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I. Activities in 2011

1. The work of the Ombudsman

As Ombudsman, it is my responsibility to investigate whether the public authorities, in their dealings with the general public, have made errors or treated people unjustly, and to issue legal opinions on such matters. Almost all public bodies and most parts of the public administration may be checked and reviewed. Checks also focus on whether the public authorities have respected and safeguarded human rights, and whether cases have been processed in accordance with good administrative practice.

My investigations are primarily launched in response to complaints by individuals, organisations and other legal persons. I am also authorised to launch investigations on my own initiative, i.e. without anyone submitting a complaint (see section 8 below with regard to such cases in 2011). As Ombudsman, I may issue opinions on the cases I investigate, but I cannot make legally binding decisions. However, the authorities tend to comply with the Ombudsman's opinions.

Investigations and reviews may cover not only decisions of the administrative sector, but also the actions of the authorities, their omissions and other matters linked to the activities of the public administration. When the public administration fails to reply to written enquiries, when the processing of a case takes a long time, the general public may complain to the Ombudsman. Making a complaint to the Ombudsman is a practical and inexpensive way of securing a neutral, objective legal investigation and assessment of one's case, or of the problem the member of the public has with the public authorities. My investigations can be a useful, practical alternative to the courts. In addition, it is important that individuals can complain to the Ombudsman on their own initiative, without having to seek expert help, for example from a lawyer.

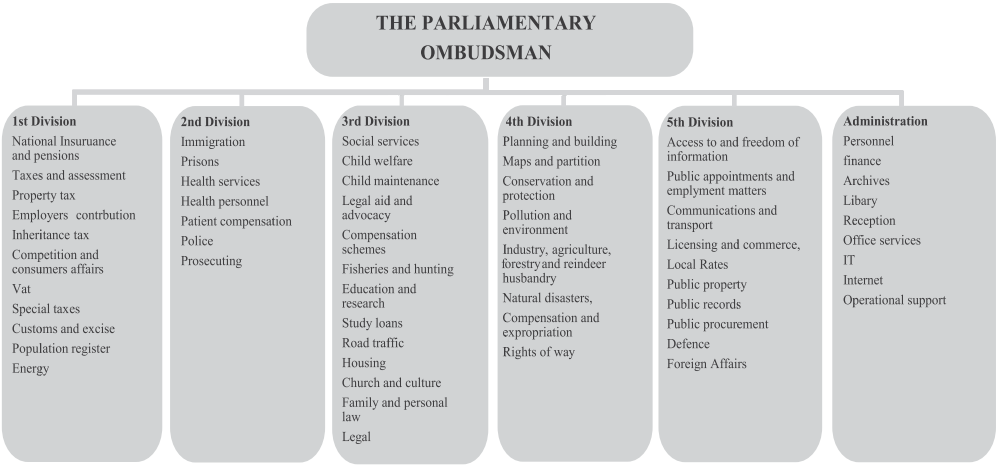
At year's end my office comprises 35 lawyers and 13 administrative support staff. The office is divided into five divisions, each of which is responsible for particular subject areas. This breakdown into specialist areas allows my heads of division and myself to continuously monitor cases, and provides a robust basis for allocating priorities and rationalising our efforts.

A new feature in 2011 is the option to submit complaints electronically using the form provided on the Ombudsman's webpage. The aim is to lower the threshold of public submissions online, as people have come to expect. The complaint form also safeguards sensitive personal details that should not be sent by open email.

Photo: Jo Michael

Norwegian Parliamentary Ombudsman Arne Fliflet

Figure 1.1 Overview of divisions and specialist areas.



2. Complaints in 2011 – the processing of complaints and the results of complaints processing

In 2011, a total of 2995 complaints were received. This represents an increase of 36 complaints on 2010 and 300 complaints more than in 2009.

Of the received complaints, 1534 were dismissed on formal grounds. These dismissals include complaints against bodies, institutions and other independent legal persons that are not part of the public administration and therefore fall outside the Ombudsman system. Another common reason for dismissal is if an appeal or complaint mechanism available through the public administration has not been used, or if the complaint has not been otherwise raised with the public administration earlier. The reason for this is that the Ombudsman's checks are intended to be retrospective, i.e. the administrative sector must first be given an opportunity to process and make a decision on the issue to which the complaint relates. Complaints will also generally be dismissed if they arrive after the deadline for submitting a complaint to the Ombudsman. Complaints must be submitted, at the latest, within one year of the date on which the official act or the matter complained about took place or ceased.

Of the cases that were investigated more closely in 2011, 1132 were closed after a review of the complaint and the case documents submitted by the public administration, and the cases were not otherwise presented to or raised with the administration. In 749 cases, the review of the complaint and case documents revealed that the complaint clearly had no chance of succeeding. In the other 383 cases, a telephone call to the public administration was sufficient to settle the matter. These cases primarily concerned long case processing times or the administration's failure to reply. Some 163 of the received complaints resulted in some form of criticism or request of the public administration. This number represents a small increase from 2010, when 155 cases resulted in such criticism or request.

Section 10, first paragraph, of the Ombudsman Act states that the Ombudsman "may state his opinion about the

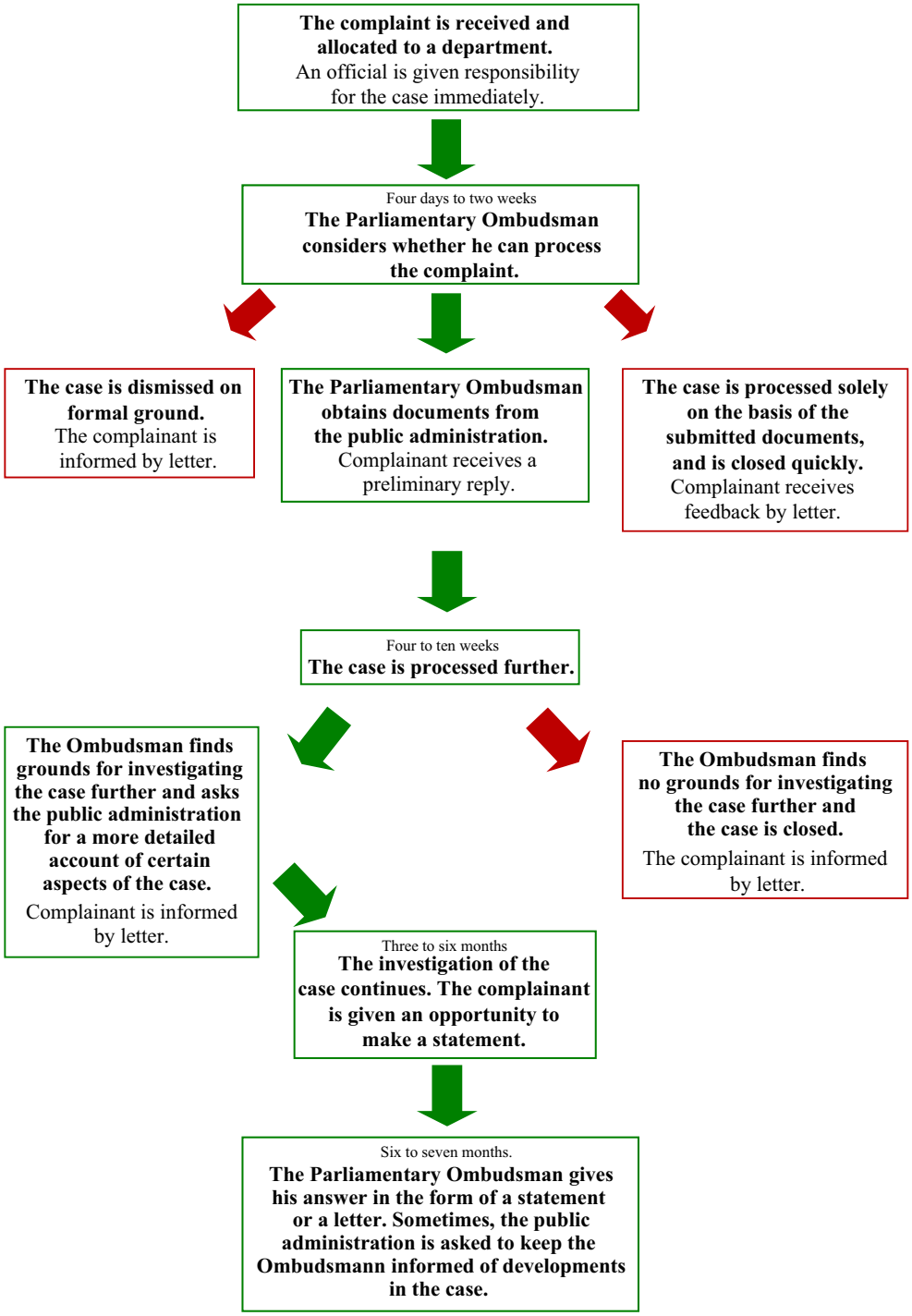
case". The Ombudsman may point out that errors have been made in the processing of a case or the application of the law, and state that a decision must be regarded as invalid, clearly unreasonable or in contravention of good administrative practice. Moreover, the Ombudsman may state that compensation should be paid, if the public administration has made errors for which this would be appropriate. More usefully, the Ombudsman can point out when doubt attaches to matters that are important for the decisions which are appealed. Such doubt can relate to both factual and legal aspects.

When I believe that errors have been made or an injustice has been committed, I normally ask the public administration to assess or process the matter again. Experience shows that the public administrative sector complies with these requests. In addition, the administration normally accepts the views I express. My impression is that the public administration generally complies loyally with the requests of the Ombudsman. When the administrative sector fails to comply with a request, the Ombudsman may advise the member of the public to submit the matter to the courts. The consequence of such a recommendation is that the member of the public becomes entitled to free legal representation; see section 16, first paragraph, sub-paragraph 3, of the Legal Aid Act of 13 June 1980 No. 35. There were three cases during the year in which I found reason to recommend legal proceedings.

Part 6 below provides further details of cases where the public administration has failed to comply with the Ombudsman's finding. Chapter IV contains a discussion of cases and topics of general interest taken from my work in 2011. An overview and summaries of all findings published on the internet are included as Chapter V of this report. Full versions of the individual findings can be read at www.sivilombudsmannen.no, besides legal review sites like www.lovdata.no and www.rettsdata.no.

There were no cases in 2011 where I felt it necessary to alert the Storting in a special report, as I am permitted to do under section 12, second paragraph, of the Ombudsman Act. In 2011 we converted to fully electronic casework which includes all our paralegal work and our archival system. The conversion meant that certain older, unfinished cases received a new docket number. Some of them are discussed elsewhere in this report, when both numbers are given for ease of reference.

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



3. Case-processing times

The time the Ombudsman takes to process cases varies according to the subject matter of the case, the size and complexity of the case, and the kinds of investigations that are deemed necessary to secure sufficient factual background.

If the complaint has to be dismissed on formal grounds, this is generally also clarified within a short period of time. The complainant normally receives a preliminary reply within one week of a complaint being received by the Ombudsman. If there are reasons for investigating the case in more detail and for raising it with the public administration, some time may pass before the case is closed. This is because the relevant administrative body must be given an opportunity to set out its views on the complaint. The reply of the administration is then sent to the complainant for comments, which the administrative body is then invited to comment on. The processing times of such cases can be long, due both to the need to provide opportunities for both sides to present arguments and to the need to ensure the greatest possible clarity in the case. However, processing times are shorter in cases concerning access to case documents in the possession of the public administration.

Since 2010, the Ombudsman's office has employed an electronic tool for calculating the average case-processing time for complaints to the Ombudsman. Previously the average time had to be worked out by hand. The calculation is based on the total number of cases in the different case categories. In 2011, a tool for calculating processing times which also adjusts for standard deviations was introduced. Previously, statistics could be severely biased by a few extraordinarily long cases. In fact there was little difference in the reported times with and without the SD correction.

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

	2011	2010	2009
Dismissed cases	17 days	15 days	18 days
Cases closed without being raised with the public administration	47 days	39 days	41 days
Cases closed after being raised with the public administration	183 days	170 days	197 days

Regrettably the table shows a small rise in the time it takes to process complaints in 2011. The number of complaints received has also risen in recent years, albeit the increase from 2010 to 2011 was less marked than before. The file of open cases has grown slightly, and the number of cases raised with the administration, and number ending in criticism, have both risen. It demonstrates that the workload in our office has been increasing in recent years. Despite resorting to more overtime the office has been unable to keep case-processing times down to the 2010 level. Even so, almost 100 more cases were concluded in 2011 than 2010.

As mentioned in part 2 and Chapter II, case numbers have been growing steadily in recent years. I am expecting that the number of complaints will remain high in the years to come. This is what experience in the Ombudsman offices in other Nordic countries tells us. The escalation may be due to several factors – one is surely the media interest in cases that we deal with, leading to a wider range of enquiries and complaints. Another may be the increasingly litigious nature of

society and growing awareness of individual rights. A third may be the Ombudsman's online presence, making access easier for the public. Work on individual cases demands time and resources. Even cases that do not warrant further consideration, still need us to make sufficient study to offer an explanation of the denial. Complainants who return with a new enquiry after a case is closed also demand time and resources which are not directly recorded in the present statistics. To avoid undesirable extensions of handling times we continue to believe it is desirable and proper to concentrate on continued processing of complaints received. We assess which cases to focus on, and whether casework can be streamlined more than we manage today. But since we have to ensure proper consideration of each person's case there are limits to how far streamlining can be taken.

4. Amendment to the Ombudsman Act, section 7 – Access to documents

The Ombudsman's processing of cases is undertaken in writing, and his investigations are largely based on a review of the public administration's case documents. It is therefore crucial for real, effective scrutiny of the public sector that the Ombudsman has access to all relevant case documents. For this reason, the Storting has authorised the Ombudsman, in section 7, first paragraph, of the Ombudsman Act, to demand from the public administration, production of minutes and records and other documents and information "he requires to discharge his duties". Formally there was a restriction in this right comparable with the rules of admissibility and non-admissibility of evidence before the regular courts of law. This was secured by a reference to the Civil Procedures Act, Chapter 22, in the second paragraph. A further discussion is given in my Annual Report 2010, Chapter I, part 3.

Following a member's bill (Doc. 8:161 L (2010-2011)) the Storting voted to repeal section 7, second paragraph, in addition to making some minor changes to the legal wording and an addition to section 9, second paragraph. The changes were enacted by the Act of 2 December 2011, No 46, which became effective on 1 January 2012. The change in section 7 brings the wording into line with the practice that was largely followed, that the Ombudsman has access to all case documents in the public service, without having to obtain the consent of any ministry or other constraint. The addition in section 9, second paragraph, now explicitly states that confidentiality also applies to "information that is classified under the Security Act or a Secrecy Order". The Ombudsman's safeguarding of such information conforms with the intent of the NSA and appurtenant regulations.

5. The Ombudsman scheme and the Norwegian Labour and Welfare Administration

The question has arisen whether we should establish a special Nav Ombudsman for the Norwegian Labour and Welfare Agency (Nav). This was most recently expressed in a written question from a member of parliament to the Minister of Labour in autumn 2011. In this connection the Ministry and I have held talks. We have agreed to meet regularly to keep each other informed about Nav's consideration of cases, and the Ombudsman's treatment of Nav complaints. The first meeting is scheduled for the middle of April, 2012, after this report is submitted to parliament. In recent years I have met regularly with the Director General of Labour and Welfare to keep in touch, most recently in March 2011, and I also inform the DG of my opinions in individual cases involving Nav when I feel the need to do so. Chapter IV, section

5, has a special report on complaints originating in Nav.

For several years now, the trend has been increasing numbers of complaints about Nav. For 2011 the figure was almost 600, of which about 30 per cent were about delays in processing and failure to reply. Nav plays a vital role in the welfare state and often deals with matters that impact the fundamental needs of citizens. It is critical in my view that the Ombudsman as an objective and impartial arbiter continues to safeguard the legal rights of Nav users. Granted, the Ombudsman is not supposed to weigh in on one or other side of a conflict of interest or to advocate user interests. I have my doubts whether there is a need for a special external Nav Ombudsman. Any further increase in the number of complaints about Nav will undoubtedly be a challenge to the Ombudsman. The need to increase resources may arise, and it may become necessary to revamp the organisation to meet the processing efficiency standards that Nav cases demand. But I have noticed, and I believe it to be a positive thing, that the Agency itself has launched efforts to upgrade complaints handling, internal control and systematic quality assurance. This is embodied in the Nav Complaints Board which will henceforward have a clearer role in tackling service complaints. Users may lodge their service complaints if the authorities are unresponsive, if access is denied or difficult, or if information is impenetrable. It is important and appropriate that Nav should have responsive internal routines to catch and effectively resolve service complaints, particularly those regarding tardy processing and failure to reply.

6. If the public administration fails to comply with the Ombudsman's opinion

In general I am convinced that the public administration heeds the advice and recommendations of the Ombudsman. Yet there do occur exceptions, when public servants neglect to observe the Ombudsman's opinion. This may be because the administrators disagree with our legal position. In such cases the Ombudsman can recommend that the private complainant should take the matter to court, to have it resolved in the courts. Such a recommendation from the Ombudsman means free legal aid under the Legal Aid Act, section 16, first paragraph, no. 3, with no means test. Below I will discuss two cases from the past year in which the officials in question did not comply with the Ombudsman's finding. Then I will present two building cases where the County Governor did abide by the Ombudsman's finding, but where the Ministry of Local Government did not want to acquiesce.

The first case was a claim to recover legal costs under the Public Administration Act, section 36, after the Nav Complaints Board had overturned a denial of an application for disability benefits, and sent the case back to the first instance for renewed consideration. The reversal was rooted in a case handling error committed by the Nav local office as the first instance. The complaint to me was that the reversal was inherently a "change for the better" which allowed for recovery of the legal costs, regardless of the outcome of the renewed consideration of the facts. In a finding of 29 April 2010, I found reason to criticise Nav's decision and ask that the decision to deny legal costs be reconsidered. My focus was among other things that the recovery of legal costs in such cases was closest to the wording of

the law "on the background that an otherwise valid negative decision is stopped", and that equity speaks for this solution since "it should not be necessary for parties to incur costs to ensure that the case is handled in conformity with the regulations". The matter is reported in the Annual Report for 2010 on page 58 under case number 2009/343.

After the matter had been presented to both the Ministry of Justice Legal Department and Ministry of Labour, the Labour and Welfare Agency finally concluded, by letter of 21 December 2011, that the Public Administration Act, section 36, did not establish a general legal claim for recovery of legal costs in this type of case. The letter referred to long-standing administrative practice and discussions in the preamble to the Act.

Given that the case raises matters of principle regarding how to interpret a key rule in the Public Administration Act, I decided to recommend that the complainant should take the case to court.

The second case I want to highlight also concerned a claim for recovery of legal costs. The issue here was whether the Directorate of Immigration (UDI)'s award of citizenship, contingent upon giving up a pre-existing citizenship, could be deemed an individual decision under the PAA, section 2, second paragraph. The relinquishment clause was waived following a complaint by the applicant, but the Immigration Appeal Board believed this did not mean that a decision had been changed. The basic criterion for recovery of legal costs under the PAA, section 36, was thus not fulfilled. In a finding of 19 March 2009, I concluded that the award of citizenship constituted an individual decision, and I asked the Immigration Appeal Board (UNE) to reconsider the case. It is discussed in the Annual Report for 2009, page 369, under case number 2008/694.

Despite my finding, both the Immigration Appeal Board and the Ministry in question upheld the view that the award of citizenship in a citizenship case was not an individual decision. The Appeal Board also reassessed the matter in the specific case, and reaffirmed its previous denial of recovery of legal costs. By letter of 20 October 2011, I therefore recommended that the private individual bring a case to court. In my recommendation I wrote, in part:

> "In my view neither the Immigration Appeal Board nor the Ministry have presented convincing arguments giving me grounds to reassess my conclusion that such award as discussed here should be deemed an individual decision. However there is not much more I can do in this specific case, so long as the administrative bodies uphold their view. The lack of clarity regarding the applicable law that thus exists is not satisfactory, however, and needs to be cleared up, in my view. With this in mind I have recommended that A should take the matter to court to test the Board's decision."

The opportunity to recommend a court case is an important and useful "safety valve" in matters where the administration does not comply with the Ombudsman's view. In this way important principles of law can be aired in the courts.

I will also discuss two building projects where I stated that the authorities cannot, by acting in violation of the law, create a new set of circumstances that undermines the legal position of the applicant. The Ministry of Local Government has expressed reluctance to adopt the Ombudsman's opinion in such cases. The cases are discussed in Chapter IV, subsection 1.4, and Chapter V. In the first case, the Ministry wrote a letter to me on its own initiative, expressing its disagreement with my conclusion (case 2011/730). Recognising that the Ombudsman "is however free in his advisory findings" to express his opinion, the Ministry duly

noted my finding. The Ministry pointed out that any reversal decision by the County Governor would be appealed by the Ministry. But the Governor adhered to the Ombudsman's finding and reversed the Ministry's denial.

The Ministry of Local Government's letter in the second case was a result of the County Governor asking the Ministry for advice following the Ombudsman's finding (case 2011/720). The Ministry opposed my legal interpretation on general grounds, as expressed in my finding. The Ministry of the Environment also entered the fray, but held that the Ombudsman's finding should be followed. The Governor accepted the Ombudsman's legal position and reversed its decision.

The reluctance to follow the Ombudsman's position as expressed here by the Ministry of Local Government in these cases may tend to weaken the confidence we have in both the administration and the Ombudsman scheme. The scheme presupposes that findings from this office are complied with. I have therefore expressed my expectation to the Ministry and County Governor that they should also comply in these cases.

7. Time spent in police detention cells

In connection with the review of the Ombudsman's budget for 2012, the Storting Standing Committee on Scrutiny and Constitutional Affairs wrote as follows in a Recommendation to the Storting, no. 10 S (2011–2012), page 7:

> "The Committee notes that the Parliamentary Ombudsman has previously expressed concern regarding the extensive use of detention in Norway, and the disturbingly high number of cases where the 48-hour period in which to transfer detainees to prison was overstepped, as was pointed out by a unanimous Committee in Recommendation 391 S (2010–2011). The Committee then asked the Ministry responsible to pursue this particular matter energetically. The Committee asks the Ombudsman to adequately describe developments in this area in his Annual Report for 2011."

Let me first stress that the decision to remand a suspect in custody is made by the courts and thus falls outside the Ombudsman's mandate under the Ombudsman Act. Thus it is not a topic I have previously investigated or spoken about. On the other hand, on several occasions I have investigated and held opinions about the use of police detention in police cells, and particularly the time spent in such cells (detention time). The most recent investigation into the subject concluded on 14 May 2010 and is discussed in the Annual Report 2010 (case 2008/1775). Persons who are held in police cells may be legally detained according to the rules of the Criminal Procedure Act (detainees), Police Act, or on other grounds, such as the Immigration Act. The rules applying to police detention come essentially from the Police Cell Regulations, and do not distinguish between the different grounds for arrest. The requirement to be transferred from the police cell to prison within "two days of arrest, except where this is impossible for practical reasons" thus applies to all detainees.

One of the challenges in this field has for many years been to get a good handle on how the police use their cells. Without a good record in the various police districts and suitable methods of developing reliable statistics, it is difficult to obtain a satisfactory picture. I have highlighted this dilemma many times. My finding in 2010, which may be read in full on our webpage, illustrates the problems connected with lack of computer tools and different ways of keeping records.

It should come as no surprise that it is difficult to provide an adequate description

of trends as requested by the Standing Committee. Nevertheless, I have been alerted to certain developments, which I will briefly discuss.

The use by the police of the detention cells is now monitored through a local and a central supervisory scheme. In the Central Supervisory Authority's Annual Report (Staff Supervision) for 2010, much information is provided about the situation in the country's police cells. During the first half of the year, the average number of "overstayers" was 5.6 % (the proportion of arrested persons who were kept in the police cell for more than 48 hours, relative to the total number of arrests). By year's end 2010 the number of overstayers had risen to 7.3 %. There were big differences from one police district to the next. The total number of overstayers in the report was 4062, an increase of 14.8 % on 2009. The average overstay component also increased slightly during the same period. Staff Supervision nonetheless reserved judgement due to possible errors in the numbers. The longest time registered by any detainee in 2010 was "more than 8 days".

Staff Supervision stated that in total there are too many people spending too long time in police cells. The reason is said to be lack of prison spaces. It is believed that the police "in general" work "actively with the Norwegian Correctional Services to find good solutions".

On my own initiative in 2011, I launched a further investigation into certain matters concerning the Central Police Detention Centre in Oslo Police District. The sitting time in the cells and the interplay of police and correctional services were part of the study. Most arrests and police cell detentions occur in the Oslo Police District, and the situation here is therefore of special interest. The central cells are said to receive between 10,000 and 12,000 detainees every year, the number of overstayers in 2010 being 1567. The Chief of Police stated in his Annual Report on Police Detentions in 2010 that "an increasing tendency for unruly behaviour by detainees as a result of long stays in the cell has been observed", and that the organisation itself is put under pressure by the overstayers. In 2011 the number of overstayers was significantly less (1107), and the proportion of arrests lasting more than 48 hours was also significantly lower. Still, many people stay in police cells for more than the regulation two days, and some even longer than a week. Consideration of the matter continues (case 2011/1355).

I have also requested a further account from the Ministry of Justice and Public Security regarding certain matters linked to the Norwegian Correctional Services, Region East, which is responsible for the Oslo Prison among other responsibilities (case 2011/2412). My enquiry derives directly from the investigation of Oslo Police District and concerns the Correctional Service's work to transfer detainees to prison. Both cases are expected to be concluded during 2012 and will be reported on in the next Annual Report.

Finally I would like to mention that the Ministry of Justice is currently working on a retrospective evaluation of the rules to extend the arraignment period under the Criminal Procedure Act, which was amended with effect from 2006. Under the CPA, section 183, arrested persons suspected of a criminal offence must be arraigned before a court of justice no later than three days thereafter (compared to the previous rule, which called for a 24-hour period). The purpose of the amendment was to reduce the demand for custodial imprisonment and thus also the total time that defendants must remain in custody during the police investigation. The effect of the change in the law has now been evaluated and the Ministry has suggested a reduction in the arraignment time. In my letter of 28 February 2011, in connection with the consultative hearing process, I endorsed the suggestion since today's rule might tend to encourage

more use of police cells. This is discussed further in part 9 below.

8. Cases I have taken up on my own initiative

In addition to dealing with complaints from citizens, the Ombudsman may open cases on his own initiative (called ET cases, on own initiative). All matters raised in this manner that are not built on a complaint are considered to be ET cases. The reason issues are taken up on my own initiative is usually because I become aware of administrative circumstances during processing of a complaint which I think it would be wise to discuss specifically. If many complaints are received about the same type of circumstance, it can make sense to raise the matter on a general basis with the public service rather than pursuing each of the individual cases. It may also be true that information from the public, or matters discussed in the media, offer grounds to raise an own-initiative case in the absence of any specific complaint. Visits also count as cases taken up on my own initiative.

In the 2011 reporting year the office raised 33 new own-initiative cases. Ten involved visits to different administrative bodies which did not precipitate further investigation or review outside that body. A total of 32 ET cases were resolved in 2011. Many are published on the internet under the general interest heading, and summaries are included in this Annual Report, Chapter V. The table below simply cites the case number and working title.

Case number	Working title of cases taken up on own initiative
Case 2011/917 (former case 2009/2108)[1]	Visit to police cells in Hedmark and Romerike Police District
Case 2011/694 (former case 2010/443)	Visit to St. Olav's Hospital, Division for Psychiatric Health Care, Brøset House, April 2010
Case 2011/1448 (former case 2010/1477)	Principal language in preschools
Case 2011/3070 (former case 2010/2010)	Validity date of passport presented with application for Norwegian citizenship
Case 2010/2788	Directorate of Immigration's processing times for complaint cases
Case 2010/2899	Visit to Bodø Prison, January 2011
Case 2010/3063	Tax Directorate's handling of enquiries sent to the Inland Revenue Office in Mo i Rana – letters gone astray
Case 2011/173	Excessive delays in transfer of unemployment benefits from Norway to other EEA member states
Case 2011/814	Council's standard matrix for estimation of property tax
Case 2011/1125	Accuracy of Population Register in licensing and required residency cases
Case 2011/1379	Grant for travel expenses in connection with employment schemes for the mentally ill
Case 2011/1625	Nav routines to correct unwarranted PAYE deductions in allowances
Case 2011/1678	Timing of disability pension for client receiving work assessment allowance
Case 2011/2220	Requirement for consent from visitation parent for voluntary placement in foster home

1 Some cases have both the new and the old number, due to the introduction of electronic document handling in the office (part 2 above).

9. Consultative submissions

In 2011 the Ombudsman received 114 requests for comments from the public administration concerning proposals for new or amended regulations. The starting point for the Ombudsman's investigations is the current law, so checking the assessments made by legislators falls outside my mandate. With the exception of cases which directly concern the Ombudsman scheme or matters which the Ombudsman has previously considered, the Ombudsman has therefore, as a matter of principle, been careful not to pre-empt legislative proposals. I made three submissions in 2011.

One of the submissions concerned reforms to the European Court of Human Rights (ECHR). The Ministry of Justice asked for submissions to the Norwegian authorities' report to the European Council of Ministers regarding measures to implement the Interlaken and Izmir declarations on the future of the ECHR.

