

Summary

Annual Report 2007

Folketingets Ombudsmand

Parliamentary Commissioner for Civil
and Military Administration in Denmark

Published by
Folketingets Ombudsmand
Gammeltorv 22
1457 Copenhagen K
Denmark

Printed by Schultz Grafisk
Printed in Denmark 2008

ISSN 1398-4977

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Preface

This booklet summarizes my Annual Report for 2007 to the Danish Parliament.

Part 1 of the Summary contains my presentation of the 2007 Report at the Parliament's yearly public meeting on my Annual Report.

Part 2 contains information about organisation, staff and office, international relations, travels and

visitors, own initiative projects and inspections and other activities and the budget.

Part 3 contains case statistics.

Part 4 contains 39 summaries of Ombudsman cases.

Copenhagen, November 2008

HANS GAMMELTOFT-HANSEN

PART 1

ANNUAL
REPORT 2007

The Ombudsman's Presentation of the Annual Report for 2007 at the Legal Affairs Committee's Public Meeting on 12 November 2008

As in the previous public meetings between the Legal Affairs Committee and the Parliamentary Ombudsman, we (Director General Jens Møller, Head of Inspections Lennart Frandsen and I) will make our introduction to the Annual Report quite short to leave more room for questions and dialogue.

Director General Jens Møller will call attention to a couple of the more significant cases from the Report. As in the previous public meetings Jens Møller will focus on a particular theme. Head of Inspections Lennart Frandsen will inform you about the inspections, and I will present some key figures concerning the work of the Office.

As I have mentioned in the previous meetings, these key figures vary from one year to the next – and I still find it impossible to reach unambiguous conclusions. However, I will not disguise my joy at finding that the number of investigated cases has gone up, and that the number of cases awaiting the Ombudsman's consideration has dropped. The number of cases in which the Ombudsman expressed criticism or gave recommendations has also gone up – and normally, these are among the cases that we spend the largest amount of resources on.

On the other hand, the number of applications has dropped – and our case processing time has gone up again, this time by an average of seven days for the investigated cases.

In 2007, the number of new cases was 3,976. In 2006, the corresponding number was 4,110 – as mentioned, a small reduction of 134 cases in 2007 compared with the previous year.

The number of applications from complainants was 3,732. In 2006, the corresponding number was 3,764. Again, a small reduction compared with 2006 – here by 32 cases.

In 2007, we concluded 4,188 cases compared with 3,951 the previous year – that is, an increase of 237 investigated cases.

The number of investigated cases also went up – from 846 in 2006 to 924 in 2007.

In 279 of the 924 cases the Ombudsman expressed criticism and/or gave a recommendation (30.2 per cent). In 2006, the number of cases with criticism and/or recommendation was 217.

In 69 cases the authorities chose to reopen the case immediately as a consequence of the Ombudsman's initial request for a statement. In our statistics, cases of this nature are registered as *rejected cases*, precisely because the Ombudsman does not make a full investigation of the case. – If these cases are added to the cases with criticism and/or recommendation, the total percentage is 35.0 per cent.

The number of cases awaiting the Ombudsman's consideration on 1 June 2008 was 92 compared with 179 the previous year.

The average case processing time in the investigated cases was approximately 182 days. In 2006, it was 175 days. As I have mentioned previously, this is a figure that the Office can only control to a certain degree – and seven days' prolongation of the average case processing time in 2007 is, in my opinion, still within the acceptable margin; but of course we both should and will continually strive towards reducing the case processing time to the lowest level possible.

In comparison, the figure in 2003 was 164 days, in 2004 153 days and in 2005 156 days.

Here, I would take the opportunity to mention that in my opinion the Parliamentary Ombudsman ought – like the institutions he controls – to establish goals for the case processing time he strives towards in complaint cases, both the rejected cases and the cases that are investigated. Even if the cases are grouped as either rejected or investigated, there are deviations in the case processing time which are not insignificant. Therefore, instead of using the average figure, the goals are considered accomplished if a certain percentage of the cases is processed within the established time limits. Given that the Office has the resources necessary to meet our goals, they will be that 90 per cent of the cases rejected should be concluded within two months. 75 per cent of the investigated cases should be concluded within six months. After a year, 90 per cent of the investigated cases should be concluded.

After this introduction I give the floor to Jens Møller.

Like the Ombudsman, I will try to make my presentation as brief as possible. Again this year, I have attempted to gather some threads from the 39 concrete individual cases, the own initiative project about the National Income Tax Tribunal and the inspection cases. Themes at the earlier meetings have been the rules concerning case processing, the demands concerning content – or, like last year: Cases that give an impression of who complains to the Ombudsman, and the complainants' right to be represented or assisted by others.

This year, I have chosen to focus on the legal standards surrounding the written rules of law – standards that are developed in various places in the Danish legal and administrative system and play quite a significant part in the daily administration and the evaluation of the work done by the administration.

Among other things, I am thinking of the legal principles that are developed by the courts, but also for instance the unwritten legal principles concerning local authorities that are developed and enforced by the regional state administrations and the Ministry of Social Welfare. But I am also thinking of the part that the Ombudsman plays in the development of legal standards, and of the term *good administrative conduct*.

I will not take your time with a lecture on these legal standards or unwritten principles of law, but merely attempt to suggest how significant these unwritten legal principles are in practice, by commenting on a couple of cases from our Annual Report for 2007.

It would be entirely appropriate, I think, to start with the unwritten rules of law and principles that are developed and enforced by the courts. The principles of law that are developed by judges are, of course, a decisive element, also in the Ombudsman's evaluation of legal matters.

In Annual Report Case No. 5.2, for instance, which concerns the dismissal of a parish clerk employed on civil service terms, the Ombudsman makes reference to the unwritten rule concerning the extended duty to hear parties which the Supreme Court refers to in two judgments published in the Danish law journal *Ugeskrift for Retsvæsen* for 1999 and 2002.

In Case No. 18.3 about a local authority's sale of real estate the Ombudsman mentions that local authorities are also subject to common principles of administrative law – for instance the principle of equality – because they are administrative authorities. And in Case No. 4.1 about a refusal to employ a social worker as educational assistant the Ombudsman refers to the established assumption that public authorities should employ the best qualified candidate, as part of the basis for his criticism.

The case I mentioned before about a local authority's sale of real estate (Case No. 18.3), discloses another group of unwritten rules of law that have con-

siderable practical significance for the control of the public administration, namely the legal principles concerning local authorities. In the specific case the Ombudsman implicated two of these unwritten rules: The principle that services which favour one person – excepting mere trifles – must be legally authorized unless they are consequences of an activity that safeguards the needs of the community. And the principle that local authorities must act justifiably in economic matters – which means that local authorities must attempt to get the highest price possible in their dealings, or the market price. The legal principles concerning local authorities that are developed in the regional state administrations and the Ministry of Social Welfare are thus among the standards that contribute to form the basis of the Ombudsman's criticism in the case.

At last, I will mention a couple of cases in which the term *good administrative conduct* has been mentioned:

In Case No. 4.3 concerning the dismissal of a public servant prison employee the issue of the case was whether the authorities had advised the public servant correctly. Section 7 in the Public Administration Act only applies to decision matters and according to the wording only in relation to persons who apply to the authorities. But the Ombudsman mentioned that Section 7 did not completely set aside the duty to give guidance, since this duty can follow from good administrative conduct and therefore apply to a wider extent than appears from Section 7 in the Public Administration Act.

In Case No. 20.2 about an employee who was informed too late about a recommendation that could lead to dismissal, reference was made to the Ombudsman's practice and good administrative conduct according to which the person or persons affected by the authorities' decision should be informed about the decision before it is made public.

Finally, I will mention Case No. 9.1 which i.a. dealt with the authorities' duty to take notes when giving guidance to persons who make a personal appearance. The Ombudsman did not consider it necessary to take a position on the authorities' conception of law: that in cases like the present there was no duty to take notes directly in accordance with Section 6 in the Access to Public Administration Files Act. The Ombudsman wrote about his basis for this consideration that it follows from a common unwritten principle of administrative law that the authorities have a corresponding duty in other cases than the ones directly included in the duty to take notes which is described in Section 6 in the Access to Public Administration Files Act.

The Ombudsman went on to state that furthermore, good administrative conduct demands that the administration takes care that a relationship of trust is established between the citizen and the administration. Such a relationship is created i.a. by avoiding doubts about what has happened and what has been said concerning the matter.

Now, Lennart Frandsen will give a brief account of the Office's inspection activities:

In 2007, 29 inspections and 3 surveys were conducted. This chart shows the distribution:

State prisons	3
Local prisons	4
Detentions	4
Police holding cells	2
Psychiatric wards	6
Social/psychiatric residential institutions/ district psychiatries	8
Secure institutions	2
Accessibility for the disabled	2
Residential institutions for children and juveniles	1

In 2008, 38 inspections within the same areas have been planned or accomplished. Many of these are re-inspections. – I would also mention that a few of the inspections have not been notified in advance.

It may appear as though the inspections are isolated and concluded cases. However, this is not the case at all. General and principal matters raised in connection with an inspection are – of course – significant to the evaluation of other, similar institutions. They may come up in connection with inspections of such other, similar institutions or in the consideration of concrete, individual complaints or cases begun on the Ombudsman's own initiative. These relations between the cases – particularly the inspection cases – could be named a state prison project, a local prison project, a psychiatry project, etc.

This also underscores the significance of an efficient – and coordinated – follow-up on the inspections. After the final report an inspection can be followed up in numerous subsequent reports before the inspection case can be considered closed; thus, it can

take several years to process an inspection case. But the project as such continues.

In this connection I would mention that the Parliamentary Ombudsman has noted that in the multiannual contract for the Prison Service for 2008 to 2011 a sum (16 million DKK) has been earmarked for changes to the conditions in the women's ward in the State Prison at Herstedvester. Also, means have been allocated for a significant expansion of the prison capacity for convicted persons in Greenland where at the moment there are also problems with a long waiting list of convicted persons. And the Parliamentary Ombudsman has noted that a considerable amount has been earmarked for improvements of the buildings belonging to the Prison Service, including i.a. the old, smaller local prisons in various parts of the country.

Concerning efficient follow-up I will, however, mention that there have also been cases where we have learnt – in consultations we have held and through the media – that after inspections where certain issues seem to have been dealt with satisfactorily, significant problems concerning the same issues have arisen after some years.

I am thinking of the waiting time for concluding the treatment of patients at Sct. Hans Hospital (psychiatric hospital). According to recent information it can take several years before such patients are offered a space in a psychiatric residential institution. I am also thinking of the many cases where schizophrenic and psychotic inmates have to wait a long time to be transferred from local or state prisons to psychiatric wards.

In both cases the closed inspection cases which i.a. dealt with exactly these matters, have been reopened – and in the future we will take better care to ask to be informed if a similar situation arises. I am referring to cases in which we have completed an inspection without finding cause to take further action on the

basis of what we were told during the inspection, or what was accomplished through the inspection.

