Legislation and the general public's requirement for clarification of the law – a challenge for the Parliamentary Ombudsman

Today, the welfare and finances of people in general is to a great extent governed by their lawful rights and their legal claims against the administration. Both the content and scope of public legal claims and rights are implemented by public administration. Control of public administration is therefore an important assignment.

Photo: Jo Michael

The law is a difficult area to penetrate. Many people must therefore seek assistance from others who have the required insight. The Parliamentary Ombudsman for Public Administration provides the opportunity for people to clarify their legal position in relation to the public authorities. The Ombudsman's terms of reference allow him to carry out investigations that represent thorough and inexpensive legal aid for the individual citizen.

In cases where people are denied their rights and legal claims, they can have their case tried before the courts. However, taking a case to court is both costly and time-consuming, as well as being connected with a certain risk. A person bringing legal action against the state or a municipality cannot be certain of succeeding. The financial disbursements required by legal action can be daunting. In many cases therefore, the Parliamentary Ombudsman scheme can be a practical, useful and reasonable alternative for the individual. For many reasons - and now more than ever, the organization covers a pressing requirement.

For the individual citizen, the control carried out by the Ombudsman on behalf of the Storting takes the form of practical legal aid. Moreover, the service is free of charge. Some people choose to engage a lawyer, although this should not be necessary. One of the reasons for the appointment of a Parliamentary Ombudsman by the Storting in 1963 was to provide ordinary men and women with the opportunity of having their legal position evaluated in an independent and objective manner, without having to pay large sums of money to lawyers and the courts. For the scheme to operate as intended, the Ombudsman must be able to work in a simpler and more informal manner than is the case in public administration and before the courts.

Public administration has wide-reaching mandates and the assignments entrusted to public administration in our welfare state is a contributing factor to the Storting's requirement for an independent legally proficient body that can supervise public administration and reveal any maladministration.

Control of public administration is important to ensure that the Storting, as the country's legislative assembly, can obtain information on how legal acts are applied and interpreted in practice. Through the processing of complaints, the Ombudsman receives valuable feedback on how the administration uses its legislative powers. The Ombudsman then provides the Storting with information on how powers and the provisions of acts are applied, and on how public administration is practiced. The information that the Ombudsman can pass on to the Storting is an important aspect in the work of the Parliamentary Ombudsman.

The Ombudsman's investigations connected with complaints from citizens against the public authorities will continue to be the main assignment of this office. However, from the experience gained from all these individual cases as well as cases taken up by the Ombudsman on his own initiative, the Ombudsman can also contribute towards improving the efficiency of the Storting in both its legislative function and its control function.

Arne Fliflet

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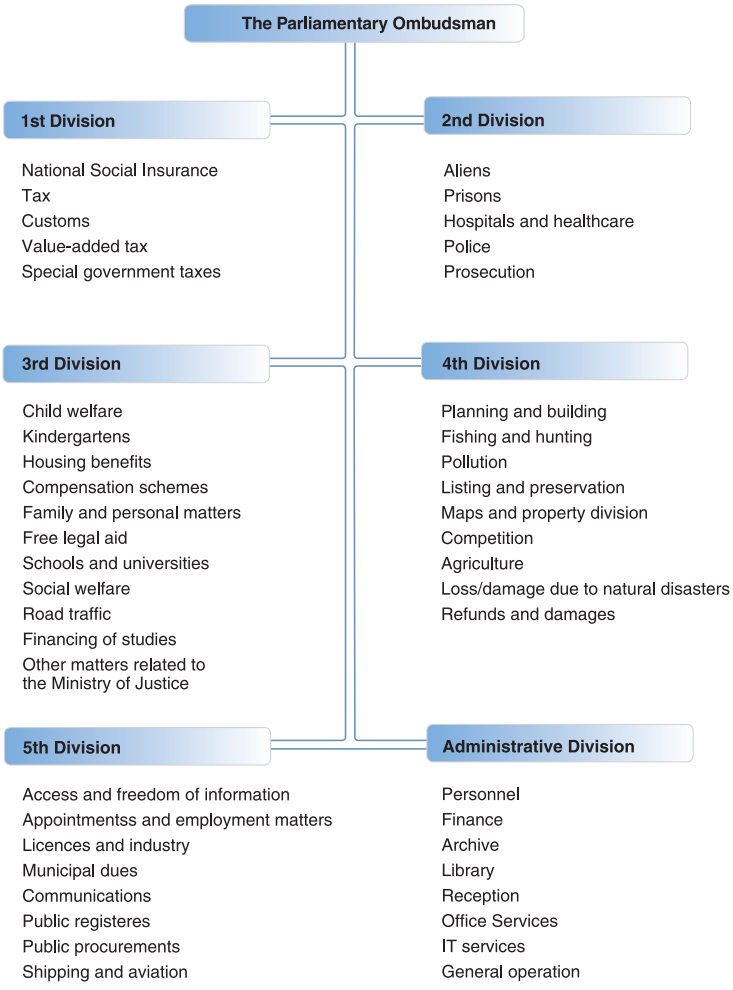
General aspects of the institution, its activities and its relations with public administration

