spying" on individuals.



Such investigative measures are not accommodated either in the rules in SoL that entitle the Social Welfare Board to gather information or to hear the child without the consent of a guardian. If the child to be observed is not taken care of based on The Care of Young Persons (Special Provisions) Act (1990:52), this requires, in the Parliamentary Ombudsman's view, the consent of the guardian to allow the arranged observation to be conducted.

The Parliamentary Ombudsman criticizes the Social Welfare Board for the observation of the child being conducted in the manner that it was conducted. (6547-2014)

**Report against the Child and Education Board in Forshaga municipality; matter of the Board's right to interview children without the consent of the custodians within the scope of a "preliminary assessment"**

Due to a report of concern for two children, the Child and Education Board made a "preliminary assessment" in order to assess whether the Board should initiate an investigation in accordance with Chapter 11, Section 1 of the Social Services Act. During the preliminary assessment, Board administrators spoke with the children without the consent of their custodians.

In accordance with Chapter 11, Section 10, third paragraph of the Social Services Act, the Social Welfare Board may in certain cases interview a child without the consent of their custodians. However, this provision is limited to situations where the Board has initiated an investigation of the child's need for protection or support.

In regard to the Social Welfare Board's conversations with children during a preliminary assessment, conversations with children who are not of such an age or maturity that they themselves can make decisions regarding their participation may not be held without the consent of the custodian.

In the case in question, the children were close to 15 and a little over 12 years of age, respectively. In light of the children's ages, it is reasonable to assume that they could decide for themselves whether they would speak to the investigators or not. The consent of the custodians has therefore not constituted a prerequisite for the Board to interview the children during the preliminary assessment. There is therefore no reason for JO to criticise the Child and Education Board. (3891-2014)

**Formal complaint against Social Resource Board in Gothenburg municipality regarding a child be-**

**ing prohibited from recording a "child interview" within the scope of a custody investigation**

In an investigation into custody, etc., social services was to conduct a child interview without the parents of the child - who was eight years old at the time - being present. The social services officer denied the child the option of making an audio recording of the interview.

According to the Parliamentary Ombudsman, the point of departure here is that an individual has the right to make an audio recording of an interview with an official. This principle also applies when social services speaks with a child. Interviews which social services conducts with children must however be carried out in such a way that the risk of the child being placed under pressure is minimised. The child's right to record an interview may therefore have to take a back seat where there is a risk of negative consequences of such a nature.

Social services must in each individual case – with the point of departure in the current situation and social services' knowledge of the child and their network – make an assessment of whether the risk that the recording will be detrimental to the child is so great that there is cause to limit the child's right to record the interview. The assessment must take into account the child's age and maturity. The older and more mature the child is, the less scope there is for issuing a prohibition.

In the current case, the Parliamentary Ombudsman deems there was a risk that the child could feel pressured by the possibility that one of the parents would later listen to the recording. There was therefore a tangible risk that the boy would not express himself freely and unrestrainedly during the interview if it had been recorded. In light of this, and the fact that the boy was only eight years old at the time, there was cause to deny the child the option of recording the interview. (2595-2015)

**Criticism of the former Labour Market and Family Board in Eskilstuna municipality for deficiencies in handling a case in which a boy placed in a foster family was under care in accordance with Section 2 in LVU<sup>1</sup>**

The social welfare board must investigate conditions in a foster family before they decide that a child shall be cared for in that family. Such a foster family investigation must be sufficiently detailed and reliable for it to form the basis of an assessment of whether the child can be provided with the necessary care in the home in ques-

1 Care of Young Persons (Special Provisions) Act (LVU)

tion. Under the Social Services Act, the social welfare board also has a responsibility to closely monitor the care of children and young people in foster families.

In its decision, JO develops its viewpoint of what a foster family investigation should include. In its decision, JO addresses criticism of the former Labour Market and Family Board in Eskilstuna municipality for a number of shortcomings in the handling of a case involving a boy placed in a foster family. JO considers that the initial foster family investigation, which was carried out in summer 2010, was neither sufficiently detailed nor reliable enough to be used as a basis for an assessment of whether the foster family was suitable. The Board had not paid attention to or examined the boy's situation in the foster family in an acceptable way during the time he was placed there. It is, according to JO, remarkable after the repeated complaints about the foster family that the boy's situation was not investigated until February 2013. It should at the very least have been carried out after the information was submitted to the Board in summer 2012.