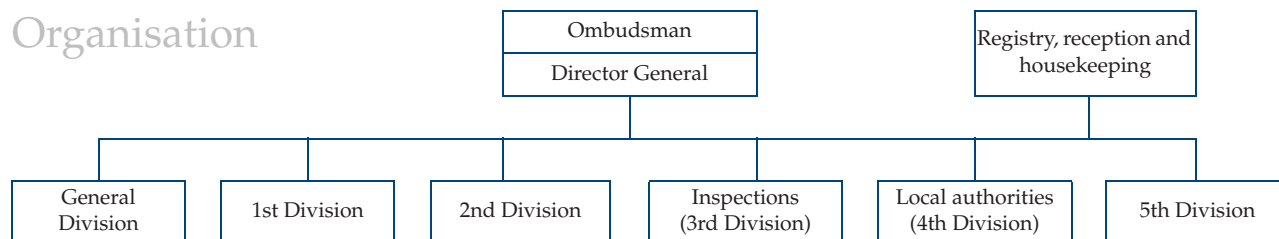
Finally, concerning the question of non-discrimination of the disabled I would make reference to the inclusive statement sent out by the Parliamentary Ombudsman on 26 August 2008 about what the Om-

budsman has done in this important area in 2007. The idea is to write such a statement every year. I can inform you that the statement for 2007 has been very well received – not least by the parties with whom we cooperate in this area.

PART 2

YEAR
IN
REVIEW

Organisation



Main areas

Annual Report
International projects
General administrative law issues
Own initiative projects
Certain concrete cases
The Office's human resource, financial and other internal matters
Secretarial assistance to the Ombudsman and the Director General

Main areas

Company legislation
Foodstuffs
Fisheries
Agriculture
Patient complaints
Pharmaceuticals
Health services
Appeal permissions
Foreign affairs
Communication
Ecclesiastical affairs
Culture
Cases involving aliens
Registers etc.
Naturalization
Adoption
Access and child support cases
Rules of inheritance/trusts
Unemployment benefits etc.
Early retirement pension

Main areas

Employment legislation
Cash benefits etc.
Social pensions
Sickness benefits
Consolidation Act on Social Services except relief measures for children and juveniles, social institutions and vehicles for the disabled

Main areas

Inspections:
State prisons
Local prisons
Secure institutions
Half-way houses
Detentions
Police holding cells
Psychiatric hospitals
Institutions for the mentally or physically disabled
Non-discrimination of the disabled
Residential institutions for children and juveniles
Others:
Patient complaints (psychiatry)
Psychiatric hospitals
Prison conditions
Defence
Criminal cases and the police
The courts
Lawyers
Private legal matters
Legal matters in general
Non-discrimination of the disabled

Main areas

Municipal law issues
Environmental and planning law
Nature protection
Building and housing
Budget and economy
Elections, registration of individuals, etc.
Human resource matters
Vehicles for the disabled
Traffic and roads
Adoption
Access and child support cases
Rules of inheritance/trusts

Main Areas

Housing benefits
Industrial injuries
Schemes for juveniles and children
Taxes and dues
Repayment of social benefits
Criminal injuries compensation
Education and study grants
Research
Child support and benefit for families with children
Social institutions except cases concerning inspections

Staff and Office

The structure of the Office was as follows:

In my absence from the office Mr. Jens Møller, Director General, replaced me in the performance of my Ombudsman duties. He was in charge of general matters taken up for investigation on my own initiative and the processing of special complaint cases.

Mr. Lennart Frandsen, Deputy Permanent Secretary, was in charge of inspections.

Mr. Kaj Larsen, Director of Public Law, was in charge of staffing and recruitment, budgeting and other administrative matters.

Mr. Jon Andersen, Director of International Law, Mrs. Vibeke Riber von Stemmann, Chief Legal Adviser, and Mr. Jens Olsen, Chief Legal Adviser and International Relations Director, dealt with general questions of public administrative law as well as investigations undertaken on my own initiative. They also participated in the processing of individual complaint cases.

The Office had five divisions with the following persons in charge:

General Division

Director of Public Law Mr. *Kaj Larsen*

First Division

Head of Division Mrs. *Kirsten Talevski*

Second Division

Head of Division Mrs. *Bente Mundt*

Third Division (Inspections Division)

Deputy Permanent Secretary Mr. *Lennart Frandsen*

Fourth Division

Head of Division Mr. *Morten Engberg*

Fifth Division

Head of Division Mr. *Karsten Loiborg*

The 78 employees of my Office included among others 18 senior administrators, 22 investigation officers, 20 administrative staff members and 13 law students.

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International Relations

During 2007, as in previous years, the guests we received had very different backgrounds. Generally, however, their common goal was to learn more about the (Danish) Parliamentary Ombudsman institution and its role in a modern democratic society. There-

fore, my Office always offers general information about the Ombudsman institution and its history with a view to a subsequent exchange of experiences and reflections.

Travels and visitors

January	February	March
Visits 15 A group of inspectors from Turkey via the Danish Institute for Human Rights. 25 A study group from the French Ministry of Justice via the Danish Embassy in Paris.	Visits 5 Meeting with associates from the Dutch Ombudsman's Office in connection with our cooperation. 28 A delegation from Tanzania's Parliament in connection with an agreement of cooperation with the Danish Parliament.	Visits 13 Delegation of members of Parliament from Yemen. 15 Delegation of members of Parliament from Bhutan. 21 A group of police officers from Vietnam attending a course at the Danish Institute for Human Rights.

Travels and conferences

21 Director of International Law Jon Andersen participated in a conference at the Danish Parliament on children's legal status. The conference was arranged by the Danish Parliament's Legal Affairs Committee and Social Services Committee.

April	May	June
Visits <p>16 Parliamentary friendship delegation from Bulgaria at the request of the Danish Parliament.</p> <p>24 Delegation of members of Parliament from Iraq.</p> <p>25 Participants in a course on fighting corruption at the Danish Institute for Human Rights.</p> <p>25 The Chairman of the Albanian Parliament, Jozefina Coba Topalli, with associates.</p>	Visits <p>10 Nepalese and Chinese course participants from Nordfyns Folkehøjskole (a Danish folk high school).</p> <p>10 Khalifabobo Khomidov, Human Rights Commissioner from Tajikistan.</p> <p>31 Supreme Court Judge James Ogoola from Uganda.</p>	Visits <p>26 Delegation from Ministry of Supervision, China.</p>
Travels and conferences <p>12–13 International Relations Director Jens Olsen and Head of Division Morten Engberg participated in a Round Table Meeting with the European Human Rights Commissioner and took part in the celebration of the Greek Ombudsman institution's 10th anniversary in Athens, Greece.</p> <p>25–28 Chief Legal Adviser Vibeke Lundmark participated in the 10th Asia Ombudsman Association Conference in Hanoi, Vietnam.</p>	Travels and conferences <p>24–25 I hosted a West Nordic Ombudsman Meeting on Bornholm with the ombudsmen from Norway, Iceland, Greenland and the Faroe Islands.</p>	Travels and conferences <p>22 International Relations Director Jens Olsen participated in a conference in connection with the celebration of the 25th anniversary of the Spanish Ombudsman institution in Madrid, Spain.</p>

July	August	September
<p>Visits</p> <p>11 Delegation from the Chinese Ministry of Education (took place at the Danish University and Property Agency at the Agency's request).</p>	<p>Visits</p> <p>14 Deputy Secretary General Chhsiung Chen from Taiwan's Control Yuan.</p> <p>17 Course participants from Africa and Asia in connection with human rights course at the Danish Institute for Human Rights.</p> <p>30 Asian, African, Middle Eastern and South American course participants from a conflict control course by MIRO/Danida.</p>	<p>Visits</p> <p>25 Meeting with delegation of ministers from Tanzania.</p> <p>27 Local Danida associates at the Danish Embassies.</p>
<p>Travels and conferences</p> <p>12–13 Head of Division Morten Engberg participated in the OSCE Supplementary Human Dimension Meeting in Vienna, Austria.</p>		<p>Travels and conferences</p> <p>17–18 Chief Legal Adviser Vibeke Riber von Stemmann participated in a seminar, "The Ombudsman's Intervention between the Principles of Legality and Good Governance", arranged by the Bulgarian Ombudsman and held in Sofia, Bulgaria.</p> <p>24 Investigation Officer Jørgen Heistvig-Larsen participated in "International European Conference on Economic Migration" in Warsaw, Poland.</p>

October	November	December
Visits <p>1 Delegation from China's State Bureau for Letters and Calls.</p>	Visits <p>4–7 Legal investigation officers from Latvia's Ombudsman Office on a study visit.</p> <p>20 Delegation from the Director of Public Prosecutions' Office in Haidan, China, on a study visit via the Danish Institute for Human Rights.</p> <p>27 Delegation of ministers from Tajikistan.</p>	Visits <p>5 Participants in a human rights course at the Danish Institute for Human Rights.</p> <p>14 Three officials from Korea's Ombudsman Office.</p> <p>18 Meeting with the Ombudsman for Slesvig-Holsten, Birgit Wille-Handels.</p>
Travels and conferences <p>15–16 Director of International Law Jon Andersen and I participated in "6th Seminar of the National Ombudsmen of the EU Member States" in Strasbourg, France.</p> <p>23 I participated in and held a presentation at a panel debate in connection with Disabled People's Organisations Denmark's conference on the UN Convention on the Rights of Persons with Disabilities. The conference was held in Copenhagen.</p>		Travels and conferences <p>11–12 Again, I hosted a West Nordic Ombudsman Meeting in Copenhagen with the ombudsmen from Norway, Iceland, Greenland and the Faroe Islands.</p>

Own Initiative Projects and Inspections

One own initiative project was concluded in 2007. 28 inspections were carried out during the reporting

year. Part IV of the Annual Report provides details concerning own initiative projects and inspections.

Other Activities

During the year several members of my staff and I gave a number of lectures on general and more specific subjects related to the Ombudsman's activities. Furthermore, members of my staff and I lectured at several courses in public administrative law.

At the request of the Minister of Justice, and with the approval of the Danish Parliament's Legal Affairs Committee, I have undertaken to chair the Government's Public Disclosure Commission. The Commission's task is to describe current legislation concerning public disclosure and to deliberate on the extent to which changes are required to the Access to Public Administration Files Act, and to make proposals for such changes. The Commission's secretarial functions are handled by the Ministry of Justice in cooperation with the Ombudsman institution and, when relevant, the Ministry of Finance.

At the Minister of Justice's request, Director General Jens Møller has undertaken to chair the Committee on Exchange of Information within the Public Administration. The Committee's task is to deliberate on and make suggestions for a simplification of the regulation concerning exchange of information in both the Public Administration Act and the Act on Processing of Personal Data and to consider the special rules that apply to cases concerning applications.

Director General Jens Møller and Head of Division Bente Mundt were appointed by the National Board of Social Services as members of a reference group for "Project on good case processing for the elderly". The group held its last meeting on 18 January 2007.

Director of International Law Jon Andersen is a member of the Danish Council of Ethics.

Budget 2007

Salary expenses	
Actual salary	29,711,000
Law students	165,000
Special holiday allowance	20,000
Wage budget regulation account	1,766,000
Overtime	287,000
Pension fund contributions	2,661,000
Contributions for civil service retirement pensions	888,000
Contributions for the Danish Labour Market Supplementary Pension (ATP)	95,000
Maternity reimbursement, etc.	- 444,000
Salary expenses in total	35,149,000

Operating expenses	
Subsidy, Ministry of Foreign Affairs	- 800,000
IT, central equipment, network, programmes	638,000
Office supplies	646,000
Furniture and other fittings	890,000
Books and subscriptions	774,000
Official travels	357,000
Business entertainment	155,000

Staff welfare	100,000
IT, client equipment	1,070,000
IT, consultants	231,000
Decentralized continued education	725,000
Translations	163,000
Printing of publications etc.	478,000
Rent	3,741,000
Leasing of photocopiers	231,000
Phone subsidies	17,000
Subsidy, staff lunch arrangement	206,000
Transfer costs	2,011,000
Operating charges in total	11,633,000

Civil servant retirement payments	
Retirement pays for former civil servants	790,000
Benefits	0
Civil servant retirement contributions	- 888,000
Retirement payments in total	- 98,000

TOTAL	46,684,000
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PART 3

CASE
STATISTICS

Complaints Received and Investigated

1. New Cases

In the year 2007 a total number of 3,976 new cases were registered. The corresponding figure for the year 2006 was 4,110 new cases.

