

# Summary

## Annual Report 2006

### **Folketingets Ombudsmand**

Parliamentary Commissioner for Civil  
and Military Administration in Denmark

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# Preface

This booklet summarizes my Annual Report for 2006 to the Danish Parliament.

*Part 1* of the Summary contains my account of the year 2006.

*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 48 summaries of Ombudsman cases.

*Copenhagen, November 2007*

HANS GAMMELTOFT-HANSEN

# PART 1

THE COURSE OF  
THE YEAR

# The Course of the Year: The Ombudsman's Account of the Year 2006

In the following introductory account I have singled out some key figures for the office's activities in 2006, and I will be outlining a few of the significant cases from the Annual Report, and give a brief overview of our inspection activity.

The number of new cases in 2006 was 4,110. The corresponding number in 2005 was 4,266 which in other words means that there has been a slight drop of 156 new cases in 2006 in relation to the previous year.

The number of applications from complainants was 3,764 while the number in 2005 was 4,065 which again signifies a minor drop in comparison to 2005; in this case, a drop of 301 cases.

As I have remarked before, these minor fluctuations (whether they go down as in 2006 or up as in 2005) are impossible to explain in a satisfactory way; and in my opinion, they are very much a matter of coincidence.

In 2006 we completed 3,951 cases against 4,283 the previous year, meaning a drop of 332 completed cases. It is not possible for me to conclude anything definite to explain the fluctuations in the office's output. When the number goes up one year and down the next it is, in my opinion, due to several reasons; and the most important one is probably the number of large, complicated cases in the individual divisions.

The number of factually processed cases was 846 in 2006 while it was 931 in 2005.

The Ombudsman expressed criticism and/or gave recommendations in 217 of the 846 cases. In 2005 the number of cases involving criticism and/or recommendations was 197.

In 56 cases the authorities chose to reopen the case immediately as a consequence of the Ombudsman's initial request for a statement. In our statistics, cases of this nature are listed under *rejected cases* precisely

because the Ombudsman does not continue to investigate the case. However, if these cases are added to the number of cases where criticism or recommendations were given it might be said that in 32 per cent of cases the complainants received a positive result from their appeal to the Ombudsman, or from the case being taken up as an own initiative investigation.

The number of cases awaiting case processing at the Ombudsman's office on 1 June 2007 was 179 compared with 123 the previous year.

The average case processing time for the factual cases was approximately 175 days. In 2005 it averaged 156 days. As I have mentioned before, we are again faced with a figure which the office can only control to a certain degree, and an increase of the average case processing time of 19 days in 2006 is in my opinion still within an acceptable margin; but of course we both should and must continually endeavour to reduce the case processing time as much as possible. In comparison, the figure was 164 days in 2003 and 153 days in 2004.

## A few of the significant cases

This year, I will take the opportunity to tell you a little about the way in which the cases come to the Ombudsman and thereby something about the categories of complainants and about the complainants' right to be represented or assisted by others.

If you keep solely to the 48 cases in the Annual Report, in 26 of those cases it was the actual party who lodged a complaint. The party can be a *professional* as was the case in e.g. three of the cases on access to files where reporters lodged work-related complaints or the case about the pilot who complained about the fact that the authorities refused to carry out an investigation of three flight episodes.

However, the citizens who complain most often do so because they have in their private life been affected by a decision, an act or an omission on the part of the public authorities – cases involving industrial injuries, children, botched operations, humanitarian residence permits, etc.

In twelve of the cases in the Annual Report the affected party chose to involve a representative or an observer, thus utilising the basic right as described in Section 8 of the Public Administration Act in accordance with which it is up to the affected party to decide to what extent he or she would like the help and support of others in connection with the case and, if so, whose help.

As in the case 20-5, it may be *professional* representatives such as the trade union which became involved in the complaint about a written warning received by a museum director. Often, however, lawyers act as professional representatives, as in five of this year's Annual Report cases.

It is not so unusual that those who assist the affected party during the course of the case are not *professionals* but acquaintances or family members, as in six of the cases in the 2006 Annual Report.

The right to be represented or otherwise assisted by others is thus an important right, also in the practice of the Ombudsman, and it is extensively used. As is well-known, the right is not without limitations, and the case 20-7 in the Report illustrates quite clearly the interests and conflicts which cases concerning this right may hold for both parties and authorities:

Two drug addicts were being treated at a treatment facility in a county in central Denmark. The county explained to me that observers for the addicts sometimes sit in during the starting phase of a treatment course. The county likewise accepted that observers attend the sessions during which discussion will take place about actual treatment changes or other important decisions such as refusal of 24-hour stays, methadone treatment or the like.

However, the county explained, once the form and content of the treatment has been decided, it is no longer practical to have family members present at the often very in-depth treatment sessions. It is important that the patient can open up during these sessions without having to worry all the time about whether the revelations may hurt or otherwise affect the observers. In the county's experience the presence of observers at the treatment sessions may result in important information of consequence to the treatment not being divulged or perhaps being scaled down.

In the case in question, and on this basis, the county confirmed that the observers of the two young people could not be present at the sessions.

The two representatives complained to the Ombudsman as the county restricted their possibility to be observers. Though the starting point in such situations clearly is that very weighty reasons are required for observers to be excluded, the Ombudsman did not think that there were grounds for criticising the authorities in this particular case.

In addition to complaints lodged directly with the Ombudsman, the Ombudsman may himself take up a matter for investigation on his own initiative. Seven cases from the 2006 Annual Report are own initiative cases vis-à-vis the authorities.

In 2006, the Ombudsman's ability to take up matters on his own initiative has, among other things, been used to raise questions of principle concerning the authorities' procedures such as e.g. no publication of a change in practice and guidance practice in the Ministry of Refugee, Immigration and Integration Affairs. On his own initiative the Ombudsman took up the question of a filing system with inadequate search options in the Ministry of Science, Technology and Innovation; and in the case 14-1 the Ombudsman raised a fundamental question of interpretation vis-à-vis the Ministry of Social Affairs on a case concerning change of a school therapy arrangement.

Own initiative cases are often used by the Ombudsman in connection with questions concerning freedom of speech for public employees, and in 2006 there was once again a case in this category: Case 3-1 concerning criticism of defence plans by an employee in the Emergency Management Agency. In this case the Ombudsman informed the party as he always does, for that matter, in such cases. In the case 7-1 the Ombudsman took up the question of whether the requirement by the National School of Theatre for advance approval of student participation in plays was in accordance with the ban against censorship in Section 77 of the Danish Constitution.

Finally, I would like to mention the case 14-7 which illustrates the particularly broad right of complaint to the Ombudsman which, according to Section 13 of the Ombudsman Act, is accorded to anybody, even though the complainant is not personally and directly affected by the authorities' decisions.

As is well-known, this broad right to complain to the Ombudsman was debated in connection with the amendment of the Ombudsman Act in 1996. On that occasion the Ombudsman commented to the Legal Affairs Committee that the option would, as hitherto, be used with caution in cases involving the private affairs of individuals, and that the Ombudsman would normally demand consent or written authorization if the complaint in such cases were submitted by a third party.

In the case 14-7 a woman wrote to a county in connection with the removal of a male resident, suffering from Downs Syndrome and Alzheimer's Disease, from one (incidentally now closed) care home to another. The woman had been acquainted with the man for quite some time. No guardian had been appointed for the man, and the procedural rules prescribed in the Social Services Act had not been observed. The authorities, the social complaints board and the Ministry of Social Affairs did not think that the social complaints board could investigate the complaint as

the complainant was not the person affected by the decision. On the other hand, it was clear that the board has special powers in precisely this sort of serious case, and the result of the Ombudsman's contribution was indeed to confirm that the authorities had a duty to react. The case clearly illustrates the importance of *anybody* being allowed to lodge a complaint with the Ombudsman and how advisable it is to have the Section 7 provision of the Ombudsman Act.

### Inspection activities

In 2006 a total of 39 inspections were carried out with the following distribution:

Prisons: 3  
Local prisons: 2  
Detentions: 10  
Police holding cells: 11  
Psychiatric wards, etc.: 5  
Social/psychiatric care facilities: 3  
Access for the disabled: 3  
Local authorities: 1  
Asylum centres: 1

As is well-known, the present Ombudsman Act, which came into force on 1 January 2007, occasioned a considerable expansion of our inspection activities. During the 10 years since then 267 inspections have been carried out. We have performed inspections of all state prisons, local prisons, halfway houses, secure institutions and detentions. Several of these institutions have been inspected more than once. There have also been inspections of social/psychiatric care facilities in all the previous counties.

Besides the inspections themselves, it is worth noting that the inspections have caused the Ombudsman to take up a large number of cases on his own initiative on the basis of observations made during those same inspections. You may read about this in more

detail on page 679-683 of the 2006 Annual Report (Danish version).

There is no doubt that the Parliamentary Ombudsman (partly because of the inspections) is known by the inmates in state and local prisons as an important appeals body, as evidenced e.g. by the increase in the number of cases concerning the Prison Service within the past decade. In 2006 the Ombudsman concluded 340 cases in this category and the prognosis for 2007 shows that an estimated 500 cases will be introduced in the category. During the period since 1997 (in that year there was a total of 75 cases concerning the Prison Service), there has thus been a significant yearly increase in the number of cases within this category.

There is also additional evidence which is worth mentioning. During the inspections of e.g. prisons an increasing number of inmates have requested a personal interview. Thus, in connection with inspections of the large state prisons the situation is by now that about 30 inmates request interviews concerning their individual circumstances. All in all, it is my opinion that, based on the figures and the development over this decade, it must be concluded that the Parliamentary Ombudsman is a well-known and relevant appeals body for the inmates.

In 2007 there have been 35 inspections within the above-mentioned categories. In addition to this, a new type of institution will become a subject for in-

spections, namely 24-hour care centres for children and juveniles.

Specifically with regard to the question of equal treatment for the disabled and the related inspections I will at the beginning of 2008 submit an overall account to the Legal Affairs Committee of the Ombudsman's activities in this category in 2007.

Finally, I can inform you that in October 2007 the Ministry of Foreign Affairs has registered the Parliamentary Ombudsman as the national preventive mechanism in accordance with Chapter IV of the optional protocol to the UN Convention against Torture. This is in continuance of the Danish Parliament's motion No. B 129 of 14 May 2004 on Denmark's ratification of the convention in which Parliament presupposed that the Parliamentary Ombudsman through his inspection activities fulfils the convention's stipulations concerning an independent national body.

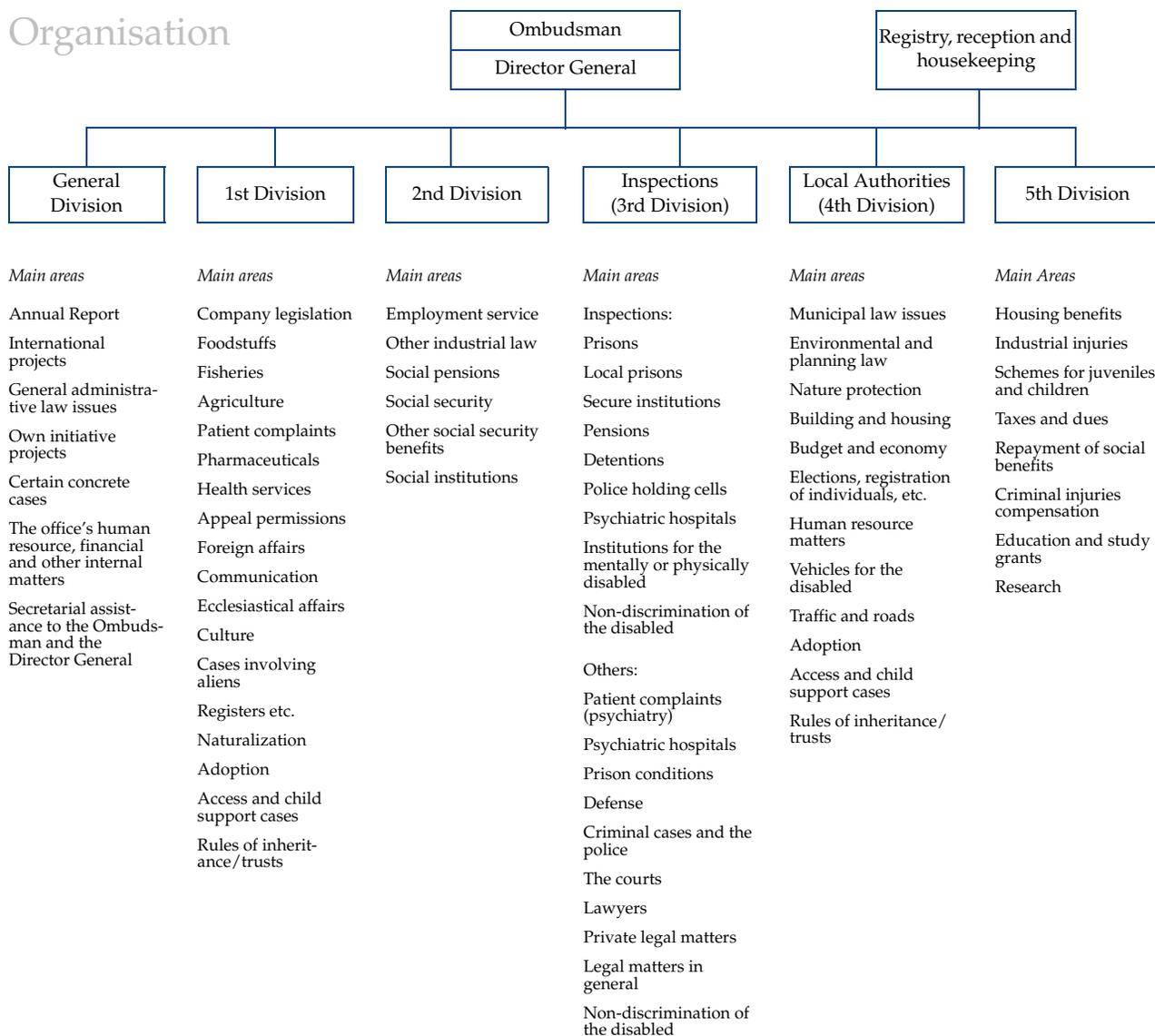
The preventive mechanism shall, i.a., have the competence to regularly inspect the conditions for incarcerated persons in the places where they are held which after all is precisely the core of the Ombudsman's inspection activity in connection with state and local prisons, halfway houses, secure facilities, detentions, police holding cells and psychiatric wards.