In my statement I explained how the Ombudsman monitors the ECHR's judgements against Norway, and submits an Annual Report to the Storting. Moreover, I regularly make findings in individual cases where Norway's human rights obligations are affected. These findings are published in the Annual Report, on my website, and are discussed in the "Yearbook for Human Rights in Norway" published by the Norwegian Centre for Human Rights, which is Norway`s national institution for human rights. My staff also organise an annual Human Rights Seminar and are members of the Council of Europe network of NHR structures.

The Ministry asked for opinions regarding how to spread information about the ECHR and thus avoid unnecessary complaints to that court. In connection with this request I asked the Ministry to consider launching a special webpage providing readily available information about the Council of Europe and the ECHR, to be published by either the Ministry or the National Institution, perhaps in collaboration with the Norwegian Bar Association or the Norwegian Association of Judges.

The second consultative submission concerned the Ministry of Education's proposal to amend the Education Regulations, section 10-2, regarding the right of pupils to a full travel allowance in the absence of a free bus option from the county council. I noted in the statement that the background for the amendment was in part my finding in case 2008/2750. The letter set out a discussion on the legal wording, and whether it was sufficiently clear regarding which costs would be covered, linked in with a general reimbursement of costs, and particularly in connection with use of a private car. With reference to that finding the Ombudsman noted that the Education Regulations, section 10-2, did indeed comply with the doctrine of full travel allowance, since they permitted a reimbursement of costs beyond the minimum set in the Patient Transport Regulations. Moreover, the Ombudsman reminded the Ministry that the question had been raised whether it was appropriate to use the Patient Transport Regulations as a minimum rate, and whether it would not be preferable to cite a minimum rate that covers more of the fixed and variable costs of motor car use. The Ministry of Education found that the Ombudsman in his finding expressed the view that the total costs were better expressed in the rates for use of a motor car on government business, as set out in the Special Agreement on Domestic Travel on Government Business, subsection 9.2.6 in section 6.

In my submission I found cause to emphasise that I had not commented at all on how much the rate should be, or whether the government travel rates should be used to determine school trans-

port arrangements. These are legislative policy issues that fall outside my remit. I also referred to the discussion in the finding, and the reference to a finding in my Annual Report for 1997, page 162. These findings seen in conjunction show what I believe to be the best match with the Education Act, that the pupil is reimbursed both his fixed and variable costs of a private motor car. The reference to the government rates was to highlight a well-known standard that made allowance for both types of cost – not to suggest that it should be the reference quoted in the new section 10-2.

The third submission was the retrospective inspection of the extension of the arraignment date for imprisonment, as also described in part 7 preceeding. Under the Criminal Procedure Act, section 183, people arrested for a criminal offence must be put before a court as soon as possible, and no later than three days after arrest. Until July 2006 the arraignment time was generally the day after arrest. This deadline was put back to reduce the need for custodial imprisonment (while awaiting arraignment), and thus the total time spent by detainees in custody during the police investigation. The idea was to have a retrospective look at the change in the law to assess if it worked as intended. The Ministry of Justice did this retrospective look and presented the findings in a consultative document in December 2010. The figures showed – in the Ministry's view – that the extension of the arraignment time had caused several detainees to remain in a police cell for more than two days. The Ministry therefore found it doubtful if the three-day limit should be continued. An arraignment date of two days was proposed, which tallies with the rules for transfer of suspects from a police cell to prison under the Police Cell Regulations.

In my submission I supported the move to reduce the arraignment time. I stressed that the overall goal must be to reduce the use of the police cell, and especially its use for extended periods. It is a concern that the extended arraignment time launched in 2006 may have led to an increase in the number of detainees who have to wait between two and three days in a police cell. In my view it is frustrating to have two different deadlines – one for detention times in a police cell, the other for arraignment before a court to decide on imprisonment. There are sound reasons for choosing a solution with a unified time limit. The rules ought to be readily understood by those involved so that the deadline is clear and unequivocal. Regarding the further particulars of the rules, it is not for me to say.

10. Work on international issues and human rights

The Ombudsman's Human Rights Seminar

The task of the Ombudsman is to endeavour to ensure that the public administration respects and safeguards human rights", as described in the Ombudsman Act, section 3. Besides the other work we do in this field, I believed it would be important to once again highlight the Ombudsman's HR mandate by holding another HR Seminar. Such seminars have previously been hosted by this office in 2007, 2008 and 2009. The topic this time, for the event that took place on 17 November 2011, was "Detention of foreign nationals – relationship with the European Convention on Human Rights (ECHR)". Both detention in the Police Immigration Detention Centre at Trandum, in a local police cell, and in the correctional services, were all addressed. The issues included the purpose of the detention, the greater availability of imprisonment under the Immigration Act In light of the ECHR, Article 5, and research and studies made of the conditions that foreigners must live under during detention were aired. Two panel debates were also arranged. One looked at deten-

tion according to the Immigration Act, the other at conditions of detention for foreigners compared to Norwegian nationals.

The Seminar attracted some 130 attendees from the public administration, academics, non-governmental organisations, representatives of the legal profession and Members of Parliament.

No lack of interest at the Ombudsman's Human Rights Seminar on 17 November 2011

Meeting with the European Committee for the Prevention of Torture

The European Committee for the Prevention of Torture (CPT) visited Norway in May 2011. On that occasion some of my staff and myself met with the Committee, which had also asked for a written submission. In my letter to the CPT, the Ombudsman's visits to closed institutions in the years 2005–2010 were reviewed. I also highlighted some problem areas, including health services for prisoners, self-mutilation, conditions for foreign inmates, prison conditions for women, the disabled and children, material conditions in prisons and repressive measures against inmates. I also addressed the challenges associated with finding wardens for prisons, the Supervisory Council scheme in the Norwegian Correctional Services, communication restrictions in prisons, catering services for prisoners taken to court, privacy and personal data protection issues, use of force during arrest, detention times in police cells and living conditions The Police Immigration Detention Centre at Trandum.

Participation in international networks

I am an active member of a number of international networks, including the globally recognised International Ombudsman Institute (IOI). I have been a member of the board of the IOI since 2010. The institute was established in 1978 as an independent, global organisation for local, regional and national Ombudsmen.

In March I attended the board meeting of IOI Europe in Warsaw, and in September I attended the board meeting in London. A global board meeting was held in Livingstone, Zambia, in October, which I also attended. The European branch, IOI Europe held a seminar in Warsaw in Sep-

tember, concerning the Optional Protocol to the Convention against Torture (OPCAT), at which I and two colleagues participated. One of my members of staff also attended the IOI seminar in Barcelona in November to discuss "Private Management in Public Services".

The European directors of the International Ombudsman Institute: The Northern Ireland Ombudsman, Mr Tom Frawley, the Polish Ombudsman, Ms Irina Lipowicz, Mr Zbigniew Zareba, the Catalan Ombudsman, Mr Raphael Ribo, and Norway's Parliamentary Ombudsman, Mr Arne Fliflet. Also in the photo are Legal Advisor, Ms Ingvild Lovise Bartels and staff member, Ms Judith Macaya.

In October, I attended the Eighth Seminar of the EU Ombudsman network in Copenhagen, which was held in association with the Parliamentary Ombudsman in Denmark.

The Ombudsman is represented in the council at Europe's network of national HR structures. In September the network held a conference in Madrid in cooperation with the Spanish Ombudsman and the Spanish Senate. The headline topic was the European Court of Human Rights.

One of my members of staff attended the Seventh International Conference of Information Commissioners (concerning transparency and freedom of information) in October 2011, which was held in Ottawa, Canada.

In December we sent a representative to the Annual Meeting of the Council of Europe Peer-II-Peer Project in Slovenia.

The public administration's response to international judgements and decisions

One aspect of the Ombudsman's HR mandate is to prevail upon the administration to pursue judgements against Norway from the European Court of Human Rights. The mandate is particularly important when the ECHR's decisions require Norwegian regulations or administrative practices to be realigned to avert violations of the European Convention on Human Rights in future.

In 2011, the Court delivered a judgement against this country in the matter of Nunez versus Kingdom of Norway. It was found that the deportation of the complainant and imposition of a two-year ban on re-entry would be a violation of the ECHR, Article 8 (the right for privacy and family life), because the best interests of her two children had not been suffi-

ciently accommodated. The case did not result in a follow-up process by the Ombudsman.

Also in 2011, the ECHR dismissed two cases: Obiora versus Norway and Agalar versus Norway. The complaints were deemed clearly inadmissible.

Opinions by the Ombudsman concerning international human rights standards

In 2011 the Ombudsman delivered two opinions in which Norway's human rights obligations were particularly in focus.

Police handling of reporter at security check in Oslo District Court – media's right to protect sources (29 April 2011, case 2011/436)

The European Convention on Human Rights, Article 10, regarding freedom of thought and freedom of expression has been adopted as Norwegian law and must take precedence over other legislation if there is a conflict, see Human Rights Act, section 2 and compare section 3. The media's right to protect its sources is part of the right to receive and communicate information and ideas, without the intervention of the public authorities, according to the practices of the European Court. The protection of sources is not an absolute right, but the intervention must be "prescribed by law" and "necessary in a democratic society" to support a legitimate purpose, confer ECHR, Article 10 (2). The court has made the point that the freedom of expression of the press is especially vital and that protection of sources is a fundamental pillar of press freedoms.

The case hinged on the police treatment of a newspaper reporter in connection with a security check to enter the main hearing in Oslo District Court. The reporter was relieved of documents which he claimed were press sources and therefore protected, an examination was made of his shoulder bag, and the leaves of his clearly marked press notepad were turned.

In my opinion I took issue with the police procedure. I found that the reporter's and the press's right to protect its sources under Article 10 was violated in the sense that the police took the documents. Looking through the press notepad was also an infringement of the protection of sources under the same article, and incidentally also in violation of the Criminal Procedure Act's rules about searching persons. The matter is also discussed in Chapters III and V in this Annual Report.

Review of visit to Bodø Prison – provision of outdoor yard for physical exercise, prisoner representatives and lighting in security cells (4 October 2011, case 2010/2899)

During visits to closed institutions the Ombudsman is on the lookout for breaches of regulations under Norwegian law and international conventions. It is also important to focus on compliance with international recommendations and guidelines, including those of the European Committee on the Prevention of Torture (CPT), the United Nations Committee Against Torture (CAT), and the UN Committee on the Rights of the Child (CRC). The European Prison Rules (EPR) are recommendations set out by the European Council of Ministers which also apply to Norwegian prison conditions.

During a visit to Bodø Prison in January 2011, it was apparent that the prison's large exercise yard was hidden beneath a thick crust of snow and ice, making running or other exercise virtually impossible. No salt or grit had been applied. Lighting conditions in the two high-security cells were also poor – there was no electric lighting, and in one cell especially there was minimal daylight.

The Norwegian Correctional Services, Region North, was asked to comment among other things on whether the prison could be said to offer prisoners outdoor physical activity in line with the EPR, count 27.1. Region North was also asked to discuss whether the lighting in the security cells could be said to meet the requirements in count 18.2, letter a, regarding daylight, and letters b and c regarding artificial lighting and an alarm system, respectively. The Committee Against Torture, CPT standards, also require "adequate lighting". The recommendation, though designed for police cells, should also apply to the very similar security cells.

In my conclusion I expressed the view that proper snow clearance and sanding were absolutely essential for prisoners to have a real chance to use the exercise yard for physical activity during the full winter half year. Lighting of security cells at the time of the visit was unsatisfactory, and I noted that Region North had stated that lights would be installed in the corridor outside the cells. I stressed the prisoner's right to adequate lighting, and also stated that prisoners in a security cell must be given a certain measure of daylight. This case is discussed further in Chapters III and V in this Annual Report.

National Preventive Mechanism (NPM)

The United Nations General Assembly adopted the Optional Protocol to the Convention against Torture (OPCAT,) in 2002. Although Norway signed the protocol on 24 September 2003, it has not been ratified. Ratification means that one or more national visiting bodies must be established to work to prevent torture – a National Preventive Mechanism – abbreviated NPM.

In the section describing work with international issues and human rights in the Ombudsman's Annual Report for 2009, OPCAT and NPM were discussed on pages 14-15.

The Standing Committee on Scrutiny and Constitutional Affairs wrote to the Minister of Foreign Affairs on 7 April 2011 with reference to Recommendation 264 S (2009-2010) about the Ombudsman's Annual Report for 2009, reminding the Minister of the need to abide by the Committee's recommendation to "put in place a way for the Ombudsman to meet the OPCAT requirements". In the Minister's reply to the Committee of 26 April 2011 he says, in part: "I can confirm that the Ministry of Justice has considered the opportunity for the Ombudsman to be appointed as the NPM, and that this is one of several alternatives under consideration. I intend to clarify the issue quickly within government, before the question of Norwegian ratification of the protocol and national implementation of the protocol requirements is circulated for consultation."

In June 2011, it was decided to set up an interdepartmental working group headed by the Ministry of Justice to assess the consequences of possible Norwegian ratification of the protocol. In line with the working group terms of reference, representatives for the Ombudsman have attended some of its meetings. Various models for a NPM have been evaluated. The working group report will be a consultative document. If the Ombudsman is appointed as Norway's NPM, it will require a rewriting of the mandate and a strengthening of the office in the form of added appropriations.

Efforts to strengthen human rights in China

Since 2005 the Ombudsman has enjoyed regular and positive cooperation with Chinese Judicial and Prison Authorities with an emphasis on mutual visits and seminars, to strengthen the level of expertise of the executive branch in China. Particularly the issues of criminal justice and

good governance receive most focus. Following the award of the Nobel Peace Prize for 2010, implementation of all planned bilateral collaboration between the Ombudsman and the Chinese counterpart has stopped. The Chinese representative has stressed that the situation is only a "suspension" of these activities, resulting from the political climate between Norway and China, and not a "break". At the same time it has been stressed that the suspension does not impinge on collaborative work involving the Ombudsman's office in international contexts. A point here is the invitations by the Supreme People's Procuratorate of China (SPP) to attend the "Third Seminar to the International Association of Anti Corruption Authorities (IAACA), which took place in Shanghai in July 2011, and the "Fifth Annual Conference and General Meeting of IAACA", held in Morocco in October 2011. One of our legal team attended both conferences.

The IAACA was established in 2006 with China as the key supportive country. The aim of the organisation is to strengthen compliance with the United Nations' Convention Against Corruption (UNCAC). The Convention currently has 140 member states and is ratified in 156 countries, including Norway. China's former Procurator General, Mr. Jia Chunwang, was the inaugural president of the association. China's current Procurator General, Mr. Cao Jianming, was elected association president in 2010. The principal topic at the Shanghai seminar was "international cooperation", with subtopics taken from Chapter 4 of UNCAC. My representative presented Norway's collaboration with other countries and international non-governmental organisations to tackle corruption. A total of more than 400 representatives attended from 78 countries and NGOs, including Denmark, Finland, France, the United Kingdom, as well as Norway.

The theme of the Morocco conference was "Asset Recovery", as set out in Chapter 5 of UNCAC. A total of 277 delegates from 80 countries and NGOs attended the conference.

Other activities relating to work with human rights and international issues

One of my staff attended with observer status at the United Nation's Fourth State Member Conference, "Absent Corruption", in Morocco. The Norwegian delegation, under the capable leadership of State Secretary Ms Ingrid Fiskaa from the Ministry of Foreign Affairs, was one of the contributors at the plenary meeting.

Another of my staff attended a seminar in Luanda, Angola, in February, as a step in Norway's bilateral human rights dialogue with that country.

In April, I was delighted to join a panel debate entitled "Human Rights and Press Freedom". The seminar was held for journalists from broadcaster Al Jazeera, and organised by the Norwegian Centre for Human Rights in conjunction with the Ministry of Foreign Affairs.

The Legal Affairs and Human Rights Committee (AS/Jur) of the Parliamentary Assembly of the Council of Europe (PACE) held meetings in Norway in June 2011. I was on the panel which debated a revision of the Constitution.

11. Meetings, visits and lectures

During the 2011 reporting year, my staff and I held meetings with various organisations and public agencies. These meetings allow exchanges of opinions and information and provide useful insights into the work of the public sector and a better basis for processing the complaints we receive.

My engagements in 2011 included four visits to closed institutions, 11 visits to other administrative bodies, and 12 lecture appointments. I also attended 10 different representational functions outside Norway, and welcomed 14 delegations to my office. A summary of my meetings, visits, lectures and trips in 2011 is included as Appendix 4 to this report.

A visit to the County Governor of Hordaland, 10 February 2011.

The Ombudsman poses with colleagues while visiting Dagens Næringsliv, 8 June 2011

The Ombudsman poses with colleagues while visiting the central police cells in Oslo, 22 June 2011

12. Economy

The Ombudsman's allocated budget in the report year ran to roughly 49.9 million kroner. Expenses totalled roughly 46.8 million kroner. See Appendix 5. The decline is due to the Ombudsman's inclination in recent years to pursue a policy of austerity. A number of activities and expenses planned have been put on hold in part for capacity reasons.

13. Organisation and staff

At year's end the Ombudsman's office had 46 full positions, including the Ombudsman, six Heads of Division and one Head of Administration. There were 27 full positions for legal case workers including 11 working for the Administration. There was also one legal advisor funded by the Ministry of Foreign Affairs but employed by the Ombudsman. This person works on human rights issues in China with a special focus on prisoners' rights, besides acting as intermediary between the Chinese and the Norwegian authorities.

The allocation of the Ombudsman's legal staff is given for the five technical divisions and the Administration in the List of Staff in Appendix 1. The divisional special fields and Administration's duties are detailed in Appendix 3.

14. Gender equality and anti-discrimination efforts

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

Appointments structure and pay policy

The Ombudsman's office has an appointments structure and applies a pay policy that ensures equal opportunities for all staff members with regard to pay rises and advancement regardless of sex, ethnicity or functional ability. Of our legal advisors, 13 were senior advisors (3 male, 10 female), 14 advisors (7 male, 7 female), and two higher executive officers (1 male, 1 female) at year's end 2011. Of our office managers, 3 were male, 2 female. The executive committee as a whole consisted of 5 men and 3 women. The administrative division is made up of 1 senior advisor, 3 advisors, 1 head of archives, 1 higher executive officer, and 5 senior executive officers, all female.

Working hours

The Ombudsman's office has no standardised part-time positions, but reduced working hours are distributed as follows (year's end 2011):

	Full-time	Reduced working hours
Legal advisors:		
Women:	14	4
Men:	10	1
Administrative division:		
Women:	10	2
Men:	0	0

	Number of overtime hours
Total legal advisors:	525
Women:	152
Men:	373
Administrative division:	0

Anti-discrimination in practice

The Ombudsman's office has a unified salary policy and appointments structure and takes account of gender composition in its recruitment and personnel policies. All staff have equal opportunities for skills development and education. Working hours and practices allow flexibility for both women and men. The same goes for child care leave and career development breaks. There are no barriers due to ethnicity or disability provided the prerequisite qualifications are in place. The Ombudsman welcomes and provides for members of staff from different backgrounds, ages and functional ability.

II. Statistics

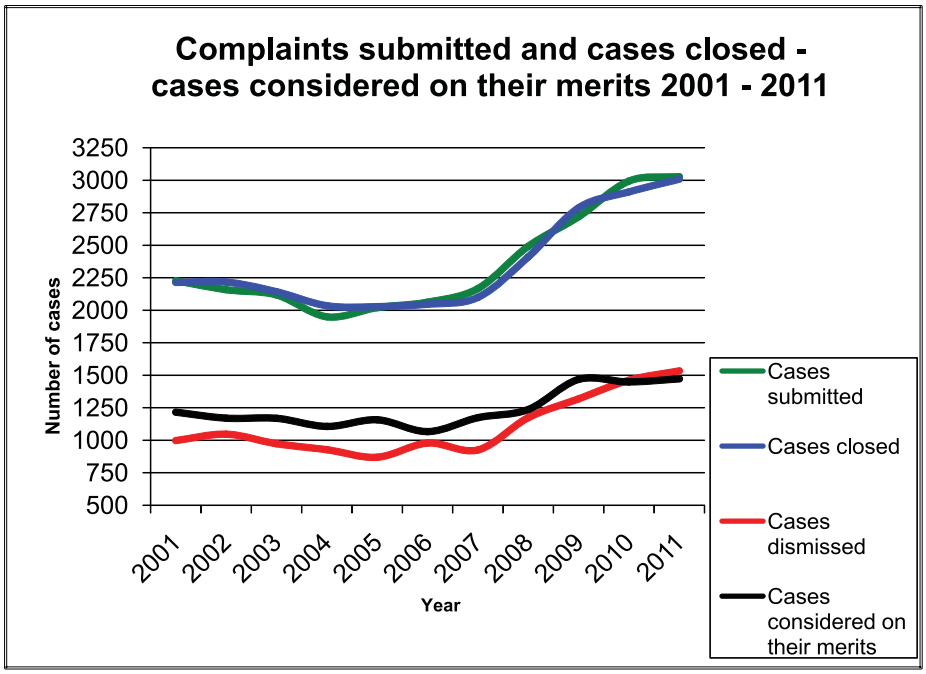
1. Introduction

This chapter presents information on the cases processed by the Ombudsman's office in 2011. The chapter provides an overview of complaints submitted during the year, cases that have been closed, cases still pending at the end of the year, the outcome of cases, and the distribution of the cases by location, public agency and subject area.

Figure 1.1 provides an overview of complaints submitted and cases closed, cases dismissed and cases considered on their merits over the last ten years. The statistics on which the diagram is based will be discussed in greater detail later in this chapter.

In addition to the statistics presented in this chapter, 22,416 documents were registered in 2011. This is a roughly 4 % increase relative to 2010. Of the registered documents, 9985 were incoming documents, and 12,431 were outgoing documents. In addition, approximately 1890 general telephone enquiries were received. This is a decline of roughly 7 % since 2010. Furthermore, a total of 1574 requests for access to information were received. This is 28 % down on 2010. Of the information requests, full access was granted in 828 cases, partial access in 332 cases, while 414 requests were refused. Refused requests generally concerned documents containing confidential information. The Ombudsman does not allow access to documents obtained from the public administration.

Figure 1.1 Complaints submitted and cases closed - cases dismissed and cases considered on their merits 2001-2011



2. Cases dealt with in 2011

The work of the Ombudsman is primarily based on complaints by members of the public. However, the Ombudsman can also take up matters on his own initiative. Table 2.1 shows the number of complaints received by the Ombudsman in 2011 and the number of cases he took up on his own initiative. The table also shows developments in cases since 2010. Table 2.2 shows the number of cases that were closed in 2011 and the number of cases still being processed at the end of they year, compared to the previous reporting period.

Table 2.1 Total number and type of cases

	2010	2011
Complaints and enquiries	2959	2995
Cases taken up on own initiative	35	33
Total	2994	3028

Table 2.2 Cases closed and cases still being processed

	2010	2011
Cases closed in 2010	2911	3007
Cases still being processed at year-end	513	536

Table 2.3 presents the geographical distribution of cases. Most are still submitted by Norwegian citizens living in Norway. But some come from citizens living abroad or in an institution, including prisons and psychiatric institutions. Other complaints are anonymous or only give an email address. These are designated "other" in the analysis. The table also presents cases that the Ombudsman took up on his own initiative on a county basis.

Table 2.3 Geographical distribution of cases opened in 2011

Norwegian county	Volume of cases	Volume in %	Population in % at 1 Jan 2011
Østfold	132	5.3	5.6
Akershus	269	10.8	11.1
Oslo	450	18.1	12.2
Hedmark	75	3.0	3.9
Oppland	67	2.7	3.8
Buskerud	107	4.3	5.3
Vestfold	105	4.2	4.8
Telemark	83	3.3	3.4
Aust-Agder	64	2.6	2.2
Vest-Agder	68	2.7	3.5
Rogaland	160	6.4	8.9
Hordaland	299	12.0	9.8

Norwegian county	Volume of cases	Volume in %	Population in % at 1 Jan 2011
Sogn og Fjordane	42	1.7	2.2
Møre og Romsdal	115	4.6	5.2
Sør-Trøndelag	114	4.6	6.0
Nord-Trøndelag	46	1.8	2.7
Nordland	125	5.0	4.8
Troms	119	4.8	3.2
Finnmark	51	2.0	1.5
Svalbard	0	0	0
	2491	100	100
Other	537		
Total	3028		

3. The outcome of cases

The outcome of cases processed by the Ombudsman can be divided into two main categories: cases dismissed and cases considered on their merits. In 2011, around 51 % of the complaints to the Ombudsman were dismissed and 49 % were considered on their merits.

All cases that are not dismissed on formal grounds where the Ombudsman has expressed a viewpoint are reported as cases considered on their merits. Cases in which the complainant's problem has been solved, for example by placing a telephone call to the administrative agency in question, are also reported as considered on their merits. Cases are also so categorised if the Ombudsman has made a provisional enquiry as to whether there are "sufficient grounds" to consider the case, see section 6, fourth paragraph of the Ombudsman Act, even if the case is later abandoned. In abandoned cases only cursory attention is given to the possible merits of the administrative case. Frequently, the purpose my investigations is only to examine the casework practices of the administrative body. Many people complain that the public sector fails to respond to enquiries and that replies are long overdue. In such cases it is often sufficient for me to speak to the competent authority by telephone.

Table 3.1 shows the breakdown of cases dismissed and cases considered on their merits in 2011, compared with the figures for the previous year, 2010. With regard to cases considered on their merits, the table shows the result of the Ombudsman's involvement in the case. It is impossible to provide a complete analysis of the final outcomes of the Ombudsman's involvement in terms of the number of complainants for whom an amended decision or compensation was secured, not least because revised decisions in cases that are re-examined by public agencies are frequently not announced until after the end of the statistical year. However, such information is updated and published as it becomes available on my website, see www.sivilombudsmannen.no.

Figure 3.2 shows the reasons for dismissing cases and the percentage-wise distribution of these reasons among the dismissed cases. Figure 3.3 shows the percentage-wise outcome of the cases considered on their merits. Figure 3.4 shows in more detail what the Ombudsman criticised or recommended.

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

			2010	2011
Cases dismissed			1462	1534
Cases considered on their merits			1449	1473
1.	Unnecessary to obtain a written statement from the public agency			
	a)	Case settled by a telephone call	339	383
	b)	The letter of complaint, possibly supplemented by relevant case documents, showed that the complaint could not succeed	740	749
2.	Written statement obtained from the public agency (submission)			
	a)	Case settled without it being necessary for the Ombudsman to issue a final opinion	87	67
	b)	Case closed without criticism or recommendation, meaning that complaint did not succeed	128	111
	c)	Cased closed with criticism or recommendation to reconsider, to remedy harmful effects	155	163

Figure 3.2 Cases dismissed (51 %)

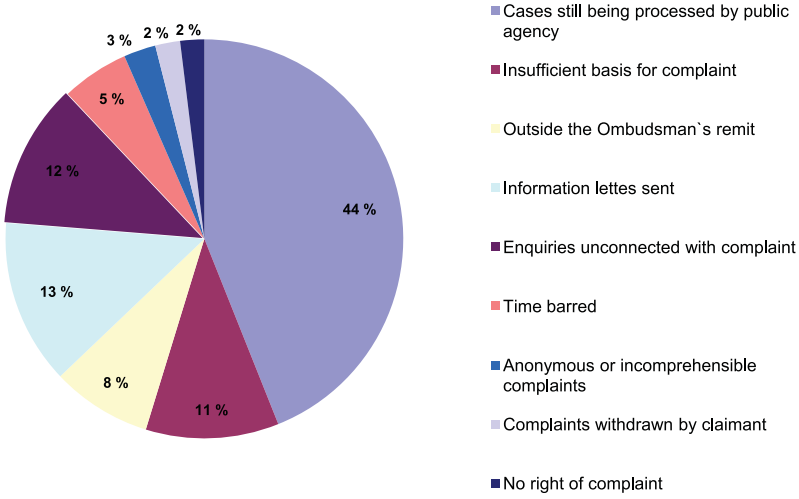


Figure 3.3 Cases considered on their merits (49 %)

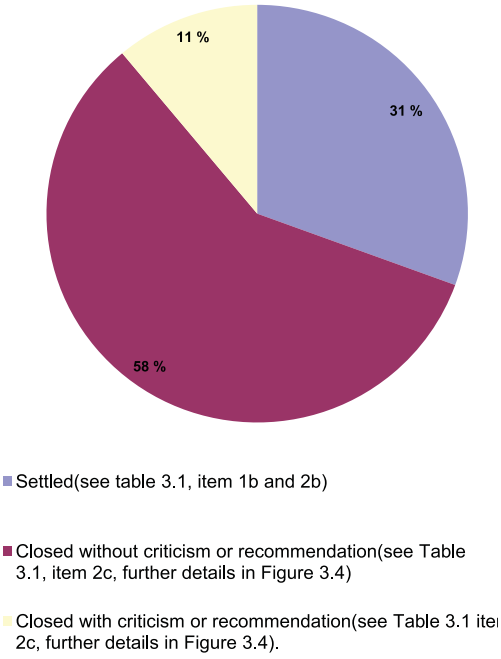
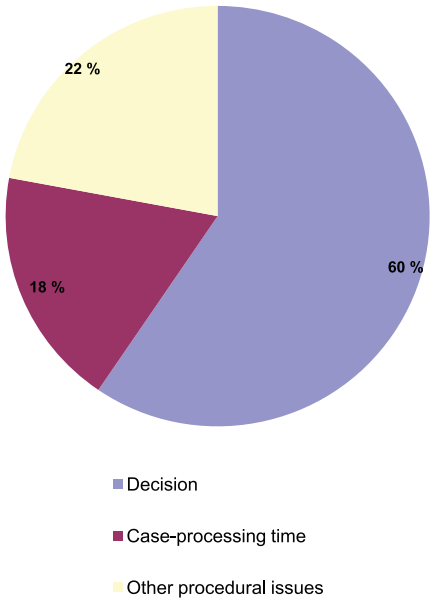


Figure 3.4 Further details of cases closed with criticism or recommendation (11 %)



4. Distribution of closed cases based on public agency and subject area

Tables 4.1 and 4.2 show the geographical and subject area distribution of cases closed in 2011. As will be seen, complaints concern the whole range of public administration from local government, through county administrations all the way up to central government. Complaints also range over many different subject areas and take many different forms.