By way of comparison, the development in the total number of cases registered over the past decade is illustrated in the figures below:

1998	3,630	2003	4,298
1999	3,423	2004	4,093
2000	3,498	2005	4,266
2001	3,689	2006	4,110
2002	3,725	2007	3,976

3,732 of the total number of 3,976 new cases in 2007 were complaint cases.

I took up 201 individual cases on my own initiative, cf. Section 17(1) in the Ombudsman Act.

The Ombudsman may carry out inspections of public institutions and other administrative authorities. Out of the total number of 3,976 new cases, 23 were inspection cases. Most of the inspection cases registered relate to institutions under the jurisdiction of the police and the prison services (detentions, police holding cells, local prisons and state prisons) and psychiatric institutions. However, inspections of other administrative units were also carried out, e.g. Odense Ice Stadium and Odense Football Stadium. Both inspections focussed on the access to the build-

ings for disabled people. (The inspection cases are described in more detail in the Annual Report. In addition, all inspection reports are available in Danish on the Ombudsman's website www.ombudsmanden.dk).

1.1. Own Initiative Projects

The Ombudsman may undertake general investigations of the authorities' case processing on his own initiative, cf. Section 17(2) in the Ombudsman Act.

One new own initiative projects was initiated in 2007. The project concerns an investigation of the case processing time in a total of 20 cases from two tax boards of appeal. The project is still pending.

An investigation of a total of 40 complaint cases from the National Income Tax Tribunal which had been initiated earlier, was concluded in June 2007. Another project initiated at the end of 2006 concerning an investigation of a total of 60 cases from three local authorities about enrolment of children in day-care was still pending on 1 June 2008.

2. Cases Rejected after a Summary Investigation

3,264 complaints lodged with my Office during 2007 were not investigated for the reasons mentioned below. In 1,561 cases, the complaint had not been appealed to a higher administrative authority, and a fresh complaint may therefore be lodged with my Office at a later stage.

The 3,264 cases were not investigated for the following reasons:

Complaint had been lodged too late	115
Complaint concerned judgments, judges or matters which had been or were expected to be assessed by the courts	118
Complaint concerned matters relating to the Parliament, including legislation	34
Complaint concerned other matters outside the Ombudsman's competence, including private legal matters etc.	186
The administrative possibilities of processing the case were not exhausted and were no longer applicable	35
Complaint not clarified or withdrawn	137
Inquiry without complaint	289
Anonymous complaint	14
Other applications, including complaints that the Ombudsman decided to turn down	639
The authority has reopened the case following the Ombudsman's request for a statement	69
Cases on the Ombudsman's own initiative and not fully investigated	67
The administrative possibilities of processing the case were not exhausted	1,561
<i>Total</i>	<i>3,264</i>

3. Cases Referred to the Ad Hoc Ombudsman. – Function as Ad Hoc Ombudsman for the Lagting Ombudsman and the Landsting Ombudsman

None of the complaints lodged in 2007 gave me reason to declare myself disqualified from their investigation.

Neither the Faroese Lagting, nor the Landsting in Greenland, has asked me to act as ad hoc Ombudsman in 2007.

4. Pending Ombudsman Cases

233 individual cases submitted to my Office before 1 January 2008 were still pending on 1 June 2008. Two own initiative projects concerning two tax boards of appeal (20 cases) and three local authorities (60 cases) were also pending on 1 June 2008.

146 of the pending individual cases were submitted in 2007, and 87 dated from previous years. Some of the pending individual cases required a statement from the relevant authority or the complainant in order to be concluded, while others were awaiting general responses from a complainant or an authority.

5. Case Processing Time

Usually, complainants receive a preliminary reply from my Office within ten working days after receipt of the complaint, also in cases which are later rejected. Of the rejected complaint cases, 53.6 per cent were concluded within ten calendar days from receipt of the complaint. The average processing time for cases that were rejected, was 32.6 days.

The average case processing time for cases subjected to a full investigation and concluded in 2007 was 6.0 months (182.3 days).

■ Tables

Table 1 All cases (regardless of registration date) concluded during the period 1 January – 31 December 2007, distributed per main authority and the result of the Ombudsman's case processing

Table 1: All concluded cases 2007	Cases in total	Cases rejected	Investigated	
Authority etc.			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
A. State authorities				
1. Ministry of Employment				
Department of Employment	19	16	2	1
The National Directorate of Labour	16	15	0	1
The Labour Market Appeals Board	26	12	14	0
The Danish Labour Market Supplementary Pension (ATP)	2	2	0	0
The National Labour Market Authority	7	7	0	0
The National Board of Industrial Injuries	33	32	0	1
The Danish Working Environment Authority	3	3	0	0
Employment appeal boards, in total	77	31	38	8
Job centres	4	3	0	1
LG (Employees' Guarantee Fund)	1	1	0	0
<i>Total</i>	188	122	54	12
2. Ministry of Finance				
The State Employer's Authority	4	2	2	0
<i>Total</i>	4	2	2	0

Table 1: All concluded cases 2007		Cases in total	Cases rejected	Investigated	
Authority etc.				No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
3. Ministry of Defence					
Department of Defence		8	6	2	0
Danish Emergency Management Agency		2	2	0	0
The Danish Defence Buildings and Establishment Service		1	1	0	0
The Danish Defence Intelligence Service		1	1	0	0
The Danish Defence Personnel Service		4	3	1	0
The Danish Home Guard		2	2	0	0
Total		18	15	3	0
4. Ministry of Justice					
Department of Justice		65	45	15	5
The Danish National Board of Adoption		5	1	4	0
The Civil Affairs Agency		33	18	15	0
The Data Protection Agency		17	12	2	3
The Greenland Board of Prison and Probation		2	2	0	0
Danish Prison and Probation Service		283	115	88	80
Local prisons		53	17	32	4
State prisons		101	79	17	5
The Courts of Denmark		1	1	0	0
The Criminal Injuries Compensation Board		2	0	1	1
Department of Family Affairs		93	65	24	4
Police commissioners, in total		144	119	10	15
The Press Council		1	1	0	0
The Danish Medico-Legal Council		5	4	0	1
Director of Public Prosecutions		35	18	14	3

Table 1: All concluded cases 2007 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommendation etc.	Criticism, recommendation etc.
The National Commissioner of Police	25	21	2	2
Public prosecutors, in total	73	48	24	1
<i>Total</i>	938	566	248	124
5. Ministry of Ecclesiastical Affairs				
Department of Ecclesiastical Affairs	12	6	1	5
Bishops	2	2	0	0
Churches	2	0	0	2
Parish clerks' offices	4	4	0	0
Parochial church councils	1	1	0	0
Deanery committee	1	1	0	0
Parish vicars	1	1	0	0
Diocesan authorities	1	1	0	0
<i>Total</i>	24	16	1	7
6. Ministry of Climate and Energy				
Danish Meteorological Institute	1	1	0	0
The Energy Board of Appeal	1	1	0	0
The Danish Energy Authority	1	1	0	0
The Danish Energy Regulatory Authority	2	2	0	0
<i>Total</i>	5	5	0	0
7. Ministry of Culture				
Department of Culture	21	17	0	4
The Library Book Royalties	1	0	1	0
Danish National Library Authority	1	1	0	0
Newspaper Pool Distribution Committee	1	0	1	0
DR (Danish Broadcasting Corporation)	17	13	3	1

Table 1: All concluded cases 2007	Cases in total	Cases rejected	Investigated	
Authority etc.			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
Danish Film Institute	1	0	0	1
The National Cultural Heritage Agency	6	6	0	0
Danish Arts Council	1	1	0	0
The Radio and Television Board	6	5	1	0
<i>Total</i>	55	43	6	6
8. Ministry of Environment				
Department of Environment	10	9	1	0
Agency for Spatial and Environmental Planning	1	1	0	0
National Environmental Research Institute	1	1	0	0
National Survey and Cadastre	2	2	0	0
The Chartered Surveyors Board	1	1	0	0
Environmental centres	1	1	0	0
The Environmental Board of Appeal	4	2	2	0
The Environmental Protection Agency	14	12	2	0
The Nature Protection Board of Appeal	72	35	32	5
The Forest and Nature Agency	6	6	0	0
Forest districts	1	1	0	0
<i>Total</i>	113	71	37	5
9. Ministry of Refugee, Immigration and Integration Affairs				
Department of Refugee, Immigration and Integration Affairs	155	86	59	10
The Refugee Board	9	9	0	0
The Immigration Service	39	36	2	1
<i>Total</i>	203	131	61	11

Table 1: All concluded cases 2007 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
10. Ministry of Food, Agriculture and Fisheries				
Department of Food, Agriculture and Fisheries	18	11	3	4
The Directorate for Food, Fisheries and Agri Business	5	4	1	0
The Danish Directorate of Fisheries	1	1	0	0
Regional veterinary and food control centres	4	4	0	0
Danish Veterinary and Food Administration	7	7	0	0
Agricultural commissions	2	2	0	0
The Danish Plant Directorate	1	1	0	0
<i>Total</i>	38	30	4	4
11. Ministry of Health and Prevention				
Department of Health and Prevention	18	15	1	2
The Danish National Committee on Biomedical Research Ethics	1	1	0	0
Medical health officers	4	3	0	1
Medicinal Injuries Board of Appeal	2	2	0	0
Danish Medicines Agency	4	4	0	0
Patient Injuries Board of Appeal	4	4	0	0
Psychiatric patient complaint boards, in total	2	2	0	0
The National Board of Health	7	6	0	1
The National Board of Patient Complaints	101	70	22	9
<i>Total</i>	143	107	23	13
12. Ministry of Science, Technology and Innovation				
Department of Science, Technology and Innovation	17	11	4	2
Danish Decommissioning	1	0	0	1
The Danish Agency for Science, Technology and Innovation	2	2	0	0

Table 1: All concluded cases 2007 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
Danish National Advanced Technology Foundation	1	1	0	0
National IT and Telecom Agency	3	3	0	0
The Telecommunications Complaints Board	1	0	1	0
Committees on scientific dishonesty	2	2	0	0
Universities and institutions of higher education	21	20	0	1
The Danish University and Property Agency	14	10	3	1
<i>Total</i>	62	49	8	5
13. Ministry of Taxation				
Department of Taxation	31	28	1	2
The Danish National Tax Tribunal	34	30	3	1
SKAT (Danish customs and tax administration), in total	121	118	2	1
Tax boards of appeal	6	6	0	0
Assessment boards of appeal	11	11	0	0
<i>Total</i>	203	193	6	4
14. Prime Minister's Office				
Department of the Prime Minister's Office	15	10	2	3
The High Commissioner of Greenland	1	1	0	0
<i>Total</i>	16	11	2	3
15. Ministry of Transport				
Department of Transport	18	17	1	0
Rail Net Denmark	1	1	0	0
DSB (Danish State Railways)	3	3	0	0
The Road Safety and Transport Agency	6	6	0	0
The Danish Infrastructure Commission	2	2	0	0
Danish Coastal Authority	3	2	1	0