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

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

### **General Division**

Director of Public Law Mr. *Kaj Larsen*

### **First Division**

Head of Division Mrs. *Kirsten Talevski*

### **Second Division**

Head of Division Mrs. *Bente Mundt*

### **Third Division (Inspections Division)**

Deputy Permanent Secretary Mr. *Lennart Frandsen*

### **Fourth Division**

Head of Division Mr. *Morten Engberg*

### **Fifth Division**

Head of Division Mr. *Karsten Loiborg*

The 81 employees of my office included among others 16 senior administrators, 24 investigation officers, 20 administrative staff members and 13 law students.

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## International Relations

During 2006, 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

### Visits

18 Visit from Iraqi judges via the Danish Court Administration.

30 Jan – 3 Feb Visit from employees from the Estonian Legal Chancellor's office in relation to the cooperation between the Danish and Estonian institutions.

### Travels and conferences

21 International Relations Director Jens Olsen participated in various international meetings in Jordan in connection with the possible establishment of an Ombudsman institution.

## February

### Visits

15 A group of journalists from Sri Lanka via Danida.

### Travels and conferences

1 I was the introductory speaker at a conference on security or legal rights at the Danish Parliament building, Christiansborg Castle.

21–24 Chief Legal Adviser Vibeke Riber von Stemann travelled to Tajikistan with representatives of the Danish Institute for Human Rights to participate in a conference on the perspectives for establishing a human rights organization in Tajikistan.

## March

### Visits

3 Members of the Committee of Petitions from the Czech Republic.

15 Fellowship course participants of various nationalities via Copenhagen DC and Danida.

24 Meeting with representatives from the Dutch and Hungarian Ombudsmen's offices.

27 Visit from the Saudi Arabian Embassy.

### Travels and conferences

16–17 Head of Division Morten Engberg participated in Local Government Denmark's delegate meeting in Aalborg.

## April

### Visits

### Travels and conferences

24–26 International Relations Director Jens Olsen participated in the international conference “Human Rights Procurators and Ombudsmen in Latin America and Europe”, arranged by the EU and the International Ombudsman Institute in Vienna, Austria.

26–29 I participated in the West Nordic Ombudsman Meeting in Greenland with the Ombudsmen from Norway, Iceland, Greenland and the Faroe Islands.

## May

### Visits

30 Visit from OSCE’s representatives, among others Ambassador Ömür Orhun, concerning religious discrimination.

### Travels and conferences

10 I participated in the Danish Board of Technology’s hearing on terror control at the Danish Parliament building, Christiansborg Castle.

14–15 Director General Jens Møller visited the EU’s Judicial Cooperation Unit (EUROJUST) in The Hague, Holland, on the Unit’s invitation.

## June

### Visits

12 The Danish Consul General to Jordan, Mr. Tawfiq Kawar.

15 A delegation from the Chinese Ministry of Supervision.

21 Good Governance course participants of various nationalities from the Danish Institute for Human Rights.

27 China’s new Ambassador to Denmark.

### Travels and conferences

9–10 Head of Division Morten Engberg and Investigation Officer Dennis Toft Sørensen participated in a seminar on non-discrimination of disabled citizens arranged by the Danish Council of Organisations of Disabled People. The seminar took place in Copenhagen.

18–20 Director of International Law Jon Andersen participated in a seminar for Liaison Officers at the European Ombudsman in Vienna, Austria.

July	August	September
<p><b>Visits</b></p>	<p><b>Visits</b></p>	<p><b>Visits</b></p> <p>28 A parliamentary delegation from Vietnam.</p>
<p><b>Travels and conferences</b></p>	<p><b>Travels and conferences</b></p> <p>25 Aug – 2 Sep International Relations Director Jens Olsen participated in various meetings and conferences in Vietnam connected with ombudsmen and their work.</p> <p>31 Aug – 3 Sep I participated in the West Nordic Ombudsman Meeting in Iceland with the Ombudsmen from Norway, Iceland, Greenland and the Faroe Islands.</p>	<p><b>Travels and conferences</b></p> <p>18 Head of Division Kirsten Tallewski was the introductory speaker at the Ministry of Integration’s seminar for managers in Bornholm about current tendencies in good case processing.</p> <p>28 Sep – 1 Oct Chief Legal Adviser Vibeke Riber von Stemann participated in the conference “Ombudswork for Children” arranged by the Council of Europe Commissioner for Human Rights, the Russian Human Rights Commissioner and the Greek Ombudsman, in Athens, Greece.</p>

## October

### Visits

- 9 A delegation from Thailand.
- 10 A delegation from Yemen on the Danish Institute for Human Rights' request.
- 16 A delegation from China's Ministry of Supervision
- 23 Asian and African course participants in a human rights course on the Danish Institute for Human Rights' request.
- 27 A parliamentary delegation from Tanzania.

### Travels and conferences

- 16 I participated in a conference on "Ombudsmanship in Europe" in Florence, Italy, on the Tuscan Ombudsman's invitation.
- 29–31 Head of Division Bente Mundt participated in the annual meeting of the Social Services Directors' Association.

## November

### Visits

- 6 A delegation from Taiwan's Ombudsman office, Control Yuan.
- 7–10 A delegation from Vietnam on study tour.
- 23 Good Governance course participants on COWI/Danida's request.
- 30 Uganda's Minister for Local Government and 26 Ugandan parliamentarians.

### Travels and conferences

- 16–26 International Relations Director Jens Olsen and I travelled to, among others, Guatemala with Executive Director of the Danish Institute for Human Rights Morten Kjærum to participate in meetings about cooperation and support.
- 23 Head of Division Kirsten Talevski and Investigation Officer Susanne Veiga were the introductory speakers at a meeting for the employees in the Danish Immigration Service about current tendencies in good case processing.

## December

### Visits

- 7 A delegation from the South African Parliament's law secretariat.
- 18–22 A delegation from Vietnam on study tour.

### Travels and conferences

- 4 I participated in an international conference about the Ombudsman institution on the invitation of Latvia's Human Rights Office in Riga, Latvia.
- 13–15 A group of my employees participated in a series of meetings with the Estonian Chancellor of Justice's employees in Tallinn, Estonia.

## Own Initiative Projects and Inspections

No own initiative projects were concluded in 2006. 43 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 General Jens Møller and Head of Division Bente Mundt were appointed by the National Board of Social Services as members of a reference group for "Project on case processing for the elderly".

Director of International Law Jon Andersen is a member of the Danish Council of Ethics and has in that connection chaired a group that prepared a report on DNA registers.

# Budget 2006

<b>Salary expenses</b>		Business entertainment	152,000
Actual salary	29,873,000	Staff welfare	20,000
Law students	161,000	IT, client equipment	1,052,000
Special holiday allowance	20,000	IT, consultants	227,000
Wage budget regulation account	1,396,000	Decentralized continued education	713,000
Overtime	281,000	Translations	160,000
Pension fund contributions	2,777,000	Printing of publications etc.	568,000
Contributions for civil service retirement pensions	893,000	Rent	3,678,000
Contributions for the Danish Labour Market Supplementary Pension (ATP)	79,000	Leasing of photocopiers	227,000
Maternity reimbursement, etc.	- 435,000	Phone subsidies	17,000
<b>Salary expenses in total</b>	<b>35,045,000</b>	Subsidy, staff lunch arrangement	153,000
		<b>Operating charges in total</b>	<b>9,207,000</b>
<b>Operating expenses</b>		<b>Civil servant retirement payments</b>	
Subsidy, Ministry of Foreign Affairs	- 813,000	Retirement pays for former civil servants	821,000
IT, central equipment, network, programmes	627,000	Benefits	3,000
Office supplies	635,000	Civil servant retirement contributions	- 893,000
Furniture and other fittings	777,000	<b>Retirement payments in total</b>	<b>- 69,000</b>
Books and subscriptions	663,000		
Official travels	351,000	<b>TOTAL</b>	<b>44,183,000</b>

# PART 3

CASE  
STATISTICS

# Complaints Received and Investigated

## 1. New Cases

In the year 2006 a total number of 4,110 new cases were registered. The corresponding figure for the year 2005 was 4,266 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:

1997	3,524	2002	3,725
1998	3,630	2003	4,298
1999	3,423	2004	4,093
2000	3,498	2005	4,266
2001	3,689	2006	4,110

3,764 of the total number of 4,110 new cases in 2006 were complaint cases.

I took up 245 individual cases on my own initiative, cf. Section 17, subsection (1) in the Ombudsman Act. 48 of these 245 individual own initiative cases were cases that I received in connection with an inspection of the municipality of Copenhagen.

The Ombudsman may carry out inspections of public institutions and other administrative authorities. Out of the total number of 4,110 new cases, 41 were inspection cases. Most of the inspection cases registered relate to institutions under the jurisdiction of the police and the prison services (detentions, local prisons and state prisons) and psychiatric institutions. However, inspections of other administrative authorities were also carried out, e.g. two churches – Holmens Kirke and Skelgårdskirken – and the town hall of Copenhagen. All three inspections focussed on the access to the buildings for disabled people; the

town hall inspection was also part an inspection of the municipality of Copenhagen. (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](http://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, subsection (2) in the Ombudsman Act.

The cases examined in connection with the own initiative projects are not included in the number of cases registered in 2006.

One new own initiative projects was initiated in 2006. The project concerns an investigation of a total of 60 cases from three local authorities about enrolment of children in daycare. The project is still pending.

In the previous years, several own initiative projects were initiated of which one project was still pending in 2006. This project, which concerns an investigation of a total of 40 complaint cases from the National Income Tax Tribunal, was concluded in June 2007.

### 2. Cases Rejected after a Summary Investigation

3,105 complaints lodged with my office during 2006 were not investigated for the reasons mentioned below. In 1,528 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 3,105 cases were not investigated for the following reasons:

Complaint had been lodged too late	140
Complaint concerned judgments, judges or matters which had been or were expected to be assessed by the courts	97
Complaint concerned matters relating to the Parliament, including legislation	42
Complaint concerned other matters outside the Ombudsman's competence, including private legal matters etc.	162
The administrative possibilities of processing the case were not exhausted and were no longer applicable	30
Complaint not clarified or withdrawn	124
Inquiry without complaint	264
Anonymous complaint	10
Other applications, including complaints that the Ombudsman decided to turn down	586
The authority has reopened the case following the Ombudsman's request for a statement	56
Cases on the Ombudsman's own initiative and not fully investigated	66
The administrative possibilities of processing the case were not exhausted	1,528
<i>Total</i>	3,105

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

None of the complaints lodged in 2006 gave me reason to declare myself disqualified from their investigation.

The Faroese Representative Council, the Lagting, asked me to act as ad hoc Ombudsman for the Lagting Ombudsman in three cases in 2006.

### 4. Pending Ombudsman Cases

268 individual cases submitted to my office before 1 January 2007 were still pending on 1 June 2007. Two own initiative project concerning the National Income Tax Tribunal (40 complaint cases) and three local authorities (60 cases) were also pending on 1 June 2007.

234 of the pending individual cases were submitted in 2006 and 34 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, 44 per cent were concluded within ten calendar days from receipt of the complaint. The average processing time for cases that were rejected was 29 days.

The average case processing time for cases subjected to a full investigation and concluded in 2006 was 5.7 months (174.3 days).

