

Summary

Annual Report 2008

Folketingets Ombudsmand

Parliamentary Commissioner for Civil
and Military Administration in Denmark

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Preface

This booklet summarizes my Annual Report for 2008 to the Danish Parliament.

Part 1 of the Summary contains my presentation of the 2008 Report at the Parliament's yearly public meeting on my Annual Report.

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

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

Part 3 contains case statistics.

Part 4 contains 34 summaries of Ombudsman cases.

Copenhagen, December 2009

HANS GAMMELTOFT-HANSEN

PART 1

ANNUAL
REPORT 2008

Annual Report 2008 ■ 5

The Ombudsman's Presentation of the Annual Report for 2008 at the Legal Affairs Committee's Public Meeting on 1 December 2009

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

Director General Jens Møller will call attention to some of the main themes in the Report. Head of Inspections Lennart Frandsen will inform you about the inspections, and I will present some key figures concerning the work of the Office.

By way of introduction I would, however, like to remark on the way in which the cases in the Report are constructed and written.

In connection with our language policy we decided in 2008 to begin the cases with the chapter "The Ombudsman's Statement" – that is, to begin with the result of the investigation. Earlier we began with a – often very long and complicated – presentation of the case. The presentation is now placed at the end of the Ombudsman's statement. In the Annual Report for 2008 you will find examples of both structures, but this is mainly due to the fact that some of the cases were written and sent to the complainants and authorities before we decided to change the structure.

The number of new cases in 2008 was 4,229 compared with 3,976 in 2007. The number of cases that were initiated on the basis of a complaint, rose equally from 3,732 in 2007 to 4,089 in 2008.

As I have emphasized in all the previous years' debate meetings, the development in these and other key figures varies from year to year, and i.a. for this

reason it is in my opinion hardly possible to reach unambiguous conclusions.

The number of cases that were concluded, was 4,164 compared to 4,188 in 2007, and the number of cases that awaited the Ombudsman's consideration, rose from 92 in 2007 to 119 in 2008.

The number of cases in which we undertook a so-called material processing, fell from 22.1 per cent in 2007 to 16.4 per cent in 2008. The number of cases in which I expressed criticism or gave a recommendation, fell proportionally from 30.2 per cent in 2007 to 23.8 per cent in 2008. Of course we monitor the development in exactly these key figures closely, but as I have already mentioned, I do not think we can conclude anything useful at the present time.

In 29 cases the authorities chose to reopen the case already when the Ombudsman asked for a statement. In our statistics, cases of this nature are registered as *rejected cases*, precisely because the Ombudsman does not fully investigate the case.

Our case processing time is fairly stable: For rejected cases there is a small increase from an average of 32.6 days to 33.2 days, and for the investigated cases a minor decline from an average of 182.3 days to 178.7 days.

As I mentioned last year, the Parliamentary Ombudsman ought in my opinion – like the institutions he controls – to establish goals for the case processing time he strives towards in complaint cases, both the rejected cases and the cases that are investigated.

The goals are that 90 per cent of the cases that are rejected, should be concluded within two months. 75 per cent of the cases that are fully investigated,

should be concluded within six months; after a year, 90 per cent of the cases that are fully investigated, should be concluded.

We still lack the resources to realize these goals. But within our current framework we came this far in 2008: 88.2 per cent of the rejected cases were concluded within two months (calculated as 60 days) – the goal was 90 per cent. And 68.9 per cent of the cases that were fully investigated, were concluded within half a year – the goal was 75 per cent. 84.5 per cent of the fully investigated cases were concluded within a year, and here the goal was 90 per cent.

We will, of course, continue to aim towards these goals.

After this short introduction I give the floor to Jens Møller.

In my introductions to the previous debate meetings I have collected some of the cases from the Annual Reports under traditional terms from administrative law such as *requirements for case processing*, *requirements for content* or, as last year, the *unwritten legal standards* surrounding the written rules of law.

This year I will adopt a horizontal approach and attempt to take a look at which themes the cases in the Annual Report for 2008 involve.

For this year's Annual Report the Ombudsman has chosen four cases concerning case processing time. In three cases, the authorities' duty to give guidance is the main theme. Two cases concern access to documents, and three cases concern disqualification. In two cases confidentiality and the passing on of sensitive information are the main themes, and four cases concern the situation of public employees. Furthermore, there are six cases which, in one way or another, concern the requirements for the content and legality of decisions. Thus, ten cases concern other matters, for instance Case No. 1.1 about the lack of signatures on letters from the National Board of Industrial Injuries.

The themes in the chosen cases are not, and I would like to emphasize this, an adequate expression of what people complain about to the Ombudsman. The choice of cases published in the Annual Report is made from other criteria, above all whether they are of general legal interest, and/or whether they uncover significant errors and inadequacies in the administration's treatment of the citizens and processing of their cases. Therefore, it may, for that matter, be pure coincidence that for instance four cases about case processing time are published in this year's Annual Report.

On the other hand, the statistics show that 25.9 per cent of all cases with criticism and recommendations dealt with precisely the matter of case processing time, and that one out of five rejected cases in 2008 concerned case processing time.

Not only the Annual Report for 2008 shows that the authorities' case processing time interests the citizens and the Ombudsman. Ever since the first Annual Reports from the Ombudsman Office cases concerning this issue have been published.

To me, there is no doubt that the administration's case processing time is of vital importance to the relationship between public authority and citizen, and it is not surprising that the case processing time has been followed and debated intensely since the 1920s, if not longer.

Various reports, circulars and recommendations have since then attempted to name the principal considerations and guidelines that the authorities should base their actions on. For instance, in 1973 the Prime Minister's Office sent out a circular advising the administration to i.a. inform the complainants when the case processing dragged on. The circular had come into being at the Ombudsman's request and was later sent out again after a debate here at Christiansborg. Today, the Ombudsman usually refers to the Ministry of Justice's guidelines from 1986 to the Public Administration Act and the circular letters of 4 June 1997

from the Ministry of Justice and the Ministry of the Interior about goals for speedy case processing which build on parameters from good administrative conduct.

One of the four cases published this year is Case No. 20.5. A farmer needed an environmental authorisation to extend his cattle stock and submitted an application in December 2007. Half a year later the case processing had not yet begun, and the local authority did not think the case would be concluded before October 2009. The case was covered by the press, and the Ombudsman decided to investigate the case on his own initiative and stated i.a. that the municipal reform had, without doubt, entailed a lot of work for the local authorities both before and after 1 January 2007. Therefore, it was understandable that for a period of time the case processing took longer. But the Ombudsman used the case to underline that it is up to the local authority to contribute to ensure that this period is as short as possible, and that the case processing time is justifiable under all circumstances. Cases like this which have an impact on the applicant's vocation, cannot, in the Ombudsman's opinion, wait that long. The Ombudsman asked the local authority to inform him of how the case progressed. The case still has not been closed, and this September the Ombudsman began investigating a similar case from the same local authority, this time about a farmer who has, so far, waited three years for a building permit and environmental authorisation of a pigsty.

The structural reform was also part of the basis for the other case I want to mention here: Case No. 18.3. Here, the former regional state authorities had, together with the former Ministry of the Interior and Health, made new guidelines for the discarding of documents in the regional state authorities, hence later the state administrative authorities. As a consequence, in 2006 the regional state authorities started to discard their cases extensively – and after having become aware of the problem via his processing of

some concrete cases the Ombudsman took up the general matter on his own initiative. Especially two considerations are important here: The first is that the authorities ensure that they have proof of the exact basis for their decisions. This, of course, strengthens the citizens' legal rights and trust in the system. The second consideration concerns the possibility of subsequently granting access to files in accordance with the rules in the legislation.

The most important issue in the case was whether it was sufficient to store the documents for only a year. Referring especially to the legislation on obsolescence, initially the Ombudsman was of the opinion that storage for a year was insufficient. However, the state administrative authorities believed that basically all documents in all social cases within a time frame of at least five years could be obtained again. The Ombudsman therefore had no basis for criticizing the state administrative authorities' practice of sending their own files to the local authorities, but stated that it was the state administrative authorities' responsibility that their files were stored securely and for the necessary period of time. Thus, the Ombudsman will continue to ask for loan of the documents in the case when he receives a complaint about a decision made by a social complaints board or an employment appeal board – and the Ombudsman presupposes that the boards will then be able to obtain the documents in the case via the local authorities.

Four of the cases in this year's Annual Report can, as mentioned, be described as dealing with the situation of public employees. Here, I will merely mention Case No. 16.1. The case concerns whether it is consistent with the Ombudsman Act that a public authority – here the Ministry of Foreign Affairs – considers a complaint to the Ombudsman a breach of a stipulation in a severance agreement. In the case, the Ombudsman referred to i.a. the consequences of two judgments of the Supreme Court from 2005 according to which his access to consider dismissal cases

that are concluded in an agreement, is limited. If a settlement between the public authority and the dismissed employee settles any *objection*, the Ombudsman is probably prevented from trying the objectivity of and method of processing the dismissal. Complaints to the Ombudsman which are covered by severance agreements, are therefore usually rejected. But in this case the Ombudsman established that the access for anyone to complain to the Ombudsman cannot be limited unless there are evident grounds for doing so in the legislation – and from this follows, in the Ombudsman’s opinion, that the authorities are not authorized to contribute towards limiting the citizens’ access to complain to the Ombudsman by making agreements or in other ways.

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

In 2008, 23 inspections were conducted. This chart shows the distribution:

State prisons	2
Local prisons	5
Detentions	8
Police holding cells	1
Psychiatric wards	1
Social/psychiatric residential institutions/ district psychiatries	2
Residential institutions for children and juveniles	1
Accessibility for the disabled	1
Half-way houses	1
In total	23

In 2009, 23 inspections within the same areas have been planned or accomplished.

Since 1997, when the Ombudsman’s inspection activities were increased significantly, almost 350 inspections have been conducted. The majority of the inspections are performed in places where people are kept in confinement. It may sound like a lot of inspections – and it is.

However, the number of inspections should be measured against the very large number of institutions we have in Denmark – institutions which the Parliamentary Ombudsman is obligated to inspect systematically. When I use the word systematically, I mean that we have an obligation to re-inspect also.

Since 1997 inspections have been performed in all the places within the public sector where people are kept in confinement. Re-inspections have been performed in many places, and some places have been inspected three or four times during the period. I here disregard the psychiatric wards where we lack about half of the 53 psychiatric wards in the country.

To make it a bit more concrete: In early November this year we inspected Aarhus Local Prison. The last time we inspected this local prison, was in 1999 – the inspection case, however, was not concluded until 2003. Of course, that is a long time between the inspection and the re-inspection – and longer than what is usual.

However, there are some things one should be aware of when assessing the time span between inspections of individual places:

- The Parliamentary Ombudsman has – not least through the inspections – become a well-known institution among inmates in local and state prisons. Thus, in 2008 we processed 305 cases within the area of the Danish Prison and Probation Service (incidentally giving criticism in 30 per cent of the 108 fully investigated cases). Through several years, this area has yielded the largest number of

Ombudsman cases. I can inform you that we processed 44 complaints specifically concerning Aarhus Local Prison during the period.

- As I mentioned at the Legal Affairs Committee's hearing last year, the individual inspections are in fact part of an overall project – here for instance a local prison project. What proves to be important in the inspection of one local prison, may very well also be important to the other 39 local prisons/local prison wards. To give an example, the Ombudsman has just taken an initiative involving the Prison and Probation Service that may be important to all local and state prisons, on the basis of some inspections. The occupation of inmates in local prisons (and state prisons) is problematic. Some places cannot offer the inmates occupation at all – other places only offer a few of the inmates occupation. This means that in many places inmates have to stay locked up in their cells without occupation during the working hours. According to the rules, inmates should be offered occupation if possible, and as a group activity.
- The Parliamentary Ombudsman has also initiated a new type of inspections that imply that we will visit for instance individual local prisons more of-

ten. The inspections are not comprehensive – as I have mentioned, such inspections have already been performed – but consist mainly of talks with spokespersons and individual inmates who request an interview. In this connection it should be remembered that citizens generally have the option of visiting the Ombudsman Office to present their case in person. The prison inmates do not have this opportunity – although the need may be great for those who find it difficult to write a complaint.

