



FOLKETINGETS
OMBUDSMAND



The Danish Parliamentary Ombudsman has been elected by Parliament. His task is to help ensure that administrative authorities act in accordance with the law and good administrative practice, thus protecting citizens' rights vis-à-vis the authorities. The Ombudsman investigates complaints, opens cases on his own initiative and carries out monitoring visits.

Annual Report 2020

The Danish Parliamentary Ombudsman

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Dear Reader,

In accordance with the Ombudsman Act, the Danish Parliamentary Ombudsman submits an annual report on his work to the Danish Parliament. In previous years, all parts of the Ombudsman's annual reports, together with summaries of statements on selected cases, were translated into English. As something new, the 2020 Annual Report of the Danish Parliamentary Ombudsman will be published in a special international edition. This report seeks to communicate in a more targeted way to colleagues, collaborative partners and other interested parties in other countries. The aim of the new format is to support the Danish Parliamentary Ombudsman's long tradition of sharing information and experiences internationally with colleagues and others with a special interest in ombudsman work. This report contains elements from our Danish report but also elements that are unique to this international version.

2020 was an extraordinary and difficult year – as in the rest of the world. Moreover, we received more complaints than ever before. Still, we managed to process more cases than in previous years and reduce our average case handling time. On the following pages, I will cover some of our most important cases in 2020. This report also contains articles about central issues which we looked into in a year characterised by COVID-19. In one article, for instance, we will share some of our experiences in relation to openness in the public administration in a pandemic – an issue which several ombudsman institutions around the world have looked into.

Because of the great diversity of ombudsman institutions around the world, we have included, as something new, an appendix which will enable readers with a special interest to get a deeper understanding of the Danish Ombudsman institution.

Enjoy the read!



Niels Fenger
Parliamentary Ombudsman

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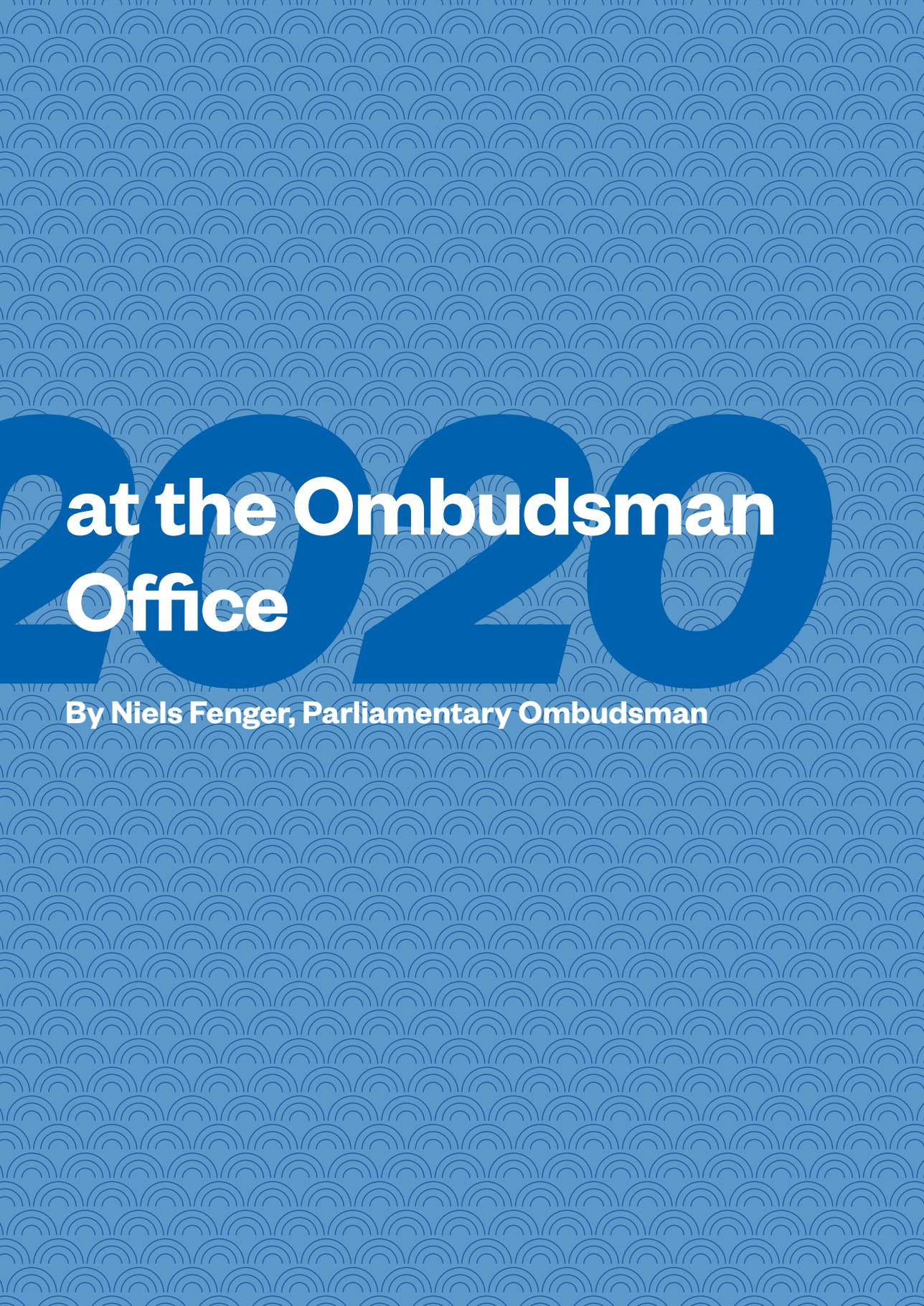
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Contents

2020 at the Ombudsman Office	
Niels Fenger, Parliamentary Ombudsman	4
About the cases	
Complaint cases	20
Own-initiative investigations	30
Monitoring activities	38
Articles	
Openness in a pandemic	
Kirsten Talevski, Senior Head of Division, and Mai Gori, Legal Case Officer	52
Getting the access to files case on the right track	
Stephan Andreas Damgaard, Deputy Head of Division	58
Monitoring activities: Institution status may provide questionable legal authority	
Kaj Larsen, Chief Legal Advisor	64
Brief overview of the year	
The year in figures	72
Extracts from news stories published on the Ombudsman's website in 2020	82
Statement of revenue and expenditure 2020	84
Organisation	88
Appendix	
General information about the Danish Parliamentary Ombudsman and about monitoring visits under the OPCAT mandate	96



2020 at the Ombudsman Office

By Niels Fenger, Parliamentary Ombudsman

The year 2020 was my first full year as Ombudsman. As for everybody else, it was of course marked by COVID-19. Also the staff members of the Ombudsman Office have had to work from home – and that already three months after I took up the post, and before I had become quite familiar with the staff and the building. COVID-19 has been a long, continuous pressure test, also here at the Ombudsman Office. But despite the challenges we have never processed more cases than in 2020 where we concluded 6,207 cases, of which 5,924 were complaint cases. I am very proud of how well my staff have tackled the difficult situation.

We received 5,707 complaints in 2020. That is an increase of more than 300 complaints, or 6 per cent in comparison to 2019. If we look at the development from 2018 till 2020, the number of complaints has risen by more than 900, or as much as 19 per cent. That has had a notable effect. That is why our work in 2020 has been dictated by the complaint cases to an even higher degree than before.

The Ombudsman Office's task is not only to help ensure good administration by the authorities. We must also show the way in that respect. It is not fair to the complainants, if we do not process their cases within a reasonable time frame. At the same time, our right to criticise the authorities for slowness is undeniably greater if our own processing times are good. In 2020, we therefore invested a lot of resources in ensuring quick processing of as many cases as possible. And actually – despite the increased number of cases, and sending the staff home due to COVID-19 – we did succeed in reducing our case processing time a little. We are really quite proud of that.

At the same time it is clear that if you use resources in one place, you will have to economise in other places. Until now, we have been able to start up just about as many own-initiative cases as in previous years. But we have not had the capacity to start up all the own-initiative cases which we would have wanted in an optimal situation. And I find that to be a bit of a shame, really. Because it is often through the own-initiative cases that the Ombudsman can deliver maximum legal protection. My aim is that we will be able to give higher priority to the own-initiative cases over the coming years.

Over the next pages, I will cover some of the most important cases from 2020. Some because they concerned matters of legal principle and others because they were of great practical importance to many citizens. In several of the cases I have had a different conception of the law from that of the authorities. In those cases I have often chosen not only to look back in time and give criticism, but also to try and help the authorities to understand what they should do better next time. Because it can never be a goal in itself to look for errors and to regulate through criticism. The aim must always be to find solutions to a case – and the authorities did accept my recommendations in the mentioned cases. The Ombudsman should continue to be a constructive partner for the authorities in the effort to ensure and maintain and further extend the high legal protection in the administration.

Cases involving access to public administration files

One of the acts on which the Ombudsman has traditionally had a special focus is the Access to Public Administration Files Act. The public's

access to insight into the administration is one of the foundations for a well-functioning democracy, for freedom of information and expression and for the monitoring of the authorities by the media and the public. Quantitatively, we have fewer cases on access to public files than many probably think. On the other hand, they often involve matters of legal principle.

The Access to Public Administration Files Act applies to 'documents sent to or set up by an authority etc. as part of administrative case processing in connection with the authority's activities'. But what about documents which concern government ministers' and their special advisers' communication with their political parties? Are such documents and such information covered by the Access to Public Administration Files Act, or do these involve party political activity which can be exempted from public insight?

A journalist had asked the Prime Minister's Office for access to e-mails which had been exchanged between special advisers in a number of Government Ministries on the one hand and Members of Parliament and staff from the Social Democratic Party on the other (Case No. 2020-41, published in Danish at www.ombudsmanden.dk). The e-mail correspondence concerned the coordination of political messages and initiatives etc. in connection with a government proposal for a reform of the municipal fiscal equalisation scheme etc. The Prime Minister's Office had refused to grant access to the e-mails, and I could not criticise that, as the special advisers had solely corresponded in connection with the Prime Minister's function as a party politician but not (also) her function as leader of the Government or administrative head. The case shows that a document can be related to the minister's function as a party politician,

even though it concerns a subject that is also being processed in the ministry.

In another case, the subject was how to establish whether correspondence etc. of a public employee is private or covered by the Access to Public Administration Files Act (Case No. 2020-39). If a public employee sends an e-mail about a family birthday, then it is undoubtedly private – and thereby not subject to access to public administration files – even though the e-mail is sent from the workplace, during working hours and from a work e-mail. But in other instances, it can be difficult to assess whether a message is private or not. This is particularly the case if the message concerns a subject which touches on the employee's area of work, and where the public employee at the same time has both a work-related and a non-work-related connection with the person he or she is corresponding with. A journalist asked for access to messages exchanged between the former chief of staff at the Prime Minister's Office and a political commentator. The Prime Minister's Office refused to give access to the correspondence on the grounds that the chief of staff and the commentator were private friends, and the messages had to be considered as private correspondence which was not subject to the Access to Public Administration Files Act. After I had read the messages, I could not set aside the assessment of the Prime Minister's Office. I acknowledged that friends can speak privately about a matter to which they both have a work-related connection. But I stressed at the same time that the fact that you are friends does not in itself mean that the communication is private in relation to the Access to Public Administration Files Act. And I set out a number of indicators to assess whether the correspondence of a public employee is private or not; indicators, which should ensure that the delimitation between



private and work-related correspondence is not determined in such a way that the right of access to public administration files risks being eroded.

Other of the more important cases in 2020 within the field of access to public administration files concerned how broadly an applicant can delimit a request for access to public administration files, and the phenomenon which I called 'concealed delimitation' on the part of the authorities. Those cases are covered in the article 'Getting the access to files case on the right track' (page 58).

➤ **There are limits to how far public authorities can go as regards professional spin, when they are making a statement to the press.**

We have also had a number of significant cases on access to public files which in one way or another concerned COVID-19. Information about those cases can be found in the article 'Openness in a pandemic' (page 52).

Public authorities and the press

Obviously, we citizens do not get information about the public administration solely via requests for access to public administration files. It is also an important job for the public administration to communicate with the public on its own initiative. An authority may for instance reply to criticism in the press, correct erroneous statements and explain its actions.

The individual authorities have quite a wide scope for how they want to communicate with the public. But regardless of how an authority communicates, it is still crucial that it observes

the common administrative law principles of equality, objectivity and duty to tell the truth. This also applies to press releases. They are usually relatively brief and can therefore not always be exhaustive in all respects but the contents must still be true and fair. This means that there are limits to how far public authorities can go as regards professional spin, when they are making a statement to the press.

These limits were in my opinion crossed in a press release which the Danish Tax Agency issued on the so-called refund of dividends tax case (Case No. 2020-46). This was because the

press release gave the impression that the National Audit Office had assessed partly that a concrete settlement in the refund of dividends tax case was lawful, and

partly that the Danish Tax Agency's statements in the media were justified. However, the National Audit Office had only stated that the Danish Tax Agency could enter into a settlement but had not taken a position on the specific settlement or on the Danish Tax Agency's statements in the media.

Also in another respect will administrative law's objectivity principles limit how an authority can act in relation to the media. A journalist had written an article on accusations of offensive behaviour at a committee meeting in Slagelse Municipality. In the article, the journalist mentioned the names of the male committee members. The mayor of the municipality was of the opinion that the journalist thereby threw suspicion on named individuals, and in that context he wrote several e-mails to both the journalist and the medium's management. In one of the

e-mails he wrote as follows, among other things: ‘(...) it is in every way very, very bad! It makes me consider terminating all cooperation’. I took up the case on my own initiative and stated that there may certainly be situations where there is an objective reason why an authority contacts a journalist or a medium’s management. For instance, if the authority believes that the journalist has misunderstood something or has written something which is factually wrong in an article. However, the authority’s contact must not appear as an act of pressure. And the mayor’s e-mail did just that. The e-mail thereby crossed the line of how an authority should act. (Case No. 2020-42).

Life in public institutions

Every year, the Ombudsman carries out a considerable number of monitoring visits to public institutions (and in the children’s sector, also certain private institutions). We investigate among other things whether persons who have been voluntarily committed or deprived of their liberty are treated lawfully, humanely and compassionately.

Each year, we select a theme which will be the common thread for that year’s monitoring activities. In 2020, I published a thematic report on legal protection for inmates placed in disciplinary cells. We had chosen this particular subject because there has been a great increase in the use of disciplinary cells in recent years, because it is very intrusive to be placed in a disciplinary cell, and because placement in a disciplinary cell carries the risk of adverse psychological effects. It is therefore important that inmates know about their rights, that there is documentation that the decision is correct, and that adverse psychological effects are sought to be prevented.

The overall conclusion in our thematic report was that the Prison and Probation Service generally does a good job. But also that the Prison and Probation Service to an (even) higher degree should safeguard the legal rights of inmates. Thus, in several instances our visiting teams spoke with inmates who had not understood what was going on during their interrogation. Consequently, they did not know that they were entitled to assistance during the interrogation, and to complain about the decision. In 6 out of 17 monitoring visits, the visiting team recommended that interpreters be used to a higher degree. In 15 out of 17 monitoring visits, the visiting team recommended that management ensure an increased focus on documenting that the decision was correct. The visited institutions were focused on the risk of adverse psychological effects from disciplinary cell placement. But I recommended that they lay down guidelines for the way in which adverse psychological effects can be prevented, and what staff can and should do when an inmate shows signs of suffering adverse effects.

We also looked into the COVID-19 measures in the state and local prisons and halfway houses under the Prison and Probation Service in a number of visits in 2020. I stressed in one of several statements on the subject that the Prison and Probation Service’s otherwise valid efforts to keep the contagion out of state and local prisons and halfway houses had had notable consequences for inmates and residents. They had thus been cut off from, among other things, occupation, leave and visits. I therefore recommended that the Prison and Probation Service evaluate the experiences and assess whether any future pandemic can be handled effectively but at the same time under less restrictive conditions. For the same reason I find it very positive that the Prison and Probation

Service has subsequently been focused on evaluating the experiences from the COVID-19 period with a view to handling the continued outbreak of COVID-19 in an effective way and at the same time under less restrictive conditions, if possible, than was the case in the spring of 2020.

Later in the year, I pointed out that there could be reasons for considering whether new inmates should be tested or screened. It is therefore positive that it now appears from the contingency plans from the Department of Prisons and Probation regarding state and local prisons that new inmates must be screened and they must not, as far as possible, be placed in a double occupancy cell. Furthermore, the individual institution must prepare procedures for screening with a quick test or a PCR test when the institution receives new inmates. It also appears that a quick test may be used when inmates are tested in connection with transfers or following leave.

In connection with our monitoring visits, we have in addition found a large number of institutions with internal rules and practices which made interventions towards residents possible. In wards for adult psychiatric patients, among other places, there were house rules which allowed for interventions towards patients without having the required legal authority. Further information can be found in the article 'Monitoring activities: Institution status may provide questionable legal authority' on page 64.

Children

The Ombudsman must be a safeguard for everybody's legal rights. But the Ombudsman

has a special obligation towards the weaker social groups who cannot fight for their rights themselves. By an amendment of the Ombudsman Act in 2012, a specialised Children's Division was established to monitor whether the rights of children are observed. We receive complaints involving children in all types of life situations. But our monitoring of the children's sector is especially focused on children in a vulnerable life situation where their rights may be under pressure. This concerns, among others, children who are placed in an institution.

➤ **It is unsatisfactory that many children attending in-house schools in placement facilities do not get the education they are entitled to.**

In 2020, we published our monitoring thematic report on younger children placed in social care, meaning children placed in accommodation facilities or open residential institutions, pursuant to the Social Services Act. The vast majority of accommodation facilities and residential institutions do a good job. But at the same time, one of our main conclusions was that several of the visited facilities and institutions lacked sufficient knowledge of the rules on the use of physical force etc., and of how force is used most considerably. Another important conclusion was that all in-house schools except one were struggling when it came to observing the rules on teaching the children the full range of subjects, on the number of class hours per year as well as the rules on exemption from subjects, compulsory tests and lower secondary school examinations. It is unsatisfactory that many children attending in-house schools in placement facilities do not get the education they are entitled to. Research has shown that

education is one of the most important factors in ensuring that children who have previously been placed in care will have a normal life as adults.

We have also investigated an important case on the return to their home of three children placed in care. Cases on returning children to their home are normally raised as own-initiative cases, as children and parents seldom complain about such decisions. Returning a child placed in care to the parents is a decision which may have far-reaching consequences for the child. That is why the municipality must ensure that it is the right decision for the child. The municipality must first have a consultation with the child and work out an action plan for the child's future, and then give children over the age of 12 a decision with grounds and guidance on complaint. In several instances, Langeland Municipality had not lived up to these fundamental requirements. I characterised the case processing as very regrettable overall. And I emphasised that children and young people placed in care do not always have the same support from parents and family as do other children. They may even be in a conflict of loyalty in relation to the parents. It is therefore crucial that the municipalities live up to the rules before they decide to return a child or young person to the home.