The majority of complaints, roughly 60 %, are directed at central government. Roughly 17 % are directed at local government, and roughly 17 % target County Governors. The proportion of complaints aimed at the county administrations is small. The overall distribution is roughly the same as in previous years.

In connection with the parliamentary debate on Recommendation 391 S (2010–2011), see Doc. 4 (2010-2011), the Storting Standing Committee on Scrutiny and Constitutional Affairs asked the Ombudsman to consider providing statistics for cases where written criticism of the public sector was delivered. This information is now included as a separate column in Table 4.1.

Table 4.1 Distribution of cases by public agency

	Total	Rejected	Processed on merits	Written criticism
The Office of the Prime Minister	5	4	1	
The Ministry of Labour	7	3	4	
The Norwegian Labour and Welfare Administration (Nav)	589	292	297	18
The Norwegian Labour Inspection Authority	4	1	3	1
The Norwegian Public Service Pension Fund	13	4	9	
The National Insurance Court	34	5	29	
The Norwegian Pension Insurance for Seamen	2	-	2	
The Ministry of Children, Equality and Social Inclusion	11	5	6	2
The Norwegian Directorate for Children, Youth and Family Affairs	4	3	1	
The County Social Welfare Boards	11	11	-	
The Consumer Dispute Commission	4	4	-	
The Equality and Anti-Discrimination Tribunal	6	3	3	
The Directorate of Integration and Diversity	1	1	-	

	Total	Rejected	Processed on merits	Written criticism
The Ministry of Finance	25	12	13	3
The Financial Supervisory Authority	4	3	1	
The Tax Administration (and Population Registers)	120	59	61	7
The Customs and Excise Authorities	20	11	9	
The Norwegian National Collection Agency	9	6	3	1
The Financial Services Appeal Board (FinKN)	2	2	-	
The Ministry of Fisheries and Coastal Affairs	5	2	3	
The Directorate of Fisheries	6	2	4	1
The Norwegian National Coastal Administration	1	-	1	
The Ministry of Government Administration, Reform and Church Affairs	6	2	4	1
The Norwegian Competition Authority	1	1	-	
The Norwegian Government Building Office, Statsbygg	1	1	-	
The Church of Norway	12	10	2	
The Ministry of Defence	6	3	3	1
The Norwegian Armed Forces	6	5	1	
The Ministry of Health and Care Services	7	3	4	
The Norwegian Patient Compensation System/ The Patient Injury Compensation Board	15	9	6	
The Norwegian Directorate of Health	20	3	17	2
The Norwegian Board of Health Supervision/ County Offices	56	21	35	5
Hospitals and health institutions	22	13	9	2
Regional Healthcare Enterprises	2	2	-	
The Norwegian Government Appeal Board for Medical Treatment Abroad	3	-	3	
The Norwegian Appeal Board for Health Personnel	6	1	5	
The Norwegian Health Economic Administration, HELFO	5	3	2	
The Norwegian Registration Authority for Health Personnel	4	2	2	

	Total	Rejected	Processed on merits	Written criticism
The Norwegian Cancer Register	4	4	-	
The Norwegian Patient and Client Ombudsmen	4	2	2	1
The Ministry of Justice and Police	18	10	8	1
The National Police Directorate	29	6	23	
The Norwegian Directorate of Immigration	84	42	42	6
The Immigration Appeals Board	85	22	63	3
The Norwegian Correctional Services	92	53	39	2
The Police and Public Prosecuting Authorities	85	44	41	6
The Enforcement Officers and Bailiffs	14	12	2	1
The Courts of Law	20	20	-	
The Secretariat for the Storting's Ex-Gratia Payment Panels	1	1	-	
The Norwegian Civil Affairs Authority	21	4	17	
The Norwegian Criminal Cases Review Commission	1	-	1	
The Supervisory Council for Legal Practice	4	3	1	1
The Compensation Board for Victims of Violent Crime/ Norwegian Criminal Injuries Compensation Authority	6	3	3	
The Directorate for Civil Protection and Emergency Planning	1	-	1	
The Supervisory Board for Practising Solicitors	7	-	7	
The 22 July Commission	1	-	1	
The Ministry of Local Government and Regional Development	3	2	1	
The Norwegian State Housing Bank	5	1	4	
The Government Building Technology Office	1	-	1	
The Ministry of Culture	9	2	7	1
The Norwegian Broadcasting Corporation	3	3	-	
The Ministry of Education and Research	11	7	4	1
The Norwegian State Educational Loan Fund	29	14	15	2
Universities and university colleges	38	16	22	4
The Norwegian Directorate for Education and Training	2	1	1	

	Total	Rejected	Processed on merits	Written criticism
The Ministry of Agriculture and Food	5	2	3	1
The County Agricultural Boards	6	3	3	1
The Norwegian Agricultural Authority	3	3	-	
The Food Safety Authority/ The Animal Welfare Board	11	7	4	1
The Norwegian Reindeer Husbandry Administration	3	1	2	1
The Norwegian Forestry Corporation, Statskog SF	5	4	1	
The Norwegian Natural Disaster Indemnity Fund	1	-	1	
The Ministry of the Environment	23	12	11	2
The Norwegian Directorate of Nature Management	6	1	5	
The Norwegian Climate and Pollution Agency	3	3	-	
The Norwegian Mapping Authority	4	3	1	
The Directorate for Cultural Heritage	3	2	1	
The Ministry of Trade and Industry	5	2	3	
Innovation Norway	4	2	2	
The Norwegian Maritime Directorate	3	1	2	
The Brønnøysund Register Centre	4	4	-	
The Ministry of Petroleum and Energy	16	7	9	3
The Ministry of Transport and Communications	13	5	8	1
The Norwegian National Rail Administration	2	1	1	
The Norwegian Public Roads Administration	34	14	20	2
The Norwegian Post and Telecommunications Authority	1	1	-	
The Civil Aviation Authority Norway	4	3	1	
The National Airports Authority, Avinor	4	-	4	3
The Ministry of Foreign Affairs	7	2	5	
The County Governors	504	208	296	33
The County Administrations	42	22	20	2

	Total	Rejected	Processed on merits	Written criticism
The Local Councils	518	308	210	36
Other	140	129	11	4
Total	3007	1534	1473	163

Table 4.2 Distribution of cases by subject area

	Total	Rejected	Processed on merits
Working life, education, research, culture, lotteries, copyright, language in the civil service			
Isolated case-processing issues:			
Casework time, failure to reply	24	10	14
Freedom of information, confidentiality, access to documents	29	15	14
Legal costs, compensation	2	2	-
Appointments	101	41	60
Employment and service matters	67	37	30
Working environment, safety provisions	12	8	4
Pay guarantee	3	1	2
Other employment matters	10	18	2
Primary schools	41	29	12
Upper secondary education in schools	22	10	12
Upper secondary education in businesses	3	2	1
Universities and university colleges	28	15	13
Public certification of professionals	27	11	16
Financing of studies	31	15	16
Education, other aspects	9	8	1
Research	2	2	-
Language in the civil service	4	3	1
Culture	7	6	1
Lotteries	1	1	-
Working life, other aspects	14	8	6

	Total	Rejected	Processed on merits
Health and social services, national insurance, family and personal matters			
Isolated case-processing issues:			
Casework time, failure to reply	210	70	140
Freedom of information, confidentiality, access to documents	38	17	21
Legal costs, compensation	9	4	5
Approval of offers	10	3	7
Treatment, compulsory measures, complaints about personnel, patient injury	81	42	39
Medical records, etc	22	9	13
Payment for board and lodging, refunds, patient funds	14	6	8
Financial assistance	63	29	34
Social services outside institutions	43	22	21
Biotechnology	1	-	1
Health and social services, other aspects	42	29	13
Membership of the National Insurance Scheme	3	3	-
Benefits related to childbirth, adoption, support of children	34	16	18
Unemployment benefits	42	26	16
Sickness benefits	294	123	171
Retirement pension, survivor’s pension	38	12	26
War service pension	1	-	1
National insurance, other aspects	66	40	26
Child maintenance, maintenance of spouse	110	54	56
Adoption	4	2	2
Child welfare, care of children	81	64	17
Day care facilities	17	9	8
Guardianship, supporting guardian	16	9	7
Marriage, separation, divorce	4	3	1
Name-related matters	3	1	2
Family and personal affairs, other aspects	14	12	2
Other	9	8	1

	Total	Rejected	Processed on merits
Resource and environmental management, planning and building, expropriation, outdoor recreation			
Isolated case-handling issues:			
Casework time, failure to reply	84	29	55
Freedom of information, confidentiality, access to documents	18	8	10
Legal costs, compensation	8	4	4
Energy	21	14	7
Environmental protection	48	22	26
Waste collection, chimney sweeping	8	4	4
Water supply and drains	27	16	11
Resource and environmental management, other aspects	3	1	2
Maps and partitioning issues	10	7	3
Planning matters	88	45	43
Exemption from plans, shoreline zones	105	40	65
Other building matters	235	109	126
Processing fees	4	2	2
Planning and building, other aspects	31	21	10
Expropriation	8	4	4
Outdoor recreation	4	4	-
Other	8	3	5
Business and industry, communications, regional development fund, the Norwegian State Housing Bank, competition, prices			
Isolated case-processing issues:			
Casework time, failure to reply	35	11	24
Freedom of information, confidentiality, access to documents	13	5	8
Legal costs, compensation	3	2	1
Fishing, trapping, hunting	19	8	11
Agriculture, forestry, reindeer husbandry	69	39	30
Industry, crafts, trade	4	2	2
Shipping, aviation	14	5	9
Tourism, hotels and restaurants, licensing	3	1	2

	Total	Rejected	Processed on merits
Transport licences, motorised transport in uncultivated terrain	9	2	7
Business and industry, other aspects	12	10	2
Transport (roads, railways, ports, airports)	50	27	23
Postal services	-	-	-
Telephone, broadcasting	7	3	4
Road traffic (driver's licence, parking permits, etc)	35	13	22
Public transport	3	2	1
Regional development	2	1	1
The Norwegian State Housing Bank, etc	7	3	4
Competition, prices	5	3	2
Other	7	3	4
Taxes, indirect taxes			
Isolated case-processing issues:			
Casework time, failure to reply	28	13	15
Freedom of information, confidentiality, access to documents	6	2	4
Legal costs, compensation	3	1	2
Assessment of taxable income	74	31	43
Tax remission, tax relief	7	3	4
Taxes, other aspects	80	42	38
Customs and excise	10	6	4
Value added tax, investment tax	14	9	5
Special taxes	14	5	9
Direct and indirect taxes, other	3	3	-
Administration of justice, immigration			
Isolated case-processing issues:			
Casework time, failure to reply	108	36	72
Freedom of information, confidentiality, access to documents	13	6	7
Legal costs, compensation	6	-	6

	Total	Rejected	Processed on merits
Ombudsman (complaints about)	1	-	1
The courts	17	16	1
The Police and the Prosecuting Authority	106	54	52
The Norwegian Correctional Services	86	50	36
Legal aid	21	9	12
Privacy	2	2	-
Enforcement, debt repayment schemes	23	20	3
Public compensation schemes	29	15	14
Administration of justice, other aspects	14	12	2
Asylum cases	41	15	26
Visas	6	3	3
Residence and work permits	85	30	55
Deportation, denial of entry	22	10	12
Citizenship	16	4	12
Immigration, other aspects	14	9	5
Administration of justice, immigration, other aspects	2	1	1
Public registers, public procurements, public property, the Armed Forces, foreign affairs			
Isolated case-processing issues:			
Casework time, failure to reply	11	4	7
Freedom of information, confidentiality, access to documents	25	7	18
Public records and registers	18	11	7
Public procurements	9	3	6
Government property	18	11	7
The Armed Forces	5	4	1
Foreign affairs	5	2	3
Other	26	13	13

III. Cases in which the Ombudsman has alerted the public administration to deficiencies in laws, regulations or practice

During my work on complaints and matters which I have taken up on my own initiative, I become aware of deficiencies in laws, regulations and administrative practices. Under section 11 of the Ombudsman Act, I am authorised to inform the Ministry of such matters. The intention is for the Ministry to take action to remedy the matters following my finding. Such cases must be detailed in my Annual Report to Parliament, see section 12, second paragraph, of the Directive to the Ombudsman.

A defect in a law or regulation may, for example, be that an individual rule or set of rules contravenes a legal rule at a higher level of legal authority. For example, all laws must be consistent with the Constitution, which takes precedence. It is also clear from the Human Rights Act, section 3, that conventions embodied therein must also take precedence before other legislation. Furthermore, regulations must not exceed the bounds set out in the acts adopted by Parliament. The Ombudsman may also notify the public administration if provisions at the same level of legal authority do not harmonise well, or if provisions are unclear, for example from a linguistic, legal or content perspective. However, most commonly, I come across cases in which administrative practice and circulars are thought to conflict with prevailing legal rules, or in which regulations are applied differently in different branches of the public service.

The power to give notice of such deficiencies is one example of the Ombudsman's ability to act not only as an investigator of individual cases, but also as an invigilator of the administrative system. I use the term "system audit" to describe the checks I undertake to see whether there are general aspects of the administrative sector that breach standard principles of administrative law and that cause the public administration to fail repeatedly in their interaction with the public, or that present a risk of such failures. In addition to notifying of shortcomings under section 11 of the Ombudsman Act, I also exercise my supervisory function through a combination of my powers to take up cases on my own initiative, to conduct systematic investigations, and to notify Parliament of common recurring problems in the public service.

The systematic, general supervision of the administrative sector is primarily the responsibility of the public service's own supervisory bodies. These include municipal supervisory boards, the county governors' supervision of various municipal functions, county and municipal audits, and the centralised specialist supervisory agencies that focus on the activities of public bodies. Moreover, the Office of the Auditor General of Norway undertakes administrative audits of matters of principle, economic impact or wide-ranging social importance. Examples are finances, productivity, achievement of stipulated goals, and effects, seen in light of Storting decisions and presuppositions. The administrative sector is also subject to the Storting's parliamentary control.

The Ombudsman's intended role as a system invigilator is stated explicitly in Article 75, litra l, of the Constitution, which states that the Ombudsman shall "supervise the public administration and all who work in its service, to ensure that no injustice is done against the indi-

vidual citizen". The wording of the provision indicates that the Ombudsman has a role to play in preventing future injustices against individuals. This was also clearly stated in Recommendation to the Odelsting No. 15 (1979–1980), page 9:

> "The committee wishes to emphasise that the Ombudsman has a special function in his position of trust as the Storting's Ombudsman for the public administration. This means that his task, to protect citizens in administrative cases, does not merely mean raising complaints about injustices that may have been committed, but also that he should seek to remedy matters through which injustices may be committed in future. In the committee's view, this will give Parliament better opportunities to exercise control over the activities of the public administration".

In the course of 2011, there were 34 cases in which I asked an administrative body to consider changes or additions to laws or regulations, or to amend an administrative practice. Of these, 28 cases have been published on my findings page at www.sivilombudsmannen.no/uttalelser.

Below, a summary is provided of all cases in 2011 in which I have pointed out deficiencies in laws, regulations or practices.

Some cases take up personal matters in which the privacy of the complainant has forced me to anonymise names and locations, so sometimes the name of the local body or county governor has been omitted from the abstract. As will also be seen from the summaries, certain case numbers were changed in 2011 when the office converted from traditional paperwork to electronic handling. In such cases both case numbers are quoted for the convenience of readers. Most cases discussed here are also detailed in Chapter V.

Deficiencies in laws

Closed, extraordinary meeting of County Executive Committee – question of notice requirements and access to teleconference

Case 2011/79

The Telemark County Executive Committee sought to hold a teleconference where it was clearly deemed vital to proceed behind closed doors. Since the notice of meeting requirements only apply in the case of a "meeting to be held with open doors", as prescribed in the Local Government Act, section 32, no. 3, second sentence, the meeting was not announced to the public. Another local authority, Larvik Local Council, in a separate Ombudsman case (Case 2010/2638), had reasoned similarly. The Ombudsman believes the notice requirement also applies to meetings that most likely will proceed behind closed doors, as there would otherwise be little sense in it being the publically elected body that decides if the doors should be closed. Were it to be decided to hold the meeting with "closed" doors, then potentially interested observers would not learn of the meeting. The Ministry of Local Government and Regional Development was asked to consider whether the provision should be rewritten to avoid misunderstandings.

Principal language in preschools

Case 2011/1448 (formerly 2010/1477)

Following a specific complaint the rules for principal language in preschools in Norway were revisited on a general footing with the Ministry of Education and Research. The Ministry held that preschools in Norway accredited under the Day Care Institution Act could not espouse a language environment with any other language than Norwegian. The Ombudsman found the matter dubious from a legal standpoint and asked the Ministry to seek to clarify the regulations.

Deficiencies in regulations

Appeal right under Pilot Schemes Act

Case 2011/708 (formerly 2010/146)

The Act relating to Pilot Schemes in Public Administration authorised local "pilot schemes" which made exemptions from the Act relating to Motor Traffic on Uncultivated Land and in Watercourses, and provided local authorities with the power to stipulate snowmobile routes in the municipal master plan. The Ombudsman found the regulations unclear in respect of whether there was, in certain cases, a right of appeal, even where it followed from the Planning and Building Act 1985, section 20-5 (Consideration of the municipal master plan), ninth paragraph, that a local council's decision cannot be appealed. In the specific case there was no criticism of the lack of appeal rights. Nonetheless, the Ombudsman pointed to the unfortunate fact that the regulations seem to be unclear on such a significant point, and advised the Ministry of the Environment to look at the issues and – if necessary – provide guidelines for how councils should react if individuals, organisations or other affected parties claim a right to appeal.

Utility funding contract as condition of building permit and commencement notice

Case 2011/1557

A local council made it a condition of granting a general building permit and commencement permit that the builder signed a contract to cover some of the council's expenses for provision of certain utilities, known as the "utility funding contract". The Ombudsman found that the council had no authority to make such a condition except by the express authorisation of an Act of Parliament, or the municipal regulations governing charges and rates for water and drains. A contract signed under the threat of not awarding the licence under such circumstances could not – the Ombudsman felt – be binding on the builder. The Ombudsman asked for changes to be made in the municipal regulations.

Deficiencies in practices

Appeal right in case concerning resettlement of foreign national at suggestion of UNHCR

Case 2010/30

The backdrop for this complaint was the Directorate of Immigration's denial of a request by the United Nations High Commissioner of Refugees regarding resettlement of the complainant as a transfer refugee. The denial was appealed, but the Directorate rejected the appeal on the grounds that there was no right of appeal in such cases. The Ministry of Labour and Social Inclusion upheld the rejection, referring to the Immigration Regulations as they were at that time, and the practice of not granting a right of appeal in such cases.

The Ombudsman found that under the then Immigration Act of 24 June 1988, no. 64, and its associated regulations, there was an appeal right. The Ombudsman referred in part to the preliminary writings on the Act and a statement of principle from the Legal Division of the Ministry of Justice and Police in 2006.

The casework was entrusted to the Ministry of Justice in autumn 2009. The Ministry agreed with the Ombudsman's view, and regretted that the complaint had been rejected due to incorrect application of the law. Since it was clear that there was no such appeal right in cases under the present Immigration Act of 15 May 2008, no. 35, the matter was still ineligible for consideration as an appeal case.

Opportunity of personnel to browse confidential information

Case 2010/2411

A local office of the Labour and Welfare Administration (Nav) found there to be nothing wrong when an employee at the office browsed for or downloaded confidential information about a named individual in the Nav computer system, without Nav stating that doing so was necessary in connection with legitimate work. The Ombudsman found that such downloading of confidential information violates the non-disclosure rule, and that Nav seemingly had failed to inform its caseworkers of the rules and significance of the confidentiality accord.

Irrelevant factor attached importance in case concerning appointment of school principal

Case 2010/2532

Given that a teacher had been convicted of abuse of a child or children at one school, the local council had introduced a practice whereby all persons "who were connected with the abuse case" could not be appointed to leading positions in the local authority. This led to an applicant being deemed unqualified for a position as head of school, even though no specific assessment had been made of what – if any – connection with the abuse case she had had in her previous employment as head of the same school. The Ombudsman found that such practices were in violation of the standard (though unstatuted) qualification practices.

The Norwegian Directorate of Immigration's processing times for complaint cases

Case 2010/2788

In 2010 the Directorate of Immigration sometimes took an extremely long time to deal with incoming complaints about its own decisions before forwarding them for final decision to the Immigration Appeals Board. During the same period the Board was also recording long processing times for many other types of case. The total processing times for complaint issues could therefore be extremely drawn-out. This was first and foremost the situation for family immigration cases. The Ombudsman raised the issue in a meeting with the Directorate in autumn 2010 and thereafter in writing. The Directorate conceded that processing times for many complaints were excessive and discussed in detail the continuing work in the field and priority issues.

The Ombudsman reminded the Directorate in his conclusion of the Public Administration Act, section 33, and the duty to submit documents to the appeal body as soon as the case has been properly prepared. It is judicially unacceptable for papers to be left unprocessed for long periods in subordinate instances. The Ombudsman was unsure whether the Directorate's routines were sufficiently streamlined to distinguish between complaints that give grounds for further investigation, and complaints that can be pushed on quickly to the Immigration Appeal Board.

Review of visit to Bodø Prison – provision of outdoor yard for physical exercise, prisoner representatives, lighting in security cells and information about Ombudsman scheme

Case 2010/2899

At the time when the Ombudsman visited Bodø Prison in January 2011, the ground in the exercise yard was hidden below a deep crust of snow and ice. There was no evidence of gritting. When the matter was broached by the Ombudsman, the Correctional Services informed me that the routines for snow removal, salting and gritting would be tightened up. This would be pursued by the Correctional Services, Region North, in connection with subsequent inspections of the prison.

The Ombudsman also raised the unsatisfactory lighting conditions in the two high-security cells in the prison. The Correctional Services stated that new lighting points would be fitted in the corridor outside the security cells, which would also improve lighting within the cells. The Ombudsman stressed the significance of adequate lighting and asked Region North to revisit the matter at the next inspection of the prison.

At the time of the visit the prison information pack to inmates stated that complaints to the Ombudsman should be communicated through the Chief Warden. The Ombudsman reiterated the fundamental principle that inmates shall enjoy the right of unsupervised communication with my office.

Tax Directorate's handling of enquiries sent to the Inland Revenue Office in Mo i Rana – letters gone astray

Case 2010/3063

In a general observation, the Directorate of Taxes was asked about records of enquiries addressed to the Directorate's post office box addresses in Mo i Rana. The point arose from claims of no reply, where there was no evidence that the unanswered letters had even been registered. The Directorate of Taxes outlined a range of possible causes why the letters to these post office boxes might not be recorded. As increasing reliance on electronic mail will reduce the risk that enquiries are wrongly dispatched to Mo i Rana, there was no need – the Directorate believed – for comprehensive measures to prevent a presumably small number of traditional letters being mislaid.

The Ombudsman argued the importance of enquiries to the Tax Office being put on record immediately and logged into the pending attention system. The Directorate's explanation raised the issue of whether logging errors for enquiries received were given sufficiently serious attention. The Directorate was therefore asked to consider whether its practical routines for registration of incoming letters to the Mo i Rana post office boxes should be reviewed, and to make a proper effort to pursue any future enquiries relating to inbox records.

Shortcomings in case priority decisions

(Case 2011/4)

This matter concerned a complaint about long handling times for renewal of a medical certificate for a pilot's licence. When it came to the scheduling of enquiries, the Directorate of Health stated that "all complaints... must... be deemed important to the person concerned", and that they try "to deliver a consideration that is both sound and as speedy as possible". In response the Ombudsman insisted that "one must consider if a case by its very nature is such that it should be given a fast track compared to the other cases and duties of the institution", and that the Directorate's practices could hardly be said to harmonise with general principles of sound casework.

Undue reliance on dispensation as opposed to rezoning

Case 2011/87

The matter was one of dispensation from the municipal zoning plan, and touched on the distinction between dispensation and reregulation. The Ombudsman found that a local council's reliance on dispensation undermined the validity of the zoning plan. If a council no longer wishes to be bound by its plan, this should be accommodated by making changes to the plan and not by granting a series of dispensations.

Police handling of journalist during security check in Oslo District Court – press right to protect sources

29 April 2011 (Case 436, former Case 2008/2516)

The case was about the police treatment of a newspaper reporter in connection with a security check on the way into a hearing in Oslo District Court. The reporter's documents were confiscated despite his objection that they were protected as a press source. His shoulder bag was inspected and a clearly-marked press notepad was opened and the pages turned. The Ombudsman found the incident to represent a violation of the right of journalists and newspapers to protect their sources under the European Convention on Human Rights (ECHR), Article 10, seeing that the police took the documents. The inspection of the notepad was also a violation of press protections under the same article, and also contrary to the Criminal Procedure Act's rules about searching persons. The Ombudsman expected measures to be implemented to reduce the danger of similar incidents happening in future.

In a letter from the Attorney General dated 11 May 2011, the Directorate of Police was reminded to reiterate to Chiefs of Police that security inspections must take place within the current regulations, and are different from the coercive powers under criminal procedure. The Ombudsman subsequently received a copy of a letter from the Directorate of Police to the Chiefs of Police which made the point.

Requirement for a clear identity for residential time spent in Norway to count toward citizenship

30 June 2011 (Case 2011/492, former Case 2009/1248)

This matter addressed the way the Immigration Appeal Board calculates the residential time spent in Norway when examining an application for Norwegian citizenship. The Board found that it was standard operating procedure for the administration to only allow months of residence to count towards citizenship if the Norwegian authorities believe the identity of the person to be correct.

The Ombudsman stated that he found it difficult to identify sufficient legal basis for practising such a condition when calculating residence time under the Citizenship Act 2005, section 7, first paragraph, letter e. This had no direct impact on the complaint in this case, since the length of residence was in any case insufficient. The matter was also decided under the Citizenship Rights Act 1950, section 6, first paragraph, no. 2. Nevertheless the Ombudsman asked the Board to make a new assessment of its practices on general grounds under the 2005 act. One reference was to the instruction by the Ministry of Labour and Social Inclusion to the Directorate of Immigration to adopt the opposite practise, and that it was regrettable that the first instance and appeal instance adopted different practices.

Access to a Letter of formal notice from EFTA Surveillance Authority

Case 2011/531

The Ministry of Petroleum and Energy had denied access to a letter from the EFTA Surveillance Authority (ESA). The grounds for the denial stated that the Ministry had neither the "desire nor the practice to allow access to such letters from the ESA", and that this rule also applied in this case. The Ombudsman responded that a practice equivalent to that pursued by the Ministry would necessarily be deemed "in violation of the fundamental arguments for freedom of information".

Property taxes – basic allowance and justification

20 October 2011 (Case 2011/551, former Case 2010/2329)

This matter concerned a decision to impose property taxes on a recreational home in Sel municipality, where a pair of siblings owned the land and a outhouse jointly, but had exclusive title to their respective cottages. Following a complaint the pair were allowed separate valuation of each cottage, but were only allowed one basic allowance for the property, as the council guidelines stated that the basic allowance could only be applied to a single land registry number (plot number).

The Ombudsman found that the municipal guidelines did not rest on a sound understanding of the law and that the siblings could – as provided in the Property Tax Act and the pointers entrenched in the preamble – justify a claim for basic allowance for each cottage.

Requirement for due process – Veterinary Medicine Legal Board's processes and duties

26 April 2011 (Case 2011/564, former Case 2009/1806)

The Veterinary Medicine Legal Board had concluded in a statement that a veterinarian was liable to pay damages for negligence when a bearded seal died during surgery.

The Ombudsman stated that the Legal Board must adhere to basic principles of due process, including the investigation and hearing of counter arguments, and make a robust and reasoned assessment of the case material. The Ombudsman was forced to put on record his partial disagreement with the Legal Board's view of its own mandate. At the request of the Ombudsman, the Ministry of Agriculture and Food has reviewed the Board's duties, practices and casework, and proposed suggestions for amendments to the Board's terms of reference.

Appointment of Fire Chief and Deputy Fire Chief – regulatory qualifications and dispensation from regulations

12 December 2011 (Case 2011/610, former Case 2010/1662)

A Fire and Rescue Service adopted the practice of applying for dispensation from the regulatory qualification requirements for its Emergency Response Captains if, at the time of appointment, they did not have the prerequisite competence to act in that capacity.

The Ombudsman stated that when, at the time of appointment, there were also applicants who did meet the requirements in the regulations, this practice contradicted the qualification principle. This also applied to the practice in the Directorate for Civil Protection and Emergency Planning when they allowed such dispensation requests in similar cases. The Directorate was asked to consider an amendment to the regulation if it thought that dispensation should be given on a looser basis than the present wording suggests.