1. Office and staff

As at 31 December 2005, the Ombudsman's office employed a staff of 40 including the Ombudsman, six heads of division and one head of administration. There were 22 legal executive officers and ten people employed in administration. A further position was financed by the Ministry of Foreign Affairs, with the Ombudsman as formal employer. The person concerned is a member of the legal profession engaged in human rights issues in China.



2. Equal opportunities

The proportional representation of women and men at the Ombudsman's office as at 31 December 2005 based on a total staff of 44 persons (40 man-years), was 29 women (66%) and 15 men (34%). The Ombudsman's office has an appointment structure and wages policy that ensure equal opportunities for everyone with regard to wage increments and advancement.

3. The year 2005

3.1 Cases received and processed

In 2005, the office received 1956 complaints concerning administrative agencies, an increase of 24 cases compared with 2004. In addition, the Ombudsman dealt with 64 cases on his own initiative, see item 3.3 below. 2028 cases were processed (completed and closed) in 2005. This was a reduction of 7 cases compared with 2004. 1158 cases were processed on the basis of the facts in issue, and 170 of these cases resulted in criticism of the agency concerned. In comparison, 1107 cases were processed in 2004 of which 161 were closed with criticism or a recommendation to the agency concerned. A total of 870 complaints were rejected without processing the facts at issue. In about 40% of these complaints the reason for dismissal was that the case was still being processed by the administrative agency concerned or that complainant had failed to make full use of the access to appeal against decisions passed by administrative agencies before referring the case to the Ombudsman for investigation. At yearend, outstanding cases numbered 326, a reduction of 7 cases compared with outstanding cases at yearend 2004.

3.2 Special report to the Storting

Pursuant to the provisions of the Act dated 22 June 1962 No. 8 concerning the Parliamentary Ombudsman for Public Administration, Section 12, second subsection, the Ombudsman submitted a special report to the Storting on 21 December 2005 concerning Document No. 4:1 (2005-2006), dealing with the processing of a complaint. The case had been raised in the Storting on several occasions, and had been discussed by the Supervisory Committee.

The complaint concerned the processing by the police and the prosecuting authority of two complaints in particular. A woman filed a complaint against her brother A, claiming abuse throughout childhood and adolescence. A later filed a complaint against his sister, claiming false accusation. Processing was subsequently discontinued. The complaint to the Ombudsman, which was signed by A and his spouse, was submitted to the Director General of Public Prosecutions by this office with specific questions concerning case processing by the police and the prosecuting authority. The Director General of Public Prosecutions subsequently issued a report. When complainants filed for damages against the state in respect of the same situation as that submitted to the Ombudsman, the Ombudsman found it necessary to refrain from carrying out further investigations. However, in his final statement on 9 September 2005, the Ombudsman found reason to sum up the results of the investigations that had been carried out prior to the legal action and to draw some conclusions.

