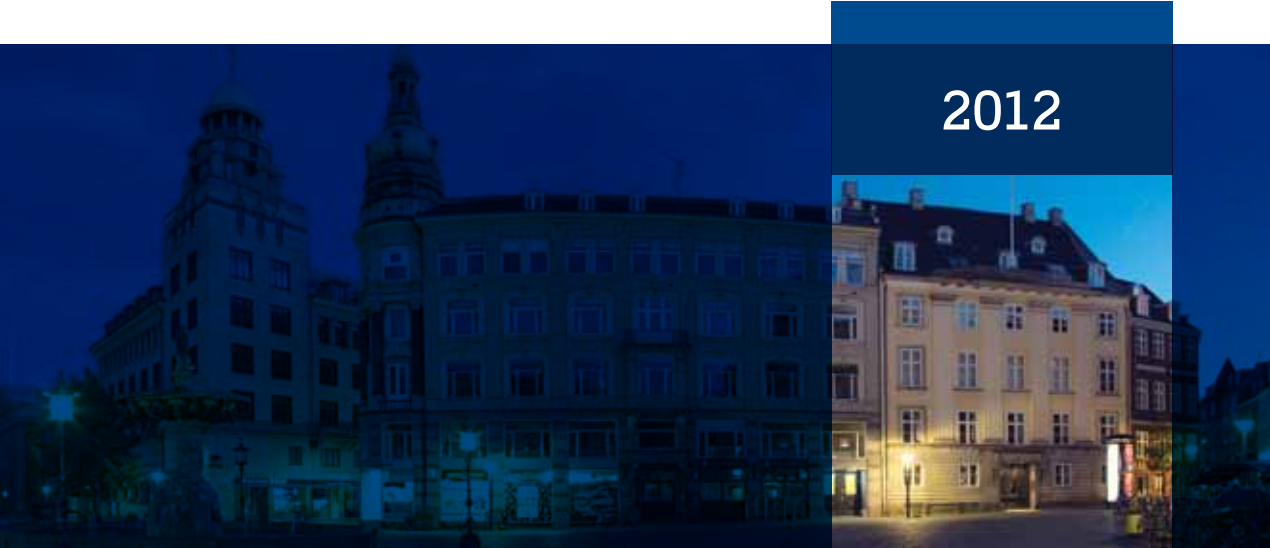




# Annual Report

2012













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## TO PARLIAMENT

Pursuant to the provision in section 11(1) of the Parliamentary Ombudsman Act (consolidating Act no. 349 of 22 March 2013), the Ombudsman is to submit an annual report on his activities to Parliament. The report is to be published. In the report, the Ombudsman is among other things to highlight statements on individual cases which may be of general interest. The accounts of the cases in the report are to contain information about the explanations given by the authorities concerning the matters criticised (section 11(2) of the Parliamentary Ombudsman Act).

In accordance with the above provisions, I am hereby submitting my Annual Report for the year 2012.

Summaries of the cases of general interest selected for publication as part of the Danish version of the Annual Report are found in Appendix B.

*Copenhagen, September 2013*

JØRGEN STEEN SØRENSEN





2012 AT THE OMBUDSMAN INSTITUTION



Jørgen Steen Sørensen  
Parliamentary Ombudsman

## 1. INTRODUCTION

On 1 February 2012, I took up the position of Parliamentary Ombudsman. This Annual Report is therefore the first report covering my time in the post.

The change of Ombudsman has provided the impetus for considering various issues with a view to carrying the institution into a new era, i.e. adapting its basic values to today's conditions.

In my view, the Ombudsman's mission can be expressed as follows:

- The Ombudsman must help the citizen who has become caught in the public administration system.
- The Ombudsman must identify and clarify general issues of administrative law and issues relating to good administrative practice.
- The Ombudsman must influence the public administration to make it (even) better.

In 2012, we worked hard to establish how to best support this mission.

## 2. INITIATIVES TO SUPPORT THE OMBUDSMAN'S MISSION

### Focus on the right cases

Pursuant to section 16(1) of the Ombudsman Act, the Ombudsman determines himself whether a complaint offers sufficient grounds for investigation – i.e. whether to take it up. Citizens therefore do not have a legal right to have their cases considered by the Ombudsman. The intention is to enable the Ombudsman to focus his resources on the cases which it is most sensible to address.

At the Ombudsman institution, we use as our gauge that a case must be significant for us to take it up. This expression is easily misunderstood, for to the individual complainant any case will of course be significant. However, by a significant case we basically mean that an individual may genuinely have become caught in the system or that the case raises some general and fundamental issues which need to be clarified.

On the basis of this criterion, we reject various types of complaints. They include, for instance, cases involving minor processing errors, cases where the complaint has already largely been redressed and cases where a preliminary assessment shows that the Ombudsman is ultimately unlikely to be able to help the complainant achieve the desired result. In short, we ask ourselves: What can the Ombudsman achieve by taking up this case for investigation?

As a result we reject a significant proportion of the complaints which we receive. However, we do so in order to have sufficient resources to consider the really important cases and also in order not to mislead the complainant in cases where – after thorough consideration – we do not believe that we will ultimately be able to give any real help. In such cases, we find it better to reject the complainant relatively quickly rather than raise false hopes. And of course we will always consider cases which may involve real and significant violations of justice (provided the complaints cannot be considered by other authorities first).

It is therefore important not to judge us by how *many* cases we consider, but whether we consider the *right* cases and get the *right* results. In this connection, we have intensified our news communication at [www.ombudsmanden.dk](http://www.ombudsmanden.dk) and in our newsletters in order to give the public a better opportunity to be updated on cases of interest and thereby to assess the value of our activities.

### More focus on own-initiative cases

Pursuant to section 17 of the Ombudsman Act, the Ombudsman has the authority not only to process complaints, but also to take up cases on his own initiative.

This is a very important power. Thus, quite a few people are not realistically able to lodge a complaint with the Ombudsman, but we may, for instance, become aware of their cases through the media. In addition, specific complaint cases may suggest the possibility of more systemic issues which should be brought up with the authorities. Finally, there is hardly any doubt that the possibility that

the Ombudsman may take up a case on his own initiative may in itself have a useful preventive effect in relation to the authorities.

We would therefore like to take up a considerable number of cases on our own initiative. For this reason as well, it is important that we carefully choose the complaint cases which we decide to enter so that we do not ‘drown’ in them. In 2012, we succeeded in taking up 23 per cent more cases on our own initiative than in 2011.

## Faster processing of large cases

We conclude the great majority of cases within a reasonable time (and many cases very quickly). However, we frequently have problems with large, more complex cases, where the case processing may easily take many months.

Long case processing times are generally a significant problem within the administration – and a problem which the Ombudsman often criticises. It is therefore of course important that the Ombudsman institution itself leads the way towards good, appropriate case processes and generally towards focusing not only on high professional standards, but also on speed, efficiency and optimal use of resources.

Also these issues were discussed in detail in the institution in 2012. We addressed them by a combination of different means, including thorough screening of complaint cases before they are taken up, careful consideration of which aspects of the individual complaint case to investigate, thorough assessment when statements requested from authorities are received, regular assessment of our resource capacity and more concise wording for some types of cases. In 2012, we also took the first steps towards an overall external analysis of the organisation, which was carried out in spring 2013. We are now in the process of implementing some of its results.

## Correct communication of important Ombudsman messages

Ombudsman messages are primarily communicated in individual cases. The requirements in relation to legal thoroughness and precision which we impose on ourselves mean that it is probably sometimes difficult for the authorities to separate out the relevant – and often actually quite simple – messages.



We try to compensate for this, for instance by means of articles in our Annual Report, training courses and participation in seminars, conferences etc. We therefore give a high priority to such efforts.

During 2012, we considered whether our communication of important messages to the authorities could be further strengthened and systematised and whether in this way we could 'get ahead' of the cases to a greater extent and help the authorities avoid errors instead of criticising them afterwards. For the citizens it is of course better if the errors are not made in the first place rather than being made and then criticised.

So far, these considerations have resulted in a decision in principle to develop a special module at [www.ombudsmanden.dk](http://www.ombudsmanden.dk) where the Ombudsman's views on practically important issues of administrative law will be summarised briefly and in an accessible form. The purpose is to provide the authorities with guidelines as far as possible, for instance specifying what must be included when giving grounds for a decision in order that they meet the requirements of the Public Administration Act, what the rules for the freedom of expression of public employees are, where the authorities typically make errors in social benefit fraud cases and what the main pitfalls are when transitioning to digital administration. This is the type of question on which we hope to be able to provide better guidance to the authorities in this way.

This is a major project which it will take years to implement and which has to be regularly adjusted and maintained, but we expect to be able to take the first steps in the second half of 2013.

### 3. CASES IN 2012 WHICH MADE A SPECIAL IMPRESSION

The short case summaries inserted throughout this report provide a picture of the variety of problems which we address in our daily work. The following are some of the cases which in their various ways made a special impression on us during 2012:

Undoubtedly the most spectacular and widely discussed case in 2012 was Case No. 2012-13 concerning *Member of Parliament Henrik Sass Larsen and his complaint about the Prime Minister's Office, the Ministry of Justice and the Security and Intelligence Service (PET)*. Among other things this case raised issues concerning the Ombudsman's role in cases of a political nature. I discuss the case elsewhere in the Annual Report (pages 50-55).

The *special issues in relation to local authorities' combating of social benefit fraud*, on which we have used considerable resources, are also discussed elsewhere in the Annual Report (pages 40-47). There is little doubt that the local authorities are finding it difficult on the one hand to target fraud and unwarranted payments aggressively and on the other to observe fundamental principles concerning, for instance, objective case elucidation, self-incrimination and the obligation to give guidance. This is an area which we will continue to monitor carefully.

Several cases reflected *the issues involved in transitioning to IT based (digital) administration*.

This applied, for instance, to Case No. 2012-4, where misfiling at the National Board of Industrial Injuries resulted in several citizens obtaining insight into very sensitive information about other people via online insight systems. This is one of many issues that may arise when transitioning to digital case processing systems. After we raised the issue more generally, the Board has now implemented various initiatives to prevent such very unfortunate situations.

Another example (Case No. 2012-14) concerned state education grants to Danish students who complete their studies (fully or in part) abroad. In a specific case, a woman studying in Australia lost money because the State Education Grant and Loan Scheme Authority had organised its IT system in such a way that the conversion of the foreign tuition fee to state education grant could only be done on the basis of the exchange rates as at 1 April. The system therefore did not take account of exchange rate fluctuations during the year. We found this method contrary to the law and the Authority therefore had to initiate a general refund of costs to students who had lost money as a result of the system.

The issue of *the freedom of expression of public employees* has traditionally been an important part of the Ombudsman's activity and we also processed several important cases in 2012. They concerned the boundaries between legitimate management reactions to legal statements, on the one hand, and illegal intervention and restrictions, on the other.

In a case (Case No. 2012-25) from Region Zealand, some nurses at Nykøbing Falster Hospital had spoken publicly about staff quotas at the hospital and their impact on the mortality statistics. In this connection, the Chairman of the Regional Council had said to a newspaper that 'staff and politicians have a joint responsibility here, and I strongly urge that we cooperate on reducing those mortality figures instead of discussing them in the press'. The Danish Nurses' Organisation regarded this as an infringement of the nurses' freedom of expres-

sion, but we did not agree. We did not regard it as a threat against the nurses, but as the expression of a legal management view of the best way of handling workplace issues. Furthermore, the Chairman of the Regional Council had subsequently emphasised that public employees have an entrenched right to freedom of expression.

The outcome was the opposite in a case (Case No. 2012-26) from the Royal Arsenal Museum, where an employee was summoned to a talk with her manager about her 'loyalty' in connection with a letter published in the newspaper *Politiken*. In her letter, the employee had criticised Danish museums for being more focused on visitor experiences than on research. In our opinion, the manager had created an unlawful uncertainty about the employee's right to express critical opinions. The museum agreed, after the manager responsible had resigned.

It is a fundamental principle that *the administration must make itself understood by the individual citizen*, but it does not always succeed.

In Case No. 2012-27, a local authority had refused to extend a woman's sickness benefit and transferred her to cash benefit. This was overturned by the Employment Appeals Board and the local authority therefore had to recalculate the cash benefit paid into sickness benefit. In this connection, the local authority made a number of errors, which among other things resulted in the woman later being ordered to pay a significant amount of outstanding tax and also finding it virtually impossible to understand the local authority's calculations. We stated more generally that citizens must be able to see and understand what has happened in their case, and the local authority took various initiatives to prevent a recurrence of similar incidents.

Some cases are characterised by authority decisions which *in a way appear reasonable and understandable, but nonetheless lack the necessary legal basis*. This applied, for instance, to Case No. 2012-9, where the Ministry of Children and Education had approved the exclusion by a technical college of a student from lessons because his qualifications were so poor that he was assumed to be unable to complete the training. Among other things, the Ministry referred to a legal principle that 'no one is obliged to achieve the impossible', but we believed that the students' right to take part in lessons was so carefully regulated that the college could not expel the student with reference to a legal principle which is not found in legislation.

A case which made an impression in a special way (Case No. 2012-10) concerned *hospitals' treatment of babies born alive, but inevitably dying*, who are the result of late abortions. This was a case which we initiated on our own initiative

on the basis of newspaper articles. Among other things, the articles suggested that babies born alive had been left to die alone in hospital sluice rooms. After a dialogue with the health authorities, the authorities took the initiative to issue more precise guidelines for maternity wards' procedure in these sad cases.

#### 4. INTERNATIONAL COLLABORATION

The Ombudsman is heavily involved in international collaboration. This continued in 2012, for it is important to share the experiences from an Ombudsman institution which we have had in Denmark, and we ourselves learn a great deal from it. Help to establish and run Ombudsman institutions in other countries is also an important part of the overall Danish aid towards democracy building around the world.

In 2012, we among other things continued our long-standing collaboration with and support for the Albanian Ombudsman institution, which is working in difficult conditions. We also worked closely with Ombudsman institutions in Uganda and Tanzania, and in December we visited Burkina Faso, where we entered into a formal collaboration agreement with the country's Ombudsman institution.

In addition, we had close contacts with Chinese state authorities, which culminated in a visit to China in June 2013, when we entered into important collaboration agreements with state authorities such as the Ministry of Supervision and the State Bureau of Letters and Calls.

#### 5. THE OMBUDSMAN – CRITICAL AND CONSTRUCTIVE

Of course, much more happened in the Ombudsman institution in 2012 than we have space to describe in this article. Major projects include the establishment of our new Children's Division and a fundamental reform – both organisationally and with regard to methods – of our monitoring of institutions for people on the outer edges of society, such as prisons and psychiatric institutions.

The establishment of the Children's Division and issues relating to our monitoring activities are described separately in other articles in the Annual Report.

The Ombudsman's key task is to help citizens with their problems in relation to the administration, and our image of the authorities can easily become dominated by the major and minor errors committed. It is therefore important to

remember that in Denmark we basically have a competent administration which wishes to do the best possible job.

Nonetheless, there *are* problems. I have touched on some of the specific issues above, for instance legal protection issues in social benefit fraud cases, the transition to digital administration and the freedom of expression of public employees.

Other issues are very fundamental. These include the financial and resource-related reality currently affecting the administration – especially the local authorities – which may challenge the quality of their task handling.

These are not problems which the Ombudsman can solve as such, for the rules are as they are, and of course they must be followed. However, it emphasises that in the coming years the authorities are facing a major task in adapting and modernising processes and above all working with efficient quality assurance, so that cases are resolved correctly at the first attempt. It is not only problematic for citizens in terms of legal protection if the administration makes the wrong decisions – it is also very expensive for the authorities, for usually it requires far fewer resources to make an effort to get it right the first time round rather than having to rectify errors already made.

At the Ombudsman institution, we wish to influence the administration to become better, and we are aware that the relationship between us and the authorities must basically be characterised by good collaboration. Of course, we must express criticism when this is required – and if necessary severely, which we do in the cases in question – but it is important that at the same time we enter into constructive, future-oriented contexts, for instance in connection with training and seminar activities, general guidance to the authorities and appropriate communication of important Ombudsman messages.

Such a general and comprehensive effort – focusing on both a critical approach and constructive support – is the best way in which we can make our contribution to improving Danish administrative culture for the benefit of the individual citizen.



Media coverage alerted the Ombudsman to a case of possible care failure in relation to an elderly citizen. Allegedly, local authority employees had on several occasions forgotten to give the elderly citizen the prescribed medication. The local authority had itself initiated an investigation of the case and, as a first step, the Ombudsman therefore asked the local authority to send him the results of its investigation.

The local authority admitted that the process in relation to the elderly citizen had not been handled satisfactorily. It had taken various initiatives to avoid recurrences. On the basis of the information provided by the local authority, the Ombudsman decided to close his investigation of the case.

All Ombudsman legal case officers read a local or national newspaper to watch out for cases which the Ombudsman should take up on his own initiative. The Ombudsman frequently opens a case in response to media coverage but closes it again soon afterwards, for instance because the authorities themselves have dealt with the issue in an appropriate way.

On behalf of her brother, a woman asked a ministry to reconsider a previously settled case. After 18 months, the case was still pending and the woman lodged a complaint with the Ombudsman about the ministry's case processing time.

In connection with the Ombudsman investigation of the case, the ministry stated that it deeply regretted the long processing time. It also admitted that regrettable and very regrettable errors had been made in connection with the case processing. The ministry informed the Ombudsman that it had issued an internal reminder emphasising that the guidelines for processing this type of case must be followed and that it would monitor that they were followed in future. The ministry also made a decision on the case.

The woman was sent a copy of the ministry's reply for her information. She then contacted the Ombudsman to withdraw her complaint on the grounds that the ministry's statement had produced the desired result: a decision on her brother's case, an apology for the long case processing time and initiatives to prevent a similar experience in other cases. The Ombudsman therefore closed his investigation without making a statement on the case.

The Ombudsman's work is to a large extent aimed at solutions rather than criticism. Among other things, this means that if an authority itself identifies any errors and endeavours to prevent recurrences, the Ombudsman may in certain circumstances choose to close the case without making an actual statement, for instance if the complainant is satisfied by the authority's reactions, because there is then no need for the Ombudsman to establish and criticise the errors as well.



The Ombudsman received three different complaints about the Appointed Building Experts Disciplinary and Complaints Tribunal. The Tribunal was established by statute on 1 January 2011 and the Ombudsman had not previously considered whether it was within his jurisdiction. After reviewing the Tribunal's tasks and composition and the rules for its case processing, he regarded it as a dispute tribunal, which meant that he could not consider the complaints.

The Ombudsman cannot consider complaints about so-called dispute tribunals, which settle disagreements between private citizens, if they process cases in a court-like manner. This follows from section 7(3) of the Ombudsman Act.

A woman wrote to the Ombudsman because she felt badly treated by a removal firm, an insurance company and her lawyer. She could not afford a court case and asked for help to claim compensation.

The Ombudsman wrote to the woman that he was unable to help her as the subjects of her complaint were not part of the public administration. He added that she might contact the Consumer Complaints Board, the Insurance Complaints Board and the Disciplinary Board of the Danish Bar and Law Society.

The Ombudsman also described the possibilities of applying for legal aid for a court case.