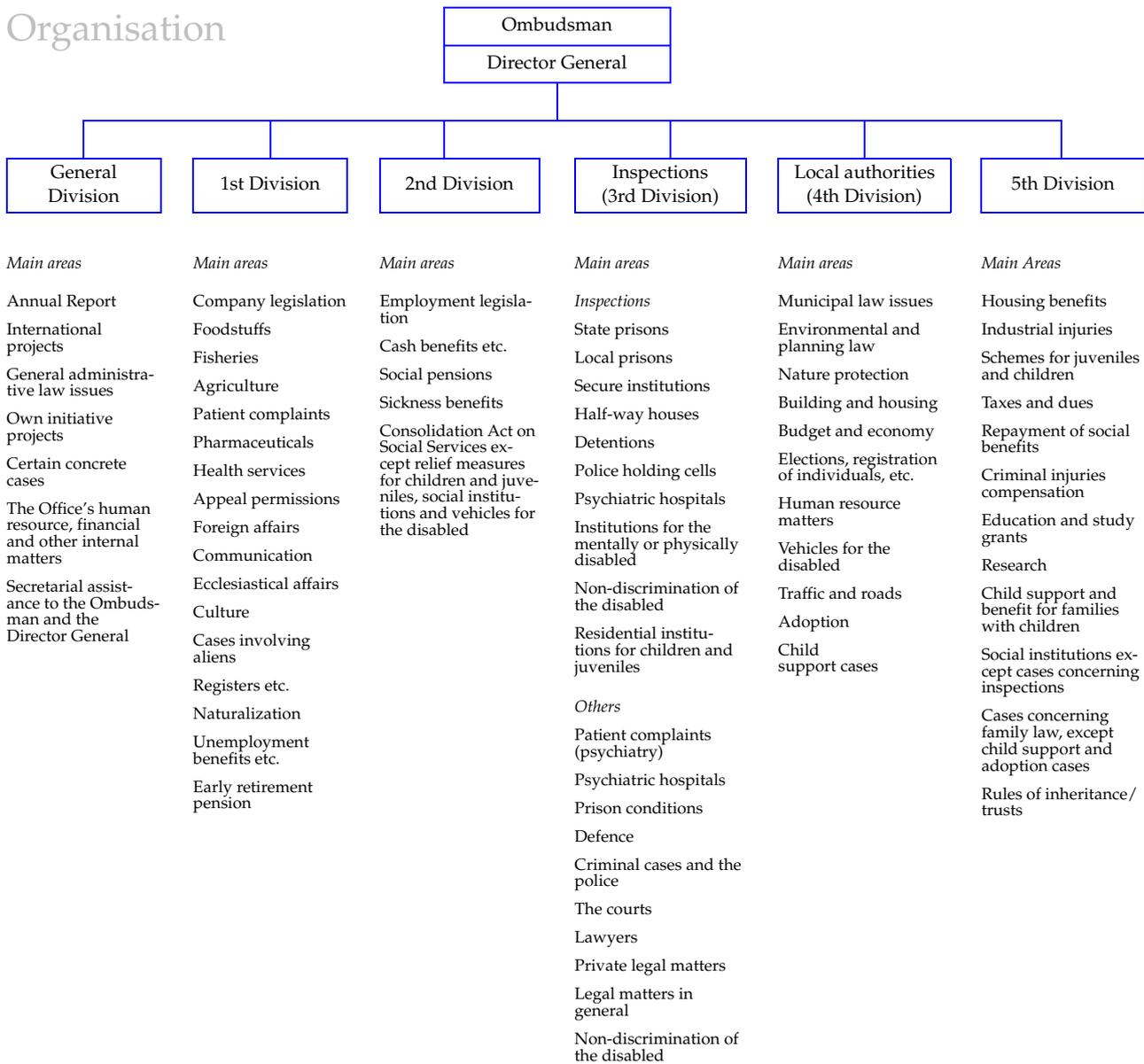
- It should also be mentioned that there are places that attract the Ombudsman's particular attention due to certain conditions – for instance the prison in Copenhagen's Police Headquarter and the Secure Ward in Nykøbing Sjælland. The prison in Copenhagen's Police Headquarter was established in 2004, but has already been inspected – extensively or in part – three times. And the Secure Ward has been inspected several times.

As you can see, an assessment of the inspection activity should not merely focus on the individual inspections, including how much time passes between individual inspections. The activity should be seen in relation to the Ombudsman's activities as a whole.

PART 2

YEAR
IN
REVIEW

Organisation



Staff and Office

The structure of the Office was as follows:

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

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

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

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

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

General Division

Director of Public Law Mr. *Kaj Larsen*

First Division

Head of Division Mrs. *Kirsten Talevski*

Second Division

Head of Division Mrs. *Bente Mundt*

Third Division (Inspections Division)

Deputy Permanent Secretary Mr. *Lennart Frandsen*

Fourth Division

Head of Division Mr. *Morten Engberg*

Fifth Division

Head of Division Mr. *Karsten Loiborg*

The 83 employees of my Office included among others 21 senior administrators, 24 investigation officers, 19 administrative staff members and 12 law students.

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International Relations

During 2008, as in previous years, the guests we received had very different backgrounds. Generally, however, their common goal was to learn more about the (Danish) Parliamentary Ombudsman institution and its role in a modern democratic society. There-

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

Travels and visitors

January	February	March
Visits 27–31 The Ombudsman of Nicaragua, Dr. Omar Cabezas Lacayo, with some members of his staff.	Visits 20–22 Marie Lukasova, Lucie Sykорова and Juri Foral from the Czech Ombudsman Office on a study tour. 21 Participants from Africa and Asia in a Good Governance Course via COWI/Danida. 25 The Human Rights Minister of Iraq and some members of her staff via COWI/Danida. 27 Adult students of municipal administration. From Viborg, Denmark. 27–28 Eight employees from Estonia’s Ombudsman office on a study tour.	Visits 3 Parliamentary delegation from Tanzania. 26 Parliamentary delegation from Bulgaria headed by the Chairman of the Bulgarian Parliament, Mr. Georgi Georgiev Pirinski, in connection with an official visit to the Danish Parliament.
Travels and conferences 18 Director of International Law Mr. Jon Andersen participated in the seminar “Deprivation of Liberty and Human Rights: The Prevention of Torture in Europe” which was arranged at the initiative of i.a. the French Médiateur in connection with the Optional Protocol to the UN Convention on Torture. In Paris, France.		Travels and conferences 7 I participated in an international conference celebrating the anniversary of the Estonian Ombudsman institution. In Tallinn, Estonia. 13–14 Head of Division Mr. Morten Engberg participated in Local Government Denmark’s delegate meeting.

April	May	June
<p>Visits</p> <p>13 I met with the Vice-chairman of the National Assembly of Vietnam, Mr. Nguyễn Đức Kiên.</p> <p>17 Four committee secretaries from the Landsting (parliament) of Greenland.</p> <p>21 The Ombudsman of Guatemala, Senör Sergio Morales, and some members of his staff.</p> <p>24 A group of inspectors from Turkey was briefed on the Danish Ombudsman institution. (The first of three visits by different groups).</p> <p>Travels and conferences</p> <p>5–7 I participated in the 7th Seminar for EU National Ombudsmen. In Paphos, Cyprus.</p> <p>10 I participated in Danish Regions' general assembly.</p> <p>12–14 Director of International Relations Mr. Jens Olsen participated in the conference "Modern Challenges to Human Rights and Freedoms" in celebration of the 60th anniversary of the signing of the UN Human Rights Declaration and the 10th anniversary of the Ukrainian Parliament's Human Rights Commission. In Kiev, Ukraine.</p> <p>26 April – 4 May Director of International Relations Mr. Jens Olsen and Chief Legal Adviser Ms. Elizabeth Bøggild Nielsen participated in the Caribbean Ombudsman Association's 5th Biannual Conference (CAROA). In Bermuda.</p>	<p>Visits</p> <p>5 I met with the UN's Special Rapporteur on Torture, Mr. Manfred Nowak.</p> <p>8 Second group of inspectors from Turkey was briefed on the function of the Danish Ombudsman institution.</p> <p>22 Third group of inspectors from Turkey was briefed on the functions of the Danish Ombudsman institution.</p> <p>28 Mr. József Berényi, representative from the Council of Europe, on the situation of the Romas.</p> <p>Travels and conferences</p> <p>15 I participated in a conference in celebration of the anniversary of the Polish Ombudsman institution. In Warsaw, Poland.</p> <p>21–22 I was host at a meeting of the West Nordic Ombudsmen (Norway, Iceland, Greenland and the Faroe Islands). In Copenhagen, Denmark.</p> <p>26 April – 4 May Director of International Relations Mr. Jens Olsen and Chief Legal Adviser Ms. Elizabeth Bøggild Nielsen participated in the Caribbean Ombudsman Association's 5th Biannual Conference (CAROA). In Bermuda.</p>	<p>Visits</p> <p>3 I met with High Court Judge Mr. Tokiyasu Fujita from Japan.</p> <p>13 I met with the new Representative at the Taipei Representative Office in Copenhagen, Mr. Charles Liu.</p> <p>15–18 The Ombudsman of Bulgaria, Mr. Guinio Ganev, and Deputy Ombudsman Mr. Borislav Tsekov.</p> <p>19 Eleven civil servants from the Vietnam Office of National Assembly.</p> <p>Travels and conferences</p> <p>1–3 Director of International Law Mr. Jon Andersen participated in a seminar for Liaison Officers to the European Ombudsman. In Strasbourg, France.</p> <p>11–12 Chief Legal Adviser Mrs. Vibeke von Stemann and legal case experts Mrs. Vibeke Lundmark, Mrs. Karen Vibeke Andersen and Mrs. Janne Lundin Vadmand participated in a workshop on children's rights. In Tallinn, Estonia.</p>

July

Visits

15 Head of Competency and Strategic Development Mr. Murrasiet Mentoor from the Department of Correctional Services (DCS), South Africa, concerning the Ombudsman's role as a national preventive mechanism under the UN Optional Protocol to the Convention against Torture (OPCAT).

Travels and conferences

13–15 Together with representatives from the Danish Rehabilitation and Research Centre for Torture Victims (RCT) I visited i.a. the Albanian Ombudsman in connection with the Albanian introduction of a national preventive mechanism under the Optional Protocol to the UN Convention against Torture.

August

Visits

20 A group of judges from Uganda in connection with a Danida-supported project.

Travels and conferences

11–12 Director of International Relations Mr. Jens Olsen participated in an anticorruption seminar at the invitation of Taiwan's Ministry of Justice. In Taipei, Taiwan.

September

Visits

2 A PhD student from Turkey writing a thesis on the Ombudsman institution.

5 Participants in the course "Integrating Human Rights in Development Programming" from the Danida Fellowship Centre. The participants came from Danida cooperation programmes in the South.

23 A judge from Portugal visited the Ombudsman institution for a briefing on the institution's activities.

25 Latinamerican course participants in connection with a course at the Danish Institute for Human Rights.

Travels and conferences

15–16 I participated in a Nordic Ombudsman meeting. In Oslo, Norway.

26 Head of Division Mr. Morten Engberg participated in a meeting between local authority Citizens Advisers.

29 Chief Legal Adviser Mrs. Lisbeth Adserballe participated in the Third European Conference of Information Commissioners. In Ljubljana, Slovenia.

October

Visits

3 Participants from Asia and Africa on a Danida conflict management course.

21 A delegation from Bhutan, headed by Bhutan's Parliamentary Chairman, in connection with a cooperation agreement between the Danish and the Bhutanese Parliaments.

29 Visit by Moderate Lawyers, a political student organisation from Aarhus University.

30 Visit by members of the Japanese Parliament's Legal Secretariat together with a Japanese cabinet member for a briefing on the Danish Ombudsman institution.

Travels and conferences

16–17 I participated in a West Nordic Ombudsman meeting. In Reykjavik, Iceland.