Quarterly billing charge for chimney sweep invoice

15 November 2011 (Case 2011/620, former Case 2010/1438)

A local council spread the costs of sweeping chimneys over four quarters, and each invoice came with a billing charge of 50 kroner. This landed the complainant with an annual charge of 200 kroner just to pay the 212 kroner owing to the chimney sweep. The council justified the smaller bills by saying that people were more willing to pay.

The Ombudsman found that it was clearly possible to save on sweeping charges by annual billing. Willingness

to pay did not seem a valid argument in this case. The Ombudsman found the arrangement "clearly unreasonable".

Calculation of variable water rate and time bar for billing of previous years

6 May 2011 (Case 2011/627, former Case 2010/1888)

This was a matter of the local council's imposition of an annual rate for water and sewers, and whether parts of the demand for variable consumption in previous years were time-barred.

The Ombudsman found that the neglect of the council to read the homeowner's meter, as required in the regulations, potentially circumscribed the obligation to pay. The opportunity to read the meter made it possible, both in law and in fact, to demand a fee based on the actual consumption each year, and the time bar for a rate based on consumption therefore started to run at the time the council could have detected the consumption by reading the meter, see Claims Limitation Act, section 3, no. 1. The demand was therefore deemed obsolete three years after the water was actually consumed, see section 2 of the Act. The Ombudsman further found that in order to determine which parts of the total demand for retrospective payment were obsolete, the council had to look at the concrete evidence of when the consumption actually occurred. The most likely alternative must be adopted. In the absence of other pointers, the clear assumption must be that the water consumption on the property was more or less constant throughout the years. The council was asked to look at the matter again.

House rules for routine inspections of patient rooms, belongings and letters at St Olav's Hospital, Brøset House

Case 2011/694

This matter involved house rules permitting routine inspections of patient living rooms, belongings and private correspondence at St Olav's Hospital, Brøset House. The Ombudsman found that the hospital – under the rule of law – lacked legal powers to conduct the interventions embodied in the house rules. Routine inspections of patient rooms, belongings and letters presuppose a change in the Mental Health Care Act. The Ombudsman noted that the Directorate of Health had asked the Ministry of Health and Care Services to consider such a change in the law. Brøset House was asked to rewrite the house rules to comply with the Mental Health Care Act, Chapter 4, until such time as the legislative changes are enacted.

Use of police detention in Romerike Police District

14 January 2011 (Case 2011/917, former Case 2009/2108)

Following a visit to the police cells in Lillestrøm Police Station in October 2009, the Ombudsman clarified the point that before any use of closed-circuit television is permitted, a concrete general assessment must be conducted in the light of the criteria that the Police Cell Regulations, section 2-1, establish for use of such technical aids. The assessment must also have in mind the guidelines in the Directorate of Police circular number 2006/014. The background for issuing this clarification was that, at the time of the visit, the restrictions on video monitoring of cells, as established by the regulatory provisions and information circular, seemed poorly understood. It was to be regretted that one camera had been so arranged that even the toilet area in the cell was in view. The Ombudsman also expressed the opinion that it was difficult to imagine cases where the regulatory criteria for use of video monitoring would be satisfied during strip-searches of detainees in the cell.

During my visit, the district informed me that occasionally several inmates were

assigned to the same cell. I insisted that the doctrine of one-prisoner-one-cell – as described in the Norwegian act relating to the Execution of Sentences and in the European Prison Rules – must also be our guide for holding detainees in police cells. The Ombudsman was concerned that the 48-hour time limit for keeping someone in police detention had been overstayed on several occasions, and remarked that the duty log must indicate what attempts were made to obtain a prison cell. The police district was asked to ensure that such information was duly recorded. The Ombudsman also remarked on the police district's log keeping of outdoor exercise periods.

Practice for establishing applicant lists

Case 2011/1008

The Ministry of Defence did not assess the grounds why applicants wished to be excluded from the publically accessible official applicant list before actually compiling the list. This meant that everyone seeking such exclusion automatically received anonymity. The analysis of whether the justification was adequate was not conducted until someone asked for "enhanced access" to the applicant list. The Ombudsman stated that this practice was at odds with the provisions in the Freedom of Information Act, section 25.

Accuracy of Population Register in licensing and required residency cases

Case 2011/1125

The Concession and Pre-emptive Acquisition of Real Property Act, section 7, first paragraph, no. 1 empowers the enactment of regulations to diminish the concession limit for "built property that is or has been used as year-round residence". The Ministry of Agriculture and Food was asked to consider if a circular had been sufficiently accurate when it stated that it was sufficient for a person to be registered as the resident on the property, for the authorities to find that the property had been previously used as a year-round residence. The question was raised in general terms. The Ministry then explained how the residence records were afforded weight in licensing and required residency cases.

The Ombudsman stated that it was reasonable to assume that a danger inherent in referring to the Population Register's records in the circular was that local councils might assume that the Concession Act, section 7, first paragraph, no. 1, would apply to properties that had not actually been used as all-year residences. This could in turn mean that a residency requirement was conveyed with the property, despite the criteria in the Act not being met. The Ministry was therefore asked to amend its circular on this point. The Ministry later informed me that the circular would be amended to comply with the Ombudsman's finding.

Special allowance for serious medical expenses – onus on tax authorities and health authorities to be proactive

Case 2011/1171

In the Ombudsman's opinion the tax assessment authorities and the health authorities must generally accept that they may have a duty to be proactive with regard to obtaining information in a case involving special deductions for heavy medical expenses, from a taxpayer who might be incapable of keeping his medical papers in order.

Given the highlights of this case, it was pretty clear that the taxpayer's sickness made him incapable of organising letters that could have shown that he met the criteria for special deductions under the Payment of Taxes Act, section 6-83, second paragraph. It seems therefore as if both Tax East and the County Gover-

nor may have neglected their duty with regard to elucidating whether there was documentation for referral to, or letters of admission to, a general treatment establishment. As this was the situation, the duty to be proactive also extends to the Directorate of Health, which decides the matter in the final instance. It is true that a proactive approach may cause a request for special deduction to be extremely time-consuming and resource-intensive for the administrative body. But when the taxpayer – as in this case – is in an extremely vulnerable situation, the administration must make the extra effort.

Parking permit for disabled person – appeal preparation, written justification and applicable law

Case 2011/1369

The handling by Skien Local Council of a renewal application for a parking permit for a disabled person was criticised on many counts: failure to send a copy of the case documents from the first instance to the appeal body to the complainant; failure to identify members of the appeal body; and failure of the appeal body to provide a written justification. The special disqualification rule under the Local Government Act, section 40, third paragraph, letter c, was also an issue.

Nor did the Ombudsman concur with the council's interpretation of the parking permit regulations. The complainant's transport problem was linked to the parking situation, and the case was therefore governed in all essentials by those regulations.

Nav routines to correct unwarranted PAYE deductions in allowances

Case 2011/1625

In general terms the Labour and Welfare Administration (Nav) was asked to clear up certain issues regarding erroneous deductions in Nav allowances. In response, Nav recognised that mistakes had been made in deductions for people receiving various allowances in recent years. The Agency explained the causes of the errors, discussed corrective measures and described action to be taken. While accepting this account, the Ombudsman had a number of points to make regarding the Agency's written protocols describing how to correct erroneous deductions.

Timing of disability pension for client receiving work assessment allowance

Case 2011/1678

In matters concerning disability pensions, the decision is prepared by Nav's Administration Unit, before being sent to Nav Pensions for assessment, coordination and payment. The administration sets the effective date from which disability pension is payable, at some point forward in time. The delay anticipates processing time in Nav Pensions in cases where the applicant receives work assessment allowance. Nav has since announced a new, simpler workflow in disability pension cases from the new year 2012.

The Ombudsman found that Nav most likely does not have the authority to impose the present practice where the effective date is set forward in time, and asked them to consider amending their practice, in cases where the effective date for payment of disability pension is set for pensioners who receive work assessment allowance.

Impact of disability pension allowance for minor child on child maintenance award for grown-up child

Case 2011/1867
(former Case 2010/594)

This matter concerned the views of the benefits authorities regarding whether a child allowance received by a disabled pensioner, for his one minor child, should be included when calculating the maintenance for his other, mature child. The Ministry of Children, Equality and

Social Inclusion believed that the allowance – under current law – should be included, but decided to alter the practice, so that in future the child allowance for a minor child will not affect the maintenance award for another child. Following a request from that Ministry, the Labour and Welfare Agency (Nav) sent out a circular detailing allowances according to the new practice.

The Ombudsman found that the Agency's former practice had been at odds with the regulations and asked Nav Appeals to look at the matter again.

The matter also raised the issue of an extended child allowance under the National Insurance Act for children over 18 years of age, considering that parental maintenance orders are issued for those same children. The Ombudsman looked no further at the matter, as it relies on arguments of a political nature, but did notify the Ministry of Labour of the issues involved.

Casework delays by Nav International – coordination with local office

Case 2011/2399

The international office of the Labour and Welfare Administration, Nav International, was tasked with providing a cross-border analysis in connection with a client's request for rehabilitation or work assessment allowance. A "cross-border" worker lives in one country and works in the neighbouring country. Nav International asked Nav Karasjok (in Norway's far north), to send certain information, and later told the client's legal counsel that they had repeatedly requested the data from there. As the matter was now more than one year old in the international office, counsel complained to the Ombudsman. Nav Karasjok claimed that the information had been sent to Nav International several times, which however denied ever receiving it.

The results of the investigations by our office led the Ombudsman to criticise the casework at Nav International. The Ombudsman asked them to determine the cause of the failure to process this case properly, and to also make sure that routines are in place in future to prevent this type of error recurring.

Award of child maintenance after attempts at private settlement

Case 2011/2445

A complaint explained that the father of the child had unsuccessfully tried to get the mother, who was liable to pay child maintenance, to sign a private maintenance accord. He then applied to the Labour and Welfare Administration (Nav) for a public stipulation of the allowance. The instalments were set to run from the date of the application, and not from the time he had sought to make an accord with the mother. Nav was asked to express an opinion on whether, in its circular, it had placed too little emphasis on the efforts made by one parent to secure a private maintenance accord, when determining if the award should be backdated.

The Ombudsman referred to Nav's stated policy that couples should wherever possible seek a private child maintenance accord. Nav replied that regard for the party who had unsuccessfully attempted to secure a private accord should be a significant element in the assessment of whether the award should be backdated, and it should be incorporated in a clarification note to the guideline.

Processing time by Tax East as first instance in appeal over backdating of VAT

Case 2011/2552

This matter examined the extremely drawn out time it took to deal with a complaint regarding the retrospective

calculation of value added tax. In response to the Ombudsman's enquiry, Tax East admitted to and apologised for the disproportionately long time the matter had taken. Tax East's VAT section was asked to review its routines to assure the quality of response to all incoming complaints, to assure correct document category, and that all reminders in complaint cases are answered and turned around within the time frames set by the Directorate of Taxes in its Guidelines 11/11, of 8 September 2011 (SKD). Equally, Tax East was asked to institute quality routines to ensure that a provisional response was always sent as described in the SKD Guidelines, subsections 7.3 and 7.4.

Failure of Tax North's response routines for taxpayer complaints

Case 2011/2897

The complaint was that Tax North had failed to pursue two different complaints from one and the same taxpayer. In one case, the taxpayer had sent three reminders, with no response to any of them. In the second, more than six months after the complaint was sent to the tax office they had still not deigned to respond with even a provisional reply.

Following the Ombudsman's enquiry the tax authority admitted and apologised for its routine failures in both cases. At the same time they assured me that the tax office's routines for logging and pursuing complaints would now be reviewed and sharpened. The Ombudsman found therefore that the matter could be laid to rest in light of the explanation and apology tended.

Processing of reversal petition to Municipal Appeal Board

Case 2010/3040

This matter raised the issue of whether the chairman of a Municipal Appeal Board was competent to rule that a petition for reversal of its decision on a preschool grant should be denied an appeal hearing. He referred to the Local Government Act, section 32, no. 2.

The Ombudsman found that Larvik Council's justification for denying the reversal petition built on an erroneous understanding of the rules of the Local Government Act, and of the competence of the board chairman. The starting point under the Public Administration Act, section 35, must be that it was the Board that could decide on the reversal petition. The Ombudsman could not see that it is possible to read into the Local Government Act, section 32, that the chairman of the board was competent to decide whether a reversal matter should be submitted to the board or not. Nor had the council stated whether the board had reached a decision to delegate competence or whether the council had otherwise drawn up special case procedures for the appeal board. The council was asked to reconsider the reversal petition.

IV. Recurring problems in the public administration's treatment of the public

1. Introduction

According to section 12 of the Directive to the Ombudsman, my Annual Report must contain "a synopsis of the processing of the individual cases which the Ombudsman believes to be of general interest". Many cases are published online on our website and abstracts are given in Chapter V. Work on individual cases and my contact with individuals, organisations and the civil service also give me a basis for expressing a general opinion on the state of our bureaucracy in its processing and activities and the public's interaction with our administrators. There is a risk that my opinion may be tainted by my work on individual cases – which are after all the result of situations where members of the public feel wrongly and unfairly treated. People who are satisfied with the public sector do not complain to the Ombudsman.

In this Chapter I will attempt to highlight aspects that working on last year's complaints gave cause to reflect on. Any general review of these impressions offers a chance to view complaints in context – even those not warranting further investigation by my team – and to highlight complainant trends and other factors that attract my attention but which are not necessarily expressed in the published findings.

Some of the topics were also discussed in last year's report. Processing delays in the various arms of government and the perception of complainant differental treatment are factors that resurface in many complaints again in 2011. They deserve special mention, therefore, and parts 2 and 4 below explore the issues. Delays are not without consequences for citizens, they can even affect what outcome a case may have. Such effects are addressed specifically.

I have also found reason to shed light on different ways of organising a complaint process as practiced by administrative bodies, with a focus on the consequences when the Ombudsman tries to investigate these appeal cases. These are discussed in part 3.

The administration can also be at fault. Just how public servants tackle their own shortcomings and how citizens are dealt with when mistakes are made are two key issues. Should one admit these mistakes and apologise? This is the subject matter of part 5.

I have been inundated with complaints about citizens dealings with the Labour and Welfare Administration (Nav) during the reporting year. A brief review of the investigations and findings in this regard are provided in part 6 below. The topic is a recurring one, which was also discussed in 2010.

A final concern for me has been the transparency of public meetings in local and county councils. Public access is a fundamental principle of a vibrant democracy. Quite a number of my investigations in 2011 looked at the transparency of meetings and in particular the duty administrators have to announce them in advance. Part 7 has the details.

2. Casework delays in public administration

The public's encounters with administrative bodies often result in a feeling of

disappointment at the long time it takes to resolve issues, and again in 2011 I have heard many complaints and answered many telephone calls regretting tardy processing and failure to respond by various branches of the administration. Although admittedly citizens may sometimes have an exaggerated view of what the administration is capable of, people's frustrations at processing delays are often justified.

"Although admittedly citizens may sometimes have an exaggerated view of what the administration is capable of, people's frustrations at processing delays are often justified".

A brief discussion of some of last year's complaints about slow response are set out in Chapter V. Here I will attempt to make a few common observations, illustrated by examples from the cases we closed in 2011.

2.1 Legal rules

Many citizens who appeal to me want to know how long the public administration can spend processing enquiries and whether there is a maximum for what is acceptable. The general rule about processing times in the Public Administration Act, section 11a, prescribes no such absolute deadline. The administrative body must prepare and decide the matter "without undue delay". Just what this implies depends on a case-by-case evaluation that has to look at the nature, scope and complexity of the case, apart from the resources available to the administrators. Handling times can therefore be very different from case to case and administrative body to administrative body. In some cases where the conditions are reasonably clear-cut, we can expect matters to be decided fairly sharply. But the situation is different for large, complex cases where a series of discretionary judgements must be carefully weighed. The administrative body may also need to obtain information and assessments from outside bodies, for example through expert reports or verifications abroad. Many patient injury cases and asylum cases demand these resources, and naturally the overall response time will be adversely affected. What is acceptable must also be seen in light of the general requirement for proper consideration and analysis. To meet the legal safeguards that are embedded in the PAA's other processing demands will necessarily mean that processing times may be extended according to circumstances.

For appeal cases there is also a lack of any prescriptive deadline. It follows from the PAA, section 33, that the first instance should make an investigation of the grounds for the complaint and submit the documents to the second instance "as soon as the case has been properly prepared". In other words it is judicially unacceptable for an appeal to be left untouched by the first instance for an extended period before submission to the appeal body. Through my work I see cases where this occurs, and from time to time I am compelled to launch an investigation. Part 2.2 below has more details.

In certain areas we can nonetheless set out specific deadlines that caseworkers must adhere to. A case in point is the deadlines written into the Planning and Building Act and its regulations. The consequences of overstepping these dates may be that a building permit fee has to be refunded, that a permit is deemed to be awarded as the applicant desires, or that the building may be used despite the lack of a letter of completion. Non-compliance with deadlines may also affect the outcome of the case proper, see part 2.2 below. In child care cases, too, specific deadlines apply. In the Child Protection Act we are admonished that child care services have no more than one week to consider whether or not to follow up a report by launching investigations. More-

over the local council – if such investigations are indicated – must perform them within a given deadline. Overstepping the deadlines may result in the levying of a fine by the county governor.

Information on anticipated handling times is always of importance to most citizens. Some administrative bodies provide general indications on their webpages. An example is the Directorate of Immigration. These indications may not be legally binding, yet they do raise expectations among applicants.

The PAA stipulates that cases referring to an "individual decision" should receive a preliminary reply if a full answer cannot be given within one month of receipt. The reply should state the reason why an earlier conclusion is not possible, and "whenever possible" indicate when a conclusion can be expected. Sadly we must concede that this stipulation is not always honoured. I believe much disappointment at overly long turn-around times could be avoided if cases routinely received a preliminary answer with an informative note to explain any prospective delays.

2.2 Consequences for citizens of casework delays

Quick replies are vital to most of us. If cases take longer, the consequences may be both economic and legal. Delays often occasion added work, frustration and uncertainty. In some cases processing time are particularly crucial, particularly cases affecting a citizen's basic needs, such as a roof over one's head, a source of income and basic health and care services. In my Annual Report 2010 (page 43 pp) I gave instances of complainants who – because of excessive delays in Nav – had to survive without means of support for several months. In some cases this had serious consequences for their ability to meet basic needs.

"If cases take longer, the consequences may be both economic and legal. Delays often occasion added work, frustration and uncertainty"

It is also particularly vital that a person whose freedom is constrained can quickly test if the basis for his incarceration is justified. Several rules about this are found in legislation such as the Mental Health Care Act, Immigration Act and Criminal Procedure Act. The demand for a speedy process is also encapsulated in the European Convention on Human Rights, Article 5, for instance. Even though the test of incarceration is often laid at the courts, the public administration plays a crucial role in relation to information, case preparation and work to submit a matter to the courts. In the case of patients committed to a psychiatric institution, the first instance is an administrative body, the Psychiatric Control Commission.

Delays in processing can also result in serious financial difficulties as we have noted before. If a construction project comes to a standstill pending the granting of a permit, the financial consequences to the developer may be profound. The same goes for an applicant who must wait for a permit to commence a line of business, such as a landlord who applies for an alcoholic beverages licence, or a taxi owner who applies for a carriage licence.

I have also seen how delays are particularly important in cases affecting families, such as cases of family immigration. Many despairing family members contact the Ombudsman when an immigration request takes an extraordinary length of time to reach a conclusion. Yet applications to stay in Norway from juveniles who are sole applicants are supposed to receive urgent attention by the immigration authorities.

One particular area of concern is matters where delays obviate the very purpose of the application. A convict benefits little if a complaint about prison conditions is considered after he is set free, or if he receives permission to attend an event after it has occurred. In such cases it is extra vital for the administrative body to have good routines for how to log and deal with applications while still relevant. Allowance must also be given for the complainant to have a real chance of appealing the matter, if necessary.

2.3 Developments in particular areas and administrative bodies

2.3.1 Labour and Welfare Administration

In recent years I have received a large number of enquiries concerning the processing times needed by the Labour and Welfare Administration (Nav). The number of cases here remains high, although it is marginally less in 2011 than in 2010. Further details of the Ombudsman's investigation of the agency are given in part 6 below.

2.3.2 The Norwegian Directorate of Immigration

The volume of complaints about the Directorate of Immigration remains relatively high. In recent years about 80–85 such complaints are received here each year, most of them citing processing delays and/or failure to respond to enquiries. We also receive a steady flow of telephone calls. I study developments carefully and have found occasion several times to address the delay issue and other matters relating to the Directorate in my Annual Reports, most recently in 2005 and 2010.

"Processing times in the Directorate of Immigration are affected by a range of issues that are outside their control".

Processing times in the Directorate of Immigration are affected by a range of issues that are outside their control. For instance, the number of applications for asylum can vary a great deal from month to month, and rapid recalibration is therefore necessary. These processes demand resources and can greatly affect asylum handling times, as well as other fields. In individual cases the need to verify and investigate can also steal much time. Asylum seekers from unstable countries and regions may also be put on hold pending a resolution, as happened in 2011 for cases from Libya, Yemen and Syria. Such factors still do not add up to a sound explanation for the sometimes extremely long handling times for certain case types in the Directorate. Currently this is especially true of citizenship enquiries and some family immigration cases.

In my Annual Report for 2010, pages 42–43, I discussed the processing times for family immigration. Again in 2011, I have received a number of enquiries in this field. However, the Directorate introduced new nominal figures for processing times for such requests received after 1 January 2011. For such cases, processing should as a rule be completed within six months, which would represent a huge improvement.

In 2010, I raised the general issue of casework delays for appeals against own decisions, particularly in family immigration cases. The Directorate acknowledged that delays were excessive. The discussion was closed with a letter of criticism from me in March 2011 (Case 2010/2788, see Chapter V). Yet I can still see little sign of improvement in this area, and I am constantly receiving letters where complaints seem to have been neglected for

many months before submission to the Immigration Appeals Board.

"My general impression is that the Directorate of Immigration has a strong focus on reducing processing times."

My general impression is that the Directorate of Immigration has a strong focus on reducing processing times, as indeed is expressed in their strategy plan for the period 2011–14. Times spent on processing have also been reduced in certain areas, notably asylum seeker cases. In high-priority areas, like economic migration of people looking for work, times taken to decide the issue are now short. Many such cases are decided in just 5–10 days even.

2.3.3 Norwegian Patient Compensation System

In 2008 I delivered a special report to Storting about the time taken to process complaints in the Norwegian Patient Compensation System (NPCS) (Doc. 4:1 (2008-2009)). The background for the report was the extreme length of casework and the difficulty of seeing any end to the situation without additional resources and action. I was also able to remark on the established queuing scheme for cases pending consideration.

Even though the handling time in the NPCS remains long, I have been advised that there has been a not insignificant reduction in the past year. The queue scheme has also been dismantled. My impression is that the Norwegian Patient compensation system has been extremely conscious of its turn-around times, and that efforts are targeted at lightening the impasse. I now receive few complaints about this branch of the public service.

2.4 Consequences of delays on outcomes

Delays in casework do not generally affect the outcome of the administrative decision. But the situation may be different if the rules are changed while the case is being considered. Such situations are often regulated in transition rules for the new act or regulation. Basically decisions must be reached under the rules in force at the date of decision. The outcome of the case can therefore be different than it would have been without the delay. If this works to disadvantage the citizen, he or she may feel that the law isn't working, leading to speculation that the delay was deliberate. The situation can also be the reverse, and more favourable rules can result in permission that would otherwise have been denied.

"Delays in casework do not generally affect the outcome of the administrative decision".

In other cases the situation may change while the papers are being processed. One practical example is an unescorted, juvenile asylum seeker who turns 18 years of age before his case is decided. The applicant is not therefore subject to the special rules that favour juveniles. On the other hand, the processing delay may strengthen the applicant's ties with Norway, which may increase his chances of obtaining residency here.

Excessive delays can also lead to the criteria for granting an application are no longer present when the issue is decided, even though they were at the time of filing the application. A permit may have lapsed, or a deadline may have passed. An example is an application for citizenship, where the immigration authorities follow a practice whereby the foreign passport must be valid on the date of the decision to be

accepted as adequate documentation of identity. This applies even if the applicant presented a valid passport, but its validity expired while the application was being processed. This is an inflexible rule that means applicants must suffer due to long processing times in Immigration. A study of the issue is mentioned in Chapter V (Case 2010/2010).

I have looked at processing delays in a number of planning and building cases recently. Here the situation is often such that the administrators have failed to meet the specific turn-around dates for building permit cases. The applications were then denied or rejected in light of the altered, less favourable legal situation, that arose after the date the application was supposed to be decided.

In the so-called "wooden tent" case, discussed in the Annual Report 2007, page 302, a number of notifications for building for enclosures around caravans ("wooden tents") were denied no less than 13 years after they were submitted. The basis for the denial was a new zoning plan that was adopted eleven years after the notifications. I stated that if building authorities are to apply a new, stricter set of regulations in the disfavour of people who have already applied for building permit, then this must be done within the mechanisms established by law. The decisive thing from my point of view was that the administrative authorities had not observed the statutory requirements for processing times. This must not be allowed to disadvantage individuals.

The same principle underlay two statements I made in 2011. In case 2011/730 an application to commence work on parking spaces was denied because the general permission had expired in the months between application and decision. In case 2011/720 an application for a general permission to erect housing was denied. Here the local council had passed a municipal sub-plan after the statutory deadline for processing the application, and the fresh municipal sub-plan was used to deny the application. In these cases the time elapsing between date of application and change in the law was much shorter than in the "wooden tent" case. Yet the principle is the same: the council had violated the rules governing processing times, and denied or rejected applications with reference to a changed, compromised legal situation, which had arisen after the date the applications should have been finalised. I indicated that this was not something that the public administration was allowed to do. The authorities cannot – by flouting the law – create for themselves a different legal basis in disfavour of the applicant. The applications must therefore be considered according to the same legal basis as would apply if the processing deadlines had not been overrun.

The cases are referred to briefly in Chapter V and published in full on the Ombudsman's webpages. The same goes for other specific cases dealing with a legal situation that is altered whilst the cases are in progress.

"The authorities cannot – by flouting the law – create for themselves a different legal basis in disfavour of the applicant".

Incidentally, the Ministry of Local Government and Regional Development has indicated that it will not comply with the Ombudsman's finding in cases 2011/730 and 720. See further details in Chapter I, part 6. Nevertheless, I have made it clear in a letter to the Ministry that I expect my legal interpretation to be adopted. In both cases the county governors involved have adopted my view.

3. How the public sector organises and processes complaints

A basic right of Norwegian public administration is that a decision – an "individual decision" – may be appealed, so that the matter is considered anew by a different administrative body. This is set out in the Public Administration Act (PAA), section 28. The right of appeal must be used and the appeal must be closed before a case can move on to the Ombudsman. Yet the appeal routes in the administration can take different turns and there may be consequences for citizens and for my opportunities to audit decisions. The purpose of this part is to highlight some of the aspects of organisation and the challenges that the Ombudsman therefore faces in his review of complaints.

"Appeal routes in the administration can take different turns and there may be consequences for citizens and for my opportunities to audit decisions."

In many cases that reach the Ombudsman it is not clear whether the first right of appeal has been exercised. This must be determined first. It can also be necessary for me to explain to the complainant where a complaint should be lodged before I can deal with it. The Ombudsman must therefore have a good understanding of the entire field of administration and the different appeal instances that exist.

Once the Ombudsman decides to raise a matter with the administration, it is also necessary to determine which body or instance is most appropriate and effective for our queries. It is standard practice for enquiries to go to the appeal body, not to the first instance. In some cases the appeal body may not be that useful for gleaning answers – for instance when the nature of my question, or the organisation of the appeal body means an approach to the secretariat is more rewarding. My office has to decide these things on a case by case basis, see below.

Work on these issues has shown that it is sometimes difficult to determine who is the appeal body and what is the appeal mechanism for the field of interest. The general rule in the PAA, section 28 is that the appeal instance is the next superior administrative body to the instance that reached the underlying decision. It is not always immediately apparent which instance is the immediate superior, and the first instance does not always embellish its decisions with a revelation of the identity of the appeal instance, despite this being required under the PAA, section 27, third paragraph, which states that appeal information must accompany the decision.

Even determining whether there actually exists a superior body can sometimes thwart our enquires, when the appeal body decides a side-issue, namely a different question than the one raised by the case. For example this may happen for a claim for reimbursement of legal costs. When an independent body or appeal board decides such issues, it is not always self-evident that the Ministry is the correct appeal body. Take for example the case where cost decisions are made by the Immigration Appeal Board – it was long unclear whether such decisions could even be appealed. If it was possible to appeal to the Ministry, then any complaint to the Ombudsman had to be referred thence at the outset. There was the issue of whether the Ministry could be deemed the "superior body" in such cases. In the regulations to the PAA, section 34, this has now been put in writing, and decisions cannot be appealed. Which means that complaints about the Immigration

Appeal Board's reimbursement decisions can be lodged with the Ombudsman.

Under the PAA, section 28, third paragraph, it is also possible to revoke the right of appeal in specific fields. In some fields special rules apply. Yet it is difficult to see that such special arrangements follow any particular pattern or that any general pointers of principle have been stipulated for how appeal handling processes are organised.

"At times it is difficult to determine who is the appeal body or what is the appeal mechanism..."