Table 1: All concluded cases 2007		Cases in total	Cases rejected	Investigated	
Authority etc.				No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
Superior valuation commissions		1	1	0	0
The Civil Aviation Administration		5	5	0	0
Valuation commissions		2	2	0	0
The National Rail Authority		1	1	0	0
The Danish Road Directorate		9	4	3	2
Total		51	44	5	2
16. Ministry of Foreign Affairs					
Department of Foreign Affairs		21	14	4	3
Danish delegations abroad (embassies, etc.)		2	2	0	0
Total		23	16	4	3
17. Ministry of Education					
Department of Education		19	15	3	1
Students' Grants and Loan Scheme Appeal Board		7	5	2	0
CIRIUS		1	1	0	0
Gymnasiums (upper secondary education)		1	1	0	0
The National Authority for Institutional Affairs		1	1	0	0
The Complaints Board for Extensive Special Education		8	8	0	0
The Board for the Advancement of Debate and Enlightenment Regarding Europe		1	0	1	0
The Danish School Authority		1	1	0	0
State Educational Grant and Loan Agency		7	6	1	0
Total		46	38	7	1
18. Ministry of Social Welfare					
Department of Social Welfare		42	28	12	2
The Department's supervision of municipalities and regional and state administrations		3	2	1	0

Table 1: All concluded cases 2007	Cases in total	Cases rejected	Investigated	
Authority etc.			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
The National Social Appeals Board	160	96	41	23
The National Social Appeals Board's Employment Committee	2	2	0	0
The Danish Supervisory Board of Psychological Practice	3	1	1	1
The National Social Security Agency	16	16	0	0
(Regional) social complaints boards, in total	153	100	51	2
State administrations, in total	103	92	7	4
State administrations' supervision of municipalities and regional administrations, in total	22	13	7	2
<i>Total</i>	504	350	120	34
19. Ministry of Economic and Business Affairs				
Department of Economic and Business Affairs	8	4	3	1
The National Bank of Denmark	2	2	0	0
The Danish Commerce and Companies Agency	2	2	0	0
The Commercial Appeal Board	1	1	0	0
The Danish Financial Supervisory Authority	5	5	0	0
The Consumer Complaints Board	4	4	0	0
The Consumer Ombudsman	1	1	0	0
The National Consumer Agency	1	1	0	0
The Danish Competition Authority	2	2	0	0
Danish Patent and Trademark Office	2	2	0	0
The Danish Safety Technology Authority	1	1	0	0
The Danish Maritime Authority	1	1	0	0
<i>Total</i>	30	26	3	1
<i>State authorities, in total</i>	2,664	1,835	594	235

Table 1A: All concluded cases 2007	Cases in total	Cases rejected	Investigated	
Authority etc.			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
A. State authorities	2,664	1,835	594	235
B. Local and regional authorities	1,058	963	51	44
C. Other authorities under the jurisdiction of the Ombudsman	0	0	0	0
D. Administrative authorities under the jurisdiction of the Ombudsman, in total	3,722	2,798	645	279
E. Institutions etc. outside the jurisdiction of the Ombudsman	262	262	0	0
F. Cases not related to specific institutions, etc.	204	204	0	0
Year total	4,188	3,264	645	279

● Graphics

Figure 1

Number of cases registered for the past ten years

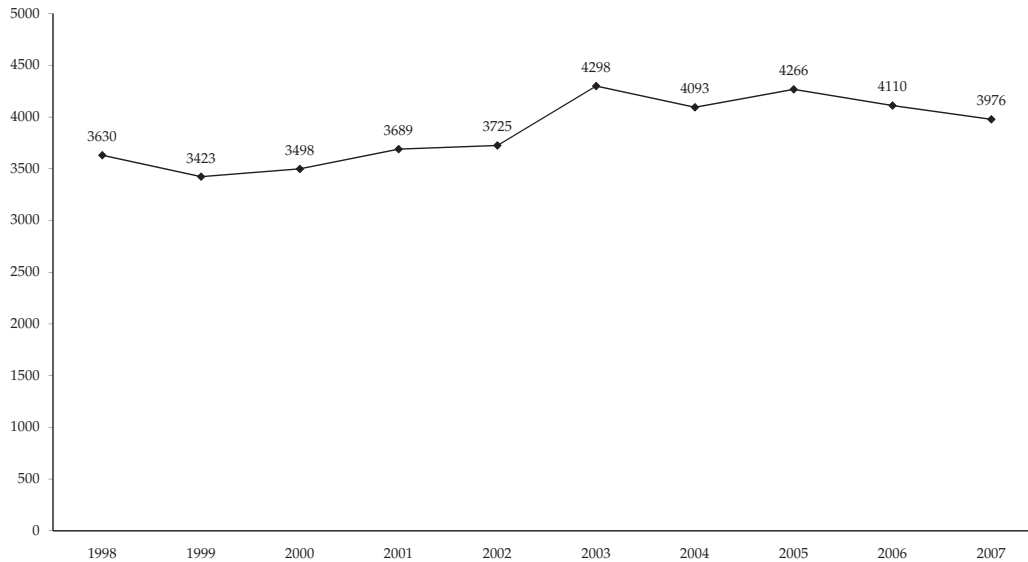


Figure 2

Categories of cases investigated to conclusion in 2007 (924 cases in total)

- A. Case processing.....10.4 %
- B. Case processing time.....12.4 %
- C. General issues.....6.2 %
- D. Administrative services5.3 %
- E. Decisions65.7 %

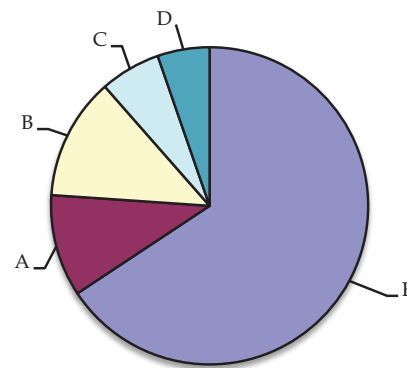


Figure 3

Categories of cases in which criticism or recommendations were expressed in 2007
(279 cases in total)

- A. Decisions31.2 %
- B. Case processing.....25.1 %
- C. Case processing time.....30.8 %
- D. General issues.....12.9 %

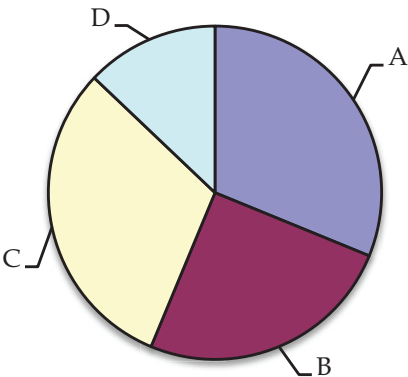
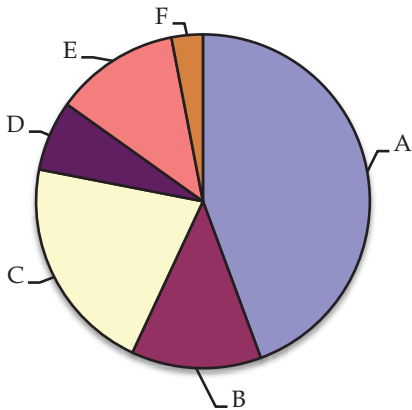


Figure 4

Cases rejected in 2007, in categories
(3,264 cases in total)

- A. Decisions 44.4 %
- B. Case processing..... 12.6 %
- C. Case processing time..... 21.1 %
- D. General issues 6.8 %
- E. Miscellaneous 12.1 %
- F. Administrative services 3.0 %



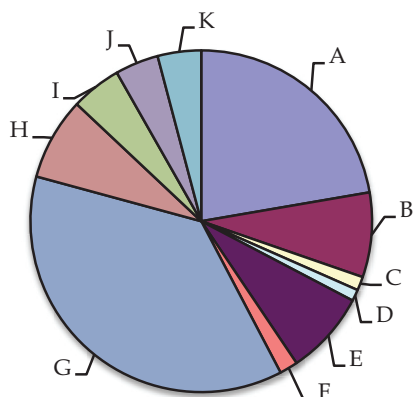


Figure 5

Cases closed in 2007, in categories
(924 cases in total)

A.	Social benefits and labour law	22.3 %
B.	Environment, building and housing	8.0 %
C.	Taxation, budget and economy	1.3 %
D.	Business regulation etc.	1.1 %
E.	Municipalities, admin. regions, health, foreign affairs and defence.....	7.9 %
F.	Transport, communication and roads	1.7 %
G.	Judiciary matters.....	36.9 %
H.	Aliens.....	7.8 %
I.	Family law etc.	4.8 %
J.	Education, science, church and culture.....	4.1 %
K.	Human resource matters etc.	4.1 %

Figure 6

Reasons for rejection in 2007, in categories
(3,264 cases in total)

A.	Lodged too late	3.5 %
B.	Judgments	3.6 %
C.	The Danish Parliament	1.0 %
D.	Outside jurisdiction.....	5.7 %
E.	Unused channel of complaint.....	1.1 %
F.	Complaint not sufficiently defined.....	4.2 %
G.	Inquiries without complaint	8.9 %
H.	Anonymous complaints	0.4 %
I.	Other inquiries	19.6 %
J.	Reopened after hearing	2.1 %
K.	Own initiative	2.1 %
L.	Preliminary rejection – unused channel of complaint	47.8 %

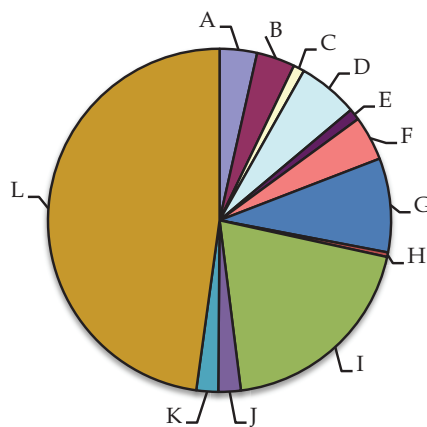
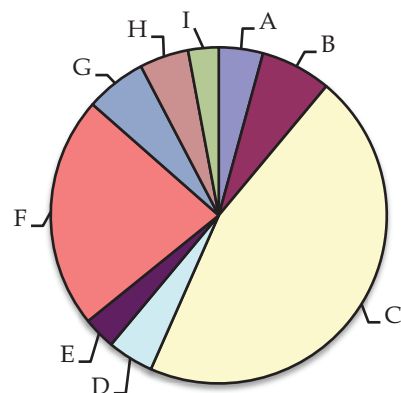


Figure 7

Total of municipal cases closed in 2007,
in categories (1,058 cases in total)

A.	Human resource administration	4.3 %
B.	Schools and culture	6.8 %
C.	Social benefits and health.....	45.6 %
D.	Social and psychiatric services	4.4 %
E.	Hospitals and health care.....	3.1 %
F.	Technology and the environment.....	22.3 %
G.	Job center	5.9 %
H.	Other administrative bodies	4.7 %
I.	Unspecified administration.....	2.9 %



Part 4

SUMMARIES

1. Ministry of Employment

Of 188 cases closed in 2007, 66 were investigated. Criticism and/or recommendations were expressed in 12 cases. 2 cases are summarized.