November

Visits

13 Visit by Yemen's Minister for Human Rights and associates.

27–28 Visit by representatives from the Centralamerican Ombudsmen and NHRI in connection with a twinning project in conjunction with the Norwegian, Swedish and Finnish Ombudsman institutions.

Travels and conferences

15 Head of Division Mr. Karsten Loiborg gave a presentation at Disabled Peoples Organisations Denmark's theme day. In Kolding, Denmark.

17 I participated in the conference "Human Rights – the Promised Land of Law, but also Fairness" which was arranged by the Bulgarian and the Dutch Ombudsman institutions. In Sofia, Bulgaria.

19–20 Director of International Law Mr. Jon Andersen participated in a meeting for contact persons in connection with the Peer-to-Peer Project under the Council of Europe. In Strasbourg, France.

December

Visits

3 Participants in the "International Basic Human Rights Course" from the Danish Institute for Human Rights.

3 I participated in a conference on the UN Convention on the Rights of Persons with Disabilities arranged by MBF, a Faroese umbrella organisation for disabled people. In the Faroe Islands.

Own Initiative Projects and Inspections

One own initiative project was concluded in 2008. 23 inspections were carried out during the reporting

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

Other Activities

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

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

Director of International Law Jon Andersen is attached to the Public Disclosure Commission's secretariat.

At the Minister of Justice's request, Director General Jens Møller was in October 2007 appointed Chair of the Committee on Exchange of Information within the Public Administration. The Committee's task was to deliberate on and make suggestions for a simplification of the regulation concerning exchange of information in both the Public Administration Act and the Act on Processing of Personal Data and to consider the special rules that apply to cases concerning applications.

The Committee submitted its report on 8 December 2008 (No. 1500), and on 29 May 2009 the Danish Parliament passed – on the basis of the Committee's suggestions in its report – Act No. 503 of 12 June 2009 concerning amendment of the Public Administration Act and the Act on Processing of Personal Data (exchange of information between public authorities).

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

Budget 2008

Salary expenses		Subsidy, staff lunch arrangement	211,000
Actual salary	31,613,000	IT, central equipment, network, programmes	903,000
Law students	169,000	IT, client equipment	1,096,000
Special holiday allowance	20,000	IT, consultants	237,000
Wage budget regulation account	1,940,000	Decentralized continued education	757,000
Overtime	293,000	Translations	267,000
Pension fund contributions	2,789,000	Printing of publications etc.	489,000
Contributions for civil service retirement pensions	908,000	Office supplies	662,000
Contributions for the Danish Labour Market Supplementary Pension (ATP)	103,000	Furniture and other fittings	911,000
Maternity reimbursement, etc.	- 454,000	Books and subscriptions etc.	943,000
Salary expenses in total	37,381,000	Cleaning, laundry and renovation	236,000
		Housekeeping uniforms	7,000
		Transfer costs	1,101,000
		Operating charges in total	11,713,000
Operating expenses			
Subsidy, Ministry of Foreign Affairs	- 819,000	Civil servant retirement payments	
Rent	3,831,000	Civil servant retirement contributions	- 908,000
Leasing of photocopiers	237,000	Retirement pays for former civil servants	807,000
Official travels	366,000	Retirement payments in total	- 101,000
Business entertainment	159,000		
Staff welfare	102,000		
Phone subsidies	17,000		
		TOTAL	48,993,000

PART 3

CASE
STATISTICS

Complaints Received and Investigated

1. New Cases

In the year 2008 a total number of 4,229 new cases were registered. The corresponding figure for the year 2007 was 3,976 new cases.

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

1999	3,423	2004	4,093
2000	3,498	2005	4,266
2001	3,689	2006	4,110
2002	3,725	2007	3,976
2003	4,298	2008	4,229

4,089 of the total number of 4,229 new cases in 2008 were complaint cases.

I took up 113 individual cases on my own initiative, cf. Section 17(1) in the Ombudsman Act.

The Ombudsman may carry out inspections of public institutions and other administrative authorities. Out of the total number of 4,229 new cases, 27 were inspection cases. Most of the inspection cases registered relate to institutions under the jurisdiction of the police and the prison services (detentions (among others, six in the Faroe Islands), police holding cells, local prisons and state prisons) and psychiatric institutions. However, inspections of other administrative units were also carried out, e.g. residential institutions for children and juveniles, a public swimming pool on the island Falster and the public libraries in Guldborgsund municipality – the two in-

spections last mentioned focussed on disabled people's access to the buildings. (The inspection cases are described in more detail in the Annual Report. In addition, all inspection reports are available in Danish on the Ombudsman's website www.ombudsmanden.dk).

1.1. Own Initiative Projects

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

One own initiative project initiated in 2007 concerning the case processing time in a total of 20 cases from two tax boards of appeal was concluded in November 2008.

Another previously launched project concerning an investigation of a total of 60 cases from three local authorities about enrolment of children in daycare was not concluded because the legal basis for the decisions made in the 60 cases had been changed significantly while the project was pending. The result of the investigation would therefore be retrospective and would not serve future purposes as own initiative projects are intended to.

2. Cases Rejected after a Summary Investigation

3,482 complaints lodged with my Office during 2008 were not investigated for the reasons mentioned below. In 1,709 cases, the complaint had not been appealed to a higher administrative authority, and a fresh complaint may therefore be lodged with my Office at a later stage.

The 3,482 cases were not investigated for the following reasons:

Complaint had been lodged too late	106
Complaint concerned judgments, judges or matters which had been or were expected to be assessed by the courts	117
Complaint concerned matters relating to the Parliament, including legislation	36
Complaint concerned other matters outside the Ombudsman's competence, including private legal matters etc.	196
The administrative possibilities of processing the case were not exhausted and were no longer applicable	43
Complaint not clarified or withdrawn	164
Inquiry without complaint	374
Anonymous complaint	10
Other applications, including complaints that the Ombudsman decided to turn down	641
The authority has reopened the case following the Ombudsman's request for a statement	29
Cases on the Ombudsman's own initiative and not fully investigated	57
The administrative possibilities of processing the case were not exhausted	1,709
<i>Total</i>	3,482

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

One of the complaints lodged in 2008 gave me reason to declare myself disqualified from the investigation. The Legal Affairs Committee assigned the case to a High Court judge.

Neither the Faroese Lagting, nor the Landsting in Greenland, has asked me to act as ad hoc Ombudsman in 2008.

4. Pending Ombudsman Cases

168 individual cases submitted to my Office before 1 January 2009 were still pending on 1 June 2009.

141 of the pending individual cases were submitted in 2008, and 27 dated from previous years. Some of the pending individual cases required a statement from the relevant authority or the complainant in order to be concluded, while others were awaiting general responses from a complainant or an authority.

5. Case Processing Time

Usually, complainants receive a preliminary reply from my Office within ten working days after receipt of the complaint, also in cases which are later rejected. Of the rejected complaint cases, 40.1 per cent were concluded within ten calendar days from receipt of the complaint. The average processing time for cases that were rejected, was 33.2 days.

The average processing time for cases subjected to a full investigation and concluded in 2008 was 5.9 months (178.7 days).

■ Tables

Table 1 All cases (regardless of registration date) concluded during the period 1 January – 31 December 2008, distributed per main authority and the result of the Ombudsman's case processing

Table 1: All concluded cases 2008 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
A. State authorities				
1. Ministry of Employment				
Department of Employment	18	15	2	1
The National Directorate of Labour	9	8	1	0
The Labour Market Appeals Board	18	15	3	0
The Labour Market Occupational Diseases Fund	1	1	0	0
The National Board of Industrial Injuries	32	27	3	2
The Danish Working Environment Authority	1	1	0	0
Employment appeal boards, in total	83	49	32	2
Job centres	3	3	0	0
LG (Employees' Guarantee Fund)	1	1	0	0
<i>Total</i>	166	120	41	5
2. Ministry of Finance				
Department of Finance	1	1	0	0
The State Employer's Authority	2	0	2	0
Region's Board for Wages and Tariffs	1	1	0	0
The Danish Agency for Governmental Management	1	1	0	0
<i>Total</i>	5	3	2	0

Table 1: All concluded cases 2008 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
3. Ministry of Defence				
Department of Defence	9	5	1	3
The Danish Defence Personnel Service	2	2	0	0
Defence Command Denmark	2	2	0	0
The Danish Home Guard	1	1	0	0
The Army's Operational Command	1	1	0	0
<i>Total</i>	15	11	1	3
4. Ministry of Justice				
Department of Justice	59	41	13	5
The Danish National Board of Adoption	1	0	1	0
The Civil Affairs Agency	32	30	1	1
The Data Protection Agency	24	21	3	0
Danish Prison and Probation Service	190	100	65	25
Local prisons	36	29	5	2
State prisons	80	71	6	3
The Courts of Denmark	1	1	0	0
The Criminal Injuries Compensation Board	8	4	4	0
Department of Family Affairs	81	64	14	3
Prison and Probation Service subdivisions	2	2	0	0
Police commissioners, in total	114	98	5	11
Director of Public Prosecutions	22	16	4	2
The National Commissioner of Police	19	16	2	1
Public prosecutors, in total	61	43	17	1
<i>Total</i>	730	536	140	54

Table 1: All concluded cases 2008 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
5. Ministry of Ecclesiastical Affairs				
Department of Ecclesiastical Affairs	21	18	2	1
Bishops	2	1	0	1
Deanery committees	2	2	0	0
<i>Total</i>	25	21	2	2
6. Ministry of Climate and Energy				
Department of Climate and Energy	1	1	0	0
The Energy Board of Appeal	4	3	1	0
Energinet.dk	3	3	0	0
The Danish Energy Authority	3	3	0	0
The Danish Energy Regulatory Authority	1	1	0	0
<i>Total</i>	12	11	1	0
7. Ministry of Culture				
Department of Culture	21	20	1	0
Newspaper Pool Distribution Committee	2	2	0	0
DR (Danish Broadcasting Corporation)	11	11	0	0
Heritage Agency of Denmark	3	2	1	0
Kunsthall Charlottenborg	1	1	0	0
Academies of music	1	1	0	0
Music schools	1	0	0	1
The Radio and Television Board	6	5	0	1
The Danish State Archives	1	1	0	0
Danish Agency for Libraries and Media	1	1	0	0
<i>Total</i>	48	44	2	2

Table 1: All concluded cases 2008 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
8. Ministry of the Environment				
Department of the Environment	13	10	1	2
Agency for Spatial and Environmental Planning	5	0	4	1
National Survey and Cadastre	3	3	0	0
The Environmental Board of Appeal	14	10	3	1
The Environmental Protection Agency	9	8	1	0
The Nature Protection Board of Appeal	43	22	21	0
The Forest and Nature Agency	5	5	0	0
<i>Total</i>	92	58	30	4
9. Ministry of Refugee, Immigration and Integration Affairs				
Department of Refugee, Immigration and Integration Affairs	145	98	37	10
The Refugee Board	5	5	0	0
The Immigration Service	71	71	0	0
<i>Total</i>	221	174	37	10
10. Ministry of Food, Agriculture and Fisheries				
Department of Food, Agriculture and Fisheries	13	13	0	0
Danish Food Industry Agency	3	1	1	1
Danish Veterinary and Food Administration	3	2	1	0
Agricultural commissions	2	2	0	0
The Danish Plant Directorate	2	2	0	0
Food and Veterinary Complaints Secretariat	2	2	0	0
<i>Total</i>	25	22	2	1
11. Ministry of Health and Prevention				
Department of Health and Prevention	42	30	8	4