Pursuant to the Ombudsman Act, the Ombudsman considers complaints about the public administration, but not complaints about private individuals or organisations.



A 15-year-old Sri Lankan girl applied for a residence permit to live with her mother, who had moved to Denmark some years earlier, but her application was rejected. The authorities attached importance to the facts that the girl was born and grew up in her native country and had lived for much of her life with her grandmother there. She had also attended school in Sri Lanka and spoke the language. The authorities furthermore attached importance to the fact that the mother had herself chosen to move to Denmark, leaving the girl behind, and that the girl's father, grandmother and step-siblings all lived in her native country.

The Ombudsman received a complaint about the rejection from a legal aid bureau. He asked the Ministry of Justice to explain the case in the light of a specific case which had been considered by the UN Human Rights Committee and the possible significance of a specific judgment by the European Court of Human Rights.

The Ministry responded and the Ombudsman considered the case on the basis of the relevant international rules. He then wrote to the legal aid bureau that he found no grounds for criticising the authorities.

When considering cases, the Ombudsman includes relevant international rules and practice. In family reunification cases, he considers, among other things, Article 8 of the European Human Rights Convention concerning the right to respect for private and family life and decisions by the European Court of Human Rights. In child cases, he also considers the rules in the UN Convention on the Rights of the Child.



ORGANISATION CHART

## Parliamentary Ombudsman

### Director General

General Division	1 <sup>st</sup> Division	2 <sup>nd</sup> Division	Monitoring Division	4 <sup>th</sup> Division	5 <sup>th</sup> Division	Children's Division
<b>The Division's main areas of responsibility are as follows:</b> <ul style="list-style-type: none"> <li>- Annual report</li> <li>- International work</li> <li>- Own-initiative projects</li> <li>- Cases concerning media access to files</li> <li>- Cases from the other divisions (buffer function)</li> <li>- HR and finance</li> <li>- Administration, service and development</li> <li>- Website and news</li> <li>- Language policy</li> </ul>	<b>The Division especially processes cases involving:</b> <ul style="list-style-type: none"> <li>- Company legislation</li> <li>- Foodstuffs</li> <li>- Fisheries</li> <li>- Agriculture</li> <li>- Patient complaints</li> <li>- Pharmaceuticals</li> <li>- Health services</li> <li>- Foreign affairs</li> <li>- Cases involving aliens</li> <li>- Registers etc.</li> <li>- Naturalisation</li> <li>- Succession law and foundations</li> <li>- Parental access cases</li> <li>- The law of capacity and the law of names</li> <li>- Family law cases</li> </ul>	<b>The Division especially processes cases involving:</b> <ul style="list-style-type: none"> <li>- Employment legislation</li> <li>- Cash benefits etc.</li> <li>- Social pensions</li> <li>- Sickness benefits</li> <li>- Social services for adults</li> <li>- Aids and appliances, except vehicle allowance for persons with impaired physical or mental functioning</li> </ul>	<b>The Division is in charge of the Ombudsman's monitoring activities, which include in particular:</b> <ul style="list-style-type: none"> <li>- State prisons</li> <li>- Local prisons</li> <li>- Halfway houses</li> <li>- Detention facilities for intoxicated persons</li> <li>- Custody reception areas</li> <li>- Psychiatric wards</li> <li>- Institutions for the mentally or physically disabled</li> <li>- Non-discrimination of the disabled</li> <li>- Deportations of foreigners</li> </ul>	<b>The Division especially processes cases involving:</b> <ul style="list-style-type: none"> <li>- Local authority law issues</li> <li>- Environment and planning legislation</li> <li>- Nature protection</li> <li>- Building and housing</li> <li>- Budget and economy</li> <li>- Elections, registration of individuals etc.</li> <li>- Personnel cases</li> <li>- Traffic and roads</li> </ul>	<b>The Division especially processes cases involving:</b> <ul style="list-style-type: none"> <li>- Benefits pursuant to the legislation on unemployment insurance and industrial injuries and for victims of the WWII occupation</li> <li>- Criminal injuries compensation</li> <li>- Child support, family allowance and housing benefit</li> <li>- Social services for children and juveniles</li> <li>- Vehicle allowance for persons with impaired physical or mental functioning</li> <li>- Old-age pensions and calculation etc. of other social pensions</li> <li>- Institutions etc. for adults and the elderly, except monitoring cases</li> <li>- Repayment of social benefits etc.</li> <li>- Taxes, duties and recovery thereof</li> <li>- Communications (post, IT and telecommunications, radio and television)</li> <li>- Youth education, higher education, student grants and research</li> <li>- Ecclesiastical affairs and culture</li> </ul>	<b>The Division carries out monitoring visits to public and private institutions and private institutions for children, such as:</b> <ul style="list-style-type: none"> <li>- Social institutions and privately run residences for children placed in residential care</li> <li>- Foster families</li> <li>- Schools, including private schools</li> <li>- Asylum centres</li> <li>- Hospital wards and psychiatric wards for children</li> <li>- Day-care facilities</li> </ul> <b>The Division especially processes specific cases involving:</b> <ul style="list-style-type: none"> <li>- Special measures for children pursuant to the Consolidation Act on Social Services</li> <li>- Schools</li> <li>- Children's institutions</li> <li>- Other cases with a particular bearing on children's rights</li> </ul>



Jon Andersen  
Director of International Law

Kaj Larsen  
Director of Public Law,  
Head of Division

Jens Møller  
Director General

Kaj Larsen, Director of Public Law, Head of Division  
Jon Andersen, Director of International Law  
Lisbeth Nielsen, Administrative Officer

#### **HR, finance, media access to files and buffer**

Vibeke Lundmark, Head of Department  
Lise Puggaard, Special Legal Adviser  
Mette Vestentoft, Legal Case Officer  
Stine Marum, Legal Case Officer  
Julie Gjerrild Jensen, Editor  
Jannie Svendsen, Administrative Officer  
Lone Gundersen, Administrative Officer  
Marianne Anora Kramath Jensen,  
Administrative Assistant

#### **International projects, annual report and language**

Jens Olsen, International Relations Director  
Christian Ougaard, Special Legal Adviser  
Eva Jørgensen, Editor

#### **Administration, service and development**

Christian Ørslykke Møller, IT and Operations Manager  
Seyit Ahmet Özkan, IT Operations Administrator  
Sonny Manjit Singh, IT Student Assistant  
Lisbeth Kongshaug, HR Consultant  
Karen Nedergaard, Information Consultant  
Jacob Berner Moe, Communications Adviser  
Birgit Kehlet-Hansen, Senior Library Assistant  
Jeanette Merete Schultz, Head of Service Section

# GENERAL DIVISION

Vibeke Lundmark  
Head of Department

Jens Olsen  
International Relations Director


Flemming Wind Lystrup, Operations and Service Assistant  
Niels Clemmensen, Operations and Service Assistant  
Annitta Lundahl, Housekeeper  
Charlotte Jørgensen, Housekeeper  
Kirsten Morell, Housekeeper  
Suphaporn Nielsen, Housekeeper  
Susanne Pedersen, Housekeeper  
Carina Haar Hillbrandt, Records Office Manager  
Lisbet Pedersen, Administrative Officer  
Ann-Birgitte Jørgensen, Administrative Assistant  
Denise Schärfe, Administrative Assistant  
Harriet Lindegaard Hansen, Administrative Assistant  
Merete Gerting Hansen, Administrative Assistant  
Olga Bardenshtein, Administrative Assistant

**The Division's main areas of responsibility are as follows:**

- Annual report
- International work
- Own-initiative projects
- Cases concerning media access to files
- Cases from the other divisions (buffer function)
- HR and finance
- Administration, service and development
- Website and news
- Language policy

As at 1 May 2013



A man with short dark hair, wearing a light blue button-down shirt and dark trousers, is sitting on a black modern chair. He is smiling slightly and looking towards the camera. His hands are clasped in his lap. To his left is another black modern chair with a dark jacket draped over it. The background features three large, vertical, colorful abstract paintings with a dense, multi-colored pattern. The floor is made of light-colored wooden planks.

Jørgen Hejstvig-Larsen  
Deputy Head of Division




# 1<sup>ST</sup> DIVISION

Johannes Martin Fenger, Head of Division  
Jørgen Hejstvig-Larsen, Deputy Head of Division  
Christoffer Bruus, Legal Case Officer  
Kristine Holst Hedegaard, Legal Case Officer  
Lykke Leth Nielsen, Legal Case Officer  
Tina Andersen, Legal Case Officer  
Dorte Buttenschøn, Administrative Assistant  
Ida Andersen Feldthaus, Legal Student Assistant

**The Division especially processes cases involving:**

- Company legislation
- Foodstuffs
- Fisheries
- Agriculture
- Patient complaints
- Pharmaceuticals
- Health services
- Foreign affairs
- Cases involving aliens
- Registers etc.
- Naturalisation
- Succession law and foundations
- Parental access cases
- The Law of capacity and the law of names
- Family law cases

*As at 1 May 2013*

A woman with curly brown hair is sitting on a black office chair, leaning against a light green door. She is wearing a dark blue blazer over a grey top and dark blue jeans. She is smiling and looking towards the camera. In the background, there is a desk with a lamp, a vase with flowers, and some papers.

Susanne Veiga  
Head of Division



A photograph of a man with glasses, wearing a dark blue button-down shirt and blue jeans, sitting on the edge of a wooden desk. He is looking towards the camera. On the desk, there is a computer monitor on a stand, some papers, and a black office chair. The background shows a light-colored wall with a door and a window with white curtains.

## 2<sup>ND</sup> DIVISION

Michael G. Thuesen  
Deputy Head of Division

Susanne Veiga, Head of Division  
Michael G. Thuesen, Deputy Head of Division  
Ann Thagård Gregersen, Legal Case Officer  
Marjanne Kalsbeek, Legal Case Officer  
Morten Bech Lorentzen, Legal Case Officer  
Nina M. Ringsted, Legal Case Officer  
Lene Lunde Johansen, Administrative Officer  
Søren Klæbel Clemmensen, Legal Student Assistant

**The Division especially processes cases involving:**


- Employment legislation
- Cash benefits etc.
- Social pensions
- Sickness benefits
- Social services for adults
- Aids and appliances, except vehicle allowance for persons with impaired physical or mental functioning





Morten Engberg, Monitoring Director, Head of Division  
Pernille Helsted, Deputy Head of Division, Chief Legal Adviser  
Erik Dorph Sørensen, Senior Legal Adviser  
Lennart Frandsen, Senior Legal Adviser  
Rikke Ilona Ipsen, Special Legal Adviser  
Camilla Schroll, Legal Case Officer  
Klavs Kinnerup Hede, Legal Case Officer  
Marta Warburg, Legal Case Officer  
Pi Lundbøl Stick, Legal Case Officer  
Sofie Hedegaard Larsen, Legal Case Officer  
Ulrik í Hjøllum, Legal Case Officer  
Anders J. Andersen, Disability Consultant  
Hanne Hartung, Administrative Assistant  
Jeanette Hansen, Administrative Assistant  
Neel Bjellekjær, Administrative Assistant  
Adam Fussing Clausen, Legal Student Assistant  
Rune Werner Christensen, Legal Student Assistant

# MONITORING DIVISION



Morten Engberg  
Monitoring Director,  
Head of Division

**The Division is in charge of the Ombudsman's monitoring activities, which include in particular:**

- State prisons
- Local prisons
- Halfway houses
- Detention facilities for intoxicated persons
- Custody reception areas
- Psychiatric wards
- Institutions for the mentally or physically disabled
- Non-discrimination of the disabled
- Deportations of foreigners

**The Division especially processes specific cases involving:**

- The Prison and Probation Service
- Patient complaints (psychiatric area)
- Psychiatric wards
- Defence
- Parking cases
- Criminal cases and the police
- Legal matters in general
- Non-discrimination of the disabled
- Prevention of torture (OPCAT)

Kirsten Talevski  
Head of Division

Ulla Frederiksen  
Deputy Head of Division





## 4<sup>TH</sup> DIVISION

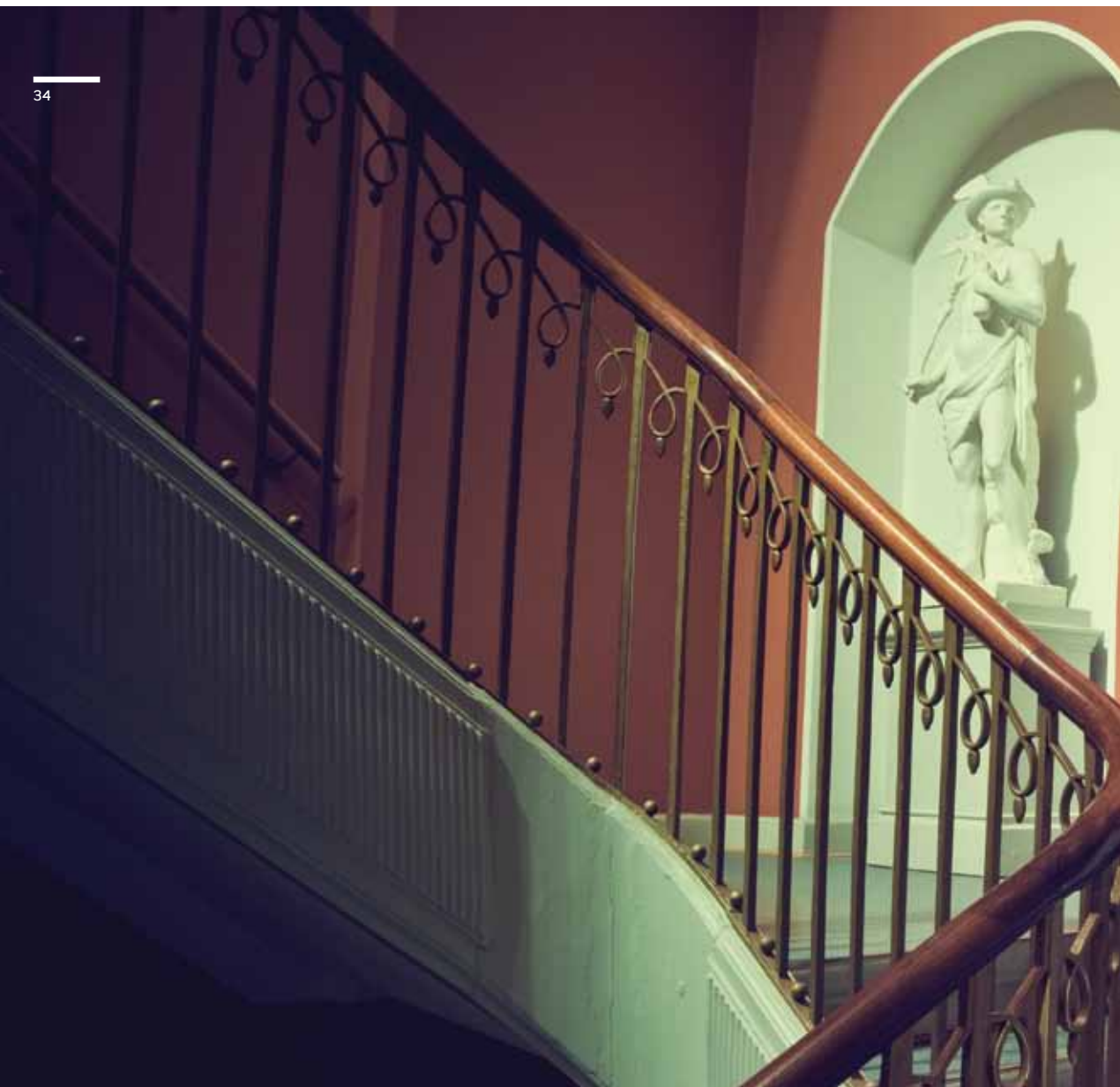
Kirsten Talevski, Head of Division  
Ulla Frederiksen, Deputy Head of Division  
Elizabeth Bøggild Nielsen, Special Legal Adviser  
Camilla Bang, Legal Case Officer  
Karina Sanderhoff, Legal Case Officer  
Peter Kersting, Legal Case Officer  
Gurli Marie Søndergaard, Administrative Assistant  
Kristine Bagger, Legal Student Assistant

**The Division especially processes cases involving:**

- Local authority law issues
- Environment and planning legislation
- Nature protection
- Building and housing
- Budget and economy
- Elections, registration of individuals etc.
- Personnel cases
- Traffic and roads

*As at 1 May 2013*





Karsten Loiborg, Head of Division  
Professor Jan Pedersen LLD, External Consultant  
Mette Ravn Jacobsen, Deputy Head of Division  
Janne Lundin Vadmand, Legal Case Officer  
Kirsten Brøndal, Legal Case Officer  
Kresten Gaub, Legal Case Officer  
Linette Granau Winther, Legal Case Officer  
Sofie Nordskov Nielsen, Legal Student Assistant

**The Division especially processes cases involving:**

- Benefits pursuant to the legislation on unemployment insurance and industrial injuries and for victims of the WWII occupation
- Criminal injuries compensation
- Child support, family allowance and housing benefit
- Social services for children and juveniles
- Vehicle allowance for persons with impaired physical or mental functioning
- Old-age pensions and calculation etc. of other social pensions
- Institutions etc. for adults and the elderly, except monitoring cases
- Repayment of social benefits etc.
- Taxes, duties and recovery thereof
- Communications (post, IT and telecommunications, radio and television)
- Youth education, higher education, student grants and research
- Ecclesiastical affairs and culture

As at 1 May 2013

## 5<sup>TH</sup> DIVISION

Karsten Loiborg  
Head of Division

Mette Ravn Jacobsen  
Deputy Head of Division



Hanne Nørgård  
Legal Case Officer

Bente Mundt  
Head of Division





# CHILDREN'S DIVISION

Mai Vestergaard  
Legal Case Officer

Mette K. Hansen  
Legal Case Officer

Bente Mundt, Head of Division  
Christina Ladefoged, Deputy Head of Division  
Irene Rønn Lind, Children's Expert  
Hanne Nørgård, Legal Case Officer  
Mai Vestergaard, Legal Case Officer  
Mette K. Hansen, Legal Case Officer  
Christian Lipka Stich, Administrative Assistant  
Anna Noushin Thestrup, Legal Student Assistant

**The Division carries out monitoring visits to public and private institutions for children, such as:**

- Social institutions and privately run residences for children placed in residential care
- Foster families

- Schools, including private schools
- Asylum centres
- Hospital wards and psychiatric wards for children
- Day-care facilities

**The Division especially processes specific cases involving:**

- Special measures for children pursuant to the Consolidation Act on Social Services
- Schools
- Children's institutions
- Other cases with a particular bearing on children's rights

As at 1 May 2013



A 14-year-old girl was at home alone when a local authority employee rang the doorbell and asked to inspect the flat as the neighbour had complained about noise. The girl let the man in as he appeared to be a person of authority. Her parents lodged a complaint with the Ombudsman because the local authority had not explained the background of the unannounced inspection to them. The Ombudsman forwarded the complaint to the Regional State Administration's unit supervising local authorities with a comment that the case might be covered by the Act on Legal Protection in Connection with the Administration's Use of Compulsory Intervention and Duties of Disclosure. The Act includes rules concerning the authorities' obligation to give prior notice of intrusive measures, such as house inspections.