Social benefits cases

Complaints about social benefits etc. make up a lot of the Ombudsman's cases. Many of the cases concern specialist assessments of for instance a medical nature where the Ombudsman institution does not possess specialist expertise, and where on those grounds alone I am very seldom able to set aside the authorities' assessments. However, there are also a considerable number of cases where we are able to make a difference.

The subject in one of the cases where I was particularly pleased that the Ombudsman institution was able to help was what documentation can be demanded from, among others, the homeless when they are required to show that they have resided in Denmark for the last nine years out of ten and thereby are qualified to receive cash benefits (Case No. 2020-7). Here, both the National Social Appeals Board and several municipalities had previously attached decisive importance to the applicant being able to show proof of having resided in Denmark in the individual calendar months for the whole of the relevant period, typically in the form of documents or digital traces such as bank entries or contact with public authorities or institutions. I pointed out that vulnerable citizens with a fragile connection with society may have great difficulty in documenting ten years back, month by month, that they have been in Denmark. And the demands for documentation must be adjusted to reflect this. I recommended that the authorities change the practice so that they in future carry out an overall assessment of whether there is particular reason to believe that a citizen has been out of the country for a longer period. My statement led to a change in the National Social Appeals Board's practice, and both the Board and, among others, City of Copenhagen reopened a major number of cases.

The tax sector

Through a grant from Parliament, we established a specialised Tax Division in 2017. In 2020, we received about 335 complaints regarding tax matters. However, the majority of the Tax Division's resources are focused on own initiatives. We start between 25 and 30 own-initiative investigations every year, often in the form of general investigations of multiple cases in order to search for systemic errors.

It almost goes without saying that our focus on tax cases means that we have quite a lot of cases involving the tax sector. However, it is not our general impression that the tax authorities find it more difficult than other authorities to observe the legislation. We have a good collaboration with the tax authorities who take our recommendations seriously and often start to solve the problems we are investigating, even before we have concluded our investigations.

In 2020, our focus regarding tax matters was on the grounds given by the tax authorities in their decisions to citizens and companies. That is because good grounds provide a better guarantee that the decision is correct. Good grounds can also help the citizen to a better understanding of the decision and perhaps an assessment of whether there is reason to appeal the decision to a higher authority. Our investigations indicate that the decisions by the tax authorities in most cases basically fulfil the requirements for grounds set out in the Act on Public Administration. However, we also found a number of examples of grounds which did not live up to the rules in the Act in all respects. These instances were, among others, the grounds given by the Debt Collection Agency in decisions regarding setting off debts (Case No. 2020-27) and grounds given in cases regarding estimated increases of tax assessments (Case No. 2020-40). In these two cases, the authorities have stated that they are working on new letter templates in order to take my comments into account.

One case which demonstrated the value of our general own-initiative investigations (Case No. 2020-28) concerned the access by the Tax Administration to barring taxpayers from using the online self-service system, E-Tax (in Danish TastSelv). In general, taxpayers have the possibility of using the Tax Administration's online self-service system E-Tax to change the

information in one's preliminary income assessment and tax assessment notice. The Tax Administration can, however, bar a taxpayer from access if there is an obvious risk that the taxpayer commits significant errors or abuses the E-Tax function. We obtained 40 randomly selected cases where the Tax Administration had barred the taxpayer from access to E-Tax, and we found a number of problems in the authorities' processing of the cases. By way of example, it was a question in a number of cases whether the taxpayers had been informed of the decisions. Furthermore, several of the cases had been processed based on an erroneous understanding of the rules, and the grounds were insufficient. As a consequence of our investigation, the Danish Tax Agency decided to annul all its decisions to bar taxpayers from E-Tax concerning tax assessment notices for 2018 and 2019.

Digitisation of public administration

Digitisation of public administration is one of my focus areas. This is because it is a system of administration which is becoming more and more important, and where any errors can have consequences for a large number of citizens. As I described in the Ombudsman's Annual Report for 2019, good digital systems can bring significant benefits to both citizens and companies, and they can save resources for the public administration. At the same time, it is my impression that the authorities have become better at designing digital solutions in such a way that these comply with legislative requirements. Unfortunately, however, it still happens that even fundamental guarantees of administrative law are overlooked during the development of the system.

We discovered in the autumn that if parents disagree about for instance parental custody and want to start a case at the Agency of Family

Law, then it is compulsory to use the Agency's digital self-service solution. However, the digital self-service solution did not allow for a personal representative, such as a lawyer, to start up a case. And that is contrary to the Public Administration Act. After I addressed the problem, the authorities stated that they would solve the problem as soon as possible, and that until then, they will ensure that citizens wishing to let a personal representative initiate a case will get the opportunity to do so in another way than via the digital self-service solution of the Agency of Family Law.

Case processing times

As Ombudsman, you get quite a good panoramic view of all of the public administration. And judging from the more than 6,000 cases we have processed while I have been Ombudsman, I am convinced that, collectively, we can be satisfied with the Danish public administration.

In almost all the cases that land on my desk, it is my impression that the administration has acted with the best intentions. In by far the majority of the cases, I cannot fault the result of the decision. I see a number of case processing errors which have no influence on the outcome of the case. Only in a relatively small percentage of cases, I disagree with the sort of outcome the case should have.

In contrast, I also see that the processing times of several authorities are unsatisfactory. In a number of appeals boards the processing times are several years.

Two citizens had waited for more than five years for a decision from the Tax Appeals Agency, and a third citizen had waited for almost four years. This is in my opinion an unacceptable processing time. I have pointed out in another case that taxpayers sometimes have to wait for several years to be told whether criminal charg-

es will be brought against them (Case No. 2020-34). In this case, I also asked the authorities to reduce the processing time considerably.

Not least when the processing times are long, it is important that the authority notifies the citizens of the status of their case and about the expected processing time. Also in this respect the Tax Appeals Agency has experienced challenges. In an investigation of 20 cases (Case No. 2020-2), I found that the Tax Appeals Agency had missed the mark by between 16 and 49 months in relation to the actual processing time. The Tax Appeals Agency has stated that it will implement initiatives to improve its notification in the cases.

In addition to this, I have pointed out problems with the processing times in, among others, various health authorities with regard to requests for access to public administration files, and with processing times in the Danish Immigration Appeals Board, the Building Appeals Unit, the Danish Town and Country Planning Board of Appeal and the Danish Environment and Food Board of Appeal. The latter boards of appeal were established with the Danish Appeals Boards Authority in 2017 in connection with the delocalisation of state workplaces. And in connection with the reorganisation of an authority, temporary case backlogs can, of course, arise. However, the problems had continued, and at the end of 2019 the expectation at the Environment and Food Board of Appeal was that a number of cases would have an average processing time of about 4.5 years (Case No. 2020-13). That was in my opinion unacceptable.

I am sure that the individual case officers are working diligently, and that the management at the various institutions are doing what they can. But from the perspective of the citizens, the situation in several authorities is unsatisfactory.

Thankfully, there are also positive stories. For some years, it had taken the National Social Appeals Board too long to process reports from citizens who were worried about the well-being of children and young people. But in the spring of 2020, I was pleased to see that the Board had managed to reduce processing times considerably so that deadlines could be observed.

Freedom of speech for public sector employees

The protection of the rights of public sector employees constitutes an important case area for the Ombudsman. In two cases, DSB (Danish Railways) had given warnings to two employees who in various situations had criticised DSB's management during an industrial dispute in 2018 and 2019. In a blog entry, a train driver had among other things called a proposal from DSB for 'a slaughter of the shop steward system not seen before in Danish history' (Case No. 2020-36). And in an interview an engine driver had called the DSB board and management 'incompetent' (Case No. 2020-47). It is true that the statements were polemic and sharp. However, public employers must tolerate criticism from the employees to a wide extent. This is no less true during an industrial dispute, where there will inevitably be situations where the parties disagree to a greater or lesser extent, and where people can blurt things out in the heat of the moment.

The mink culling case and the Radio24syv case

Lastly, the year was also marked by the cases I did not take up. Some have wondered why I did not intervene in the case of Radio24syv, others why I did not start an investigation of the

mink culling case. As far as the first-mentioned case was concerned, the central question was whether there was so-called public authority disqualification on the part of the secretariat of the Radio and Television Board. After a quite thorough review of the available information on the case, I found that it was unlikely that I would be able, through an in-depth investigation, to establish that this was so.

As far as the mink culling case was concerned, the reason why I did not take up the case was that a majority of the parties in Parliament had agreed to mount a special investigation of the matter. And it is not the practice that the Ombudsman, in a situation where Parliament has decided to carry out an independent investigation of a particular course of events, carries out

➤ Public employers must tolerate criticism from the employees to a wide extent.

a parallel investigation of the same course of events. Besides, an Ombudsman investigation will be directed at the authorities as such and will not be able to place a possible personal responsibility on the individuals involved in the matter.

Law and ethics

This was a small selection of a great number of cases that we have processed here at the Ombudsman Office over the past year. I cannot always give complainants what they are hoping for, and I must sometimes tell authorities that their actions are open to criticism. This is the way it has to be when my task is to assess, in an objective and unbiased way, whether the public administration has observed the law.

But I hope that everybody – also those who have not won the argument – have felt that we have listened to their views and processed their case thoroughly and fairly. It is important, both for the authorities and the Ombudsman Office, never to forget that anyone exercising public power must not only act correctly according to the law. You must also remember that you are making decisions for flesh-and-blood people who deserve respect, proper treatment and empathy.



About the cases



Complaint cases



Own-initiative investigations



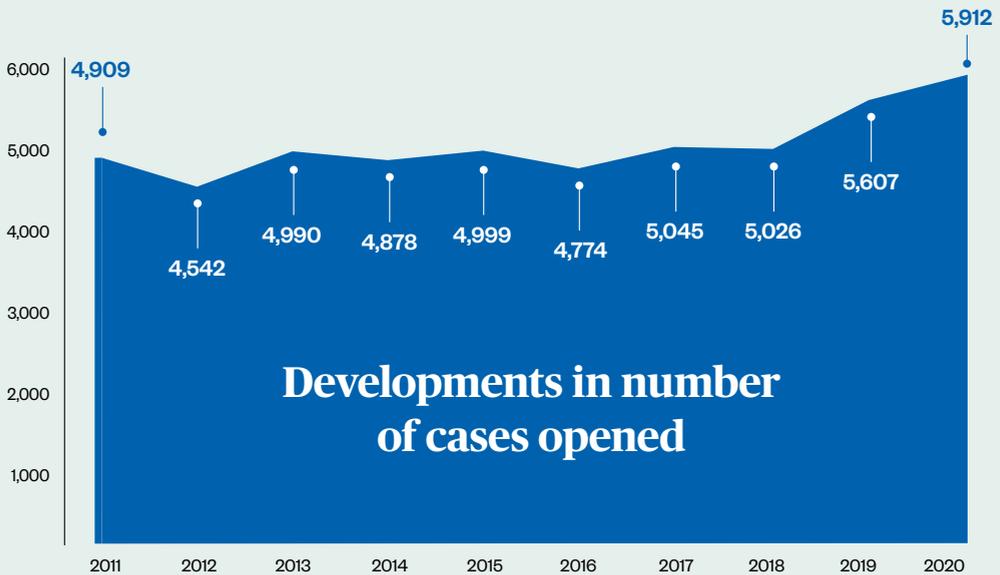
Monitoring activities

Cases opened in 2020¹

5,912

1) Administrative cases are not included. In addition, cases selected for collective review in connection with general own-initiative investigations are not normally included.

5,707 — **complaint cases**
165 — **own-initiative investigations**
40 — **monitoring cases**





Complaint cases

Who: In general, anybody can complain to the Ombudsman, and it is not necessary to be a party to a case to lodge a complaint with the Ombudsman. A complainant cannot be anonymous.

What: The Ombudsman considers complaints about all parts of the public administration and in a limited number of situations also about private institutions, an example being complaints about conditions for children in private institutions.

The Ombudsman does not consider complaints about courts, nor about tribunals which make decisions on disputes between private parties.

When: The Ombudsman's task is to ensure that the authorities have observed the applicable rules. For this reason, the Ombudsman cannot consider cases at first instance; he can consider a complaint only if the case has been considered by the relevant authority – and by any appeals bodies.

There is a deadline of one year for complaints to the Ombudsman.

How: When the Ombudsman receives a complaint, he first determines whether it offers sufficient cause for investigation. In some cases, the Ombudsman is unable to consider a complaint, whereas in other cases, he chooses not to open an investigation, for instance because he would not be able to help the complainant achieve a better outcome.

In a large proportion of complaint cases, the Ombudsman helps the citizen by providing guidance or by forwarding the complaint to the relevant authority, for instance in order that the authority will be able to consider the complaint or give the citizen more details of the grounds for a decision which it has made in the case.

In a number of cases, the Ombudsman discontinues his investigation because the authority chooses to reopen the case, for instance after being asked for a statement on the matter by the Ombudsman.

In some complaint cases, the Ombudsman carries out a full investigation, which, among other things, involves obtaining statements from the authority and the complainant. The investigation may result in the Ombudsman choosing to criticise the authority and, for instance, recommend that it make a new decision on the matter.

What were the complaints about?

Access to public records under the Access to Public Administration Files Act, the Environmental Information Act etc.

The complaints under this heading are primarily about refusals by authorities to give access to information or documents and about processing times. A large proportion of the complaints are against the central government.

Children

The Ombudsman's Children's Division receives complaints from children and young people, but the complaints lodged with the Ombudsman in relation to children are especially from parents or from other relatives or caregivers. Many complaints are about support measures for children and young people. The Ombudsman also receives a number of complaints about family law matters or relating to schools.

Institutions for adults

The institutions which these complaints concern include prisons, psychiatric wards and institutions for adults with disabilities. As residents and inmates typically spend 24 hours a day in the institution, the complaints cover all aspects of life. Examples are contact with relatives and friends, the food available in the institution or feelings of unsafety because of other residents or inmates.

Environment and building

Many complaints under this heading are made by dissatisfied neighbours. Complaints may be about, for instance, loss of privacy due to overlooking from a building, smells from a pig farm or noise from a school. The Ombudsman also receives a number of complaints about wind

turbines and telephone masts. The complaints typically concern issues relating to compliance with rules on environmental protection and building legislation.

Personnel matters (including freedom of expression)

The majority of complaints about personnel matters are from public employees who are dissatisfied with a negative reaction from their employer, such as dismissal, a warning or a reprimand. A small proportion of complaints relate to the freedom of expression of public employees. These complaints are made mainly by affected employees or their union.

Taxation

Complaints relating to taxation are handled by the Ombudsman's Taxation Division. They are received from citizens and businesses, including professional representatives of complainants, such as practising lawyers specialised in tax law and accountants. Examples of the subject matter of complaints include tax assessments, debt collection, property assessments and long processing times.

Social benefits and services

Complaints concerning social benefits and services account for a large proportion of the complaints received by the Ombudsman. The majority of these complaints involve municipalities, Udbetaling Danmark (an authority responsible for a number of public benefits) or the National Social Appeals Board and are about, for instance, pensions, home help, cash benefit, accompaniment or technical aids.

Transport, communication and roads

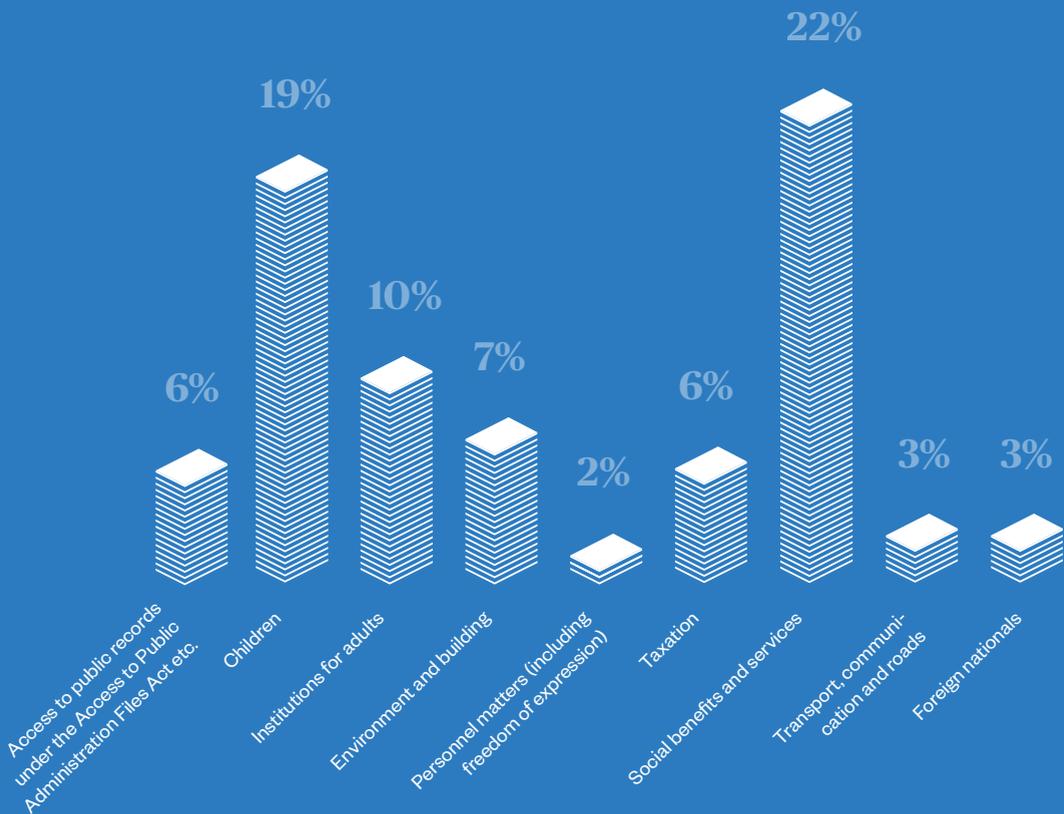
A substantial proportion of complaints under this heading are about public roads or private communal roads. Examples of situations which give rise to complaints are neighbour disputes or dissatisfaction with an order by a municipality to maintain or provide access to a private communal road. Other complaints concern, for instance, public digital self-service solutions or media licence fees.

Foreign nationals

These cases account for a relatively small proportion of the complaints received by the Ombudsman. A number of complaints under this heading are about long processing times. In addition, the Ombudsman receives complaints from foreign nationals who are required to reside at a departure centre and complaints about, among other things, refusals of applications for humanitarian residence permits, family reunification and visas.



Complaint cases



Selected subject areas of complaints as percentages of all complaints received by the Ombudsman in 2020

Still more complaints for the Ombudsman

Increase in complaints: A total of 5,707 complaints were delivered to the Ombudsman Office in 2020, so the upward trend continues.

In 2018, the Ombudsman received 4,798 complaints, and in 2019 the figure rose to 5,368. Thus, from 2018 till 2020 there has been a rise in the number of complaints of 19 per cent.

The explanation is not clear-cut. The complaints are spread evenly over most types of cases.

Nor can you say that there are more complaints about certain parts of the public administration.