1. Scope of Section 24(1) of the Act on Protection against the Consequences of Industrial Injuries

A claim for compensation in accordance with the Act on Protection against the Consequences of Industrial Injuries may be rejected if notice of the injury has been given too late (formal rejection) or if the injury is not covered by the Act because it is not caused by work or by the conditions in which the work has been carried out (substance rejection).

According to Section 24(1) of the Act, a rejected case can be resumed within five years when the injured person or the surviving relatives have been informed that the injury “is not covered by the Act”.

In an actual case the National Board of Industrial Injuries and the National Social Appeals Board had rejected a claim because the notification of the injury had not been given in due time. Subsequently, the authorities had refused to resume the case with reference to, i.a., Section 24(1) (now Section 41(1)).

On this basis the Ombudsman took the matter up as a general case on his own initiative.

The authorities were of the opinion that the provision in Section 24(1) (now Section 41(1)) covers all rejected cases, i.e. both formal and substance rejections.

The Ombudsman did not agree with this interpretation of Section 24(1) (now Section 41(1)). He believed that the wording “not covered by the Act” refers solely to rejection on the grounds that there is no

industrial injury within the meaning of the Act. In his opinion, the provision does not cover formal rejections. Therefore, in these cases an application for resumption shall not be assessed according to Section 24 but according to general principles within administrative law concerning resumption. Among other things, this means that the five-year rule in Section 24(1) (now Section 41(1)) does not apply.

The authorities stated that, moreover, they considered the terms for resumption in accordance with Section 24(1) (now Section 41(1)) more lenient than the requirements for resumption within administrative law. The Ombudsman made a note of this observation.

The authorities took note of the Ombudsman’s judicial opinion and said that they would adapt their case processing in compliance with this opinion. Furthermore, the authorities would consider the need for changes in the law. The Ombudsman asked to be kept informed of the result of these deliberations.

In a letter dated 10 March 2008 the Ministry of Employment stated that the National Board of Industrial Injuries continues to deliberate on the need for a change in the law.

(Case No. 2005-1902-023).

2. Sick leave benefit

Grounds. Medical particulars

A man was absent on sick leave and received sick leave benefit. After 12 months the local authority deemed that none of the special grounds for extending the sick leave benefit beyond a year had been met.

The man filed a complaint about the decision. The social board maintained the decision but changed the grounds. The social board had a different assessment of the consequences of the man's health condition. The nature of the changed assessment did not appear from the social board's decision.

The Ombudsman stated that the grounds for the social board's decision were inadequate.

In the Ombudsman's opinion, the grounds did not appear as an explanation as to why the social board

did not consider that the complainant fulfilled the condition for receiving sick leave benefit. The decision by the social board should have contained an explanation of the nature of the changed assessment of the medical conditions and the basis of the assessment. This could have been done through a presentation of the contents of the medical adviser's statement contained in the case.

In the Ombudsman's opinion, the grounds given for the decision did not give the man a meaningful basis for disputing the decision made by the social board.

(Case No. 2007-1514-002).

2. Ministry of Finance

Of 4 cases closed in 2007, 2 were investigated. No criticism and/or recommendations were expressed in any of the cases. No cases are summarized.

3. Ministry of Defence

Of 18 cases closed in 2007, 3 were investigated. No criticism and/or recommendations were expressed in any of the cases. 1 case is summarized below.

1. No investigation of case concerning the Danish forces in Afghanistan

The Ombudsman's political neutrality

Two journalists asked the Ministry of Defence, the Chief of Defence Denmark and the Prime Minister's Office for access to information concerning the Danish Special Forces in Afghanistan for use in the making of the documentary "The Secret War". The jour-

nalists complained to the Ombudsman about the degree of access they were given.

Following the release of the film a large number of the members of the Danish Parliament, the Folketing, evinced a considerable interest in gaining further in-

sight into the information about the Danish Special Forces in Afghanistan. The MPs tried to gain this insight by asking questions of ministers and through the MPs' participation in the Folketing's Defence Committee, Foreign Policy Committee and the Presidium.

Consequently, the Ombudsman deemed that the Folketing's involvement in the case had assumed

such an extensive and special character that consideration for his political neutrality dictated that the Ombudsman abstain from further pursuing the matter.

(Case Nos. 2006-1113-409, 2006-1114-401, 2006-1744-401 and 2006-2625-401).

4. Ministry of Justice

Of 938 cases closed in 2007, 372 were investigated. Criticism and/or recommendations were expressed in 124 cases. 6 cases are summarized below.

1. Refusal of employment of social worker as educational assistant

The legal principle of employment of the best qualified. Grounds

Following a job interview, a social worker was recommended for a position as educational assistant at one of the halfway houses of the Prison Service but was turned down for the position. The Danish Prison and Probation Service omitted an assessment of whether the applicant in question was the best qualified because the applicant, as a social worker, fell outside the job advertisement's target group.

The Ombudsman criticised the Service's omission, as the weighing presupposed by the legal principle of

employing the best qualified candidate was thereby precluded.

In addition, the Ombudsman stated that the grounds for the refusal were inadequate and misleading. This was a matter for criticism, particularly because the applicant in question had been to an interview and been recommended for the position. Furthermore, the Ombudsman criticised that the wording of the job advertisement had been misleading.

(Case No. 2006-1149-810).

2. Refusal of conditional release not subjected to court hearing "without undue delay"

The Danish Prison and Probation Service refused to grant an inmate conditional release after he had served two thirds of his sentence. The inmate demanded a court hearing about the refusal in accordance with Section 122(vi) of the Corrections Act, and subsequently lodged a complaint with the Ombudsman to

the effect that the Service had not – roughly one and a half months after receiving his request – arranged for a court hearing regarding the refusal.

The Ombudsman investigated the Service's case processing time, starting from 28 July 2006 when the Service received the inmate's request, and until 10

October 2006 when the Service's account of the conditional release case was forwarded to the court.

Pursuant to Section 114(1) of the Corrections Act, such a case must be given a court hearing "without undue delay". The Ombudsman stated that in his opinion the preparation of a case where an application has been made for a court hearing pursuant to Section 112 of the Act must progress continuously, and that it must be possible to justify any breaches of this continuity – in order for the case officer to observe the

requirements of Section 114(1) of the Act – on the grounds of the circumstances of this particular case.

The Ombudsman stated that the time the Service spent on the case – almost two and a half months – in his opinion stretched far beyond what could be considered reasonable, regardless of which concrete circumstances the case might include. Therefore, the Ombudsman did not think that the case had been processed "without undue delay".

(Case No. 2006-3027-600).

3. Guidance on the right to have an observer present at official interview

Following a recommendation from a prison, the Danish Prison and Probation Service dismissed a public servant prison employee due to unsuitability.

Before the recommendation the prison had held a meeting with the prison employee. At this meeting the employee was informed that the prison deemed the employee to be unsuitable for the job, and that the

employee was therefore released from service with immediate effect.

The Ombudsman stated that the prison should have advised the prison employee of the right to bring an observer to the meeting.

(Case No. 2006-4256-813).

4. Decision by the Data Protection Agency not to institute a general data protection case

A man complained to the Data Protection Agency about the processing by the Central Customs and Tax Administration of his personal data in connection with the forwarding of income tax returns and annual statements for 2003. The Data Protection Agency fully sustained the man in his complaint about the Central Customs and Tax Administration. However, the Data Protection Agency did not find grounds for instituting a general data protection case concerning processing security. The man complained to the Ombudsman about this decision.

The Ombudsman stated that the Data Protection Agency is a supervisory authority and not an appeal body, and that the Data Protection Agency's supervision of the observance of the Act on Processing of Personal Data is in the nature of a supervision of le-

gality. The Ombudsman also pointed out that a distinction must be made between the actual complaint case (in which the man was a party) and a general data protection case (in which the man was not a party).

Because the Data Protection Agency's decision not to institute a general data protection case concerning the processing security was made based on all existing information in the case, the Ombudsman did not think he had grounds for criticising the Agency's assessment of whether a general data protection case should be instituted or not. Consequently, neither could the Ombudsman criticise the Data Protection Agency's decision not to take further action towards the Central Customs and Tax Administration.

However, the case did give the Ombudsman occasion to note that there could be – but in all likelihood relatively seldom is – a complete congruence between the information necessary for assessing whether a data controller has violated the Data Processing Protection Act, and the information necessary to determine whether a general data protection case should be instituted vis-à-vis the data controller with a view to future compliance with the Data Pro-

cessing Protection Act's provisions on processing security, etc. In consequence, the Ombudsman did not think that the Data Protection Agency would always be able to make a decision on whether or not to institute a general data protection case on the basis of the information contained in a complaint case, but that in some cases the Agency would have to obtain further details from the data controller.

(Case No. 2005-2259-203).

5. Disclosure of personal data from regional prosecutor to chief of police

Assessment grounds

A regional prosecutor discontinued the investigation of a case in which a police sergeant was suspected of wrongfully passing on confidential information to individuals connected to the criminal environment. In that connection, the regional prosecutor passed on information about the police sergeant divulged during the investigation to the chief of police in the judicial district where the police sergeant was employed.

The Director of Public Prosecutions did not think the disclosure provided grounds for criticism and the police sergeant then complained to the Ombudsman.

In a preliminary statement the Ombudsman said that in his opinion the provisions of the Act on Processing of Personal Data had to apply when the legitimacy of the disclosure was assessed.

The Ombudsman thought that the disclosure was warranted according to the provisions of the Act on Processing of Personal Data.

Since neither the regional prosecutor nor the Director of Public Prosecutions had assessed the issue according to the provisions of that Act, the Ombudsman submitted the case to the Data Protection Agency before giving his final statement.

The Data Protection Agency stated that disclosure in a case like the one in question where a letter had been written electronically and then printed out and passed on manually, must be assessed according to the provisions of the Public Administration Act and not the Act on Processing of Personal Data.

In his final statement the Ombudsman maintained that most indications were in favour of maintaining the opinion in his preliminary statement, namely that the issue should be decided according to the provisions of the Act on Processing of Personal Data. Because of the uncertainty about this which the Data Protection Agency's statement had raised, the Ombudsman chose to investigate whether the disclosure had also been warranted according to the provision in Section 28 of the Public Administration Act. The Ombudsman was of the opinion that this was the case, and he could consequently not criticise the regional prosecutor's disclosure of the information.

The Ombudsman informed the Committee on the Exchange of Information within the Public Administration of the case so that the problem can be included in the basis for the Committee's work.

(Case No. 2006-2591-611).

6. Cessation of child benefit

Child pension. Legitimate expectation. Contradictory guidance. Annulment. Party dispute.
Retroactive alteration

A mother had custody of her and her former husband's joint children, and the father had been ordered to pay child support to the mother. At the same time the mother also received child pensions from the father's pension fund.

In 2002 the mother was advised by the regional state authority that she was not entitled to receive child support due to the child pensions.

Following an application from the father in 2004 the regional state authority decided that his payment of child support should be discontinued, but did not make the decision retroactive. In 2006 the Department of Family Affairs upheld the regional state authority's decision. The Department of Family Affairs was of the opinion that, due to the father's long passivity, the mother had had a legitimate expectation of receiving the support regardless of whether she knew that she might not be entitled to it.

The father complained to the Ombudsman whereupon the Department of Family Affairs resumed the case and made a new decision to the effect that the child support should be discontinued retroactively. The Department of Family Affairs did no longer think that the mother had had a legitimate expectation of receiving the child support.