When the King in Council is the appeal body, the rule that all appeal avenues in the administration must be exhausted before a complaint can go to the Ombudsman does not apply. The reason is that the Ombudsman, under the Parliamentary Ombudsman Act, section 4, does not audit "decisions adopted by the King in Council". Accordingly the citizen can choose between appealing to the King in Council, or appealing to the Ombudsman. This is relevant when ministries make decisions, and is particularly useful for questions of disclosure under the Freedom of Information Act (FIA). The press and others often ask to see documents held by ministries, and refusals are often laid at the Ombudsman's door. Incidentally there is a special rule in the FIA, section 32, whereby ministries must alert the reader to the non-availability of the Ombudsman if the matter has been dealt with by the King in Council.

Driver's licences are one area where not only the mechanism of complaint, but even the entire administrative organisation generates challenges. The confiscation of a driver's licence or right to conduct a motor vehicle is decided in the first place by the courts in connection with a criminal hearing. But the administration also plays a role in these cases, which are crucial for so many of us. Here the Police Directorate, Directorate of Health or Public Roads Directorate may be the appeal body, depending on the niceties of the particular case.

Certain issues relating to the confiscation – such as a request to advance the reinstatement date – are dealt with by the local police, and a decision by the Police District may be appealed to the Police Directorate. Issues relating to the health requirements of the Driver's Licence Regulations follow a different appeal track. Doctors must report to the county governor if the licence holder no longer meets the health standards. The county governor is enjoined to tell the police, who decide to confiscate the licence, and this decision may be appealed to the Police Directorate. The report from the county governor to the police is not a decision and cannot be appealed. However, it is possible to ask the county governor for dispensation from the health requirements in the Driver's Licence Regulations. The county governor's decision in this case can be appealed to the Directorate of Health. Certain other types of issue – such as a request to exchange a foreign driver's licence for a Norwegian one – are decided by the Norwegian Public Roads Administration (NPRA), where the Public Roads Directorate is the appeal body. The Ombudsman receives a number of complaints about these matters every year.

"In some areas where no administrative appeal mechanism has been established, complaints must be taken directly to the courts"

Cases involving compensation for victims of violent crime illustrate other issues of administrative organisation. Here the mechanism has moved from a decentralised first instance process with the county governors to a centralised process in the

Victims of Violent Crime Compensation Office VVC. Since this compensation scheme was established, appeals have also been centralised through the VVC Compensation Appeal Board, with the Ministry of Justice, and later the National Civil Law Administration (NCLA) as the secretariat. Proposals are now afoot to change this, so that the Board is disbanded and the NCLA is the appeal body. In a consultative hearing in September 2010, I lent my support to the proposal, particularly on account of the potential to realise shorter turn-around times.

In some areas where no administrative appeal mechanism has been established, complaints must be taken directly to the courts. This includes the activities of the enforcement authorities, including the bailiffs, Nav Collection Service and the National Collection Service. Complaints about decisions in these bodies cannot in principle come before the Ombudsman. Under the Parliamentary Ombudsman Act they fall outside my remit. In practice cases that have been or can be dealt with by the courts under such special arrangements are not vetted by me here.

Nevertheless questions of jurisdiction do arise. It is important to examine whether matters affecting legal safeguards of citizens are not properly scrutinised, whether by the Ombudsman or the courts. Some cases regarding enforcement decisions by the bailiffs can be examined by me, using this approach, for example complaints about failure to reply or processing delays. These cases are assessed on their merits, and the police directorate can sometimes also be brought in. The thing that decides the limits of the Ombudsman's jurisdiction must be the reach of the court's involvement – we must avoid a situation where both the Ombudsman and the court deal with the same issue. When it is clear that court proceedings will not go ahead, the Ombudsman can step in to tackle the matter.

In local government the local council can be the appeal body, for instance in cases involving discharge permits under the Pollution Control Act. Most local councils also have a special Municipal Appeal Board, often going by that name or called an appeal committee. A range of municipal decisions are dealt with there, involving matters that do not need to reach a government appeal body like the county governor. The county governor is the appeal instance for many council decisions – like building permits, social assistance, and sometimes cases involving child protection. Sometimes it may be unclear whether the county governor or the local council is the right appeal body, for instance in cases involving citizen security alarms. In one of this year's complaints information about the appeal body was given to the complainant, but our conclusion after investigating the matter in the Ombudsman's office was that the council's appeal board was the right instance. The case illustrated the fact that council appeal routines were inadequate. In the Local Government Act there are special rules regarding impartiality of the appeal process, and here too knowledge seems sometimes to be variable.

Administrative activities can also be organised into boards. There are rules about this in the public administration act. In a number of fields special appeal boards have been established, and casework in these boards can be a challenge when the Ombudsman tries to deal with complaints. There may be uncertainty about how and who should respond to the Ombudsman's questions. For example the board may have been dissolved, or it may only meet occasionally, and therefore the secretariat or administration is often delegated to answer questions on the board's behalf. For some issues this is not a problem. But if we are requesting more details about the reason for the decision, it is not always satisfactory if the responsibility to reply is delegated. In some cases the board

chairman answers on behalf of the board. Although this may be satisfactory, it can also lead to uncertainty as to whether the answer truly represents what the other board members had in mind.

"It is worth questioning whether special appeal routines or mechanisms should be established in the administration for cases where processing has taken too long".

In conclusion, let me mention how important organisation is when it comes to complaints about delays in processing, which I receive in large numbers. These complaints are always pursued with vigour here, often by calling the administrators on the telephone. But we can wonder if this is a useful employment for the Ombudsman's office, or whether there should rather be special appeal routines or mechanisms baked into the administration. In some areas service desks have been set up to assist with such complaints, but there does not seem to be a unified system everywhere. In major administrative organisations – such as Nav and the Immigration Directorate – the suggestion of internal service desks or complaints offices has been raised. Nav is presently reorganising its handling of service complaints within the organisation to streamline appeal processes and contact with the public. The mechanism of a Health, Patient and Social Ombudsman in local councils can also be seen as a method that the administration is trying to tackle such complaints. At the county level, the county Patient and Client Ombudsmen can also be seen in the same light.

4. Discrimination and unequal treatment

4.1 Introduction

Again in 2011 many enquiries to the Ombudsman were from complainants who felt they were the victims of discrimination and prejudice.

It may not be far off the truth to suggest that the ever-increasing reliance on the internet may be one reason that different results in seemingly similar cases of fact or law are coming to the surface more often and more visibly. Increasingly the administrative arms of government are publishing cases and abstracts online where they are readily accessed. Those with a penchant for investigation can compare their case with earlier decisions and the feeling that you have been unfairly dealt with can be just around the corner.

"There is little doubt that in many administrative areas achieving uniform practices is a difficult bridge to cross".

Examples are immigration cases, where the Immigration Appeal Board has set up an exhaustive and readily searchable groundswell of established practice. Yet key details may be omitted from such a case review, for example where privacy issues prevent full disclosure. A list of established practice is likely to be a random list of decisions, not necessarily decisions that can provide an indicator for similar cases, not necessarily cases establishing precedent. Differences in fact – including the complainant's previous history, health, dependants and age – may be the reason for different outcomes. These differences are not always obvious in published references. For many complainants it is difficult to distinguish between fair and unfair differences. A person's perception of being the victim of prejudicial treatment will in any case tend to undermine confidence in the public service.

I believe the widespread use of social media can also foster a general impression of unfair process. Information – true or misleading – spreads like wildfire in today's interconnected society.

"Online solutions can both reveal and prevent disparities and engender greater uniformity of case outcomes in the public sector".

In my Annual Report for 2010, page 46, I stressed how important it is for the public administration to strive for uniform treatment of similar cases. The work of this office on the countless enquiries that came in during 2011 regarding unwarranted differences in treatment leave little doubt that in many administrative areas achieving uniform practices is a difficult bridge to cross. This is particularly troublesome in areas where the administration is tasked with reaching broad discretionary judgements. Decentralised and local administration – for example where welfare laws are to be implemented by all local councils throughout the country – represent challenges. Similar treatment is not always a goal, however, since councils enjoy some level of autonomy. But even in centralised appeal boards it can prove difficult to apply a uniform practice. This is particularly so in bureaucracies where decisions rest on the shoulders of many different officials. We can mention the Immigration Appeal Board, which has a pool of more than thirty chairmen and chairwomen, plus a host of tribunal members who step into function each time the board convenes.

In general my prevailing impression is that the administration is alive to the imperative of equal treatment. Through my studies from this office, I have seen that in many administrative areas much work is done to resolve the challenges of getting as close to the ideal goal of uniform practice as possible, even when decisions of a similar nature are to be decided by different bodies. Digital administration, local and central banks of case practice, and abstracts of precedents are mechanisms that offer fresh opportunities for coordinating practices within a body, and within different fields of administration across various bodies. In this sense online solutions can both reveal and prevent disparities and engender greater uniformity of case outcomes in the public sector.

"The importance of public confidence in how the administration exercises its authority cannot be overstressed".

In many unfair discrimination cases, it quickly transpires that no further investigation of the claim is warranted. In cases where decisions have to rely on specific, individual assessments, it is almost by definition difficult to prove unfair discrimination. Typical examples are found under the auspices of the Correctional Services, for instance cases of leave from prison, and applications for parole. Much of the complaints in these areas nevertheless show that people's perception of being unfairly treated can generate dissatisfaction with the office in question and bureaucracy in general.

The importance of public confidence in how the administration exercises its authority cannot be overstressed. In cases where it is likely that the private individual may perceive the outcome of a process to be coloured by discrimination, it is therefore especially vital for the administration in its justification of the decision to be at pains to explain matters as exhaustively as possible. But again, regard for privacy issues and confidentiality may constitute a block to good communication.

4.2 Planning and building cases

Unfair discrimination is still a common complaint in building matters, especially in regard to dispensations. This was discussed in the Annual Report 2010,

Chapter IV, page 46. Although I must admit some sympathy with individuals who feel hard done by, it is not often that I find reason to call into question different outcomes as unfair in the cases I have reviewed. The main reason is that the cases held up for reference are often distinguished from the complainant's case, either in fact or in law, or in both regards. Some of the permits that complainants cite as comparative cases seem to be based on unclear or shaky legal foundations. The equal treatment doctrine does not mean that if an error is committed in one case, or a few cases, then the same error can be repeated in a seemingly similar case.

When a complainant applies for a building permit for something that runs contrary to legislation or local plans, it is the job of the planning and building authorities to consider if the criteria for dispensation have been met. The new dispensation provision in section 19-2 of the Planning and Building Act, 2008, came into force on 1 July 2009. To date I have not received a sufficient number of complaints about this provision to have an opinion about how claims of discrimination will be dealt with by the building authorities.

4.3 Taxation issues and assessment

In 2010 the Ombudsman received a large number of claims suggesting that the Tax Authorities were following discriminatory practices within the group of taxpayers who attract special deductions for medical outlays for serious illness, as described in the paragraph on unequal treatment in the Annual Report for 2010, Chapter IV, page 46. My review of this problem area concluded as follows:

> "Regardless of cause it is unfortunate that some taxpayers have good reason to suspect that parts of the tax assessment are impaired by unequal treatment. The Ombudsman has repeatedly alerted the tax authorities to the problem. The tax authorities have now stated that they are working both on increasing and coordinating expertise among assessment officers and simplifying the regulations, and increasing resources for scrutiny of tax returns which do not solely contain information reported by third parties, such as the taxpayer's employer and bank connections. The Ombudsman hopes that these measures will be effective and work as promised, so that far fewer taxpayers than now are left with the impression that their case was wrongly dealt with. In the period ahead I will take a keen interest in developments."

Sadly the year 2011 seems not to have brought any noticeable decline in the number of enquiries to the Ombudsman by taxpayers who feel their case has been subject to unfair discrimination. It was on this background that I wrote in October 2011 as follows to the Directorate of Taxes:

> "Regardless of whether the Government's proposal [to phase out the special deduction] is passed by Parliament, the special deduction will continue to be a component of tax assessments for fiscal 2011 and some years thereafter, until 2014. Therefore the Ombudsman has been persuaded once again to raise with the Tax Directorate the problem that assessments of taxpayers, who demand a special deduction for heavy medical expenditures, result in many of them feeling their claims are not fully accepted, and that they are thus the victims of prejudice. In this context allow me to refer to the two latest general studies done on this matter, cases 2006/1758 and 2007/1450. Both have the Tax Directorate's reference number 2006/505616.
>
> The Ombudsman is aware that in relation to the special deduction for heavy medical expenditures it is possible that two types of discrimination can occur. One is due to the gap between the claims on the unchecked tax return and the invigilated tax return, and the

other is due to the rules being so complex and discretionary. The Ombudsman is also well aware that the Tax Directorate in recent years has done much work within the organisation and otherwise to minimise the inequalities that arise due to the complex and discretionary rules.

The number of taxpayers appealing to the Ombudsman that they have been denied all or part of their special deductibility for heavy medical expenditures, and who claim prejudicial treatment as the reason for their complaint, sometimes in conjunction with other complaints, has still not declined – rather, the opposite is the case. For the individual taxpayer who feels discriminated by prejudicial treatment this is a very unfortunate situation. It is also unfortunate in the wider scheme of things if throughout the community the feeling of constant discrimination by tax officials should repeatedly and severely undermine the trust taxpayers should have in their tax authorities.

Accordingly the Ombudsman asks for an analysis of what, if anything, the Tax Authorities or Tax Directorate feel they can do to mitigate the prejudicial treatment felt by the group of taxpayers claiming special deduction for heavy medical expenditures for the duration of the special deduction regime in whatever form it takes"

"Sadly the year 2011 seems not to have brought any noticeable decline in the number of enquiries to the Ombudsman by taxpayers who feel their case has been subject to unfair discrimination".

Also during the year some taxpayers complained to the Ombudsman about prejudicial treatment by the tax authorities on the basis that their assessment was quite different from one year to the next, even though roughly the same details of income and allowances were reported on the tax return in both years. After reviewing these complaints my conclusion is that I do not have the legal powers to censure such "illogical" differences in the assessments. Differences in assessments of one and the same taxpayer from one year to the next, due to failure of control functions, are not the same as prejudice in the true sense. But of course it is not to be encouraged and can raise questions of confidence in the outcome of the internal revenue's assessment.

5. How are citizens met when officials make a mistake? Should administrators apologise?

In many cases citizens are not simply concerned that a mistake has been made by the public servants, but also about the way they are met in a situation where something has gone wrong. The error may be connected with the processing of the case – opinions that were not respected, delays that occurred, documents that were not disclosed, investigation was too cursory – or with the way the case ended. It can also be about how you or someone you love was treated by an official, an administrator, a health worker or an employee of some other institution. I note that the inability to be open, to share information, and to recognise errors that have been committed can raise temperatures and lead to complaints that might otherwise have been avoided.

The public service can benefit greatly from meeting citizens with candour and with sound, thorough and – as necessary – repeated information where errors were made. This applies in particular in cases and areas where citizens are personally affected. An example is per-

sonal injury or death of someone close. Sound, prompt information and an open, welcoming approach can help people come to terms with the tragic event that has happened. Where a written account of the incident is made in retrospect, as in supervisory reviews of medical incidents, it is also vital that the public sector is alive to the way the presentation of a case can be hurtful to someone who is not used to legal rules and jargon. A soulless, strictly professional language can therefore alienate and provoke a complainant in an already devastating situation. Hospitals, health care institutions and The Board of Health Supervision should therefore strive to present the case in an open and considerate manner, even if those affected are not strictly parties.

"In my opinion the public services should not be reluctant to apologise for errors and omissions and other unfortunate circumstances".

It can be a difficult balance to strike how far the administration should go in meeting individual needs where a serious error has been committed and the incident has tragic consequences. It must depend on a specific evaluation of the nature of the case, the significance it has for those involved, and what errors were made, among other considerations. In the health sector, for example, the circumstances of an unexpected death must be dealt with differently than if minor complications have arisen. The resources in the public body will also play a role. In some individuals expectations are far higher than the administration can manage. The essentially supervisory role of the Board of Health Supervision can serve as one example. Whilst citizens who complain about wrong treatment can expect a full "investigation" to analyse all facts in a case, this is not necessarily written into the supervisory board's terms of reference. The job of an administrative body is also to explore relevant factors and deal with cases, not to act as soul mate or support. Meeting people's expectations can be a difficult balance in a complex situation, where you have to discharge your own duties as well as assist colleagues.

My experience tells me that an apology from an administrative body can mean a lot when a mistake has been made – whether the matter is a serious one or a more ordinary administrative matter. Sometimes the desire for an apology is the key issue for the complainant. It is my impression that the administration is quick to apologise during the handling of a case, for example if there are delays or the citizen receives no reply to an enquiry. For other types of error there can be differences in whether the nature of the case makes it natural to apologise, and how comprehensive such apology may be. Here the attitudes of the many branches and units of the public service that the Ombudsman interacts with come into play.

"There are also good reasons to believe that transparency, explanation and apology will in many cases smooth over or reduce the potential for conflict"

In my opinion the public services should not be reluctant to apologise for errors and omissions and other unfortunate circumstances. I believe most of us understand that an administrative body or public institution can make mistakes sometimes. It can be far more difficult to understand why your local council, a government ministry or a hospital is unable to admit its mistakes.

There may be many reasons for a failure to be self-critical. Fear of losing prestige may be one. Another may be fear of further conflict or potential litigation. Yet a recognition of fault and an apology are not tantamount to an admission of guilt in the legal or criminal sense. In my opinion

there are also good reasons to believe that transparency, explanation, and apology will in many cases smooth over or reduce the potential for conflict. An apology can allow citizens to feel that they are taken seriously in the unfortunate situation. The problems the error has caused the complainant – such as frustration, insecurity, sense of loss and wasted time – are recognised and understood. This can have a major effect on the person's trust in the administration and belief that the error will not be repeated.

Can the Ombudsman promote more openness when officials make mistakes? I believe so. A complaint process in itself can lead to the administration taking another look at the issue with a stronger focus. Critical questions raised by my office lead not infrequently to an acknowledgement that errors were made, and sometimes even to a reversal of a decision. When my conclusion is that a citizen was treated unjustly, either in the course of processing or in the ultimate outcome, I can also ask the administration to reconsider the matter and bear in mind my views. Sometimes I can also ask that financial compensation be considered – or that an apology be tended.

"But action by the Ombudsman may lead to a more positive result – self-criticism within the administration – and perhaps even an apology".

Often, however, I leave the solution to the administrative body itself. An apology by the administration can often be a sufficient and acceptable end to an injustice. If the administration tenders an apology, I will often be satisfied to note that "the apology was appropriate".

Where an administrative body commits an error that does not automatically void a decision or justify a claim for damages, action in the courts may not bring much satisfaction. But action by the Ombudsman may lead to a more positive result – self-criticism within the administration – and perhaps even an apology.

6. Ombudsman's inspections of Nav

In the course of 2011, the Ombudsman received almost 600 complaints and an equal number of telephone enquiries regarding Norway's Labour and Welfare Administration (Nav), not counting municipal services. Although the volume of enquiries has exploded since the agency was established, the increase from 2010 to 2011 was less than hitherto. Enquiries ask about all sorts of benefits and concern almost all divisions and offices, and are extremely varied regarding the subject of the complaint. Yet we can initially sort the complaints into types: dissatisfaction with decisions, delays in getting an answer, and other processing inadequacies.

6.1 Processing delays

From 2010 to 2011 the number of complaints concerning slow processing in Nav fell. The Ombudsman now receives far fewer complaints than previously from users who are without benefits due to tardy casework, and it is my impression that Nav has been more conscientious than before in providing stopgap answers and advising clients of possible delays. This is a welcome development.

"It is my impression that Nav has been more conscientious than before in providing stopgap answers and advising clients of possible delays. This is a welcome development."

Nonetheless there remain certain divisions and offices that still leave a negative impression, perhaps because they seem to lack good routines for logging enquiries, or sending updates about processing delays, or because the general time spent processing cases is especially long, or because their tackling of enquiries by the Ombudsman reveals a lack of capacity to tackle lamentable situations. Of the cases I received in 2011 regarding tardy casework in Nav, a considerable number concerned information – or rather lack of information – about getting a reply, and the long time it took to get answers from Nav International and Nav Pensions. This was part of the reason that my colleagues visited Nav International in December 2011 to receive a briefing on activities there. Among other things they discussed which measures had been implemented to speed up processing times.

A common complaint was that users do not receive information from the local office regarding the location of a complaint that has been submitted to an administrative or special unit, and the anticipated completion date. It has also proved difficult to contact the caseworker dealing with the matter, even just to elicit a reply, because Nav says that users can only speak to the local office. These factors have been raised with Nav by my office in citizen complaint cases and also on my own initiative.

The above notwithstanding, I do get the impression that the setting up of contact centres, and issuing guidelines for users to be contacted with 48 hours of attempting to call, have led to better telephone access. I know, too, that division of work in disability pension enquiries has been reorganised to simplify the process from the new year 2012. The reorganisation means that the administrative unit, instead of Nav Pensions, now does the job of calculating and coordinating disability pension and sending the decision to the user. It is hoped that this reorganisation will expedite processing.

"Meeting users with sympathy, sound advice and determination can be critical for getting the proper benefits and being able to return to working life successfully".

Complaints about delays in processing are generally investigated by telephone from my office, and in almost all cases, my colleagues receive a reply that enables the matter to be closed with a promise by Nav that the matter will be settled by a certain date. Where we have been unsuccessful in obtaining an explanation of delays by telephone, and where we have seen fit to ask more general questions or enquire about matters of principle, the matter has been taken up in writing.

Processing delays in Nav were also discussed in my Annual Report 2010.

6.2 Decisions

Only a tiny fraction of Nav's decisions are examined here. The decisions normally be brought before the National Insurance Court, and cannot be dealt with by the ombudsman until the Court has ruled. The Ombudsman receives roughly 30–40 complaints about the National Insurance Court's decisions each year. For a sense of the context, the Court handed down 2557 rulings in 2011.

Decisions stipulating child maintenance cannot be brought before the NI Court, and quite a large number of such cases are investigated by me each year. Three such cases are analysed in Chapter V. Another field where the court does not have jurisdiction is decisions about how to correct errors in benefits and maintenance when recipients fail to receive the proper amount. Three such cases are also analysed in Chapter V.

6.3 Other casework issues

In many of the enquiries the Ombudsman receives about Nav the objection is to casework that is not necessarily directly related to any decision or processing delays. Typical complaint topics are lack of guidance, follow-up and understanding of the complainant's situation, and the conduct of the caseworker. Since the Ombudsman's inspections are supposed to come after the administration's own investigations, these complainants are normally asked to initiate a complaint with the superior administrative body. In such cases this is normally the county office or central office. Many such cases seem to reach resolution within Nav and only a very few revert to the ombudsman with their enquiry.

Only a few of the complaints received by the Ombudsman which have been dealt with along service channels in Nav County or Nav Central demand further consideration by the Ombudsman. There are different reasons why this is so: If an error is identified and an apology is given by the appeal instance, it is unlikely that an examination of the matter by me can produce any more findings of significance. In other cases there may be a dispute between the complainant and Nav regarding what was said orally, and this is a difficult problem for the Ombudsman to investigate by writing letters.

Even though processing complaints are not always investigated further by the Ombudsman's office, this does not necessarily mean that they are unfounded. Many people are clearly upset about the treatment they have received, and some complainants also tell me that the illness or impediment they already suffer from has been exasperated. Meeting users with understanding and follow- up , sound advice and determination can be critical for getting the proper benefits and being able to return to working life successfully.

Enquiries to my office, including telephone enquiries and complaints, which are not pursued further, are recorded so that they can offer grounds for general investigations. Such investigations on a general basis are conducted several times each year. Chapter V describes four such self-motivated investigations into the workings of Nav.

7. Meeting transparency and announcement

Meetings in elected bodies in local and county administrations, typically town or district council, and executive committees, are supposed to be open to the public under the Local Government Act, section 31. These councils also ought to use meetings to process cases. By allowing the general public to observe the meetings, citizens are assured an insight as to how our elected bodies deal with cases of interest. Transparency in decision processes also allows scrutiny, and thus enhances our confidence in the decisions reached by our representatives. Meeting openness is a key principle and premise for active local democracy.

Legal authority is needed before a council may consider a case behind closed doors and thus exclude a matter from public scrutiny. The administrative body concerned must pass a resolution to sit behind closed doors in the individual case.

"Meeting openness is a key principle and premise for active local democracy".

Effective 1 July 2011, new rules were in force in the Local Government Act setting out the legal authority and the procedures in order to hold a meeting behind closed doors. Though the new rules primarily clarifies previous rules, they also highlight a number of procedural issues. One aspect that is explic-

itly stated now is which decisions must be subject to a vote.

One condition of genuine transparency in meetings is that everyone can know that a meeting will take place, and the agenda for the meeting. It is therefore mandatory to present the agenda to the public and to make sure that "meetings to be held with open doors" are suitably advertised under section 32 of the Act. The announcement of the meeting and publication of the agenda makes it possible for members of the public and the media to consider if they wish to be present when specific issues is discussed.

In 2011 three complaints in particular regarding open meetings gave cause for further investigations by my office (cases 2010/2638, 2011/79, 2011/78). I had critical remarks in two of these cases.

In the two first cases the meetings had not been advertised. The reason was that the office calling the meeting simply assumed that they would be held behind closed doors. The rules were understood to mean that there was therefore no obligation to announce the meeting. In both cases I stressed the point that all meetings of elected assemblies must be announced – not simply those that one assumes beforehand will actually be open. This became even clearer after the law was amended with effect from 1 July 2011. It is now clear from the wording of the act that the assembly must expressly "decide" that the doors shall be closed. Moreover, the debate about closure should basically be held in the open, and voting is to be open. Thus there will always be parts of a meeting that the public may witness. Accordingly an announcement is needed so that those members of the public who are interested may use their right to be present, even if only to witness the decision to close the doors.

"The announcement of the meeting and publication of the agenda makes it possible for members of the public and the media to consider if they wish to be present when specific issues is discussed."

In light of my statements above the Ministry of Local Government and Regional Development was asked to consider changing the rules to avert misunderstandings in future regarding the need to announce meetings in advance. The Ministry replied that they had acknowledged the concern and would consider it in detail in due course.

V. Overview of cases of general interest in 2011

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

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

The cases below are cited by title and abstract (using both case numbers if new numbers were adopted when the office converted to digital processing). The dates of the Ombudsman's findings are also stated. The cases are also published on a continuous basis on the Ombudsman's website, www.sivilombudsmannen.no, on Lovdata, www.lovdata.no, once a year. Another site, Rettsdata at www.rettsdata.no publishes the cases annually.

My ongoing work on individual cases and my contact with the public administration allow me to form a general opinion about the state of the public administration and the effectiveness of their procedures. There is always a risk that my work on individual cases may give a distorted impression of the way the public service generally deals with matters. After all, the complaints arise from situations where citizens feel that they have been wrongly and unjustly treated. In the light of the contact that I otherwise have with officials in the form of visits and inspections, it is my impression that the cases I have included in this report are representative, based on the above criteria.

General administrative law

Opportunity of personnel to browse confidential information

24 January 2011 (Case 2010/2411)

A member of staff of the Labour and Welfare administration (Nav) had used the Administrations database to access details of a specific individual based on an incident she had witnessed off duty. Details about the complainant were then communicated to the local Child Welfare Service as an "expression of concern, together with a description of the incident in question.

The Public Administration Act, section 13, allows for a fairly broad-based approach to the dissemination of confidential information within an administrative body. But such information cannot flow unchecked within the organisation. Information that is confidential is not supposed to be available to public servants beyond what they "need to know" to do their assigned jobs. This Nav employee had no obvious need to access the complainant's information based on her job. It was to be criticized that the local Nav office had not ade-

quately briefed staff members on the confidentiality rules, and nor had they pursued the actual case internally. The Ombudsman also found that there was justified doubt that the available information about the complainant was sufficient to justify a "duty to inform" the child protection services, under which the confidentiality rule would be waived under the Child Welfare Act, section 6-4, second paragraph. But the option to file an "expression of concern" was always available.

Casework delays by Oslo Court of Enforcement

17 January 2011 (Case 2010/2085)

The time taken to process a case by the Oslo Enforcement office was reviewed with the Directorate of Police, who gave a thorough account of the casework situation and measures implemented to cut delays.

The Ombudsman found no cause to criticise the bailiff's consideration of a distraint petition in the particular case, but drew attention to the importance of the Directorate continuing its follow-up work to ensure that the enforcement mechanisms are fit for purpose.

Directorate of Immigration's processing times for complaint cases

3 March 2011 (Case 2010/2788)

Following a meeting with the Directorate of Immigration in autumn 2010, the Ombudsman asked about processing times when its own decisions were appealed. Details on the Directorate's webpage and my own experience suggested that appeals in family immigration cases were taking much longer. The Directorate recognised that processing times for many family appeals were excessive and provided details of current efforts in this area and discussed priorities.

The Ombudsman reminded the Directorate of the Public Administration Act, section 33, which requires submission of the relevant documents to the appeal body without delay once preparations are complete. From a legal point of view, it is unacceptable for cases to stay untreated for long periods. The Ombudsman was unsure whether the Directorate had adequate routines to distinguish between complaints that demand further investigation, and complaints that can be fast-tracked to the Immigration Appeal Board. The Ombudsman also stressed the importance of the Directorate operating to high standards, regardless of ministerial funding decisions or other government signals. Loyal adherence to such signals could not justify unlawful situations or dubious legal practices in parts of the case portfolio.

Duty to consider claim for reimbursement of legal costs under the public Administration act section 36

21 March 2011 (Case 2011/723, former Case 2010/681)

This matter concerned a claim for recovery of legal costs under the Public Administration Act, section 36, based on a solicitor's fee schedule. The counsellor had indicated that his client would not be billed until the question of legal costs had been decided. The local council refused to decide on the claim until documentation showed that the client had actually paid the fee.