The percentage of complaints which lead to a full ombudsman investigation and ultimately the possibility of criticism has been at the same level during the years mentioned.

By far the majority of the citizens who contact the Ombudsman fill in the complaint form on the website or send an e-mail.

Traces of COVID-19 in the complaints of the year

Pandemic: The COVID-19 agenda has been reflected in many of the complaints received by the Ombudsman.

For example, one individual complained that the border against Germany was closed in the spring, another complained about the Ministry of Foreign Affairs' travel guidelines, and a number of people complained about the health authorities' decisions about access to public files and processing times in that connection.

In addition, approximately 20 people complained about restrictions or other matters in the children's sector as a result of COVID-19, such as the charging of payment for day care and suspension of visits to children placed in out-of-home care. In the course of November and December 2020, the Ombudsman received

another approximately 20 complaints about the government's decision to cull all mink.

Social media contributed to more than 150 inmates and relatives complaining to the Ombudsman. They were discontented with the Prison and Probation Service's restrictions, and several complainants called on the Ombudsman to grant interruption of sentence. Among other things, the Ombudsman stated the following in a news article:

'(...) Unfortunately, it seems that an idea has spread in the Danish prisons that the Ombudsman can grant interruption of sentence. I am not able to do so.' Instead, Ombudsman Niels Fenger encouraged the inmates and relatives to contact the Prison and Probation Service first.

Article: Openness in a pandemic, page 52



'Unfortunately, it seems that an idea has spread in the Danish prisons that the Ombudsman can grant interruption of sentence. I am not able to do so.'

Criticism of ‘concealed delimitation’

Dialogue on access to files: Two of Niels Fenger’s first statements as Ombudsman contained criticism of the way in which two ministries had processed cases on access to public files:

‘(...) If the public authorities carry out a very narrow delimitation of a request for access to public files without informing the journalist about it, the result for the journalist will in reality be the same as if the authority concealed the information. That of course will not do,’ said the Ombudsman in a news item.

‘Concealed delimitation’, the Ombudsman called the unfortunate approach. In two quite different instances, journalists had asked a ministry for access to files on a subject. The ministry had then interpreted the journalists’ request narrowly – as if the journalists were only interested in certain parts of the subject.

Article: Getting the access to files case on the right track, page 58

Facebook group set off a complaint storm

Frozen holiday funds: In quite few days in June, the Ombudsman suddenly became busy processing almost identical complaints over the new rules about frozen holiday funds. Apparently, a Facebook group had encouraged people to complain about the freezing of holiday funds. Around 75 people complained in the course of a few days, where they asked for help with having their holiday funds paid out.

However, the Parliamentary Ombudsman can only consider complaints about the public administration – not about Parliament or any law. Therefore, in addition to responding to every single complaint, the Ombudsman quickly issued a press release emphasising that he could do nothing to help.

In August, Parliament decided that up to three weeks of the frozen holiday funds could be paid out to those who requested it.

➤ **The Parliamentary Ombudsman can only consider complaints about the public administration – not about Parliament or any law.**

Many complaints about the Agency of Family Law

Children's cases: Just under 140 complaints were sent to the Ombudsman concerning the Agency of Family Law in 2020. The Agency, which on 1 April 2019 took over the family law cases from the Regional State Administration, has therefore taken up a lot of resources at the Ombudsman's Children's Division. Many parents have complained about long processing times, but also about other subjects.

A lawyer complained about the Agency's mandatory self-service solution. The problem was that the lawyer was often asked by clients to start a custody case with the Agency but the self-service solution did not allow for the possibility of having somebody represent you, such as a lawyer – something that must be possible.

The Ombudsman has emphasised several times the importance of digital solutions being designed from the start in such a way that they comply with the requirements of administrative law.

Public employees can also be private

Private correspondence: '(...) It is, however, important for me to say that all public employees should be aware of when they correspond as private individuals and when they correspond as public employees.'

This is what Ombudsman Niels Fenger said when he published the result of a specific complaint case.

A journalist had asked to see an exchange of messages between the chief of staff at the Prime Minister's Office and a political commentator. But the Prime Minister's Office refused to grant the journalist access on the grounds that

the two were friends, and that the correspondence was private. After seeing the messages, the Ombudsman could not criticise the refusal of the Prime Minister's Office in this specific case.

➤ **The Prime Minister's Office refused to grant journalist access on the grounds that the two were friends, and that the correspondence was private.**

DSB staff were allowed to criticise management

Freedom of speech in state railways: A Danish State Railways (DSB) engine driver and a train conductor had both received warnings for uttering criticism of management during an industrial conflict. In both instances, the Ombudsman reached the conclusion that the utterances were legal and that, consequently, DSB was not allowed to issue warnings because of them.

In the wake of the two cases, the Ombudsman decided to raise an own-initiative investigation of DSB's general internal rules on, among other things, the behaviour of staff on social media.

Extraction was also a difficult exercise in 2020

Factual information: Briefly, extraction means that authorities extract certain information from a document and grant access to that information, even though the rest of the document can be kept confidential. This can for instance be done by an authority redacting all that is not to be extracted.

➤ **In practice, an important main rule on extraction is that 'factual information' in a case must be extracted.**

In practice, an important main rule on extraction is that 'factual information' in a case must be extracted. This is not just 'hard facts' but also information that appears 'softer' but in reality functions as substantiating facts.

Extraction can be a difficult exercise, as has previously been pointed out in the Ombudsman's annual report. As shown by a number of complaint cases from 2020, that is still so. One example was a case where a government agency and a university had refused to extract and release some estimated calculations of past nitrogen run-off from Danish farming. But though they were estimates and not concrete measurements, in the Ombudsman's opinion the information should be extracted. This was because the estimates had to a certain extent replaced conducted measurements and were thus included in the university's calculations etc. in the same way as measurements would have been. Subsequently, the government agency informed the Ombudsman that the university had reopened the case and given access to the information that had been withheld.

Press releases must be correct

Refund of dividends tax case: The authorities have great freedom of action to choose how they wish to inform the public in press releases. But it is crucial that the contents are correct.

This was the main message in a statement in which the Ombudsman expressed the opinion that a press release from the Danish Tax Agency on a settlement in the refund of dividends tax case had gone further than justified.

The national newspaper Politiken had sent a complaint to the Ombudsman about some statements in the press release which were aimed at Politiken, among others. The Danish Tax Agency had written that 'certain media persistently maintain wrongful interpretations of the settlement towards the public'. Politiken believed that this statement was contrary to good administrative behaviour. However, the Ombudsman did not find grounds for criticising this part of the press release.

Forwarding may solve the problem

Help to self-help: If a citizen sends a complaint, and the Ombudsman can see that the authority, for instance, referenced the wrong law or failed to consider significant questions, the Ombudsman often decides to forward the complaint. In short, this means that the Ombudsman forwards the citizen's complaint to the authority, typically with an explanation of what the authority has not considered. In this way, the authority can solve the problem itself without the citizen having to wait for a full Ombudsman investigation of the case.

A considerable number of the Ombudsman's cases were forwarded in 2020, approximately 20 per cent.

The method is used, for instance, in complaints about access to public administration files, where the Ombudsman may forward an enquiry from a journalist to the authority and at the same time place focus on a potential legal misunderstanding or an opportunity for further dialogue between the authority and the journalist.

Also in the social sector, forwarding is a good tool to helping citizens quickly. For example, a woman complained about having to repay housing benefits. Udbetaling Danmark (Public Benefits Administration) and later the National Social Appeals Board had assessed that she was not entitled to housing benefits because she had made payments to a pension scheme. However, the woman could document that she was unemployed and had not made payments to the pen-

➤ **Also in the social sector, forwarding is a good tool to helping citizens quickly.**

sion scheme in the months during which she had received housing benefits. The Ombudsman forwarded the woman's complaint with documentation and referred to the relevant provision of the Housing Benefits Act. The National Social Appeals Board made a new decision, and the claim for repayment was reduced in accordance with the woman's information.

Nordhavn homeowners dissatisfied with property tax jump

Informative statement requirements: A total of 29 homeowners in the new city district of Nordhavn complained to the Ombudsman because they had had to pay significantly more in property tax than they had been promised when they bought their property. The reason for the difference was that the informative statement from the then Customs and Tax Administration (SKAT) regarding the properties' value, which the estate agent had obtained for the sale particulars, was much lower than the actual assessments of property when the properties were completed.

The Ombudsman conducted a general investigation of the issue and reached the conclusion that the informative statements had not complied with legal requirements. As the case processing in connection with the statements had since been improved, the Ombudsman took no further action in that specific case. In addition, there was no prospect that the Ombudsman could change the legal position of the Nordhavn homeowners in the specific complaint cases, as there was no reason to assume that the final assessments were wrong, and as the authorities' original statements to the estate agent could not have created a legally protected expectation on the part of the homeowners.



Own- initiative investiga- tions

What: Opening investigations on his own initiative is a high priority for the Ombudsman.

The Ombudsman may open the following types of investigation on his own initiative:

- investigations of specific cases
- general investigations of an authority's processing of cases

The Ombudsman mainly opens own-initiative investigations of themes and within areas with one or more of the following characteristics:

- There is an aspect of fundamental public importance.
- Serious or significant errors may have been made.
- They concern matters which raise important issues in relation to citizens' legal rights or are otherwise of great significance to citizens.

Why: A main objective is to identify recurring errors made by authorities. This can have a great impact on authorities' case processing, thus helping a large number of citizens at the same time.

The focus is not only on errors that the authority may already have made – but also on preventing errors being made in the first place.

In addition, the Ombudsman opens investigations on his own initiative of specific cases of a more one-off nature.

From where: Specific complaint cases or monitoring visits may give rise to suspicion of recurring errors etc. and be the launch pad for an own-initiative investigation. Media coverage of a case may also cause the Ombudsman to open an investigation on his own initiative. The Ombudsman monitors both local and national media.

Further, external parties – such as professional committees for practising lawyers or accountants or interest groups – can be useful sources of knowledge about recurring errors etc.

In addition, the Ombudsman chooses some general themes each year for the activities of the Ombudsman's Monitoring Department, Children's Division and Taxation Division.

How: Own-initiative investigations have the common denominator that the focus is usually expanded beyond specific problems to a more general level, with emphasis on any general and recurring errors or problems and on how the authorities involved can handle and rectify errors and problems.

In some own-initiative investigations, the Ombudsman reviews a number of specific cases from an authority. In others, the Ombudsman asks an authority for a statement about, for instance, its administration, interpretation of the law, practice or processing times in a specific area.

The Ombudsman is working on an ongoing basis on a variety of own-initiative investigations where he considers, based on, for instance, specific complaint cases, legislative changes or media coverage, whether a matter should be investigated further.

In some cases, the Ombudsman's own investigation leads to the conclusion that there is no cause to contact the authorities involved and that the case can thus be closed without a full Ombudsman investigation. The Ombudsman may also decide to close a case without a full investigation after contacting the authorities.

More examples of long case processing times

Waiting time: The Ombudsman has carried out several investigations of too long case processing times in 2020. There is often more than one reason when citizens must wait a long time for a decision, but one recurring explanation can be reorganisations, which can affect the authorities' activities in various ways.

This has been the case in, among others, the Environment and Food Board of Appeal, the Town and Planning Board of Appeal, the Building Appeals Unit, the Disciplinary Board of the Danish Health Service and the Agency for Patient Com-

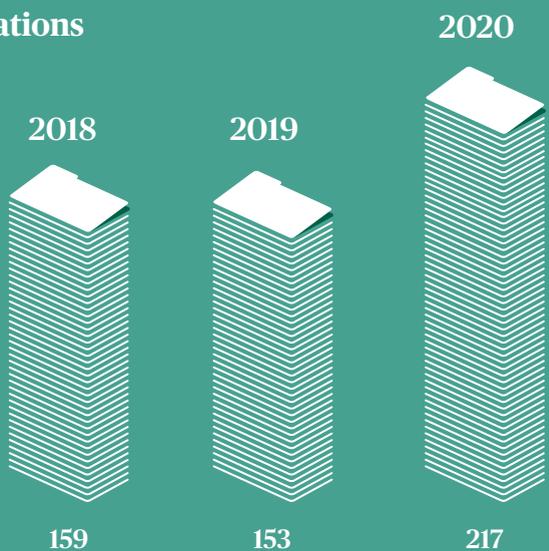
plaints. The Ombudsman has seen some of the longest processing times at the Environment and Food Board of Appeal where a backlog of older complaints was not expected to be concluded until after 4.5 years on average.

The Ombudsman's general investigations of processing times are often focused on clarifying the possible reason for the long processing times and on what initiatives the authorities have taken to solve the problem, including whether the authorities have done enough.



Own-initiative investigations

Total investigations concluded



– of which concluded with criticism or formal or informal recommendations



Pandemic also affected access to files cases

COVID-19: During the first coronavirus wave in the spring, the Ombudsman decided to keep a close eye on how long journalists and others had to wait for a response from the health authorities in cases about access to public files. The first consultation responses showed that there were difficulties in meeting legislative deadlines. In the beginning of autumn, the Health Authority managed to respond within the deadlines, but the Ministry of Health, the national serum institute (Statens Serum Institut, SSI) and the Danish Patient Safety Authority were still struggling. Some requests had been lying unanswered for up to seven months.

Therefore, the Ombudsman expressed concern at the end of 2020. He pointed out that the authorities 'have now to a certain extent had the opportunity to make arrangements so that the measures against COVID-19 etc. would not stand in the way of the satisfactory processing of access to files cases'.

Article: Openness in a pandemic, page 52

The Ombudsman conducts more thematic investigations

Increased focus: As a new development in 2020, the Ombudsman's Tax Division worked on a cross-cutting theme regarding grounds.

Thematic investigations are not a new phenomenon at the Ombudsman Office. For a number of years, the Monitoring Division and the Children's Division (for further information, refer to the section 'Monitoring activities', page 38) have set annual themes for their monitoring activities.

As part of the Tax Division's theme, a number of general investigations have been opened. Among others, an investigation of the grounds given by the Danish Tax Agency to citizens when cutting them off from using the online self-service solution E-Tax (in Danish TastSelv).

Municipalities' guidelines on freedom of speech must be correct

Freedom of speech for public employees:

'Keep away from the press', it said on a poster at a staff seminar in Esbjerg Municipality. In the local media, the poster was referred to as an 'illegal muzzle' for the staff, and the case was brought before the Ombudsman. However, the municipality quickly announced to the public that the poster should never have been shown, and that the municipality had now taken the initiative of clarifying the rights of the staff with regard to freedom of speech.

➤ **The municipality quickly announced to the public that the poster should never have been shown.**

Instead of focusing on the poster, the Ombudsman chose to take a closer look at the municipality's general guidelines on freedom of speech in an own-initiative investigation. This was because the Ombudsman had at roughly the same time

received a complaint that the guidelines of both Esbjerg Municipality and Aalborg Municipality on staff's freedom of speech were misleading.

For both municipalities, the Ombudsman's own-initiative investigation led to a change of the guidelines. Previously, the guidelines of the two municipalities said, among other things, that disloyal utterances could have consequences for the individual's employment. As the Ombudsman has stated in several instances, an employer cannot with reference to the duty of loyalty introduce restrictions in staff's freedom of speech, except those pursuant to general rules and principles regarding the freedom of speech of public employees.

In continuation of these cases, the Ombudsman clarified that if the municipalities choose to write guidelines on staff's freedom of speech themselves, the guidelines must be correct. Help is at hand in that respect from the guidelines of the Ministry of Justice on freedom of speech for public employees.

71,000 errors in one and the same investigation

Mass administration: An important point of raising an own-initiative investigation is that this will make it possible to catch more errors in one go. However, it is rare that the Ombudsman finds 71,000 errors in one and the same investigation. But so it was when it was revealed that the Danish Debt Collection Agency had given incorrect guidance on complaint in 71,000 decisions

on off-setting and withholding of wages and salaries for fines etc. imposed by the police.

The Ombudsman said that he agreed with the Danish Debt Collection Agency in that it was very regrettable and extremely inappropriate. The Agency rectified the error through general public information.

Cash benefits recipients will find it easier to ‘prove’ living in Denmark

Documentation requirement: Can a citizen receiving case benefits be required to prove, month by month for nine out of the last ten years (previously seven out of the last eight years), that he has been living in Denmark?

This was the issue which the Ombudsman questioned back in the spring of 2020 – just in slightly different words. The Ombudsman had received several complaints that homeless persons, among others, had been transferred from cash benefits to the significantly lower integration allowance (now self-support and return allowance or transitional allowance). This had happened because the citizens could not document that they had been living in Denmark for the required number of years.

The Ombudsman did not find that it was in accordance with the Act on Active Social Policy to demand continuous monthly documentation if there was nothing to suggest that the citizen had spent an extended period abroad.

The Danish National Social Appeals Board agreed with the Ombudsman, and at the end of the year the Board announced that it would reopen about 40 cases. The Board would also inform the municipalities of the new practice.

Mayor went too far in reaction to journalist

Good administrative behaviour: Most own-initiative investigations are of a general nature. This means that the aim is to find systemic errors which exist in a number of cases. But these investigations can also concern a specific case or stem from a single episode.

This was so when it came out that the mayor of Slagelse Municipality had written an angry e-mail to a local journalist. The mayor felt that the journalist had thrown suspicion on named local council colleagues, and he therefore wrote, among other things, that he was considering ‘terminating all cooperation’.

A few weeks later the Ombudsman concluded that the mayor had gone too far in his statements. And that he had crossed the line of how a public authority should act. The problem was that the e-mail could be seen as a threat – both in relation to the journalist’s and the medium’s access to getting information from the municipality and in relation to the municipality’s future advertising in the medium.

➤ **The problem was that the e-mail could be seen as a threat.**

Serious errors in cases about returning children in care to their homes

Children's rights: Returning a child placed in care is a very intrusive decision in a child's life. Therefore, the municipality must ensure that returning is the right solution for the child. Legislation imposes a number of requirements to the municipality's case processing before the child is returned. In several cases, Langeland Municipality did not live up to these requirements, according to a major own-initiative investigation.

➤ **For instance, the municipality had not in all cases held consultations with the children, prepared action plans or given children above the age of 12 sufficient grounds for the decision.**

Through media coverage, the Children's Division of the Ombudsman became aware of problems in return cases in Langeland Municipality, and so the Division requested a random selection of cases for review. Since the cases raised various questions with respect to the municipality's case processing, and by the way were several years old, new cases were reviewed where minors had been returned to their homes in 2019 (three cases in total). There turned out to be serious errors in the municipality's case processing. For instance, the municipality had not in all cases held consultations with the children, prepared action plans or given children above the age of 12 sufficient grounds for the decision. The Ombudsman gave Langeland Municipality six weeks to state how the municipality would ensure in future that cases about returning children would be processed in accordance with legislation.

In 2018, similar problems appeared after an investigation of return cases in Randers Municipality.