## ■ Tables

**Table 1** All cases (regardless of registration date) concluded during the period 1 January – 31 December 2006, distributed per main authority and the result of the Ombudsman’s case processing

Table 1: All concluded cases 2006 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
<b>A. State authorities</b>				
<b>1. Ministry of Employment</b>				
Department of Employment	16	13	1	2
The National Board of Industrial Injuries	25	24	1	0
The Labour Market Appeal Board	23	5	17	1
The Danish Labour Market Supplementary Pension (ATP)	4	4	0	0
The ATP Complaints Board	1	1	0	0
Labour Market Councils, in total	2	1	0	1
Public Employment Services	8	8	0	0
The Danish Working Environment Authority	3	3	0	0
The National Directorate of Labour	11	11	0	0
The National Labour Market Authority	7	6	0	1
<i>Total</i>	100	76	19	5

Table 1: All concluded cases 2006 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommendation etc.	Criticism, recommendation etc.
<b>2. Ministry of Finance</b>				
Department of Finance	4	1	1	2
The State Employer's Authority	2	1	0	1
The Danish Agency for Governmental Management	4	4	0	0
<i>Total</i>	10	6	1	3
<b>3. Ministry of Defence</b>				
Department of Defence	12	5	6	1
The Royal Danish Administration of Navigation and Hydrography	1	1	0	0
Defence Command Denmark	3	3	0	0
The Danish Home Guard	2	2	0	0
<i>Total</i>	18	11	6	1
<b>4. Ministry of the Interior and Health</b>				
Department of Interior and Health	48	38	8	2
Department supervision of local councils and regional state authorities, in total	1	1	0	0
Regional state authorities, in total	74	65	6	3
Regional state authority supervision of local councils, in total	65	40	22	3
The Danish Medicines Agency	3	2	1	0
The National Board of Health	3	3	0	0
Medical Health Officers, in total	1	1	0	0
The National Board of Patient Complaints	50	38	9	3
The Psychiatric Patient Complaint Boards, in total	3	3	0	0
<i>Total</i>	248	191	46	11

Table 1: All concluded cases 2006 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
<b>5. Ministry of Justice</b>				
Department of Justice	52	36	12	4
The Civil Affairs Agency	56	22	28	6
The Data Protection Board	7	5	2	0
The Danish Prison and Probation Service	169	81	38	50
State prisons	116	101	14	1
Local prisons	55	30	21	4
The Criminal Injuries Compensation Board	7	5	0	2
The Danish Medico-Legal Council	2	1	1	0
Director of Public Prosecutions	32	16	15	1
The National Police Commissioner	17	14	3	0
Chief constables	107	90	5	12
Public prosecutors, in total	71	37	30	4
The Special Parliamentary Committee for the Intelligence Service (the Wamberg Committee)	1	1	0	0
<i>Total</i>	692	439	169	84
<b>6. Ministry of Ecclesiastical Affairs</b>				
Department of Ecclesiastical Affairs	15	10	3	2
Bishops	1	1	0	0
Diocesan authorities	4	4	0	0
Parish councils	2	2	0	0
<i>Total</i>	22	17	3	2

Table 1: All concluded cases 2006 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommendation etc.	Criticism, recommendation etc.
<b>7. Ministry of Culture</b>				
Department of Culture	21	13	7	1
DR (Danish Broadcasting Corporation)	10	8	0	2
The National Cultural Heritage Agency	1	0	1	0
The Radio and Television Board	3	3	0	0
The Danish State Archive	1	1	0	0
<i>Total</i>	36	25	8	3
<b>8. Ministry of Environment</b>				
Department of Environment	14	8	2	4
The National Survey and Cadastre	2	1	1	0
The Environmental Protection Agency	9	9	0	0
The Nature Protection Board of Appeal	47	26	17	4
The Forest and Nature Agency	11	10	1	0
Forest districts	2	2	0	0
<i>Total</i>	85	56	21	8
<b>9. Ministry of Family and Consumer Affairs</b>				
Department of Family and Consumer Affairs	7	5	1	1
The Family Agency	119	85	25	9
The Adoption Board	2	1	1	0
The Consumer Ombudsman	2	1	1	0
The Danish Veterinary and Food Administration	3	3	0	0
Regional Veterinary and Food Control Centres, in total	1	1	0	0
<i>Total</i>	134	96	28	10

Table 1: All concluded cases 2006 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
<b>10. Ministry of Refugee, Immigration and Integration Affairs</b>				
Department of Refugee, Immigration and Integration Affairs	202	135	63	4
The Refugee Board	13	13	0	0
The Immigration Service	97	96	0	1
<i>Total</i>	312	244	63	5
<b>11. Ministry of Food, Agriculture and Fisheries</b>				
Department of Food, Agriculture and Fisheries	5	4	1	0
The Danish Institute of Agricultural Sciences	1	1	0	0
The Directorate for Food, Fisheries and Agri Business	10	7	3	0
The Danish Plant Directorate	1	1	0	0
<i>Total</i>	17	13	4	0
<b>12. Ministry of Science, Technology and Innovation</b>				
Department of Science, Technology and Innovation	15	13	2	0
The Danish Agency for Science, Technology and Innovation	1	1	0	0
The National IT and Telecom Agency	4	4	0	0
The Danish Committees on Scientific Dishonesty	1	1	0	0
The Danish University and Property Agency	3	3	0	0
Universities and institutions of higher education	32	31	0	1
<i>Total</i>	56	53	2	1

Table 1: All concluded cases 2006 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
<b>13. Ministry of Taxation</b>				
Department of Taxation	24	15	4	5
The Danish National Tax Tribunal	30	24	5	1
SKAT – Central Customs and Tax Administration	55	54	0	1
SKAT – Tax Payment Centre	1	1	0	0
SKAT – Tax Collection Centre	11	11	0	0
SKAT (regional taxation authorities)	43	42	1	0
The Motor Vehicle Board of Appeal	1	0	1	0
The Tax Board of Appeal	8	8	0	0
<i>Total</i>	173	155	11	7
<b>14. Ministry of Social Affairs</b>				
Department of Social Affairs	18	15	3	0
The Social Appeals Board	122	82	33	7
The National Social Security Agency	15	15	0	0
(Regional) social complaints boards, in total	283	166	111	6
The Gender Equality Board	1	1	0	0
The Danish Supervisory Board of Psychological Practice	3	1	2	0
<i>Total</i>	442	280	149	13
<b>15. Prime Minister's Office</b>				
Department of the Prime Minister's Office	20	16	4	0
<i>Total</i>	20	16	4	0
<b>16. Ministry of Transport and Energy</b>				
Department of Transport and Energy	21	14	3	4
DSB – Danish State Railways	6	6	0	0
The Danish Energy Authority	1	1	0	0

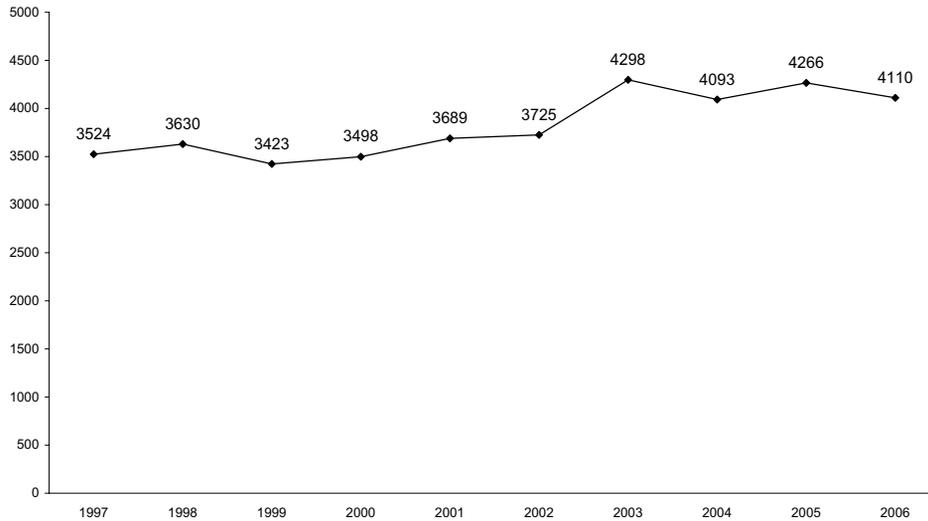
Table 1: All concluded cases 2006 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
The Danish Energy Regulatory Authority	2	2	0	0
The Road Safety and Transport Agency	1	1	0	0
The Complaints Board for allotment of places of call in harbours	1	1	0	0
The National Rail Authority	1	1	0	0
The Road Transport Council	19	11	8	0
<i>Total</i>	52	37	11	4
<b>17. Ministry of Foreign Affairs</b>				
Department of Foreign Affairs	20	12	1	7
Danish delegations abroad (embassies, etc.)	3	3	0	0
<i>Total</i>	23	15	1	7
<b>18. Ministry of Education</b>				
Department of Education	13	10	1	2
The National Authority for Institutional Affairs	1	1	0	0
The National Education Authority	3	3	0	0
Students' Grants and Loan Scheme Appeal Board	7	3	4	0
Various institutions of higher education	2	2	0	0
<i>Total</i>	26	19	5	2
<b>19. Ministry of Economic and Business Affairs</b>				
Department of Economic and Business Affairs	17	16	1	0
The Danish Enterprise and Construction Authority	4	4	0	0
The Patent and Trademark Appeal Board	1	1	0	0
The Danish Commerce and Companies Agency	4	3	1	0
The Commercial Appeal Board	1	1	0	0
The Danish Financial Supervisory Authority	2	2	0	0

Table 1: All concluded cases 2006 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
The Danish Competition Authority	3	2	1	0
The Danish Patent and Trademark Office	2	2	0	0
The Danish Safety Technology Authority	1	0	1	0
The Danish Maritime Authority	2	2	0	0
<i>Total</i>	37	33	4	0
<i>State authorities, in total</i>	2,503	1,782	555	166

Table 1A: All concluded cases 2006 Authority etc.	Cases in total	Cases Rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
A. State authorities	2,503	1,782	555	166
B. Local government authorities	1,025	900	74	51
C. Other authorities under the jurisdiction of the Ombudsman	0	0	0	0
D. Administrative authorities under the jurisdiction of the Ombudsman, in total	3,528	2,682	629	217
E. Institutions etc. outside the jurisdiction of the Ombudsman	208	208		
F. Cases not related to specific institutions, etc.	215	215		
<i>Year total</i>	3,951	3,105	629	217

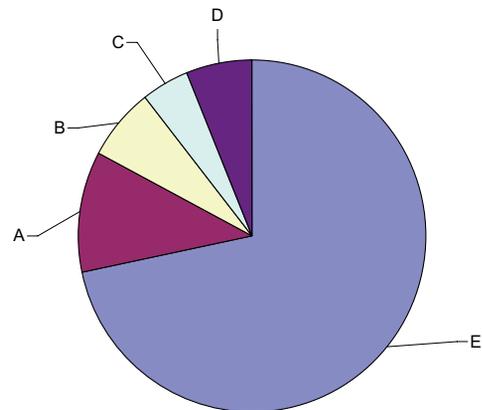
## ● Graphics

**Figure 1**  
Number of cases registered for the past ten years



**Figure 2**  
Categories of cases investigated to conclusion in 2006 (846 cases in total)

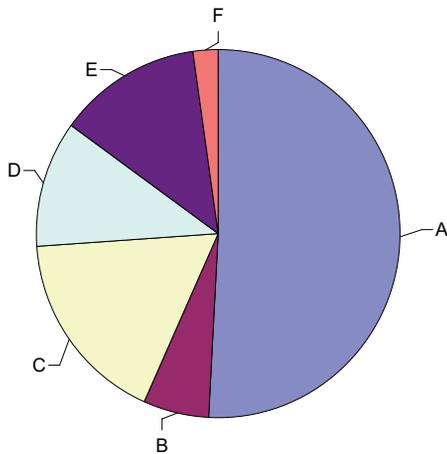
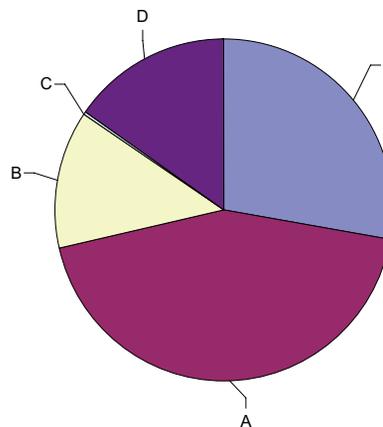
- A. Case processing.....11.6 %
- B. Case processing time.....6.5 %
- C. Administrative services .....4.6 %
- D. General issues.....6.1 %
- E. Decisions .....71.2 %



**Figure 3**

Categories of cases in which criticism or recommendations were expressed in 2006  
(217 cases in total)

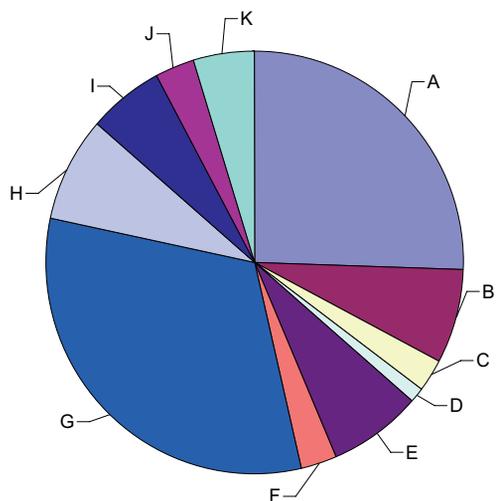
A. Decisions .....	41.9 %
B. Case processing time.....	12.9 %
C. Administrative services .....	0.5 %
D. General issues.....	15.7 %
E. Case processing.....	29.0 %