Table 1: All concluded cases 2008 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
Danish Medicines Agency	3	2	1	0
Psychiatric patient complaint boards	4	4	0	0
The National Board of Health	4	4	0	0
The National Board of Patient Complaints	98	50	41	7
<i>Total</i>	151	90	50	11
12. Ministry of Science, Technology and Innovation				
Department of Science, Technology and Innovation	14	14	0	0
The Danish Agency for Science, Technology and Innovation	3	3	0	0
Danish National Advanced Technology Foundation	1	1	0	0
National IT and Telecom Agency	5	4	1	0
The Telecommunications Complaints Board	2	2	0	0
Universities and institutions of higher education	18	17	1	0
The Danish University and Property Agency	15	10	4	1
<i>Total</i>	58	51	6	1
13. Ministry of Taxation				
Department of Taxation	22	17	3	2
The Danish National Tax Tribunal	42	26	14	2
The Motor Vehicle Board of Appeal	1	1	0	0
SKAT (Danish customs and tax administration), in total	116	110	5	1
Tax boards of appeal	6	6	0	0
The National Tax Board	2	2	0	0
Assessment boards of appeal	2	2	0	0
<i>Total</i>	191	164	22	5

Table 1: All concluded cases 2008 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
14. Prime Minister's Office				
Department of the Prime Minister's Office	14	10	3	1
The High Commissioner of Greenland	2	2	0	0
<i>Total</i>	16	12	3	1
15. Ministry of Transport				
Department of Transport	11	10	1	0
DSB (Danish State Railways)	7	5	2	0
The Road Safety and Transport Agency	12	11	0	1
The State Commissioners for Expropriations	2	2	0	0
Danish Coastal Authority	1	1	0	0
The Civil Aviation Administration	4	2	2	0
The Danish Road Directorate	10	6	3	1
<i>Total</i>	47	37	8	2
16. Ministry of Foreign Affairs				
Department of Foreign Affairs	8	3	4	1
Danish delegations abroad (embassies, etc.)	2	2	0	0
<i>Total</i>	10	5	4	1
17. Ministry of Education				
Department of Education	14	12	0	2
Students' Grants and Loan Scheme Appeal Board	4	3	1	0
The Appeal Board concerning Vocational Training Establishments	1	1	0	0
Schools for vocational education and training (EGU)	1	1	0	0
Gymnasiums (upper secondary education)	7	6	0	1
The National Authority for Institutional Affairs	1	1	0	0

Table 1: All concluded cases 2008 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
The Complaints Board for Extensive Special Education	3	1	2	0
State Educational Grant and Loan Agency	16	16	0	0
Institutions of higher education	1	1	0	0
<i>Total</i>	48	42	3	3
18. Ministry of Social Welfare				
Department of Social Welfare	32	25	6	1
The Department's supervision of municipalities and regional and state administrations	2	1	1	0
The National Social Appeals Board	103	69	25	9
The National Social Appeals Board's Employment Committee	7	3	4	0
The Danish Supervisory Board of Psychological Practice	3	2	1	0
The National Board of Social Services	2	2	0	0
The National Social Security Agency	22	21	1	0
(Regional) social complaints boards	107	73	33	1
State administrations, in total	122	100	15	7
State administrations' supervision of municipalities and regional administrations, in total	38	25	12	1
<i>Total</i>	438	321	98	19
19. Ministry of Economic and Business Affairs				
Department of Economic and Business Affairs	5	5	0	0
Danish Enterprise and Construction Authority	2	1	1	0
The Danish Commerce and Companies Agency	1	1	0	0
The Commercial Appeal Board	2	1	1	0
The Danish Financial Supervisory Authority	5	5	0	0
The Consumer Complaints Board	1	1	0	0

Table 1: All concluded cases 2008 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
The Consumer Ombudsman	3	3	0	0
The Danish Competition Authority	2	2	0	0
Danish Patent and Trademark Office	1	1	0	0
The Audit Authority	1	1	0	0
The Danish Safety Technology Authority	2	2	0	0
The Storm Council	3	3	0	0
The Danish Maritime Authority	2	1	1	0
<i>Total</i>	30	27	3	0
<i>State authorities, in total</i>	2,328	1,749	455	124

Table 1A: All concluded cases 2008 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
A. State authorities	2,328	1,749	455	124
B. Local and regional authorities	1,327	1,224	65	38
C. Other authorities under the jurisdiction of the Ombudsman	0	0	0	0
D. Administrative authorities under the jurisdiction of the Ombudsman, in total	3,655	2,973	520	162
E. Institutions etc. outside the jurisdiction of the Ombudsman	263	263	0	0
F. Cases not related to specific institutions, etc.	246	246	0	0
<i>Year total</i>	4,164	3,482	520	162

● Graphics

Figure 1
Number of cases registered for the past ten years

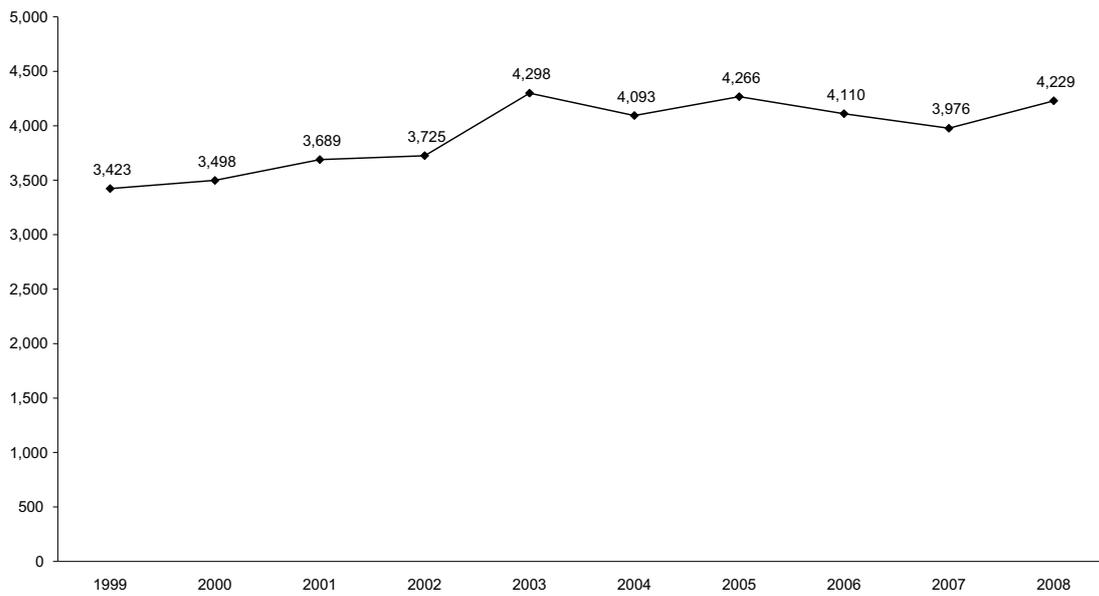


Figure 2
Categories of cases investigated to conclusion in 2008 (682 cases in total)

- A. Case processing.....10.6 %
- B. Case processing time.....9.8 %
- C. General issues.....6.9 %
- D. Administrative services2.9 %
- E. Decisions69.8 %

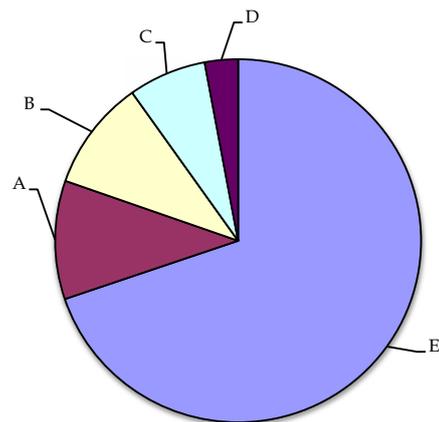


Figure 3
 Categories of cases in which criticism or recommendations were expressed in 2008 (162 cases in total)

- A. Decisions31.5 %
- B. Case processing.....24.1 %
- C. Case processing time.....25,9 %
- D. General issues.....16.7 %
- E. Administrative services1.9 %

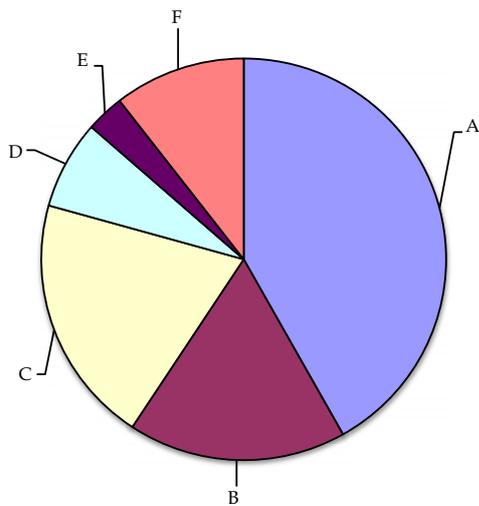
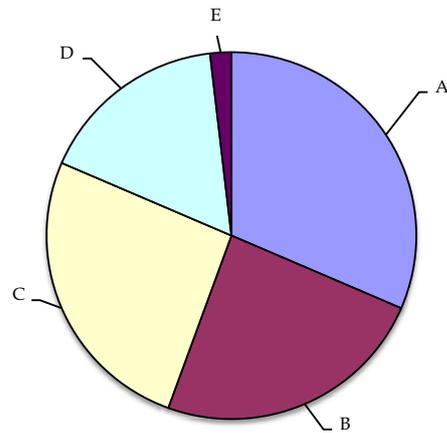


Figure 4
 Cases rejected in 2008, in categories (3,482 cases in total)

- A. Decisions 41.8 %
- B. Case processing 17.4 %
- C. Case processing time 20.0 %
- D. General issues 7.1 %
- E. Administrative services 3.0 %
- F. Miscellaneous 10.5 %

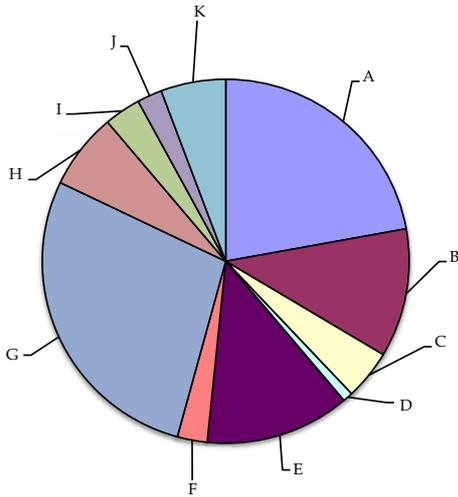


Figure 6
Reasons for rejection in 2008, in categories
(3,482 cases in total)

A.	Lodged too late	3.0 %
B.	Judgments.....	3.4 %
C.	The Danish Parliament	1.0 %
D.	Outside jurisdiction.....	5.6 %
E.	Unused channel of complaint.....	1.2 %
F.	Complaint not sufficiently defined.....	4.7 %
G.	Inquiries without complaint	10.7 %
H.	Anonymous complaints	0.3 %
I.	Other inquiries	18.4 %
J.	Reopened after hearing	0.8 %
K.	Own initiative	1.6 %
L.	Preliminary rejection – unused channel of complaint	49.1 %

Figure 5
Cases closed in 2008, in categories
(682 cases in total)

A.	Social benefits and labour law	22.1 %
B.	Environment, building and housing	11.4 %
C.	Taxation, budget and economy	4.4 %
D.	Business regulation etc.	0.9 %
E.	Municipalities, admin. regions, health, foreign affairs and defence.....	12.8 %
F.	Transport, communication and roads	2.6 %
G.	Judiciary matters.....	27.9 %
H.	Aliens.....	6.7 %
I.	Family law etc.	3.2 %
J.	Education, science, church and culture.....	2.2 %
K.	Human resource matters etc.....	5.7 %

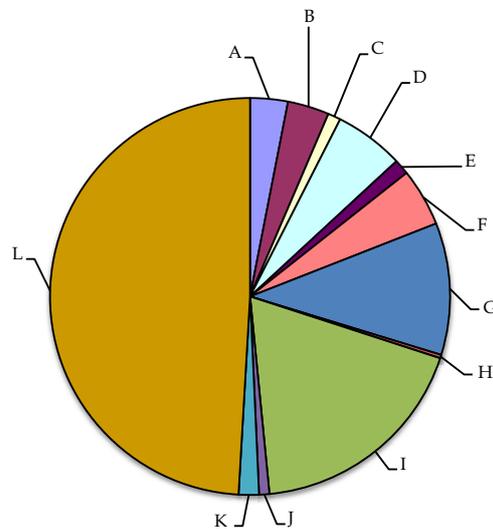
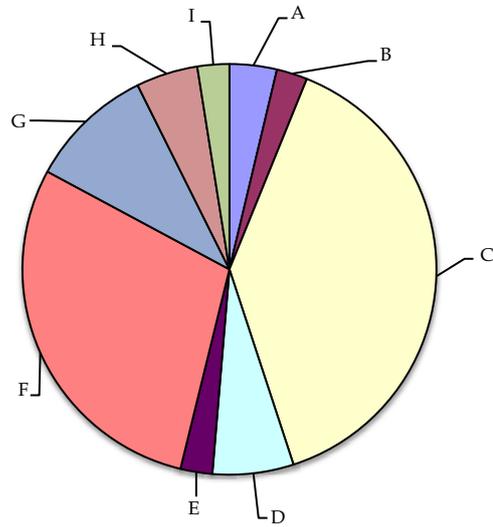


Figure 7
 Total of municipal cases closed in 2008,
 in categories (1,327 cases in total)

- A. Human resource administration3.7 %
- B. Schools and culture2.4 %
- C. Social benefits and health.....38.9 %
- D. Social and psychiatric services6.3 %
- E. Hospitals and health care.....2.5 %
- F. Technology and the environment.....29.1 %
- G. Job center9.8 %
- H. Other administrative bodies4.8 %
- I. Unspecified administration.....2.5 %



Part 4

SUMMARIES

Summaries ■ 37

1. Ministry of Employment

Of 166 cases closed in 2008, 46 were investigated. Criticism and/or recommendations were expressed in 5 cases. 2 cases are summarized.