The Ombudsman found that section 36 cannot be construed as meaning that the public administration must consider the material criteria to be met before a party's claim can be processed. Once the facts of the case are clear, the same Act's section 17 offers no powers to avoid reaching a decision on the grounds that the facts in evidence fail to meet the materiality test of the Act. In such a case the local council is required to judge the matter on its merits and reach a decision. In this case there-

fore the council was asked to process and decide on the claim for recovery of the legal costs.

Legal costs under the Public Administration act section 36(2) – "complainant's request for an alteration ... was properly founded"

28 November 2011 (Case 2011/817, former Case 2009/1588)

The County Governor of Buskerud appealed a decision by Rollag Local Council to temporarily prohibit building activities and property subdivision, because it omitted to include a specific holiday cottage development site. The County Governor of Oslo and Akershus, acting as the substitute governor, rejected the appeal, stating that there was no right of appeal in such cases. The developer of the holiday cottages demanded reimbursement of legal costs under the Public Administration Act, section 36, second paragraph. The demand was denied, citing that the "request for an alteration of the administrative decision was properly founded".

The Ombudsman found that the interests that the Governor of Buskerud purported to protect in her appeal were not sufficient in themselves to provide "adequate grounds to demand amendment" under the Act. The Ministry of the Environment was therefore asked to reconsider the matter.

Requirement for sound casework, including counter argument – Veterinary Medicine Legal Board's processes and mandate

26 April 2011 (Case 2011/564, former Case 2009/1806)

The Veterinary Medicine Legal Board had concluded in a statement that a veterinarian was liable to pay damages for negligence when a bearded seal succumbed during an operation. The vet argued that the statement was tainted by procedural errors and that the Board had exceeded its mandate.

The Ombudsman stated that the Legal Board's consideration of the matter did not comport with the requirement for sound casework. Among other things, the need to hear counter arguments by the complainant, A, before reaching a decision, was not met. The Board seems also to have exceeded its mandate in stating that A had acted in a manner liable to justify a damages claim. Accordingly I asked for the matter to be reconsidered. The Ministry of Agriculture and Food was also enjoined to examine the terms of reference of the Board's work, as indeed the Ministry had already expressed a willingness to do.

Excessive delays in transfer of unemployment benefits from Norway to other EEA member states

6 May 2011 (Case 2011/173)

The time that the Labour and Welfare Administration's European Economic Area office (Nav EEA) took to process cases involving the transfer of unemployment benefits from Norway to other EEA members was raised with Nav on general grounds. The Agency explained the processing times and described measures already in place to try and reduce them.

The Ombudsman recognised the explanations and made a note that the Agency intends to follow the developments closer hereafter.

Delays in processing disability pension appeal – Nav Administration Bergen

31 May 2011 (Case 2010/2436)

This case concerns the excessive time it took to process, and failure to follow up on, a complaint about disability pension. One reason for the long delay was that the complaint had been mislaid after

transfer from the local Nav office to Nav Administration Bergen.

The Ombudsman found that the administration in Bergen's failure to pursue the complaint was clearly open to criticism. The unit's response to the questions raised by the Ombudsman suggested an inability or reluctance to determine how the complaint had been mislaid, and why, despite repeated reminders, nothing had been done to address the matter earlier. As there was reason to suspect the archival practices in the administrative office and question if they complied with current regulations, the matter was reported to the National Archives.

Delays in Enforcement Office's processing of debt settlement

8 August 2011 (Case 2011/1181)

This case was about delays in the Law Enforcement Office's handling of a petition for a debt settlement, and also whether the complainant had received adequate information and guidance on the case procedure.

The Ombudsman found that the bailiff's handling of the petition was inadequate. The processing time was excessive, and the stated reasons seemed to rely on a misunderstanding of the rules. As a result the Ombudsman found reasons to report the matter to the Directorate of Police.

Unreasonable orders and sanctions in radio amateur case

28 April 2011 (Case 2011/608, former Case 2010/1455)

The complainant was previously a radio ham operating from his home, but in 2007 was ordered to remove aerials and other paraphernalia. In 2009, the amateur sent a new request to the local council, asserting among other things that conditions had changed and new technology was in vogue. The Ministry dealt with the matter as a petition for alteration, and found the criteria for alteration to be absent.

The Ombudsman found that the 2009 request should have been considered as a fresh licensing application to install aerials and other equipment on the property. The Ombudsman therefore asked for the matter to be forwarded to the Norwegian Post and Telecommunications Authority Supervisory Board for consideration of the substance of the application to reinstate amateur radio activities in the complainant's residence.

Processing of petition for alteration to Municipal Appeal Board

22 July 2011 (Case 2010/3040)

This matter raised the issue of whether the chairman of the Municipal Appeal Board was competent to deny a petition for alteration of a decision without submitting the question to the Board.

The Ombudsman found that Larvik Council's reason for denying the petition for alteration was based on a faulty understanding of the Local Government Act. Larvik was therefore asked to reconsider the reversal petition.

Incapacity of Substitute Governor's case worker

25 August 2011 (Case 2011/585, former Case 2010/1813)

This matter examined whether a case worker employed by the Substitute County Governor was disqualified under the Public Administration Act, section 6, second paragraph, since she – during processing of a complaint about dispensation from a construction ban in the beach zone – had signed an employment contract with the County Governor who had appealed the decision.

The Ombudsman found that there did indeed exist "special factors" that were

"liable to undermine confidence" in her impartiality, and asked the Substitute Governor to reconsider the case.

The Substitute Governor then revoked his decision in the case and simultaneously passed a new decision that revoked the council's dispensation decision. It was apparent from the Governor's decision that it could be appealed and the appeal should be sent to the Substitute Governor.

Building notice for boat house and seawall – duty to clarify the case and interruption of appeal deadline for electronic appeal

10 August 2011 (Case 2011/571, former Case 2010/453)

This case revolved around a building notice submitted for a boat house and landing stages for agricultural supplies. It was assumed that these works would be "working buildings for agriculture", which ought to be notified under the Planning and Building Act of 14 June 1985, no. 77, section 81 regulating agricultural buildings. The key issue was whether the buildings were "necessary ... in agriculture", as expressed by the exemption clause in the PBA, section 17-2, third paragraph, no. 1. Without an exemption, buildings may not be erected along the seashore.

The Ombudsman found that the owners had done as much as could be expected of them to support their claim that the landing stages were necessary. So it was up to the County Governor to shed further light on the matter, to disprove the owner's claim. The Governor had also failed to provide a sufficiently specific justification for why the combination feed store and boat house was not "necessary". The Governor was asked to reassess the circumstances.

Another issue raised by the case concerned interruption of the appeal deadline in cases of electronic appeal. The Governor had appealed against the local council's decision by email, directly to the processing clerk in the council, on the last day of the deadline. The Ombudsman found that the appeal had not been timely, since it was not sent to the email address designated for receipt of electronic appeals. Considering the circumstances of this particular case, the Ombudsman found no reason to suppose that overstepping the deadline had seriously affected the substance of the decision.

The County Governor of West Agder then reviewed the case, reversing his previous decision, so as to approve the building notice.

Substantive review of new application for dispensation

31 August 2011 (Case 2010/2776)

This case looked at whether it was permissible to deny a dispensation application. The council had denied an application claiming that it was essentially identical to a previously denied application. The County Governor upheld the denial decision.

The Ombudsman found it necessary to reiterate the general rule that any application must be given substantive review. Where structural changes have been made to a building before a new application is submitted, the concerns that this general rule is supposed to protect are increasingly relevant. Since it was clear that the new application was not submitted maliciously, the Ombudsman could not understand how the building authorities had found adequate legal basis to deny the review. The Governor was therefore asked to reconsider the case.

The Governor acceded to the Ombudsman's legal opinion and reversed his

decision, causing the council to assess the dispensation application on its merits.

Written warning – question of exercise of public authority?

9 September 2011 (Case 2010/3262)

A public limited company with a licence to engage in civil aviation had issued warnings to two employees of a security firm who were responsible for security checks at the airport. Specific demands were also voiced regarding the security firm's execution of its checks. As the complainant found this to be an administrative decision, they were concerned that the procedural rules of the Public Administration Act had not been followed.

The Ombudsman found that neither the giving of warnings nor the requirement for how to execute security checks constituted the exercising of public authority. The warnings were therefore not an administrative decision, but there remained the issue of whether the rule requiring both sides of a case to be heard meant that staff should be asked their opinion before the warning was given. The company was asked to reconsider its warnings.

Tax Directorate's handling of enquiries sent to the Tax authorities post office box addresses in Mo i Rana – letters gone astray

20 October 2011 (Case 2010/3063)

In a general observation, the Directorate of Taxes was asked about the registration of enquiries addressed to the Tax Authorities post office box addresses in Mo i Rana. The point arose from claims of no reply, where there was no evidence that the unanswered letters had ever been logged in. The Directorate of Taxes outlined a range of possible causes why the letters to these post office boxes might not be logged in. As increasing reliance on electronic mail will reduce the risk that enquiries are wrongly dispatched to Mo i Rana, there was no need – the Directorate believed – for comprehensive measures to prevent a presumably small number of letters being mislaid.

The Ombudsman argued the importance of enquiries to the Tax authorities being put on record immediately and logged into the pending attention system. The Directorate's explanation raised the issue of whether logging errors for enquiries received were given sufficiently serious attention. The Directorate was therefore asked to consider whether its practical routines for registration of incoming letters to the Mo i Rana post office boxes should be reviewed, and to make a proper effort to pursue any future enquiries relating to logging errors.

Council order and demand to remove earth bank and hedge

14 October 2011 (Case 2011/947)

The owner of a property had for several years received a series of orders and demands from the local council to remove a hedge and earth mound which lay close to a road.

The Ombudsman found that many aspects of the casework deserved criticism and therefore asked the council to take another look at the matter.

Award of 50 % operating grant to physiotherapist – casework

23 December 2011 (Case 2010/3024)

One of the respondents to an advertisement for a 50 % operating grant to physiotherapy was not summoned to interview and not awarded the grant. She believed she had been excluded and marshalled an arsenal of objections to the council's casework, including failure to submit the list of applicants and failure to provide adequate information.

The Ombudsman found that processing of the grant had been unsatisfactory on sev-

eral key levels, including the freedom to access the case documents. The council seemed to lack knowledge of central processing rules and was asked to review its routines for dealing with administrative issues in general, and access to information issues in particular. Whether these errors and omissions might also have distorted the award of the grant, was not something on which the Ombudsman could pronounce.

Parking permit for disabled person – appeal preparation, written justification and applicable law

24 January 2012 (Case 2011/1369)

This case concerned Skien Local Council's consideration of a parking permit renewal for a disabled person.

The Ombudsman found that there were several errors in the appeal body's decision, both procedural and material. The study showed that the council routines in appeal cases for parking permits were flawed. The Health Service Appeal Committee was asked to reconsider the matter. Skien Council were also asked to review their routines to ensure that its case workers complied with the Public Administration Act, Local Government Act, and good administrative practices in general.

Skien looked at the matter anew and granted the complainant a parking permit on the basis of handicap.

Lawyers

Criteria for solicitor's licence – payment of audit fees etc

3 October 2011 (Case 2010/3137)

The Supervisory Board for Practising Solicitors requires fees for audits to be paid before it will consider an application for reinstatement of a solicitor's licence after revocation. The complaint in this case involved this requirement and the fact that details were given to the press in violation of the Public Administration Act's Duty of Confidentiality rule in section 13, first paragraph, no. 1.

The Ombudsman found that the Supervisory Board's decision, to allow a new license should be subject to appeal to the Solicitors Licensing Board, since the criteria set must be deemed unfavourable to the practitioner. The Ombudsman also found it doubtful if one could demand payment of book audit fees before considering or granting an application for a new licence. The Supervisory Board was asked to revisit the issue. The Ombudsman found there was no breach of any duty of confidentiality.

Children

Requirement for consent from visitation parent for voluntary placement in foster home

8 December 2011 (Case 2011/2220)

Certain issues regarding the requirement for parental consent for voluntary placement of an underage child in a foster home were raised on a general footing with the Ministry of Children, Equality and Social Inclusion.

The Ombudsman took cognizance of the Ministry's explanation that the visitation parent's consent is only necessary if the placement is directed at or directly impacts the visitation parent's visitation rights. A concrete assessment must be performed in each case.

Labour and Welfare Administration's handling of appeal to National Insurance Court and other email enquiries

16 February 2011 (Case 2010/1518)

A complainant complained about lack of response to several enquiries he had made to the international office of the

Labour and Welfare Agency, Nav International, by email. These enquiries concerned an appeal to the National Insurance Court and the freedom to access a statement by the advisory medical officer.

When the Ombudsman's office pursued the matter, it turned out that the appeal to the NI Court had not been logged in the database, Infotrygd, and moreover had been consigned to the wrong case file.

The Ombudsman criticized Nav International for failure to respond to the complainant's enquiries and pursue them properly. As there was reason to doubt if the archival routines at the office were sound, the National Archives were alerted, as required under current rules.

Labour and Welfare Administration's obligation to advise of back payment of maintenance

29 March 2011 (Case 2011/735, former Case 2010/2035)

The issue in this case was whether the Labour and Welfare Agency (Nav) in its treatment of a claim for child maintenance should have informed the applicant that she might qualify for an advance payment, and thereby failed in its information duty so severely that the criteria for back payment were fulfilled.

The Ombudsman found that the failure of Nav to inform the applicant about her entitlement to an advance on the child maintenance, could not in this case be deemed equivalent to misinformation qualifying for back payment.

Nav Appeals handling of the enquiry from the Ombudsman drew critical comments. It took a long time to reply to the questions, and some of the documents requested by the Ombudsman had not been submitted, despite reminders. The Ombudsman put on record his dissatisfaction that the com original enquiries had not been followed up properly.

Child maintenance – assessing evidence to decide visitation deduction

13 January 2011 (Case 2010/1851)

The maintenance recipient and maintenance provider disagreed as to whether the provider's visitation with the son was compatible with the court's judgement. The child maintenance authorities (Nav), when assessing the evidence, ignored several details presented by the maintenance recipient client, which they considered insufficiently neutral.

The Ombudsman found that there were flaws in Nav Appeals East's assessment of the evidence presented and pointed in particular on the importance of the child's statements. The Ombudsman recommended reconsideration of the case.

When Nav Appeals reopened the case, the evidence was found to show clearly that visitation did not comply with the judgement.

Calculating income of welfare clients to determine child maintenance

17 November 2011 (Case 2011/2131)

A maintenance client had no income and received financial support from the social services. In the maintenance review the child maintenance authorities (Nav) found that receipt of this financial support was in itself reasonable ground to have no income, and that there was therefore no basis for stipulating a nominal income. The income was therefore stipulated as zero.

The Ombudsman found that the Nav Appeals office for Oslo and Akershus was relying on a misinterpretation of the rules for specifying maintenance. A client may receive a living allowance, yet a specific assessment still has to be made to determine if the income is below the client's income capacity, and if the client has a justifiable reason for the low income.

The Ombudsman asked for the case to be reconsidered.

Child maintenance – significance of court settlement for split residence

16 March 2011 (Case 2010/2901)

The question in this case was whether a court settlement prescribing division of residence should be relied on when calculating maintenance, or whether the change in circumstances – the new location of the child – should be relied on.

The Ombudsman found that the decision by the Nav Appeals office rested on a misunderstanding of the rules for setting maintenance, and asked for the case to be reconsidered.

Housing

Council home for deprived family

3 January 2012 (Case 2011/1689)

An African family including six underage children were denied an application for a council home. The Ombudsman questioned the council's assessment as to whether the family met the requirement to "not be capable of finding a suitable home by themselves". The council's routines for processing appeals were discussed, especially whether the practice of allowing the first-instance case worker to attend the appeal board's hearing was compatible with the impartiality rule in the Local Government Act, section 40, no. 3, letter c); and also the requirement for decisions to be reasoned.

The Ombudsman found that there were flaws in the assessment of whether the complainants should be classed as a deprived family, and asked for the matter to be considered afresh. Several factors in the casework gave rise to critical remarks, and the Ombudsman asked the council to review its routines for handling appeal cases.

Energy

Ministry of Petroleum and Energy's casework for wind farm licence

27 April 2011 (Case 2011/522, former Case 2010/616)

A and B, complained about the Ministry of Petroleum and Energy's handling of their appeal about the Norwegian Water Resources and Energy Directorate's decision of 20 December 2006, which granted Andmyran Vindpark AS a construction and operating licence for a wind farm in Andøy local district. They wondered if the Ministry had delayed the issue, believed the law had been wrongly applied (in part), that the equality doctrine in administrative law had not been upheld, and that the Ministry's presumption that low-frequency noise from turbines is not a particular health hazard was incorrect.

The Ombudsman found no cause to criticise the Ministry's processing time or application of the law. Although the Ombudsman could not see that the award of a wind farm licence in this case could be construed as a product of unfair discrimination, he did sympathise with A and B's question as to whether fairness and impartiality were adequately safeguarded. The health assessments underlying the Ministry's presumption that there is no health hazard due to low-frequency noise from wind turbines was not suitable for assessment by the Ombudsman

Family and individual

Principal language in preschools

14 January 2011 (Case 2010/1477)

The rules for principal language in preschools in Norway were revisited on a general footing with the Ministry of Education and Research.

The Ombudsman found it dubious from a legal standpoint whether there exists any imperative for Norwegian to be the principal language in preschools accredited under the Day Care Institution Act. The Ministry was therefore asked to arrange for clarification of the regulations.

Nomination of supporting guardian, hearing of counter arguments and written justification

28 June 2011 (Case 2011/247)

This case concerned the right of a person to be heard before a decision was reached, and the Public Administration Act's requirement that sufficient justification be provided in a case concerning the appointment of an additional supporting guardian, as defined in the Social Services Act, section 4A-3, third paragraph. The provision governs the use of force or legal powers on the client.

The Ombudsman found that the County Governor's consideration had not fulfilled the requirements for illumination of the case, the hearing of counter arguments, or the written justification standard. There was also a question of whether the rules had been misinterpreted. The Ombudsman asked for the matter to be taken up for reconsideration.

Fisheries and hunting

Fine for violation of aquaculture licensing regulations

27 July 2011 (Case 2011/518, former Case 2010/2294)

A fish farm complained about a penalty fine of 200,436 kroner for violation of the licensing regulations under the Aquaculture Act. The location of the farm had been moved before the licence was issued.

The Ombudsman found that the size of the fine did not comport with the regulations since no specific analyses were made of the earnings of the farm due to the violation. The Directorate of Fisheries was asked to reconsider the calculation of the fine.

Healthcare

House rules governing routine inspections of patient rooms, belongings and letters at St Olav's Hospital

24 March 2011 (Case 2011/694, former Case 2010/443)

Following a visit to St Olav's Hospital, Department for Mental Health, Brøset House, the Ombudsman found cause to raise certain issues with the Brøset management. The questions were principally about the routines for and implementation of the inspections of patient rooms, belongings and letters, and the legal justification for these inspections.

The Ombudsman concluded that the hospital – under the rule of law – lacked legal powers to conduct the interventions embodied in the house rules. Routine inspections of patient rooms, belongings and letters presuppose a change in the Mental Health Care Act. The Ombudsman noted that the Directorate of Health had asked the Ministry of Health and Care Services to consider such a change in the law. Brøset House was asked to rewrite the house rules to comply with the Mental Health Care Act, Chapter 4, until such time as the legislative changes are enacted.

Award of operating grant to physiotherapist

11 February 2011 (Case 2011/792, former Case 2010/43)

A local council awarded an operating grant to a physiotherapist in private practice. There were four applicants for the grant, but only the successful applicant was summoned to interview. Another applicant appealed the decision, claiming

that there were many errors in the council's casework, and in how applicants' qualifications had been assessed. Among other things she asserted that she had far longer and far more relevant experience then the successful applicant.

The Ombudsman found that the council had not been adequately aware of the distinction between appointing a person and allocating a grant to a person, under the Municipal Health Services Act, section 4-2, first paragraph. A series of casework rules had been broken in the process, a salient feature of which was lack of paperwork. For one thing, there was no written decision in the case, and the complainant, when being told of the decision, was not alerted to her right of appeal or time limit for doing so. It was also difficult to see how the council had found sufficient evidence to make a sound assessment of each applicant's qualifications.

The Ombudsman indicated that there was reason to question key factors in this case. Since the matter was now several years old a new process was not a viable appeal option. But the council was asked to consider what, if anything, could be done in respect of the complainant, considering the errors that had been committed against her. The Ombudsman also asked to receive the council's new procedures for these grant awards.

The council duly supplied its guidelines. In a new letter to the council, the Ombudsman pointed to the brevity and lack of detail of the rules, regarding casework in cases where an operating grant is awarded. However, the Ombudsman expected that the rules in the Public Administration Act governing written documentation, written justification and need to announce decisions would be adhered to by the council in future cases.

Denial of request for preimplant diagnostics abroad

22 December 2011 (Case 2011/685, former Case 2099/1225)

This request for diagnostics abroad was denied by the Preimplant Diagnostics Board. The board denied the application, saying that the requirement for a serious, inherited condition was not met. In its assessment, the board did not feel itself bound by a decision by the former Dispensation and Appeal Board for Treatment Abroad, which had granted permission based on the same diagnosis in one case. Nor was it considered crucial that permission had been given for a later-term abortion in cases where the baby suffers from that particular genetic defect.

The Ombudsman found it was not possible to criticise the board for not finding itself bound by a decision regarding the same disease by the previous panel of experts. Nor could the different conclusions in the two cases be said to constitute unfair discrimination. On the other hand, in the Ombudsman's opinion there was some justifiable doubt regarding the board's findings when it came to the significance of the permission for a late-term abortion in case of the same genetic defect, as was the case here. In light of this the Ombudsman asked the board to reconsider the matter, including a reassessment of the abortion decision reached in the complainant's case.

Broadcasting and communications

Complaint regarding allocation of local radio licences

31 January 2011 (Case 2010/731)

The Norwegian Media Authority authorised a number of new licences for operators of local radio stations in 2008. The decision was reversed by the Ministry of Culture based on a casework

error. The Media Authority then announced the competition a second time and passed a licensing awards. Despite an appeal this award was upheld by the Ministry. The Norwegian Local Radio Federation complained to the Ombudsman about the casework and application of the law.

Following a review of the case documents and in light of the analysis from the Ministry, the Ombudsman found the matter could be closed. Yet the Ombudsman found cause to comment on the Ministry's interpretation of the regulations. Regarding which broadcaster was the successful applicant, this was a matter for the Media Authority to decide, and not something the Ombudsman could re-examine.

Competition and consumer affairs

Denial of request for injunction under Competition Act, section 12 – written justification

25 July 2011 (Case 2011/569, former Case 2009/2925)

Dairy cooperative Tine BA, in August 2007, deducted the sum of 40 øre per litre for milk supplied by a farmer, since he was not a member of the Tine quality ring, Kukontrollen. Following an enquiry from the farmer, the Competition Authority could not see that Tine had abused a dominant position in the market, in violation of the Competition Act, section 11. It therefore found no reason to resource an enquiry. The farmer appealed to the Ministry of Government Administration, Reform and Church Affairs, who did not pursue the matter.

The Ombudsman found that the Competition Authority's reasoning was flawed and that it was not possible to verify if the Authority's resource priorities were acceptable. The requirement for a written justification or reasoning in section 12 of the Competition Act could not be said to be met. The Ombudsman asked for the matter to be reconsidered.

Prison welfare

Review of visit to Bodø Prison – provision of outdoor yard for physical exercise, prisoner representatives, lighting in security cells and information about the Ombudsman

4 October 2011 (Case 2010/2899)

In January 2011 the Ombudsman visited Bodø Prison. In light of what was revealed at the visit, a number of issues were raised with the Correctional Services, Region North, including the opportunities for inmates to take physical exercise in the yard, the representation scheme, lighting in security cells, and information given to the inmates regarding procedures for approaching the Ombudsman.

The Ombudsman remarked that proper snow clearance and sanding were absolutely essential if inmates were to have any real chance of using the main yard for physical exercise throughout the winter half year. It was therefore a good thing that the Correctional Services had announced it would tighten up the routines for snow clearance and sanding. The Ombudsman further noted that certain prisons allow broad freedom in how the representation scheme is organised, and praised the prison's system of morning meetings in each department. The point was made that regard should also be paid to the inmates' wishes in designing prisoner representation, and the Region was asked to consider if the purpose of the scheme had been safeguarded.

Lighting in the two high-security cells was poor at the time of the visit. The Ombudsman noted that the Region had announced that lights would be installed in the corridor outside the cells. The Ombudsman emphasised that satisfactory lighting was a right, and that even

security cells must allow inmates a certain degree of daylight. The right of inmates to communicate freely and unhindered with the Ombudsman was also reiterated. It was positive that the prison, after the visit, removed a paragraph in its bulletin to prisoners which required enquiries to the Ombudsman to be channelled through the Prison director.

Agriculture, forestry and reindeer husbandry

Relaxation of residency requirement on property no longer subject to licence

15 April 2011 (Case 2011/596, former Case 2010/1110)

This case concerned a complaint to the County Governor of Rogaland, regarding her treatment of an application to relax the residency requirement for land. It remained an important consideration that licensing conditions should be upheld at the time the relaxation issue was decided, despite the property no longer being subject to a licence.

The Ombudsman found that the Governor's decision to refuse relaxation of the residency requirement might have an unfair impact, and asked her to make a renewed assessment of the case.

Denial of application for low price subsidy on wheat

31 August 2011 (Case 2011/705, former Case 2010/1640)

A complainant applied for a low price subsidy on wheat. Such subsidies are available for importers who purchase wheat for resale or as an ingredient in commercial feedstocks and concentrates. The request was denied on the grounds of non-commerciality. Following a review by the Norwegian Agricultural Authority, the denial was upheld, this time on the grounds that the complainant was subject to a resale ban since the wheat was not pasteurised. The Ministry arrived at the same conclusion.

The same official had investigated parts of the case for both instances – the Agricultural Authority and the Ministry of Agriculture and Food. In the Ombudsman's opinion, this involvement in the case in both the first instance and the appeal instance was a mistake considering that the appeals process seeks to be impartial. After looking at the whole issue, the Ombudsman found, despite the duplication, that the official's involvement in both instances was unlikely to have prejudiced the outcome of the decision.

Lack of appeal right following "expression of concern" to the Norwegian Food Safety Authority

3 October 2011 (Case 2010/2482)

A practising veterinarian sent in an "expression of concern" to the Norwegian Food Safety Authority Emergency Response about a dog owner who had not brought his dog in for the examinations the vet considered necessary. When, by coincidence, the vet later learned what the FSA duty officer had done in respect of the case, he appealed to the FSA about that officer's decision. Later the vet also objected to the FSA's response to the first appeal. The veterinarian believed he had a right to complain about the FSA's decisions in the case.

The Ombudsman found no grounds to criticise the FSA for not allowing a right of appeal regarding the duty officer's handling of the expression of concern. Nor did the Ombudsman find reason to criticise the FSA for not allowing the complainant to appeal the decision not to institute sanctions against the duty officer – also a veterinarian.

Accuracy of Population Register in licensing and required residency cases

24 November 2011 (Case 2011/1125)

On a general basis the Ministry of Agriculture and Food was invited to comment on statements by the Directorate of Taxes regarding how registered residence in the Population Register was afforded weight in cases regarding licensing and required residency. The Ministry was asked to consider if a circular M-2/2009 had been sufficiently comprehensive when it stated that it was sufficient for a person to be registered as the resident on the property, for the authorities to find that the property had been previously used as a year-round residence, as required in the Concession and Pre-emptive Acquisition of Real Property Act, section 7, first paragraph, no. 1. The provision permits councils to issue regulations with a diminished concession limit for "built property that is or has been used as year-round residence" The Ministry subsequently explained how the population records were utilised in such cases.

The Ombudsman stated that it was reasonable to assume that a danger inherent in referring to the Population Register's records in the circular was that local councils might assume that the Concession Act, section 7, first paragraph, no. 1, would apply to properties that had not actually been used as all-year residences. This could in turn mean that a residency requirement was conveyed with the property, despite the criteria in the Act not being met. The Ministry was therefore asked to amend its circular on this point. The corollary in the Concession Act, sections 6 and 7, that a residency requirement implied a requirement for residency records, gave no grounds for comment.

The Ministry later informed me that the circular would be amended to comply with the Ombudsman's finding.

Human rights

Police handling of reporter at security check in Oslo District Court – media's right to protect sources

29 April 2011 (Case 2011/436, former Case 2008/2516)

The case concerned the police treatment of a newspaper reporter in connection with a security check on the way into a hearing in Oslo District Court. The reporter's documents were confiscated despite his objection that they were protected as a press source. His shoulder bag was inspected and a clearly-marked press notepad was opened and the pages turned. Among the issues raised by the case was the right of the media to protect its sources under the European Convention on Human Rights (ECHR), Article 10.

The Ombudsman criticised the police action, finding that the incident represented a violation of the right of journalists and newspapers to protect their sources under Article 10, seeing that the police took the documents. The inspection of the notepad was also a violation of press protections under the same article, and also contrary to the Criminal Procedure Act's rules about searching persons. The Ombudsman expected measures to be implemented to reduce the danger of similar incidents happening in future.