**Figure 4**

Cases rejected in 2006, in categories  
(3,105 cases in total)

A. Decisions .....	50.8 %
B. General issues .....	5.9 %
C. Case processing time.....	17.2 %
D. Miscellaneous .....	11.1 %
E. Case processing.....	12.6 %
F. Administrative services .....	2.4 %

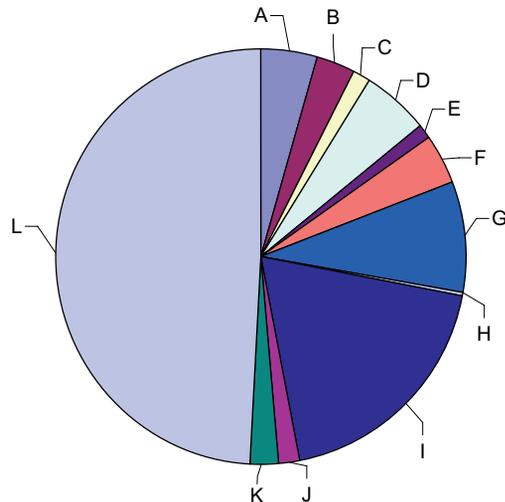


**Figure 5**  
Cases closed in 2006, in categories  
(846 cases in total)

- A. Social benefits and labour law .....25.5 %
- B. Environment, building and housing .....7.3 %
- C. Taxation, budget and economy .....2.5 %
- D. Business regulation etc.....1.1 %
- E. Local authorities, health, foreign affairs and defence.....7.3 %
- F. Transport, communication and roads ....2.8 %
- G. Judiciary matters.....31.9 %
- H. Aliens .....8.0 %
- I. Family law etc. ....5.9 %
- J. Education, science, church and culture .....3.0 %
- K. Human resource matters etc. ....4.7 %

**Figure 6**  
Reasons for rejection in 2006, in categories  
(3,105 cases in total)

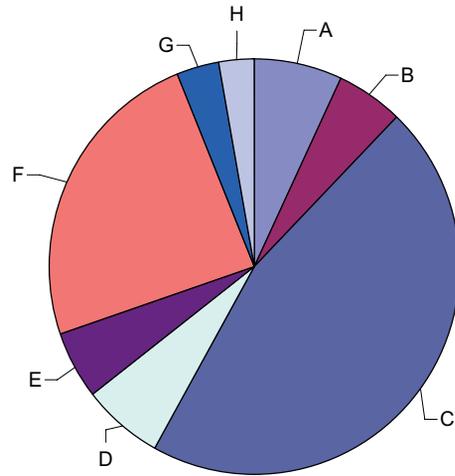
- A. Lodged too late .....4.5 %
- B. Judgments .....3.1 %
- C. The Danish Parliament .....1.4 %
- D. Outside jurisdiction.....5.2 %
- E. Unused channel of complaint.....1.0 %
- F. Complaint not sufficiently defined.....4.0 %
- G. Inquiries without complaint .....8.5 %
- H. Anonymous complaints .....0.3 %
- I. Other inquiries .....18.9 %
- J. Reopened after hearing .....1.8 %
- K. Own initiative .....2.1 %
- L. Preliminary rejection – unused channel of complaint.....49.2 %



**Figure 7**

Total of municipal cases closed in 2006,  
in categories (1,034 cases in total)

- A. Human resource administration .....7.0 %
- B. Schools and culture .....5.3 %
- C. Social benefits and health.....45.8 %
- D. Social and psychiatric services .....6.4 %
- E. Hospitals and health care.....5.2 %
- F. Technology and the environment.....24.1 %
- G. Other administrative bodies .....3.4 %
- H. Unspecified administration.....2.8 %





# Part 4

## SUMMARIES

## 1. Ministry of Employment

*Of 100 cases closed in 2006, 24 were investigated. Criticism and/or recommendations were expressed in 5 cases. No cases are summarized.*

## 2. Ministry of Finance

*Of 10 cases closed in 2006, 4 were investigated. Criticism and/or recommendations were expressed in 3 cases. No cases are summarized.*

## 3. Ministry of Defense

*Of 18 cases closed in 2006, 7 were investigated. Criticism and/or recommendations were expressed in 1 case. 1 case is summarized below.*

### 1. Criticism of defence plans by employee in the emergency management system

#### Freedom of speech

A newspaper published a polemic article with critical comments about the merger of the armed forces and the emergency management system and about the Government's plans for the terrorism management system. The article was written by the principal of a school which was part of the emergency management system.

The following day, the Minister of Defence told the press that he disapproved of the principal's article and expressed doubt about its being compatible with the principal's continued employment in the Ministry of Defence. On the same day, the Ministry of Defence asked the principal to state whether the Ministry could continue to have confidence in his working

efficiently and loyally to implement political agreements in the area of defence.

The Ombudsman took up the case on his own initiative. In his opinion, the article must be considered legitimate expressions of opinion, which the principal had written as a private individual. The Ombudsman criticised the Ministry of Defence for approaching the principal, as it had not been proven that the approach served a factual purpose. On the contrary, when considered in the context of the Minister's simultaneous public statements, the approach must be regarded as pressure on the principal. The Ombudsman also criticised the Minister of Defence for expressing disapproval of the fact that the principal had written the polemic article. (Case no. 2005-3419-815).

## 4. Ministry of the Interior and Health

*Of 248 cases closed in 2006, 57 were investigated. Criticism and/or recommendations were expressed in 11 cases. 5 cases are summarized below.*

### 1. Case processing time in regional state authority

A lawyer lodged a complaint about the case processing time in a regional state authority. The regional state authority had spent over two years processing a case without regularly informing the lawyer about its progress.

The Ombudsman stated that the long case processing time was a matter for regret.

He also considered it regrettable that the regional state authority had failed to inform the lawyer that the case was making slow progress, despite a request from the Ombudsman.

Moreover, the regional state authority should have regarded the lawyer as the representative of a party to the case. (Case no. 2005-4327-400).

### 2. Illegal condition for housing allocation

A woman who was about to come of age lived in a fairly large flat with her father. The father indicated that he wished to move to a smaller flat, while the daughter wanted to move away from home. The daughter asked the local authority to help her find suitable accommodation and the father repeatedly asked the local authority to help calculate what it would cost him to move.

The local authority was willing to help. For several years, the daughter and the father had communicated verbally and in writing with the local authority about their housing situation.

Among other things, it was discussed whether the local authority was able to help the daughter find somewhere to live through its right to allocate coun-

cil housing. During the course of the case, the local authority made its help to the daughter conditional on the father's removal to a smaller flat.

The father lodged a complaint with the Ombudsman about the local authority's handling of the case.

The Ombudsman stated that the local authority's condition for helping the daughter – the father's removal – was illegal. The regulations in the Council Housing Act concerning local authorities' right to allocate housing do not allow consideration of anyone other than the applicant.

The Ombudsman also criticised Copenhagen State County's failure to protest against the illegal condition. (Case no. 2004-3379-163).

### 3. Access to information about local authority's expenditure on graffiti consultant

A journalist lodged a complaint with the Ombudsman because a local authority had refused to disclose

invoices showing what its department of construction and technology had paid a graffiti consultant

during the “Stop Graffiti” campaign. The regional state authority had endorsed the refusal.

The refusal was made pursuant to Section 12, subsection (1.2) of the Access to Public Administration Files Act. The authorities considered it likely that the consultancy would suffer financially if the invoices were disclosed. Among other things, the authorities stated that competing businesses might take advantage of the information about the consultancy’s financial situation and/or copy the consultancy’s concept.

The Ombudsman agreed that the invoices contained information about operating and business

procedures, cf. Section 12, subsection (1.2) of the Access to Public Administration Files Act. However, he did not consider it likely that disclosure of the invoices would have significant financial effect on the consultancy. The exemption clause in Section 12, subsection (1.2) of the Access to Public Administration Files Act therefore did not apply.

On this background the Ombudsman recommended that the regional state authority reconsider the case. (Case no. 2005-0087-101).

#### 4. Case processing time in the National Board of Patient Complaints and the Board’s failure to inform about the case processing and to reply to reminders

On 19 December 2003, a woman lodged a complaint with the National Board of Patient Complaints about the treatment of her late husband. On 26 February 2006, she lodged a complaint with the Ombudsman about the Board’s case processing time.

The Ombudsman made a statement on the case on 24 October 2006. At that point, the Board had not yet made a decision on the case.

The Ombudsman stated that 34 months of preliminary case processing afforded grounds for severe criticism. He recommended that a decision on the case be made as soon as possible.

The Ombudsman also criticised the Board’s handling of the Medical Health Officer’s failure to forward a preliminary examination and, in this connection, the Board’s reminder procedure. He stated that the Board is responsible for ensuring that statements etc. are received sufficiently quickly to allow the Board to process the case within a reasonable period of time. In this connection, the Ombudsman asked the Board for more detailed information about, among other things, its reminder procedure.

The Ombudsman further stated that the Board’s failure to act in accordance with items 206, 207 and 208 in the Ministry of Justice’s guide to the Public Administration Act (1986) likewise afforded grounds for criticism.

In connection with his follow-up of an earlier case concerning the Board’s case processing time, the Ombudsman had received detailed information about the procedure for keeping parties to cases informed, which had been introduced after the Ombudsman’s investigation of 60 cases from the Board. (The follow-up is published in the Ombudsman’s Annual Report for 2005, page 616).

In the Ombudsman’s opinion, the present case raised doubts about the effectiveness of the information procedure which the Board had introduced, including the Board’s reminder system. On this background, he asked for information about the failure of the information procedure in the present case. He also asked to be informed whether the Board would consider revising its procedure for informing parties, partly on the background of the present case.

Finally, the case caused the Ombudsman to institute an independent investigation of the processing of the case by a Medical Health Officer institution,

pursuant to Section 17, subsection (1) of the Ombudsman Act. (Case no. 2006-0697-400).

## 5. Access to informers' names in case concerning the conditions in a foster family

A local authority received a written report with severe criticism of the conditions in a foster family. The report was signed by three persons. The report caused the local authority to initiate an investigation to reassess the family's authorisation to foster children.

The local authority refused to disclose the informers' names to the foster parents on the grounds that the informers might be subjected to harassment and threats by the foster parents. The Ombudsman's consideration of the case focussed exclusively on this matter.

The Ombudsman took for his basis that the foster parents undoubtedly had a significant interest in knowing the identity of the informers in order to be able to protect their interests in the case.

Consequently, the Ombudsman took the view that a number of specific circumstances in the case left significant doubts about whether the grounds given by the local authority were a sufficiently valid reason for withholding the informers' names.

The Ombudsman therefore recommended that the case be reconsidered in order for a new decision to be made and that the local authority further investigate the case in that connection. (Case no. 2005-4595-001).

## 5. Ministry of Justice

*Of 692 cases closed in 2006, 253 were investigated. Criticism and/or recommendations were expressed in 84 cases. 7 cases are summarized below.*

### 1. The Director of Public Prosecutions' obligation to pay attention to the time limit for changing decisions in Section 724, subsection (2) of the Administration of Justice Act

A lawyer lodged a complaint with the Director of Public Prosecutions on behalf of a client because the Regional Prosecutor had stopped the investigation of a case in which a police officer had fired a shot at the client's son. The son died soon afterwards. The police officer was not charged in connection with the investigation, but was questioned under caution.

The Director of Public Prosecutions determined that the time limit for changing a decision to with-

draw charges, cf. Section 724 of the Administration of Justice Act, applied to the case and that the time limit had expired soon after the complaint about the decision had been lodged with the Director of Public Prosecutions. It was therefore no longer possible to reverse the Regional Prosecutor's decision to stop the investigation of the case. The Director of Public Prosecutions criticised the Regional Prosecutor's failure to investigate whether the time limit for changing de-

cisions applied to the case already in connection with the decision to withdraw charges and the resultant complaint.

The Ombudsman agreed with the Director of Public Prosecutions that the time limit for changing decisions applied as the police officer must be regarded as a suspect in the case. On this background, the Ombudsman could not criticise the Director of Public Prosecutions' failure to consider whether he would have assessed the matter of guilt differently from the Regional Prosecutor.

The Ombudsman also stated that the Director of Public Prosecutions in general should be aware of the time limit for changing decisions when processing

complaints about withdrawal of charges and endeavour to decide on the cases before the expiry of the time limit. In his initial assessment of the complaints received, the Director of Public Prosecutions should thus not only note what the Regional Prosecutor has stated about the time limit, but also consider whether the Regional Prosecutor may be mistaken in this respect. In the Ombudsman's opinion, it would in the present case have been desirable for the Director of Public Prosecutions to consider whether the time limit for changing decisions applied and assess whether the case could be processed before the expiry of the time limit. (Case no. 2004-3420-611).

## 2. Indication of statutory authority when withdrawing charges

A lawyer lodged a complaint because the Chief Constable – and in the second instance the Regional Prosecutor – had withdrawn charges in a case pursuant to Section 721, subsection (1.2) of the Administration of Justice Act instead of Section 721, subsection (1.1).