When the decision concept becomes decisive

What is a decision? In order for a complaint to be processed by the Environment and Food Board of Appeal, a decision must have been made by, for instance, a municipality. However, when the Ombudsman investigated four refusals from the Board, it turned out that, in some areas, the Board had an incorrect understanding of the decision concept. This means that the citizens had received refusals on the wrong basis.

Among other things, the Ombudsman emphasised that the content determines whether a statement made by an authority to a citizen constitutes a decision – not what the statement is called or how it is communicated to the citizen.

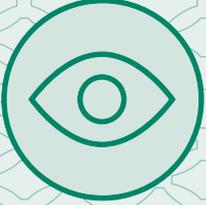
Municipalities had to correct errors in many cases involving parents of disabled children

Loss of earnings: Many parents who look after a disabled child at home have received pension contributions that were too low for a number of years. This is because the pension contribution was not regulated. A fact that was covered in 2018 after the Ombudsman raised some questions to the National Social Appeals Board regarding the contribution, resulting in a change of practice.

In an own-initiative investigation in 2020, the question was whether the municipalities were

now to reopen the erroneous cases themselves or whether they could simply inform of the possibility to apply for reopening, for instance on a website, and then wait for the citizens to make contact.

After having taken a closer look at cases from three municipalities, the Ombudsman concluded that the municipalities were to reopen the cases where parents, at the time of the change of practice in 2018, received loss of earnings benefits.



Monitoring activities

Where: The Ombudsman carries out monitoring visits to places where there is a special need to ensure that citizens are treated with dignity and consideration and in accordance with their rights – because they are deprived of their liberty or otherwise in a vulnerable position.

Monitoring visits are made to a number of public and private institutions etc., such as:

- Prison and Probation Service institutions
- psychiatric wards
- social residential facilities
- residential institutions for children and young people

In addition, the Ombudsman monitors:

- forced deportations of foreign nationals
- forced deportations arranged by other EU member states at the request of the European Border and Coast Guard Agency, Frontex

Finally, the Ombudsman monitors the physical accessibility of public buildings, such as educational establishments or health institutions, to persons with disabilities.

Why: The Ombudsman's monitoring obligations follow from the Ombudsman Act and from the rules governing the following special responsibilities which the Ombudsman has been assigned:

- The Ombudsman has been designated 'National Preventive Mechanism' (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The task is carried out in collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights, which contribute with medical and human rights expertise.
- The Ombudsman has a special responsibility to protect the rights of children under the UN Convention on the Rights of the Child etc.

- The Ombudsman has been appointed to monitor forced deportations.
- The Ombudsman monitors developments regarding equal treatment of persons with disabilities at the request of Parliament.

How: A monitoring visit to an institution is normally a physical visit by a visiting team, who speak with users, staff and the management and look at the physical environment. In 2020, however, the majority of monitoring visits were carried out as digital meetings due to COVID-19.

The monitoring of a forced deportation involves, among other things, a member of the Ombudsman's staff participating in the whole or part of the deportation.

The Ombudsman may make recommendations to the institutions visited and to the responsible authorities. Issues from the visits may also be discussed with the responsible authorities, or they may be the subject of own-initiative investigations or be dealt with in thematic reports (i.e. reports on the year's work in relation to each of the themes chosen for the year's monitoring visits).

Who: Monitoring visits are carried out by the Ombudsman's Monitoring Department, except for visits to institutions etc. for children, which are carried out by the Children's Division. External collaborative partners or consultants participate in a large proportion of visits. Depending on the type of monitoring visit, the Ombudsman collaborates with:

- medical doctors from DIGNITY – Danish Institute Against Torture
- human rights experts from the Danish Institute for Human Rights (IMR)
- wheelchair users from the Danish Association of the Physically Disabled
- consultants from the Danish Association of the Blind

Where did we go in 2020?



Monitoring visits - adults



6 Prison and Probation Service institutions

17 social residential facilities

1 psychiatric ward

2 police detention facilities for intoxicated persons

 2 physical visits (1 of them focusing on 1 person)

 12 physical visits

 1 physical visit

 2 physical visits

 3 partly virtual visits and 1 virtual visit

 5 virtual visits

Read about the individual monitoring visits at en.ombudsmanden.dk/visits_adults
en.ombudsmanden.dk/visits_children



Monitoring visits - children



2 private accommodation facilities

 1 physical visit

 1 virtual visit



6 open residential institutions

 5 physical visits

 1 virtual visit



2 foster families (specialised)

 1 physical visit

 1 virtual visit

Themes

Theme for 2020 – adults

Convicted persons with intellectual and developmental disabilities

Persons with intellectual and developmental disabilities who have committed a criminal offence are in many cases not given a prison sentence. Instead, they may be sentenced to measures aimed to prevent further offences. Such a sentence may involve placement in a social residential facility, in some cases in a secure unit. The sentence may be of indefinite duration, and it may remain in force for many years, depending, among other things, on whether the convicted person is at risk of committing further offences.

In 2020, the Ombudsman investigated the conditions for convicted persons with intellectual and developmental disabilities who have been sentenced to placement in a social residential facility.

The Ombudsman visited 17 social residential facilities approved to receive persons sentenced to placement, including the secure unit of the facility of Kofoedsminde. Seven out of the 17 facilities were run by a municipality, six by a region and four by a private party.

Five of the monitoring visits were carried out virtually on account of COVID-19.

Focus areas

During the monitoring visits to the 17 facilities, the Ombudsman's visiting teams focused particularly on the following questions:

- Are efforts made to ensure that the individual resident will no longer be at risk of committing offences, and is enough done to document these efforts?
- Does the municipality or the facility observe the rules when making decisions on applications for leave?
- Does the facility observe the special rules on use of force and other restrictions against convicted residents?
- Do residents have access to relevant treatment of mental or physical illness, and is there focus on prevention of suicide and self-harm?

Follow-up

In connection with the visits, a number of recommendations were made on matters relating to the theme for the year. For instance, the Ombudsman recommended the facilities to:

- establish what targets and initiatives are needed to ensure that residents will no longer be at risk of committing offences
- ensure documentation in relation to leave
- establish who the residents' guardian representatives are
- ensure knowledge of the special provisions of the Social Services Act on restrictions against convicted residents

Read about themes at
en.ombudsmanden.dk/themes

The visits have caused the Ombudsman to open several cases on his own initiative with the responsible ministries about, among other topics, the interpretation of the rules on leave for persons sentenced to placement in a social residential facility and the rules on the supervision by municipalities for crime-prevention purposes of persons sentenced to placement.

In 2021, a report will be published which summarises the results of the visits carried out as part of the theme in the form of overall conclusions in relation to the main focus areas of the visiting teams. The report will also contain the Ombudsman's general recommendations based on the monitoring visits.

Theme for 2020 – children

Institutions for children and young people with disabilities

The institutions visited by the Ombudsman's Children's Division as part of the theme were institutions for children and young people with disabilities in a broad sense, including institutions that housed children and young people with a variety of types of physical and mental disabilities.

More specifically, the Ombudsman's visiting teams visited two private accommodation facilities and six open residential institutions (three of them regional and the other three municipal) as part of the theme. In connection with these visits, four in-house schools were also visited.

Two of the eight monitoring visits were carried out virtually on account of COVID-19.

Focus areas

During the monitoring visits carried out as part of the theme, the Ombudsman's visiting teams focused particularly on:

- use of physical force
- prevention of violence and sexual abuse and the procedure for handling suspected abuse
- education

Examples of recommendations

In connection with the visits, a number of recommendations were made on matters relating to the theme for the year. For instance, the Ombudsman recommended institutions to:

- continue endeavours to prevent and reduce the incidence of use of force
- observe deadlines for recording and reporting use of force
- consider drawing up written guidelines on prevention of violence and sexual abuse and on the procedure for handling suspected abuse
- observe the rules on teaching the full range of subjects and on the number of class hours per year
- observe the rules on exemption from subjects, compulsory tests and lower secondary school examinations

In 2021, a report will be published which summarises the results of the visits carried out as part of the theme in the form of overall conclusions in relation to the main focus areas of the visiting teams. The report will also contain the Ombudsman's general recommendations based on the monitoring visits.

Focus on fewer restrictions

COVID-19 in the Prison and Probation Service:

In 2020, the Ombudsman's Monitoring Department has been investigating how the inmates of the Prison and Probation Service's institutions have been affected by COVID-19 restrictions.

After having investigated the conditions in the spring, the Ombudsman stated that it was positive that only one inmate had been infected with COVID-19. At the same time, the Ombudsman encouraged the Prison and Probation Service to review and consider whether 'a future pandemic can be handled effectively by means of less restrictive measures'.

In the autumn, the Prison and Probation Service was focusing on limiting restrictions for the inmates. For example, the inmates could, as a general rule, receive visits from close relatives. However, the conditions for the inmates were assessed on an ongoing basis and changed in the light of the gradually stricter regional and national COVID-19 restrictions. By the end of the year, 27 inmates had been infected with COVID-19, according to the Prison and Probation Service.

News item, 14 July: Ombudsman: Can a future pandemic be handled less restrictively in Prison and Probation Service institutions?

Can you ban a psychiatric patient from reading Science Illustrated?

Legal authority issue: The answer to the above question is unclear under current legislation. The Mental Health Act does not provide legal authority for censoring, for instance, Science Illustrated, historical journals or religious literature like the Secure Department of Slagelse Psychiatric Hospital ('Sikringsafdelingen') turned out to be doing during one of the Ombudsman's monitoring visits.

The Ombudsman has also encountered other types of interventions in the psychiatric sector for which there was no statutory authority. In several cases, the interventions are set out in a set of house rules and may be justified in the ward due to, for instance, health reasons, but at the same time, they are so extensive that they require statutory authority.

Therefore, the Ombudsman opened a general investigation of the authority issue with the Ministry of Health. The investigation concerned, among other subjects, the use of breathalysers and urine sampling as well as restrictions on who could visit the patients and the use of mobile phones and computers.

At the end of 2020, the Ministry stated that it would endeavour to create statutory authority. Shortly after, the Ombudsman asked the Ministry to state how it would manage the lack of statutory authority until such authority was in place.

Article: Monitoring activities: Institution status may provide questionable legal authority, page 64

Illegal use of prison cell

Cell 709: During a monitoring visit to Ringe Prison, several inmates stated consistently that one specific cell had been used to lock up inmates for a longer period when there had been trouble at a workshop. According to the inmates, there had been many people in the cell at the same time. The cell, number 709, was unfurnished.

The information was confirmed by prison guards during the monitoring visit.

A subsequent investigation by the prison showed that, in October 2018, cell 709 had been used briefly to exclude eight inmates from association at the same time to preserve order and safety.

The Department of Prisons and Probation agreed with the Ombudsman that the use of the cell was not legal. The Department wrote that, in future, the cell would only be used as a 'waiting cell' in connection with submission of urine samples – and with only one inmate at a time, as the clear starting point.

The Ombudsman finds patterns in suicide attempts

Suicide prevention: Twice in 2020, the Ombudsman has pointed to specific patterns in cases of suicide and suicide attempts in Danish state and local prisons.

Over the course of a little over a year, three inmates in Vestre Hospital, the hospital unit of the local Copenhagen prison of Vestre Fængsel, committed suicide by hanging themselves from exposed pipes in their cells.

Another pattern was that inmates in Danish state and local prisons in several cases had attempted to commit suicide using razor blades.

➤ **The exposed radiator pipes in the prison hospital within Vestre Fængsel were hidden while new guidelines on inmates' access to razors would contribute to the prevention of suicide using razor blades.**

In response to both situations, the Prison and Probation Service stated that the problems would be handled. The exposed radiator pipes in the prison hospital within Vestre Fængsel were hidden while new guidelines on inmates' access to razors would contribute to the prevention of suicide using razor blades.

According to an established agreement, the Parliamentary Ombudsman is notified of all deaths and suicides, and all suicide attempts and other self-harm which are highly likely to be life-threatening, among inmates of Prison and Probation Service institutions. The Ombudsman will subsequently look into, among other things, whether adequate precautionary measures had been taken, whether quick and adequate action was taken in response to the incident and whether the inmate has been provided with adequate supervision and received adequate treatment following the incident.

News item, 4 June: Measures to be taken to prevent suicides in prison

Isolated for more than eighteen months

Monitoring one person: Normally, the Ombudsman's monitoring team visits an entire institution and speaks with numerous inmates or residents. However, on occasion, as in January 2020, a monitoring visit is targeted at only one person. The Ombudsman's monitoring team conducted an announced monitoring visit to a prison inmate who had been excluded from association for more than three months.

During the visit, it turned out that the man had been isolated on various legal grounds for more than eighteen months without interruption. The Ombudsman later sent a question to the Department of Prisons and Probation asking what the

Department had done and would do to stop the isolation of the inmate. The case is still pending.

In 2018 and 2019, the Ombudsman has had a special focus on inmates who periodically serve time in isolation. In 2018, focus was on inmates who were excluded from association with other inmates, while in 2019, it was on inmates in disciplinary cells. In continuation of the Ombudsman's investigation of these themes, the Prison and Probation Service has stated that it would ensure specific and adequate documentation in disciplinary cell cases by educating the staff who decide whether to use that method.

An end to secret phone detection scanning

Legal authority issue: Young people who were in surrogate custody at a secure residential institution in the north of Zealand were not allowed to have mobile phones. Therefore, upon justified suspicion, the staff would stand outside the young person's room with a scanner that could detect mobile phones through the wall. The young person would not be notified before the scanner was used. This became evident during one of the monitoring visits by the Children's Division.

Even though there may be good reasons for performing these phone detection scans, it is not legal unless the young person is made aware of it and consulted beforehand.

The then Ministry of Social and Internal Affairs said this after the Ombudsman had asked for a statement. The institution has now changed practice so that the young person will be informed before the room is searched – also when the search takes place outside the room using a scanner.

This was not the only time the monitoring team of the Children's Division encountered interventions for which there was no statutory authority. For example, visitors to a secure residential institution were searched using a scanner, among other things, before being allowed to visit.

Article: Monitoring activities: Institution status may provide questionable legal authority, page 64



Monitoring visits to investigate accessibility for persons with disabilities

Monitoring visits in 2020

Owing to COVID-19, no monitoring visits to investigate accessibility for persons with disabilities were carried out in 2020.

Theme

In 2019, the Ombudsman decided that, for some time to come, the accessibility of healthcare centres was to be the theme for his monitoring visits to investigate accessibility. The Ombudsman therefore visited the healthcare centre 'Sundhedscenter Odsherred' in December 2019. Following the monitoring visit, the healthcare centre informed the Ombudsman that a number of changes would be made to improve accessibility. For instance, the centre would adjust the location and size of its disability parking facilities and make minor alterations to its disabled toilet facilities. These alterations would include installing disabled-friendly locks on toilet doors and fitting mirrors that could be used by wheelchair users.

Other cases

In a new stadium in Elsinore, wheelchair users did not have an unrestricted view of the pitch because the barrier of the covered stand was too high. Following press coverage, the Ombudsman raised the matter with Elsinore Municipality, which promised to find a solution to the problem. The Ombudsman therefore closed the case but asked the Municipality to be notified when a solution had been provided. The Municipality has subsequently informed the Ombudsman that it expects the problem to be solved before the start of the 2021 season.

Read more at
en.ombudsmanden.dk/equal_treatment_of_persons_with_disabilities



Monitoring of forced deportations

Monitoring activities in 2020

Owing to COVID-19, the Ombudsman did not participate in any forced deportations of foreign nationals by the Danish authorities in 2020. The Ombudsman's monitoring of these deportations will therefore consist exclusively in reviews in 2021 of the case files in some of the concluded deportation cases from 2020.

In addition, the Ombudsman did not register any forced-return monitors to participate in Frontex operations in 2020.

Annual review of concluded cases

In 2020, the Ombudsman reviewed the case files in 52 deportation cases from 2018 and 44 cases from 2019 which had been concluded by the police. Three of the cases from 2018 and six of the cases from 2019 caused the Ombudsman to raise questions with the National Police. The other 87 cases did not give rise to comments.

Selected cases

Case No. 2020-32: A foreign national was put in a transport belt when he was collected by the police at 2:25 p.m. Both his hands were strapped in the belt from 2:32 p.m. until 5:50 p.m. despite the fact that the deportation was aborted at 5:04 p.m. The Ombudsman considered it very regrettable that the deportation report of the police contained no information about why it was necessary to strap both of the deportee's hands in the transport belt and why that degree of restraint was necessary during the whole period. The police were given the opportunity to explain to the Ombudsman why it was deemed necessary to put the deportee in a transport belt and strap both his hands in the belt. The Ombudsman had no grounds for repudiating the assessment of the police of the need for the deportee to wear a transport belt and for his hands to be strapped until the deportation was aborted. However, the police were unable to explain why it was necessary for the deportee's hands to remain strapped after the deportation was aborted.

General investigations

In connection with his review of concluded cases from 2018 and 2019, the Ombudsman decided to open two general investigations.

One concerned the practice of the police for ascertaining, when a deportation is to be carried out, that the foreign national can still be deported. Normally, the police ask the relevant immigration authorities via a so-called 'e-mail round' whether any barriers to deportation have arisen. The Ombudsman focused, among other things, on how the police handle situations where they do not receive a reply from one or more authorities. As a result of the Ombudsman's questions, the Danish Return Agency, which is now responsible for e-mail rounds, expanded its guidelines to state that the Return Agency must ascertain that it has received a reply from all authorities. In future, when monitoring forced deportations, the Ombudsman will focus on the Return Agency's observance of its guidelines on e-mail rounds.

The other general investigation concerned the practice of the police with regard to obtaining so-called 'fit to fly' or 'fit to flight' declarations, which state whether deportees are able to travel by air. During the Ombudsman's investigation of the matter, the remit for obtaining fit to fly declarations passed from the police to the Return Agency. The information about the practice of the police will be included in the Ombudsman's monitoring of forced deportations by the authorities in future.

Read more at
[en.ombudsmanden.dk/
 forced_deportations](https://en.ombudsmanden.dk/forced_deportations)



Articles



Openness in a pandemic



Kirsten Talevski
Senior Head of Division



Mai Gori
Legal Case Officer

A democratic society is characterised by an open administration. The COVID-19 pandemic has not changed the importance of this fundamental principle.

In 2020, the COVID-19 pandemic has hit the headlines and has had significant implications for everyone's daily life.

However, some things have not changed – in spite of the pandemic. One of these things is the right of access to public files under the Access to Public Administration Files Act. Even though Denmark is in a national crisis, the fundamental principle of an open administration still applies.

In the course of 2020, the Ombudsman has – as usual – processed complaints about access to files. The Ombudsman focuses on whether the authorities comply with the rules and whether their response times have become too long. This also applies in cases where journalists or others want information on the COVID-19 pandemic.

It is especially important in such an extraordinary situation with lockdowns and restrictions that the authorities remember the fundamental purpose of the Access to Public Administration Files Act when they consider withholding information concerning the pandemic. This is illustrated by several cases throughout the year.

The lockdown of Denmark

Before Denmark was largely locked down in March 2020 due to COVID-19, the Danish Health Authority asked the regions a number of questions about their preparedness for the handling of the pandemic.