1. Lack of signature on letters from the National Board of Industrial Injuries and failure to keep copies of letters sent

In the course of investigating a number of complaints concerning the National Board of Industrial Injuries, the Ombudsman noticed that not all letters from the Board had been signed by a case worker.

As a consequence, the Ombudsman initiated a general investigation into the lack of signatures on letters from the National Board of Industrial Injuries and the Board's failure to keep copies of the letters to identify the signers. The investigation was limited to decision cases.

The Ombudsman stated that for reasons of legal protection, practical purposes of proof and good order the outgoing letters from an administrative authority in a decision case, including the decision itself, must be signed and an authentic copy be kept on

file. For that matter, authentic copies should be kept in all cases.

While the Ombudsman was investigating the case, the National Board of Industrial Injuries changed its work routine so that all outgoing letters – except for reminders – are signed with an electronic facsimile signature, and copies are kept on file of all outgoing letters.

The Ombudsman expressed his criticism of the National Board of Industrial Injuries' work routine prior to the system change. In addition, the Ombudsman recommended that also reminders in future be provided with a signature.

(Case No. 2004-3889-009).

2. Processing of cases concerning past-deadline applications for parental leave Reaction to guidance error. Notification of administrative practice

Following an amendment to the Act on Parental Leave in March 2004, parents wishing to use their right to parental leave at a later date had to hand in a written application to that effect to a job centre before 1 April 2004. At the same time it was agreed that dispensation allowing the retention of the right to parental leave could be granted in exceptional cases to parents who had been unable to keep to the deadline due to reasons beyond their control. However, the

deadline for applying for the dispensation was 31 December 2004 at the latest.

After the dispensation deadline the Ministry of Family and Consumer Affairs (the Ministry) was approached by a number of citizens who were not registered as having applied for parental leave. The Ministry briefed the job centres on the correct processing of these cases in two letters of, respectively, 28 February and 15 April 2005. Those applicants whom the job centres could not immediately turn down, should

apply in writing to the Ministry for a concrete assessment of their case. In certain cases it had to be considered a reasonable probability that administrative errors or misunderstandings might have occurred in connection with the application which should not be detrimental to the applicant. In those cases, and regardless of the lack of registration, the applicant could, according to circumstances, be considered to have registered after all. The Ministry would then inform the job centre of its interpretation.

The Ombudsman noticed the letters during his processing of a concrete case and started an own initiative investigation of the described practice.

The Ombudsman stated that the authorities' practice was based on a common principle in administrative law of so-called real compensation as a reaction

to guidance errors, etc. The authorities' lack of or inadequate guidance to a citizen (here, e.g., the introduction of a deadline for registration) may according to this principle lead to the citizen being placed as if correct guidance had been given, and the citizen had acted in accordance therewith. The Ombudsman did not think that the use of this principle in the outlined cases should be considered precluded by virtue of the amendment of the Act on Parental Leave.

The Ombudsman did, however, state that, at least as a reflection of good administrative behaviour, the Ministry should have made sure that the public was notified of the described practice. As this notification had taken place in the meantime, the Ombudsman took no further action in the case.

(Case No. 2006-1998-022).

2. Ministry of Finance

Of 5 cases closed in 2008, 2 were investigated. No criticism and/or recommendations were expressed in any of the cases. No cases are summarized.

3. Ministry of Defence

Of 15 cases closed in 2008, 4 were investigated. Criticism and/or recommendations were expressed in 3 cases. No cases are summarized.

4. Ministry of Justice

Of 730 cases closed in 2008, 194 were investigated. Criticism and/or recommendations were expressed in 54 cases. 5 cases are summarized below.

1. Case processing time in the Ministry of Justice in an inheritance case

Three members of a family applied to the Ministry of Justice for the inheritance of an aunt. The inheritance would otherwise revert to the State because there were no next of kin automatically entitled to inherit. The application was filed by a lawyer.

The Ministry asked the lawyer to arrange a Probate Court conducted hearing of the applicants and any impartial witnesses to the wishes of the deceased regarding the disposal of her possessions. However, Probate Court refused to carry out hearings in the case but suggested that the lawyer talked with the family members himself and wrote a report. The lawyer asked the Ministry of Justice if the Ministry agreed to this method. When he did not receive a reply, he went ahead and talked with the family members and sent the Ministry his report of the talks. Lat-

er on, the lawyer and Probate Court sent numerous reminders to the Ministry but the lawyer did not hear from the Ministry until 17 months later. The Ministry's total case processing time was over 25 months. The Ministry of Justice expressed its regret to the Ombudsman for the lengthy case processing time and particularly for the lack of reply to the reminders.

The Ombudsman agreed that the Ministry's case processing time was a matter for severe criticism and joined the Ministry in regretting that the many reminders had gone unanswered. Furthermore, in the Ombudsman's opinion the Ministry should have advised the lawyer that the case was delayed.

(Case No. 2008-0384-600).

2. Preliminary case processing in cases of suspension of sentence, etc.

The passing-on of health information to the police and the requirement to attempt to obtain consent

A lawyer complained on behalf of a citizen that the Danish Prison and Probation Service (the Service) had sent the citizen's application for a suspension of his sentence to the police and asked for comments. The Service had also sent a medical report to the police.

The Ombudsman stated that, even though the rules do not specifically say so, the Service may obtain comments from the police if this is necessary for the Service's decision process.

According to Section 28(2)(i) of the Public Administration Act information about health matters may be passed on when it follows from a statute or pursuant to rules laid down in a statute.

The Ombudsman stated that the stipulation of rules on passing on information in a statutory order pursuant to Section 11 of the Corrections Act may give rise to some uncertainty. However, the Ombudsman did not criticise the use of Section 11 as authority for the statutory order. The Ombudsman was

of the opinion that the statutory order did give authority to pass on the citizen's information to the police, but found it regrettable that the Service had not first tried to obtain consent from the citizen.

The Ombudsman urged the Service to endeavour to change Section 11 to bring it into keeping with the

Ministry of Justice's guidance rules on quality in law. The Ombudsman also assumed that the Service would clarify two specific rules in the statutory order and, if necessary, at the same time amend the order to bring it into line with prevailing practice in this field.

(Case No. 2006-2420-620).

3. Homicide chief's information to a newspaper in the case of a missing woman

In connection with two missing person searches for a young woman who had disappeared and was feared killed, the homicide chief in the case gave information to the press on the woman's purely personal circumstances.

The woman's brother and a legal aid counsellor reported the homicide chief to the police for breaching his duty of confidentiality. Both the district public prosecutor and the Director of Public Prosecutions refused to open an inquiry as it was deemed to have been necessary for the sake of the investigation to make the information public. The woman's brother and the legal aid counsellor then complained to the Ombudsman.

The authorities maintained to the Ombudsman that the publication of the purely personal details of the woman's life was necessary for the sake of the investigation.

The Ombudsman stated that the starting point for passing on information of purely personal details must be that only information that is strictly relevant, may be passed on. The Ombudsman agreed with the

Director of Public Prosecutions that the assessment of which information could be passed on, was a matter for discretion from case to case.

In connection with the actual case the Ombudsman found it particularly important that the publication of more detailed information about the missing woman could help to attract special attention to the search, partly in the circles usually frequented by the woman and partly in the public at large. The Ombudsman also stressed that almost five months had passed between the first and the second missing person search without, it seemed, any details about the woman's disappearance coming to light. In the Ombudsman's opinion this in itself could justify that additional and more detailed information on purely personal circumstances be made known to the public.

On this basis the Ombudsman did not find grounds for criticising that the report to the police about the homicide chief had been dismissed, or the exercised discretion.

(Case No. 2007-3730-610).

4. Overcrowding of the detention in Tasiilaq, Greenland

An internet newspaper described conditions in the detention centre in Tasiilaq on the east coast of Greenland as "wretched and miserable", with partic-

ular reference to the massive problems of overcrowding of the detention.

The newspaper articles also mentioned a criminal case against the head of the Tasiilaq station. The station head was charged with dereliction of duty for not locking the remanded and sentenced prisoners in the individual detention cells at night, thereby contravening the chief constable's rules. The charge against the station head was, however, dismissed by the Tasiilaq District Court as the Court agreed with the station head that locking in the inmates was not safe in view of the conditions.

The Ombudsman started an investigation of the case on his own initiative. After a thorough reading of the police arrest protocol etc. the Ombudsman found that only on twelve days (of the 334 days, or eleven months, in 2006 on which he had received information) did the records show no overcrowding of the detention. Subsequently, and as the overcrowding problem had not improved to any significant extent during the first six months of 2007 in his immediate evaluation, the Ombudsman asked the author-

ities for additional information and statements. During the previous case investigation the authorities had only referred to the opening on 1 July 2007 of a temporary prison in Kangerlussuaq, a village on the west coast of Greenland, and to the prospect of opening a (permanent) prison on the east coast within a few years.

The Prison and Probation Service then informed the Ombudsman that the authorities in question (including the Palaces and Properties Agency and the Danish Police) had decided that the Tasiilaq detention would be extended with two extra detention cells, and that the extension project would be carried out when the climatic conditions so allowed with a view to occupation by the autumn of 2008.

On 3 February 2009 the Ombudsman noted that the extension work had gone as planned, and that the Tasiilaq detention centre now has five detention cells. (Case No. 2006-2982-618).

5. Dismissal of sight-impaired employee without considering possible disabled status

A woman was dismissed after 24 years as a civil servant with the Prison and Probation Service. She had an ophthalmic (eye) disease which meant that she could not work at a computer for more than a limited amount of time each day. It was primarily the eye disease which caused her work problems at the Service.

The Ombudsman stated that the employer had not made sufficient efforts to find alternative ways of keeping the woman in the workplace by compensating for the eye disease and perhaps employing her in a flexi job.

The Ombudsman also said that the employer should have considered whether the woman's eye

problems could be characterised as a disability, meaning that a possible breach of the Act on Discrimination against the Disabled should be included in the assessment of the case.

The woman was dismissed less than a year before she would have been able to take early retirement. In the Ombudsman's opinion the employer should have taken into account the fact that prior to her dismissal the woman had stated several times to the employer that she wished to stay in the workplace until she could take early retirement. In addition, the Ombudsman did not think that the employer could disregard the woman's length of service.

The Ombudsman stated that the case processing by the Prison and Probation Service provided grounds for extreme criticism. In addition, the Ombudsman found that the authorities had grounds for

resuming the case processing with a view to considering the woman's claims.
(Case No. 2007-1785-813).