The mother then complained to the Ombudsman. She referred to the very long time that had elapsed, and that she – at least after the first decision made by the Department of Family Affairs – had rightfully expected to receive the support and had made arrangements accordingly.

However, the Ombudsman did not think that he had grounds for criticising the Department of Family Affairs.

In the Ombudsman's opinion, a citizen cannot legitimately accept a legal position which he or she cannot rightfully expect to be correct.

In addition, the Ombudsman listed the criteria which must be included when assessing whether or not a citizen has such a legitimate expectation.

The Ombudsman also made some general remarks about the authorities' possibility of cancelling decisions, including those instances when the case may be further pursued by other parties.

The fact that the mother had received an at least somewhat contradictory or unclear guidance from the local authority, could not lead to another conclusion, among other things because the local authority was not the competent authority in the case.

(Case No. 2007-2800-652).

5. Ministry of Ecclesiastical Affairs

Of 24 cases closed in 2007, 8 were investigated. Criticism and/or recommendations were expressed in 7 cases. 3 cases are summarized below.

1. Dismissal of churchwarden

Before the term of office expired, a parochial church council dismissed a churchwarden who was not a member of the council. The churchwarden complained to the bishop and to the Ministry of Ecclesiastical Affairs, both of which upheld the council's dismissal.

The Parochial Church Council Act does not directly govern the question of dismissal before the term of office has expired for church wardens who are not members of the council. It is, however, a firmly established practice in the Ministry of Ecclesiastical Affairs

that it is possible to dismiss church wardens who are not members of the parochial church council, in accordance with the general principles of employment law.

The Ombudsman recommended that the Ministry of Ecclesiastical Affairs at the first opportune occasion would clarify the Parochial Church Council Act so that the Act clearly specified which provisions apply to the dismissal of church wardens who are not members of the parochial church council.

(Case No. 2005-1500-749).

2. Duty to hear the parties according to Section 31 of the Public Servants Statute

Legal grounds. The extended duty to hear parties

On the grounds of unsuitability and uncooperativeness the Ministry of Ecclesiastical Affairs dismissed a parish clerk employed on civil service terms.

The party hearing stressed both uncooperativeness and faulty account keeping in the grounds for the contemplated dismissal.

The Ombudsman did not think that he had grounds for criticising the dismissal but stated that a correct hearing of the legal grounds presupposed that the Ministry had informed the parish clerk prior to the dismissal that the cooperative problems in themselves would lead to a dismissal.

(Case No. 2005-4366-813).

3. Dismissal of parish vicar

The Ministry of Ecclesiastical Affairs dismissed a parish vicar on the grounds that she was unfit to perform her duties and lacked the skills necessary for co-operation. The Ombudsman did not have grounds

for criticising the dismissal, but he did criticise that the Ministry had committed several errors in the course of the processing of the case.

(Case No. 2007-1043-812).

6. Ministry of Climate and Energy

Of 5 cases closed in 2007, all were rejected.

7. Ministry of Culture

Of 55 cases closed in 2007, 12 were investigated. Criticism and/or recommendations were expressed in 6 cases. 1 case is summarized below.

1. Refusal of access to the grounds for appointing theatre managers

A journalist complained to the Ombudsman about the refusal by the Ministry of Culture to a request for access to the grounds for the appointment by Københavns Teater (the Copenhagen Theatre) of four theatre managers at four different theatres.

The Ministry had based its refusal on the view that the appointments were not covered by the Access to Public Administration Files Act because it was a question of appointments “within the public service” (Section 2(2)(i) of the Act).

However, in the course of the Ombudsman’s investigation of the case the Ministry stated that the individual theatres could not be considered part of the public administration. Nonetheless, the Ministry still maintained the refusal to grant access, now based on the protection of essential consideration for private and public interests where secrecy is required due to

the special nature of the matter (Section 13(1)(i) of the Access to Public Administration Files Act).

The Ombudsman was of the opinion that both the regard for the applicants and for the public interest in ensuring that qualified applicants would apply for the advertised positions in reliance on a refusal to grant access, could provide grounds for the said refusal (Section 13(1)(i) of the Access to Public Administration Files Act).

Therefore, the Ombudsman did not consider that he had grounds for criticising the result of the refusal to grant access.

However, the Ombudsman informed Københavns Teater and the Ministry of Culture that they should not have cited Section 2(2), first sentence, of the Access to Public Administration Files Act in the original refusal to grant access.

(Case No. 2007-0579-701).

8. Ministry of Environment

Of 113 cases closed in 2007, 42 were investigated. Criticism and/or recommendations were expressed in 5 cases. 4 cases are summarized below.

1. The case processing time of the Nature Protection Board of Appeal in cases involving raw material extraction

A lawyer complained on behalf of a company about the case processing time of the Nature Protection Board of Appeal in two cases concerning raw material extraction. The Board had received one of the cases on 1 July 2004, and it must be considered that the Board had received the second case by a letter dated 22 September 2004.

In December 2004 the Nature Protection Board of Appeal stated that the Board expected to make a decision in January/February 2005. In September 2005 the Board stated that no material processing of the cases had been instituted, but that they would now be given a higher priority. The Nature Protection Board of Appeal concluded the two cases on 20 September 2006 and 20 December 2006, respectively.

The Ombudsman criticised that the Nature Protection Board of Appeal had not of its own accord informed the lawyer that the case processing had been delayed. He also criticised the lack of response by the Board to a written reminder from the lawyer and to a letter in which the lawyer asked the Board to come to a decision regarding the further processing of the cases.

The Nature Protection Board of Appeal had informed the Ombudsman that the Board did not have an established practice of informing the complainants in cases where no processing had taken place for a period of time. The Ombudsman recommended that the Board introduce such a practice.

(Case No. 2006-1949-100).

2. Decision on building design made in accordance with district plan and not according to rural zone regulations

A local authority had granted land zone planning permission to the construction of a building but had, based on a district plan for the area, refused permission for a specific design of the building. The Nature Protection Board of Appeal confirmed the local authority's decision. The Board regarded the local authority's decision as the granting of planning permission within a rural zone with the condition that the building would not be built to the specification in the original application.

In a preliminary statement the Ombudsman questioned whether the Nature Protection Board of Appeal was right in regarding the refusal for the requested building design as a condition for a rural zone planning permission, and he criticised that the Board had based its decision on this view without any further explanation. According to the Ombudsman, much of the evidence indicated that the local authority considered it had granted a rural zone planning permission without conditions, but that a refusal had

been given to a dispensation from the district plan for the requested design of the building.

The Nature Protection Board of Appeal reopened the case and declared itself in agreement with the Ombudsman. In its new decision the Nature Protection Board of Appeal did not think that the district

plan gave the local authority warrant to resist the construction of the building in the requested design, and the requested building design was therefore immediately allowed in accordance with the provisions of the district plan.

(Case No. 2006-0090-122).

3. Fee charging on application for resumption

Late rejection of complaint. Party hearing and case elucidation

A man complained to the Nature Protection Board of Appeal that a local authority had rejected his application to be allowed to live in a weekend cottage all year round for which a dispensation is needed. The Nature Protection Board of Appeal started to process the complaint. After just over a year the Board informed the complainant that the Board would not consider the case because the complaint had been lodged one day after the expiry of the complaint deadline.

The Nature Protection Board of Appeal had not carried out any hearing of parties, and the complainant protested several times about the rejection of the complaint. Twice the Board charged the complainant a fee for considering his objections which the Board viewed as applications for a resumption of the case.

The Ombudsman stated that it was very regrettable that it had taken more than a year after the recep-

tion of the complaint before the Nature Protection Board of Appeal had considered whether the complaint had been lodged in time before the deadline expired. The Ombudsman criticised that the Board had not heard the complainant before the Board rejected the complaint and subsequently maintained the rejection. Finally, the Ombudsman thought that the Board did not have authority under the provision of the statutory order then in force to charge a complaint fee for considering a citizen's objections. Please also see Ombudsman Case No. 2005-3841-109, included in this Annual Summary as Case No. 8.4, regarding fee charging by the Board under the provisions of a later statutory order.

(Case No. 2004-4007-109).

4. Fee charged on application for resumption

A lawyer complained to the Ombudsman that the Nature Protection Board of Appeal had demanded a fee of 500 DKK from him for considering his protest concerning the Board's processing of a complaint.

In the Ombudsman's opinion the Nature Protection Board of Appeal had sufficient authority to charge a fee. The Ombudsman commented that, re-

gardless of this fact, the Board still had a duty to resume the processing of a case on its own initiative under certain circumstances. Please also see Ombudsman Case No. 2004-4007-109, included in this Annual Summary as Case No. 8.3.

(Case No. 2005-3841-109).

9. Ministry of Refugee, Immigration and Integration Affairs

Of 203 cases closed in 2007, 72 were investigated. Criticism and/or recommendations were expressed in 11 cases. 5 cases are summarized below.

1. The Immigration Service's duty to take notes in connection with guidance on the legal duration of a visa stay

Good administrative conduct. Hearing of parties

The immigration authorities refused a visa application by an alien. The reason for the refusal was that she has exceeded the visa's validity period during a previous visa stay.

During the previous visa stay the alien had applied in person to the Danish Immigration Service for guidance as to her visa's validity period. The applicant and the Service disagreed about the content of the guidance given in connection with this enquiry.

The Ombudsman stated that it was regrettable that the Danish Immigration Service had not taken any notes on the guidance given to the applicant. The

Ombudsman considered whether the Service's lack of notes would have to mean that the applicant's understanding of the guidance should apply, but he did not after all think that there were sufficient grounds for this interpretation. Consequently, the Ombudsman could not criticise the refusal of the subsequent visa application.

The Ombudsman did criticise that the Ministry of Refugee, Immigration and Integration Affairs had not heard the applicant's lawyer prior to making the decision.

(Case No. 2005-4242-644).

2. No announcement of practice change

A newspaper article stated that the Immigration Service had not announced its practice change in cases involving family reunification. The change meant that it would be easier for pensioners who had resided in another EU member country, to bring a foreign spouse with them back to Denmark. This constituted a considerable practice relaxation.

The Ombudsman took up the case on his own initiative. He later stated that it was regrettable that the

Ministry of Refugee, Immigration and Integration Affairs had not immediately announced the practice change so that people could avail themselves of the new rights. As the immigration authorities had then ensured the speedy announcement on the authorities' homepage of any future practice changes, the Ombudsman took no further action in the case.

(Case No. 2006-3807-643).

3. Criticism of the case processing and case processing time in the Ministry of Refugee, Immigration and Integration

In connection with a spousal reunification case a lawyer complained to the Ombudsman on behalf of the applicant about the case processing time in the Ministry of Refugee, Immigration and Integration Affairs. It took a little over 24 months from the time when the Ministry received the lawyer's complaint, for the Ministry to make a decision in the case.

In the Ombudsman's opinion, the overall case processing time was far too long. This was very regret-

table – also in respect to the fact that the applicant had resided in a refugee camp during the whole time the case was being considered. In addition, the Ombudsman criticised that the Ministry had not informed the lawyer that the case could not be concluded within the deadline given by the Ministry, and that the Ministry did not reply to a reminder from the lawyer.

(Case No. 2006-1701-600).

4. Discontinuation of residence permit due to extended stay in the Lebanon

An alien had gone to the Lebanon at the beginning of 2001, and during the stay there he became ill and lost his residence permit and passport. He therefore applied to the Danish Embassy in Beirut at the end of 2001 in order to get a copy of the residence permit. For various reasons, this was not immediately possible, and due to illness the alien did not apply again to the Embassy for a return permit until 2003.