In a letter from the Attorney General dated 11 May 2011 the Directorate of Police was reminded – in light of the Ombudsman's findings – to reiterate to Chiefs of Police that security inspections must take place within the current regulations, and are different from the coercive powers under criminal procedure. The Attorney General insisted that, when the practices were tightened up, they should clearly state that searches and seizures may only take place where the proper conditions exist. The protection of media sources must be respected, and in this

respect the protections of Article 10 must be borne in mind.

The Ombudsman subsequently received a copy of a letter of 2 September 2011 from the Directorate of Police to the Chiefs of Police which made these points.

Open meetings

The nature of meetings under the Local Government Act

8 April 2011 (Case 2010/2939)

Skedsmo Council found that a two-day seminar for elected representatives and others on the municipal budget was not a "meeting" in the sense of the Local Government Act. According to the council, the seminar was for information purposes only – a sort of homework help session – for councillors without any planning or other discussions taking place.

The Ombudsman found that an assembly of a publically elected body was a meeting in the sense of the Act when it was determined beforehand that the members of that body would join together as an elected body to negotiate, plan, reach decisions or otherwise deal with issues and questions which – by law or under regulations – it was tasked to tackle. Even though the council had flagged the seminar as a study session, the budget process needed to be viewed in context, and it was therefore hard to see how the seminar could not be part of the process leading to adoption of the budget. The Ombudsman therefore found that the council's understanding of the seminar's place outside the remit of the LGA's rules on meeting transparency was dubious.

Closed, extraordinary meeting of county council – question of notice requirements and access to teleconference

23 August 2011 (Case 2011/79)

Telemark County Council sought to hold a teleconference to deal with a proposed settlement for a contractual dispute. So as to keep internal views confidential, in case the settlement was not adopted, requiring the matter to go to court, it was deemed vital at the outset to proceed behind closed doors. Since the notice of meeting requirements only apply in the case of a "meeting to be held with open doors", the meeting was not announced to the public. The interval between the settlement proposal and the acceptance date was in any case so short that there was no time for the statutory announcement.

According to the Ombudsman, the county council had misinterpreted the law. The Ombudsman's view, based in part on earlier statements that year, discussed the announcement duty as it also relates to meetings that most likely will proceed behind closed doors. If it were the case that the opinion of the administration or county mayor was to decide whether to have the doors open or closed, then there would be little substance in the rule that the elected body – in this case the county council – should by law decide the issue. Given today's technology and the fact that the county council even one week before was advised that a meeting of the county council would have to be held, it is hard to understand why it was so impracticable to offer general information about the pending event. The Ombudsman also found reason to comment on some other aspects of the process.

Procedure prior to and during meetings in elected body

1 June 2011 (Case 2010/2638)

Two meetings of the executive committee in Larvik Local Council in autumn 2010 were held behind closed doors. The meetings had not been advertised in the media beforehand, and it was unclear under what powers the doors were closed. Information in the meeting ledger was of little help. A newspaper objected to the way the matter was handled prior to and during the meetings of the executive.

Closure of meetings is something the executive must decide. The duty to advertise the meeting in advance must be held to apply in full, even where there may be reason to close the doors for consideration of one or several issues at a specific meeting. Closure of the doors must be decided on a case by case basis, and the authority on which they are closed must be put on record in the ledger.

Industry, licences, permits and concessions

Parallel import of insecticides – documentation of formulations

24 June 2011 (Case 2011/737, former Case 2009/1499)

The principal importer found that the Food Safety Authority had no right to approve applications from a number of parallel importers. They argued that lack of control of parallel approvals which may be harmful to health and the environment could potentially damage the reputation of the original formulation.

The question for the Ombudsman was whether the documentation attached with the applications was sufficient to meet the requirements set out in regulations and guidelines.

The Ombudsman found it doubtful whether the FSA had sufficiently solid grounds to approve the parallel formulations and asked for the case to be reviewed.

Open government and transparency

Access to letter of formal notice from EFTA Surveillance Authority

20 May 2011 (Case 2011/531)

A complainant had asked for access to a "Letter of formal notice" sent by the EFTA Surveillance Authority (ESA) to the Ministry of Petroleum and Energy. The Ministry denied the request, asserting that the information should be kept confidential "in the interests of Norwegian foreign policy", and that the letter contained information about Norway's negotiation stance with the ESA.

The Ombudsman found the denial to be rooted in domestic policy issues, and that the Freedom of Information Act, section 20, first paragraph, letter c – which the Ministry had cited as its authority – therefore failed to offer the Ministry the option to exclude the ESA's letter from the view of the complainant. The Ministry's decision conflicted with the fundamental concerns underpinning the right of access. It was also difficult, the Ombudsman found, to accept that a letter written by the ESA, even if disclosed, could in any way damage Norway's negotiation stance towards the ESA.

Following a review of the issue the Ministry adopted the Ombudsman's legal perspective. The ESA letter was published.

Access to interim report to Ministry of Finance

20 May 2011 (Case 2010/3227)

A complainant referred a matter to the Ombudsman, stating that the Ministry of Finance had denied full access to a report from the Directorate of Taxes entitled "Report for the first six months 2010",

and an appendix entitled "General risk analysis for Directorate of Taxes in 2011". The refusal of access to the report was rooted in the view that publication could undermine government control measures (Freedom of Information Act, section 24), since resourceful taxpayers could adapt to the inland revenue's inspection regime and monitoring strategies. The argument in the case of the appendix was in part that the FIA, section 15, first paragraph, allowed exclusion of a document that the Ministry had called for as a step in its internal deliberation.

The Ombudsman asked the Ministry to reconsider if parts of the report could be redacted on the grounds of section 24. It was remarked that the refusal of access was not adequately specific in its justification, and that the Ministry's account to the Ombudsman left some doubt regarding whether redaction was an option. The Ombudsman found no reason to object on legal grounds to the Ministry's decision to redact the entire appendix.

The matter was then laid to rest, in light of the Ministry's new explanation for why the redaction was necessary in the Ministry's view.

Access to cost estimate by Government Building Office

27 April 2011 (Case 2010/2832)

The Ministry of Culture denied newspaper Aftenposten's request for access to a letter from the Norwegian Government Building Office (Statsbygg) to the Ministry, containing cost estimates for refurbishment of the National Theatre main building.

The Ombudsman asked for further particulars of the denial. The fuller rejection supplied could hardly be said to meet the standards envisioned in the Freedom of Information Act, section 31, second paragraph, as there was no reference to the main concerns that decided the denial. Nor was there any indication in the original denial or in the justification that "enhanced access" under section 11 had been considered. The Ministry did not alert the Ombudsman to specific factors making it "imperative" to exclude the letter from disclosure, for reasons of robust decision-making processes within the Ministry, see FIA, section 15. The Ministry was therefore asked to make a new assessment of whether access to the letter could be granted in this case.

The Ministry of Culture then granted access to the letter from Statsbygg.

Access to consultancy report and question of whether reports from a regional office to a directorate are internal

8 September 2011 (Case 2010/2991)

A newspaper wished to review a report to the Directorate for Children, Youth and Family Affairs (Buf-Dir) from an external group of consultants, and documents from the five regional offices of the Children, Youth and Family Affairs Office (Buf-Etat), which had been sent to Buf-Dir and used in the writing of the Office's annual review. The Ministry of Children, Equality and Social Inclusion found – after a new review – that it could provide partial access to the consultancy report, but maintained that Buf-Dir and the regional offices of Buf-Etat must be viewed as a single body in the context of the Annual Reporting work, and that the reports from the regional offices must be a single body in the same context, and that the reports from the regional offices could therefore be excluded from disclosure on the grounds of being within a single body.

Following a complete review of the information available in the case, regarding the nature of the relationship

between the regional offices and the host directorate, the Ombudsman found it hard to understand that the Directorate and its regional offices could be deemed a single body. There was no explanation given why the situation should be different in the context of the Annual Report, and therefore the Ombudsman was doubtful whether it was permissible to exclude the documents on the basis of being internal, see Freedom of Information Act, section 14. The justification the Ministry had given for not granting "enhanced access" to the underlying documents from the regions was also flawed. Nor had the Ministry explained why it was "imperative" to exclude five pages of the external report, see FIA, section 15, second paragraph.

After considering the matter anew the Ministry granted full access to all documents in the case.

Setting up list of applicants

26 October 2011 (Case 2011/1008)

A reporter complained that nine out of twenty-one applicants on a list of applicants for the position of Director of Communications in the Ministry of Defence were not disclosed. The Ministry's practice was to not examine the reasons applicants gave for confidentiality before setting up the list. If anyone asked for "enhanced access", then the grounds were assessed.

The Ombudsman found that the Ministry's practice did not sit comfortably with the Freedom of Information Act.

Document disclosure – distinction between public actions of a civil servant and confidential matters of a personal nature

22 September 2011 (Case 2011/1374)

A complainant requested to see a document in the files of Nes Local Council. The council denied the request, stating that the document was written in such a way that it concerned "a person's personal matters", under the Freedom of Information Act, of 19 May 2006, no. 16, section 13, confer the Public Administration Act, of 10 February 1967, section 13. The entire document was excluded from access in respect of "the intimate circumstances in the village", and the risk that the person detailed in the information could be identified (risk of connecting the dots), if partial access was granted. The County Governor of Oslo and Akershus upheld the council's denial, denying disclosure of the whole document. The justification noted that "the document concerns an official's execution of his work", but that the information described the individual's characteristics in a manner that boiled down to "personal matters", as defined in the PAA, section 13, first paragraph, no. 1 and FIA, section 13.

The County Governor failed to state specifically what information in the document was felt to constitute personal characteristics of the official, so presented as to be embraced by the non-disclosure rule. Accordingly it was also not proven that such information constituted "the major part" of the document, such that the entire document could be excluded from access, see FIA, section 12, letter c). It was not apparent whether the County Governor had considered whether the official's need for protection – if any – would be safeguarded if individual characteristics were omitted, see PAA, section 13 a, no. 2. The County Governor was therefore asked to make a new, specific assessment of what details in the document, if any, would be covered by the non-disclosure rule, and whether parts of the document could be accessed. In as much as delayed disclosure was relevant, as described in the FIA, section 5, first paragraph, the Governor was reminded that this was a continuous assessment, and that he would have to adhere to the facts in the case as they appeared at the time of making the assessment.

Following a renewed assessment the Governor found that partial access to the document was acceptable, but that certain details had to be excised to protect private individuals mentioned in the letter.

Access to municipal pension fund documents

5 December 2011 (Case 2011/244)

A reporter wanted to see documents held by the Trondheim Municipal Pension Fund, but the request was denied. The South Trøndelag County Governor upheld the denial, referring to the fact that the pension fund was not subject to the Freedom of Information Act.

As the Ombudsman found the opposite to be true, he asked the Governor to reconsider the request for disclosure.

Access to working environment report

1 November 2011 (Case 2011/1273)

A newspaper asked to see a report on the working environment that a local council had prepared. The occasion was a press release by the council stating that the chief executive would immediately take up a new position in the council. The County Governor responded that the results of the working environment study had only been written on a few slides used to present the matter to the executive committee. Access to the slides was denied with reference to the Public Administration Act, section 13, first paragraph, no. 1 concerning non-disclosure of "a person's personal matters".

The Ombudsman found it doubtful that all data on the slides was subject to non-disclosure, and asked the Governor to reconsider the request for access to slides 5, 6 and 9.

Public records

Directorate of Taxes' consideration of request to reverse residency records

14 April 2011 (Case 2011/559, former Case 2010/100)

The owner of a property used it for recreational purposes. Until it was purchased by A in 1982, it was owned by B, and in the Population Register B was registered as living there from 1978 to 1989. It was claimed by A that B had never lived on the property, but that he had always lived in a workman's cottage on the neighbouring plot. Since the residency records might be significant for future owners, who might be forced to live at the address, A made a series of requests for records to be reversed. As documentation of B's residence, he presented a number of affidavits, including letters from B and from B's employer.

Tax South and the Directorate of Taxes rejected the plea for reversal, not least with reference to the residency records being many years old, and the case documents for registration having been destroyed. The Directorate also made the point that normally it was necessary to show more than a preponderance of probability that a decision based on residency was based on false information.

The Ombudsman found that one had to assume that a decision about residency records would be void if the person registered had neither lived there, on the property, nor should he have been registered there, for whatever reason, and that the Population Register, if proof could be offered, would be bound to make changes. The Population Register had to have the option to demand that important pointers showed that the residency records were built on unsustainable facts, but one could not require that all conceivable possibilities that the records were correct could be discounted. When the Directorate of Taxes

did not agree that the documents presented by A proved that the records were based on inaccuracies, then it should have given guidance on the types of documentation that could be significant, and perhaps also investigated the matter itself. Following this the Directorate of Taxes was asked to reconsider its position.

The Directorate therefore reviewed the matter, but concluded for a second time that there was no proof that B had failed to take his daily rest on the property.

Planning and building

Change in circumstances due to administrative omissions – should complainant's permit survive council's dereliction of duty

24 March 2011 (Case 2011/730, former Case 2009/2235)

The complainant sent in a building commencement notice six weeks before his general permit ran out under the Planning and Building Act 1985, section 96, first paragraph. Four months later the application was denied on the grounds that the general permit had then expired.

The Ombudsman found that the building authorities did not have the power to reject the notice on these grounds. There were good reasons for saying that the three-year deadline had already paused when the notice was sent in, but regardless of that, the council could not impede the building owner's rights, by neglecting to discharge their duty to consider the commencement. The County Governor was asked to look at the matter anew. The Ombudsman also asked the Ministry of Local Government and Regional Development to reconsider the regulations, as they had promised to do.

In a reply to a letter from the Ministry, the Ombudsman added that a natural reading of the Act and preamble was that it presupposed lawful actions by the competent authorities. A general principle of this statement was that the council's failure to consider the owner's notice would also influence the administrative issue under consideration. He pointed out that the Ombudsman scheme presupposes that the Ombudsman's findings are adhered to, and expected the Ministry and County Governor to comply also in this case.

The County Governor subsequently cancelled the denial and asked the council to reassess the commencement notice on its merits.

Alteration of planning basis after request for building permit

13 April 2011 (Case 2011/720, former Case 2009/1675)

An application for a general building permit to erect a two-family home was denied, with reference to a new sector plan, which had only been passed after the standard 12-week deadline allowed by the Planning and Building Act for handling building permit requests. The complainant was adamant that the revised plan could not be used to justify the denial.

The Ombudsman found that a general point of departure must be that the competent authorities abide by the law and cannot, by failing to do so, create space in which the applicant's material basis is eroded. He found that the council had not adhered to the legislative requirement that cases be moved forward, and that the new sector plan could not therefore be used to decide the issue. In light of this the County Governor was asked to consider the matter afresh.

Following a request from the County Governor for guidelines, the Ministry of Local Government and Regional Development stated by letter that it disputed the Ombudsman's findings regarding legal interpretation. By contrast the Ministry of the Environment ruled that the Ombuds-

man's findings should be relied on until such time as the law is changed. The County Governor then adopted the Ombudsman's legal finding, reversed his decision, and granted the general building permit.

Zoning plan – inadequate consideration given to alternative industrial sites

28 April 2011 (Case 2011/709, former Case 2009/2104)

This matter concerned the obligation of a council to consider alternative locations when drawing up the planning and building master plan for an industrial estate. From the planning documents for the Environmental Impact Analysis, it was apparent that twelve different locations had been considered, albeit only in general terms, and without further details.

The Ombudsman found that the alternative sites and alternative assessments should have been presented to the local council, and found the matter to be insufficiently illuminated when the council reached its planning decision. The County Governor was asked to make a new assessment.

Building permit in area designated for bath house

7 March 2011 (Case 2011/721, former Case 2009/2669)

This matter concerned a building permit to erect a structure on a site that Frogn Local Council had reserved in the zoning plan for "building of a bath house".

The Ombudsman found that the building did not come under the zoning plan's provision of a bathing beach bath house, and asked the County Governor of Oslo and Akershus to reconsider the request.

Following the new consideration the County Governor overturned the permit.

Effect of temporary development ban on earlier "incomplete" building application

17 June 2011 (Case 2010/3235)

The complaint concerned the rejection of two applications for a general permit for provision of water and drains to projected housing estates containing about 20 homes. The complainant argued that the work he asked to do could not be hit by a temporary ban on building and partitioning of the area, since his application predated the ban.

As the applications were incomplete, it was uncertain whether they could have been granted before the ban was put in place. On a general note, there was insufficient evidence to justify further investigation. The matter was assessed in light of the Ombudsman's previous findings, notably cases 2007/2067, 2009/196 and 2011/720.

Understanding a decision about location of outhouse and annex

1 September 2011 (Case 2010/3197)

This case concerned how to interpret a decision about the location of an annex and a pre-approved outhouse, see Planning and Building Act, 1985, section 70, no. 1. The council had granted permission for the erection of an outhouse in 2007. Later the parties disagreed whether the location desired by the owner was compatible with the building permit granted.

In the Ombudsman's opinion the County Governor's interpretation of the location clause was too narrow and there was no evidence that the Governor had provided a satisfactory justification for his view. Therefore the Ombudsman asked the County Governor to consider the matter anew.

Partitioning of plot segment in recreational zone for combination with holiday cottage plot

23 September 2011 (Case 2010/2416)

This case concerned the right of a local council to deny partitioning of a parcel of land. The argument was that partitioning violated the zoning intent, even though in fact the parcel had the same zoning intent before and after partition.

Partitioning and combination of a plot containing a holiday cottage might ultimately result in increased or altered use of the parcel. In recognition of this, the Ombudsman found – with reservations – that there was inadequate basis to strongly object to the County Governor's decision on legal grounds.

Undue reliance on dispensation as opposed to rezoning

11 October 2011 (Case 2011/87)

This matter looked at dispensation from a zoning plan and the reliance on the dispensation mechanism rather than going through a rezoning process. Haram Local Council had granted dispensation for the number of floors and ridge heights of new homes. The decision was supported by the County Governor of Møre and Romsdal.

The Ombudsman found that the council's readiness to grant dispensation undermined the standing of the zoning plan. If a council no longer wants to adhere to its zoning plan, then the proper course of action is to change the zoning provisions, rather than start granting a series of dispensations. It was also uncertain whether the reasons the County Governor had voiced could justify such a comprehensive set of dispensations. Therefore the Ombudsman asked the Governor to reconsider the matter.

Consideration of application from co-owner in a private dispute

18 October 2011 (Case 2011/1013)

Two sisters, A and B, were joint owners of a plot of land. B owned a holiday cottage on the plot. A asked the local council for dispensation to build her own holiday cottage on the same, jointly-owned plot. B believed A had no right under private law to erect a cottage, and A's application should therefore be denied by the local planning and building office.

After looking at the facts of the case the Ombudsman found no reason to object on legal grounds to the building office's consideration of A's application.

Denial of general application with reference to a new zoning provision adopted before the appeal

13 October 2011 (Case 2011/377)

The complainant asked for general building permit to erect six residential units as projected in the council's zoning plan. The council denied the application without giving any reason. The complainant appealed, whereupon the council passed new zoning provisions. The County Governor found that the application violated the new zoning provisions, for which reason he denied the application.

The complainant then turned to the Ombudsman, who referred the matter to the County Governor. With reference to the Ombudsman's comments in SOMB-1987-71, case 2011/720 and case 2011/730, the Governor was asked whether the matter should have been considered under the original zoning rules. As the County Governor replied with a promise to reverse his decision, to bring it in line with the comments mentioned, the Ombudsman found that the case was satisfactorily concluded.

Third party concerns to justify denial of building permit

1 November 2011 (Case 2011/1412)

This matter related to a denial of an application to erect a holiday cottage on an island. The County Governor of Oslo and Akershus upheld Asker Local Council's denial of the building application. The reason for the denial was the zoning plan's requirement for a parking space on the mainland, which had not been complied with.

The Ombudsman found that a general permit granted to a third party could hardly be considered relevant from a legal perspective to allow the authorities to deny the building application. The Ombudsman felt that nor could one infer any requirement for public registration in the zoning plan's parking space rule. The Ombudsman therefore asked the County Governor to take another look at the matter.

Utility funding contract as condition of building permit and letter of commencement

22 December 2011 (Case 2011/1557)

Vinje Local Council granted a general building permit on certain conditions, namely that the builder signed a funding contract for site development of utilities. The condition was upheld by the County Governor of Telemark.

The Ombudsman found that the council has no right to impose such a condition without specific powers in statutes or regulations. Any contract signed subject to such coercion would not be binding on the owner, the Ombudsman felt. Therefore the Ombudsman asked the County Governor to reconsider the matter, including whether he believed site development and provision of utilities was adequately founded in the Water and Sewage Rates Act and its appurtenant regulations, or in the municipal regulations governing water and sewage rates.

Police and prosecution service

Use of police cells in Romerike Police District – exercise yard, multiple occupancy, video monitoring, arrest journal and door hatches

14 January 2011 (Case 2011/917, former Case 2009/2108)

In October 2009 the Ombudsman paid a visit to Romerike Police District and Lillestrøm Police Station. Based on observations there, a number of questions were put to the police district, including the exercise facilities for persons held in detention, the placing of multiple detainees in a single cell (doubling), video monitoring of the cell area and the cell occupancy log.

The Ombudsman insisted that it would be preferable if all exercise times were entered in the arrest journal, and also that, in cases where exercise was not possible, a brief explanation be given. The Ombudsman indicated that the basic "one man one room" rule in the Correctional Services should also be the guideline for police detention practices. The Ombudsman was critical towards the use of video cameras. He therefore noted with concern that the 48-hour rule for police detainees was exceeded in a number of cases, remarking that the journal should reflect what was done to find a prison cell. The Ombudsman also remarked on certain aspects of cell door operation where there were bars or slots instead of a plain steel hatch.

Romerike Police District returned to the matter, offering comments and further information on the topics raised by the Ombudsman. A new letter was then sent to the police district with further comments from the Ombudsman.

Submission of information about Norwegian citizen from Økokrim to foreign judicial authority – legal basis and procedure

2 September 2011 (Case 2011/678, former Case 2009/759)

The case raised issues associated with the National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim)'s response to and pursuance of a judicial request from the Brazilian authorities. The request was linked to the Brazilian police's investigation of a Norwegian citizen's financial dispositions in Brazil.

The Ombudsman found that the police had sufficient legal basis to reply to the judicial request. There were no points in the material examined that gave cause for important legal objections regarding how the final report was transmitted or the police follow-up after it was initially sent. However, Økokrim was criticised for not responding to an enquiry from the complainant's Norwegian counsel.

Utilities and rates

Calculation of annual water rates – time bar on previous years' variable consumption

6 May 2011 (Case 2011/627, former Case 2010/1888)

A local council billed the complainant for annual water and sewer rates, based on the difference between actual meter reading the last time the meter was read, and the total of previous years' billed consumption. In the years the owner had not read the meter, the council had still demanded the variable component of the water rate, based on an estimated number of litres consumed. The owner found the annual rate estimated in this way to be too high, noting that not all variable consumption as estimated by the council had occurred in the current year. He held that consumption had been consistent during the years when the meter was not read, so that parts at least of the variable consumption had to be out of date.

The Ombudsman found good reason to suppose that the time bar on the variable rate was in effect from the date that the water usage could have been determined by reading the meter. The question of what parts of the consumption were time-barred therefore depended on when water was actually consumed. A concrete appraisal of the evidence was therefore required, whereupon the council must assume the most likely alternative. The Ombudsman found that in the absence of other indicators, it was clearly likely that the consumption of water on the property was more or less uniform from one year to the next. The council was therefore asked to reconsider the matter.

Billing charge for chimney sweep

15 November 2011 (Case 2011/620 former Case 2010/1438)

A council demanded payment of its chimney sweep charges in conjunction with payment of the water and sewage rates. The demand was broken down into four instalments, which meant that the complainant was faced with a total of 200 kroner in billing charges in order to pay 212 kroner to the chimney sweep. Division into instalments supposedly made people more willing to pay.

The Ombudsman found that there were clearly opportunities to save money by demanding the charges once a year. Since the council's argument for breaking down payments into instalments was unlikely to apply in the case of the chimney sweep, the instalments were deemed "clearly unreasonable". The council was asked to readdress the matter.

A reply from the council stated that the billing charge on sweeping services had been abolished on 1 January 2011 and for

2012. The costs of billing are now incorporated in the sweeping charge.

Taxation, assessment and property taxes

Council's standard matrix for estimation of property tax

22 August 2011 (Case 2011/814)

For the determination of property taxes the Ministry of Finance summed the nominal plot value and nominal building value. This sum was multiplied by internal and external coefficients. In general terms, the Ministry was asked whether the method was appropriate and legally sound for determination of property tax rates.

The Ministry replied in part that the standard matrix used for taxation had to ensure that the tax base was proportional to variations in market values in different properties in a council district. If several alternative matrices were used, they had to take account of different qualities of the property, and the guidelines should try to explain what aspects to focus on when applying any given matrix. The use of internal and external coefficients for the building (on the one hand) and the plot (on the other) was likely to yield "highly accurate precision". If the coefficients were applied to the sum of the land and building values, then it might be necessary to adjust the coefficients in light of that. The precision would be rather less if such a combinatory approach was used, and further corrections would be necessary in cases where the value of land and building was greatly at odds with the local norm.

The Ombudsman noted the arguments and expects local councils to adhere to them.

Property taxes – tax-free allowance and justification

20 October 2011 (Case 2011/551, former Case 2010/2329)

The matter concerned property taxes on a holiday home in Sel local district, where two siblings owned the land and an outhouse jointly, but had exclusive or separate title to individual cottages on the plot. Following a complaint the pair were taxed on their individual cottages, but were only granted a common tax-free allowance for the joint property, since the council guidelines required the allowance to follow the land registry code number.

The Ombudsman found that the council guidelines were not consistent with a correct understanding of the law, and that the siblings – as provided in the Property Tax Act and the legal arguments predating that Act – were entitled to separate tax-free allowances for their individual cottages. The Ombudsman also offered remarks about the reasoning for the property tax decision.

Failure to forward request for medical expenses deduction from Local to National Taxation Appeals Board – unfair treatment

3 October 2011 (Case 2011/1963)

On behalf of taxpayer A, complainant C held that the Local Taxation Appeals Board's ruling on her claim for a special income deduction for medical expenses for 2007 was the result of discrimination. The complainant held that the Directorate of Taxes had denied the taxpayer's request for a review of the decision by the National Taxation Appeals Board.

The Ombudsman found that the discretion that the Directorate of Taxes had exercised in connection with consideration of the taxpayer's request for an alteration had not been at fault. Addi-

tionally the Ombudsman found that the denial of the request for an alteration could not be said to be inequitable.

Special allowance for serious medical expenses – obligation of tax authorities and health authorities to be proactive

18 October 2011 (Case 2011/1171)

Taxpayer A failed to win a deduction for medical treatment expenses for alcohol psychosis at a private therapy centre. The Directorate of Health found insufficient evidence that treatment had been sought in the national health service, or that any indication had been provided of the waiting times in the national health service that might apply in the taxpayer's instance.

In the Ombudsman's opinion the tax authorities and health authorities must generally recognise that the level of proactive enquiry required from them may be greater if the client is unable to organise his documents adequately.

The Ombudsman found that the Directorate of Health had failed in its obligation as an appeal body to engage actively in the complaint.

Failure of Tax North's response routines for taxpayer complaints

15 November 2011 (Case 2011/2897)

The case concerned Tax North's follow-up of two separate complaints from a named taxpayer. One disputed the assessment for 2008, the other the assessment for 2009.

Tax North acknowledged that the office's routines had failed in both cases, and gave assurances that the office's routines for logging and pursuing complaints would now be examined and sharpened up. The Ombudsman therefore laid the matter to rest given the explanation and apology tended.

College funding

Funding of studies abroad – interpretation of regulations

23 June 2011 (Case 2011/458)

The case examined the understanding of rules for student funding when studying abroad. Norway's State Educational Loan Fund considered the study in question to fall short of the educational requirement for full-time tuition, since it appeared that the tuition arrangements were suitable for students working a full-time job, with lectures on Fridays and Saturdays.

The Ombudsman found that the Loan Fund Complaints Board had applied an overly narrow reading of the criteria for award of basic grants set out in the grant regulations. In evaluating whether any given educational arrangement is designed to be full-time, a specific appraisal must be made of whether the student has to study full-time, including whether the overall study load indicates that the student must study full-time. The Loan Fund was asked to reconsider the case.

The Loan Fund reconsidered the matter and granted a loan for education abroad.

Appointments and employment conditions

Appointment of project manager

8 April 2011 (Case 2010/2955)

An applicant who lacked relevant formal qualifications was appointed project manager in a local council. Another applicant who met the formal requirements was short-listed as number two.

There was no legal opportunity to appoint the applicant who did not meet the formal qualification requirements for the post. If the council believed the formally qualified applicant was not a suitable candidate for the post, then the post should have been advertised again, this time cast-

ing a wider net. The council was asked to review the matter and consider what action to take to rectify the errors committed.

Unlawful retaliation following smoking alert

15 February 2011 (Case 2010/90)

The case examined whether a campaigner who had actively opposed indoor smoking in a public office had been subject to unlawful retaliation by the employer. The Ombudsman found that the smoking room set aside did not meet the statutory standards for a sound working environment, and that the complainant was protected by the rules prohibiting retaliation in connection with "notification" set out in the Working Environment Act, section 2-5. However, it was not found that she had been the subject of such retaliation as the result of her anti-smoking commitment at the workplace.

Reliance on spurious objections to appointment of school principal

22 August 2011 (Case 2010/2532)

The complainant applied for the position of headmistress at a local school. The complainant was not short-listed on the grounds that the council followed an "objective" practice of not appointing persons to leading positions who had "been involved with" a major abuse case at the same school, and because she failed to inform the appointment committee of her "involvement" with the case at the job interview.