If a case falls within the jurisdiction of a supervisory authority, the Ombudsman will often forward the case to the authority even if he is not precluded from considering it. In this connection, he may draw the authority's attention to specific issues in the case.

A newspaper published an article about a dyslexic man who had had difficulty passing a test he had to take to qualify as a taxi driver. According to the article, the Taxi Board had refused to allow the man to take the test on special terms which took account of his dyslexia. The Ombudsman took up the case on his own initiative and asked the Board for information about its deliberations. The Board stated that in future dispensation can be granted in relation to the time and tools used for the test if, for instance, the candidate suffers from dyslexia. The Ombudsman then closed the case.

If the Ombudsman becomes aware, for instance through media coverage, of a case which he believes offers grounds for investigation, he does not have to wait for a possible complaint from one of the parties to the case. He can take up the case on his own initiative, typically by asking the authority involved for an explanation or for the files of the case.

The Ombudsman received a complaint from a couple who were dissatisfied that the birth of twins did not entitle them to longer maternity/paternity leave. He was unable to help them in the case as the rules on maternity/paternity leave in the legislation and the labour market agreements do not allow for extended maternity/paternity leave in connection with the birth of twins.

The Ombudsman's task is to investigate whether the authorities comply with the existing rules and regulations. He cannot change legislation passed by the Danish Parliament, even if some citizens find it wrong or unreasonable. He also does not consider issues which are covered by an agreement between two equal parties, such as agreements made by two labour market parties.



A parking attendant was dismissed without notice because she had visited an amusement arcade dressed in uniform during working hours. The local authority (her employer) informed the Ombudsman that the parking attendant had previously been informed that she was contravening the local authority's employee policy by visiting the amusement arcade in uniform. The parking attendant denied previously having received information and guidance of this nature from the local authority. The Ombudsman was unable to resolve the disagreement of the two parties as it involved conflicting claims. In other words, he could not disprove that the parking attendant had been told that she would be dismissed if she visited the amusement arcade in uniform. He therefore could not criticise the local authority's dismissal of the parking attendant. The case did not offer the Ombudsman grounds for considering whether the local authority should have taken notes of the content of its conversations with the woman about the consequences of visiting the amusement arcade in uniform.

As a starting point, the Ombudsman considers cases on a written basis. He is unable to examine witnesses or in other ways assess the evidence in a case.

The chairman of a local tenants' association lodged a complaint about a mayor's refusal to meet with him, referring him instead to the relevant part of the administration. The Ombudsman assessed that it does not follow from good administrative practice that a citizen is generally entitled to a meeting with a particular person in the public administration – in this case the mayor.

The Ombudsman not only assesses cases on the basis of written rules of law. He also considers whether the authorities have followed the guidelines implied by good administrative practice. These are unwritten principles laying down 'softer' requirements in relation to the authorities' treatment of citizens. These non-statutory principles have primarily been developed through the Ombudsman's practice.



# LEGAL PROTECTION IN SOCIAL BENEFIT FRAUD CASES



Karsten Loiborg  
Head of 5<sup>th</sup> Division



Christian Ougaard  
Special Legal Adviser,  
General Division

In 2012 and 2013, the combating of social benefit fraud has received a good deal of media and authority attention, and for good reasons: it is estimated that the social benefits paid to people who are not entitled to them amount to DKK 5-12 billion per year. The figure is much debated, but the amount is certainly significant. It is therefore natural that the authorities, especially the local authorities and the institution responsible for the disbursement of a number of social benefits, make an effort to discontinue unwarranted payments. In fact, the authorities are under an obligation to discontinue unwarranted social benefit payments and to demand repayment if the respective conditions are met.

It is a problem if citizens are paid social benefits to which they are not entitled. However, it is also a problem if citizens are deprived of social benefits to which they are entitled or are asked to repay benefits received when there is no basis for this.

## HOW MUCH IS REQUIRED?

Over the last year or so, the Parliamentary Ombudsman has investigated several cases involving the combating of social benefit fraud. The cases concerned whether the citizen was still entitled to various benefits and whether benefits must be repaid. The question whether there may also be a basis for sentencing the citizen for fraud is decided by the Prosecution Service and the courts.

In April 2012, the Ombudsman published a statement about a woman in the town of Sorø. The payment of various social benefits which she had been receiving had been discontinued and she had been ordered to repay a considerable

amount for benefits already received. The local authority and the Social Tribunal took the view that the woman was not genuinely single as she had claimed, but lived in a 'marriage-like relationship' and had received the benefits 'in bad faith'. Among other things, the Ombudsman found that the case had not been adequately investigated for the local authority to reach that conclusion.

The Ombudsman's statement, which is popularly known as 'the Sorø Case'<sup>1</sup>, received considerable media attention. The issue was also highlighted by, among other things, a documentary series on DR1 television entitled 'Action Social Benefit Fraud'. Benefit fraud investigators wanted an explanation of the rules, and since autumn 2012, lawyers from the Parliamentary Ombudsman's office have participated in a number of events for investigators across the country.

In 2013, the Ombudsman has made another statement, the 'Greve Case'<sup>2</sup>, in which he considers issues such as the provision of adequate evidence in a case, the privilege against self-incrimination (the right of the subject of a suspicion not to provide information if this would amount to the person accusing him- or herself of a crime) and when a citizen has received social benefits 'in bad faith' and therefore has to repay benefits already received.

Overall, the Ombudsman's conclusion in the two cases just described was that the local authorities did not have adequate evidence to conclude that the citizens had committed fraud – and that the decisions had been made on too tenuous and uncertain a basis.

Considering these cases, the overall conclusion is that if a local authority observes the rules concerning the legal protection of citizens during a case, it is far more likely to make the 'right' decision in the end. In today's language, it could be called a win-win situation. If, for instance, citizens are given the opportunity to comment on the information available in their case, they are able to defend themselves and the local authority can be sure that any misunderstandings have been cleared up before a decision is made.

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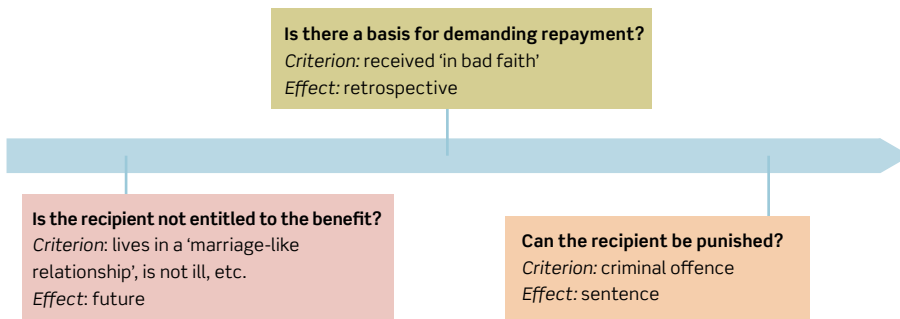
1 Annual Report of the Parliamentary Ombudsman, 2012, Case No. 2012-8.

2 Selected for publication in the Annual Report of the Parliamentary Ombudsman, 2013, as Case No. 2013-4. The statement is published (in Danish) on the Ombudsman's website, [www.ombudsmanden.dk](http://www.ombudsmanden.dk).

## WHEN THE OBLIGATION TO PROVIDE INFORMATION CEASES

When a local authority investigates whether a citizen is still entitled to social benefits, there are two perspectives on the case: looking forward, whether benefits are still to be paid, and looking back, whether benefits already received must be repaid. Different questions need to be answered and thus investigated depending on whether the local authority wants to discontinue payment of benefits or to demand repayment. If the citizen has acted in bad faith, a third issue may be added: whether there is a basis for initiating a criminal case, i.e. having the police and the Prosecution Service assess whether there are grounds for trying to have the citizen sentenced for social benefit fraud in court.

Using cases concerning whether a person is still entitled to a social benefit as a starting point, the questions can be presented schematically as follows:



Before considering when a citizen is living in a 'marriage-like relationship' and when a citizen can be said to have received benefits 'in bad faith', we shall touch on the possibility that a case concerning entitlement to social benefits may develop into a criminal case – as this can have a significant influence on the way in which it must be processed.

In social matters, citizens are obliged to provide information to the authorities. However, pursuant to section 10 of the Act on Legal Protection in Connection with the Administration's Use of Compulsory Intervention and Duties of Disclosure, this obligation does not apply if an authority has an actual suspicion that a person has committed a punishable offence. In other words, the citizen's obligation to provide information no longer applies if during a case the local

authority gets an actual suspicion that the citizen has committed social benefit fraud – and the authority is obliged to inform the citizen of this.

In principle, this is very simple, but in reality the question is when an authority has such an ‘actual suspicion’. The crucial factor is whether the authority’s suspicion is so strong that there would be a basis for pressing charges against the citizen or for giving him or her a defendant’s rights under the criminal justice system. In other words, it does not matter whether the authority has actually reported the citizen to the police.

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## MARRIAGE-LIKE RELATIONSHIP

The media coverage of the local authorities’ efforts against social benefit fraud has paid considerable attention to the meaning of the concept of ‘marriage-like relationship’ – i.e. when a citizen’s relationship with another person is such that the citizen is no longer entitled to receive social benefits as a single person.

For a relationship to be ‘marriage-like’, the parties must contribute to the joint household through financial contributions, work in the home or in other ways and it must be a relationship which can generally lead to marriage under Danish law. The concept is not formulated completely identically in all acts and, in particular, it is used with a different content in the Housing Benefit Act. Of course the authorities need to be aware of this.

The concept of ‘marriage-like relationship’ focuses on the financial and practical relationship established between the parties. In other words, it is not in itself problematic that a social benefit recipient has a lover. It is likewise not significant whether the parties have a sexual relationship, sleep in the same bed or are regarded as a couple by friends etc.

What is crucial to the assessment is whether the parties have arranged things in such a way that they have advantages comparable to the advantages generally enjoyed by people who are married or living together in the form of financial and/or other contributions to the joint household. This has been established by the National Social Appeals Board in its decisions in principle 8-13, 9-13 and 10-13.

## ADEQUATE EVIDENCE MUST BE OBTAINED IN THE CASES

It has also been discussed with what certainty the authorities must be able to prove that two persons have a marriage-like relationship. The Parliamentary Ombudsman considered this issue in considerable depth in both the Sorø Case and the Greve Case.

Overall, it can be said that an authority must be careful in assessing which conclusions can be supported by the information it has obtained. Thus the authority must carefully consider whether the information can be interpreted in a different way to the assumption immediately made by the authority. In the Sorø Case, for instance, the local authority argued that the man had transferred several amounts to the woman. This is an entirely normal and relevant matter to investigate in a case concerning possible 'single person fraud'. However, in the specific case the woman pointed out that the man had stayed at her camping site and had transferred money to pay for this. This information could be of key importance, but nonetheless the local authority did not look into the matter.

It is also important not to read more into information than is warranted. In the Greve Case, a woman's boyfriend had stated according to the local authority's notes of an interview that he was looking for a new flat himself as he needed to have his own place and that the couple 'might move in together in the very long term'. In its decision, the local authority stated that the man had said that 'the parties would probably move in together in due course'. It should be obvious that the local authority's interpretation was not warranted, and it is also not confidence-inspiring when local authorities 'clarify' citizens' statements in this way.

In a thematic article of March 2013, the National Social Appeals Board followed up some specific cases. The article concludes that the evidence overall must create a 'well-founded assumption that the benefit recipient maintains a joint household with another person'. In other words, there must be sufficiently clear evidence and any contradictory information must have been resolved. The assessment of evidence should be seen in the light of the authority's obligation to ensure that adequate evidence is obtained for a decision to be made on the case.

In other words, cases concerning possible social benefit fraud must be investigated according to the same rules as any other cases – for instance, the authority must take into account how intrusive the consequences of the decision would be. This follows from the general inquisitorial principle of administrative law.



## IN BAD FAITH

In the nature of things, withdrawal of social benefits can very significantly affect a citizen. The consequences are even greater if the citizen also has to repay benefits already received. Therefore, even more is required before an authority can demand that a citizen repay benefits.

Clearly, it is a condition for demanding repayment of benefits that the recipient was not entitled to receive them, for instance because the citizen was not ill as assumed by the authority and therefore not entitled to sickness benefit. This is known as the objective condition.

However, it is also a requirement that the citizen knew or should have known that he or she was not entitled to the benefit, i.e. in the above example that the citizen knew or should have known that he or she was not 'sufficiently ill' to be entitled to sickness benefit. This requirement, which is sometimes expressed as receiving benefits 'in bad faith', is referred to as the subjective condition.

In the Greve Case, the Ombudsman considered this issue. His conclusion was that the authorities should be very aware that there are two conditions which must be met – and of what is required before a benefit can be said to have been received in bad faith.

## CORRECT CASE PROCESSING IS WORTHWHILE

The above outline illustrates that the local authority is faced with many pitfalls when considering possible social benefit fraud cases. At the same time, these are errors of a nature that gives rise to doubt about the basis of the decision itself. Conversely, if such errors have not been made, this can be said to create a presumption that all relevant considerations (also in relation to the legal protection of the citizen) have been taken into account, resulting in an increased likelihood that the decision is therefore correct.

**Remember ...**

In the cases about this subject considered by the Ombudsman, he has highlighted the following points of which the local authorities should be aware in their efforts against social benefit fraud:

**The case framework**

*Understanding of when a citizen is 'genuinely single'*

The rules governing different public benefits do not all define the concept of 'genuinely single' in the same way. The authorities must therefore take into account whether the assessment is to be made pursuant to for instance the Child Benefit Act or the Housing Benefit Act.

*Repayment may be demanded only when benefits have been received 'in bad faith'*

When the authorities consider whether to demand repayment of social benefits, it is not enough to establish that the benefit should – objectively – not have been paid. It is also a fundamental condition for demanding repayment that the benefit was received 'in bad faith'.

**Case processing**

*Anonymous tip-offs*

Some social benefit fraud cases are initiated on the basis of an anonymous tip-off. An anonymous tip-off may result in an authority initiating an investigation of a citizen, but it cannot in itself form part of the evidence in the case.

*The provisions of section 10 of the Act on Legal Protection in Connection with the Administration's Use of Compulsory Intervention and Duties of Disclosure*

A citizen is not obliged to provide information in his or her case if there is an actual suspicion that the citizen has committed a punishable offence. In such cases, the authorities must give the citizen explicit guidance on this rule.

*The importance of complying with the inquisitorial principle*

The principle implies that the individual authority is obliged to procure adequate evidence before a decision is made. It is part of the requirement that the authorities must be objective when gathering information.

*Cost of investigation of the case*

In the Ombudsman's opinion, the authorities can only order a citizen to pay to obtain information for use in a case initiated by the authorities if there is a secure legal basis for doing so. As a starting point, the authorities thus cannot demand that the citizen pay a fee for obtaining, for instance, bank statements.

**When the case is concluded**

*The rules on consultations of parties to cases*

The authorities are obliged to consult a citizen before making a decision if significant factual information is prejudicial to the citizen and the citizen cannot be assumed to be familiar with it. Depending on the circumstances, the citizen should be consulted in writing.

*Careful phrasing of grounds*

Especially in cases which affect the citizen as significantly as social benefit fraud cases, it is important that the authorities phrase the grounds for decisions in such a way as to leave no doubt whether adequate evidence has been obtained in the cases or whether decisions have been made on the wrong basis.

The Supreme Court decided that a man was subject to tax and VAT in Denmark and ordered him to pay a significant amount of tax and VAT. The man lodged a complaint with the Ombudsman as he believed the Supreme Court's decision was incorrect. The Ombudsman had to reject the case as he cannot consider complaints about the courts.

Pursuant to the Ombudsman Act (section 7(2)), the Ombudsman cannot consider complaints about the courts. Consequently, the Ombudsman cannot consider complaints about judgments and other decisions by the courts. It is also the Ombudsman's established practice not to consider cases or issues that are sub judice or expected to be brought before the courts.

An elderly woman wrote to the Ombudsman that she feared the local authority would send her to a nursing home against her will. She therefore wanted to know her rights and whether she was protected by the law.

The Ombudsman explained to the woman that he cannot make general legal statements except in connection with processing a complaint about a particular situation. He therefore could not immediately help her unless her approach concerned an actual decision by the local authority. He also wrote to her that the local authority was obliged to provide further guidance if she wanted information about her legal position.

If the Ombudsman cannot immediately advise a citizen on one or more specific issues, he attempts as far as possible to refer the citizen to the relevant authority or authorities.



A woman who had suffered a knee injury which was recognised as an industrial injury in 2005 was granted compensation by the National Board of Industrial Injuries some years later as she could no longer work full-time and had thus suffered a loss of working capacity.

However, before she received the compensation, the insurance company appealed to the National Social Appeals Board, which overturned the decision. The Board took the view that the woman could handle a job that did not put any strain on her knee. If the woman's knee problems prevented her from working full-time, the reason must be a more recent injury to the same knee.

The woman lodged a complaint with the Ombudsman. In a letter asking the National Social Appeals Board for a statement on the case, the Ombudsman provided an account of the case on the basis of the material accompanying the woman's complaint. He referred to a special rule which implies that a loss of working capacity is regarded as the result of the industrial injury unless it is more likely that it is caused by something else. The Board had referred to the more recent injury to the woman's knee as the cause of any reduced working capacity. In this connection, the Ombudsman pointed out that the special rule also implies that subsequent injuries may be comprised by the recognised industrial injury if there is a clear connection between the original injury and the later injury. Moreover, the National Board of Industrial Injuries had apparently taken the view that there was such a connection.

After receiving the Ombudsman's request for a statement, the National Social Appeals Board reopened the woman's case. The Ombudsman therefore closed the case and informed the woman of the possibility of lodging another complaint with him when she received the new decision by the National Social Appeals Board.

When the Ombudsman writes to an authority asking for a statement on a case – and in this connection provides an account of the case – the authority sometimes decides to reconsider the case. If so, the Ombudsman usually takes no further steps in the case. In 2012, 42 cases were closed in this way.

A woman lodged a complaint when her state education grant was delayed by several months after a change of study. When the Ombudsman entered the case, the specific problem was resolved within a week. However, a telephone conversation with a state education grant adviser at the woman's educational establishment suggested that the late payment might be due to a systemic fault in minSU, the electronic self-service system for applying for student grants and loans. The Ombudsman therefore asked the Agency for Higher Education and Educational Support whether there was a systemic fault and, if so, how the Agency intended to rectify the problem.

The Agency explained that the error had occurred during the manual handling of the case. Although it was a rare occurrence, the Agency had initiated a discussion in the case worker group to ensure that they all knew how to process such cases correctly. In addition, the Ministry of Children and Education would enter into a dialogue with the Agency to prepare guidelines, manuals or the like in order to minimise the risk of errors. On this basis, the Ombudsman closed his investigation.

If the Ombudsman gets the impression that a specific case reflects a general problem – a systemic fault – he will usually give high priority to establishing whether this is the case and what can be done to resolve the problem. This applies especially in cases related to the subsistence basis of the citizens involved.