After examining the case documents, the Ombudsman took for his basis that the Chief Constable when releasing the man believed that his contact with the other suspects in the case had merely been casual.

The Ombudsman stated that the use of Section 721, subsection (1.1) of the Administration of Justice Act as statutory authority for withdrawing charges is not limited to instances where the prosecution services have no grounds for charging the person concerned at the time of the charge. It likewise is not requisite that positive (definite) proof of the suspect's inno-

cence is obtained subsequently. Section 721, subsection (1.2) is only applicable as statutory authority if there has been at least a minimum of doubt about the part which the person concerned has played in the case. In the relevant case, there was no such doubt.

The Ombudsman therefore took the view that the charge against the man in question had proved unfounded and that charges should therefore have been withdrawn pursuant to Section 721, subsection (1.1).

After examining the Ombudsman's preliminary statement, the Director of Public Prosecutions made a new decision on the case, in which charges were withdrawn pursuant to subsection (1) of the provision. On this background, the Ombudsman took no further action in the case. (Case no. 2005-2733-611).

### 3. Acquittal in a criminal case led to partial pardon in another criminal case after resumption

In 2001, a Yugoslav citizen agreed to a road traffic fine of DKK 6,000 for driving a car in Denmark without a driver's licence. In connection with the road traffic case, the man showed a Yugoslav driver's licence that turned out to be forged. In March 2002, he was found not guilty of forgery because the Court believed that he neither was nor should have been aware that his driver's licence was forged. The Court based its verdict on the man's detailed and credible explanation concerning his acquisition of the driver's licence.

The police, and subsequently the National Commissioner of Police, refused to replace the false Yugoslav driver's licence with a Danish driver's licence. In accordance with the one year limit for lodging complaints with the Ombudsman in the Ombudsman Act, the man's complaint about this was deemed obsolete.

With regard to the size of the road traffic fine from 2001, the Ombudsman stated that, on the basis of the available information, he could not decide whether (part of) the DKK 6,000 fine should be repaid to the man on account of the acquittal. In this connection, he referred to the fact that neither the Chief Constable nor the Regional Prosecutor appeared to have considered the issue. He submitted the question to the Chief Constable.

The Chief Constable upheld his former decision concerning the size of the road traffic fine, but after the man had lodged a further complaint with the Ombudsman, the Regional Prosecutor reversed the Chief Constable's decision. The Regional Prosecutor believed that the man should only be fined for driving without "a valid driver's licence", not for driving "without having acquired the right to drive a car". The man was then (partially) pardoned and repaid DKK 4,500. (Case no. 2005-3447-612).

### 4. Refusal of request to serve sentence in low security prison due to biker gang association

A convicted man was refused permission to serve his prison sentence in a low security prison. The Danish Prison and Probation Service decided that he must serve his sentence in a section for negatively dominant prisoners in a high security prison. The Service gave limited grounds to the prisoner but did inform him that it had attached importance to the assumption that the prisoner was or had recently been associated with a biker gang when making its decision.

As it was a relatively interfering decision of a damaging nature, the Ombudsman stated that the authorities must be able to provide evidence documenting a strong likelihood of biker gang associations. In the

present case, he took for his basis that the authorities had not been able to produce adequately documented information about the prisoner's (continued) biker gang association. In the Ombudsman's opinion, the necessary basis for considering the prisoner biker gang related – causing him to be placed in a section for negatively dominant prisoners – therefore did not exist.

The Ombudsman also stated that he agreed with the Danish Prison and Probation Service that the Service could limit its grounds in a case like the present. He also agreed that the Service was allowed to give detailed grounds for its decision, regardless of

the provision in Section 24, subsection (3.1) of the Public Administration Act. However, he considered it a matter for regret that the Service in its decision stated that it was unable to give the prisoner detailed grounds for the decision, while also providing the full grounds, i.e. that the prisoner must be assumed to be or recently have been associated with a biker

gang. In practice, the Service thus had not limited the grounds. In the Ombudsman's opinion, it was a matter for regret that the prisoner in this way had been left with the impression that the Service had information which it did not actually have. (Case no. 2005-1870-621).

## 5. Evidential basis for the Danish Prison and Probation Service's decision on a reported suicide

By agreement with the Danish Prison and Probation Service, the Danish Parliamentary Ombudsman examines all cases involving deaths, suicides and suicide attempts et cetera in the Prison Service's institutions. On 28 November 2005, the Danish Prison and Probation Service informed the Ombudsman that it had on the same day made a decision on a report from Herstedvester State Prison concerning a prisoner's suicide on 2 July 2005. At the time, the prisoner was still at the prison even though it had referred him to St. Hans Hospital more than three months earlier.

Among other things, the Ombudsman's investigation focussed on whether the prison had done enough to get the prisoner transferred to St. Hans Hospital.

After obtaining statements from Herstedvester State Prison, the Danish Prison and Probation Service, St. Hans Hospital and the hospital group on Copenhagen's Board of Directors, the Ombudsman on 12 October 2006 stated that in his opinion the Serv-

ice's decision was based on inadequate evidence. He referred to the Service's failure to obtain the prisoner's medical journal from Herstedvester State Prison before making its decision on the case. The Service therefore had not been able to check the information that was part of and formed the basis of the prison's statement to the Service. The Service thus had no basis for deciding that the prison had been sufficiently persistent in relation to St. Hans Hospital. The Ombudsman noted that the medical journal contained the prison's notes on the (many) telephone calls between the prison and St. Hans Hospital about transferring the prisoner to the hospital. The Ombudsman also criticised the prison's failure to observe the duty to take notes.

The Ombudsman could not take a position on whether the prison ought to have done more to effect the planned admission to St. Hans Hospital, as he has no medical (psychiatric) expertise. (Case no. 2005-2467-626).

## 6. The Ministry of Justice's processing time in a case in which the response was not a decision

Requirements in relation to the authorities' consideration of such cases

On 30 September 2005, an individual wrote to the Minister of Justice concerning a case in which a de-

fence attorney had given his client documents containing information about the identity of an any-

mous witness. The letter asked the Minister to take up the case. The sender subsequently requested a reply from the Ministry several times, both by telephone and by letter. On 20 February 2006, the individual lodged a complaint with the Ombudsman about the Ministry's case processing time.

The Ministry of Justice replied to the letter on 14 March 2006. In its letter, the Ministry expressed regret about the late reply.

The Ombudsman concurred with the Ministry of Justice's regret. He also agreed with the Ministry that the response was not a decision within the meaning of the Public Administration Act.

## 7. Refusal to approve the full or partial renunciation of a group life insurance by the guardian of a minor

A father lodged a complaint against the Civil Affairs Agency, which had refused to approve that he, as the guardian of an under-age child, fully or partially renounced a group life insurance that was payable following the death of the child's mother.

The file showed that the couple had two children together and that the mother – approximately three years before the birth of their second child – had made their first child the main beneficiary of her group life insurance. It also showed that the father's request for approval of partial renunciation of the group life insurance was motivated by his wish to give the two full siblings equal rights.

The Ombudsman considered it a matter for regret that the Civil Affairs Agency had decided on the case as first instance as the Agency should have returned the case for processing by Storstrøm regional state authority.

The Ombudsman also considered it a matter for regret that the Civil Affairs Agency in its refusal

The Ombudsman stated that certain requirements apply to the authorities' case processing even when no decision within the meaning of the Public Administration Act is made. He further stated that it would have been most in keeping with the principles of good administrative practice if the Ministry had confirmed receipt of the letter when it became evident that a final response could not be given within a reasonable period of time. It would also have been in keeping with good administrative practice if the Ministry in this connection had stated when it expected to be able to reply to the letter. Moreover, the Ministry should have replied to the written reminders. (Case no. 2006-0639-600).

failed to explain the main considerations behind its decision.

According to the available information, the Civil Affairs Agency's refusal to approve full renunciation of the group life insurance was in keeping with its long-standing restrictive practice in the area. Partly with reference to this, the Ombudsman found no grounds for recommending that the Agency reconsider this part of the case.

As far as the Agency's refusal to approve partial renunciation of the group life insurance was concerned, the file showed that the Agency had not previously considered a similar case.

On the basis of a specific assessment of the nature of the case, its unique circumstances, the mistakes discovered and the principle involved, the Ombudsman recommended that the Civil Affairs Agency reconsider this part of the case and decide to return it to the regional state authority for processing.

The Civil Affairs Agency returned the case to the regional state authority for processing. The state ad-

ministrative body (which took over the case from the regional state authority on 1 January 2007 in connection with the structural reform of Danish local and regional authorities) decided to grant the application for approval of partial renunciation so that the children will share the insurance amount equally.

The Ombudsman informed the state administrative body and the Civil Affairs Agency that he had noted the new decision in the case and would take no further action. (Case no. 2005-3597-650).

## 6. Ministry of Ecclesiastical Affairs

*Of 22 cases closed in 2006, 5 were investigated. Criticism and/or recommendations were expressed in 2 cases. No cases are summarized.*

## 7. Ministry of Culture

*Of 36 cases closed in 2006, 11 were investigated. Criticism and/or recommendations were expressed in 3 cases. 1 case is summarized below.*

### 1. The training at a drama school

Advance approval requirement for performance that is not part of the training

The guide to admission to the Danish National School of Theatre states that students' participation in plays (performances) that are not part of the training must be approved in advance by the School.

The Ombudsman asked the School and the Ministry of Culture to consider the requirement in relation to the provisions concerning freedom of expression in the Danish Constitution and the European Human Rights Convention.

The Ombudsman took for his basis that the students' performances must be regarded as expressions within the meaning of the provisions. The advance approval requirement must therefore be as-

sessed in relation to the prohibition of censorship in Section 77 of the Constitution and the particular legal status of institutions which may justify a limited deviation from the protection under Section 77.

The Ombudsman considered it very doubtful that the School's grounds for the advance approval requirement provide adequate legal basis for such a limitation of the students' protection under Section 77 of the Constitution.

The Ombudsman therefore recommended that the Ministry of Culture ensure that the advance approval requirement was not retained on the present basis. (Case no. 2004-3970-7549).

## 8. Ministry of Environment

*Of 85 cases closed in 2006, 29 were investigated. Criticism and/or recommendations were expressed in 8 cases. 2 cases are summarized below.*

### 1. Minister's email to her parliamentary group was an activity within the public administration

A journalist asked the Danish Ministry of the Environment to disclose an email which the Minister of the Environment had sent to her parliamentary group.

The email contained the Minister's comments on a case which had been transferred from the Ministry of the Environment to the Ministry of Justice because doubts might arise about the Minister's competence to act. The Ministry of the Environment refused to disclose the email, stating that it was private and therefore not part of the public administration. The journalist lodged a complaint with the Ombudsman about the refusal.

The Ombudsman stated that the Minister of the Environment, like others who work in the public administration, may obviously comment as a private person on a case in which she has been involved in her role as minister. As the content of the email was clearly connected with a case in the Ministry and the Minister's role as minister, there was, however, in the

Ombudsman's opinion, reason to assume that the email must be regarded as an activity within the public administration. This assumption might be reduced or removed by other circumstances in the case.

It did not appear from the email in which role the Minister had written it. For instance, it did not mention that she was writing in her role as minister or in another role, such as a member of her parliamentary group. In accordance with the assumption the email must, under these circumstances, be regarded as an activity within the public administration.

On this background, the Ombudsman recommended that the Ministry of the Environment reopen the case and reconsider the disclosure application. He pointed out that he had made no statement on whether access should be granted or whether the email was covered by the exemption clauses in the Access to Public Administration Files Act. (Case no. 2005-2214-101).

### 2. Case limitations in relation to administrative recourse

Disclosure of documents. Guidance on time limit for bringing a case before the courts

A citizen submitted a complaint to the Danish Environmental Protection Agency when a local authority refused to disclose some documents concerning a proposed district plan. The citizen also complained about the local authority's failure to provide a correct

time limit for comments on the district plan proposal and about mistakes in the local authority's information to two involved tenants.

The Environmental Protection Agency in principle endorsed the local authority's decision on disclosure

of the documents and also agreed with the local authority about the time limit for comments on the district plan proposal. In the Agency's opinion, the citizen did not have the necessary legal interest in having the matter of mistakes in the local authority's information to the two involved tenants tested. The Agency's letter to the citizen indicated that any legal process to test the decision should have been initiated within six months, cf. Section 62, subsection (1) of the Planning Act.

The Ombudsman took for his basis that the local authority had not exempted the documents from disclosure and considered it a matter for regret that it had given the opposite impression in its response to the citizen.

The Ombudsman also took for his basis that the Agency's decision on the part of the complaint that concerned the time limit for comments on the district plan proposal implied a recognition that the citizen had a legal interest in the outcome of the case. In the

Ombudsman's opinion, a citizen who is regarded as entitled to complain about the decision on a case is entitled to complain about all aspects of the case that are within the competence of the complaints authority. Accordingly, the complaints authority is under an obligation to consider every point which the complainant makes in the complaint. On this background, the Ombudsman took the view that the Agency should not have refused to consider the part of the complaint which concerned the issue of mistakes in the local authority's information to two involved tenants.