The shortcomings in the administration of the case were serious. However, the inspection of social welfare boards by JO in March 2015 noted no deficiencies of this type, which gives JO reason to believe that the case under review was an exception in which processing had failed. (3081-2013)

#### **Care of Young Persons (Special Provisions) Act (LVU)**

**Criticism of an official within the Social Services in Jönköping Municipality for having enforced a judgment on care under LVU, even though the judgment could not be enforced before it had gained legal force**

In a judgment, the Administrative Court of Appeal approved an application for a child to receive care pursuant to Section 2 of LVU, but rejected the Board's petition for the judgment to apply immediately. The guardian appealed the judgment to the Supreme Administrative Court. An official at the Board's administration fetched the child and brought it to a family home before the Supreme Administrative Court had ruled on the appeal and without checking whether the Administrative Court of Appeal judgment had become final. JO brought an action against the official for misconduct, but the charges were dismissed.

JO states: Even if the official has not committed a crime, the fact remains that a serious error

has been committed in that the judgment was executed despite the fact that it had not gained legal force. The official cannot escape criticism for the shortcomings in the handling of the case. (3864-2013)

**Case initiated by JO of the Swedish National Board of Institutional Care (SiS), inter alia, because a special residential home for young people neglected to clarify whether a youth was taken into care based on any grounds mentioned in Section 3 of LVU**

A 17-year-old boy was immediately taken into custody pursuant to Section 6 of LVU. The boy was placed in a lockable unit at the National Board of Institutional Care's special residential home for young people at Bärby. In the decision regarding custody, it was not clearly stated whether the boy was taken into care due to such circumstances as indicated in Section 2 of LVU (environment reasons) and/or Section 3 of LVU (the boy's own behaviour).

The placement unit at SiS is criticised for having not documented information that the social service centre had provided over the phone. The youth home is criticised for having placed the boy in a locked unit without it being clearly stated that his placement in the home was on such grounds as indicated in Section 3 of LVU. (228-2013)

**Criticism of the Social Welfare Board in Bollnäs municipality for the board having decided on limitation of access without legal grounds in accordance with Section 14 of the Care of Young Persons Act (LVU), including a requirement for a drug test**

A social welfare committee decided to impose limitations on access in accordance with Section 14 of LVU, stipulating a special condition for the parents to have access to children that they must take a drug test in connection with the access session. In its decision, the Parliamentary Ombudsman examined whether there were legal opportunities to stipulate such a condition.

Every citizen has, in relation to public authorities, protection against forced physical intrusion (Chapter 2, Article 6 of the Instrument of Government). The law permits limitation of this protection under certain circumstances. An intrusion is forced if the authority disposes over instruments to enforce the measure or if the individual's opposition is broken down via a threat of sanction. The condition of the drug test decided on by the social welfare committee cannot, in the Parliamentary Ombudsman's view, be considered anything other than a

decision which entails forcing the individual to be subjected to a physical intrusion. There is no provision in either LVU or other legislation which gives the social welfare committee the right in a case such as this to require a drug test. The social welfare committee is criticised for having pronounced a decision without legal grounds. (38-2015)

**Criticism of the Swedish National Board of Institutional Care at Johannisberg residential home, where a youth was kept in separate confinement for a certain time without the support of the law**

Persons in a residential home under the National Board of Institutional Care may be kept in separate confinement if they have behaved violently or are so influenced by an intoxicating substance that they cannot be kept in order. Separate confinement must be stopped as soon as there are no longer grounds for justifying the measure.

In a previous decision, JO has stated that in certain situations it must be possible to keep an inmate separated from other inmates, despite the circumstances not being identical to those specified in the law, such as in an emergency.