5. Ministry of Ecclesiastical Affairs

Of 25 cases closed in 2008, 4 were investigated. Criticism and/or recommendations were expressed in 2 cases. 2 cases are summarized below.

1. Member of deanery committee should not have been declared disqualified

A diocese decided that a member of a deanery committee should have been declared disqualified in connection with the decision on financing for a new church. The church was going to be built on a piece of land that had been bought from the local council. The diocese's reason for finding the member disqualified was that he was also the local council's finance director, and that there could be a conflict of interest between the committee and the local council because the local council could demand that the land be sold back to them for the selling price if the building of the church had not been financed and begun within a certain deadline. The local council would thereby probably be able to gain a substantial amount of money by subsequently reselling the plot for the building of residential housing.

The member complained to the Ombudsman who agreed that the member was not disqualified. The

Ombudsman found it important that the local council's interest in the case was not primarily the prospect of a considerable profit by reselling the plot. On the contrary, the interests of the local council would be of a wider and more general nature and therefore also include i.a. the construction of a church. The Ombudsman referred i.a. to the fact that the adopted district plans showed *that* the local council had been interested in the building of a church since the 1980s, *that* the local council had sold the plot for precisely that purpose, and *that* the right of repurchase clause was common. Thus, according to the information on the case there was no conflict of interest between the deanery committee and the local council that would provide grounds for disqualification.

(Case No. 2006-3671-709).

2. Service tenancy rent. Access to complain

An incumbent was dissatisfied with the service tenancy rent set by the diocesan authority and brought the matter before the Ministry of Ecclesiastical Affairs (the Ministry). The Ministry refused to consider

the matter with reference i.a. to an agreement between the Ministry of Finance and the civil servants' central organisations whereby the authority to set the rent rested with the diocese.

The Ombudsman stated that the citizens' non-statutory right to complain about a decision to a higher authority cannot be removed or restricted through an agreement.

Furthermore, the said agreement had to be characterised as a framework agreement which did not determine practical implementation. The authorities' unilateral setting of the amount payable by a civil servant with a service tenancy obligation was a decision within the sense of administrative law.

The decision had been made by an authority within the usual hierarchical structure, and the access to complain was not barred pursuant to specific legisla-

tion. On this basis the Ombudsman was of the opinion that the decision could be brought before the Ministry, and he recommended that the Ministry consider the case. In addition, the Ombudsman recommended that the Ministry either change the service tenancy circular to include an express complaint guideline or take the initiative in changing the legislation to make it possible for the Ministry to refuse such complaints.

The Ministry subsequently considered the case and stated that the circular would be changed in accordance with the Ombudsman's recommendation.

(Case No. 2007-3458-802).

6. Ministry of Climate and Energy

Of 12 cases closed in 2008, 1 was investigated. No criticism and/or recommendations were expressed in the case. No cases are summarized.

7. Ministry of Culture

Of 48 cases closed in 2008, 4 were investigated. Criticism and/or recommendations were expressed in 2 cases. 1 case is summarized below.

1. Dismissal of employee who did not accept a warning

The principal of a music school gave a teacher a warning because she had failed to attend a Christmas concert. The warning was given during a meeting, but afterwards a disagreement about the minutes from the meeting arose between the principal and the teacher. The teacher would only sign the minutes with comments which the principal would not accept. The principal asked the teacher to acknowledge

and accept the warning in writing, and when this did not happen, the teacher was dismissed.

The Ombudsman stated that the warning given to the teacher had been warranted. The Ombudsman also said that there are no grounds for assuming that an employee who has been warned by the employer, has a duty to inform the employer that he or she acknowledges and accepts the warning. Neither does the employee have a duty to sign the minutes from a

disciplinary meeting during which the warning has been given to the employee. Consequently, the dismissal was unwarranted. In addition, the music school had not in all particulars followed the rules on party hearing and grounds. The Ombudsman recommended that the music school reopen the case.

The music school did reopen the case and took note of the Ombudsman's statements. The teacher asked the Ombudsman to recommend to the Civil Affairs Agency that she be given free legal aid in a case against the music school, but the Ombudsman decided not to do so.

(Case No. 2006-4201-813).

8. Ministry of the Environment

Of 92 cases closed in 2008, 34 were investigated. Criticism and/or recommendations were expressed in 4 cases. 1 case is summarized below.

1. Access to files concerning environmental information on flue gas waste

A lawyer complained that the Environmental Protection Agency and the Ministry of the Environment (the Ministry) had refused his client access to all files with information pertaining to a specific company's export of flue gas waste to Germany. The authorities had also refused to give access to files with information on the authorisation of flue gas waste export to a specific company in Germany.

The Ombudsman stated that the authorities had not assessed the request for access to files in accordance with the requirements pursuant to the weighing rule of Section 2(3) in the Act on Access to Environmental Information Files, and he recommended that the Ministry of the Environment reopen the case. At

the same time the Ombudsman recommended that the Ministry in this context consider whether information other than that which the Ministry had considered environmental, could be included in the concept as defined by the Act. Furthermore, the Ombudsman criticised the Ministry's case processing and case processing time in the matter, referring i.a. to the absolute reply deadline of two months pursuant to the Act on Access to Environmental Information Files.

Subsequently, the Environmental Protection Agency granted full access to the companies' export applications.

(Case No. 2008-0635-101).

9. Ministry of Refugee, Immigration and Integration Affairs

Of 221 cases closed in 2008, 47 were investigated. Criticism and/or recommendations were expressed in 10 cases. 4 cases are summarized below.

1. Reopening of cases concerning humanitarian residence permits after the applicants have left Denmark

Nova. Substantive identity

On his own initiative the Ombudsman started an investigation of a general issue concerning the reopening of previously concluded cases on residence permits on humanitarian grounds.

According to the provisions of the Aliens Act an application for a residence permit on humanitarian grounds may only be submitted by persons already in the country. Consequently, it was clear that the immigration authorities could refuse first time applica-

tions for humanitarian residence permits submitted from abroad. The question was, however, whether applications for the reopening of cases could also be refused when submitted from abroad by persons who had been refused a humanitarian residence permit during their stay in Denmark, and who had subsequently been sent out of the country or left on their own accord.

(Case No. 2006-3032-649).

2. Refusal to grant access to documents from international meetings

A journalist complained to the Ombudsman about the partial refusal by the Ministry of Refugee, Immigration and Integration Affairs (the Ministry) to grant access to documents pertaining to two international meetings on the expulsion of rejected asylum seekers to Kosovo.

The grounds given for the refusal was the protection of important considerations vis-à-vis Danish foreign policy or external economic interests (Section 13(1)(ii) of the Access to Public Administration Files Act). In the Ministry's opinion, the excepted documents and information had been compiled based on an assumption of discretion, an assumption which was also evident in the participating countries' statements. In addition to this, the Ministry refused in-

creased access to the documents with reference to the duty of confidentiality.

The Ombudsman noted that, particularly in relation to one of the two meetings, it was actually only one country which subsequently had indicated to the Ministry that the information had been given on the assumption of discretion. The other three countries stated to the Ministry that they had either themselves given out the information or were prepared to do so for a fee.

This in the Ombudsman's opinion showed considerable doubt as to the countries' mutual conditions for submitting the information and whether any reservations on discretion had been observed and respected in practice. The Ministry had not attempted to shed light on this doubt.

On this basis the Ombudsman did not think that the Ministry had had the necessary grounds for considering the information to be confidential and subject to non-disclosure. As the right to refuse access to files pursuant to Section 13(1)(ii) of the Access to Public Administration Files Act coincides with the duty of non-disclosure, neither did the Ministry have the

necessary grounds for refusing access with reference to said provision.

Following the Ombudsman's recommendation the Ministry made a new decision in the case, and the journalist was subsequently granted access to all of the previously excepted documents.

(Case No. 2007-2990-601).

3. The Integration Minister's written guidance to citizen asking about family reunification based on EU rules

A citizen had been refused family reunification with his registered partner and subsequently wrote to the Minister for Integration to ask for guidance on any other ways of obtaining a residence permit for the partner. In the letter he expressly mentioned the possibility of using the EU rules on free movement of labour and moving to Sweden. In her reply the Minister referred the citizen to information found on the website of the Danish immigration authorities, www.nyidanmark.dk. The case was covered by the press at the end of July 2008, and in this context it was mentioned that the Minister for Integration had omitted to give guidance on the options provided by EU law. The Ombudsman then decided to look into the matter.

The Ministry for Integration (the Ministry) was of the opinion that the duty to provide guidance to the

citizen had been fulfilled with the general reference to the website. The Ombudsman did not agree; in his opinion, the Ministry should have provided the citizen with express guidance on the possibility of obtaining family reunification through EU rules – as a minimum by mentioning that the website provided information on the practice for family reunification according to EU rules. In addition, the Ombudsman remarked that in his opinion it would have been natural if the Ministry in the letter to the citizen had given an outline of the relevant current practice.

As a standard draft referring to the practice for family reunifications according to EU rules was now in use, the Ombudsman took no further action in the case.

(Case No. 2008-2828-609).

4. The immigration authorities' guidance on family reunification according to EU law, etc.

In a series of articles in the summer of 2008 the press accused the Immigration Service of a practice going back years of omitting to give guidance on the possibility of obtaining family reunification based on EU law. The Ombudsman then asked the Immigration Service to give an account of their practice in this regard for the period 2002-2008. He also asked for de-

tails of the information and guidance made available to citizens in that same period. Afterwards, the Ministry of Immigration was invited to comment on the Immigration Service's account.

The Ombudsman gave his final statement on the case in the late autumn of 2008. His investigation showed that in some periods the immigration au-

thorities had interpreted the related EU law restrictively, and that on some important points the practice had been very fluctuating. This, in the Ombudsman's opinion, was unfortunate. He also noted that the immigration authorities had in several instances taken a long time to bring their practice into line with new judgments in this field from the European Court of Justice. The Ombudsman found this to be regrettable.

In addition, the Ombudsman criticised the immigration authorities for providing inadequate information on their official website, www.nyidanmark.dk, concerning the practice for family unifica-

tion via EU law. He also stated that during the course of the case processing he had learned of some actual cases in which the immigration authorities had not lived up to the guidance duty pursuant to Section 7(1) of the Public Administration Act in their replies to queries from the public.

As the immigration authorities had undertaken thorough changes of their practice and in this connection adjusted and added to the information on the website, the Ombudsman took no further action in the case.

(Case No. 2008-2300-609).

10. Ministry of Food, Agriculture and Fisheries

Of 25 cases closed in 2008, 3 were investigated. Criticism and/or recommendations were expressed in 1 case. No cases are summarized.

11. Ministry of Health and Prevention

Of 151 cases closed in 2008, 61 were investigated. Criticism and/or recommendations were expressed in 11 cases. 1 case is summarized below.

1. Calculation of deadline for complaint to the National Board of Patient Complaints

Complaint presented by deceased patient's relative

A lawyer complained to the Ombudsman that the National Board of Patient Complaints (the Board) had refused his client's complaint about the treatment of the client's now deceased spouse. The grounds for the Board's refusal were that the complaint had been lodged after the expiry of the two year period of limitation for lodging complaints with the Board. The period of limitation – which runs from the time when the complainant was or should have been aware of the matter complained of – should in

the Board's opinion be counted from the date when the spouse died. The complaint was refused because the death of the spouse had occurred more than two years prior to the time when the complaint was lodged.

The Ombudsman stated that the non-statutory right to complain to which the next of kin (including a spouse) to a deceased patient is entitled, follows from a long-standing practice of the National Board of Patient Complaints. The Ombudsman then noted

that he understood the Board's practice to mean that the next of kin's right to complain was not an independent right but, on the contrary, a right which derived from the relationship to the deceased. This was, he understood, the reason for the Board's view that the period of limitation could not be dated later than from the date on which the death occurred.