The immigration authorities then decided that the residence permit had lapsed because the complainant had resided outside Denmark for more than 12 successive months.

The alien's lawyer then complained to the Ombudsman, stating among other things that events at the Embassy in 2001 had not been fully clarified, and that he had asked for access to any embassy documents regarding the matter.

The Ombudsman asked the immigration authorities for an explanation as to why the lawyer's request for access to any documents had not been attended to. The Ombudsman also asked the authorities to

consider whether the Immigration Service should have delayed its decision until the request for access to documents had been processed. In addition, the Ombudsman asked to see a copy of all the Beirut Embassy's documents in the case.

The Ministry of Refugee, Immigration and Integration Affairs then resumed the case. The Ministry went through the information which was now available from the Embassy in Beirut concerning the complainant's application in 2001 and compared them with the medical information concerning the alien's health during the period of 2001-2003. On this basis, the Ministry found that the residence permit should not have been considered as lapsed.

The Ministry therefore asked the Immigration Service to contact the Danish Embassy in Beirut in order to make it possible for the alien to re-enter Denmark.

The Ombudsman subsequently took no further action in the matter.

(Case No. 2006-3092-643).

5. Leaking of information to the press

A newspaper described a case in which the Immigration Service had leaked confidential information about a married couple to a journalist in a case concerning residence permits and adoption. The Ombudsman then took up the case.

The Ministry of Refugee, Immigration and Integration Affairs confirmed that the Immigration Service had leaked the information without the consent

of the couple. Indeed, the Ministry had apologised to Parliament for the incident.

However, the couple had not received an apology from the authorities, and the Ombudsman stated that in his opinion the Ministry should also see to it that the couple received an explanation and an apology as stipulated by good administrative behaviour.

(Case No. 2007-0529-603).

10. Ministry of Food, Agriculture and Fisheries

Of 38 cases closed in 2007, 8 were investigated. Criticism and/or recommendations were expressed in 4 cases. 1 case is summarized below.

1. Refusal of access to names of veterinaries who had prescribed too much penicillin

In connection with an action plan for the reduction of an increasing use of antibiotics in the Danish pork sector, the Danish Veterinary and Food Administration ((DVFA) invited those 18 veterinaries who prescribed most antibiotics to pigs to a talk at the DVFA. The invitation stressed that this was not an initiative intended to result in fines or reports of the individual veterinaries to the police but that the intention was to start up a dialogue.

A man asked for access to the names of the 18 veterinaries, but the DVFA refused the request with reference to the provision in Section 12(1), second sentence, of the Access to Public Administration Files Act. The DVFA wrote that disclosing the names might give the impression that the prescription of antibiotics by these particular veterinaries was illegal and/or disproportionately high, and this might mean that the veterinaries' clients would avoid them. In the DVFA's opinion, therefore, there was a likely

risk that the public coverage could potentially have a serious effect on the competitiveness of the veterinaries, and thereby also have financial consequences for them.

The man then complained about the refusal to the Ministry of Consumer and Family Affairs which confirmed the decision by the DVFA. The man then complained to the Ombudsman.

The Ombudsman stated that the risk of an applicant or others abusing or misunderstanding the information given to them according to the Access to Public Administration Files Act cannot ordinarily be given importance when the authorities consider a request for access. Notwithstanding that the authorities had deemed the risk of damaging effects to be likely, the Ombudsman did not think the risk was substantiated and made plausible in such a way and to such a degree that the authorities could rightfully refuse access in accordance with Section 12(1), second sen-

tence, of the Act. In this context the Ombudsman referred particularly to the fact that the risk assessment grounds were of a general character and were not, for example, substantiated by concrete experience of material, damaging effects from access to files in similar

cases. On this basis the Ombudsman recommended to the Ministry that the case be resumed and a new decision made to grant access to the information. (Case No. 2007-1008-301).

11. Ministry of Health and Prevention

Of 143 cases closed in 2007, 36 were investigated. Criticism and/or recommendations were expressed in 13 cases. 1 case is summarized below.

1. Forwarding of complaints to correct authority

Section 7(2) of the Public Administration Act

The Ombudsman asked the National Board of Patient Complaints for a statement on the Board's practice of sending on complaints concerning matters outside the Board's jurisdiction to the correct authority.

The National Board of Patient Complaints explained that the Board's general practice was not to send

on such complaints to the correct authority unless the complainant had expressly asked the Board to do so. The Ombudsman stated that in his opinion the Board's practice was not in accordance with Section 7(2) of the Public Administration Act, and recommended that the Board reconsider its practice. (Case No. 2007-1194-409).

12. Ministry of Science, Technology and Innovation

Of 62 cases closed in 2007, 13 were investigated. Criticism and/or recommendations were expressed in 5 cases. 1 case is summarized below.

1. Personally involved manager had participated in dismissal proceedings against an employee

A researcher was dismissed from a university because he had not prepared a satisfactory work plan, and because he had not given the project manager an apology for making accusations that the project manager had started a smear campaign. The researcher was

suspended from duty already at the preliminary hearing on the grounds that he had removed the project manager's name from a list of authors.

In addition, at a departmental meeting the researcher had made derogatory remarks about the project

manager's serious illness, and he had brought a libel action against the project manager for defamatory remarks.

In the Ombudsman's opinion the project manager should have been regarded as disqualified in connection with the personnel case against the researcher. The Ombudsman stressed that the project manager (and any person in the same situation) was, or rightfully could be, particularly affected personally by the researcher's behaviour, and that the researcher si-

milarly had a strong and demonstrable personal antagonism against the project manager. Therefore, the university should not have based its decision on the project manager's information untested but put it on much the same footing as evidence by a party.

The Ombudsman recommended that the supervisory authority consider whether the disqualification had had a concrete and material influence on the decisions.

(Case No. 2004-2887-812).

13. Ministry of Taxation

Of 203 cases closed in 2007, 10 were investigated. Criticism and/or recommendations were expressed in 4 cases. No cases are summarized.

14. Prime Minister's Office

Of 16 cases closed in 2007, 5 were investigated. Criticism and/or recommendations were expressed in 3 cases. 1 case is summarized below.

1. The Prime Minister's refusal to give interview to a journalist

Parity principle. Grounds

A journalist complained to the Ombudsman that the Prime Minister had refused to give him an interview about the war in Iraq, an interview which the journalist had asked for over a long period of time. At first, the Ombudsman concluded his investigation of the complaint without criticism because he took particular notice of a statement from the Prime Minister's Office that the Prime Minister had not given any interviews at all on the war in Iraq for a long time.

After the case had been closed, the journalist informed the Ombudsman that the Prime Minister had in fact given interviews on the war in Iraq to other me-

dia in August 2006. In the light of this information the Ombudsman resumed his investigation of the case.

The Ombudsman subsequently said that he still did not have grounds for criticising the Prime Minister's refusal to give an interview to the journalist during the period when the Prime Minister generally refused to give interviews on the war in Iraq. After the Prime Minister had started to give interviews on the Iraq war again, the Ombudsman did not think that the Prime Minister's Office had provided any concrete grounds for refusing the journalist's request for an interview. The Ombudsman asked the Prime Mini-

ster's Office to resume the case or to give a concrete reason for the refusal.

The day after the Ombudsman's statement was made public, the Prime Minister's Office made a new decision to refuse the interview. The Office did not provide any concrete grounds for the refusal, and on this basis the journalist asked the Ombudsman to resume the case on the grounds that the Prime Mini-

ster's Office had refused to follow the Ombudsman's recommendation.

As the Prime Minister shortly afterwards did give the journalist the interview on the war in Iraq, the Ombudsman announced that he took no further action in the case.

(Case No. 2006-3446-450).

15. Ministry of Transport

Of 51 cases closed in 2007, 7 were investigated. Criticism and/or recommendations were expressed in 2 cases. 1 case is summarized below.

1. Local authority's assumption of house owners' obligations

A local authority council decided to extend an area in which the local authority was paid to take care of cleaning and winter maintenance of the roads. The decision was made on the basis of documentation which the local authority's administration had produced. In this documentation the area concerned by the decision was indicated in two mutually contradictory ways. The local authority council's decision was later implemented by the administration through decisions which were announced to the affected house owners, including a houseowners' association.

The houseowners' association complained to the Road Directorate because, in the association's opinion, the local authority council's decision did not include the association's street and therefore depended on preceding negotiations with the affected house owners. The Road Directorate did not change the local authority council's decision but remarked that the council should have informed the houseowners' as-

sociation before making the decision. The Road Directorate stated to the Ombudsman that the council should have heard the houseowners' association as a party but that this error had been rectified in connection with the processing of the complaint.

The Ombudsman stated that the local authority council's decision included the properties of the houseowners' association, and that it did not depend on preceding negotiations with the affected house owners. However, the Ombudsman did criticise that, before the council meeting, the local authority's administration had produced documentation which could give rise to doubts about the content of the decision. In addition, the Ombudsman criticised that the Road Directorate had not more expressly addressed the association's individual complaints. The Ombudsman agreed that the local authority should have carried out a hearing of parties, but did not agree that this error had been rectified.

(Case No. 2006-2045-516).

16. Ministry of Foreign Affairs

Of 23 cases closed in 2007, 7 were investigated. Criticism and/or recommendations were expressed in 3 cases. 1 case is summarized below.

1. The Foreign Minister's refusal to give a journalist an interview

The decision concept. Weight on lack of trust

A journalist complained to the Ombudsman that the Foreign Minister had refused to give him an interview about the war in Iraq.

At first, the Ombudsman had to understand the explanation from the Ministry of Foreign Affairs to mean that the Ministry had based its decision not to give the interview on two things, namely 1) on the assessment that the Foreign Minister could not rely on his statements in the interview being quoted faithfully in a subsequent article, and 2) on the fear that the journalist would use an interview with the Foreign Minister as occasion for additional negative and critical comments on the Government's and the Foreign Minister's handling of the matter.

In a preliminary statement the Ombudsman said that the Ministry of Foreign Affairs could not base its decision on these considerations. The Ombudsman was therefore going to ask the Ministry of Foreign Affairs to reconsider the interview request and this

time to make a decision on the matter without including any of the above-mentioned reasons.

The Ministry of Foreign Affairs stated that the Ministry had not wished to claim that the journalist would not quote the Foreign Minister correctly, and that the Ministry's refusal was not based on the risk and the fear that the journalist would use an interview with the Foreign Minister as an occasion to make further negative and critical comments about the Government's handling of the matter.

After this statement, the Ombudsman could not establish that the decision was based on non-objective considerations, and he concluded the case.

In the final statement, the Ombudsman said that a decision not to give a journalist a specific interview is not usually a decision within the meaning of the Public Administration Act.

(Case No. 2006-3499-450).

17. Ministry of Education

Of 46 cases closed in 2007, 8 were investigated. Criticism and/or recommendations were expressed in 1 case. No cases are summarized.

18. Ministry of Social Welfare

Of 504 cases closed in 2007, 154 were investigated. Criticism and/or recommendations were expressed in 34 cases. 6 cases are summarized below.

1. Determination of and dispensation from complaint deadlines

Dating and forwarding of decisions. Postal delays

The Ombudsman investigated four cases (three industrial injury cases and one social sector case) in which the National Social Appeals Board had refused to consider the complaints on the grounds that the complaint deadlines had been exceeded. In this context, the Ombudsman commented on various general issues in relation to the determination of complaint deadlines and dispensation from these deadlines.