In the case examined, a youth was separated after a “riot” in the residential home. The youth initially behaved in a violent fashion and conditions were such to justify keeping him separate from the others. From midnight onwards, however, the separation was justified more for practical considerations. JO accepts that staff at the residential home considered it was not appropriate to make any new arrangements during the night. On the other hand, according to JO the separate confinement could well have been cancelled earlier than took place, and in any case during the morning. The authority cannot avoid the criticism that the youth was held in separate confinement for a certain period despite the lack of support by the law for such an action. (714-2014)

**Case initiated by JO regarding the conditions for requesting judicial assistance according to Section 43 of the Care of Young Persons (Special Provisions) Act (LVU)**

A 17-year-old Romanian boy had been taken into custody pursuant to Section 6 of LVU and had been placed in a special residential home for young people. Following contact with the boy’s guardians in Romania and consultation with the boy, the Social Welfare Board determined that he should travel home to his parents. The Board requested the assistance of the police, known as judicial assistance, to bring the boy

from the home to Arlanda. The Social Welfare Board may request judicial assistance according to Section 43 of LVU, *inter alia*, to implement a decision on care or custody pursuant to LVU. In this case, JO notes that the request could not be considered to have been made to implement such a decision. There were no circumstances necessitating a request for assistance from the police. However, the situation was special and the Board acted in the boy’s best interests. JO therefore does not direct any criticism at the Board. (229-2013)

**Criticism of the Board for individual and family care in Kungälv municipality for several deficiencies in the processing of a case under LVU (Care of Young Persons (Special Provisions))**

In a notification to JO, a mother complained about how the social administration board in Kungälv municipality had processed visitation rights for her and her daughter, who was being given care under LVU. The mother later submitted additional complaints against the administration.

In the decision, the Board is criticised for limiting the mother’s visits with her daughter without a formal decision being taken on the matter. Among other things, this meant that the mother could not have the issue heard in court. This is not acceptable.

The Board is also criticised for its delay in opening an investigation after the mother’s request that the care of her daughter should be stopped, and for failure to take a decision on placing the child in a foster family.

The Board’s comments on the matter indicate poor knowledge of the rules and regulations in the area. JO assumes that the Board will take the necessary measures to ensure that similar situations do not arise in the future. (6223-2013)

**Care of Abusers (Special Provisions) Act (LVM)**

**Case initiated by JO regarding, *inter alia*, whether the LVM home Rällsögården has been too passive with regard to preventing residents from unlawfully leaving the home**

During an inspection of the LVM home Rällsögården, it emerged that the home, in conjunction with threatening situations, has chosen to allow residents to leave the home. As a result of, *inter alia*, this information, JO obtained a statement from the Swedish National Board of Institutional Care (SiS).

In the decision, JO states the following.

When someone is receiving compulsory care

at an LVM home, they are expected not to be allowed to leave the home without permission. The staff has the authority to use force to restrain a resident who is trying to leave the home or exhibiting violent behaviour. The aim of LVM care, however, is to motivate the individuals to receive care and support measures on a voluntary basis. The purpose of the compulsory care must be factored into the assessment of what level of force is justifiable to use to prevent someone from unlawfully leaving the LVM home.

The staff may find themselves in difficult situations with threatening residents where there may also, because of the resident's behaviour, be a risk to the safety of staff or other residents. It can therefore not be ruled out that the staff at the home may, in exceptional cases, allow the resident to leave the home rather than employing force that would not appear to be justified given the aims of the care.

If there is a risk that the staff at a home cannot maintain order, SiS must consider adding the extra resources necessary to allow staff to intervene in violent situations and to prevent residents unlawfully leaving the home. (7163-2014)

#### **Criticism of the Healthcare Committee in Vännäs Municipality for its handling of a case under the Care of Abusers (Special Provisions) Act, LVM**

A notice of consent to treatment does not automatically exclude compulsory care under LVM. Even when the individual has accepted the necessary care, the Social Welfare Committee must make an assessment of whether the consent appears realistic. In this assessment, factors such as the addict's state of health, disease awareness and motivation for treatment should be taken into account, as well as the results of previous healthcare interventions.

In the examined case, one man had, over the course of more than three months, been taken into immediate care pursuant to Section 13 of LVM on three occasions. The custody ended each time after a few days, when the man said he consented to voluntary treatment.