THE HENRIK SASS LARSEN CASE  
– LAW AND POLITICS  
IN THE OMBUDSMAN WORLD



Jørgen Steen Sørensen  
Parliamentary Ombudsman

In his Annual Report for 2009, pages 9-15, the Ombudsman at the time, Hans Gammeltoft-Hansen, considered the issue of the Ombudsman's role in cases with a political aspect. Gammeltoft-Hansen summarised his analysis as follows:

- 'a) The Ombudsman must not avoid taking up a case for investigation merely because it (also) contains political substance.
- b) In 'mixed' cases, which include both political and legal aspects, the Ombudsman must limit his investigation to the legal aspects of the case.
- c) The Ombudsman must refrain completely from investigating a case if Parliament expresses an opinion on the case.'

I completely agree with this analysis. It also expresses the course which successive Ombudsmen have basically followed throughout the history of the institution. However, in a complex case it can sometimes be difficult to determine the exact boundaries between legal and political aspects.

The most widely publicised Ombudsman case in 2012 is a good illustration of the problem. It was the case concerning Member of Parliament Henrik Sass Larsen and his complaint about the Prime Minister's Office, the Ministry of Justice and the Security and Intelligence Service (PET)<sup>1</sup>.

After the general election in September 2011, it was generally assumed that Henrik Sass Larsen would get a prominent ministerial post. At that time, he was political spokesman for the Social Democratic Party.

1 Annual Report of the Parliamentary Ombudsman, 2012, Case No. 2012-13

However, this did not happen. On the morning of 29 September 2011, Sass Larsen announced that he was not available for a ministerial post as the authorities would not grant security clearance. He was unable to say much more, but the media closely linked the case with his alleged association with people in the biker gang environment.

In November 2011, Henrik Sass Larsen lodged a complaint with the Ombudsman, who selected three issues for investigation. They were:

- an order to remain silent which the authorities had imposed on Sass Larsen in relation to a much-discussed PET memorandum
- refusal of Sass Larsen's subsequent request for access to this memorandum
- the fact that PET had not called Sass Larsen for a 'preventive interview'.

I will not consider the last two issues, but instead provide an overview of the first and undoubtedly most controversial part of the case, i.e. the issues in relation to the order to remain silent imposed on Henrik Sass Larsen in relation to the PET memorandum. I will also reflect on the Ombudsman's role in the case.

## THE ORDER TO REMAIN SILENT IMPOSED ON SASS LARSEN

On 28 September 2011 – i.e. after the general election, but before a new government was formed – Henrik Sass Larsen participated in two meetings at the Prime Minister's Office. In addition to Sass Larsen, the first meeting was attended by the Permanent Secretaries of the Prime Minister's Office and the Ministry of Justice and the second by the head of PET and later Minister of Finance Bjarne Corydon.

During the first meeting, Henrik Sass Larsen was shown a memorandum prepared by PET, which among other things concerned Sass Larsen's contact with people in the biker gang environment. It was the information in this memorandum which formed the basis for Sass Larsen's subsequent public announcement that he was not available as a ministerial candidate because he could not get the necessary security clearance.

At the meeting, a so-called order to remain silent, i.e. an order not to make the memorandum public, was also imposed on Henrik Sass Larsen. Pursuant to

the provisions of the Public Administration Act and the Penal Code, breach of such an order is punishable by imprisonment. Sass Larsen was therefore unable to inform the public exactly why he was (currently) not available as a ministerial candidate.

The question may be asked why the authorities wished to impose this order to remain silent on Sass Larsen. This was clarified during the Ombudsman investigation of the case. Thus the Ministry of Justice stated among other things that there had been no obligation to show the PET memorandum to Sass Larsen. The Ministry also stated that there was a ‘clear need to impose an order to remain silent on Henrik Sass Larsen due to the harm that might be caused in relation to the prevention etc. of criminal offences if an unauthorised person became aware of the confidential information’.

It is not difficult to understand why Henrik Sass Larsen wanted an investigation of the order to remain silent. He was under great pressure to explain the detailed background to his not being available for a ministerial post but unable to do so while the order remained in force. Of course this could – and indeed did – give rise to much speculation about exactly what biker gang links etc. had temporarily made him unavailable for a ministerial career.

## NO WRITTEN DOCUMENTATION

An important issue for the Ombudsman was therefore whether the order to remain silent was valid. This issue could be divided into two sub-issues: Had the *conditions* of the law for imposing an order to remain silent been met? And could the *way* in which it was imposed be problematic?

The question whether the conditions of the law for imposing an order to remain silent had been met was difficult. However, the Ombudsman did not have a fully sufficient basis for rejecting the authorities’ assessment, including their assessment that there was a clear need to impose the order – as required by the rules.

However, the case raised other issues, i.e. the fact that the order to remain silent had only been imposed verbally on Sass Larsen and the lack of any notes or other documentation of its existence, content or scope.

The Public Administration Act and the Penal Code contain no provisions specifying the form in which an order to remain silent must be imposed in



order to be valid, and there is no relevant case law or Ombudsman practice in relation to the issue. It was therefore a question which the Ombudsman had to answer without any tangible sources of law.

An obvious starting point was the generally recognised principle of administrative law that particularly intrusive administrative decisions should be communicated in writing (or at least subsequently confirmed in writing). In addition, an order to remain silent is in principle comparable to a tightening of the provisions of the Penal Code on the obligation to observe secrecy, targeting a single individual only. General principles on the promulgation of legislation could therefore strongly suggest that an order to remain silent must be imposed in writing in order to prevent any doubt subsequently arising about the existence, content and scope of the order.

In addition, it could be said that in the very special situation in which he found himself, Henrik Sass Larsen needed full documentation of and certainty about his legal position. It also seems unlikely that the courts would ultimately recognise an order to remain silent which did not exist in writing.

There was therefore no doubt that the order to remain silent should have been imposed in writing. I informed the Prime Minister's Office and the Ministry of Justice that the failure to do so must be regarded as a matter for severe criticism.

The question then was whether the order to remain silent must be regarded as invalid in these circumstances.

Ultimately, this question would have to be decided by the courts during criminal proceedings against Henrik Sass Larsen for breach of the order. However, I stated that I regarded it as extremely doubtful whether the order could be valid. I therefore asked the authorities to reconsider the case. This did not take very long, for a few hours after the publication of my statement, the Ministry of Justice revoked the order and Henrik Sass Larsen was now able to explain to the public why he had had to withdraw as a ministerial candidate.

## THE LAW ALSO APPLIES IN THE DARK

In many ways, this was a unique case. For instance, it is not common for a member of the Danish Parliament to lodge a complaint with the Ombudsman about the country's Prime Minister and Minister of Justice (who even belong to the same political party). It is also not common for the Ombudsman to have to

express severe criticism of the highest authorities in the land. And it certainly is not common for the Ombudsman to get so close to issues related to the formation of a government.

Nonetheless, I had no doubts about considering Henrik Sass Larsen's complaint about the order to remain silent.

As a clear starting point, the formation of a government is of course a purely political issue which is entirely the Prime Minister's responsibility. However, when actual legal instruments – such as imposing an order to remain silent, whose breach may lead to a prison sentence – are suddenly used in connection with the formation of a government, other mechanisms come into force. As Professor Michael Gøtze put it in a newspaper feature, the law also applies in the dark. And Henrik Sass Larsen had a completely legitimate wish to find out whether the order to remain silent was legal.

I began the article by mentioning my predecessor's analysis of the issue of the Ombudsman's role in cases with a political aspect. The Henrik Sass Larsen case is an excellent illustration of two of Hans Gammeltoft-Hansen's theses, i.e. *that* the Ombudsman must not avoid taking up a case merely because it (also) contains political substance and *that* in 'mixed' cases – i.e. cases which include both political and legal aspects – the Ombudsman must stick to the legal aspects.

A woman was not satisfied with the local authority's processing of and decision on her disability pension case. In her view, the local authority had chosen to disregard all medical statements. In addition, she felt that insufficient account had been taken of her special needs in connection with an assessment of her ability to work.

The Ombudsman rejected the case as he considered it unlikely that he would be able to change its outcome. He pointed out that his experience from a very large number of similar disability pension cases showed that he usually cannot help the complainant achieve a different decision to the one made by the authorities because decisions on disability pension cases are largely based on medical information and individual assessments.

The Ombudsman has no medical expertise and therefore cannot assess whether a citizen is entitled to disability pension. Thus, he is usually unable to determine whether adequate medical evidence has been obtained in a case, the relative value of conflicting medical assessments or to what extent an illness affects a person's ability to work.

After a local authority had refused to help a woman pay her gas bill, her heating and hot water were cut off. The woman lodged an appeal with the Social Tribunal – which stated that the average case processing time was nine to ten months. The Ombudsman was unable to consider the woman's complaint about the local authority's decision until the authorities had made a final decision. However, he forwarded her complaint to the Social Tribunal, asking the Tribunal on her behalf to expedite the case. Soon afterwards, the Tribunal made a decision.

'Expediting requests' are a tool often used by the Ombudsman, typically in cases which have not progressed for several months. In this case, it happened earlier because the woman had no hot water or heating.



A local authority's citizen advisor had criticised the local authority's processing time in a disability pension case. The Ombudsman rejected the case as the citizen advisor had already expressed criticism of the case processing time. The Ombudsman also attached importance to information from the local authority that a decision would be made on the case within three months.

The Ombudsman receives a huge number of complaints every year. He prioritises the cases and in this connection considers, among other things, whether an Ombudsman investigation is likely to help the complainant.

An Ombudsman employee called a woman who had lodged a complaint with the Ombudsman. The woman was dissatisfied with her local authority caseworker. In the woman's view, her caseworker had not adequately studied her case, which related to a job under the flexible job scheme. The Ombudsman employee explained how and when the Ombudsman is able to help – among other things, he cannot consider issues which have not yet been considered by the relevant authority. The employee and the woman therefore agreed that the Ombudsman would close the case without sending her a letter because he was unable to help her at that time.

The Ombudsman may close cases solely on the basis of a telephone call to the complainant, for instance in cases where the Ombudsman is unable to help as an appeal option has not yet been used.

During a meeting with a complainant, an Ombudsman employee called a government agency as the man had complained about the agency's failure to reply to an e-mail he had sent. The Ombudsman employee explained to the agency that the man's e-mail was intended to clarify which of the agency's documents were covered by a request for access to documents. The employee also explained that the man was dissatisfied about the agency's failure to reply to his e-mail and asked it to expedite its reply.

The Ombudsman can help complainants in many different ways. Sometimes a telephone call to an authority can be the quickest way of speeding up a complainant's case.



# THE ESTABLISHMENT OF A CHILDREN'S DIVISION



Bente Mundt  
Head of Children's Division

A major project for the Ombudsman in 2012 was the establishment of a new Children's Division. The challenge was not just to establish a new division with new employees in new premises, but also to ensure that the entirely new target group – children and young people – were met at their own level. Finally, it was crucial that the public were made aware of the new division.

The reason for the establishment of the Children's Division was a recommendation concerning the rights and conditions of children made in April 2011 by the UN Committee on the Rights of the Child. It recommended the establishment of an open, specialised body with 'sufficient resources to monitor the implementation of the rights of children and the authority to process individual complaints' within the Danish Ombudsman system.

With Act no. 568 of 18 June 2012 to Amend the Parliamentary Ombudsman Act, Parliament decided that a Children's Division was to be established at the Ombudsman's office, opening on 1 November 2012. The explanatory memorandum explicitly states that the Ombudsman is to ensure that the public are made aware of the Children's Division and its possibilities for helping.

In other words, the Ombudsman was given about four months to establish a new division for children and young people and at the same time ensure that the public were made aware of the new addition.

It was therefore important to plan an overall strategy very quickly. The key questions were: Who are the primary target group? How do we ensure that children and young people are able to contact the Children's Division? Which adults working professionally with children is it relevant to reach (for instance teachers, including kindergarten teachers)? Which interested parties should



naturally be informed about the Children's Division (organisations working with children's rights)? How should the general public be informed?

## THE TARGET GROUP OF THE CHILDREN'S DIVISION

The Ombudsman's Children's Division is to monitor that the rights of the child are respected. In other words, the Division considers children and their conditions. However, is it a division for all children, and does it have particular obligations towards certain groups of children?

Any child may have its rights infringed or at least need an assessment of whether its rights have been infringed. It was therefore soon obvious that we should not distinguish between young and older children, whether they are in a difficult personal situation or other individual circumstances. The Children's Division is for all children.

Nonetheless, there are groups of children in a vulnerable situation, whose rights may be under pressure. The Ombudsman has special obligations towards the very weakest citizens in society. These include children who live in residential institutions – especially children placed in care. The Children's Division therefore has a particular obligation towards these children.

## EASY ACCESS FOR CHILDREN

The Ombudsman is not used to processing complaints made by children and young people themselves. We recognise that the way to the Children's Division is long for this group, and indeed we have not considered receiving a large number of complaints from children and young people an indicator of success in itself. In relation to major issues such as children's rights, it is natural that children's interests are handled by adults. Nonetheless, it was important that we were able to provide facilities for any children who do find their way and need to complain to the Ombudsman themselves and that we advertised this possibility as well as possible.

We were aware that children and young people primarily communicate via digital platforms such as mobile phones, tablets and computers, but to adapt as well as possible to children's reality, we had to investigate how other institutions communicate with them. We therefore contacted the Danish National Council for Children, Children's Welfare (a Danish organisation offering the Child

Helpline, the Children's Chat Room etc.) and the Ombudsman for Children in Norway to find out how they communicate with children. We were then able to decide our policy in this respect.

Data security is a very important issue for the Danish Ombudsman institution. We therefore asked the Danish Data Protection Agency for advice. Although we are aware that to a large extent children communicate via social media (such as Facebook), we eventually decided, at the advice of the Data Protection Agency, not to establish a profile at Facebook or other social media.

Instead, we developed the following during the months up until 1 November:

- *A website*, specially targeted at children and young people. The website – Boernekontoret.ombudsmanden.dk – includes a short cartoon with stories illustrating situations in which a complaint can be made to the Ombudsman. In addition, the text on the website is written in child-friendly language. It describes the framework for the Ombudsman's activities in more detail.
- *A very simple complaint form*, available on the website, which can be used by children and young people to submit complaints or otherwise contact the Ombudsman.
- *A chat function*, available on the website, which is open for a couple of hours two afternoons a week.

## PUBLICISING THE CHILDREN'S DIVISION

Although we had decided that the Children's Division was for all children and that we had a special obligation towards vulnerable children, the targets of our communication were not obvious. We agreed that it was probably unrealistic to expect children aged under 10 to be able to lodge complaints with the Ombudsman to any significant extent. We therefore decided to address primarily children and young people aged 10-17. However, did we want to be known to all children of that age?

In Denmark, Children's Welfare has managed to make more than 80 per cent of all Danish children in the relevant age groups aware of its services for children – i.e. the Child Helpline, the Children's Chat Room etc. This is impressive and means that the great majority of children in Denmark know who to contact if they have problems, of whatever kind. We did not wish to dilute this clear



image and have therefore been more selective in our dissemination of information about the Children's Division.

For there are groups of children – i.e. children in residential institutions – for whom the possibility of complaining to and getting help from the Ombudsman can quite often be relevant. We want these children to be aware of the opportunity to call, write to or chat with the Children's Division. This is why the opportunity to lodge complaints with the Ombudsman's Children's Division is described in the leaflets from the National Council for Children which must be given to children placed in care. The Council is expecting the leaflets, which concern the rights of children placed in

care etc., to be available in printed form in late summer 2013. This is why one of the examples described in the cartoon on our website illustrates a situation involving a child placed in care. This is why representatives of the Division bring along the poster about the Ombudsman's Children's Division on monitoring visits to institutions. The poster includes the telephone number of the Ombudsman institution and a QR code providing direct access to the Children's Division website. And this is why the Children's Division has a prominent position on the page about children placed in care on Børneportalen.dk, a new website providing children and young people with easy, quick access to advice, help and information about rights. Børneportalen.dk was launched on 13 May 2013.

## ADULTS AROUND CHILDREN

To reach the relevant target group of children, it was also important for us to inform the *adults who professionally or otherwise encounter children in their daily lives* about the opportunity to lodge complaints with the Children's Division. After all, it is not just children placed in care whose rights may be infringed, and adults will often be better able to identify the cases where it is relevant to contact the Children's Division. In November 2012, we therefore sent the Children's Division poster to all local authorities with a letter briefly describing the tasks of the Division.

It was also important to reach the *organisations working with children's rights*. In October 2012, we therefore invited these organisations to the Ombudsman institution to tell them about the Division and start a dialogue with them. The aim was among other things to enable them to refer relevant children and young people to the Division.

## THE GENERAL PUBLIC

To create as much awareness as possible around the opening of the new division among *the general public* as well, we issued a press release about the new division almost every week in the final month before its launch on 1 November 2012. The Ombudsman and I wrote a feature article which was printed by several newspapers, and in the final week before the launch of the Children's Division there was extensive media coverage about the new division in the Ombudsman institution and its future tasks. On the launch day, we held a large reception with the participation of the Chairman of Parliament, the Minister for Social Affairs and Integration and representatives of the political parties, children's organisations etc., relevant authorities and pupil organisations. During the reception, children worked with an artist to make paintings for the walls of the Division's premises and a band of young people played music in the yard. The media were also invited to this event.

In our view, events since 1 November 2012 have shown that our information effort prior to the launch of the Children's Division has paid off. From day one, the Division has received many complaints, including some from children and young people. We are, however, very aware that our work is not done. New children and young people are added all the time and we must therefore continuously review whether we are sufficiently visible, especially to the particularly vulnerable children living in residential institutions.

The Children's Division has four overall tasks:

- Receiving **complaints** involving children, either from children or adults.
- Taking up so-called **own-initiative cases**. The Children's Division may choose to take up a case on the basis of, for instance, media coverage suggesting that authorities or private institutions have not complied with legislation or good administrative practice in relation to children. Own-initiative cases may also be taken up on the basis of information in a complaint case.
- Carrying out **monitoring visits** to private and public institutions.
- As a special task, monitoring that the administration complies with **the UN Convention on the Rights of the Child** and other international obligations aimed at protecting children's rights.

During a monitoring visit to a residential institution, representatives of the Children's Division interviewed a 14-year-old girl. She told them that she liked living at the institution. She was therefore unhappy that the local authority had informed her seven months earlier that she would be moved to a foster family and that it was working to find a family for her. Since then, she had heard nothing further from the local authority. This unsettled her and the uncertainty about her future was very difficult for her.

The Ombudsman passed the girl's wishes on to the local authority, which then decided that she was to remain at the institution where she was living.

The Ombudsman cannot decide where a child in care is to live, but he can pass on the child's wishes to the relevant authority and thus help ensure that the child's wishes and views are taken into account when the authority considers the issue.

A 14-year-old boy asked the Ombudsman for help to prevent his mother's boyfriend, who was a foreigner, being expelled from the country. Among other things, the boy wrote that his mother's boyfriend had become a second father to him and that they all got on well – he, his mother and her boyfriend.

The Ombudsman told the boy that he understood why he would like his mother's boyfriend to remain with him and his mother. However, as the boy's letter was not about his own case, but that of his mother's boyfriend, the boy was not a so-called party to the case. The Ombudsman therefore took no action in response to the boy's letter.

If a 'third party' submits a complaint to the Ombudsman which includes information about another person, it is the Ombudsman's established practice to seek the consent of the other person – usually in the form of an original power of attorney – in order to ensure that he or she agrees to the Ombudsman's considering the complaint.