Furthermore, the Ombudsman considered it a mistake that the Environmental Protection Agency's information about the time limit for bringing the case before the courts failed to mention that the time limit is irrelevant to the access to bringing disclosure decisions before the courts. The Ombudsman recommended that the Agency consider clarifying its guidance. (Case no. 2005-2659-120).

## 9. Ministry for Family and Consumer Affairs

*Of 134 cases closed in 2006, 38 were investigated. Criticism and/or recommendations were expressed in 10 cases. 5 cases are summarized below.*

### 1. The authorities' case investigation and discretionary assessments

A father lodged a complaint with the Ombudsman about the decisions on his child maintenance case by the regional state authority and the Department of Private Law (now the Department of Family Affairs).

The child maintenance paid by the father had been reduced to the standard rate, but the authorities had refused to annul the maintenance.

The Ombudsman stated that he could not rule out that the scarce information available about the par-

ties' provision for the children at the time when the maintenance was fixed had influenced the authorities' decisions. However, in his opinion, this circumstance could not reasonably be allowed to have a prejudicial effect on one party only (the father) and, together with the authorities' attention to practical arrangement considerations, make it difficult to get the child maintenance reduced or annulled. In the Ombudsman's opinion, several circumstances sug-

gested that the authorities had attached too much importance to the original agreement between the parties and the interests of the mother who had organised her life on the basis of the existing arrangement. The Ombudsman stated that the basic conditions for fixing child maintenance must also be met before the authorities can refuse to reduce or annul a fixed maintenance. In his opinion, the authorities have a duty to ensure that the basic conditions are met when a substantiated application for alteration of a fixed maintenance is submitted. He did not consider it sufficiently clear from the information on which the authorities based their decisions that the father was not

fulfilling his obligation to maintain his children so that the mother carried the main burden of maintenance. In the Ombudsman's opinion, it was therefore very doubtful that the authorities' decision was within the limits of Section 16, subsection (1) of the Child Maintenance Act then in force, now Section 13, subsection (2) and Section 18, subsection (2).

After the case had been submitted to the Ombudsman, the regional state authority decided to relieve the father of his duty to pay child maintenance. The Ombudsman therefore had no basis for recommending that the authorities reconsider the case. (Case no. 2003-0868-652).

## 2. Dyslexic banned from contacting the Department of Family Affairs by telephone

The Department of Family Affairs banned a citizen from contacting it by telephone. The background to the injunction was the man's many telephone calls to the Department which took up a disproportionate amount of the staff's time. In these calls, the man abused and reproached the staff. As he had on earlier occasions stated that he was dyslexic, the Department told him to ask the local authority for help with his future correspondence with the Department. An employee also advised the man to apply to the regional state authority for a grant towards IT equipment to compensate for his dyslexia.

In the Ombudsman's opinion, the Department's decision to limit its contact with the man was in prin-

ciple warranted. However, this did not release the Department from its special duty to give the man guidance because of his dyslexia. The Department had not adequately met this duty simply by referring the man to ask the local authority for help, as it had done. Furthermore, the Department should not have advised him to apply to the regional state authority for a grant towards IT equipment without having first investigated whether there was reason to assume that the conditions for such a grant were met.

Until such a preliminary investigation had been carried out, the Ombudsman recommended that the Department again allow the man to call within reasonable limits. (Case no. 2005-3606-609).

## 3. Passing on of information that a citizen was banned from telephone contact with the authority

Case concept. Party concept

The Department of Family Affairs instructed a man not to call and at the same time sent a copy of the injunction to his former partner and to a regional state

authority. The injunction was issued when the Department made its decision on a complaint from the man about the regional state authority's failure to

make a decision on his request for reduced child maintenance to the couple's common child. In the Department's opinion, the decision to ban the man from telephone contact was so closely connected with the Department's future case processing that the child's mother and the regional state authority must be informed.

The Ombudsman stated that the Department's injunction to the man was an independent case which was essentially different from the complaint case about the regional state authority's case processing time. The former partner could not be considered a party to this independent case. Moreover, as the information about the injunction must be regarded as confidential, the Department had acted contrary to

its general obligation to observe confidentiality pursuant to Section 27, subsection (1.6) of the Public Administration Act by passing on this information to the man's former partner. In the Ombudsman's opinion, this circumstance afforded grounds for criticism.

With regard to the passing on of confidential information to the regional state authority, the Ombudsman stated that the Department had not given grounds to support that the Department or the regional state authority had a factual need to pass on the information, as required pursuant to the relevant provision in Section 28, subsection (3) of the Public Administration Act. In the Ombudsman's opinion, this circumstance likewise afforded grounds for criticism. (Case no. 2005-4516-603).

#### 4. The Department of Family Affairs' refusal to process complaints submitted late

In two cases, the Ombudsman considered whether the Department of Family Affairs could refuse to process a complaint submitted late with reference to the long time that had passed since the lower instance made its decision.

The first case (no. 2004-3465-651) involved alimony. Here, the complaint about the lower instance's decision was submitted after 112 months.

The second case (no. 2006-0751-652) involved child maintenance. Here, the complaint about the lower instance's decision was submitted after 32 months.

Even though the legislation does not lay down a limit for access to appeal, the Department of Family Affairs refused to process either complaint. The Department stated that in its opinion a complaint must be submitted within a certain period of time. The Department took the view that consideration for a party's access to appeal must be balanced against consideration for the opposite party, who must be assumed to have organised things on the basis of confidence in the decision made.

In its statements to the Ombudsman, the Department of Family Affairs described its administrative practice in relation to complaints submitted late. The Department stated that there are no fixed guidelines for what must be considered "a certain period of time", but that a complaint submitted within a year of the lower instance's decision will not be rejected.

The Ombudsman stated that when the legislation has not laid down a limit for access to appeal, an appeals body can only refuse to submit a complaint submitted late to an actual investigation, if the complainant has no legal interest in having the decision changed or if the case can no longer be investigated.

The Ombudsman further stated that, in his opinion, explicit legal warrant is required to bar access to appeal beyond cases where the complainant has no legal interest in having the decision changed or the circumstances can no longer be investigated – just as it is for setting an actual time limit for submission of complaints. On this background, the Ombudsman found that the Department of Family Affairs' practice

of rejecting complaints submitted late afforded grounds for criticism.

In both cases, the Ombudsman criticised the Department of Family Affairs' refusal to process the

complaints and recommended that the Department submit the case to an actual investigation. (Case nos. 2004-3465-651 and 2006-0751-652).

## 5. Disclosure of veterinary register

A citizen asked for disclosure of data in a register of information about the use of prescription drugs for animals according to the Access to Environmental Information Act. The Danish Institute for Food and Veterinary Research rejected the application. The Ministry of Family and Consumer Affairs endorsed the refusal.

During the case processing, the Ministry received a statement by the Danish Institute for Food and Veterinary Research indicating that extensive analyses were required to assess whether the drugs listed in the register might affect the environment.

As grounds for upholding the refusal, the Ministry of Family and Consumer Affairs, among other things, stated that the information in the register is so remote from environmental issues that it is not envi-

ronmental information within the meaning of the Act. The Ministry mentioned that it had attached importance to the fact that the register was established for reasons relating to food rather than the environment.

The Ombudsman criticised the Ministry's failure to investigate whether the data in the register is included in the concept of environmental information as defined in the Access to Environmental Information Act. He also criticised the Ministry for using the reasons for establishing the register as the main criterion in its assessment. He referred to the comments on an amendment of the Access to Environmental Information Act, which showed that the context of the information must no longer be decisive. (Case no. 2005-0951-301).

## 10. Ministry of Refugee, Immigration and Integration Affairs

*Of 312 cases closed in 2006, 68 were investigated. Criticism and/or recommendations were expressed in 5 cases. 5 cases are summarized below.*

### 1. Refusal of residence permit to Afghan woman whose under-age son is a Danish resident

Administrative practice. Case investigation. Use of criteria

An Afghan woman lodged a complaint with the Ombudsman because the Ministry of Integration Affairs had rejected her application for a humanitarian residence permit.

The woman was the second wife of an Afghan citizen resident in Denmark. He had asylum in Denmark and had been granted family reunification with his first wife and his five children. He had also been

granted a residence permit for his son with his second wife.

The Ombudsman asked the Ministry to consider the possible significance of Article 8 of the European Human Rights Convention in relation to the woman's opportunities to be with her son, her husband, the husband's first wife and their children. It would probably be impossible for her to see her son if she was sent back to Afghanistan. He also asked if the Ministry had investigated whether the woman's sib-

lings in Afghanistan would be able to look after her if she had to return. In addition, he asked for an account of the Ministry's practice.

The Danish Immigration Service then started processing the case about residence permit (for special reasons) pursuant to Section 9 c, subsection (1) of the Aliens Act. The Ombudsman therefore stopped his investigation. The woman was subsequently granted a residence permit. (Case no. 2003-4225-642).

## 2. Failure to announce practice change

In May 2003, the Ministry of Integration introduced a new practice for family reunification cases.

The change meant that certain individuals – unlike earlier – were able to obtain residence permits for spouses. The new practice was not announced. After this had been criticised by the media, the Ombudsman took up the case on his own initiative.

The practice change was significant and very important to the affected persons. Failure to announce the less stringent conditions involved a significant risk that the citizens who were in a more favourable position would not apply for family reunification at all.

In keeping with good administrative practice, the Ministry should therefore immediately have announced the practice change in an appropriate manner. The announcement could, for instance, have been made by posting a notification about the practice on the authorities' websites. A press release might also have been issued. In this way, the citizens would have had an opportunity to find out about the new practice and act accordingly. The Ombudsman considered it a matter for regret that this had not happened. (Case no. 2005-3523-643).

## 3. Deportation of alien because of illegal work

The evidential basis

An alien was deported administratively with entry prohibition by the Ministry of Refugees, Immigration and Integration Affairs because of illegal work.

The police and tax authorities had observed the man operating a dishwasher in a restaurant without the necessary work permit. A court later found the alien not guilty of working illegally in the restaurant. His lawyer therefore asked the Ministry to reconsider the deportation case. The Ministry upheld its deci-

sion, referring to the alien's information in connection with the arrest that he received board and lodging from the restaurant owner in return for childcare.

The Ombudsman asked the Ministry to state whether there was a lower limit to what the authorities consider "work" within the meaning of the legislation, and, if so, to make a statement about it in relation to the childcare which was allegedly involved in the present case. He also asked the Ministry to

make a statement on the evidential basis in relation to the nature of the childcare. He referred to the fact that the police's interrogation report was directed towards the work in the restaurant, so that the interrogation concerning the childcare must be assumed to have been fairly limited.

The Ministry subsequently reversed the deportation with entry prohibition, referring to the fact that some doubt had arisen about the extent of the childcare so that it could not be established with adequate certainty that the alien had carried out work covered by the legal regulations concerning deportation. (Case no. 2005-4029-649).

#### 4. Guidance on the possibility of obtaining residence and work permits pursuant to Section 9 a, subsection (1) of the Aliens Act – cf. the association agreement (Turkey)

On his own initiative, the Ombudsman raised a matter with the Ministry of Integration Affairs concerning the aliens authorities' guidance of Turkish citizens on residence and work permits – more specifically, their rights pursuant to the association agreement between the EC and Turkey of 12 September 1963.

The Ministry stated, among other things, that in the future guidance about the possibility of obtaining residence permit on the basis of the association agreement will be provided in all cases in which this may

be relevant. It will no longer depend on an actual assessment in the individual case.

The Ministry also considered it most in keeping with good administrative practice if the association agreement etc. was published on the Danish Immigration Service's website and later added to a joint internet portal.

The Ombudsman took note of the statement and took no further action in the matter. (Case no. 2006-0812-609).

#### 5. Retaining of financial security provided in connection with visa for visit

A man was given a visa to Denmark and in connection with the visa case, his girlfriend, who was resident in Denmark, provided a financial guarantee of DKK 50,000.

The man then married his girlfriend in Denmark and applied for family reunification.

The Danish Immigration Service informed the woman that the guarantee of DKK 50,000 would be retained because her husband had applied for a residence permit in Denmark. The Ministry endorsed the decision.

The Ombudsman raised the matter of guidance with the authorities. In his opinion, it was at the time

of the drafting of Section 4 of the Aliens Act presupposed that the authorities must give applicants guidance about the consequences of infringing the visa conditions in connection with both the processing of a visa case and the initial processing of a possible ensuing residence case.

The Ministry of Refugees, Immigration and Integration Affairs obtained information to clarify the guidance issue. The Ministry then informed the Ombudsman that in the present case, the couple had not been advised that the financial security provided would be retained when the application for family reunification was submitted. On that background, the

Ministry reconsidered the case and released the financial security provided.

The Ombudsman took no further action in the case after this. (Case no. 2006-1216-649).

## 11. Ministry of Food, Agriculture and Fisheries

*Of 17 cases closed in 2006, 4 were investigated. No criticism and/or recommendations were expressed in any of the cases. No cases are summarized.*

## 12. Ministry of Science, Technology and Innovation

*Of 56 cases closed in 2006, 3 were investigated. Criticism and/or recommendations were expressed in 1 case. 1 case is summarized below.*

### 1. Inadequate search options in a filing system

The filing system at a university was arranged in such a manner that the university could not search for cases involving a particular subject or a specific provision in the legislation concerning student grants.