Because of the information about the man which emerged during the Committee's meeting, it should according to JO have been obvious after the third time that the consent provided by the man at the time was not realistic. The processing at the meeting suggests that the Committee either lacked knowledge on what should be required so that consent is able to form the basis for care, or that the Committee

did not conduct a sufficiently critical examination of whether consent was realistic. The Committee is criticised for its handling of the case. (4157-2013)

### **Support and service for persons with certain functional impairments (LSS)**

#### **Criticism of the Social Welfare Board in Astorp municipality for implementing a lex Sarah investigation and ordering an assistance company to take certain measures without having the requisite authority**

The manager of an authority in a municipality initiated a lex Sarah investigation after she had heard suspicions that an individual who was eligible for assistance experienced irregularities in a private sector organisation that was responsible for performing services for the individual. After the investigation, the assessment was made that measures needed to be taken for certain working methods to cease. The social administration issued an order for the assistance company to submit a plan of action on what measures the company intended to take to rectify the irregularities.

The question in this matter is whether the administration had the authority to carry out an investigation under lex Sarah, and whether the administration could order the assistance company to draw up a plan of action.

In the decision it is stated that the purpose of lex Sarah is to address shortcomings in an organisation's own activities, to develop them and to prevent similar irregularities from recurring. It is the organisation running the activities that should investigate, remedy or remove possible instances of irregularities in its activities. The responsibility for taking appropriate action in these respects in private organisations is thus limited to the legal person's authorised representatives. Consequently, the administration did not have any authority under the lex Sarah provisions to carry out an investigation concerning the possible instances of malfeasance in the activities of the assistance company, or to order the company to submit a plan of action. However, as the relevant supervisory authority, the Health and Social Care Inspectorate has such an option. (1972-2014)

#### **Municipalities are unable to make interim decisions in LSS cases**

In connection with an application for personal assistance in accordance with the Act con-

cerning Support and Service for Persons with Certain Functional Impairments (LSS), it was requested that a municipal committee in Kramfors municipality pronounce an interim decision pending the final decision. The committee made no such decision.

In the decision, the Parliamentary Ombudsman points out that apart from in exceptional cases, authorities must have explicit support from an act or other statute in order to make interim decisions. The Social Insurance Code states that under certain circumstances, Försäkringskassan has the right to make interim decisions on attendance allowance. Neither LSS nor the Administrative Procedure Act has an equivalent provision. The legislation in the area thus does not support the idea of municipalities having the opportunity to make interim decisions in LSS cases. As there was no support from statutes and there were no exceptions, the municipal committee was unable to make an interim decision in the case.

Furthermore, the decision states that the fact that municipalities are unable to make interim decisions in LSS cases does not mean that the individual can be left entirely without support during the investigation period. Up until the final decision is made, the individual's needs may instead be satisfied via certain initiatives as per the Social Services Act, which has also taken place in this case.

In general, authorities must respond to individuals' petitions. In addition, interim petitions must receive a speedy response. In the decision, it is established that the committee should have quickly dismissed the petition for an interim decision. The committee is criticised for not having done so. The board is also criticised for the protracted handling of the application. (6900-2014)

**Criticism of the Social Care Board in Södertälje municipality for the erroneous handling of matters of trusteeship and power of attorney**

The case highlights issues of a trustee's opportunities to use a power of attorney to have a third party safeguard the principal's interests. In the decision, it was established that the task of trustee is always linked to a certain person charged with carrying out the duties associated with representation. The task is thereby personal, and the person appointed as trustee has the responsibility to ensure the principal's needs and interests are satisfied. An appointed trustee is therefore not considered able, via a power of attorney, to transfer the general responsibility

for representation to a third party. However, this does not prevent a trustee who considers themselves to have insufficient knowledge or experience to satisfy the interests of the principal in a particular matter from hiring a third party to represent him or her. In such cases, the trustee's appointment constitutes the upper limit for authority that can be transferred to the third party via a power of attorney.