The answers included information on the capacity of intensive care units and the number of ventilators. On the first day of lockdown, a journalist from the Danish trade magazine *Ingeniøren* requested access to the regions' reports to the Health Authority.

To begin with, the journalist received refusals from all regions. When the Ombudsman received a complaint from the journalist, he decided to focus on Region Zealand's refusal to grant access and the National Social Appeals Board's refusal to initiate a supervisory case against Region Zealand.

Region Zealand had refused access on the grounds that it was an extraordinary situation. Significant considerations and compelling protective interests meant that the region

Purpose of the Access to Public Administration Files Act

The Access to Public Administration Files Act is built on a fundamental principle of openness and democratic control of the public administration. The openness principle is thus a central characteristic of a democratic society.

The purpose of the fundamental openness principle is to support the control of the administrative authorities' performance of their tasks as well as the media's communication of information to the public and trust in the public administration, among other things.

The main rules concerning openness are clear:

- Everyone has the right of access to files.
- The decision must be made as soon as possible.
- Exemptions can only be made if there is a legal basis in the Access to Public Administration Files Act.

should be able to communicate with the Health Authority without public insight. The region later clarified its view stating that access to files might significantly affect the efforts to counteract unrest and panic among the population. The refusal to grant access was given with reference to Section 33(5) of the Access to Public Administration Files Act (the so-called general clause).

The Ombudsman emphasised that the general clause is only meant for very exceptional circumstances and that the public must generally be able to have insight into the public administration, even if it may cause insecurity and worry. This is especially the case with matters of substantial public interest. In this connection, he noted that the openness principle constitutes an extension of democracy and that general access to documents in the public administration must in this day and age be considered a central characteristic of an open, democratic society. It is thus a fundamental purpose of the Access to Public Administration Files Act to underpin the information available to the public as well as the public's control of the public administration, including the media's communication of information to the public.

The Ombudsman noted that *if* the authorities are to use the general clause to withhold information about capacity shortages, the adverse effects of the publication must be both specific and probable. He also noted that the authorities might consider adding to or clarifying the information covered by the request of access if there is a risk that it may be misunderstood.

While the Ombudsman investigated the matter, the region decided to grant the journalist access to the information in August. In the light of the amount of time that had passed, Region Zealand believed that the information could no longer be kept secret. The Ombudsman concluded that Region Zealand had no basis for exempting the requested information from access under Section 33(5) of the Access to Public Administration Files Act.

The case is published in Danish at www.ombudsmanden.dk as Case No. 2020-35.

Text messages between the Minister for Health and WHO

Another case about an authority's limitation of access to files on the COVID-19 pandemic

concerned the text message correspondence between the Danish Minister for Health and the Director-General of WHO (Case No. 2020-29).

The Minister for Health had direct and personal contact with the Director-General of WHO, and the Minister thus received information about WHO's recommendations about testing strategies through brief and informal text messages. In March 2020, a journalist requested access to the text messages.

The Ministry of Health granted access to the subject-related parts of the text messages but not the remaining content.

The refusal was given with reference to Section 32(1) of the Access to Public Administration Files Act. According to the provision, the authorities may limit the right of access due to consideration of Danish foreign-policy interests, including international law obligations and protection of the relationship with international organisations if there is a general practice of confidentiality.

However, the Ministry of Health had not given any information indicating that there was an international law obligation or a general practice of confidentiality. On the contrary, the reason given for the refusal was regard for the relationship that the Minister for Health had established with the Director-General of WHO. The Ministry emphasised the possibility of maintaining a direct and personal relationship and a level of confidentiality. According to the Ministry of Health, this relationship might suffer if the full extent of the text messages were made public.

However, WHO had not indicated that the information in the text messages could not be made

public. On the contrary, WHO had indicated that the organisation did not want to get involved in the exchange of information between member states and the media.

On this basis, the Ombudsman found that the consideration of the relationship between the Minister for Health and the Director-General of WHO could not justify an exemption from access to the information. The Ministry of Health subsequently disclosed the text messages in their entirety.

‘Worrying’ processing times with the health authorities

In the spring of 2020, it quickly became clear to the Ombudsman that the extraordinary situation could affect the processing times of the health authorities in cases about access to files.

In order to get an idea of the situation, in May 2020, the Ombudsman asked the Ministry of Health for a general status of the processing of access to files cases in the Ministry, the Health Agency, the national serum institute (Statens Serum Institut, SSI) and the Danish Patient Safety Authority.

According to the reply from the health authorities, the COVID-19 crisis had led to significantly more requests for access to files than usual, and the Ministry of Health explained that it was often impossible to meet the deadlines set out in the Access to Public Administration Files Act due to the exceptional circumstances with the handling of COVID-19.

The health authorities had taken various initiatives in order to reduce the processing times. But the Ombudsman decided to keep track of whether the initiatives worked sufficiently well.

In the autumn of 2020, the Ombudsman was informed that the Health Agency now met the deadlines set out in the Access to Public Administration Files Act. However, the Ministry itself, SSI and the Danish Patient Safety Authority were still struggling to meet the deadlines. Therefore, the Ombudsman asked for a more detailed account.

According to the response, several cases had processing times that exceeded those set out in the Access to Public Administration Files Act. For instance, the processing times of several pending cases in the Ministry were between 80 and 120 business days. In some cases, the processing times exceeded 140 business days (corresponding to approximately seven months). This worried the Ombudsman.

In a news item of 16 December 2020, the Ombudsman stated that 'if journalists have to wait too long for a response to requests for access to files, their ability to conduct investigative journalism is obstructed, and it becomes more difficult for them to inform the population about matters of substantial public interest, such as the measures against COVID-19. It was therefore important that the health authorities reduced their processing times'.

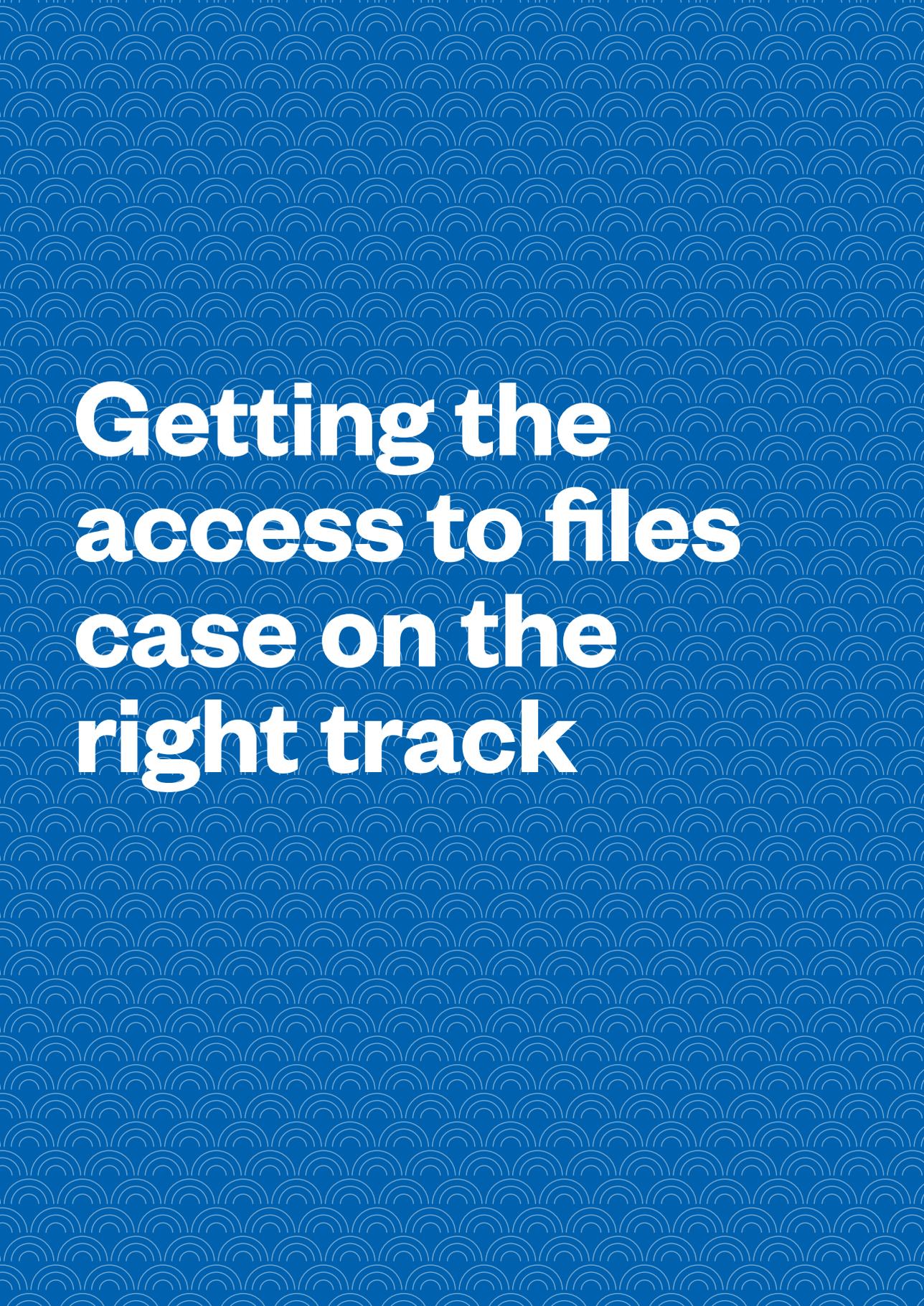
In the light of the health authorities' challenges, the Ombudsman decided to continue keeping track of the processing times in 2021.

Openness in extraordinary times

The above-mentioned cases illustrate that it has not been easy for the authorities to meet the requirements of openness and quick processing times set out in the Access to Public Administration Files Act while Denmark has found itself in an extraordinary situation with the handling of COVID-19.

However, an open administration is one of the cornerstones of Danish democracy. It is therefore important to remember that the public is entitled to information about COVID-19, unless the conditions for exemption are met. In the same way, the media is entitled to a quick response to requests for access to files in order to keep the public informed.

The Ombudsman understands that the efforts against COVID-19 throughout 2020 have demanded considerable resources for many authorities – not least the health authorities. Oftentimes, the same employees have to carry out preparedness-related tasks and service politicians while at the same time managing requests for access to files. But, even though the challenges are substantial, the authorities have to adjust the usual working procedures to ensure the openness principle. In other words, the measures against COVID-19 cannot stand in the way of cases about access to files being processed in accordance with the Access to Public Administration Files Act.



**Getting the
access to files
case on the
right track**



Stephan Andreas Damgaard
Deputy Head of Division

Many problems in cases about access to public administration files can be prevented with a little more dialogue and mutual understanding. So how can the authorities get the access to files case on the right track from the start - and how can journalists and others help?

When talking about the Access to Public Administration Files Act, focus is often on the exemption from access to documents or information. But before getting this far, the access to files case must be started off in the right way – and experience at the Ombudsman Office shows that the first steps may be crucial.

All access to files cases begin with a request – often from a journalist – to see an authority's documents on a case or a subject. The request is the starting point of the access to files case. A thorough initial assessment by the authority can clear up doubts and misunderstandings and set the case on the right track from the start.

It is simple but still important to keep in mind that a journalist rarely knows what documents the authority has. Only the authority knows this, while the journalist is often on a 'fishing expedition'.

If the authority skips the initial assessment of the journalist's request, the authority may overlook or misunderstand what the journalist is actually searching for. In the worst-case scenario, the authority may go off on a tangent, which takes time and resources and may not correspond at all with what the journalist is interested in.

The authorities may be tempted to 'just get on' with assessing the pile of documents which has been retrieved from the records system. It is a well-known fact that access to files cases must be processed especially fast.

However, the energy spent in the initial stage of the access to files case is well worth it. A thorough initial assessment of the request – and clarity from the start about what the journalist is and is not interested in – makes the case faster and easier to process.

Requirements for the access request

It is the authority's responsibility to process the access request correctly. But the requester and the request can help the authority well on the way. And in order to help in the best possible way, the request must meet certain requirements. This is implied in the Access to Public Administration Files Act.

Among other things, the request must contain information that makes it possible for the authority to identify the requested cases or documents etc. – the *objective identification requirement*.

The request must also state the theme of the cases or documents to which access is requested. This is called *the theme requirement*.

So, it is not sufficient that you in the request mention a certain type of documents – for instance internal information notes or outgoing e-mails – without stating anything about the contents of the documents.

It is also not sufficient to simply mention a work process within the authority where documents may have been included. This happened in a case in 2020. A journalist had requested access to the documents that the then Ministry of Transport and Housing had presented to the Government's Finance Committee over a period of about three years. However, in the Ombudsman's opinion this request did not meet the theme requirement (Case No. 2020-22, published in Danish at www.ombudsmanden.dk).

In the same case, the journalist had also requested access to enquiries from the Ministry's permanent secretary of state and head of Press Section to external recipients about the recipient's – or the recipient's employee's – participa-

tion in media coverage, for instance television, radio or articles. Here, the theme requirement was met. Because in the Ombudsman's view, the requests involved more than just media coverage or media handling as a procedure in the Ministry.

In another case about the theme requirement, a journalist requested access to all of the Ministry of Foreign Affairs' consultation responses given to either the Royal Danish Defence College, the Danish Institute for International Studies (DIIS) or the Centre for Military Studies in the years 2017-2019. The Ministry of Foreign Affairs informed the Ombudsman that the consultation responses in question could pertain to various subjects and could be included in various kinds of processes. For example, it was not a question of one yearly consultation response about one specific subject.

The Ministry of Foreign Affairs did not find that the request met the theme requirement – and the Ombudsman could not criticise this assessment, based on the Ministry's information. (Case No. 20/04214, published in Danish on the Public Access Portal, www.offentlighedsportalen.dk).

The request as kick-off for the access to files case

So, while the Access to Public Administration Files Act has requirements regarding the contents of the access request, there are no such requirements as to form.

A request does not have to be in writing, as many may believe. It can also be made orally, for instance by telephone – and in that case, the authority should always take notes from the telephone conversation (see for instance Case No. 2020-17).

There is also not a requirement for the requester to give grounds for the request (see for instance Case No. 2020-35).

Overall, the requirements that the Access to Public Administration Files Act imposes on requests for access are fairly limited.

However, do not forget that the more information the requester can give the authority, the more the authority is assisted in delimiting and processing the access to files case.

This is because the access request marks the authority's starting point. The authority now has to consider what the requester is and is not interested in. And how is the request to be understood and matched with the documents in the authority's possession?

The open and loyal delimitation

Sometimes, it will be pretty clear to the authority what for example a journalist is interested in – then it will be easy for the authority to delimit the request and find the relevant documents.

At other times, the delimitation of a request may give rise to doubt. The journalist does not always know what he or she should ask for – because it is only the authority that has a general overview of its documents and their contents.

Ultimately, it is up to the authority to interpret the request and to reach a delimitation that reflects what the journalist is searching for. It is crucial that the delimitation is impartial as well as loyal to the request and to the journalist.

And the cards must be put on the table. If the authority is in any way in doubt about the delimitation, this must be made clear to the journalist – either by asking the journalist before the

conclusion of the access to files case, or by stating in the decision how the authority has handled the request. In this way, the journalist is able to say if the authority has taken the wrong approach.

Two cases from 2020 concerned this issue (Cases Nos. 2020-9 and 2020-10). In each case, the Ombudsman found that a ministry had given a journalist the wrong picture of its delimitation of the request for access. Therefore, the journalist was under the impression that the ministry had assessed more material for the request than was actually the case. In the Ombudsman's opinion, such a concealed delimitation was not acceptable.

So, the authorities must be open and loyal as to what has been considered and done.

But a good start of an access to files case goes beyond that – because often it will also be wise for the authority and the requester to talk with each other and match expectations as to the interests of the requester.

Collaboration between authority and journalist

Many initial questions of doubt and misunderstandings can be resolved through an open dialogue between the authority and the journalist. Is it in fact this or that angle the journalist is interested in – what about this and that theme? Are there subjects that are of no interest? Is a specific period of time relevant? Maybe certain authorities or actors?

Authorities' dialogue with journalists and authorities' duty to provide guidance are frequent themes when the Ombudsman processes complaints about access to files. This was also the case in 2020 where several of the Ombudsman's

cases again showed that authorities' processing of access to files cases should be built on dialogue, trust and collaboration. See, for instance, Cases Nos. 2020-22, 2020-10 and 2020-9, as referred to above.

Another example was a case where a journalist was refused access to specific complaint cases about bullying etc. by the National Complaints Centre against Bullying (Case No. 2020-17). When the case got to the Ombudsman, it had reached a deadlock – but maybe partly due to misunderstandings. In his recommendation to the Complaints Centre to reopen the case, the Ombudsman noted, among other things, that it was not clear if the journalist and the Complaints Centre had the same understanding of what the request for access actually involved. Subsequently, the Complaints Centre stated that the Complaints Centre and the journalist had entered into a dialogue about the matter that the journalist wanted to shed light on.

At times, an access to files case can be resolved by simply having a dialogue and by 'thinking outside the box'. One example from 2020 was a complaint to the Ombudsman in a complex access to files case about the tax authorities' special duty of confidentiality, among other things. For the purpose of a municipal case about acquisition of road areas, the requester asked for the addresses of drivers who had been observed on a particular road. The tax authorities did not find that they could disclose this information.

Based on the requester's description of his or her wish for access to files – and from the authorities'

explanation of the reason for the refusal – we at the Ombudsman Office had reason to believe that a fast and easy solution might be found with which the authorities as well as the requester would be satisfied. Therefore, in a consultation, we asked for alternative methods to meet the wish for access to files – for example, if it was possible to just state the number of drivers who were living on a specific road, or if more or less than half of the drivers were living on different roads from the requester.

After the consultation, the authorities and the requester opened a dialogue, which resolved the case. (Case No. 20/03009, published in Danish on the Public Access Portal, www.offentlighedsportalen.dk).

Get the access to files case on the right track – it pays off

At the Ombudsman Office, our experience is that many problems and conflicts in access to files cases can be avoided with a little more dialogue and mutual understanding between the authority and the journalist – not least in regard to what the journalist is in fact interested in.

One thing is certain: Good initial assessments of the request make the access to files case faster and easier to process. Everyone benefits from this. The authority saves time and resources. The requester can get a reply faster and – if the requester is a journalist – provide all of us with information about the public administration's present cases in a faster and better way. It is well worth the effort to get the access to files case on the right track from the start.

How to get the access to files case on the right track from the start

For authorities – and employees about to process an access to files case

- **Request requirements**

Clarify whether the request for access meets the requirements of the Access to Public Administration Files Act, for example the theme requirement.

- **Oral/written**

If the request is oral, you ought to make a note about the request.

- **Understanding**

Do you understand the request – do you have a fair picture of what the requester wants?

- **Delimitation**

When delimiting the access to files case – that is, finding out what material is or is not covered by the request – you must be impartial and loyal to the request and to the requester.