A woman lodged a complaint with the Ombudsman because the local authority in the area where she used to live refused to transfer its status as the authority responsible for her daughter, who had been compulsorily placed in care, to the local authority where the woman now lived.

It was the woman's former local authority which had placed her daughter in care, and it was therefore the authority responsible for her daughter, even though the woman had moved to another local authority area.

The rules allowed the woman's current and former local authority to agree a transfer of responsibility for her daughter to the woman's current local authority, but her former local authority did not wish to enter into such an agreement. It took the view that its retaining responsibility would ensure the best continuity for the woman's daughter.

The Ombudsman wrote to the woman that he considered it unlikely that he would be able to criticise her former local authority's decision to retain responsibility and therefore closed the case.

If the Ombudsman believes he is unlikely to be able to criticise the decisions made in a case, he typically closes the case without asking the authorities involved for a statement.



A woman was unhappy with the local authority's decision to limit her telephone contact with her son, who had been placed in care. They were only allowed to speak twice a week. The local authority's decision could be appealed to the Social Tribunal, and the woman had received guidance on appeal with the decision. According to the guidance, she had four weeks to appeal the decision, but she had failed to do so.

The Ombudsman wrote to the woman that he was unable to consider her complaint as she had failed to use her option to appeal the local authority's decision to the Social Tribunal.

The Ombudsman cannot consider complaints about matters which can be appealed to another administrative authority until this authority has made a decision. This implies that any appeal options must have been used – otherwise the Ombudsman cannot consider the complaint.

The Ombudsman received an e-mail from a woman which she had also sent to, among others, the council and management of a local authority. In her e-mail, the woman wrote that in her opinion the local authority did not provide adequate help and support to families with special needs children.

The Ombudsman wrote to the woman that he would take no action as he regarded her e-mail as having been sent to him solely for his information.

The Ombudsman receives many e-mails sent to him solely for his information, including e-mails copied to him. In general, he takes no action in response to e-mails sent for his information.



# THE RIGHTS OF YOUNG PEOPLE IN CARE



Morten Engberg  
Monitoring Director,  
Head of Monitoring Division

In 2012, the Ombudsman submitted a number of key issues to the Ministry of Social Affairs and Integration concerning the rights of young people in care. The background was a number of monitoring visits to residences in 2011 and 2012. The visits revealed that some residences used measures against young people which cannot be used against other citizens without consent unless there is a special statutory basis for it, in legal language called the use of compulsion.

## URINE SAMPLES

One example was the use of urine samples. Several of the young people who spoke with the Ombudsman and his team during the visits said that they had been asked to provide a urine sample in various situations. These included cases where a young person who had previously had drug abuse problems had been on a visit away from the residence or where the young person's behaviour gave rise to a specific suspicion, for instance that drugs had been taken. However, urine samples were also sometimes requested simply because the young person's caseworker wanted a test.

As a starting point, urine samples were provided on a voluntary basis. However, it turned out that at some residences a refusal to provide a urine sample had consequences for the young people. Thus, several residences regarded a urine test as positive if a young person refused to provide a sample, i.e. as proof that the young person had taken drugs. This could in itself have consequences and, for instance, result in the young person being forced to have close contact with employees at the residence, such as sleeping in a room with an employee of the same sex. Another consequence could be that the young person was not allowed

to leave the residence unaccompanied or that weekend leave was withdrawn. The Ombudsman therefore concluded that urine samples were not provided on an entirely voluntary basis.

In practice, urine samples were provided under the supervision of an adult, for instance by an employee standing immediately next to or behind the young person; in other cases, the adult turned his or her back or stood outside the door. Several of the young people stated that they found it humiliating having to provide a urine sample under the supervision of employees.

There can undoubtedly be good reasons to request a urine sample, for instance at residences with drug abusers. However, if the residents are more or less forced to provide samples, this is an intrusion into their right to a private life. This is particularly true in the case of people living in an institution as they are dependent on the employees. It is therefore important that the legislation lays down clear rules for the use of urine samples in such places.

## MOBILE TELEPHONES AND COMPUTERS

The Ombudsman came across the same issue in other areas on his monitoring visits. For almost all children and young people it is crucial that they have access to the Internet or a mobile telephone. Some residences have introduced rules limiting the young people's access to communicating by mobile telephone or computer. The specific rules vary. For instance, some residences have rules stating that the young people will be given their mobile telephones after completing their daily tasks, after showering at weekends or on Fridays after they have cleaned their area and their rooms. There are also examples of internal rules at residences laying down that the young people's mobile telephones are confiscated if used inappropriately, for instance for threats or swearing, or if the young person has left the premises without permission. Some residences also have rules stating that when the young people are ill, they can only get their mobile telephone back by agreement with the employees.

Some residences have also introduced restrictions on the use of computers. At one residence visited by the Ombudsman and his team, smoking was thus prohibited in bedrooms and the Internet connection of anyone found smoking anyway was cut. Other residences had rules stating that the young people were not allowed to download anything from the Internet without the permission of an adult or that they were only allowed to visit particular chat websites.

Several of the young people who spoke to the Ombudsman and his team during the visits stated that they found the restrictions very intrusive. Conversely, there is no doubt that the institutions may have good disciplinary, educational or safety reasons for imposing such restrictions.

## LEGISLATION

The monitoring visits caused the Ombudsman to consider the legality of introducing such restrictions in relation to young people living at residences. There is no simple answer to the question as it is not explicitly addressed anywhere in the legislation.

The fact that it is impossible to get a definite answer as to whether it is legal to introduce such restrictions is in itself a problem. It implies a risk that young people at different residences are treated inconsistently and arbitrarily.

The Ombudsman therefore requested a meeting with the Ministry of Social Affairs and Integration. At the meeting, which was held on 23 October 2012, there was agreement that there was a lack of clear rules in this area.

It was no coincidence that the Ombudsman became aware in 2011 and 2012 of the lack of clear rules concerning various measures used against young people in care: The Ombudsman had decided in advance that in 2011 and 2012 his monitoring visits were to focus among other things on residences for children and young people, as this would allow him to clarify whether there were any general issues at this particular kind of institution. At the same time, there was clearly no point in the Ombudsman raising the issue of the legality of such restrictions with the individual institutions. An issue of this nature must as far as possible be resolved in collaboration with the ministry responsible for the area, in this case the Ministry of Social Affairs and Integration.

In late spring 2013, the Government set up a committee to describe the challenges in connection with the use of compulsion in relation to children and young people living at hostels, in residences and with foster families. The committee is also to make recommendations for new rules if relevant.

On Tuesday 30 October 2012, the Ombudsman's OPCAT monitoring team rang the doorbell at the secure residential institution Egely to make an unannounced visit to the secure sections of the institution, including a high-security section. The Egely management, which were in the middle of a job interview, welcomed the monitoring team and ensured that the monitoring visit could be carried out.

Most monitoring visits are announced, but the Ombudsman can also visit unannounced, for instance to follow up earlier, announced visits.

The concept of accessibility for people with disabilities was not mentioned in connection with the upper secondary school reform, which resulted in the former county upper secondary schools becoming self-governing. In the Ombudsman's opinion, it was important that accessibility for people with disabilities was included in the planning and coordination of the upper secondary schools area. He therefore requested a meeting with the Ministry of Education.

At the meeting, the Ministry stated that it was considering contacting the committees responsible for allocating students to the individual upper secondary schools.

The Ministry subsequently informed the Ombudsman that the issue had been discussed at a meeting with the secretariats of the allocation committees and had been included in the Ministry's considerations of amendments to the executive order concerning admission to upper secondary schools. After an amendment was made to the order, accessibility for people with disabilities is now an important criterion in connection with the allocation of students to the individual upper secondary schools.

At the request of the Danish Parliament, the Parliamentary Ombudsman monitors developments in the equal treatment of people with disabilities. Among other things, he monitors accessibility for people with disabilities, especially in relation to older public buildings. In addition, he collaborates with the relevant authorities and the Disabled People's Organisation Denmark on a regular basis.

During a deportation to Kabul, a 26-year-old Afghan man went berserk. The man had been pre-assessed as very violent, and when he was collected at the Institution for Detained Asylum Seekers, Ellebæk, his hands were restrained with a restraining strap. On the plane to Istanbul, he butted two policemen. He was then held down in his seat by the three accompanying policemen for an hour until their arrival in Istanbul. During the transit period in Istanbul, he remained violent, among other things kicking a policeman in the head. With the help of Turkish police, the policemen succeeded in immobilising the man and tried to calm him down before the flight to Kabul. Nonetheless, he repeatedly tried to butt the policemen. However, on the plane to Kabul he calmed down and after an hour, his hands were therefore released. The journey was completed without further use of force.

The entire process was observed by an Ombudsman representative, who accompanied the Afghan man and the policemen to Kabul, where the man was let into the country without any problems. The Ombudsman representative later stated that the police had to use force and that their use of force was not excessive. In these circumstances, the deportation was as dignified as possible.

The Ombudsman monitors deportations by the police. An employee is responsible for monitoring the process in connection with deportations – partly by joining flights and partly by reviewing the police files in selected cases.





A prisoner lodged a complaint with the Ombudsman about a refusal of conditional release after he had served two-thirds of his sentence. Such a refusal can be brought before the courts. The Ombudsman informed the prisoner of the opportunity to take the matter into court and then closed the case.

The Ombudsman cannot consider complaints about the courts. It is also his established practice not to consider cases with particularly easy access to court processing – irrespective of whether this access has been exploited.

In connection with a monitoring visit to Aalborg Psychiatric Hospital, the Ombudsman became aware that the hospital had laid down some rules on restrictions and measures in relation to the individual patient. Among other things, patients could only leave the hospital with the permission of hospital staff. The Ombudsman asked the Psychiatric Department of the North Denmark Region to explain the legal basis for these restrictions on the patients, who had been admitted voluntarily rather than compulsorily admitted pursuant to the Act concerning Deprivation of Liberty and Other Compulsion in Psychiatric Care.

The Ombudsman pointed out that the Psychiatric Care Act *exhaustively* states to what extent deprivation of liberty is permitted at psychiatric wards. He asked the Psychiatric Department to ensure that the provisions of the Act concerning deprivation of liberty are fully observed.

The Parliamentary Ombudsman carries out monitoring visits to, for instance, psychiatric wards. During monitoring visits, attention is also paid to the issue of compliance with the rules of the Psychiatric Care Act.







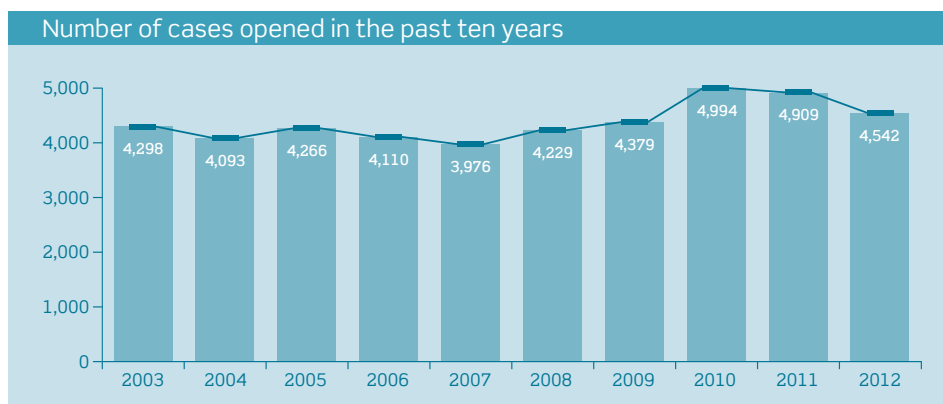


## STATISTICS

### KEY FIGURES

This section presents some key figures related to the cases processed by the office. For detailed statistics, see pages 78-91.

The number of *new* cases in 2012 was 4,542 as against 4,909 in 2011. For comparison purposes, developments in the number of new cases have been as follows over the past decade:



The number of cases opened on the basis of a complaint was 4,263 in 2012 as against 4,670 in 2011.

127 cases were opened as a result of the Ombudsman's option to investigate cases on his own initiative. 13 cases were monitoring cases (until 1 November 2012 termed 'inspection cases') and 75 cases were opened as part of the office's responsibilities in connection with OPCAT (see the Annual Report of the Parliamentary Ombudsman, 2009, pages 18-19, for further information). In addition, 24 cases were opened in relation to the Ombudsman's function as monitoring authority in connection with deportations of foreigners (see the Annual Report of the Parliamentary Ombudsman, 2011, pages 21-22). The Ombudsman also received 742 concrete deportation cases for review pursuant to section 30 a(3) of the Aliens Act (not included in the total number of cases). No own-initiative projects were opened in 2012. However, the Ombudsman asked the Food and Veterinary Complaints Board for 40 cases in 2012 in connection with an own-initiative project opened in 2011 and not concluded by the end of 2012.

The number of cases *concluded* in 2012 was 4,297 as against 4,922 in 2011. Of the cases concluded, 686 (16.0 per cent) were substantively investigated, i.e. the Ombudsman generally concluded these cases with a statement, and 3,611 (84.0 per cent) were rejected for various reasons (see page 87 for further information).

Number of cases concluded in the past ten years



Usually, a first reply is sent by the Ombudsman to the complainant within ten working days after receipt of the complaint, also in cases which are eventually rejected. 35.2 per cent of rejected complaint cases were concluded within ten calendar days. The average processing time for rejected complaint cases was 39.1 days in 2012.

The average processing time for substantively investigated concrete cases (i.e. complaint cases and concrete cases opened on the Ombudsman's own initiative, but not monitoring cases etc.) concluded within the report year was 6.0 months (181.9 days). For rejected concrete cases, the average case processing time was 40.3 days in 2012. The corresponding figures for 2011 were 33.7 days for rejected concrete cases and 162.7 days for substantively investigated concrete cases.

The case processing times were generally longer in 2012 than in the preceding years, and fewer cases were concluded. This was connected, among other things, with the implementation of a new electronic case and document handling system in 2012. The transition was relatively resource-intensive, and it took some time before all procedures were in place in the new system.

The Ombudsman has established targets for the desired case processing times for *complaint cases*, partly for rejected cases and partly for substantively investigated cases. The target is that 90 per cent of rejected complaint cases should be concluded within two months. Of the complaint cases which are substantively

investigated, 75 per cent should be concluded within six months and 90 per cent must be concluded within 12 months.

These targets were not entirely met in 2012: 81.2 per cent of rejected complaint cases were concluded within two months (calculated as 60 days) – the target was 90 per cent. 69.0 per cent of substantively investigated complaint cases were concluded within six months (calculated as 182 days) as against a target of 75 per cent, and 87.7 per cent of substantively investigated complaint cases were concluded within 12 months – here the target was 90 per cent.

#### The Ombudsman's targets for processing times for complaint cases

Rejected cases concluded within 2 months	90.0%	Target
	81.2%	Result
Substantively investigated cases concluded within 6 months	75.0%	Target
	69.0%	Result
Substantively investigated cases concluded within 12 months	90.0%	Target
	87.7%	Result

As at 1 June 2013, 236 concrete cases had not been concluded within five months of being opened. 179 of them were awaiting the Ombudsman's procedure.

I declared myself disqualified in 22 complaint cases in 2012. This relatively high figure is connected with my background as Director of Public Prosecutions. The Legal Affairs Committee of the Danish Parliament assigned these cases to Mr Henrik Bloch Andersen, High Court Judge. The Ombudsman's office provided secretariat assistance in connection with the processing of these cases.

The Faroese Lagting did not ask me to act as ad hoc Ombudsman in any cases in 2012, whereas the Inatsisartut (the Parliament of Greenland) asked me to act as ad hoc Ombudsman for the Ombudsman for Inatsisartut in two cases. I had to declare myself disqualified in one of these cases, however.

A total of 32,160 documents (letters to and from the office etc.) were registered in the electronic system of the office in the calendar year 2012. The corresponding figure for 2011 was 30,305 documents.



## DETAILED STATISTICS

This section provides a detailed explanation of the main figures related to the cases processed by the office.

The Ombudsman statistics are intended to reflect some important characteristics of the cases processed – but also to say something about the utilisation of the institution's resources. The presentation is based on some general distinctions. First of all, this section and the section 'Key figures' on pages 75-77 provide information about new cases at the office and the cases which have been processed by the office. The figures for concluded cases relate to cases *concluded* in 2012 – irrespective of when they were opened – while the figures for new cases relate to cases *opened* in 2012 – irrespective of whether they were concluded in 2012 or later. The figures are therefore typically not identical.

In addition, a distinction is made between different types of cases: complaint cases, monitoring cases (until 1 November 2012 termed 'inspection cases') and cases opened by the Ombudsman on his own initiative (own-initiative cases), cases where the complainant or others request access to documents, cases connected with international cooperation etc. The degree to which individual case types are included in the statistics varies. However, the figures for the cases concluded in 2012 and the information in the section 'Key figures' about the number of new cases relate only to the first three types of cases.

Finally, a distinction is made between cases which the Ombudsman concludes with a statement about the issue(s) raised in the case – referred to as substantively investigated cases – and cases which are rejected for various reasons.

In general, a substantive investigation is carried out on the basis of a consultation where the authorities have the opportunity to make a statement to the Ombudsman about the content of the complaint. However, in particularly obvious cases where the Ombudsman does not express criticism or make recommendations, he may choose to consider the complaint without prior consultation.

Certain cases must be rejected – for the time being or finally.

For instance, the Ombudsman is not permitted to consider complaints concerning matters *that may be appealed to another administrative authority until that authority has made a decision* (section 14 of the Ombudsman Act). Therefore, complaints submitted to the Ombudsman before any appeal options available have been exhausted cannot be processed and have to be rejected – at least for the time being, until the relevant appeal authority or authorities may have processed the appeal.

Pursuant to section 7(2) of the Ombudsman Act, the courts are outside the Ombudsman's jurisdiction. Therefore, complaints concerning courts, for instance, have to be rejected, and in this case the rejection is final.

We have attempted to gather the various figures and information under clear themes: How many cases did the office open? How many cases did the Ombudsman conclude? How long did it take to process the cases? These themes have been dealt with separately in the section 'Key figures' on pages 75-77.

The following pages deal with the issues: What did the Ombudsman do in the cases concluded in 2012? What did the cases concern? Which authorities were affected?

## What did we do in the cases?

We concluded 4,297 cases in 2012. Of these, 686 (16.0 per cent) were substantively investigated and 3,611 (84.0 per cent) were rejected.

### Substantively investigated cases

As mentioned above, the category of substantively investigated cases includes cases where the Ombudsman carries out an investigation in which he submits the case to the relevant authority or authorities for consultation and concludes the case with a statement. These cases may be complaint cases, monitoring cases or cases initiated on the Ombudsman's own initiative.

The category also includes cases subjected to what is referred to as a shortened substantive investigation. These may be complaint cases where the Ombudsman assesses, after reviewing the information available in the case, that a full substantive investigation of the case is unlikely to result in criticism of the authorities or any other way of helping the complainant with the outcome of the case. Therefore, the Ombudsman usually concludes these cases without obtaining statements from the authorities. Typically, the Ombudsman investigates the complaint and the case in the same manner as in a full substantive investigation. Cases subjected to a shortened substantive investigation may also be cases initiated by the Ombudsman on his own initiative where he questions the authorities about certain matters and chooses on the basis of their replies not to take any further steps in the case.