In the Ombudsman's opinion the right of complaint to which the next of kin to a deceased patient is entitled, is an independent right. This means that the Board's calculation of the two year period of limitation should be based on the subjective circumstances of the complaining relative. As the Ombudsman mentioned, it is undisputed that it is not a condition for the next of kin's right to complain that the deceased prior to death had expressed a wish to complain. In addition, the Ombudsman found it impor-

tant that the next of kin's right to complain only comes into effect after the patient has died, and that the next of kin at that point no longer has anyone from whom to derive the right.

Only in special cases where the deceased prior to death had expressed a wish to lodge a complaint did the Ombudsman think that the next of kin's right to complain should give way out of regard for the interests of the deceased.

The Ombudsman recommended that the Board reopen the case and reconsider whether the complaint was indeed time-barred.

Subsequently, the Board reopened the case.

The Ombudsman consequently took no further action in the case.

(Case No. 2007-0014-420).

12. Ministry of Science, Technology and Innovation

Of 58 cases closed in 2008, 7 were investigated. Criticism and/or recommendations were expressed in 1 case. No cases are summarized.

13. Ministry of Taxation

Of 191 cases closed in 2008, 27 were investigated. Criticism and/or recommendations were expressed in 5 cases. 3 cases are summarized below.

1. Inland Revenue's assumption about continued party representation

The Ombudsman started an investigation on his own initiative into the Danish Inland Revenue's (SKAT) guidelines for involvement of representative agents in the communication between SKAT and a taxpayer.

The guidelines assumed that, in the event of SKAT raising a new case against the taxpayer in question,

the professional representative agent would remain the same as in the most recent communication between the taxpayer and SKAT. The guidelines listed some specific cases where this assumption was invalid, the reason being that there could be a general

uncertainty in these cases as to whether such an agency still existed.

The Ombudsman stated that it was not impossible that, due to this assumption, SKAT accidentally approached a former agent who no longer represented the taxpayer. This carried the risk that in some cases SKAT would be in violation of the rules on agency, the rules on confidentiality and disclosure of information to other private persons and the rules in the Act on Processing of Personal Data on how to deal with information of a personal nature.

2. Case processing time of more than 4 years in the National Tax Tribunal

A man complained to the National Tax Tribunal (the Tribunal) about the tax assessment for his limited liability company as well as for his private tax assessment. On receipt of the man's complaint the Tribunal informed him that the case processing time was 9 to 15 months. Following receipt of the last of the material on the cases from the subordinate authorities, the cases rested with the Tribunal for 1 year and 2 months without the Tribunal taking any action. At the man's request a meeting was held about the case but, after having received the man's comments to the minutes from the meeting, the case was again left unprocessed with the Tribunal. After another 1 year and 1 month the man pressed the Tribunal for a reply. During a telephone conversation in continuation of the reminder the Tribunal regretted the long case processing time and stated that the cases would be expedited. Still the cases progressed no further, and the man sent another reminder. At this time the cases had been under consideration by the Tribunal for 3

The Ombudsman added that there would not be the same problem if SKAT obtained a specific power of attorney from the taxpayer to the effect that he or she wished to be represented by a specific professional agent also in future tax cases, and that the power of attorney also specifically said that it was valid until such time as the taxpayer expressly stated to SKAT that it was revoked.

The Ombudsman recommended that SKAT change its guidelines in the light of his comments. (Case No. 2006-4251-209).

years and 10 months and 3 years and 6 months, respectively.

When the man finally complained to the Ombudsman, the Tribunal had had the cases for processing for more than 4 years, and they were still not concluded.

The Tribunal deeply regretted the very long case processing time to the Ombudsman and also regretted that the man had not since the meeting been regularly informed of the case processing status.

The Ombudsman found it a matter for severe criticism that the Tribunal's processing of the cases was still not concluded after more than 4 years, and that the Tribunal through all of this time had omitted to inform the man that the processing of the cases was delayed and the reason for the delay.

The Ombudsman also criticised that the Tribunal had not filed any notes on the telephone conversation which according to the Tribunal had taken place on the basis of one of the man's reminders.

(Case No. 2007-3804-200).

3. Accountancy company's secondary interest in tax case not sufficient for case party status

An accountancy company had advised a client on a taxation question. On the basis of the accountancy company's advice the client carried out a transaction which was later fiscally disallowed by the taxation authorities.

The tax case ended up before the Supreme Court. The accountancy company acted as intervener in support of the client in the Supreme Court case on the grounds that the client had reserved the right to demand compensation from the accountancy company if the client lost the tax case.

When the Supreme Court had delivered a judgment in the case, the accountancy company applied

for cost compensation pursuant to the Tax Administration Act. The National Tax Tribunal (the Tribunal) refused to grant the accountancy company cost compensation because the Tribunal did not think that the accountancy company was a party in the client's tax case.

In the Ombudsman's opinion, the accountancy company's secondary interest in the tax case was not of such a nature that the Tribunal should have considered the accountancy company a party. The Ombudsman used the common party concept of administrative law in his assessment.

(Case No. 2008-1209-219).

14. Prime Minister's Office

Of 16 cases closed in 2008, 4 were investigated. Criticism and/or recommendations were expressed in 1 case. No cases are summarized.

15. Ministry of Transport

Of 47 cases closed in 2008, 10 were investigated. Criticism and/or recommendations were expressed in 2 cases. 1 case is summarized below.

1. Privatisation of vehicle inspection test (MOT) company

Do the public administration disqualification rules apply?

A lawyer complained to the Ombudsman that the Road Safety and Transport Agency (the Agency) had authorised rust protection centre companies to also carry out inspection tests of vehicles (MOTs).

The Ombudsman stated that, based on the rules adopted vis-à-vis private vehicle inspection test com-

panies in connection with the privatisation, there are no common rules regarding so-called public administration disqualification. In the Ombudsman's opinion, the common rules on public administration disqualification would indeed result in disqualification in a situation where a vehicle inspection test centre,

which also functioned as a rust protection centre, had to assess defects and shortcomings in a vehicle which the centre had itself previously rust proofed.

As the rules on public administration disqualification do not apply, the Ombudsman did not think that he had grounds for criticising the view of the legal basis taken by the Agency and the Ministry of Transport and Energy to the effect that there was no disqualification in a situation as described above. Consequently, neither could the Ombudsman criticise that the Agency had given the authorisations to carry out vehicle inspection tests.

However, the Ombudsman did state that the Agency's guidance on the subject was misleading, and asked that the wording of the guidance be changed at the first given opportunity.

The Ombudsman briefed Parliament's Transport Committee and Legal Affairs Committee on the matter so that the committees were informed of the consequences resulting from the framing of the rules, including the fact that no public administration disqualification rules applied for inspection test companies.

(Case No. 2006-1740-612).

16. Ministry of Foreign Affairs

Of 10 cases closed in 2008, 5 were investigated. Criticism and/or recommendations were expressed in 1 case. 1 case is summarized below.

1. Complaint to the Ombudsman considered a breach of agreement

The Ministry of Foreign Affairs considered a complaint to the Ombudsman lodged by a former employee as a breach of a stipulation in a severance agreement.

The Ombudsman took up the case on his own initiative. In the Ombudsman's opinion it is incompat-

ible with the Ombudsman Act to consider a complaint to the Ombudsman to be a breach of a stipulation in an agreement.

The Ombudsman informed Parliament's Legal Affairs Committee of his opinion of the case.

(Case No. 2006-2696-819).

17. Ministry of Education

Of 48 cases closed in 2008, 6 were investigated. Criticism and/or recommendations were expressed in 3 cases. 2 cases are summarized below.

1. Neighbour dispute disqualifies teacher from grading exam

Lack of decision. Substitution

An upper-secondary school teacher lived next door to one of her pupils. There was a neighbour dispute between the teacher and the pupil's family which i.a. included a court case concerning the property line between the two neighbouring properties and a hedge dispute. The neighbour dispute was ongoing and culminated in the spring of the pupil's final exam (upper-secondary school leaving exam).

The Ombudsman stated that, for decisions on end of year marks and final exam marks, administrative law's unwritten principles on disqualification apply, and the content of these principles corresponds to a large extent to the express provisions in the Public Administration Act. On this basis the Ombudsman found that the teacher had been disqualified from grading the pupil's yearly performance and final exam pursuant to the principle expressed in Section 3(1)(iv) of the Public Administration Act, and that the teacher should have informed the school of the possibility of disqualification, pursuant to Section 6(1) of the Public Administration Act.

The Ombudsman criticised that the school had not made a definite decision on the teacher's competence and the question of substitution. If a teacher is disqualified vis-à-vis a pupil, a school should, in the Ombudsman's opinion, first explore whether it would be practically possible to transfer the pupil to another form for the lessons which the disqualified teacher would ordinarily teach him or her. If this is not possible, another teacher should attend a certain number of the lessons (and grade any written assignments) and then grade the yearly performance. In case of substitution in connection with exams another teacher should assess the pupil.

The Ombudsman also criticised that the Ministry of Education had not censured the school's lack of decision. The Ombudsman recommended that the Ministry again refer i.a. the upper secondary schools to the existing rules on disqualification and competence.

(Case No. 2006-2162-709).

2. Grade assessment was part of the decision in a complaint case

A citizen applied to the Ombudsman with some questions regarding complaints about the assessment of grades at an upper-secondary school leaving exam.

The Ombudsman stated that there is no legal authority allowing the Ministry of Education to stipulate a system regarding complaints about such grades which differs from that commonly in place for administrative recourse. This means i.a. that the gen-

eral rules which say that the inquisitorial principle applies to the appeal body and that the complainant has access to present new submissions etc. to the appeal body, are valid for the processing of complaints about upper-secondary school leaving exam grades.

The Ombudsman also listed the situations in which a decision concerning an exam complaint case is a decision within the meaning of the Public Administration Act. A possible re-evaluation and a consequently changed grade are (part of) the result of the complaint case decision, and thereby also a part of the overall decision. This means i.a. that any re-assessment which changes the grade, is (a part of) a decision. But, basically, an authority does not make a decision within the sense of administrative law when it determines how to proceed with the processing of a

case; this is a procedural direction, not a decision. This does not apply, however, if the conclusion is to close the case, as this does constitute a decision. Likewise, it is a decision to allow a new exam, while the assessment of the result of the new exam does not constitute a decision in the complaint case, or, indeed, a decision at all within the meaning of the Public Administration Act.

On this basis, the Ombudsman recommended to the Ministry of Education to change its system and practice for the processing of complaints concerning grades awarded for upper-secondary school leaving exams, or, alternatively, to ensure the required statutory authority for the system.

(Case No. 2007-3885-711).

18. Ministry of Social Welfare

Of 438 cases closed in 2008, 117 were investigated. Criticism and/or recommendations were expressed in 19 cases. 5 cases are summarized below.

1. Case processing time by state administrative body

Orderly conditions

A citizen complained that a state administrative body had not replied to an application to be exempted from paying costs in connection with the official determination of a boundary. The application had been presented in September 2006 to the then regional state authority.

The state administrative body took over the case on 1 January 2007 in connection with the introduction of the local government reform. The applicant pressed for a reply several times, but not until December 2007 when the Ombudsman stepped in, did the state administrative body make a decision. The

case had been placed among the non-current records by mistake.

The Ombudsman stated that the case processing was a matter for severe criticism. The transfer of the case from the regional state authority to the state administrative body should have been done in such a way that the case would be caught by the reminder system. In addition, the state administrative body should not have made any statements to the applicant about the stage of the case without verifying the information. Furthermore, the state administrative body had confused the case with another case. The

Ombudsman criticised the case processing as being both slack and sloppy.

Besides, the state administrative body should have replied to the applicant's reminder, and the reminder

should have caused a search for the case. Finally, the Ombudsman criticised the state administrative body's statements to him as being inadequate.

(Case No. 2007-4138-100).

2. Refusal to grant dispensation for 30 year old construction

In connection with the sale of a property a local authority noticed that a covered terrace and a lean-to had been built without permission about 30 years previously. The buyer applied for permission and later for dispensation, but the local authority said no to both applications. The case was appealed to the re-

gional state authority which did not change the local authority's decisions.

The Ombudsman did not criticise the authorities' decisions but did criticise, however, that they had not taken the long-established nature of the construction into consideration when they made their decisions.