These issues particularly concerned the start of the deadline term, who bears the risk of postal delays (whether a postal delay should be detrimental to the complainant or to the authority), and the substance of the authorities' duty to elucidate cases in which a complaint (on the face of it) does not seem to have been lodged in time.

(Case Nos. 2004-3074-024 and 2004-3037-085).

2. Refusal by the National Board of Industrial Injuries to disclose the name of medical adviser

The National Board of Industrial Injuries and the National Social Appeals Board refused a woman access to the name of the medical adviser in the National Board of Industrial Injuries who had participated in the processing of the woman's industrial injury case. The woman had previously – following the National Board of Industrial Injuries' decision in the case – been granted access to the actual report by the medical adviser, in accordance with the principle of increased access to public records in Section 4(1), second sentence, of the Access to Public Administration Files Act.

The Ombudsman took up the case on his own initiative and asked the authorities to give a detailed account of the reasons why the woman could not be granted access to the medical adviser's name. The Ombudsman referred to the principle in Section 2(3) of the Access to Public Administration Files Act

which says that i.a. information of the public employee's name is open to the public. In addition, the Ombudsman referred to the regard for a citizen's opportunity to protest against a decision on the grounds of disqualification. The National Board of Industrial Injuries then granted the woman access to the medical adviser's name.

The Ombudsman criticised that the woman had not previously been granted access to the medical adviser's name. At the same time the Ombudsman commented that the medical adviser's report is an internal work product, but that the extraction duty pursuant to Section 12(2) of the Public Administration Act under certain circumstances may mean that access to information contained in a medical adviser's report must be granted during the processing of the case.

(Case No. 2006-4384-001).

3. Local authority's sale of land plot

A local authority sold a plot of land to the owner of a property. A married couple who owned another property, had indicated several times to the local authority that they were interested in buying the plot. The couple complained to the regional state authority which did not think that the local authority had acted

illegally. The Ombudsman criticised that the local authority had not invited the couple to make a bid for the plot. In addition, the regional state authority should have heard the couple before making a decision.

(Case No. 2005-4326-419).

4. Right to complain in connection with building project

Party concept

A neighbour was not heard as a party before a local authority granted planning permission for the construction of hotel apartments just in front of the neighbour's holiday house. The construction of the apartments meant, among other things, that the neighbour lost his sea view, and caused a nuisance because it would be possible to look inside his house from the apartments.

The local authority considered the neighbour to be a party in the case because of the lost sea view but omitted to hear him because the local authority considered making a decision on the existing basis unobjectionable.

The regional state authority did not find that the neighbour was a party to the case and thereby entitled to complain.

The Ombudsman stated that the nuisance inflicted on the neighbour had to be assessed objectively and independently of the neighbour's possible expectations as a consequence of the area being designated for hotel purposes. The neighbour's holiday house could be let all the year round, and the neighbour could use

it himself during the times when it was not let. Consequently, the house's designation as a holiday home should not be regarded when it was determined whether the neighbour was a party or not. In addition, it was not out of the question that the preservation of a sea view could be included in an overall assessment of the neighbour's party status.

Because of the short distance to the neighbour's property, the nuisance caused by the loss of privacy had to be deemed considerable. So much so that the neighbour's interest in the case for that reason alone had such a degree of intensity and force that the neighbour should have been considered a party in the case and thereby entitled to complain.

The Ombudsman also stated that the local authority should not have omitted to hear the neighbour on the basis that this was unobjectionable. The information received by the local authority from the applicant did not have the necessary authentic quality which is required according to Section 19(2), first sentence, of the Public Administration Act.

(Case No. 2006-2510-104).

5. Visitor banned from visiting a care facility

A woman's mother had for some years prior to her death been a resident at a care facility. When the woman visited her mother, conflicts arose between the woman and the nursing staff concerning the mother's care. The conflicts were instrumental in causing the nursing staff's trade union to announce that its members could no longer perform their duties of caring for the mother if the conflicts were not resolved.

After the mother died, the woman continued to visit the care facility, among other things as a contact friend for one of the other residents, and her visits still resulted in conflicts. This led to the mayor sending a registered letter to the woman, informing her that her visits to the care facility were unwanted. In this context he referred the woman to Section 264 of the Criminal Code on persons who obtain unlawful access to a strange house or any other place not freely accessible. The woman showed up at the care facility regardless and had to be expelled by the police.

The woman's husband complained to the municipal supervisory board which did not find grounds for criticising the local authority. The husband then complained to the Ombudsman.

6. The use of basement for day-care centre

Authority's legal disqualification

An association complained that a kindergarten had been set up in the rooms of a basement. The basement floor was about 1.5 metres below ground level, and the local authority had therefore dispensed from the rule that today living room floors in day-care and 24-hour institutions must not be situated below ground level. In the opinion of the regional state authority, the dispensation was valid.

The Ombudsman could not criticise that, out of consideration for the running of the care facility, the local authority felt it was necessary to tell the woman that her presence at the care facility was unwanted. The legal grounds for such a notification could either be 1) a request accompanied by a warning of police intervention or a visiting ban, 2) a report of the matter to the police or 3) a visiting ban in pursuance of institutional considerations.

It appeared from the case that the matter had not been reported to the police at the same time the woman was notified. It was unclear whether the notification should accordingly be seen as a request with a warning of possible police intervention (cf. the reference to Section 264 of the Criminal Code) or as a visiting ban.

The Ombudsman considered it a matter for criticism that the legal grounds for the notification did not appear clearly. The statutory grounds on which the decision had been made, should have appeared clearly from the notification.

(Case No. 2004-3027-063).

The Ombudsman stated that it was reasonable to assume that the rule in question also had an underlying consideration for matters of light and view. As the windows were placed about 1.4 metres above the floor, it followed that especially smaller children would hardly be able to look out at the surrounding area. The local authority had not included this consideration in its assessment.

As a housing authority, the local authority had to be considered legally disqualified in the case, and the local authority or the regional state authority should therefore have obtained a statement from the National Agency for Enterprise and Construction as part of an intensified scrutiny.

The Ombudsman recommended that the case be resumed, which it was. The decisions by the state regional authority and the local authority were annulled, and the case was remitted for renewed consideration.

(Case No. 2006-1151-160).

19. Ministry of Economic and Business Affairs

Of 30 cases closed in 2007, 4 were investigated. Criticism and/or recommendations were expressed in 1 case. 1 case is summarized below.

1. Access to correspondence on e-mail server

An association complained to the Ombudsman about the refusal by the Ministry of Economic and Business Affairs to the request for access to e-mail correspondence on the e-mail server of the Maritime Authority. The Ombudsman did not think that there were grounds for doubting the authorities' information that they were not in possession of the correspondence, either physically or electronically. Neither did the Ombudsman think that the Maritime Authority was obliged to go through the Authority's computer back-up security copy in order to look for the corre-

spondence as the information in the Authority's back-up system had not, in the Ombudsman's opinion, been sent to nor created by the Authority as part of administrative case processing. Consequently, the information in the back-up system was not included in the rights to access to files pursuant to Section 4 of the Access to Public Administration Files Act. The Ombudsman therefore did not think that there were grounds for criticising the refusal by the Ministry to grant access.

(Case No. 2005-3629-701).

20. Local authorities

Of 1,058 cases closed in 2007, 95 were investigated. Criticism and/or recommendations were expressed in 44 cases. 4 cases are summarized below.

1. Demands to carry out an inspection into the possibility of mould fungus in day-care centre

Admission to specific day-care centre. Consideration for the individual citizen

As a member of the parents' association in a day-care centre, a mother raised the suspicion that there was mould fungus present in the day-care centre's sleeping quarters. It was the mother's opinion that the local authority and the day-care centre's management did not to a satisfactory degree on their own accord investigate or follow up on the suspicion, nor carry out the necessary inspections.

The Ombudsman made some general comments on the authorities' case investigation duty in connection with the processing of such more general cases.

The Ombudsman did not in the actual case have grounds for assuming that the local authority did not react correctly and adequately to the mother's inquiries about mould fungus.

During the case processing considerable cooperative problems arose between the mother on the one side and the day-care centre staff and the other members of the parents' association on the other side.

Later on, the mother applied for also her youngest daughter to be admitted to the day-care centre. The

local authority refused the application with reference to the cooperative problems and said that it would be best for the mother if the youngest daughter was admitted to a different day-care centre.

The Ombudsman did not have grounds for criticising the local authority's refusal.

The Ombudsman expressed some general opinion on the inclusion of various considerations, and mentioned i.a. the principle that it is up to the party/citizen to assess what is best for him or her. Only very specific circumstances should allow this assessment to be set aside.

The Ombudsman found it regrettable that the local authority had based its decision on what would be best for the mother.

In addition, the Ombudsman criticised the grounds given for the decision and the lack of a hearing of parties.

(Case No. 2005-2276-060).

2. Employees were informed too late of recommendation which could lead to dismissal

A newspaper brought an article about the dismissal of two local government employees. According to the article, the chairman of one of the local government's committees had stated to a television station that the committee had decided to dismiss the two employ-

ees. The employees did not know about the committee's decision before they heard about it from the press.

The Ombudsman took up the case on his own initiative and asked the local government for a state-

ment. The local government informed him that the committee had not decided to dismiss the two employees but had made an economic decision in connection with the budget planning. On this basis the local government had shortly afterwards discontinued the scheme under which the two employees worked.

The Ombudsman stated that it was unfortunate that the committee chairman had informed the public of the committee's decision before telling the employees

who would be affected by the decision. However, this in itself could not provide grounds for criticising the local government as the committee's recommendation was primarily of a budgetary nature. On the other hand, the Ombudsman did criticise the local government for not informing the two employees of the committee's recommendation and its consequences as quickly as possible after the decision had been made, and before it was made public.

(Case No. 2007-2140-813).

3. The drawing of lots to decide the allocation of Christmas tree sale stands

A local authority had decided on a set of guidelines for the allocation of stands for the selling of Christmas trees. According to these guidelines, the local authority drew lots to decide in cases where there was more than one applicant for a particular stand.

In the Ombudsman's opinion the local authority could not use the guidelines without significant modifications in cases regarding stands on public roads

and public areas and in cases involving an application from a disabled applicant.

The Ombudsman stated that when deciding on guidelines for the processing of a specific case type, an authority should ensure that the guidelines tally with the legislation. The Ombudsman recommended that the local authority revise the guidelines.

(Case No. 2006-2345-419).

4. Two out of three dismissals found wrongful by a dismissal board

The local authority's grounds were not objective in the third dismissal case

A local authority dismissed three family counsellors on the same grounds. Two of the three counsellors had their dismissal reviewed by a dismissal board which stated that the grounds for the two dismissals were not sufficiently objective.

The third family counsellor did not fulfil the collective agreement's conditions for having the dismissal reviewed by a dismissal board. The case was brought before the municipal supervisory board which gave a statement in the case. During the Ombudsman's investigation of the case, the municipal supervisory board changed its mind so that the board no longer considered that they had any competence in the case.

The Ombudsman then initiated an investigation of the local authority with focus on the authority's obligation to reconsider the third case in the light of the dismissal board's ruling.

The local authority changed the dismissal grounds. The Ombudsman stated that the authority's changed grounds for the dismissal of the third family counsellor lacked the necessary objective basis. The Ombudsman therefore recommended that the local authority resume the case.

The local authority subsequently stated that the authority and the third family counsellor had arrived at an amicable settlement in the case.

(Case No. 2004-4151-813).