Cases subjected to a shortened substantive investigation are governed by section 16(2) and section 17(1) of the Ombudsman Act.

In 2012, 399 (58.2 per cent) of the cases subjected to a substantive investigation were concluded after a shortened investigation as described above.

Occasionally, an authority will reopen a case as a result of the Ombudsman's request for a statement. This means that the authorities will reconsider the case, and as they cannot therefore be said to have concluded it, the Ombudsman will virtually always discontinue his investigation of the case. The authorities may not change their original decision, but in practice, the effect is the same as if the Ombudsman had recommended that the authorities reconsider the case.

In 2012, a total of 42 cases were concluded on this basis.

Of the cases subjected to a full substantive investigation, 162 did not give rise to criticism, recommendation etc. in relation to the relevant authority.

83 of the substantively investigated cases did result in criticism, recommendation etc. in relation to the relevant authority.

Table 1 overleaf shows the distribution by authority, first for the substantively investigated cases as a whole and then for the 83 cases which gave rise to criticism, recommendation etc.

**Table 1**

Substantively investigated cases, including cases resulting in criticism, recommendation etc., by minister areas, local and regional authorities and other authorities etc. within the Ombudsman's jurisdiction<sup>1</sup>

Table 1: Substantively investigated cases concluded in 2012

Authority etc.	Substantively investigated cases, total	Substantively investigated cases resulting in criticism, recommendation etc.
<b>A. Minister area (central authorities)</b>		
a. Ministry of Employment	63	4
b. Ministry of Business and Growth	5	2
c. Ministry of Finance	2	0
d. Ministry of Defence	2	1
e. Ministry of Justice	165	21
f. Ministry of Climate, Energy and Building	3	0
g. Ministry of Culture	6	3
h. Ministry of the Environment	28	1
i. Ministry of Housing, Urban and Rural Affairs	0	0
j. Ministry of Children and Education	10	3
k. Ministry of Science, Innovation and Higher Education	14	5
l. Ministry of Food, Agriculture and Fisheries	0	0
m. Ministry for Gender Equality and Ecclesiastical Affairs	1	0
n. Ministry of Health	21	2
o. Ministry of Taxation	7	4
p. Ministry of Social Affairs and Integration	168	13
q. Prime Minister's Office	2	1
r. Ministry of Transport	17	1
s. Ministry of Foreign Affairs	5	3
t. Ministry of Economic Affairs and the Interior	26	1
<b>Central authorities, total</b>	<b>545</b>	<b>65</b>

Table 1: Substantively investigated cases concluded in 2012

Authority etc.	Substantively investigated cases, total	Substantively investigated cases resulting in criticism, recommendation etc.
<b>B. Local and regional authorities</b>		
Local authorities <sup>2</sup>	103	15
Regions	27	3
Special local or regional authority units	1	0
<b>Local and regional authorities, total</b>	<b>131</b>	<b>18</b>
<b>C. Other authorities etc. within the Ombudsman's jurisdiction</b>		
Residences for children and juveniles	9	0
Independent institutions	1	0
Transport authorities	0	0
<b>Other authorities etc. within the Ombudsman's jurisdiction, total</b>	<b>10</b>	<b>0</b>
<b>D. Total</b>		
Central authorities, total (A)	545	65
Local and regional authorities, total (B)	131	18
Other authorities etc. within the Ombudsman's jurisdiction, total (C)	10	0
<b>Year total (A-C total)</b>	<b>686</b>	<b>83</b>

- 1) The statistical registration of cases concluded in 2012 was done immediately after the individual case had been concluded. The cases in Section A of the Table have been classified under the ministries existing at the end of the year. In the same way, as a general rule, cases relating to authorities closed down or reorganised after the statistical registration have as far as possible been classified under the minister areas where the cases would have belonged at the end of the year.
- 2) The figures do not include local authority dispute tribunals covered by section 7(3) of the Ombudsman Act.



## Rejected cases

A total of 3,611 (84.0 per cent) of the cases concluded were rejected without being subjected to a full or shortened substantive investigation.

Cases may have to be rejected by the Ombudsman for various reasons and the category 'rejected cases' covers a number of situations:

If a complaint is submitted too late, the case must be rejected pursuant to section 13(3) of the Ombudsman Act. In 2012, the Ombudsman rejected 128 cases for this reason.

Sometimes a person lodging a complaint with the Ombudsman has not exhausted the appeal options available in connection with the case processing by the administrative authorities within the existing deadlines. In such cases, the complaint cannot subsequently be considered by the Ombudsman. In 2012, the Ombudsman rejected 47 cases of this kind.

The Ombudsman does not consider cases which are outside his jurisdiction. Pursuant to section 7(2) of the Ombudsman Act, the Ombudsman must reject complaints relating to the courts and their work. The Ombudsman also rejects complaints concerning matters on which a court is expected to make a decision. In 2012, a total of 131 cases were rejected for these reasons. Complaints relating to the Danish Parliament, including complaints about legislative issues, are likewise outside the Ombudsman's jurisdiction (a total of 34 cases). This also applies to complaints relating to private legal matters and complaints about certain tribunals, even though they are part of the public administration in other contexts (section 7(3) of the Ombudsman Act). In 2012, 226 cases were rejected for these reasons.

In 2012, the Ombudsman rejected a total of 391 cases because they were outside his jurisdiction.

1,591 cases were rejected for the time being because the complainant could still complain about the matter/appeal the decision within the administrative appeal system etc. As already mentioned, the Ombudsman cannot enter a case until all administrative complaint/appeal options have been exhausted (section 14 of the Ombudsman Act). In such situations, the Ombudsman will either forward the case to the relevant authority or authorities or ask the complainant to use his or her complaint/appeal options etc. within the administrative system. In this connection, the Ombudsman will also inform the complainant of the possibility of returning after his or her complaint/appeal options have been exhausted and a final decision has been made. In 2012, the Ombudsman forwarded 988 (62.1 per cent) of the cases he rejected for the time being to the relevant authorities.

In the 1,591 cases which the Ombudsman rejected for the time being in 2012, the vast majority of complainants were thus able to return to the Ombudsman if they remained dissatisfied with the authorities' decision on and/or processing of their case.

In certain cases, the complaint was anonymous and therefore had to be rejected pursuant to section 13(2) of the Ombudsman Act (14 cases in 2012). In other cases, the approach turned out not to be an actual complaint, but an enquiry or simply material sent to the Ombudsman for his information (342 cases). In still other cases, it was necessary to ask the complainant to clarify his or her complaint, but the complainant did not respond, or the complainant withdrew his or her complaint (190 cases). We have combined all these situations in the statistical overview (item 1.4 in Table 2 overleaf). We had 546 such cases in 2012.

Pursuant to section 16(1) of the Ombudsman Act, the Ombudsman decides himself whether a complaint offers sufficient grounds for an actual investigation.

The Ombudsman's decision to reject a case is made after a review of the complaint and any material accompanying the complaint, but the Ombudsman is free to obtain case documents from the authorities before responding to the complainant with an explanation of why he has decided not to initiate an investigation.

In 2012, the Ombudsman rejected 908 cases pursuant to section 16(1) of the Ombudsman Act.

Table 2 overleaf contains information about the grounds registered for rejection, first for all cases and then for local and regional authority cases.



**Table 2**  
Cases rejected in 2012

Table 2: Cases rejected in 2012

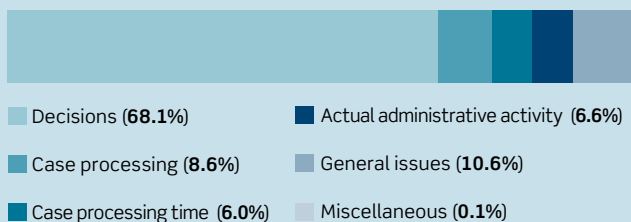
	Rejected cases, total	Of which local and regional authority cases
<b>Grounds for rejection</b>		
<b>1. Final rejections</b>		
1. Complaints submitted too late (section 13(3) of the Ombudsman Act)	128	38
2. Administrative case processing options not exhausted and no longer available (section 14 of the Ombudsman Act)	47	32
3. Complaints relating to matters outside the Ombudsman's jurisdiction, e.g. a court, judges, Parliament, legislative issues or private legal matters	391	22
4. Enquiries etc. without actual complaints; complaints not clarified; complaints withdrawn; anonymous complaints etc.	546	147
5. Other approaches, including complaints which the Ombudsman decided to reject (section 16(1) of the Ombudsman Act)	908	297
<b>Final rejections, total</b>	<b>2,020</b>	<b>536</b>
<b>2. Temporary rejections</b>		
Administrative case processing options not exhausted etc. (section 14 of the Ombudsman Act)	1,591	693
<b>Temporary rejections, total</b>	<b>1,591</b>	<b>693</b>
<b>Total (1+2)</b>	<b>3,611</b>	<b>1,229</b>

## What did the cases concern?

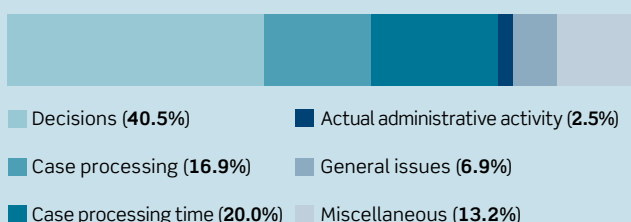
The distribution by main topic – i.e. the main focus of the Ombudsman's reaction in the case – of the 4,297 cases concluded in 2012 was as follows for substantively investigated cases (686 cases in total) and for rejected cases (3,611 cases in total):

**Figure 1**

Substantively investigated cases in 2012 by main topic (686 cases in total)



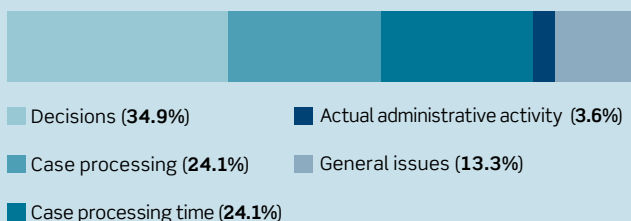
Cases rejected in 2012 by main topic (3,611 cases in total)



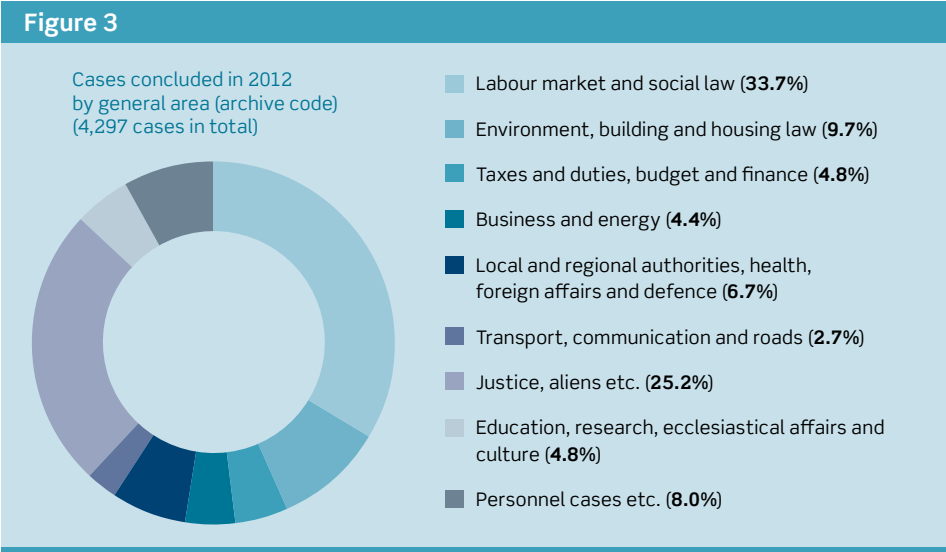
By way of comparison, the distribution by main topic was as follows for substantively investigated cases which gave rise to criticism, recommendation etc. (83 cases):

**Figure 2**

Cases in 2012 resulting in criticism/recommendation by main topic (83 cases in total)



The distribution of concluded cases by administrative area was as follows:



Which authorities etc. were affected?

Table 3 overleaf shows the distribution of all cases concluded in 2012 by authority etc. involved. A more detailed overview is provided (in Danish only) on the Ombudsman’s website, [www.ombudsmanden.dk](http://www.ombudsmanden.dk).



**Table 3**  
Authorities etc. affected<sup>1</sup>

Table 3: Authorities etc. affected

Authority etc.	All cases	Rejected cases
<b>A. Minister area (central authorities)</b>		
a. Ministry of Employment	233	170
b. Ministry of Business and Growth	23	18
c. Ministry of Finance	16	14
d. Ministry of Defence	14	12
e. Ministry of Justice	729	564
f. Ministry of Climate, Energy and Building	18	15
g. Ministry of Culture	30	24
h. Ministry of the Environment	91	63
i. Ministry of Housing, Urban and Rural Affairs	0	0
j. Ministry of Children and Education	27	17
k. Ministry of Science, Innovation and Higher Education	80	66
l. Ministry of Food, Agriculture and Fisheries	40	40
m. Ministry for Gender Equality and Ecclesiastical Affairs	12	11
n. Ministry of Health	118	97
o. Ministry of Taxation	158	151
p. Ministry of Social Affairs and Integration	488	320
q. Prime Minister's Office	15	13
r. Ministry of Transport	68	51
s. Ministry of Foreign Affairs	15	10
t. Ministry of Economic Affairs and the Interior	130	104
<b>Central authorities, total</b>	<b>2,305</b>	<b>1,760</b>
<b>B. Local and regional authorities</b>		
Local authorities <sup>2</sup>	1,253	1,150
Regions <sup>3</sup>	103	76
Special local or regional authority units	4	3
<b>Local and regional authorities, total</b>	<b>1,360</b>	<b>1,229</b>

Table 3: Authorities etc. affected

Authority etc.	All cases	Rejected cases
<b>C. Other authorities etc. within the Ombudsman's jurisdiction</b>		
Residences for children and juveniles	13	4
Independent institutions	3	2
Transport authorities	2	2
<b>Total</b>	<b>18</b>	<b>8</b>
<b>D. Authorities etc. within the Ombudsman's jurisdiction, total<sup>4</sup></b>		
Central authorities, total (A)	2,305	1,760
Local and regional authorities, total (B)	1,360	1,229
Other authorities etc. within the Ombudsman's jurisdiction, total (C)	18	8
<b>Total (A-C total)</b>	<b>3,683</b>	<b>2,997</b>
<b>E. Institutions etc. outside the Ombudsman's jurisdiction</b>		
1. Courts etc. <sup>5</sup>	62	62
2. Dispute tribunals <sup>6</sup>	20	20
3. Other institutions, companies, businesses and persons outside the Ombudsman's jurisdiction	240	240
<b>Total</b>	<b>322</b>	<b>322</b>
<b>F. Cases not relating to specific institutions etc.</b>		
	292	292
<b>Year total (A-F total)</b>	<b>4,297</b>	<b>3,611</b>

- 1) The statistical registration of cases concluded in 2012 was done immediately after the individual case had been concluded. The cases in Section A of the Table have been classified under the ministries existing at the end of the year. In the same way, as a general rule, cases relating to authorities closed down or reorganised after the statistical registration have as far as possible been classified under the minister areas where the cases would have belonged at the end of the year.
- 2) The figures do not include local authority dispute tribunals covered by section 7(3) of the Ombudsman Act. Cases relating to such tribunals have been included under item E.2. of the Table.
- 3) Owing to a change in registration practice following the introduction of a new electronic case and document handling system in March 2012, it is no longer possible to provide breakdowns by region.
- 4) In 2012, the Ombudsman made no decisions in pursuance of section 7(4) of the Ombudsman Act that his jurisdiction was to extend to a company, an institution, an association etc. which was covered administratively by the Public Administration Act, the Act on Public Access to Documents on Public Files or the Public Authorities' Registers Act.
- 5) Cf. section 7(2) of the Ombudsman Act.
- 6) Bodies covered by section 7(3) of the Ombudsman Act.

How much did the Ministry of Children and Education demand for the sale of two buildings in the town of Rønne? This was the question asked by a journalist. However, the Ministry refused his request for access to the information, as negotiations about the sale of the buildings were still ongoing. The journalist then lodged a complaint with the Ombudsman, who agreed with the Ministry that the public authorities would not be able to negotiate as an equal contract party if access to the relevant documents was granted during the negotiations.

The Ombudsman's task is to investigate whether the authorities comply with statutory rules and regulations, but that does not mean that he 'supports' the complainant. He must assess all cases on a purely legal basis.

When a private shared road requires maintenance, the local authority splits the cost between the residents along the road. However, a married couple disagreed with the cost allocation and lodged a complaint with the Ombudsman. The local authority had followed the criteria laid down in the Highway Contribution Act. The Ombudsman therefore did not find that there were grounds for criticising the local authority's allocation of costs. As he was unable to help the couple with regard to the cost allocation, which was the core of their complaint, he decided to take no further action on the other aspects of their complaint.

If the Ombudsman is unable to help with the key issue of a complaint, he often chooses to reject the other aspects of the complaint as well.

The Danish Committees on Scientific Dishonesty (UVVU) refused a request of access to the files of a case concerning a scientist on the grounds that the case was still pending. The Ombudsman had recently stated in a similar case that the UVVU's practice did not comply with the Act on Public Access to Documents on Public Files and had consequently asked the UVVU to review its practice in this respect. The Ombudsman therefore forwarded the new case to the UVVU to give it the opportunity to consider it in the light of his recent statement.

Even if the Ombudsman is able to consider a case, he may choose to forward it to the authority involved, for instance because he believes the complainant's problem will be resolved most quickly in this way.



Is the Port of Svaneke an industrial port? This was the key issue of a complaint case. The Danish Coastal Authority regarded it as such and had therefore granted permission for the building of a new jetty. By contrast, a man who lodged a complaint with the Ombudsman believed it was not an industrial port, which rendered the jetty illegal. The Ombudsman's investigation of the case revealed that the Bornholm Regional Authority had classified the port as a minor industrial port. He therefore declared himself in agreement with the Coastal Authority, which meant that he could not help the complainant.

If the Ombudsman discovers that an authority has handled a case correctly and, among other things, taken account of the relevant circumstances, he will typically state that he is unable to assess and weigh the circumstances of the case in a different and better way than the authority.



A government agency granted a man access to the information and documents filed in a case, with a few exceptions. Later, it turned out that the agency held another 1,500 or so e-mails about the case which had not been filed.

The case caused the Ombudsman to ask the agency which files it believed had to be released. The agency agreed with the Ombudsman that the right of access is not limited to the documents filed in a case. It also agreed that e-mails – depending on their content – may be 'documents' subject to access. However, it took the view that the approx. 1,500 e-mails were so casual and informal in nature that they did not constitute 'documents' within the meaning of the Act on Public Access to Documents on Public Files. Nonetheless, the agency decided to grant the man access to the e-mails.

As there was thus agreement on the rules applying to the specific case and as the man had been granted access to the e-mails, the Ombudsman took no further action in the case.

Nonetheless, he expressed surprise that hardly any of the 1,500 e-mails constituted documents within the meaning of the Act on Public Access to Documents on Public Files. In fact, the agency's description of them suggested that some of these e-mails might be of significant importance to the case and therefore to be regarded as documents.