- **Dialogue**

If you are in doubt about the requester's wish, put the cards on the table – and always consider having an open dialogue with the requester.

If you wish to request access to files

- **Request requirements**

You are not obliged to give grounds for your request for access. However, your request must make it possible for the authority to identify the requested cases or documents etc. Your request must also state the theme of the case or the documents to which you wish to gain access.

- **You can help the authority**

It is the authority's responsibility to process the access to files case correctly. Still, what you can and want to disclose about your request for access can help the authority process your case better and faster.

- **Dialogue**

Many authorities have a lot of material. And maybe your request involves more material than you think at first. Be open to having a dialogue with the authorities so that you can come closer to what it is you are actually interested in.

**Monitoring
activities:
Institution
status may
provide
questionable
legal authority**



Kaj Larsen
Chief Legal Advisor

In his monitoring work, the Ombudsman has seen several examples of problems with the legal authority for house rules and interventions - in future, he will continue to focus on this issue.

Body searches, examination of personal belongings, urine tests, compulsory washing of clothes, examination of mail, nightly door locking and literature control.

These are some of the interventions encountered by the Ombudsman during monitoring visits in recent years where it turned out that legal authority was lacking or questionable. All these interventions were introduced due to the institutions' wishes to protect a citizen or maintain order at the institution. Thus, on the face of it, the reasons behind the interventions are good. However, many of the interventions are so extensive that they require explicit statutory authority.

In 2020, the Ombudsman published six cases concerning a lacking or questionable basis for interventions. One of the cases concerned 17 different psychiatric wards where the Ombudsman found a lack of or questionable legal authority in the house rules of the wards (Case No. 2020-43, published in Danish at www.ombudsmanden.dk).

Therefore, the Ombudsman's Monitoring Department and Children's Division continuously focus on whether interventions towards residents, patients or inmates at institutions – or visitors – have sufficient legal authority.

Written rules and institution status

The Ombudsman's Monitoring Department carries out monitoring visits to institutions especially within the Prison and Probation Service (state and local prisons etc.), psychiatric wards, social residential facilities and asylum centres. The monitoring by the Children's Office involves children and young people particularly at social institutions, private accommodation facilities and children's psychiatric wards.

If it turns out that a provision in a set of house rules or an intervention against a resident does not have legal authority in written rules (laws or executive orders), the question is often whether the unwritten principle of institution status could provide legal authority. To a certain extent, the management of an institution can establish house rules or introduce interventions

towards the residents in order to ensure that the institution can function. The legal authority for these house rules or interventions is said to be the institution status (or institution considerations).

However, there are limits to when the institution status may be recognised as legal authority:

1. It is a common assumption that the more intensive the interventions in the fundamental rights of individuals, the greater the requirements on the authority. Thus, the principle of institution status can hardly be considered to provide legal authority for interventions in personal freedom or integrity. Interventions in personal freedom and integrity could involve confinement, examination of personal belongings, mobile phone confiscation, compulsory submission of a urine sample or setting up of surveillance equipment.
2. If an intervention can be compared to something that is already expressly governed by written rules, the institution status cannot usually be recognised as legal authority. Neither for making decisions nor establishing rules such as house rules.
3. The institution status does not generally provide legal authority for interventions that have previously been – but no longer are – governed by written rules.

Ban against certain kinds of literature

Thus, the institution status can often only provide legal authority for less extensive interventions or provisions of house rules. Such provisions might concern when a ward should be quiet, visitation hours, where smoking is allowed and the institution's alcohol policy.

In 2020, the Ombudsman found the institution status to provide insufficient legal authority in several cases.

During a monitoring visit to the Secure Department of Slagelse Psychiatric Hospital ('Sikringsafdelingen'), which is especially targeted at patients who are sentenced to placement and treatment in a hospital, the visiting team found that the Secure Department had restricted some patients' access to literature (Case No. 2020-16). Among others, the visiting team spoke with a patient who was not allowed to read religious literature, historical journals or the magazine *Science Illustrated*. A different patient was not allowed to read books on psychiatry.

The management of the Secure Department said that several patients suffered from delusions, which might be worsened by too many stimuli. There were thus therapeutic reasons behind the Secure Department's decision to keep the patients from reading certain literature.

As legal authority for these interventions, the authorities referred to a provision in the Mental Health Act concerning house rules and to the principle of institution status.

The Ombudsman stated that the restriction interfered with the patients' right to receive information under Article 10 of the European Convention of Human Rights, and that interference with the freedom of individuals requires clear and unambiguous legal authority. The Ombudsman believed that the provision of the Mental Health Act on house rules does not in itself provide the required legal authority. It seems that the institution status also did not provide legal authority for the interventions,

since limiting the right to receive information was an extensive intervention.

The Ministry of Health recognised the problem and would work towards creating clear legal authority.

Greater legal protection through written rules

In several cases, the Ombudsman's statements have led to an institution's previously questionable legal practice being replaced by actual legislation. A significant example is the opportunity afforded by the Social Services Act to establish restrictions for visitors to care homes etc. (Case No. 2010 20-7).

Legislation will generally increase legal protection. The provisions of an act will typically state when interventions can be taken. In this way, it is also indirectly stated when they *cannot* be taken. This is not the case when the institution status provides the legal authority. Legislation will typically also include provisions on special documentation requirements and complaint options. Therefore, written rules normally reduce the risk of interventions being taken in practice without the required legal authority. At the same time, written rules provide a more secure basis for the Ombudsman and other reviewing bodies to assess the legal authority for specific interventions.

In addition, law-making naturally gives the legislative power a chance to consider which provisions should apply in the area. This ensures that the sometimes difficult balancing between the civic rights of the citizens and the objective considerations behind an intervention is carried out by Parliament with the resulting democratic credibility.

A voluntary agreement must in fact be voluntary

In the psychiatric sector, the Ombudsman has many times been informed that patients have voluntarily entered into agreements about interventions. For example, this was the case during a visit to the Secure Department, where two patients had entered into an agreement on a transition from having their doors locked (Case No. 2020-15). The Secure Department had previously decided that the doors of the two patients would be locked – the Mental Health Act provided legal authority for this. It was later decided that the doors should no longer be locked, but the patients would still not be allowed to leave their rooms. Whenever they wanted to go to the common rooms, they would first have to call the staff, and then the staff would collect them and lead them out of their rooms.

Voluntary agreements are generally in keeping with the fundamental principle of the patient's right of self-determination set out in the Health Act, which also applies in the psychiatric sector. The Mental Health Act thus states that admission, stays and treatment at psychiatric wards must to the extent possible take place with the consent of the patient. Force cannot be used until every possible attempt has been made to convince the patient to participate voluntarily.

However, in the case from the Secure Department and another case from 2020 (Case No. 2020-25), the Ombudsman has pointed out that psychiatric wards must ensure that such agreements are in fact voluntary – not forced. In order for an agreement to be valid, it must have been entered into voluntarily, based on satisfactory information and by a patient who is able to give valid consent. Otherwise, it is considered

illegal force, regardless of the intentions of the staff. It is also important that the patients are aware that they can back out of an agreement at any time without automatically being met by sanctions because of it.

In recent years, there have been relatively many cases in the psychiatric sector where the Ombudsman has found a lack of or questionable

legal authority for interventions or where it has been questionable whether there was valid consent for an intervention. This has contributed to the Ombudsman placing special focus in 2021 on force and non-statutory measures and interventions in the psychiatric sector in connection with monitoring visits. In the spring of 2022, the Ombudsman will summarise the most important results in a thematic report.

The Ombudsman's cases about legal authority

The Ombudsman's cases about lack of legal authority in house rules and for specific interventions as well as the legislative developments in the area are characterised by the following:

- The cases are often opened on the Ombudsman's own initiative in connection with monitoring visits.
- The institutions' house rules and interventions are typically aimed at residents, patients or inmates, who rarely complain about the issues to the Ombudsman.
- In several cases, the Ombudsman has expressed understanding of the professional views behind the provisions of house rules or specific interventions.
- When the Ombudsman finds legal authority to be lacking or questionable, he usually involves the relevant ministry in order for the ministry to consider whether authority based on written rules is needed.
- Over time, there is a tendency for the framework of the institutions' house rules and specific interventions to be increasingly governed by written law. The increase in legislation naturally reduces the area where the institution status can be considered to provide relevant legal authority.
- If there are written rules that govern specific types of interventions, the institution status generally does not provide legal authority for comparable interventions. This also applies to interventions of a less intensive character.
- The Ombudsman will continue to focus on the issue of interventions without legal authority – also in connection with monitoring visits.

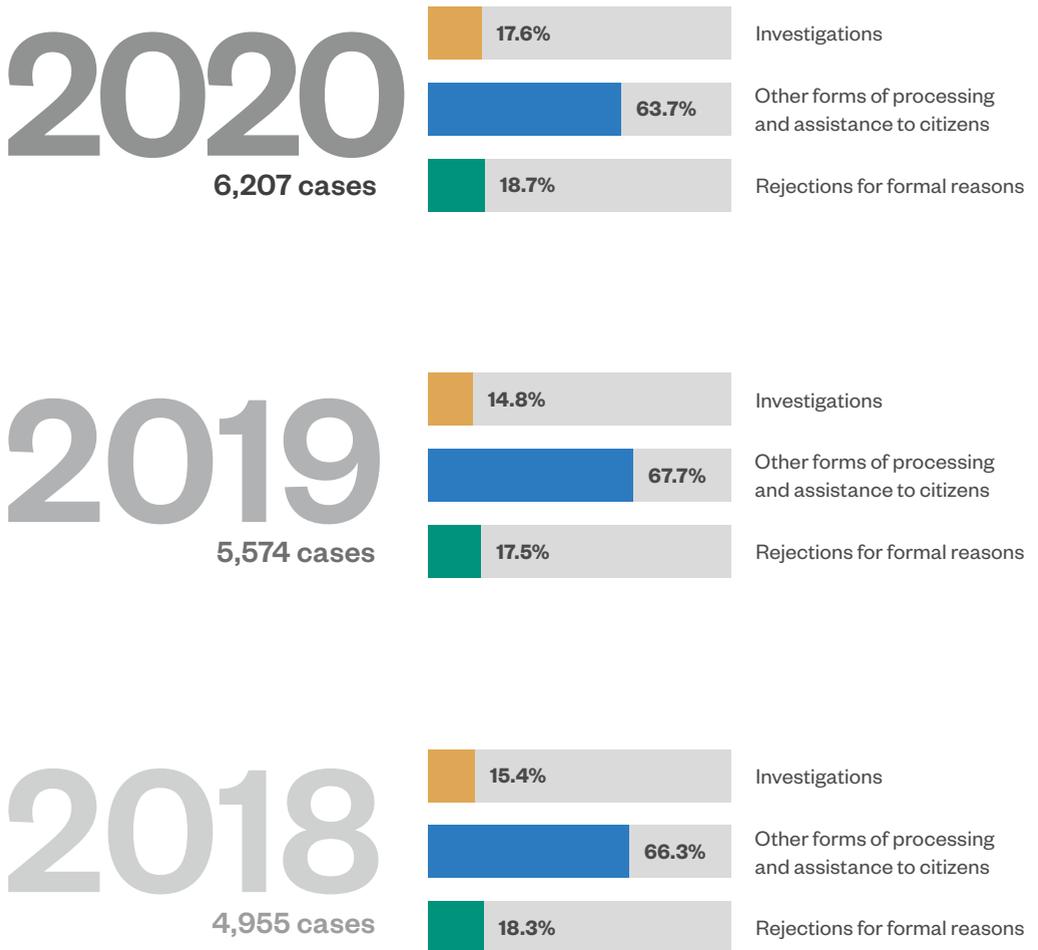


Brief overview of the year

The year in figures

The following pages contain key figures for the cases processed by the Ombudsman in 2020. More information about the Ombudsman's work and the rules governing the Ombudsman's activities can be found on en.ombudsmanden.dk.

Concluded cases¹



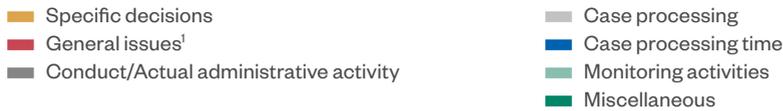
1) Administrative cases are not included. In addition, cases selected for collective review in connection with general own-initiative investigations are not normally included.

What was the outcome of the cases?

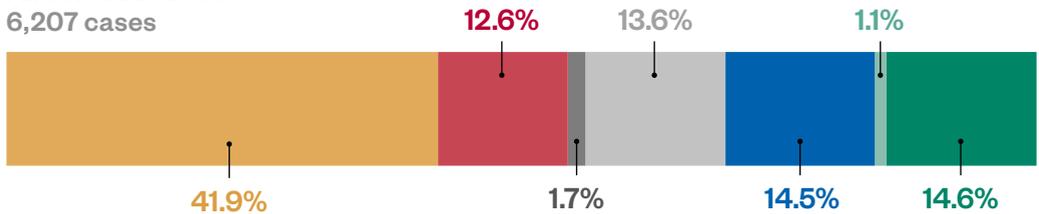
	Concluded cases
1. Investigations	
Full investigations	254
– of which cases with criticism, formal or informal recommendations etc.	138
Shortened investigations ¹	836
Investigations, total	1,090
2. Other forms of processing and assistance to citizens	
Various forms of intervention in cases where the avenues of processing by authorities had not been exhausted	2,142
– of which cases forwarded to authorities	1,124
Cases where the Ombudsman's review did not result in further investigation	1,285
Answers to enquiries, guidance etc.	528
Other forms of processing and assistance to citizens, total	3,955
3. Rejections for formal reasons	
Complaints which were submitted too late to the Ombudsman	125
Cases where the complaint/appeal options to authorities had not been used – and could no longer be used	54
Cases which related to courts, judges or matters on which a court had made or could be expected to make a decision – and which were thus outside the Ombudsman's jurisdiction	200
Cases which concerned matters relating to Parliament, including legislative issues, and were thus outside the Ombudsman's jurisdiction	148
Complaints which related to other matters outside the Ombudsman's jurisdiction, including private legal matters	276
Complaints which were not clarified sufficiently to enable investigation and complaints which were withdrawn	290
Cases in which the Ombudsman declared himself disqualified	1
Anonymous approaches	68
Rejections for formal reasons, total	1,162
Total (1-3)	6,207

1) Shortened investigations comprise primarily cases in which the Ombudsman reviewed a complaint but decided not to obtain statements from the authorities because it was unlikely that a full investigation would result in criticism or recommendations. The category of shortened investigations also includes, among others, cases which were reopened by the authorities after the Ombudsman asked them for a statement (61 cases in 2020).

What did the cases concern?



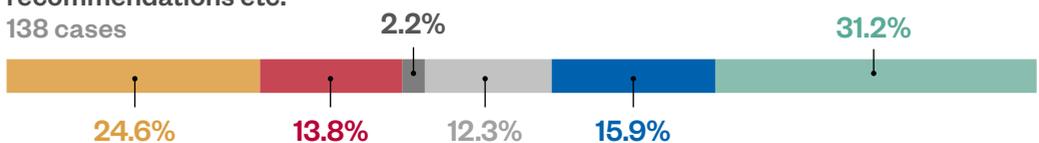
All concluded cases 6,207 cases



Investigations 1,090 cases



Cases with criticism, formal or informal recommendations etc. 138 cases



1) The category 'General issues' comprises, for instance, the overall conditions in an institution or the question whether an enabling act provides a sufficient legal basis for the provisions of an executive order or whether an authority's general practice in a specific area is acceptable.

Which authorities etc. were involved?

Cases concluded in 2020 - by authority etc.

Authority etc. with prime responsibility	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
A. Ministries and authorities etc. under them¹					
Ministry of Employment	0	14	67	10	91
Ministry of Children and Education	1	10	30	0	41
Ministry of Industry, Business and Financial Affairs	7	46	83	12	148
Ministry of Finance	1	4	4	0	9
Ministry of Defence	1	5	12	0	18
Ministry of Justice	30	169	650	90	939
Ministry of Ecclesiastical Affairs	1	3	21	2	27
Ministry of Climate, Energy and Utilities	1	2	16	3	22
Ministry of Culture	0	8	21	10	39
Ministry of Environment	0	1	33	1	35
Ministry of Food, Agriculture and Fisheries	0	4	40	2	46
Ministry of Taxation	17	128	186	36	367
Ministry of Social Affairs and the Interior	5	286	463	127	881
Prime Minister's Office	2	5	27	4	38
Ministry of Health	4	27	110	8	149
Ministry of Transport and Housing	5	19	57	8	89
Ministry of Higher Education and Science	1	28	47	15	91
Ministry of Foreign Affairs	2	8	13	1	24
Ministry of Immigration and Integration	2	27	98	27	154
Total	80	794	1,978	356	3,208
B. Municipal and regional authorities etc.					
Municipalities	27	127	1,321	187	1,662
Regions	19	12	80	15	126
Joint municipal or regional enterprises	0	1	5	4	10
Special municipal or regional entities	0	0	4	0	4
Total	46	140	1,410	206	1,802

1) The cases have been classified under the ministries existing at the end of the year. Concluded cases relating to authorities which have been moved to another ministry, closed down or reorganised have as a general rule been classified under the ministries which had the remit for the relevant areas at the end of the year.

Cases concluded in 2020 - by authority etc.

Authority etc. with prime responsibility	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
C. Other authorities etc. within the Ombudsman's jurisdiction²					
Other authorities etc. within the Ombudsman's jurisdiction	12	18	133	19	182
Total	12	18	133	19	182
D. Authorities etc. within the Ombudsman's jurisdiction, total					
Central authorities etc., total (A)	80	794	1,978	356	3,208
Municipal and regional authorities etc., total (B)	46	140	1,410	206	1,802
Other authorities etc. within the Ombudsman's jurisdiction, total (C)	12	18	133	19	182
Total	138	952	3,521	581	5,192
E. Institutions etc. outside the Ombudsman's jurisdiction					
Courts etc., cf. section 7(2) of the Ombudsman Act	0	0	0	110	110
Dispute tribunals, cf. section 7(3) of the Ombudsman Act	0	0	0	12	12
Other institutions, associations, enterprises and persons outside the Ombudsman's jurisdiction	0	0	15	388	403
Total	0	0	15	510	525
F. Cases not relating to specific institutions etc.					
	0	0	419	71	490
Grand total (A-F total)	138	952	3,955	1,162	6,207

2) The figures comprise private institutions etc. which fall within the Ombudsman's jurisdiction in connection with OPCAT or in the children's sector and other institutions etc. which have been included under the Ombudsman's jurisdiction. In 2020, the Ombudsman made no new decisions in pursuance of section 7(4) of the Ombudsman Act that his jurisdiction was to extend to a specific company, institution, association etc.

Processing times



Complaint cases and



own-initiative investigations

Investigations

– of which cases about access to public records¹

12 months

Result: 93%
(Target: 90%)

6 months

Result: 73%
(Target: 70%)



40 days

Result: 90%
(Target: 90%)

20 days

Result: 74%
(Target: 45%)



Average
processing time

4.9
months

19
working days²

1) Complaint cases about access to public records under the Access to Public Administration Files Act, the Environmental Information Act, the Administration of Justice Act etc., with the exception of cases about the right of a party to a case to obtain access to documents of the case.