The Ombudsman stated that it was a matter for regret that the university's search options were limited

to searches using the applicant's civil registration number. The authorities must observe the principle laid down in administrative law, which implies that they must have a sufficiently specific overview of their own practice. (Case no. 2004-3341-730).

## 13. Ministry of Taxation

*Of 173 cases closed in 2006, 18 were investigated. Criticism and/or recommendations were expressed in 7 cases. No cases are summarized.*

## 14. Ministry of Social Affairs

*Of 442 cases closed in 2006, 162 were investigated. Criticism and/or recommendations were expressed in 13 cases. 7 cases are summarized below.*

### 1. Change of school therapy arrangement

#### Delaying effect of complaint

A boy had been placed in a school therapy arrangement at a special school, where he was doing well. After some time, the local authority decided to change the offer to the boy and move his teaching to another special school. The parents' lawyer submitted a complaint about the decision to the social complaints board and asked the board to grant the complaint delaying effect (so that the local authority had to continue to pay for the boy's attendance at the original school) until the board had made its decision.

The board informed the lawyer that it was not competent to grant the complaint delaying effect, and referred to the local authority which, however, refused to grant the complaint delaying effect. The boy therefore did not attend school from 1 May until the summer holiday.

The social complaints board then decided that the boy should continue in his school therapy arrangement and ordered the local authority to re-enrol the

boy in the original school. Subsequently, the board decided that the local authority should have granted the complaint delaying effect pursuant to Section 72, subsection (1) of the Legal Protection in Social Matters Act and thus should have continued to pay for the boy's school attendance until it had made its decision.

The Ombudsman took up the case on his own initiative and made a statement on the relationship between Section 72, subsection (1) of the Legal Protection in Social Matters Act and the general legal principle in administrative law regarding appeal instances' authority to consider whether complaints shall be granted delaying effect.

The Ombudsman criticised the board's failure to consider the lawyer's request that the complaint be granted delaying effect when it was first made.

He also criticised the local authority in several respects, including its original failure to grant the complaint delaying effect. (Case no. 2005-2216-079).

### 2. Sending copy of disclosure decision to other authorities infringed the regulations concerning passing on information

#### Party concept. Case concept

The National Social Appeals Board sent the social complaints board and the local authority a copy of a decision on disclosure of a medical consultant's statement in connection with a woman's industrial injury

case. The statement originally formed part of the woman's pension case, which the social complaints board and the local authority had been involved in processing. The National Social Appeals Board's de-

cision on disclosure of the document included a quote from the statement, which was in the nature of highly confidential information concerning health issues covered by Section 28, subsection (1) of the Public Administration Act.

The National Social Appeals Board gave as grounds for passing on the information to the two authorities that no independent disclosure case had been established because this issue in the Board's opinion formed part of the pension case. The board and the local authority had thus received the information as "parties" to this case.

The Ombudsman considered the Board's designation of the social complaints board and the local authority as "parties" misleading, as he assumed it only referred to the social complaints board's and the local

authority's processing of this case as public authorities.

The Ombudsman further stated that, in terms of administrative law, the disclosure case and the pension case must be regarded as two distinct cases even though the Board had not physically established a separate disclosure case.

In the Ombudsman's opinion, the Board had not documented an objective need to send a copy of the disclosure decision to the social complaints board and the local authority. On this background, the Ombudsman criticised the Board's infringement of the regulation concerning passing on information in Section 28 of the Public Administration Act, thus failing in its duty to observe confidentiality pursuant to Section 27, subsection (1) of the Public Administration Act. (Case no. 2005-1146-003).

### 3. Decision on disclosure of documents accompanied by complaint guidance with time limit for complaint

A woman submitted a complaint to the National Social Appeals Board because the National Board of Industrial Injuries had refused to grant her access to some documents concerning her industrial injury case. The National Social Appeals Board refused to process the complaint because the time limit of four weeks had been exceeded.

In a preliminary report, the Ombudsman stated that decisions on access to industrial injury cases are made pursuant to the Public Administration Act or the Access to Public Administration Files Act. These Acts do not specify any time limits for complaints. Provisions that establish special time limits for complaints concerning substantive law issues are irrele-

vant to the access to complain about disclosure decisions, unless the opposite is explicitly indicated.

Neither the wording of the appeals provisions in the Protection against the Consequences of Industrial Injuries Act nor the preliminaries suggested a time limit of four weeks for complaints about decisions concerning access to industrial injury cases. The National Social Appeals Board's refusal to process the complaint was therefore wrong.

The National Social Appeals Board replied that it agreed with the Ombudsman, and stated that it would now subject the woman's complaint to an actual investigation. (Case no. 2005-3090-001).

#### 4. Child benefit abroad

Forwarding of application. Hearing of party. Case investigation. Announcement of decision.  
Documentation of the contents of the decision

A local authority decided to stop child benefit payments because the citizen was no longer resident in Denmark.

The Ombudsman criticised the local authority's failure to ensure that there was sufficient evidential basis. Among other things, it failed to investigate the citizen's claim that he had been granted dispensation from the obligation to reside in Denmark.

The Ombudsman also criticised the local authority's failure to hear the citizen and stated that it should have done more to procure an address for its correspondence with the citizen. For the same reason, he criticised the failure to inform the citizen of the decision.

Finally, the Ombudsman criticised that the local authority's files did not show whether a legal assessment of the case had been carried out before the decision was made, and that it was impossible to provide written grounds for the decision on the basis of the local authority's file.

The Ombudsman criticised the social complaints board's failure to take a position on the local authority's inadequate case processing.

At the Ombudsman's request, the local authority declared that it would reconsider the case and change its decision. (Case no. 2004-4463-050).

#### 5. The issue of party status in a placement case for a father without shared custody

A local authority made a decision on voluntary placement of a child.

The placement was made at the request of the child's mother, who had sole custody. The child's father submitted a complaint about the decision to the social complaints board. However, the board rejected the complaint on the grounds that the father did not have shared custody and for that reason alone could not be considered as a party in the case concerning voluntary placement of the child. The National Social Appeals Board later endorsed this view.

The Ombudsman did not concur in the social complaints board's and the National Social Appeals

Board's general view that parents without shared custody can under no circumstances be granted party status in voluntary placement cases. In other words, having custody was a sufficient but not an essential condition of being granted party status.

The Ombudsman then considered whether the present case offered a sufficiently strong, specific basis for considering the father a party in the case. He did not find that to be the case. However, he mentioned some general criteria which, in other circumstances, would have supported considering a parent without shared custody a party to such cases. (Case no. 2005-0949-070).

## 6. Application for resumption of occupational injury case should also be assessed on a non-statutory basis

A man suffered an acute noise trauma during a shooting exercise in 1980 in connection with his job in the police force. In 1990, the National Board of Industrial Injuries acknowledged that the man's disorder was an occupational injury, but took the view that the man – who despite the noise trauma had continued in his job – had suffered no loss of working capacity. In a shooting exercise in 1992, the man suffered another noise trauma. In 1994, the National Board of Industrial Injuries assessed his loss of working capacity as a result of the injury as 15 per cent – which, however, did not entitle him to any compensation either.

In 2001, the local authority awarded the man early retirement pension at medium level with reference to his now massive hearing disability as well as memory and concentration difficulties, which might be due to the hearing disability. In other words, the local authority took the view that his working capacity with the police was severely reduced. In 2002, he was dismissed with qualified incapacity pension. The reason given for the dismissal was that he was unfit for service due to poor health.

On this background, the man asked the National Board of Industrial Injuries to reconsider the issue of loss of working capacity as a result of his two occupational injuries. However, the National Board of In-

dustrial Injuries and later the National Social Appeals Board refused to reconsider the issue because the application was made more than five years after the original compensation decision. Pursuant to Section 29 of the Industrial Injury Insurance Act then in force, the issue could only be reconsidered at this stage if exceptional circumstances called for it. The authorities did not consider this to be the case according to the administrative practice associated with Section 29.

The Ombudsman considered it uncertain whether the National Social Appeals Board had applied the above-mentioned administrative practice in accordance with the premises in a judgment passed by the Supreme Court on 19 May 2005 during his processing of the case. As the authorities believed that resumption must be regarded as precluded pursuant to the statutory arrangement in Section 29, the Ombudsman criticised their failure to consider whether the resumption application was based on issues which, in the circumstances, should lead to resumption on a non-statutory basis. He recommended that the National Social Appeals Board – and possibly initially the National Board of Industrial Injuries – make a new decision on reconsideration of the case on the basis of his statement. (Case no. 2004-3895-024).

## 7. Competence pursuant to Section 109 e of the Social Services Act

Duty to react in cases raising serious concerns about infringement of the legal rights of affected citizens

A regional state authority moved a citizen who suffered from Down's syndrome and Alzheimer's disease and was presumably legally incapable from one institution to another. The removal was carried out without observing the relevant procedural rules in

Section 109 e in the Social Services Act – among other things, a guardian for the citizen was not appointed. In the opinion of the social complaints board and the Ministry of Social Affairs, the board could consider the case. The social complaints board cannot take up

a case on its own initiative and no complaint had been made by the person affected by the decision or his representative (for instance a guardian).

In cases concerning removal of legally incapable persons, the social complaints boards have been given authority which is unique in the social legislation. The boards have been given this authority because the decisions are considered to be a significant encroachment on the liberty of these persons.

In the Ombudsman's opinion, the social complaints board in this area has a duty to react when concerns are raised about whether the citizen's legal rights have been infringed. In the present case the social complaints board must thus be under an obliga-

tion to ensure that a guardian is appointed for the legally incapable person.

The Ombudsman therefore recommended that the social complaints board consider the case and take the initiative in appointing a guardian for the citizen – with follow-up to ensure this actually happens. The authorities must then consider the case in co-operation with the guardian.

Similar considerations will, in the Ombudsman's view, be relevant in other cases about coercion in which the social complaints board has been given a special approval authority, cf. Section 109 f in the Social Services Act. (Case no. 2004-2807-062).

## 15. Prime Minister's Office

*Of 20 cases closed in 2006, 4 were investigated. No criticism and/or recommendations were expressed in any of the cases. 1 case is summarized below.*

### 1. Access to the Prime Minister's Office's correspondence concerning the Queen's speech during an official visit to the Faroe Islands

An individual asked the Prime Minister's Office to disclose its documents relating to the Royal Family's official visit to the Faroe Islands in June 2005. The Prime Minister's Office turned down the request for access to the Office's correspondence with the Court and the High Commissioner of the Faroe Islands about the speech given by the Queen at the Lawspeaker's official dinner during the visit.

The Prime Minister's Office referred to Section 7 and Section 13, subsection (1.6) of the Access to Public Administration Files Act.

The Office's grounds for the refusal were, among other things, that the Court and the Prime Minister's Office in relation to the Queen's speech must be re-

garded as one authority, as the speech was given as part of the administration of the state. The correspondence with the Court concerning the speech must therefore be considered internal.

The Prime Minister's Office further argued that the considerations applying to the exemption of correspondence between the Court and the Office also apply to draft speeches exchanged between the Office and the High Commissioner of the Faroe Islands, and stated that these considerations could not be protected if the underlying exchange of draft speeches between the Office and the High Commissioner were covered by the right of access to documents. The Office made special reference to the need to protect the

regent's ability to prepare a speech to be held as part of her participation in the administration of the state without restrictions.

The Ombudsman could not criticise the Prime Minister's Office's assessments in the case. (Case no. 2005-4338-801).

## 16. Ministry of Transport and Energy

*Of 52 cases closed in 2006, 15 were investigated. Criticism and/or recommendations were expressed in 4 cases. 1 case is summarized below.*

### 1. Flight safety on three flights

The inquisitorial procedure. The party concept. The decision concept. The duty to make notes. Grounds. Appeal access

A pilot lodged a complaint about the authorities' refusal to initiate a closer investigation of three flight episodes.

The Ombudsman stated that the authorities should have procured – or have attempted to procure – further information before making a final assessment of whether the case in question was a flight episode or a flight security incident.

The authorities' assessments of the episodes were decisions within the meaning of the Public Adminis-

tration Act. The pilot must be considered a party to the case, and the decisions could be appealed to the Ministry of Transport and Energy.

The Ombudsman also criticised that the duty to make notes had not been observed and that the grounds given in the decisions were inadequate.

The Ombudsman recommended that the case be resumed. (Case no. 2003-3737-511).

## 17. Ministry of Foreign Affairs

*Of 23 cases closed in 2006, 8 were investigated. Criticism and/or recommendations were expressed in 7 cases. 4 cases are summarized below.*

### 1. Access to information about applicants for export preparation consultant post

The Ministry of Foreign Affairs turned down an association's request for access to information about the identity of the applicants for a post as export preparation consultant to the Trade Council of Den-

mark. In its decision, the Ministry of Foreign Affairs referred to Section 12, subsection (1.1) of the Access to Public Administration Files Act.