The Ombudsman may decide to close a case without an actual Ombudsman statement. This may, for instance, occur if the authority expresses agreement with the Ombudsman in its reply to him or if the problem has been resolved in the meantime.











## APPENDIX A. BUDGET 2012

### Salary expenses

Actual salaries	43,417,000
Student assistants	262,000
Special holiday allowance	22,000
Overtime	287,000
Pension fund contributions	3,253,000
Contributions for civil service retirement pensions	1,072,000
Contributions for the Danish Labour Market Supplementary Pension (ATP)	113,000
Maternity reimbursement etc.	- 499,000
<b>Salary expenses in total</b>	<b>47,927,000</b>

### Operating expenses

Subsidy, Ministry of Foreign Affairs	- 900,000
Rent	4,121,000
Leasing of photocopiers	254,000
Official travels	403,000
Entertainment	171,000
Staff welfare	110,000
Phone subsidies	7,000
Subsidy, staff lunch arrangement	227,000
IT, central equipment, network, programmes	1,249,000
IT, client equipment	1,069,000
IT, consultants	254,000
Decentralised continued education	811,000
Translations	390,000
Printing of publications etc.	321,000
Misc. services	900,000
Office supplies	796,000
Furniture and other fittings	671,000
Books and subscriptions etc.	1,137,000
Cleaning, laundry and refuse collection	202,000
Housekeeping uniforms	7,000
<b>Operating expenses in total</b>	<b>12,200,000</b>

Civil servant retirement payments	
Civil servant retirement contributions	- 1,000,000
Retirement payments for former civil servants	400,000
<b>Civil servant retirement payments in total</b>	<b>- 600,000</b>
BUDGET	59,527,000





## APPENDIX B: SUMMARIES OF SELECTED CASES

### A. MINISTRY OF EMPLOYMENT

No cases concluded in 2012 were selected for publication in the Annual Report

### B. MINISTRY OF BUSINESS AND GROWTH

No cases concluded in 2012 were selected for publication in the Annual Report.

### C. MINISTRY OF FINANCE

No cases concluded in 2012 were selected for publication in the Annual Report.

### D. MINISTRY OF DEFENCE

No cases concluded in 2012 were selected for publication in the Annual Report.

### E. MINISTRY OF JUSTICE

The following cases concluded in 2012 were selected for publication in the Annual Report:

#### **2012-2. REQUEST FOR ACCESS TO FILES IN CASE OF EXTRADITION TO ANOTHER COUNTRY'S AUTHORITIES TO BE DECIDED UNDER THE ADMINISTRATION OF JUSTICE ACT**

A journalist complained to the Ombudsman about a refusal by the Ministry of Justice to grant access to the Ministry's files in a case concerning extradition of a Danish citizen to the authorities in another country.

In the Ombudsman's opinion the case was not covered by the provisions of the Public Administration Act on the right of a party to a case to obtain access to documents of the case, as the case concerned a criminal prosecution matter (section 9(3) of the Public Administration Act) and, consequently, despite having power of attorney, the journalist was not entitled to party access to files according to section 9(1) of the Act.

The Ombudsman agreed with the Ministry of Justice that, since it was a criminal justice administration case covered by section 2(1)(i) of the Act on Public Access to Documents on Public Files, all the documents and information in the case, including document logs etc., were exempt from the provisions of the Act on Public Access to Documents on Public Files on access to files.

In the Ombudsman's opinion the provisions of the Administration of Justice Act on access to files in criminal cases – or at least the principles of the Act – were applicable.

### **2012-3. THE IMMIGRATION AUTHORITIES MUST NOTIFY APPLICANTS INDIVIDUALLY AND DIRECTLY OF RECEIPT OF APPLICATION AND CASE PROCESSING TIME. GENERAL INFORMATION ON WEBSITE IS NO SUBSTITUTE**

The Ombudsman received a complaint about the case processing time of the Immigration Service and the then Ministry of Integration. In the complainant's opinion the Immigration Service had taken too long to process an application for extension of a residence permit and the Ministry of Immigration had taken too long to consider his complaint about the case processing time of the Immigration Service.

During his investigation of the case, the Ombudsman became aware that the Immigration Service did not send out letters of receipt to notify those who had applied for an extension that their applications had been received and were being processed. Nor did the Immigration Service provide direct (and regular) information on how long it would take to process their applications. Instead, the Immigration Service informed applicants that they could consult the website [www.nyidanmark.dk](http://www.nyidanmark.dk) or telephone the Service for information on the case processing time.



The Ombudsman stated that in his opinion parties to cases should be sent letters acknowledging receipt of their applications and individual notifications of the case processing time. The Immigration Service could not deviate from this by asking applicants to telephone the Service or consult [www.nyidanmark.dk](http://www.nyidanmark.dk) for information.

The Ministry of Justice – which became responsible for the subject matter through a reorganisation of responsibilities – agreed with the Ombudsman’s opinion and asked the Immigration Service to ensure that parties to cases were sent letters of receipt and kept apprised of the case processing time.

As a result of the Ombudsman’s investigation, the Immigration Service also stated that the Service would change its guidelines on when to take notes on telephone reminders in the cases, in accordance with the Ombudsman’s statement.

### **2012-13. DOUBTFUL IF VERBAL ORDER TO REMAIN SILENT COULD BE CONSIDERED VALID**

Following a general election a member of the Danish Parliament was a candidate for a ministerial post. Prior to the Government being formed, he was summoned to a meeting at the Prime Minister’s Office with, among others, the Permanent Secretaries of the Prime Minister’s Office and the Ministry of Justice. At the meeting he was shown a memorandum written by the Security and Intelligence Service (PET) containing information which the ministries believed would prevent him from obtaining the required security clearance to become a minister. He was also issued with a verbal order to remain silent with regard to the information in the memorandum. He later asked the Ministry of Justice for access to the memorandum but his request was refused.

Through his lawyer, the Member of Parliament complained to the Ombudsman. The Ombudsman stated that he did not have sufficient grounds for rejecting the authorities’ assessment that an order to remain silent could be imposed with regard to the information in the memorandum. However, the Ombudsman did find it a matter for severe criticism that the order to remain silent had not been imposed in writing and that the availability of documentation of the order’s existence, content and scope was not otherwise ensured. In the Ombudsman’s opinion these circumstances made it extremely doubtful whether the order to remain silent could be enforced.

The Ombudsman did not have sufficient grounds for rejecting the assessment by the Ministry of Justice that the Member of Parliament could not be given access to the document (in the form of a copy), but it was the Ombudsman's opinion that the decision to refuse access was worded in an unfortunate and unclear manner. In addition, the Ministry of Justice should have considered whether the Member of Parliament could have been given the opportunity to read through the memorandum again.

After receiving the Ombudsman's statement, the Ministry of Justice made the contents of the memorandum public with the exception of a few details.

## F. MINISTRY OF CLIMATE, ENERGY AND BUILDING

No cases concluded in 2012 were selected for publication in the Annual Report.

## G. MINISTRY OF CULTURE

The following cases concluded in 2012 were selected for publication in the Annual Report:

### 2012-18. NO GROUNDS GIVEN FOR REFUSAL OF WORK GRANT

The Literature Committee of the Danish Agency for Culture refused a work grant application from a writer of children's books. In its letter of refusal, the Literature Committee stated that it had assessed the application on the basis of the scheme's support criteria and had prioritised within the means available to the Committee.

The writer did not find that an adequate reason had been given for the refusal and complained to the Ombudsman. During the Ombudsman's processing of the case, the Literature Committee explained in more detail the criteria used in its assessment of applications. The Committee stated that it made its decision on the basis of the literary quality of a submitted text sample, and it elaborated on the elements which decided whether or not a text was considered to have the required literary quality.

On the basis of the Committee's detailed explanations, the Ombudsman stated that he did not have sufficient grounds for assuming that objective and relevant criteria had not been adequately included. Consequently, he could not criticise the content of the Committee's decision.

However, the Ombudsman did criticise the Literature Committee's original wording of its refusal, particularly as it did not contain any indication at all of the criteria used. On this basis, he recommended that the Literature Committee arrange its future practice in such a way that grounds given for refusals met the requirements of the Public Administration Act.

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### **2012-23. INTERPRETATION OF PROVISION IN SECTION 86(1) OF THE RADIO AND TELEVISION BROADCASTING ACT ON EXEMPTION OF CERTAIN CASES AND DOCUMENTS FROM THE ACT ON PUBLIC ACCESS TO DOCUMENTS ON PUBLIC FILES**

On the basis of a specific case, the Ombudsman investigated a general question concerning the interpretation of the provision in section 86(1) of the Radio and Television Broadcasting Act, pursuant to which cases and documents concerning DR's (the Danish Broadcasting Corporation) programming and its related business matters are exempt from the Act on Public Access to Documents on Public Files.

The Ombudsman agreed with the DR that it is not, for instance, a condition for applying section 86(1) that in each individual instance access to the cases and documents in question would actually reveal anything more specific about DR's programming or editorial processes. He stated, however, that there is a limit to how indirect a document's relation to the actual programming can be if it is to be considered as covered by the provision.

The Ombudsman had previously – based on the way in which DR itself had applied the provision in a specific case – taken as his basis that, despite the fact that section 86(1) of the Radio and Television Broadcasting Act mentions 'cases and documents', this must be understood to mean that only that information in a particular document which concerns the programming and its related business matters is exempt from the Act on Public Access to Documents on Public Files. When DR rejected this interpretation, the Ombudsman agreed with DR that it most likely follows from the provision's wording and from the legislative history behind the Act that an assessment of the individual elements of information is not mandatory. He would therefore have no comments if DR applied a practice based on this interpretation.

## 2012-26. SUMMONING AN EMPLOYEE TO A TALK REGARDING HER LOYALTY FOLLOWING THE PUBLICATION OF A DEBATE LETTER WAS IN VIOLATION OF THE RULES ON FREEDOM OF EXPRESSION FOR PUBLIC EMPLOYEES

In a debate letter published in a newspaper, a woman had criticised Danish museums for being more focused on visitor experiences than on research. She alleged that this was also the case at the museum where she herself worked. After the letter had been published, the woman was summoned to a talk by the museum management. It was stated in the e-mail in which she was summoned to the talk that the subject of the talk was her loyalty towards the museum.

The case occasioned the Ombudsman to go through the circumstances in which an authority has a legitimate reason for talking to an employee regarding utterances made by the employee. The Ombudsman did not find that there was a legitimate reason for summoning the woman to a talk. On the contrary, he found that the museum's reaction to her letter in the newspaper was likely to cause uncertainty among the museum staff about their right to express themselves in public. According to the Ombudsman, this was in violation of the rules on the freedom of expression for public employees. The Ombudsman therefore agreed with the museum when it later stated that it was regrettable that the woman had been summoned to a talk about her loyalty.

### H. MINISTRY OF THE ENVIRONMENT

No cases concluded in 2012 were selected for publication in the Annual Report.

### I. MINISTRY OF HOUSING, URBAN AND RURAL AFFAIRS

No cases concluded in 2012 were selected for publication in the Annual Report.

## J. MINISTRY OF CHILDREN AND EDUCATION

The following case concluded in 2012 was selected for publication in the Annual Report:

### 2012-9. EXCLUSION FROM BASIC TRAINING COURSE AT TECHNICAL COLLEGE

A technical college had excluded a student from a basic training course which was part of a training programme in web integration on the grounds that his qualifications were so poor that the college did not think that it would be possible for him to complete the training.

The Ministry of Children and Education wrote to the student that the college's decision was well-founded. The Ministry did not find that this was a decision but merely a statement intended as a guide.

The Ombudsman maintained that the Ministry had made a decision and that the Ministry's failure to realise this was regrettable.

The Ministry was of the opinion that the legal basis for excluding the student was the legal principle that 'no one is obliged to achieve the impossible'. The Ombudsman stated that the legal principle referred to by the Ministry could not be used as a legal basis for excluding a student from lessons. As there was also no legal basis for excluding a student from lessons because of the student's qualifications, the Ombudsman recommended that the Ministry reopen the case, if the student so wished.

Finally, the Ombudsman stated that the Ministry should not in a statement intended as a guide comment specifically on the legitimacy of a decision made by a college.

## K. MINISTRY OF SCIENCE, INNOVATION AND HIGHER EDUCATION

The following cases concluded in 2012 were selected for publication in the Annual Report:

### 2012-5. REPRESENTATION BY OTHERS IN ELECTRONIC COMMUNICATION WITH UNIVERSITIES

The Ombudsman opened a case on his own initiative concerning access for students and prospective students to representation by others – to which they are entitled pursuant to section 8 of the Public Administration Act – when using the electronic self-service systems ‘minSU’ (for applications for student grants and loans) and ‘mitUddannelseskort’ (to apply for a student discount transport card).

The self-service systems were not designed so as to make it technically possible to choose to be represented by others. The Ombudsman assumed that the Ministry of Science, Innovation and Higher Education (formerly the Ministry of Science, Technology and Development) agreed that students and prospective students were entitled to express guidance on their option of exemption from electronic communication if they wished to be represented by others. The Ombudsman asked the Ministry to inform him what sort of guidance students and prospective students would in future receive regarding their access to representation by others.

In relation to the self-service system ‘mitUddannelseskort’ (for youth education programmes) the case raised another issue due to the statutory right of parents to represent their under-age children. The Ombudsman maintained that custodial parents also needed express guidance on their option of exemption from electronic communication if they wished to represent their children. The Ombudsman recommended that the Ministry ensure that in future custodial parents receive such guidance.

## 2012-14. EXCHANGE RATE USED FOR CALCULATION OF OVERSEAS STUDY GRANT

A student received an overseas study grant to cover tuition fees for her Australian master's degree in communication. According to the provisions of the State Education Grant and Loan Scheme Act, the overseas study grant corresponded to 'the actual tuition fee'. However, because of rules in the State Education Grant and Loan Scheme Executive Order on the exchange rate for tuition fees stated in a foreign currency, the student was refunded an amount which was less than the tuition fee she had actually paid.

The student complained to the then Ministry of Education and subsequently to the Ombudsman. The Ombudsman stated that the provisions of the State Education Grant and Loan Scheme Act did not in themselves provide a legal basis for a system whereby overseas study grants were assigned at a significantly lower exchange rate than the rate on the day of payment. In addition, the Ombudsman did not find that the Minister of Education had a sufficient legal basis to lay down rules on such a system in the Executive Order.

Even before the Ombudsman made his statement, the Ministry had informed him that it was prepared to cover the shortfall suffered by the student. The Ministry had also stated that it would take steps to change the legislation. Finally, the Ministry had outlined how it would deal with the other decisions on overseas study grants which had been or would be made before the rules were changed. Consequently, the Ombudsman took no further action in the matter.

## 2012-22. SEVERAL FIXED-TERM APPOINTMENTS NOT UNLAWFUL. IMPLEMENTATION OF EU DIRECTIVE

A lawyer complained that after a woman had been employed in several fixed-term appointments, she still had not been given a permanent job at Aarhus University. In the lawyer's opinion the woman's temporary employment contracts had been continuously extended in violation of the provisions of an EU directive that Denmark was obliged to implement during the time of the woman's employment at the university.



The Ombudsman did not find that the possibility should simply be dismissed that the woman's previous fixed-term employment contracts should be taken into consideration. However, he did not carry out an actual investigation of this issue.

The Ombudsman then considered which conditions might lead to the jobs being defined as new (fixed-term) appointments. He stated that in his opinion the significant factors were those which would normally be important when deciding if a position is a new position, including the pay and the general pay structure, work hours, work location, job title and job content. In the case of a managerial position, a change in managerial authority would also have significance.

The Ombudsman's assessment was that the woman had been employed in several different fixed-term appointments, and that there had been no unlawful renewals of her appointments.

#### L. MINISTRY OF FOOD, AGRICULTURE AND FISHERIES

No cases concluded in 2012 were selected for publication in the Annual Report.

#### M. MINISTRY FOR GENDER EQUALITY AND ECCLESIASTICAL AFFAIRS

No cases concluded in 2012 were selected for publication in the Annual Report.

## N. MINISTRY OF HEALTH

The following cases concluded in 2012 were selected for publication in the Annual Report:

### 2012-10. DUE CARE FOR LIVE-BORN BUT INEVITABLY DYING BABIES (FOLLOWING LATE ABORTIONS)

In April 2011 a number of articles in a Danish newspaper criticised hospitals' treatment of babies born alive following late abortions. It appeared from the press coverage that live-born babies had been left to die alone in hospital sluice rooms.

The Ombudsman asked the National Board of Health and the Ministry of the Interior and Health (now the Ministry of Health) for a statement on the case, including a statement on the Board's monitoring activities.

The treatment of live-born but inevitably dying babies is governed by Guidance Notes no. 9623 of 31 August 2005 on the criteria for live births and stillbirths etc. The Guidance Notes specify that if a foetus/baby shows signs of life after being born or delivered, it is to be considered a live-born baby. This applies irrespective of the stage of pregnancy and irrespective of whether the background is an intervention in accordance with the provisions of the Abortion Act. If the baby is inevitably dying, 'due care' must be provided.

On 30 November 2011, after the Ombudsman had opened the case, the National Board of Health wrote to all hospital maternity wards concerning the rules governing the situation and clarified the meaning of 'due care'. And the Board asked all maternity wards to draw up a local set of instructions, if such did not already exist.

At a meeting with the Ombudsman institution, the authorities informed the Ombudsman that the National Board of Health would write to the maternity wards in a year to ensure that such instructions had been issued.

The Ombudsman asked to be informed of the result of the authorities' follow-up.

## 2012-21. INFORMATION ON THE OCCURRENCE OF BACTERIA CONSIDERED TO BE ENVIRONMENTAL INFORMATION

A man complained to the Ombudsman because the SSI (the State Serum Institute – a public enterprise under the Ministry of Health) had refused him access to information from an investigation of the occurrence of the staphylococcus bacterium MRSA in a number of participants in a conference. The then Ministry of the Interior and Health had upheld the decision.

The Ombudsman stated that in his opinion all the information obtained from the SSI's investigation was covered by the Environmental Information Act. The request for access to information should therefore have been decided pursuant to this Act.

The Ombudsman agreed with the authorities that information about test results for the individual participants in the investigation, with names, addresses etc., could be exempted from access according to section 12(1)(i) of the Act on Public Access to Documents on Public Files, cf. section 2(3) of the Environmental Information Act.

However, the Ombudsman did not find that all the other information could be exempted pursuant to section 13(1)(v) of the Act on Public Access to Documents on Public Files, cf. section 2(3) of the Environmental Information Act, on the grounds that this information was produced on the basis of a contract that had been entered into as part of the SSI's commercial activities. For some of the information, the Ombudsman did not find that there was sufficiently detailed information and sufficient circumstantial evidence that the SSI would suffer appreciable damage by allowing access to it. On this basis the Ombudsman recommended that the SSI reopen the case and make a new decision.