The Ombudsman found that the case involved processing errors since the complainant had not been told, and was not given an opportunity to comment on, the council's appointment policies in this regard. The general reference to current practice was not considered to constitute a just and relevant factor for the appointment. Also, her failure to inform "involvement with the abuse case" could not be a deciding factor.

Appointment case involving age, over-qualification and likelihood of leaving soon

9 September 2011 (Case 2011/235)

An applicant considered he/she had been overlooked when applying for the post of financial advisor in a local council.

The Ombudsman was critical to the wording of the position vacant announcement. He found also that the council had relied on invalid arguments when partially justifying the appointment decision on age composition grounds. It was therefore not impossible that the complainant had been ignored for the appointment. Although the Ombudsman was unhappy with the council's opinion that the complainant might apply for other positions in the immediate future, he could not object to the council's belief that such might be probable.

Appointment of college lecturers – written submissions and personal suitability held up against long and relevant work experience

19 September 2011 (Case 2011/710)

This case concerned appointments to two vacancies for college lecturers. The appointments board ignored the expert committee's recommendation. The complainant, who was the committee's first choice, was not appointed. The decision was not giving in writing, and there were no documents to cast light on the reason the recommendation was ignored. In one vacancy, an applicant of very limited work experience was appointed, who also had no teaching experience at college level.

The Ombudsman insisted that good administrative practices required the

key junctures in the appointment process to be put down in writing. The absence of a written record made the appointment process difficult to invigilate effectively. There were significant differences in the backgrounds and experience of a successful applicant and the complainant, and the Ombudsman therefore found cause to express doubt as to whether the appointment board had afforded sufficient weight to the complainant's background and work experience.

Question whether to continue or discontinue contract

2 May 2011 (Case 2010/2450)

The complainant was employed on a one-year tenure in the County Governor's office and appealed to the Ombudsman when his tenure was not extended. Based on the contact that had taken place with the County Governor in the matter, the complainant felt that she was entitled to an extension until the end of 2011. The Governor argued that the complainant had no claim for such extension, since there were no administrative powers to extend the contract, and the appointment board had not decided to make the appointment.

The County Governor's handling of the case gave the complainant to expect that she would be employed until the end of 2011 despite the lack of administrative powers to extend the engagement. Despite the complainant not having a claim for extension on this basis, the Ombudsman found that the Governor's handling of the matter in respect of possible rights that the complainant might have to extend the appointment was open to criticism. The complainant's justified expectation of extension of the appointment to year's end arose because of the Governor's process and therefore presumably had some level of legal protection.

Following the Ombudsman's comment the County Governor reviewed the protocols for temporary appointments and extensions. Financial compensation was also paid to the complainant.

Appointment of Fire Chief and Deputy Fire Chief – regulatory qualifications and dispensation from regulations

12 December 2011 (Case 2011/610, former Case 2010/1662)

An applicant to a position as Fire Chief and Deputy Fire Chief as part of the municipal contingency apparatus for Fire and Rescue Services, objected that he had been passed over for the appointment. He noted in part that some of the successful applicants did not meet the regulatory standards for Emergency Response Captains.

The Ombudsman found that the educational standard for Emergency Response Captains in the Regulations of 26 June 2002, no. 729, relating to Organisation and Scope of the Fire Service, was not an absolute requirement for appointment to the position of Fire Chief or Deputy Fire Chief. The practices of the Fire and Rescue Service, of appointing applicants to such positions, could not be criticised, despite the failure of the successful applicants to meet the regulatory requirements for Emergency Response Captains at the time, provided they took the necessary course before acting in that capacity in the position. The practice of applying for dispensation from the fire service capacity requirements when applicants were available who actually met the requirements at the time of appointment, was by contrast a violation of the qualification doctrine.

The Directorate for Civil Protection and Emergency Planning whose practice it was to allow such dispensation requests also failed to comply with that doctrine. If the Directorate felt that dispensation should be allowed on a looser basis than the regulation wording suggested, then they should consider to amend the regulation. The Ombudsman also noted that the

response to the applicant's access request should have been decided under the Public Administration Act, not the Freedom of Information Act.

Social security and pensions

Wages guarantee following in advance payment of employee's sickness allowance to employer

5 January 2011 (Case 2010/2545)

The Labour and Welfare Administration (Nav Administration) had made advance payments of sickness allowance to an employer, who then went bankrupt before the allowance was paid to the employee. The Ministry of Labour denied the employee's request to recover the sickness allowance through the wages guarantee scheme. The Ombudsman concluded that Nav had no right to advance payments of the allowance, whereupon the Ministry asked the relevant Nav office to reconsider the matter.

Payment of support allowance into wrong account

12 July 2011 (Case 2011/975)

The Labour and Welfare Administration (Nav Administration) had paid basic and support allowance into a mother's account instead of the child's account. It was clear that the mother and father had signed a contract whereby the money should be paid into a separate account in the child's name, and this fact had been communicated to Nav. Though the Agency admitted the mistake, it claimed that the Public Guardian had verified that the money was actually used in the interests of the child.

The Ombudsman found the important point to be adherence to the formalities, concluding that a mistake had occurred in the sense of the National Insurance Act. The Public Guardian's verification in such a case could not be afforded weight. Nav was asked to reconsider the matter in light of the Ombudsman's finding.

Following a reassessment of the matter the money was duly paid into the child's bank account.

Grant for travel expenses in connection with employment schemes for the mentally ill

5 July 2011 (Case 2011/1379)

On a general basis the Labour and Welfare Administration (Nav Administration) was asked whether mental illness could, in the circumstances, represent a level of handicap that entitled the individual to a higher supplementary grant to cover travel expenses in connection with efforts to qualify for a job. Nav affirmed that mental illness could represent such a handicap and reiterated this position in a circular explaining the National Insurance Act, Chapter 11.

The Administration's position was noted by the Ombudsman.

Timing of disability pension for client receiving work assessment allowance

3 October 2011 (Case 2011/1678)

The Ombudsman made a general study of case procedures when people apply for disability pension and the applicant already receives work assessment allowance. The current protocols in the Labour and Welfare Agency (Nav) mean the decision is made first in Nav Administration, before submission to Nav Pensions for calculation, coordination and payment. Part of the routine requires Nav Administration to set the effective date from which disability pension will be payable, at some point in the future, which means an assumption about handling times in Nav Pensions in these complex cases. The Agency advised that they intend to pursue a new, streamlined protocol for disability applications from the new year.

The Ombudsman found that Nav most probably lacked powers for its current practice of setting a forward date. The Agency was asked to consider changing its practice for setting the effective date for collection of disability pension in cases where the recipient receives work assessment allowance. The Ombudsman further asked to be kept in the picture regarding case handling procedures in Nav Pensions and the Agency's views about whether processing times can be further shortened.

Casework delays by Nav International – coordination with local office

Case 2011/2399

The international office of the Labour and Welfare Agency, Nav International, was tasked with providing a cross-border analysis in connection with a client's request for rehabilitation or work assessment allowance. A "cross-border" worker lives in one country and works in the neighbouring country. Nav International asked Nav Karasjok (in Norway's far north), to send certain information, and later told the client's legal assistant that they had repeatedly requested the data from there. As the matter was now more than one year old in the international office, the legal assistant complained to the Ombudsman. Nav Karasjok claimed that the information had been sent to Nav International several times.

The Ombudsman criticized the casework at Nav International. The Ombudsman asked them to determine the cause of the failure to process this case properly, and to also make sure that routines are in place in future to prevent these sorts of errors recurring.

Subsequently Nav International explained the causes of the failures, stating that protocols had now been established for handling cases to avoid this type of error occurring again.

Nav routines to correct unwarranted PAYE deductions in allowances

6 December 2011 (Case 2011/1625)

In a general enquiry the Labour and Welfare Administration (Nav) was asked a number of questions about incorrect deductions in Nav allowances. Nav admitted being alive to such errors in the case of some clients in recent years, and explained the causes of the failures, corrective protocols and measures in place.

The Ombudsman duly noted the Agency's position but found cause to offer further remarks about the Agency's written protocols describing correction of unwarranted Pay-As-You-Earn deductions.

Immigration cases

Demand for clear identity if residence period in Norway will count in citizenship application

30 June 2011 (Case 2011/492, former Case 2009/1248)

The case primarily regarded the Immigration Appeal Board's calculation of residency times in Norway when processing an application for Norwegian citizenship. The Board found that only time spent with an identity that was correct, according to the Norwegian authorities, could be considered when determining if the required residency time was met. According to the Appeal Board, this was standard administrative practice.

The Ombudsman had no crucial legal objections to the Appeal Board relying on the aforementioned practice when calculating the residency time requirements in the Norwegian Nationality Act of 8 December 1950, no. 3, section 6, first paragraph, no. 2; and that the citizenship application was denied on that basis.

However, the Ombudsman did state that the requirement for a clarified identity during the residency period should be

stated in a manner enabling potential applicants to predict their legal position. When it came to the Board's enactment of a claim for clear identity when calculating the residency time under the Norwegian Nationality Act of 10 June 2005, no. 51, section 7, first paragraph, letter e, the Ombudsman found it difficult to see that there was sufficient basis in the legal sources. This did not affect the complainant's case, but the Ombudsman asked the Board to make a new, general assessment of its practices on this point.

The Board later advised that it found no reason to make a review of the standard practice. One argument was that the issue can be expected to occur only exceptionally in the future, and that the Ombudsman's statement and the Directorate of Immigration's standard practices will both be relevant legal sources when that happens. Given this reply the Ombudsman saw no reason to pursue the matter.

The Norwegian Directorate of Immigration's processing times in Norwegian citizenship case

20 May 2011 (Case 2011/499, former Case 2010/800)

The matter concerned the Directorate of Immigration's time taken to process an application for Norwegian citizenship. When the complainant invoked the Ombudsman, it had taken almost two and a half years since the application was made, Without closure of the case. Nor had the complainant received any information about what sort of processing period he could expect, and his written approaches to the Directorate were not answered.

The Ombudsman criticised the Directorate for not having determined earlier in the process that further investigations would be required in the case. That this only happened after about one year meant a serious delay in the processing. The Ombudsman also criticised the fact that no provisional reply had been given to suggest a prospective handling time, that the complainant did not receive subsequent information about the delays in the process, and that his enquiries were either answered late or left unanswered. The Ombudsman also made critical remarks about the journal keeping in the Directorate and its pursuance of the Ombudsman's enquiries.

Denial of family immigration request for juvenile orphans

31 October 2011 (Case 2010/2426)

Two orphans from Afghanistan, both boys under the age of majority, applied to reunite with their sister in Norway. The boys were aged respectively 13 and 16 at the time of the application, and 16 and 18 at the time of the final decision by the Immigration Appeal Board. They had travelled to Pakistan and survived in primitive conditions with a landlord, who the Directorate considered a "caregiver" under the terms of the Immigration Regulations. One of the questions the case raised was if this was a tenable interpretation and whether the case process was sound.

The Ombudsman found that the matter was urgent in light of its nature, but that it had still taken more than two years to reach a final ruling. The Directorate seemed to have spent especially long in dealing with the appeal, which was unfortunate. Nor had the applicants been heard as is required under current rules and protocols. The Ombudsman further noted that there were clearly challenges associated with good, credible case details about conditions in a far-off land. It was not at all certain what sort of living conditions and care the applicants had encountered. In an overall assessment taking into account the ages of the applicants in particular, the Ombudsman found no reason to criticise neither the investigation nor the conclusion.

Slow processing of family immigration case

28 March 2011 (Case 2011/698, former Case 2010/1948)

This matter examined the Norwegian Directorate of Immigration's long processing time for an application for family immigration. By the time the complainant wrote to the Ombudsman, roughly twenty-one months had passed since filing the application, and it took another year before the Directorate, in the first instance, could reach a decision. Reminder letters to the Directorate were not answered.

The Ombudsman pointed to the importance of determining – at the earliest possible stage in the process – just what investigations need to be made, and remarked that it would undoubtedly have been better if the need to clarify matters in this case had been recognised earlier on. Where the processing of the case has already occupied many months, before even the need for further studies or clarifications is recognised, then greater urgency must attach to the further processing of the matter, to avoid excessive total turnaround times.

The Ombudsman expected the entire Residency Division in the Directorate to work actively to preclude delays in processing due to late realisation that further studies and clarifications are needed. In this connection it was stressed that if such delays do occur, this must imply that the next steps in the case are given greater urgency.

The Ombudsman also found that the total elapsed time to resolve family immigration cases was not acceptable. The Directorate was also criticised for failure to answer letters.

Validity date of submitted passport when considering application for Norwegian citizenship

9 February 2011 (Case 2010/2010)

In response to a specific complaint the Ombudsman learned of the practice of the immigration authorities to demand that a passport must be valid at the date of the decision in order to be accepted as sufficient documentation of identity in cases requesting Norwegian citizenship. This was the case even if the applicant had submitted a passport which was valid at the application date, and there were no concerns about his identity. The Ministry of Children, Equality and Social Inclusion was asked in general terms to elucidate this practice. The Ombudsman also asked if there was any established information about the practice.

The Ministry replied that the practice was based on a specific wording and that work was being done to amend the regulations. In the Ministry's view, clear information regarding this practice was accessible on the Directorate of Immigration websites.

The Ombudsman found no judicial basis for condemning the interpretation and application of the rules, but stated that other interpretations were also possible. The rule, as it was practiced, seemed rigid and inflexible, and could have unwarranted consequences, particularly in light of the Directorate's tardy processing. The Ombudsman found no cause to pursue the matter further, partially because the change in the regulations was forecast for 2012.

Civil servants freedom of speech.

Case regarding appointment of supporting guardian – the adversarial principle and the demand to ground decisions

28 June 2011 (Case 2011/247)

This case concerned the right to be heard before a decision is made (right of audience), and the requirement in the Public Administration Act to justify decisions in writing, and whether this was adequately safeguarded in a case of appointment of a supporting guardian under the Social Services Act, section 4A-3, third paragraph. The rule covers the use of coercion or administrative powers in respect of clients unable to care for themselves.

The Ombudsman found that the County Governor of Møre and Romdal's process neither had enlightened the case sufficiently, nor sufficiently taken care of the adversarial principle or sufficiently grounded the decision. There was also a question of whether the regulations had been misinterpreted. The Ombudsman asked for the case to be reconsidered.

Appendix 1

The Ombudsman's office – list of staff

As at 31 December 2011 the Ombudsman's office had the following divisional structure and comprised the following staff. The specialist areas of the divisions are set out in the organisation chart in Chapter I and Appendix 3.

All divisions

Division 1:

Head of Division:	Bjørn Dæhlin
Deputy Head of Division:	Annicken Sogn
Senior Advisor:	Ingvild Lovise Bartels
Advisor:	Jan Gunnar Aschim
Advisor:	Signe Christophersen
Advisor:	Leif Erlend Johannessen
Advisor:	Heidi Quamme Kittilsen

Division 2:

Head of Division:	Eivind Sveum Brattegard
Deputy Head of Division:	Camilla Wohl Sem
Senior Advisor:	Elisabeth Fougner
Senior Advisor:	Arnhild Haugestad
Advisor:	Harald Søndenå Jacobsen
Advisor:	Kari Bjella Unneberg
Higher Executive Officer:	Lene Stivi

Division 3:

Head of Division:	Berit Sollie
Deputy Head of Division:	Bente Kristiansen
Advisor:	Marianne Lie Løwe
Advisor:	Torbjørn Hagerup Nagelhus
Advisor:	May-Britt Mori Seim

Division 4:

Head of Division:	Kai Kramer-Johansen
Deputy Head of Division:	Lisa Vogt-Lorentzen
Senior Advisor:	Marianne Guettler Monrad

Senior Advisor:	Johan Nyrerød Spiten
Senior Advisor:	Bernhard Vigen
Advisor:	Øystein Nore Nyhus
Advisor:	Audun Bendos Rydmark
Higher Executive Officer:	Mathias Emil Hager

Division 5:

Head of Division:	Annette Dahl
Deputy Head of Division:	Cathrine Opstad Sunde
Senior Advisor:	Siv Nylenna
Senior Advisor:	Bjarte Thorson
Advisor:	Edvard Aspelund
Advisor:	Therese Stange Fuglesang
Advisor:	Dagrun Grønvik

Others:

Head of Division:	Harald Gram
Special Advisor:	Yeung Fong Cheung[11]

Administration

Head of Administration:	Solveig Antila

Finance, Personnel, General Operations:

Senior Advisor:	Solveig Torgersen

Office and Reception:

Senior Executive Officer:	Mette Stenwig
(Secretary to the Ombudsman)	
Senior Executive Officer:	Torill H. Carlsen
Senior Executive Officer:	Kari Rimala
Higher Executive Officer:	Nina Olafsen

Archives and Library:

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

The following members of staff were on leave as at 31 December 2011:

Senior Advisor:	Camilla Lie
Advisor:	Eva Grotnæss Barnholdt
Advisor:	Stine Elde
Advisor:	Martin Ewan Jæver
Advisor:	Frederik Langeland
Advisor:	Vidar Toftøy-Andersen
Senior Executive Officer:	Tina Hafslund

1. On secondment from and funded by Ministry of Foreign Affairs to work for Ombudsman.

Appendix 2

Gender equality summary

		Proportion of men %	Proportion of women %	Total workforce %	Average pay per month, Men	Average pay per month, Women
Total	This year	33	67	100		
	Last year	35	65	100		
Ombudsman	This year	100				
	Last year	100				
Executive team	This year	57	43	100	79 346	73 917
	Last year	57	43	100	75 934	76 055
Senior advisors	This year	21	79	100	42 966	50 755
	Last year	25	75	100	44 914	49 800
Advisors	This year	37	63		39 796	33 210
	Last year	47	53	100	37 978	38 494
Higher EOs	This year	33	67	100	33 700	34 562
	Last year	40	60	100	33 983	34 280
Senior EOs	This year		100			
	Last year		100			
Paid by the hour	This year		100			
	Last year		100			
Part-time	This year	6	20			
	Last year					
Medically certi-fied sick leave	This year	1.7	7.3			

Appendix 3

Overview of divisional structure and specialist areas

Appendix 4

The Ombudsman's lectures, meetings, visits and trips in 2011[1]

Lectures	
12 January	Lecture on Human Rights at the Wadahl Seminar for law students, Vinstra
7 February	Lecture on Ombudsman's Experience of the Public's Problems with Government, for senior members of the Norwegian Polytechnic Society, Oslo
8 February	Refresher course in Administrative Law, Ombudsman's address at Centre for Continuing Legal Education, Oslo
9-13 March	Lecture on Constitutional Law, course in Administrative Law, Centre for Continuing Legal Education, Svalbard
17 March	Lecture on Ombudsman's Activities, special interest group, Intermunicipal Forum for Oversight and Scrutiny (FKT), Oslo
6 April	Lecture on Labour Law, staff meeting in Confederation of Norwegian Enterprises (NHO), Oslo
28 April	Presentation of Annual Report 2010 to the Storting Standing Committee on Scrutiny and Constitutional Affairs
18 May	Lecture on Due Process of law, Norwegian Bar Association Conference on Due Process of law, 2011, Oslo
20 June	Lecture on Elected Bodies and issues presented by one party, course for local government lawyers, Oslo
13-14 October	Discussion with Director General of Norwegian Data Inspectorate and participation in panel debate, Law Days in Oslo
22 November	Lecture on Good Administrative Practices, legal course at Centre for Continuing Legal Education, Lysebu
24 November	Lecture on Ombudsman's Activities, Senior Citizen Centre, Vinderen
26 November	Panel member in debate on Terror Process, Faculty of Law, University of Oslo
7 December	Lecture on the Right to Education in Prison custody Walls, seminar by County Governor of Hordaland in Bergen

[1] This is a summary of Ombudsman Arne Fliflet's activities. Staff have also been involved in other outreach activities.

Meetings and visits in Norway:

5 January	Visit by Law Students Free Legal Aid Organization, Juss-Buss
10 January	Meeting with Norwegian Food Safety Authority, Oslo
25-26 January	Visit to Bodø Prison and Nordland County Hospital, Bodø
10 February	Visit to County Governor of Hordaland, Bergen
8 March	Meeting with Director General of Labour and Welfare Agency (DG-Nav), Oslo
18 March	Visit to National Insurance Court, Oslo
21 March	Meeting with the Norwegian Criminal Cases Review Commission, here
22 March	Meeting with the Storting International Department, here
8 April	Audience with His Royal Highness the King
14 April	Participant in seminar on the Constitutional Court of the Realm, in the Storting
28 April	Meeting with the Norwegian Parliamentary Intelligence Oversight Committee (EOS), Oslo
4-5 May	Visit to Nav Kristiansand
18 May	Meeting with delegation from the European Committee for the Prevention of Torture (CPT), here
25-26 May	Visit to County Governor of Telemark, Skien
8 June	Meeting in Ministry of Children, Equality and Social Inclusion about Clear Legal Language
9 June	Meeting in Ministry of Finance about Taxes and Transparency
22 June	Visit to Oslo Police District, Central Police Detention Centre
10 August	Visit from Law Students Free Legal Aid Organization, Juss-Buss, here
8 September	Attended Norwegian Medical Association’s conference on Human Rights, Oslo
13 September	Meeting with Director General of Board of Health Supervision, Oslo
21 September	Meeting with Norwegian Institute of Human Rights (SMR), University of Oslo, here
11-12 October	Visit to County Governor of Rogaland, Stavanger
14 November	Attended Constitution Seminar, in the Storting
15 November	Visit to Ullersmo Prison, Oslo
18 November	Attended conference on Clear Legal Language, hosted by Ministry of Government Administration, Reform and Church Affairs, Legal Department (FAD/JD), Oslo

28 November	Meeting with Ministry of Justice and Police on the Ombudsman's Role in Connection with Setting up a National Preventive Mechanism (NFM) under the United Nations Optional Protocol to the Convention against Torture (OPCAT)
6 December	Meeting with the Norwegian Directorate of Immigration, Oslo
21 December	Visit to the Norwegian Knowledge Centre for the Health Services, Oslo

International visits hosted by Ombudsman:

18 February	Visit by the Ombudsman of Georgia
7 March	Meeting with the British Ambassador, Ms Jane Owen
11-13 April	Panel member during visit by the Al Jazeera Broadcasting Company, hosed by University of Oslo and Norwegian Institute of Human Rights (SMR), Oslo
13 April	Meeting with Guatemalan Ambassador in connection with upcoming visit by the Ombudsman of the republic Guatemala
24 May	Visit by the Ombudsman of the republic of Guatemala
6 June	Panel member for debate on Constitution and Human Rights, Council of Europe Parliamentary Assembly, Storting
9 June	Visit by the National Ombudsman of the Republic of Kazakhstan
3 August	Meeting with Russian Embassy in connection with visit by Ambassador-at-large Konstantin Dolgov, Commissioner on Human Rights, Democracy and the Rule of Law
26 September	Meeting with the Russian delegation on study trip to learn about criminal welfare in Norway
27 September	Meeting with Members of Parliament from the republic of Mozambique, in the Storting
24 November	Visit by Ambassador-at-large Konstantin Dolgov, Commissioner on Human Rights, Democracy and the Rule of Law, the Russian Federation

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

15.-20 January	World Conference on Constitutional Justice, Brazil
31 March-1 April	Meeting of the Board of Directors of the International Ombudsman Institute (I.O.I), Europe, in Warsaw
4-5 April	West Nordic Meeting of Ombudsmen, Copenhagen
16-18 June	Represented I.O.I at conference on Human Rights of Immigrants and Minorities in Baku, Azerbaijan
11-15 August	West Nordic Meeting of Ombudsmen, Vestmannaøyene, Iceland

18-19 August	39th Nordic Lawyers' Meeting, Stockholm
13-14 September	Seminar in the I.O.I on Ombudsmen and OPCAT, Warsaw
30 September	Meeting of the Board of Directors of I.O.I Europe, London
21-22 October	Eighth National Seminar of the European Network, hosted by the Danish Ombudsman and European Ombudsman in Copenhagen
30 October–2 November	Meeting of the Board of Directors of I.O.I worldwide, Livingstone, Zambia
25 November	Judicial Review Conference, London
7-9 December	West Nordic Meeting of Ombudsmen, Copenhagen

Appendix 5

Budget and accounts for 2011

Chap	Item		Budget adopted 2011	Accounts 2011
43	01	Salaries and benefits	32 747	32 722
	01	Goods and services	17 155	14 088
		Total outgoings	49 902	46 810
3043	16	Tax rebate parental allowance		1 431
		Total incomings		1 431

(in 1000 kr)

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

Appendix 6

The Constitution of the Kingdom of Norway

Article 75 litra l:

It devolves upon the Storting to appoint a person, not a member of the Storting, in a manner prescribed by law, to supervise the public administration and all who work in its service, to assure that no injustice is done against the individual citizen.[2]

[2] Addendum by Constitutional provision dated 23 June 1995 no. 567.

Appendix 7

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

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

§ 1.

Election of Ombudsman.

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

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

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

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

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

§ 2.

Directive.

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

§ 3.

Purpose.

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

§ 4.

Scope of Powers.

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

a) matters on which the Storting has reached a decision,
b) decisions adopted by the King in Council of State,

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

The Storting may stipulate in its Directive to the Ombudsman:

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

§ 5.

Basis for acting.

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

§ 6.

Further provisions regarding complaints and time limit for complaints.

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

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

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

§ 7.

Right to obtain information.

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

The Ombudsman may require the taking of evidence by the courts of law, in accordance with the provisions of § 43 second paragraph of the Courts of Justice Act. The court hearings shall not be open to the public.

§ 8.

Access to offices in the public administration.

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

§ 9.

Access to documents and pledge of secrecy.

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

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

§ 10.

Termination of a complaints case.

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

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

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

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

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

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

§ 11.

Notification of shortcomings in statutory law and in administrative practice.

If the Ombudsman becomes aware of shortcomings in statutory law, administrative regulations or administrative practice, he may notify the Ministry concerned to this effect.

§ 12.

Report to the Storting.

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

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

§ 13.

Pay, pension, other business.

The Ombudsman's pay and pension shall be determined by the Storting. The same applies to remuneration for any person appointed to act in his place in accordance

with § 1 fourth paragraph, first sentence. The remuneration for any person appointed pursuant to the fourth paragraph, second sentence, may be determined by the Storting's Presidium. The Ombudsman's pension shall be determined by law.

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

§ 14.

Staff.

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

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

§ 15.

1. This Act shall enter into force 1 October 1962.
2. --.

Appendix 8

Directive to the Storting's Ombudsman for Public Administration

Laid down by the Storting on 19 February 1980 in pursuance of the Act of 22 June 1962 No. 8 concerning the Storting's Ombudsman for Public Administration (the Ombudsman Act).

§ 1. *Purpose.*

(Re § 3 of the Ombudsman Act.)

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

§ 2. *Scope of Powers.*

(Re § 4 of the Ombudsman Act.)

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

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

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

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

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

(Re § 6 of the Ombudsman Act.)

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

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

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

(Re § 6 of the Ombudsman Act.)

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

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

If a complaint is made against a decision which the complainant has a right to submit for review before a superior agency of the public administration, the Ombudsman shall not deal with the complaint

unless he finds special grounds for taking the matter up immediately. The Ombudsman shall advise the complainant of the right he has to have the decision reviewed through administrative channels. If the complainant cannot have the decision reviewed because he has exceeded the time limit for complaints, the Ombudsman shall decide whether he, in view of the circumstances, shall nevertheless deal with the complaint.

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

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

§ 6. *Investigation of complaints.*

(Re §§ 7 and 8 of the Ombudsman Act.)

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

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

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

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

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

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

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

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

(Re § 5 of the Ombudsman Act.)

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

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

(Re § 10 of the Ombudsman Act.)

The Ombudsman shall personally render a decision on all cases proceeding from a complaint or which he takes up on his own initiative. He may nevertheless authorise specific members of his staff to ter-

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

§ 10. *Instructions for the staff.*

(Re § 2 of the Ombudsman Act.)

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

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

1. The Ombudsman's case documents are public, unless pledge of secrecy or the exceptions in Nos. 2, 3 and 4 below otherwise apply. The Ombudsman's case documents are the documents prepared in connection with the Ombudsman's processing of a case. The Ombudsman cannot grant public access to the Administration's case documents prepared or collected during the course of the Administration's processing of the case.
2. The Ombudsman's case documents may be exempt from public access when there are special reasons for this.
3. The Ombudsman's internal case documents may be exempt from public access.
4. Documents exchanged between the Storting and the Ombudsman and that refer to the Ombudsman's budget and internal administration may be exempt from public access.
5. Right of access to the public contents of the register kept by the Ombudsman for the registration of documents in established cases may be demanded. The Public Records Act (Norway) dated 4 December 1992 No. 126 and the Public Records Regulations dated 11 December 1998 No. 1193 apply similarly to the extent that they are applicable to the functions of the Ombudsman.

§ 12. *Annual Report to the Storting.*

(Re § 12 of the Ombudsman Act.)

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

The report shall contain a survey of the proceedings in the individual cases which the Ombudsman feels are of general interest and shall mention those cases where he has drawn attention to shortcomings in statutory law, administrative regulations or administrative practice or has made a special report pursuant to § 12 second paragraph of the Ombudsman Act. The report shall also contain information on his supervision and control of public agencies to safeguard that the public administration respect and ensure human rights.

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

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

§ 13. *Entry into force.*

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