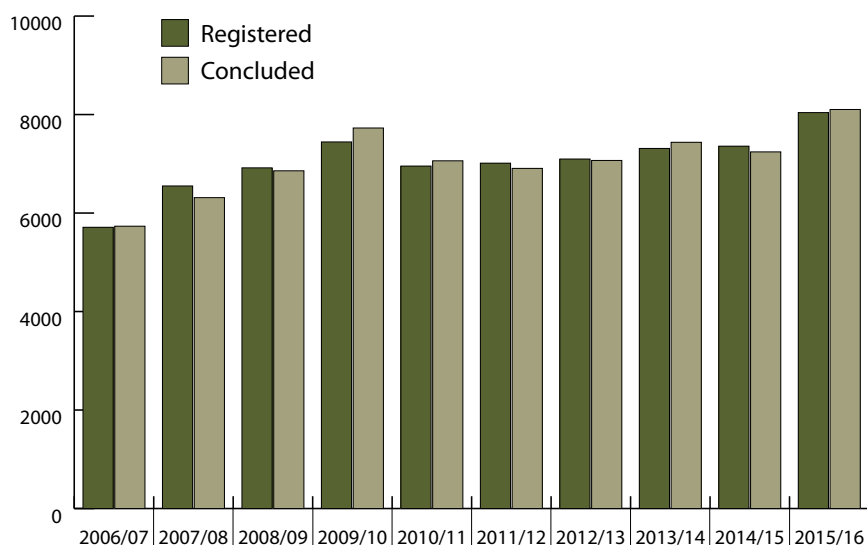
In the decision, the Social Care Board is criticised for failing to inform a counsel that it considered the power of attorney to be invalid and provide a reason for this in connection with its decision. The board is also criticised for not affording the counsel the opportunity to prove their authorisation. (6948-2014)



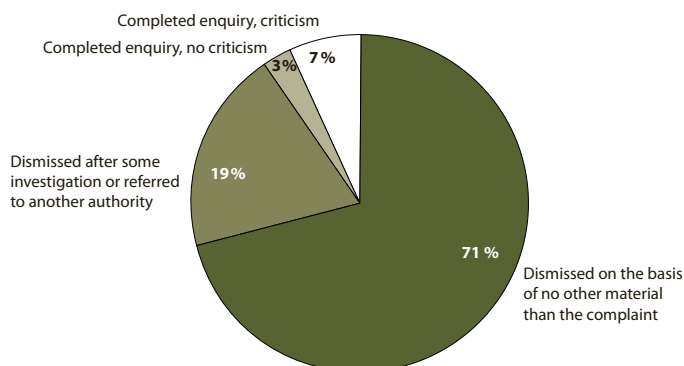


# Statistics

## Evolution of the number of complaints and initiatives in the last 10 years



## Decisions in complaints and initiatives 2015/16, total 7,928



Most complaints 2015/16		
Area	Com-plaints	% criti-cism
Social welfare	1 207	7,4 %
Police	1 026	4,2 %
Prison and probation	989	9,9 %
Migration	572	1,0 %
Access to public documents	483	16,6 %
Social insurance	345	6,6 %
Health and medical care	336	6,2 %
Public courts	317	1,3 %
Communications	305	1,3 %

Most criticized 2015/16		
Area	Criti-cism	% criti-cism
Prison and probation	98	9,9 %
Social welfare	89	7,4 %
Access to public documents	80	16,6 %
Police	43	4,2 %
Planning and building	31	13,6 %
Social insurance	23	6,6 %
Education	21	7,4 %
Health and medical care	21	6,2 %
Agriculture, environment	11	5,5 %

## Inspections 2015/16

Regular inspections	
Myndighet	Antal
Prison and probation	4
Financial Supervisory Authority	1
Social insurance	2
Municipalities , social welfare boards	6
Municipalities, environment boards	2
Psychiatry	1
Courts of law	2
Prosecutor	1
Police	9
Chief guardians	1
Lantmäteriet	1
Inspections sum	30

Opcat inspections	
Institution	Antal
Remand prisons	5
Prison	1
Police cells	9
Migration Agency detention centre	1
Psychiatric wards	2
Opcat inspections sum	18

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