## O. MINISTRY OF TAXATION

The following cases concluded in 2012 were selected for publication in the Annual Report:

### 2012-6. RULES THAT DOCUMENTS NEED NOT BE SIGNED MUST BE STIPULATED IN AN EXECUTIVE ORDER

Under the authority of the Tax Administration Act, the Ministry of Taxation had laid down rules on digital communication within the Ministry's remit in an executive order. The executive order stated, among other things, that some of the documents from SKAT (the Danish Central Customs and Tax Administration) need not be signed to be valid. Later on, the Ministry changed the rules so that these specific types of documents were no longer expressly mentioned in the executive order. At the same time a so-called 'SKAT message' was issued in which the types of documents in question were listed.

The Ombudsman stated that, as the rules on which documents required signing involved regulation of citizens' legal position, the rules should be stipulated in an executive order rather than published in a 'SKAT message'.

Furthermore, the Ombudsman was of the opinion that the rules should have been announced in the Law Gazette.

The Ministry agreed with the Ombudsman's conception of the law and would issue an executive order with the relevant rules as soon as possible.

In addition, the Ombudsman found it unfortunate that the 'SKAT message' appeared to have been issued by SKAT when the Ministry of Taxation had informed him that it had in fact been issued by the Ministry's Corporate Group Centre.

## 2012-12. 'REVOCATION' OF BINDING ANSWER WAS A DECISION

A man was thinking about moving abroad with his spouse. He owned some shares in a private limited company and wanted to know how much tax he would have to pay on the value of his shares if he did move abroad. He therefore asked SKAT (the Danish Central Customs and Tax Administration) for a binding answer concerning the value of the shares. SKAT gave him a binding answer, and on the basis of this answer the man moved abroad.

Later that year, SKAT informed the man that it no longer considered itself bound by the answer. The reason, SKAT said, was that the assumptions on which it had based its binding answer had changed. The man did not agree, and he appealed to the National Income Tax Tribunal, which, however, refused to consider his appeal. Neither SKAT nor the Tribunal deemed SKAT's letter that it no longer considered itself bound by its binding answer to be a decision, which could be appealed to the Tribunal. In the authorities' opinion, the letter was solely a 'service message'.

The man's lawyer complained to the Ombudsman, who stated that in this specific case the letter constituted a decision within the meaning of the Tax Administration Act and the Public Administration Act and that it could consequently be appealed to the National Income Tax Tribunal. However, the Ombudsman did not express his opinion as a criticism of the authorities. The Ombudsman recommended that the National Income Tax Tribunal reopen the case if the complainant still wished to have it tested there.

### P. MINISTRY OF SOCIAL AFFAIRS AND INTEGRATION

The following cases concluded in 2012 were selected for publication in the Annual Report:

## 2012-4. APPEAL FILED AND PROCESSED ON THE WRONG CASE BY INDUSTRIAL INJURIES AUTHORITIES

The National Board of Industrial Injuries accidentally filed an appeal against a decision on the wrong case. As a result of the error, the appeal was not processed (on the correct case) for almost a year. Instead, both the National Board of Industrial Injuries and the National Social Appeals Board processed the appeal on another person's case, as if it were a petition to reopen the case.

The Ombudsman agreed with the authorities that the filing error was regrettable and that it was very regrettable that the error was not discovered during the subsequent processing of the wrong case.

In addition, the Ombudsman pointed out that it was very unfortunate that the National Board of Industrial Injuries and the National Social Appeals Board made details of the appeal available to a third party during their processing of the wrong case.

Finally, the Ombudsman found it very unfortunate that the processing of the appeal was delayed for almost a year as a result of the error committed.

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## **2012-7. GUIDELINES FOR THE WORK OF LOCAL AUTHORITY MEDICAL CONSULTANTS**

The Ombudsman and the Ministry of Social Affairs and Integration agreed that the Ministry could not – unless expressly authorised by statute – lay down legally binding guidelines on the nature of the work which local authority medical consultants were permitted to do. It was the individual local council which had the power to determine the nature of the work to be done by medical consultants and to direct how their work was to be done, in the same way as for other administrative staff employed by local authorities.

## **2012-8. NOT ADEQUATE EVIDENCE IN CASE CONCERNING POSSIBLE SOCIAL BENEFIT FRAUD**

A local authority received an anonymous tip-off that a woman who received various social benefits as ‘genuinely single’ was in a marriage-like relationship. The local authority summoned the woman to a meeting ‘concerning the social benefits which you receive and have applied for’. At the meeting the woman was informed of the anonymous tip-off and its contents and was asked for details of her situation. After investigating the matter further, the local authority held another meeting with the woman, which was referred to as a ‘consultation of the woman as a party to the case’. The local authority subsequently made a decision that the woman was not entitled to various social benefits and that she had to repay benefits which she had already received.

Based on an individual assessment of the considerations to which the authorities had given importance when making their decisions, the Ombudsman found that in a number of respects adequate evidence had not been provided, meaning that there were material shortcomings in the evidence provided.

The Ombudsman took as his basis that the local authority had had a 'suspicion' as described in section 10 of the Act on Legal Protection in Connection with the Administration's Use of Compulsory Intervention and Duties of Disclosure. The local authority should therefore have given the woman guidance that she was not obliged to provide information which might affect the decision on the punishable offence presumed to have been committed.

The Ombudsman was also of the opinion that the local authority's second meeting with the woman did not meet the requirements on consultations of parties to cases set out in section 19 of the Public Administration Act as, based on an individual assessment, the local authority ought to have consulted her in writing.

Finally, the Ombudsman found that it was an evident error that the Social Tribunal made its decision on a partially incorrect factual basis with regard to the division of an amount of money between the woman and her former spouse and that the Tribunal's statement to the Ombudsman contained the same factual error. The error had been pointed out to the Social Tribunal once and twice, respectively.

## **2012-17. REFUSAL OF ARTIFICIAL INSEMINATION TREATMENT FOR DISABLED COUPLE. GROUNDS GIVEN FOR DECISION**

A couple who both suffered from spastic paralysis and were wheelchair users were refused artificial insemination treatment by a consultant doctor at a fertility clinic on the grounds that there was reasonable doubt about their ability to care adequately for a child. The National Social Appeals Board found no grounds to depart from the consultant doctor's assessment of the couple's suitability as parents and therefore upheld the decision.

The Ombudsman asked the consultant doctor and the National Social Appeals Board to explain the basis for their decisions and to expand on the grounds given for the decisions.



The Board stated in its reply to the Ombudsman that the couple would need help with the physical care of a child. Their disability would make it difficult for them to fulfil the function of carers to a baby to the usual extent, and the child would have its basic needs for care met by changing people, possibly without any special qualifications. In addition, the Board assessed that it would be difficult for the couple to care for a child emotionally. The Board was therefore of the opinion that there was obvious or reasonable doubt about the couple's ability to care adequately for a child.

After reviewing the case, and in the light of the more detailed information on the grounds for the decision of the National Social Appeals Board which the Board had provided in its statement to him, the Ombudsman could not criticise that the Board had made a decision refusing the couple artificial insemination treatment. Among other things, the Ombudsman gave weight to the fact that the Board had balanced the considerations involved on the basis of an individual assessment, in accordance with its obligations under the law and the European Convention on Human Rights.

However, the Ombudsman found that the grounds given by the National Social Appeals Board for its decision should have stated the main considerations which had entered into the weighing process and which had been decisive for the decision. This was especially true because the right to use artificial insemination is covered by Article 8 of the European Convention on Human Rights and because any limitation of this right requires that a fair balance is struck between the interests of the couple seeking treatment and any other relevant interests, including the welfare of any child who may be born as a result of treatment.

## **2012-20. CAUSAL RELATIONSHIP BETWEEN INDUSTRIAL INJURY AND ESTABLISHED LOSS OF WORKING CAPACITY**

A man complained about a decision made by the National Social Appeals Board in an industrial injury case. The documents of the case showed that the authorities had recognised that the man had suffered an industrial injury.

The Ombudsman asked the Board for a statement on the case. In its statement to the Ombudsman, the Board wrote that it had been established that the man had suffered a loss of working capacity. However, the Board did not assess his loss of working capacity to be a consequence of his industrial injury.

With reference to the wording and legislative history of section 13 of the Act on Protection against the Consequences of Industrial Injuries in force at the time, the Ombudsman stated that in his opinion the National Social Appeals Board had not established by a preponderance of probabilities that the man's loss of working capacity was not a consequence of the industrial injury which he had suffered. On that basis, the Ombudsman recommended that the Board reconsider the case in the light of his statement.

The protracted nature of the case and the circumstances etc. cited by the National Social Appeals Board as grounds that the man's loss of working capacity was not in its opinion a consequence of his industrial injury occasioned the Ombudsman to make a more general statement on the possibility of including these circumstances etc. in a possible assessment of the degree of the man's loss of working capacity.

## Q. PRIME MINISTER'S OFFICE

The following cases concluded in 2012 were selected for publication in the Annual Report:

### 2012-13. DOUBTFUL IF VERBAL ORDER TO REMAIN SILENT COULD BE CONSIDERED VALID

For a summary of the case, see under 'E. Ministry of Justice'

### 2012-24. REGARD FOR THE INTERNAL POLITICAL DECISION PROCESS GIVEN AS GROUNDS FOR REFUSAL OF ACCESS TO DOCUMENTS – TEN YEARS AFTER THE DOCUMENTS WERE PREPARED

The Prime Minister's Office refused to grant access to a number of documents relating to statements from the Ministry of Justice in connection with Denmark's accession to various EU treaties. Two of the documents were exempted from access on the grounds that this was necessary in order to protect the internal political decision process (section 13(1)(vi) of the Act on Public Access to Documents on Public Files). As the Prime Minister's Office had not stated which specific circumstances necessitated exempting the documents from access almost ten years after they had been prepared, the Ombudsman recommended that it reconsider its refusal of access to the two documents.

## R. MINISTRY OF TRANSPORT

No cases concluded in 2012 were selected for publication in the Annual Report.

## S. MINISTRY OF FOREIGN AFFAIRS

The following case concluded in 2012 was selected for publication in the Annual Report:

### 2012-16. NO ACCESS TO INFORMATION ON THE QUEEN'S BESTOWAL OF THE GRAND CROSS ORDER ON THE KING OF BAHRAIN

A journalist complained that the Ministry of Foreign Affairs had refused him access to correspondence between the Danish Royal Household and the Danish embassy in Riyadh concerning the Queen's bestowal of the order of the Grand Cross on the King of Bahrain.

The Ministry was of the opinion that some of the information in the correspondence could be exempted pursuant to section 13(1)(ii) of the Act on Public Access to Documents on Public Files on relations with foreign powers. The Ministry referred to the fact that the information had been obtained during a confidential dialogue between the Royal Household of Bahrain and the Danish embassy in Riyadh.

The Ministry was further of the opinion that all of the correspondence could be exempted pursuant to the 'omnibus clause' in section 13(1)(vi) of the Act on Public Access to Documents on Public Files on essential regards for the public interest. The Ministry stressed that the Queen's bestowal of decorations is in principle not covered at all by the Act and that the Royal Household is in a very special position as it is dependent on the assistance of Danish embassies when establishing contact – and exchanging information – with foreign heads of state prior to royal visits abroad, including information on the possible exchange of decorations.

With regard to the Ministry's interpretation of section 13(1)(ii), the Ombudsman could not on the existing basis of information consider it sufficient that the Ministry had solely in more general terms based its refusal on the grounds that

the information had been obtained during a confidential dialogue between the embassy in Riyadh and the Royal Household of Bahrain.

However, the Ombudsman did not have sufficient grounds for criticising the Ministry of Foreign Affairs' applying section 13(1)(vi) to the correspondence in question in the case.

## T. MINISTRY OF ECONOMIC AFFAIRS AND THE INTERIOR

No cases concluded in 2012 were selected for publication in the Annual Report.

## U. LOCAL AND REGIONAL AUTHORITIES

The following cases concluded in 2012 were selected for publication in the Annual Report:

### 2012-1. ISSUING OF SCHOOL BOOKS ON NON-RETURN OF OLD BOOKS. PAYMENT FOR LOST SCHOOL BOOKS

A parent complained to the Ombudsman that his son's school had refused to issue new school books to pupils – including his son – who had not returned their old school books. He also complained that the school had demanded payment for a book which his son had not returned.

The Ombudsman took as his basis that the school had not issued school books for the new school year until school books from the old year had either been returned or paid for or a dialogue between the school and the parents in question had been initiated.

The Ombudsman asked the local authority and the Ministry of Education (now the Ministry of Children and Education) for statements.

The Ministry stated that the local authority has an obligation to make the necessary educational materials available, also to pupils who have not returned educational materials which have previously been made available to them. The

local authority must thus make the necessary educational materials available to all pupils, including pupils who have not returned educational materials which their school has previously issued to them.

The Ombudsman agreed with the Ministry's conception of the law and found the school's practice of withholding educational materials to be a matter for criticism.

The Ombudsman also considered the issue of compensation for lost school books, which in his opinion must be resolved on the basis of the general rules of Danish law on non-contractual damages. The Ombudsman explained in general terms that part of the law of torts which was of relevance to the case and stated, among other things, that a pupil must make a plausible and convincing explanation as to how a book has been accidentally lost if he or she is to be exempted from liability. Furthermore, a local authority will to a large extent be able to raise a claim against the pupil's parents pursuant to the Children's Liability for Damages Act.

## **2012-11. LOCAL AUTHORITY'S CHARGING OF FEE FOR SUPPLYING COPIES OF PROPERTY ASSESSMENT NOTICES**

A lawyer complained that a local authority charged a fee of DKK 70 for copies of property assessment notices with reference to section 30 a of the Act on Taxation of Real Property and to the executive order on local authorities' right to charge a fee for supplying information on real property to private individuals.

The Ombudsman obtained a statement from the Ministry of Economic Affairs and the Interior. The Ministry was of the opinion that, based on an interpretation of the purpose of section 30 a of the Act on Taxation of Real Property and the appurtenant executive order, local authorities had no legal basis for charging a fee for supplying copies of property assessment notices. The purpose of the provisions had been to compensate local authorities for the administrative work of filling in charts with information on real property – typically in connection with property transactions. The administrative burden of supplying a copy of a property assessment notice was significantly lighter.

In the Ministry's opinion the local authority's supplying of copies was instead governed by the Act on Public Access to Documents on Public Files and the provisions on the charging of fees issued under the authority of that Act.

The Ombudsman agreed with the Ministry's conception of the law. In addition, he pointed out that the application of the Act on Public Access to Documents on Public Files (or the Public Administration Act) and the rules on fees issued under the authority of the two Acts is also supported by the fact that the right of access to documents according to these rules covers documents which are in existence at the time when access is requested. However, the special fee rule of the Act on Taxation of Real Property concerns the production of new documents – including charts which are completed with property information.

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### **2012-15. TRANSFER OF LOCAL AUTHORITY MUSIC SCHOOL'S RESPONSIBILITY FOR GENERAL COURSE IN MUSIC TO ANOTHER LOCAL AUTHORITY MUSIC SCHOOL WAS NOT COVERED BY THE TRANSFER OF UNDERTAKINGS ACT**

With effect from 2011, the Danish Arts Council changed the subsidy conditions for MGK teaching at local authority music schools (MGK is an intensive course preparing for music academy entrance in content and level). The purpose was to change the structure of MGK teaching so that responsibility for the course and the accompanying subsidy were allocated to seven music schools spread out on various regions.

As a consequence, responsibility for MGK teaching was transferred from one music school to another music school, which had been designated by the Danish Arts Council as MGK centre for the region. A teacher at the former music school complained to the Ombudsman because he believed that the rights of himself and a colleague pursuant to the Transfer of Undertakings Act had been set aside by the local authority.

In the Ombudsman's opinion the transferred MGK activities could not be assumed to constitute a financial entity which had retained its identity after the transfer to the other music school. There were therefore no grounds for assuming that the transfer was covered by the Transfer of Undertakings Act. On this basis the Ombudsman did not think it likely that he would be able to criticise the result of the local authority's assessment in the case.

## **2012-19. DECISION-MAKING AUTHORITY IN CASES CONCERNING ACCESS TO CHILDREN PLACED IN CARE**

On the basis of a specific case concerning parents' and grandparents' access to a girl placed in care, the Ombudsman opened an own-initiative case.

The own-initiative case concerned the question of who – local authority officials or the local authority's committee for children and young people – has the authority pursuant to the Social Services Act to make decisions in the various types of cases involving access to children placed in care.

The Ombudsman stated that the conclusive factor when determining whether it is local authority officials or the committee for children and young people that has the authority to make decisions pursuant to section 71(1)-(3) of the Social Services Act is not the category of persons who the decision concerns but how intrusive the decision is.

For instance, decisions to limit access to less than once a month and decisions for access to be supervised must be made by the committee for children and young people, regardless of whether the decision is aimed at the child's parents or other persons in the child's network. Less intrusive decisions on access must be made by local authority officials.

## **2012-25. CHAIRMAN OF REGIONAL COUNCIL'S CALL FOR INTERNAL COOPERATION IN NEWSPAPER ARTICLE DID NOT INFRINGE ON EMPLOYEES' FREEDOM OF EXPRESSION**

A trades union complained to the Ombudsman about a Regional Council Chairman's remarks to a local newspaper. The Chairman's remarks appeared in the same article as a statement from a hospital staff representative concerning the influence of staff quotas on the hospital's placement in the national mortality statistics. The Regional Council Chairman was quoted as saying: 'Staff and politicians have a joint responsibility here, and I strongly urge that we cooperate on reducing those mortality figures instead of discussing them in the press'.

In the Ombudsman's estimation, a full Ombudsman investigation was not likely to result in any criticism of the Regional Council Chairman's remarks.



Consequently, the Ombudsman chose not to investigate the matter any further, with reference to the fact that the Chairman's remarks, as quoted in the newspaper, did not contain any mention of the legal limits of the employees' freedom of expression. In the Ombudsman's opinion, according to the wording the remarks must more naturally be considered solely as a – legal – call for the employees to raise the matter internally rather than in the press.

### **2012-27. RECALCULATION OF CASH BENEFIT INTO SICKNESS BENEFIT. CALCULATION ERRORS AND OVERSIGHTS LED TO BACK TAX DEMAND. LOCAL AUTHORITY'S FAILURE TO PROVIDE A STATEMENT OF THE RECALCULATION MADE IT VERY DIFFICULT FOR THE CITIZEN TO CHECK THE CORRECTNESS OF THE RECALCULATION AND TO SAFEGUARD HER INTERESTS**

A woman who was absent from work due to sickness appealed her local authority's refusal to extend her sickness benefit period to the Employment Appeals Board. The Board overturned the local authority's refusal and referred the case back to the local authority for renewed processing and decision. As a result of the Board's decision, about 10 months of cash benefit was to be recalculated into sickness benefit and the balance to be paid to the woman. But simple calculation errors and oversights on the part of the local authority in connection with the recalculation resulted in the woman receiving a comparatively large back tax demand almost a year after the decision by the Employment Appeals Board.

The Ombudsman criticised the local authority's processing of the case on several points. Among other things, he considered the errors made by the local authority when recalculating the woman's cash benefit into sickness benefit to be very regrettable. Furthermore, the Ombudsman found it very regrettable that the local authority had not sent the woman a statement showing how her cash benefit had been recalculated into sickness benefit. The statement should have been accompanied by guidance on appeal, as the recalculation should be considered a decision.

The case caused the local authority to review its procedures and draw up a standard formula for future recalculations and a letter template for cases where a citizen needs to have cash benefit recalculated into sickness benefit.







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