2) Processing times for cases about access to public records are stated in working days – as in the Access to Public Administration Files Act. The number of working days is calculated from the date on which the Ombudsman has received replies from the citizen and the authorities and the case is thus ready for final processing (the 'maturity date').



Monitoring cases³

Other forms of processing and assistance to citizens and rejections for formal reasons

6 months

Result: 96%
(Target: 98%)



3 months

Result: 88%
(Target: 90%)

6 months

Result: 72%
(Target: 80%)



1.3

months

4.8

months

3) Concluded cases concerning monitoring visits made to institutions etc. for children and for adults, monitoring visits to investigate physical accessibility for persons with disabilities and monitoring of forced deportations of foreign nationals by the Danish authorities. The processing time for a monitoring case is calculated from the date of the monitoring visit or the deportation.

Other facts

The Ombudsman declared himself **disqualified** in one case in 2020. Parliament's Legal Affairs Committee assigned this case to Henrik Bloch Andersen, High Court Judge. The Ombudsman's office provided secretariat assistance in connection with the processing of the case.

The Faroese Lagting (the Parliament) did not ask the Ombudsman to act as **ad hoc ombudsman** for the Faroese Parliamentary Ombudsman in any cases in 2020. The Inatsisartut (the Parliament of Greenland) asked the Ombudsman to act as ad hoc ombudsman for the Ombudsman for Inatsisartut in one case.

Extracts from news stories published on the Ombudsman's website in 2020 of special relevance for international readers

The following are translated extracts from news stories of special relevance for international readers which were published on the Ombudsman's website in 2020.

The Ombudsman has now adopted the practice of translating the full text of news stories of special relevance for international readers into English. To be notified every time a news story is published in English on en.ombudsmanden.dk, please follow us on Twitter at [@DanishOmbudsman](https://twitter.com/DanishOmbudsman).

12 March

Ombudsman and staff to continue operations from home offices

The staff of the Parliamentary Ombudsman have been asked to work from home from tomorrow, in line with Government instructions, and will continue to process cases.

6 May

Ombudsman cannot criticise refusal to extend humanitarian residence permit

The Ombudsman cannot criticise the refusal by the Ministry of Immigration and Integration to extend the residence permit of a seriously ill man from Afghanistan who was ordered to leave Denmark.

This is the conclusion of the Ombudsman's investigation of one of the cases which were reopened in the light of the judgement by the European Court of Human Rights in the case of Paposhvili v Belgium.

4 June

Measures to be taken to prevent suicides in prison

Over the course of a little over a year, three inmates in Vestre Hospital, the hospital unit of the local Copenhagen prison of Vestre Fængsel, committed suicide by hanging themselves from exposed pipes in their cells. After the Ombudsman has pointed out the pattern, the Prison and Probation Service will now see that all exposed pipes in the ceilings of the cells of Vestre Hospital are hidden in order to prevent suicides and suicide attempts.

12 June

Ombudsman: Rules on gifts also apply in COVID-19 times

Public employees may not freely accept gifts. This also applies in COVID-19 times. This is the message from the Parliamentary Ombudsman, Niels Fenger, after he found cause to consider the issue in a case involving the Central Denmark Region.

23 June

Still problems with education of children in out-of-home care

Many children in in-house schools of placement facilities are not getting the education to which they are entitled. This is one of the principal conclusions of the 2019 annual thematic report from the Ombudsman's Children's Division.

1 July

2019 Annual Report of Danish Parliamentary Ombudsman now available in English

The English-language version of the 2019 Annual Report of the Danish Parliamentary Ombudsman has now been published.

In the preface, Ombudsman Niels Fenger stresses that a guiding principle for him is to apply the institution's resources where they can be of the greatest possible use in protecting citizens' legal rights.

14 July (originally published in Danish on 3 July)

Ombudsman: Can a future pandemic be handled less restrictively in Prison and Probation Service institutions?

Only one out of all inmates in state and local prisons and halfway houses under the Danish Prison and Probation Service has been infected with COVID-19. The Ombudsman finds this very positive. At the same time, however, he recommends, following a recent Ombudsman investigation, that the Prison and Probation Service review its experiences of recent months with a view to determining whether a future pandemic can be handled by means of less restrictive measures.

10 August (originally published in Danish on 5 May)

Prison and Probation Service should do more to ensure legal rights of inmates placed in disciplinary cells

The Prison and Probation Service should do more to ensure the legal rights of inmates who are to be placed in disciplinary cells. This is the Ombudsman's assessment following monitoring visits to 11 local prisons, five state prisons and one immigration detention centre under the Prison and Probation Service.



Statement of revenue and expenditure 2020

The Ombudsman's ordinary activities

	DKK
Revenue	
Revenue	25,000
Total revenue	25,000
Expenditure	
Wages and salaries, pension costs	74,197,000
Rent	5,575,000
Staff and organisation, including staff welfare	142,000
Continuing training/education	404,000
Books and library	93,000
Specialist databases	1,619,000
Newspapers and journals	235,000
Communication	786,000
Computer systems – operations and development	2,981,000
Computer hardware	1,606,000
Telephony and internet	457,000
Premises – repairs and maintenance	635,000
Furniture, fixtures and fittings	369,000
Cleaning, laundry and refuse collection	294,000
Heating and electricity	508,000
Premises – other expenditure	190,000
Travel	181,000
Entertainment and meals	27,000
Contribution to financial support scheme for trainees	301,000
Stationery and office supplies	207,000
Other goods and services	578,000
Total expenditure	91,385,000
Total expenditure (net)	91,360,000
Government appropriation	92,700,000
Result for the year	1,340,000

Public service pensions

	DKK
Revenue	1,630,000
Expenditure	2,325,000
Result for the year	-695,000

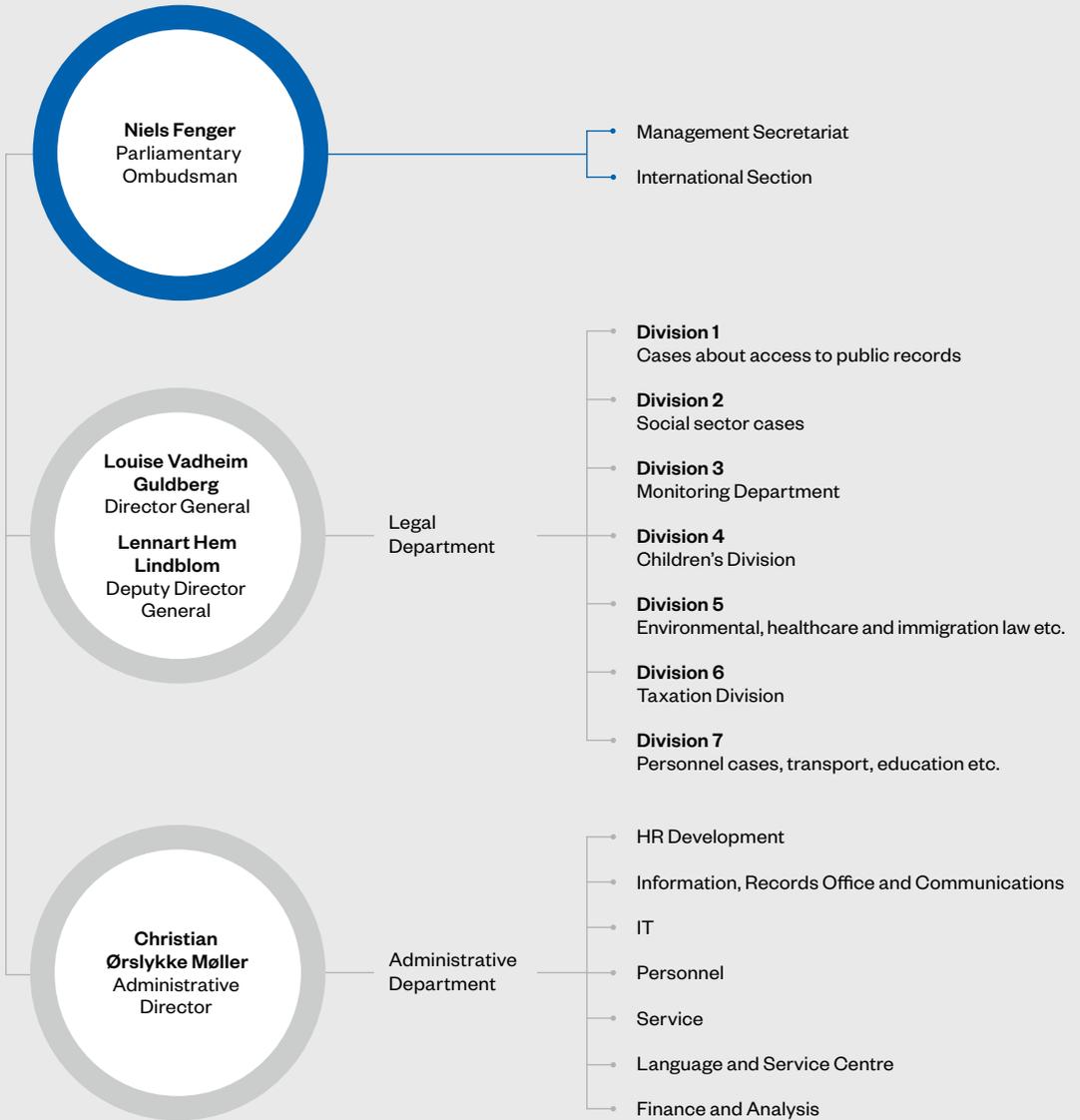
Collaboration agreements with Ministry of Foreign Affairs

	DKK
Revenue	607,000
Expenditure	607,000
Result for the year	0

Organisation

As at 31 December 2020

Management







Employees and core responsibilities as at 31 December 2020

Management

Niels Fenger, Parliamentary Ombudsman
 Louise Vadheim Guldberg, Director General
 Lennart Hem Lindblom, Deputy Director General
 Christian Ørslykke Møller, Administrative Director

Management Secretariat

Jens Møller, Chief Legal Advisor
 Kaj Larsen, Chief Legal Advisor
 Jacob Berner Moe, Special Communications Advisor
 Mai Gori, Management Coordinator
 Jannie Svendsen, Executive Secretary

International Section

Klavs Kinnerup Hede, Director of International Relations
 Camilla Schroll, Legal Case Officer

Division 1

Cases about access to public records

Kirsten Talevski, Senior Head of Division
 Kristine Holst Hedegaard, Deputy Head of Division
 Stephan Andreas Damgaard, Deputy Head of Division
 Sofie Hedegaard Larsen, Special Legal Advisor
 Jakob Liebetrau, Legal Case Officer
 Mai Gori, Legal Case Officer
 Martin Dyhl-Polk, Legal Case Officer
 Tina Andersen, Legal Case Officer
 Maria Thostrup Jakobsen, Legal Student Assistant

Key subject areas of cases handled

- Cases about access to public records
 - The Access to Public Administration Files Act
 - The Environmental Information Act
 - The Radio and Television Broadcasting Act
 - Selected cases involving the Administration of Justice Act
 - Selected cases about press handling etc.

Division 2

Social sector cases

Karsten Loiborg, Senior Head of Division
 Marte Volckmar Kaasa, Deputy Head of Division
 Stine Marum, Deputy Head of Division
 Bente Mundt, Senior Consultant
 Mette Ravn Jacobsen, Special Legal Advisor
 Kirsten Broundal, Legal Case Officer
 Marianne Halkjær Ebbesen, Legal Case Officer
 Rikke Malkov-Hansen, Legal Case Officer
 Bjørg Boye Gudbrand, Legal Student Assistant

Key subject areas of cases handled

- Social security and labour market law

Division 3

Monitoring Department

Morten Engberg, Senior Head of Department
 Adam Abdel Khalik, Deputy Head of Department
 Jørgen Hejstvig-Larsen, Deputy Head of Department
 Lise Puggaard, Senior Consultant
 Nina Melgaard Ringsted, Special Legal Advisor
 Ulla Birgitte Frederiksen, Special Legal Advisor
 Franz Amdi Hansen, Legal Case Officer
 Lina Funda Phillips, Legal Case Officer
 Sabine Heestertermans Svendsen, Legal Case Officer
 Signe Brehm Jensen, Legal Case Officer
 Jeanette Hansen, Senior Administrative Officer
 Clara Næsborg Olsen, Legal Student Assistant
 Oskar Stangegård Christensen, Legal Student Assistant

The Monitoring Department is in charge of the Ombudsman's monitoring activities in relation to adults, which involve in particular:

- State prisons
- Local prisons
- Halfway houses under the Prison and Probation Service
- Police detention facilities for intoxicated persons
- Psychiatric wards
- Social and social psychiatric residential facilities
- Asylum centres
- Non-discrimination of persons with disabilities
- Forced deportations of foreign nationals

The Monitoring Department especially handles specific cases involving:

- Sentence enforcement and custody
- Psychiatric healthcare and conditions for psychiatric patients
- Social institutions

Division 4

Children's Division

Susanne Veiga, Senior Head of Division
 Christina Ladefoged, Deputy Head of Division
 Lise Bitsch, Deputy Head of Division
 Irene Rønn Lind, Special Advisor on Children's Issues
 Christine Hagelund Petersen, Legal Case Officer
 Lene Levin Rybtke, Legal Case Officer
 Marie Helqvist, Legal Case Officer
 Marie Nyborg Kvist, Legal Case Officer
 Pernille Helsted, Legal Case Officer
 Peter Kersting, Legal Case Officer
 Nikolaj Mielcke Siekstele, Legal Student Assistant
 Sarah Videbech, Legal Student Assistant

The Children's Division carries out monitoring visits to public and private institutions etc. for children, such as:

- Residential institutions and private accommodation facilities for children placed in residential care
- Foster families
- Asylum centres
- Hospital wards and psychiatric wards for children

The Children's Division especially handles specific cases involving:

- Support measures for children and young people
- Social services for children
- Family law matters
- Primary and lower secondary schools, continuation schools and private schools
- Institutions for children
- Other cases with a particular bearing on children's rights

Division 5

Environmental, healthcare and immigration law etc.

Jacob Christian Gaardhøje, Senior Head of Division
 Ann Thagård Gregersen, Deputy Head of Division
 Louise Marie Jespersen, Deputy Head of Division
 Helle Sidenius, Special Legal Advisor
 Janne Lundin Vadmand, Special Legal Advisor
 Cecilie Thornvig Andersen, Legal Case Officer
 Hanne Nørgård, Legal Case Officer
 Lucienne Josephine Lokjær Bak, Legal Case Officer
 Mai Vestergaard, Legal Case Officer
 Morten Bech Lorentzen, Legal Case Officer
 Nanna Flindt, Legal Case Officer
 Yasaman Mesri, Legal Case Officer
 Ditte Hector Dalhoff, Legal Student Assistant

Key subject areas of cases handled

- Environment and planning
- Building and housing
- Energy
- Food and agriculture
- Municipalities and regions etc.
- The non-psychiatric healthcare sector
- Foreign nationals
- The law of capacity, the law of names, foundations and the law of succession
- The Guide for Authorities on the Ombudsman's website

Division 6

Taxation Division

Lisbeth Adserballe, Senior Head of Division
 Anne Djurhuus, Deputy Head of Division
 Rasmus Krogh Pedersen, Deputy Head of Division
 Michael Gasbjerg Thuesen, Senior Consultant
 Elizabeth Bøggild Monrad, Special Legal Advisor
 Linette Granau Winther, Special Legal Advisor
 Isabella Hinze Glenstrøm, Legal Case Officer
 Marjanne Kalsbæk, Legal Case Officer
 Marta Warburg Schmidt, Legal Case Officer
 Sverre Dehnfeld Kjeldgaard, Legal Case Officer
 Mathilde Hellmund Tønder, Legal Student Assistant
 Professor Jan Pedersen, LLD, External Consultant, Aarhus University

Key subject areas of cases handled

- Direct taxes
- Indirect taxes, including value-added tax, etc.
- Levying and collection of taxes
- Cases within certain other fields, including industrial injury cases

Division 7

Personnel cases, transport, education etc.

Johannes Martin Fenger, Senior Head of Division
 Camilla Bang, Deputy Head of Division
 Vibeke Lundmark, Deputy Head of Division
 Kristian Gyde Poulsen, Special Legal Advisor
 Anna Helene Stamhus Thommesen, Legal Case Officer
 Morten Juul Gjerlundbo, Legal Case Officer
 Rune Werner Christensen, Legal Case Officer
 Stine Harkov Hansen, Legal Case Officer
 Anna Grevelund Kiil, Legal Student Assistant

Key subject areas of cases handled

- Public employment law
- Transport, communication, roads, traffic etc.
- Education and research
- Prosecution Service and criminal cases etc.
- Passports, weapons etc.
- Elections, registration of individuals etc.
- Ecclesiastical affairs and culture
- Trade and industry etc.

Administrative Department

Core responsibilities

- Personnel
- Finance and analysis
- HR development
- Organisational development
- Information and communications
- Proofreading and other linguistic services
- IT
- Service and maintenance
- Records office

Christian Ørslykke Møller, Administrative Director

HR Development

Lisbeth Kongshaug, Head of HR and Development
 Jannie Svendsen, Senior HR and Development Administration Officer

Information, Records Office and Communications

Karen Nedergaard, Head of Information, Records Office and Communications
 Anna Skov Foug, Librarian
 Julie Gjerrild Jensen, Senior Communications Officer
 Eva Jørgensen, Senior Communications Officer
 Carsten Christiansen, Senior Records Assistant
 Denise Schärfe, Senior Records Assistant
 Harriet Lindegaard Hansen, Senior Records Assistant
 Julie Roland, Senior Records Assistant

IT

Seyit Ahmet Özkan, IT Administrator
 Kevin Pedersen, IT Officer
 Uffe Larsen, IT Officer

Personnel

Mette Vestentoft, Special Legal Advisor
 Lone Gundersen, Senior Personnel Officer
 Neel Aggestrup, Senior Personnel Officer
 Stine Holst Gamain-Nørgaard, Senior Personnel Assistant

Service

Jeanette Schultz, Head of Service
 Charlotte Charboe Andersen, Receptionist
 Flemming Wind Lystrup, Service Assistant
 Niels Clemmensen, Service Assistant
 Annitta Lundahl, Housekeeper
 Charlotte Jørgensen, Housekeeper
 David Jensen, Housekeeper
 Katarzyna Sztukowska-Thomsen, Housekeeper
 Kirsten Morell, Housekeeper
 Suphaporn Nielsen, Housekeeper

Language and Service Centre

Vibeke Lundmark, Senior Consultant
 Gurli Søndergaard, Senior Language Officer
 Lisbeth Nielsen, Senior Language Officer
 Marianne Anora Kramath Jensen, Senior Language Officer

Finance and Analysis

Torben Frimer-Larsen, Head of Finance and Analysis
 Jeanette Schultz, Head of Service
 Mathias Brix, Finance and Analysis Student Assistant

Appendix

**General information
about the Danish
Parliamentary
Ombudsman and
about monitoring
visits under the
OPCAT mandate**

1

General information about the Danish Parliamentary Ombudsman

The task of the Parliamentary Ombudsman

The Danish Parliamentary Ombudsman was established in 1955 following a constitutional amendment in 1953. The general background to introducing a Parliamentary Ombudsman was a wish to improve the protection of citizens' legal rights vis-à-vis public authorities.