(Case No. 2006-2031-160).

3. Social case files discarded by state administrative bodies

In connection with the local government reform, the fourteen regional state authorities were amalgamated into five state administrative bodies. In the course of the preparation for the amalgamations on 1 January 2007, the state administrative bodies in collaboration with the then Ministry of the Interior and Health composed i.a. new guidelines for discarding the files of the regional state authorities and, later on, the state administrative bodies. During the processing of some concrete cases the Ombudsman noted the guidelines and that the regional state authorities had begun to discard a large number of their case files in the course of 2006. The Ombudsman started an own initiative investigation of the regional state authorities' and later the state administrative authorities' practice of discarding files.

The guidelines said i.a. that all social case files should be discarded one calendar year after the year in which they were created. The Ombudsman stated that it was an error when the state administrative bodies discarded social cases based on the year when they were created. He based this opinion on a state-

ment in the case from the State Archives which said that the age of a case must be calculated from the year in which it is concluded.

The Ombudsman also stated that, basically, it was not sufficient to keep case files on record for one year. He scrutinised the legal basis in the archive legislation and established that original case files cannot be discarded until such a time as there is no longer a legal or administrative need for them. The determination of that point in time depends on a concrete assessment. In the Ombudsman's opinion, the question must be seen in the light of the statute of limitations in force at the time in question. It was a matter for criticism if a state administrative body had discarded files prior to such a time. However, the Ombudsman did not think that he had grounds for expressing criticism of the state administrative authorities' guidelines if the case files could be obtained anew from local authority archives. It was the Ombudsman's opinion, though, that the responsibility for ensuring that the state administrative authorities' records were safely kept for the necessary period of time rest-

ed on the state administrative authorities themselves and was not to be left to the local authorities.

(Case No. 2006-3096-009).

4. The National Board of Industrial Injuries' reply to complaint about insurance company's lump sum calculation was a decision

The degree of earning incapacity for a man who had sustained an industrial injury in 1988, was subsequently adjusted several times. On 11 October 2001 the National Board of Industrial Injuries increased the man's degree of incapacity from 50 per cent to 65 per cent. As the National Board of Industrial Injuries also decided that the increase should have effect from 1 May 1992, the man was owed a lump sum for the period 1 May 1992 till 1 October 2001. The Board's decision did not contain any indication of the size or calculation of the sum, and it was not until 1 November 2001 that the man was informed of the size of the lump sum from the employer's insurance company.

However, the man did not agree with the insurance company's calculation of the lump sum, and he notified both the insurance company and the National Board of Industrial Injuries of this in writing. On 7 December 2001 the National Board of Industrial Injuries replied to the man's objections to the insurance company's calculation of the lump sum. The man was not satisfied with the reply and communicated his dissatisfaction to the Board. The National Board of Industrial Injuries then sent the case to the National Social Appeals Board which, however, rejected the case. The National Social Appeals Board was of the opinion that the man had lodged the complaint too late, and referred to the expiry date of 9 November 2001 for filing a complaint concerning the decision of 11 October 2001 by the National Board of Industrial

Injuries. Over the following years the man applied several times to both the National Board of Industrial Injuries and the National Social Appeals Board without, however, any decision forthcoming from the latter on the question of whether or not the lump sum had been calculated correctly.

The Ombudsman stated that the reply sent to the man by the National Board of Industrial Injuries on 7 December 2001 was a decision within the meaning of the Public Administration Act, and that the decision should have contained an appeals guideline. Furthermore, the Ombudsman stated that the National Social Appeals Board should have investigated the factual aspects of the man's complaint regarding the decision by the National Board of Industrial Injuries, and he criticised that the National Social Appeals Board had not done so. In the Ombudsman's opinion, the National Social Appeals Board's overall processing of the man's appeal concerning the calculation of the lump sum had been very regrettable.

The Ombudsman recommended that the National Social Appeals Board reopen the case and make a decision concerning the man's complaint about the decision of 7 December 2001 by the National Board of Industrial Injuries.

The National Social Appeals Board subsequently reopened the case and made a decision on 8 April 2009 on the calculation of the lump sum.

(Case No. 2007-3836-024).

5. Refusal to cover additional expenses

Deaf person not in entitled category mentioned in Section 100 of the Act on Social Services.
Administrative practice. Principle of compensation. Briefing of Parliament

A deaf woman applied for financial assistance so that she and her hearing daughter, a minor, could participate in a family seminar for deaf parents with hearing children. The local council refused to grant the assistance with reference to Section 100 of the Act on Social Services, and the Social Appeals Board upheld the local council's decision. The grounds for the refusal were that the deaf woman was not included in the category of persons who are entitled to financial assistance for necessary additional expenses pursuant to Section 100 of the Act on Social Services. An institution representing the woman pointed out that the decision would mean that adults who are deaf but have no other functional disability, will in practice be excluded from receiving financial assistance for additional expenses following from their deafness.

The Ombudsman could not criticise the decisions in the case or the administrative practice which the decisions expressed. However, deaf persons were specifically mentioned in the Act's preparatory works as an example of a category of people who could receive financial assistance for additional expenses. The Ombudsman was therefore of the opinion that there was some doubt as to whether the established practice was quite in accordance with the intentions behind the provision for additional expenses, and that it was also doubtful whether the established practice was in harmony with the general principle of compensation for the disabled. The Ombudsman briefed i.a. Parliament's Legal Affairs Committee on the case.

(Case No. 2007-4204-052).

19. Ministry of Economic and Business Affairs

Of 30 cases closed in 2008, 3 were investigated. No criticism and/or recommendations were expressed in the cases. No cases are summarized.

20. Local authorities

Of 1,327 cases closed in 2008, 103 were investigated. Criticism and/or recommendations were expressed in 38 cases. 6 cases are summarized below.

1. Local council's delegation of its decision authority to lawyer

In connection with the processing of a specific case the Ombudsman noticed a number of letters which a lawyer had written to a citizen on behalf of a local council. On the basis of these letters the Ombudsman started an own initiative investigation of i.a. the extent to which the local council could delegate to a lawyer the handling of communications with a citizen.

The Ombudsman stated that a public authority, including a local council, may entrust a private party with communications vis-à-vis a citizen, but that there are certain important limitations to this. First and foremost, a public administrative body cannot without express statutory authority delegate decision making to private parties. An administrative body's refusal to consider a case is a decision within the meaning of the Public Administration Act which means that a local council cannot without express

statutory authority delegate to a lawyer the power to refuse a case.

There should still be clear written guidelines for a lawyer who handles communications with a citizen on behalf of a local council.

The Ombudsman also commented on the language used by the lawyer in the letters to the citizen. In the Ombudsman's opinion, the tone of the letters crossed the bounds for good administrative behaviour. Finally, the Ombudsman said that some phrases in the lawyer's letters to the citizen not only sounded like a suggestion to the citizen to seek legal assistance, but they could also rightfully be construed to mean that legal assistance was a requirement for getting any reply to applications to the local council. In the Ombudsman's opinion, such phrasings were unfortunate.

(Case No. 2006-1664-009).

2. Priority allocation of taxi permits to disabled applicants

A citizen complained to the Ombudsman that in two cases a local council had given taxi permits to disabled applicants without having assessed their qualifications in relation to the other applicants.

In a statement to the Ombudsman the local council acknowledged that in one case the council had misinterpreted the rules on priority allocation of taxi permits to disabled applicants. The council had interpreted the rules to mean that a disabled applicant

should receive the permit on the criteria that he applied for priority allocation, had been recommended by the job centre and was qualified professionally. The local council expressed its regret at the incorrect interpretation and informed the Ombudsman that it took notice of the error.

The Ombudsman agreed with the local council that its decision was regrettable. He also stated that case decisions for which there is no legislative au-

thority, are usually invalid, and that the administrative body shall rescind (annul) such decisions. However, this practice may be deviated from in exceptional circumstances. The local council had not considered this problem. The Ombudsman did not think it sufficient that the local council had taken notice of the case, and he recommended that the council reo-

pen the case. The Ombudsman also assumed that the local council would consider whether or not to also reopen the second case. The local council reopened both cases and decided not to annul the previous decisions.

(Case No. 2007-3064-514).

3. Abuse of power in processing of a case involving sickness benefits

The inquisitorial principle

A citizen on sickness benefits participated in work training (work capability assessment) at a private company. The company did not wish to continue the work capability assessment and sent the citizen back to the local authority on the grounds that he did not participate actively. Among other things the company thought that he bothered the other employees and showed very little interest in the work.

The citizen disagreed very much with this description of events.

In a reply to a complaint from the citizen the Mayor wrote that the local authority still had to work together with the private company, and that the local authority therefore could not appear to doubt the private company's credibility. On the other hand, neither did the local authority doubt the citizen's view of

events. Consequently, in the Mayor's opinion the best solution would be to leave the judging to the social board which had received a complaint about the decision to discontinue payment of the sickness benefits.

The Ombudsman thought it was a violation of the inquisitorial principle that the local authority had not considered the question of evidence in the case while at the same time maintaining the decision to discontinue payment of sickness benefits.

In addition, the Ombudsman criticised that concern for the cooperation with the private company had been included in the local authority's assessment of the case.

(Case No. 2007-3642-009).

4. Refused employment due to family relationship

A midwife was refused employment at the maternity ward of a hospital because her mother was employed at the same ward. The hospital and the regional authority did not think that it was practical to have closely related staff working at the same ward. The ward in question was not very large, and in the interest of the patients mother and daughter should not be working on the same shift which would make roster planning problematic. Furthermore, they would

have the same supervisor, and that could lead to problems regarding loyalty.

The Ombudsman stated that in connection with employment public authorities must employ those persons who are considered to be best qualified. The assessment must not be precluded or restrained by the establishment of internal rules. There were no concrete reasons to suppose that problems would arise, and consequently there was no valid reason for

the refusal. In addition, the Ombudsman criticised certain aspects of the case processing.

(Case No. 2008-0935-810).

5. No reply to application

In December 2007 a farmer applied for environmental approval for an extension of his cattle stock. In June 2008 the processing of the case had not begun yet, and the case was mentioned in the press. The Ombudsman then took up the case on his own initiative.

The local authority informed the Ombudsman that a waiting list had been introduced as a consequence of the redivision of local government and a new Livestock Act. The cases would be dealt with consecutively according to the time of application. The local authority's environmental department had experienced

recruitment difficulties, and it was therefore expected that the processing of the case would not be finished until October 2009.

The Ombudsman stated that it was the responsibility of the local authority that its administration be adequately staffed. It was very regrettable that the case – which concerned the applicant's livelihood – could not be dealt with sooner. The Ombudsman recommended to the local authority to seek to expedite the case as much as possible.

(Case No. 2008-2133-100).

6. Local authority's preparation and implementation of foster-child's removal

Following a holiday with his biological mother, a nine year old boy did not come back to his foster family because the local authority had decided that after the holiday the boy should go straight to an institution. The decision had been made before the boy went on holiday with his mother, but the local authority did not inform the foster family of the decision.

The Ombudsman criticised the local authority's approach. He did not think that the way in which the local authority had prepared and implemented the boy's move, had been in accordance with good administrative behaviour.

In the Ombudsman's opinion, those cooperative problems which had arisen between the local authority and the foster parents could not in itself justify that the local authority postponed informing the foster parents of the decision to move the boy.

Furthermore, the Ombudsman stated that the case did not contain any documentation to support the local authority's assumption that there was a grave risk of the foster parents allowing their dissatisfaction with the local authority's decision to influence their relations with the boy to such an extent as to make it necessary to postpone informing the foster parents of the decision until the boy had left for the holiday with his mother.

In addition, the Ombudsman said that in those instances when a local authority estimates that it is necessary to postpone informing a foster family of the decision to move a foster child, it would be most correct if the local authority in e.g. an internal memo give a detailed account of the authority's deliberations in the matter. The memo should be prepared before the authority decides to move the child, and in the memo the authority should explain why it was thought necessary not to inform the foster family,

and include an account of the concrete grounds for the authority's assessment.

(Case No. 2006-4114-079).