The Ombudsman could not criticise the Ministry's rejection of the application, but took the view that it should have been done pursuant to Section 2, subsec-

tion (2.1) of the Access to Public Administration Files Act rather than Section 12, subsection (1.1) of the Act. (Case no. 2005-1601-401).

## 2. Demand for payment of the cost of bringing back a mentally ill person from abroad

Duty to take notes. Guidance. Good administrative practice

The Ministry of Foreign Affairs had on several occasions asked the mother and the sister of a periodically mentally ill man to pay to have him brought back from abroad. On the third occasion, the mother and the sister refused to pay. The Ministry of Foreign Affairs then had the cost covered by the National Health Service's negotiation committee, in accordance with a 1994 agreement with the committee concerning help for mentally ill persons in distress.

The sister lodged a complaint with the Ombudsman on behalf of the mother because the Ministry of Foreign Affairs in telephone calls had pressed them to pay even though they were not legally obliged to do so. She also complained about the Ministry's failure to inform them of the possibility of getting the costs covered through the National Health Service's negotiation committee.

The Ombudsman considered it a matter for severe regret that the Ministry of Foreign Affairs had failed to make notes about the telephone conversations that had taken place. As a result, it was not possible to es-

tablish, on the basis of the case files, how many conversations that had taken place, exactly when they had taken place and what had been said during them. Among other things, the Ombudsman emphasised the serious nature of the case and that file notes would have documented the steps taken in the Ministry's case processing, which might have helped prevent doubts about what the Ministry had said during the conversations.

The Ombudsman also criticised the Ministry of Foreign Affairs' failure to inform the mother/sister about the agreement with the National Health Service's negotiation committee. As the mother was under no legal obligation to cover costs incurred by her adult son, it would have been reasonable and most correct if the Ministry had informed her of the agreement when asking her to pay. In that way, the mother (and the sister) would have had a more complete basis for deciding whether to support the son financially with his return etc., irrespective of the agreement. (Case no. 2005-2583-450).

## 3. Exemption of IØ Fund from the Access to Public Administration Files Act and the Access to Environmental Information Act unwarranted

In connection with the processing of a disclosure case, a journalist questioned whether the government order on exemption of the investment fund for the Eastern European countries (the IØ Fund) from the Access to Public Administration Files Act was ad-

equately warranted by Section 3 of the Act. He also believed that the IØ Fund was covered by the Access to Environmental Information Act, so that requests for access to the Fund's information must also be assessed pursuant to this Act.

The Ombudsman on his own initiative raised the issues with the Ministry of Foreign Affairs and the IØ Fund.

In his final report on the case, the Ombudsman stated that it was difficult to see that the condition in Section 3 of the Access to Public Administration Files Act – stating that the provisions in Sections 7-14 of the Act generally mean that a disclosure request can be turned down – was met in relation to all of the Fund’s activities. He also considered it risky to assume that the Fund as such can be exempted from disclosure administratively on the basis of general considerations about its nature and purpose. He therefore considered it doubtful whether the Ministry of Foreign Affairs’ use of the authorisation in Section 3, subsection (1) of the Access to Public Administration Files Act to exempt the IØ Fund generally

from disclosure was in keeping with the purpose of the authorisation as stated in the preliminaries.

The Ombudsman therefore recommended that the Ministry of Foreign Affairs rescind the government order on exemption of the IØ Fund from the Access to Public Administration Files Act. If the Ministry wished to prepare a new government order, the Ombudsman recommended that the exemptions were delimited and phrased in such a way that they clearly fell within the limits of the authorisation in Section 3 of the Access to Public Administration Files Act.

In the Ombudsman’s opinion, the IØ Fund was undoubtedly covered by the Access to Environmental Information Act and had been covered by the Act since it originally came into force on 1 July 1994. (Case no. 2005-2808-499).

#### 4. Insufficient basis for investigating disclosure case

##### Duty to make notes. Grounds

The Ministry of Foreign Affairs complied in part with a journalist’s application for access to the Ministry’s documents concerning a particular subject.

The disclosure application did not include the documents in a specific case, but on the contrary individual documents in a number of cases in the Ministry of Foreign Affairs.

The journalist asked the Ministry for a list of the documents covered by his disclosure application, but not supplied to him. The Ministry of Foreign Affairs turned down this request, stating that it did not have such a list and that it was not immediately possible to generate it using an archive list or lists.

The Ombudsman stated that the Ministry’s procedure meant that the basis for investigating the case was insufficient. An investigation of whether the Ministry had the authority to refuse access to the documents presupposed that it was possible to establish which specific legal and factual considerations were behind the Ministry’s refusal to disclose every single document. The Ombudsman also referred to the duty to make notes and the duties relating to the giving of grounds. On this background, he recommended that the Ministry reconsider the case. (Case no. 2005-4106-401).

## 18. Ministry of Education

*Of 26 cases closed in 2006, 7 were investigated. Criticism and/or recommendations were expressed in 2 cases. No cases are summarized.*

## 19. Ministry of Economic and Business Affairs

*Of 37 cases closed in 2006, 4 were investigated. No criticism and/or recommendations were expressed in any of the cases. No cases are summarized.*

## 20. Local authorities

*Of 1,025 cases closed in 2006, 125 were investigated. Criticism and/or recommendations were expressed in 51 cases. 8 cases are summarized below.*

### 1. Change of employment terms

Annulment. Hearing of party. Grounds

A county engaged an employee on public servants' terms pursuant to the Public Servants in Elementary and Lower Secondary Schools etc. Act. Subsequently, the county realised that the employee was not covered by the Act and annulled the employment. Instead, it offered him employment on group contract terms.

The Ombudsman agreed with the county that there was no legal warrant for engaging the man on public servants' terms. It must therefore be assumed that the decision was invalid and had to be annulled.

The Ombudsman considered whether the employment on public servants' terms should be retained out of consideration to the employee, or whether the county should perhaps instead have offered the employee employment as a county public servant. In the Ombudsman's opinion, this was not the case.

The Ombudsman criticised the failure to hear the employee as a party to the case before the decision was made and the fact that the county's decision did not comply with the requirements in relation to the giving of grounds for decisions. (Case no. 2004-4184-810).

## 2. Local authority's delegation of tasks to a municipal partnership covered by the Business Delegation Act

A school consultant in a local authority was dismissed when his tasks for the local authority were transferred to a municipal partnership. The school consultant's applications for employment by the municipal partnership were also turned down.

In the Ombudsman's opinion, the transfer of the school consultant's tasks constituted a delegation of part of a business covered by the Business Delegation Act. As the local authority and the municipal partnership had not regarded the transfer of tasks as covered by the Business Delegation Act, the Ombudsman recommended that the local authority reconsider the case concerning dismissal of the school consultant.

The purpose of the reconsideration was for the local authority to consider – in light of the Ombudsman's statement – whether the transfer of tasks in its opinion was covered by the Business Delegation Act and, if so, make a decision on the consequences of this.

The Ombudsman also recommended that the municipal partnership consider, in light of his statement, whether the transfer of tasks in its opinion was covered by the Business Delegation Act and, if so, make a decision on the consequences of this. (Case no. 2005-0129-813).

## 3. A hospital's assessment of decisions from the Patients Complaints Board

The management of a hospital wrote a report on a case which had been considered by the Patients Complaints Board. The Patients Complaints Board had found that a neuropsychologist employed at the hospital had exceeded her powers in several respects. The report showed that the hospital management did not agree with the Patients Complaints Board in its assessment of the complaints. This also appeared from a letter which the hospital management sent with the report to the chairman of the health committee and the county director of health.

The Ombudsman stated that it is beyond the powers of other administrative authorities to assess cases which have been processed by the Patients Complaints Board in a way that raises doubt about the correctness of the Board's decisions, unless there are obvious errors. In his opinion, it therefore afforded grounds for criticism that the hospital management had indicated, in both the report and the letter, that it did not agree with the Patients Complaints Board's assessment of the complaints. (Case no. 2005-2451-819).

## 4. Statement about class composition was a decision

A girl's parents lodged a complaint with the Ombudsman about a local authority school's decision on the composition of their daughter's class because they did not wish their daughter to be in class with a

particular boy. The couple also complained about the case processing.

The Ombudsman stated that the school's decision on class composition is covered by the concept of ac-

tual administrative activity and that the school's announcement about the class composition does not constitute a decision within the meaning of the Public Administration Act. However, the school's reply to the parents' complaint about the class composition is a decision, which implies that the school should have followed the rules in the Public Administration Act. The local authority's reply to the complaint about the school is also a decision within the meaning of the Public Administration Act.

It is generally assumed that the result of an administrative authority's processing of a complaint (about

the authority's performance of actual administrative activity) is a decision within the meaning of the Public Administration Act. In the Ombudsman's opinion, it afforded grounds for criticism that the school failed to realise that the processing of the parents' complaint is an activity involving a decision. The Ombudsman also criticised the local authority's case investigation, hearing of parties, failure to refer to legal rules in the grounds given and failure to give the parents guidance on appeal. (Case no. 2005-2831-710).

## 5. Warning for infringement of duty of loyalty and obedience

### Duty to notify

A museum inspector was given a written warning because of an episode when he, in the absence of his superior, changed the arrangements for an exhibition at the museum planned by the superior. In the local authority's opinion, the inspector had infringed his duty of loyalty and obedience to his superior.

The Ombudsman stated that disciplinary sanctions may only be applied in cases of misconduct, and the employee must have acted intentionally or carelessly. In his outline of the duty of loyalty and

obedience, he stated that public employees with special expertise have the right and the duty to react to any professionally unwarrantable situation.

In the Ombudsman's opinion, the information in the case did not afford grounds for assuming that the inspector had infringed his duty of loyalty and obedience. He recommended that the local authority reconsider the case and make a new decision. (Case no. 2005-3209-864).

## 6. Refusal of employment was in reality unsolicited dismissal

### Entering of agreement. Distortion of procedure. Hearing of parties. Wording

A museum division offered employment to an applicant on condition that he moved to the region and completed his training in the museum shop. The applicant moved to a temporary residence in the area, but it was agreed that he would not start working until he had got a more permanent residence. Before he started work, but after a meeting in the division at which, among other things, he met some of the em-

ployees, his employment offer was withdrawn on the grounds of restructuring and unsuitability. The county responsible for the museum endorsed the decision.

In the Ombudsman's opinion, a binding employment agreement had been made. The procedure for unsolicited dismissal should therefore have been followed.

The Ombudsman criticised the failure to observe the inquisitorial procedure and the duty to make notes as well as the failure to hear the applicant as party to the case before the decision was made. Furthermore, the grounds given were inadequate. Finally, he criticised the authorities' wording.

## 7. Access to representation during treatment

Note about the basis of decision

The party representatives of two drug addicts lodged a complaint about a county treatment centre's decision to limit the addicts' access to make use of a representative/observer.

The county explained that observers could participate in certain types of talks, but not in the weekly treatment sessions.

The Ombudsman did not criticise the county's decision, although weighty reasons are required to

The Ombudsman recommended that the case be resumed to allow the authorities to consider what consequences the inadequate case processing should have for the applicant. (Case no. 2005-3791-810).

deny a citizen access to bring an observer. The treatment centre had made the specific assessment that the presence of the observers made it impossible to establish proper treatment.

The Ombudsman stated that it would have been desirable – and have been best in keeping with good administrative practice – if the county had made a file note about the considerations involved in the decision. (Case no. 2005-1651-059).

## 8. Local authority's duty to make decisions on unsolicited benefits pursuant to Section 5 of the Administration of Justice Act

Duty to give guidance. Allowance

A man asked the local authority to cover the costs of his dental treatment and recreational travel.

For the local authority's case processing, he provided information about, among other things, his and his wife's financial situation. The wife suffered from muscular atrophy, was wheelchair-bound and received early retirement pension. She had a disability vehicle. The local authority turned down the application, stating that the man was able to pay the costs himself. When processing the case, the local authority had considered which costs could be included in the calculation of the couple's allowance. They included expenses related to the wife's disability, such as medicine and petrol for the disability vehicle. The

Ombudsman assumed that the local authority had given the wife guidance on the opportunities to apply for subsidy of additional expenses related to her disability.

The Ombudsman explained how Section 5 of the Administration of Justice Act should be interpreted; for instance that an authority is obliged to make decisions in relation to the citizens pursuant to the relevant provisions. He considered it unfortunate that the local authority had failed to make its decision on covering additional expenses in relation to the wife. He referred to the actual circumstances, which showed that the local authority had such knowledge of the wife's conditions via the financial information

in the husband's case that it should have made its decision in relation to the wife.

The Ombudsman considered it a matter for regret that the social complaints board's decision was worded in a way which might give rise to the misunderstanding that the board had not taken any account of the information about the amount spent on petrol.

As far as the decision about payment of the costs of dental treatment and travel expenses was concerned,

it was difficult for the Ombudsman to get a clear impression of what the local authority and the board had considered necessary costs which must be paid either as fixed expenses or from the allowance. On the face of it, the information appeared insufficient. The Ombudsman considered it a matter for regret that the authorities had failed to consider in detail which expenses were necessary – and to what extent. (Case no. 2005-0914-009).