The primary task of the Parliamentary Ombudsman is to help ensure that administrative authorities act in accordance with the law and good administrative practice, thus protecting citizens' rights vis-à-vis the authorities. An additional function of the Ombudsman is to support and promote good administrative culture within the public administration.

The Parliamentary Ombudsman is not the National Human Rights Institution of Denmark. The Danish Institute for Human Rights carries out this mandate.

Relationship to Parliament and jurisdiction

The Parliamentary Ombudsman is governed by the Ombudsman Act.

The Parliamentary Ombudsman is organisationally linked to the Danish Parliament. After each general election and whenever a vacancy occurs, Parliament elects an Ombudsman. Further, Parliament may dismiss the Ombudsman if the person holding the office no longer enjoys

its confidence. However, the Ombudsman Act stipulates that the Ombudsman is independent of Parliament in the discharge of his functions.

Under the Ombudsman Act, the jurisdiction of the Parliamentary Ombudsman extends to all parts of the public administration: the state, the regions, the municipalities and other public bodies.

Parliament – including its committees, the individual members of Parliament, the Administration of Parliament and other institutions under Parliament – is outside the Ombudsman's jurisdiction. Thus, the Ombudsman is generally precluded from considering complaints regarding the isolated effects of a statutory provision or its compliance with the Constitution and international law. However, if any deficiencies in existing statutes or administrative regulations come to the Ombudsman's attention in specific cases, the Ombudsman must notify Parliament and the responsible minister. Further, the Ombudsman Act states that the Ombudsman must monitor that existing statutes and administrative regulations are consistent with, in particular, Denmark's international obligations to ensure the rights of children, including the UN Convention on the Rights of the Child.

Courts of justice are outside the Ombudsman's jurisdiction, and the same applies to court-like bodies and tribunals that make decisions on disputes between private parties. Subject to a few exceptions, the Ombudsman cannot consider complaints about private establishments either.

The Danish Parliamentary Ombudsman is located in Copenhagen and has no branch offices. The Faroe Islands and Greenland both

have their own ombudsman, with jurisdiction in relation to issues falling under the remit of the home rule administration in the case of the Faroe Islands and the self-government administration in Greenland's case. Issues relating to the Faroe Islands and Greenland which fall under the remit of central administrative authorities of the Realm of Denmark are within the jurisdiction of the Danish Parliamentary Ombudsman.

Working methods

The Ombudsman investigates complaints, opens investigations on his own initiative and carries out monitoring visits. Investigating complaints from citizens is a core function of the Ombudsman.

Complaint cases

In general, anybody can complain to the Ombudsman, also if they are not a party to a case. Complaining to the Ombudsman is free. A complainant cannot be anonymous.

The Ombudsman considers complaints about all parts of the public administration and in a limited number of situations also about private institutions, an example being complaints about conditions for children in private institutions.

The Ombudsman does not consider complaints about courts, nor about court-like bodies or tribunals which make decisions on disputes between private parties.

The Ombudsman's task is to ensure that the authorities have observed the applicable rules. For this reason, the Ombudsman cannot consider cases at first instance; he can consider a complaint only if the case has been considered by the relevant authority – and by any appeals bodies.

There is a deadline of one year for complaints to the Ombudsman.

When the Ombudsman receives a complaint, he first determines whether it offers sufficient cause for investigation. In some cases, the Ombudsman is unable to consider a complaint, whereas in other cases, he chooses not to open an investigation, for instance because he would not be able to help the complainant achieve a better outcome.

In a large proportion of complaint cases, the Ombudsman helps the citizen by providing guidance or by forwarding the complaint to the relevant authority, for instance in order that the authority will be able to consider the complaint or give the citizen more details of the grounds for a decision which it has made in the case.

In a number of cases, the Ombudsman discontinues his investigation because the authority chooses to reopen the case, for instance after being asked for a statement on the matter by the Ombudsman.

In some complaint cases, the Ombudsman carries out a full investigation, which, among other things, involves obtaining statements from the authority and the complainant. The investigation may result in the Ombudsman choosing to criticise the authority and, for instance, recommend that it make a new decision on the matter.

Own-initiative investigations

As mentioned above, investigating complaints from citizens is a core function of the Ombudsman. However, opening investigations on his own initiative is also a high priority for the Ombudsman.

The Ombudsman may open the following types of investigation on his own initiative:

- investigations of specific cases
- general investigations of an authority's processing of cases

An example of a topic for a general investigation could be whether an authority's interpretation and application of specific statutory provisions or its practice in a specific area is correct.

Objectives of own-initiative investigations

One of the main objectives of also giving high priority to own-initiative investigations is to identify recurring errors made by authorities. Investigations of this type can have a great impact on the case processing by authorities, thus helping a large number of citizens at the same time.

In an own-initiative investigation, the focus is not only on errors that the authority may already have made – but also on preventing errors being made in the first place.

In addition, the Ombudsman opens investigations on his own initiative of specific cases of a more one-off nature if he finds cause to look further into a case.

Backgrounds to opening own-initiative investigations

In practice, the Ombudsman mainly opens own-initiative investigations of themes and within areas with one or more of the following characteristics:

- There is an aspect of fundamental public importance.
- Serious or significant errors may have been made.

- They concern matters which raise important issues in relation to citizens' legal rights or are otherwise of great significance to citizens.

Specific complaint cases or monitoring visits may give rise to suspicion of recurring errors etc. and be the launch pad for an own-initiative investigation. When the Ombudsman is investigating a specific case, his focus is therefore, among other things, on problems which characterise not only that particular case.

Media coverage of a case may also cause the Ombudsman to open an investigation on his own initiative. The Ombudsman monitors both local and national media.

Further, external parties – such as professional committees for practising lawyers or accountants or interest groups – can be useful sources of knowledge about recurring errors etc. on the part of authorities.

In addition, the Ombudsman chooses some general themes each year for the activities of the Ombudsman's Monitoring Department, Children's Division and Taxation Division.

What characterises the work on own-initiative investigations?

The Ombudsman's own-initiative investigations comprise a variety of activities with the common denominator that they are not centred on a complaint in a specific case, as the focus is usually expanded beyond specific problems to a more general level, with emphasis on any general and recurring errors or problems.

Further, own-initiative investigations typically have a more forward-looking focus, centring on how the authorities involved can handle and rectify errors and problems.

In some own-initiative investigations, the Ombudsman reviews a number of specific cases from an authority.

In other cases, the Ombudsman asks an authority for a statement about, for instance, its administration, interpretation of the law, practice or processing times in a specific area.

The Ombudsman is working on an ongoing basis on a variety of own-initiative investigations where he considers, based on, for instance, specific complaint cases, legislative changes or media coverage, whether a matter should be investigated further. Thus, the Ombudsman decides on an ongoing basis which issues or areas give cause for investigation and how to prioritise them.

In some cases, the Ombudsman's own investigation leads to the conclusion that there is no cause to contact the authorities involved and that the case can thus be closed without a full Ombudsman investigation. The Ombudsman may also decide to close a case without a full investigation after contacting the authorities.

Monitoring visits

The Ombudsman carries out monitoring visits to places where there is a special need to ensure that citizens are treated with dignity and consideration and in accordance with their rights – because they are deprived of their liberty or otherwise in a vulnerable position.

Monitoring visits are made to a number of public and private institutions etc., such as:

- Prison and Probation Service institutions
- psychiatric wards
- social residential facilities
- residential institutions for children and young people

In addition, the Ombudsman monitors:

- forced deportations of foreign nationals
- forced deportations arranged by other EU member states at the request of the European Border and Coast Guard Agency, Frontex

Finally, the Ombudsman monitors the physical accessibility of public buildings, such as educational establishments, to persons with disabilities.

The Ombudsman's monitoring obligations follow from the Ombudsman Act and from the rules governing the following special responsibilities which the Ombudsman has been assigned:

- The Ombudsman has been designated 'National Preventive Mechanism' (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The task is carried out in collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights, which contribute with medical and human rights expertise.
- The Ombudsman has a special responsibility to protect the rights of children under the UN Convention on the Rights of the Child etc.
- The Ombudsman monitors developments regarding equal treatment of persons with disabilities at the request of Parliament.
- The Ombudsman has been appointed to monitor forced deportations of foreign nationals.

A monitoring visit to an institution is normally a physical visit by a visiting team, who speak with users, staff and the management and look at the physical environment.

The monitoring of a forced deportation involves, among other things, a member of the Ombudsman's staff participating in the whole or part of the deportation.

Monitoring visits are carried out by the Ombudsman's Monitoring Department, except for visits to institutions etc. for children, which are carried out by the Children's Division.

External collaborative partners or consultants participate in a large proportion of visits. Depending on the type of monitoring visit, the Ombudsman collaborates with:

- medical doctors from DIGNITY – Danish Institute Against Torture
- human rights experts from the Danish Institute for Human Rights (IMR)
- wheelchair users from the Danish Association of the Physically Disabled
- consultants from the Danish Association of the Blind

During monitoring visits, the Ombudsman often makes recommendations to the institutions. Recommendations are typically aimed at improving conditions for users of the institutions and in this connection also at bringing conditions into line with the rules. Recommendations may also be aimed at preventing, for instance, degrading treatment.

In addition, monitoring visits may cause the Ombudsman to open own-initiative investigations of general problems.

Powers

Tools of investigation

Under the Ombudsman Act, the Ombudsman has a set of tools at his disposal when carrying

out investigations. Firstly, authorities etc. within the Ombudsman's jurisdiction are required to furnish the Ombudsman with such information and to produce such documents etc. as he may demand. Secondly, the Ombudsman may demand written statements from authorities etc. within his jurisdiction. Thirdly, the Ombudsman may inspect authorities etc. within his jurisdiction and must be given access to all their premises.

Assessment and reaction

The Ombudsman's assessment of a case is a legal assessment. In connection with monitoring activities, however, the Ombudsman may also include universal human and humanitarian considerations in his assessment. The Ombudsman only considers the legal aspects of cases and not matters which require other specialist knowledge, such as medical matters. Further, the object of the Ombudsman's investigations is the acts or omissions of public authorities, not the acts or omissions of individual public servants.

Under the Ombudsman Act, the Ombudsman may express criticism, make recommendations and otherwise state his views of a case, typically by criticising a decision or recommending that the authority change or review its decision. The authorities are not legally obliged to comply with the Ombudsman's recommendations, but in practice, they follow his recommendations.

The Ombudsman may recommend that a complainant be granted free legal aid in connection with any matter within his jurisdiction.

If the Ombudsman's investigation of a case reveals that the public administration must be presumed to have committed errors or derelictions of major importance, he must notify Parliament's Legal Affairs Committee and the relevant minister or municipal or regional council.

Organisation

Under the Ombudsman Act, the Ombudsman engages and dismisses his own staff. The Ombudsman currently employs roughly 120 people, about 60 per cent of them law graduates.

The management of the institution consists of the Ombudsman, the Director General, the Deputy Director General and the Administrative Director. A management secretariat and an international section support the management.

The Ombudsman's office consists of two departments, a legal department and an administrative department, which are further divided into a number of divisions and units, respectively.

The Ombudsman's annual budget is approximately EUR 12 million.

2 General information about monitoring visits under the OPCAT mandate

In 2009 the Danish Parliament passed an amendment to the Ombudsman Act enabling the Ombudsman to act as National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). In the same year, the Ombudsman started carrying out the functions of the NPM.

Is the NPM independent?

The functions of the NPM are carried out as an integral part of the Ombudsman's work. The Ombudsman is independent of the executive power and is appointed by the Danish Parliament. The Ombudsman is independent of Parliament in the discharge of his functions.

Does the NPM have the necessary professional expertise?

The members of the Ombudsman's staff primarily have legal expertise. However, the Ombudsman's special advisor on children's issues participates in monitoring visits to institutions etc. for children. The Danish Institute for Human Rights contributes with human rights expertise, and DIGNITY – Danish Institute Against Torture contributes with medical expertise.

Does the NPM have the necessary financial resources?

The costs of exercising the functions of the NPM are financed via the overall Government appropriation for the Ombudsman.

Are monitoring visits carried out on a regular basis?

Approximately 30 monitoring visits to institutions for adults and 10 to 12 visits to institutions etc. for children are carried out per year.

What types of institutions are monitored?

The Ombudsman monitors, among others, the following types of institutions where adults may be deprived of their liberty:

State prisons are run by the Prison and Probation Service and receive convicted persons who are to serve a sentence. State prisons may be closed or open. Closed prisons are characterised by a high degree of security and control, whereas inmates in open prisons may be able to work or take part in training or education outside the prison. However, there are also clear limits to inmates' freedom of action in open prisons.

Local prisons are run by the Prison and Probation Service and receive arrestees, remand prisoners and in certain cases convicted persons

who are to serve a sentence. Local prisons are characterised by a high degree of security and control.

Halfway houses are run by the Prison and Probation Service and are used especially for the rehabilitation of convicted persons who are serving the last part of their sentence. Compared to prisons, halfway houses may have a high degree of freedom.

Immigration detention centres are run by the Prison and Probation Service and receive foreign nationals who are to be detained, as a general rule not for a criminal offence but for reasons relating to the Aliens Act.

Departure centres are run by the Prison and Probation Service and receive rejected asylum seekers, persons sentenced to deportation and persons with tolerated residence status. The residents are not under detention and are therefore free to come and go. As a general rule, however, they are required to reside at the centre, including to spend the nights there.

Asylum centres are run by municipalities and the Danish Red Cross and comprise, among others, reception centres, where asylum seekers stay the first weeks after arrival, and residential centres, where they stay while the authorities are considering their application for asylum.

Police detention facilities are used to detain persons who are unable to take care of themselves, for instance due to intoxication.

Police custody reception areas are used for detentions of very short duration without overnight stays of arrestees.

Psychiatric wards are run by the regions and receive psychiatric patients. Wards may be open (with unlocked outer doors), closed (with locked outer doors) or integrated (with outer doors or doors to certain sections being locked according to patients' needs). There are also forensic psychiatric wards, which receive, among others, patients sentenced to placement or treatment in a psychiatric ward.

Social residential facilities are run by regions, municipalities or private parties and receive persons with impaired cognitive or physical functioning. In addition, they receive persons sentenced to placement in a social residential facility. Outer doors are unlocked, except in secure units.

Care homes are run by municipalities or private parties and receive persons with an extensive need for personal care, healthcare and extra support in their daily lives.

The Ombudsman monitors, among others, the following types of institutions etc. where children and young people may be placed:

Open residential institutions are run by municipalities or regions and receive children and young people belonging to the target group for which the institution has been approved. The target group may be defined in terms of age but may also be defined in terms of needs, diagnoses or disabilities.

Partly closed residential institutions and partly closed units of residential institutions are run by municipalities or regions and receive children and young people with criminal behaviour, substance abuse or other behavioural problems. In these institutions and units, residents may be detained by periodic locking of windows and outer doors.

Secure residential institutions and high secure units of residential institutions are run by municipalities or regions and receive children and young people in order to prevent them harming themselves or others or for observation or treatment. These institutions and units may also receive, among others, young people to be remanded in non-prison custody during investigation of their case or convicted young people who are to serve a sentence. Windows and outer doors may be constantly locked, and placements of short duration in a seclusion room are permitted.

Accommodation facilities are run by private parties, such as foundations or enterprises, and receive children and young people belonging to the target group for which the facility has been approved.

Foster families are either general, reinforced, specialised or network foster families. A foster family may foster children and young people belonging to the target group for which it has been approved. Reinforced foster families may foster children and young people with moderate to high support needs, whereas specialised foster families may foster children and young people with high support needs.

24-hour units of child and adolescent psychiatric wards are run by the regions and receive children and young people for examination or treatment of psychiatric disorders.

Asylum centres for unaccompanied underage asylum seekers are run by municipalities and the Danish Red Cross and are residential centres where unaccompanied underage asylum seekers stay while the authorities are considering their application for asylum.

How are monitoring visits carried out?

A monitoring visit is typically a physical visit. Before or following the visit, the Ombudsman will ask for various information, for instance reports of incidents involving use of force, records of statements taken prior to the sanction of placement in a disciplinary cell being imposed, or information from parents or other relatives. During the visit, the Ombudsman's visiting team will speak with users, staff and the management.

The Ombudsman has designated the following general focus areas for his monitoring visits:

- use of force and other restrictions
- interpersonal relations
- work, education and leisure time
- health-related issues
- user safety
- sector transfers

The prioritisation of the individual focus areas depends on the place visited. During specific monitoring visits, the Ombudsman may also focus on other issues, for instance buildings in a poor state of repair.

In most cases, recommendations are made to the management of the institution already during the monitoring visit.

Following the visit, the visiting team will prepare a memorandum of the visit, and the Ombudsman will subsequently send a concluding letter to the institution and the responsible authorities with his recommendations.

DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights normally take part in preparing, carrying out and following up on the monitoring visits.

Each year, the Ombudsman chooses, together with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights, one or more themes for the year’s monitoring visits. The majority of the monitoring visits to be carried out during the year will be to institutions where the themes will be relevant. A theme could be, for instance, disciplinary cells or younger children placed in social care.

After the monitoring visits for a given year have been carried out, the Ombudsman prepares a separate report on the year’s work in relation to each of the themes for the Ombudsman’s monitoring visits to institutions for adults and children. The reports summarise and present the most important results in relation to the themes. Results may be general recommendations to the responsible authorities, for instance a recommendation to see that institutions draw up policies on prevention of violence and threats among residents. The reports are also used as a starting point for discussions with key authorities about general problems.

Monitoring visits may cause the Ombudsman to open cases on his own initiative, with, among others, the authorities which have the remit for the relevant areas. This may be the case, for instance, with general problems which affect not only the specific institution visited. An example of such a case opened on the Ombudsman’s own initiative was an investigation of whether it was permitted to initiate various types of measures in relation to psychiatric patients without statutory authority.

Does the Ombudsman submit proposals and observations regarding existing legislation or drafts for legislation?

The Ombudsman monitors that the authorities observe the conventions within the framework of Danish legislation.

The more politico-legal and advisory tasks in relation to the legislature are carried out by other bodies, such as the Ombudsman’s collaborative partners in the discharge of his functions as NPM (i.e. the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture). According to an established practice, the Ombudsman does not submit consultation responses on bills, with the exception of bills affecting matters which relate to the Ombudsman’s office itself.

The Ombudsman may notify the responsible minister and Parliament if a statute or the state of the law in a specific area is not consistent with Denmark’s international obligations and a legislative change may therefore be required.