As shown in Document No. 4:1 (2005-2006), the Ombudsman's investigations, although limited in scope, left no doubt that the processing of the complaints was

open to criticism on numerous points. Criticism concerned slow case processing, failure to reply to inquiries, failure to register and investigate the counter-complaint and failure to keep proper records and poor document management in general.

The office of the Director General of Public Prosecutions had also pointed out numerous faults and deficiencies in case processing, and had subsequently implemented several corrective measures. Moreover, in a letter to complainant, the Director General has apologised for the case processing. This apology was appropriate.

Following the statement issued by the Ombudsman, the Director General issued an anonymised version of this statement to all public prosecutors stating as follows:

> «It is requested that the administrator ensures that public prosecutors study the statement issued by the Parliamentary Ombudsman and ensures that case processing and follow-up routines are duly quality assured. Public prosecutors *must* – as part of the administrative procedure – similarly ensure that the police districts have good and proper routines and that each individual is properly aware of the importance of correct and proper case processing.»

3.3 Issues raised on own initiative

Pages 12 to 14 in the Annual Report for 2004 dealt with measures to improve the efficiency of case processing at the Ombudsman's office. Several of these measures were aimed at strengthening the Ombudsman's access to take up issues on his own initiative, cf. Section 5 of the Ombudsman Act. When the Ombudsman finds that there is reason to use this access to take up an issue on his own initiative and not following a complaint from citizens, this could be because a problem has been brought to his attention through for example a report in the media. Implementation of investigations of this type can also take place in cases where a complaint has highlighted a problem without the complaint in itself warranting further investigation. When the Ombudsman receives several complaints on the same issue, it can also be more appropriate to take the matter up in a wider perspective on own initiative rather than pursuing each individual specific case.

In Innst. S. No. 210 (2004-2005) the Supervisory Committee of the Storting stated in section 3 concerning the raising of issues on own initiative by the Ombudsman that the Committee «shares the Ombudsman's viewpoint that this part of the Ombudsman's work is important and must continue inter alia as it provides opportunities for dealing with issues of fundamental interest that affect many people».

As mentioned previously, 64 cases were taken up on the Ombudsman's own initiative during the course of the year, compared with 18 cases in 2004.

A case concerning *Health requirements for persons working in the petroleum industry – the composition of the complaints board* (Case 2005/883) is dealt with in Chapter III of the Annual Report. The following cases that were raised on own initiative are dealt with in more detail in Chapter VI of the Annual Report:

8. *Application of the provisions of the Freedom of Information Act in respect of the Board dealing with procurement decisions etc. in A/S Vinmonopolet* (Case 2005/1118)

11. *Practising the provisions of the Freedom of Information Act in Vefsn municipality in conjunction with the appointment of a chief administrative officer – access to list of applicants* (Case 2005/1772)
14. *Case processing time in cases concerning access to patient records* (Case 2005/368)
27. *The wording of an appeal decision in a case concerning termination – content of reasoning* (Case 2005/962)
29. *Announcement of civil service positions – requirement with regard to electronic applications* (Case 2005/1108)
37. *Case processing routines at the National Office for Social Insurance Abroad – routines for the processing of «service complaints» and routines for arresting weak points which result in cases remaining unanswered/uncompleted for disproportionately long periods* (Case 2005/905)
38. *Processing of claim for unemployment benefit – use of discretionary assessment regarding income limits and the relationship between electronic and manual case processing* (Case 2005/656)
45. *Documentation requirements pursuant to the Social Services Act* (Case 2005/390)
47. *Case processing in cases concerning child maintenance payments* (Case 2005/1721)
48. *Confinement periods in police custody* (Case 2005/315)
50. *Follow-up of visits to Ullersmo prison* (Case 2004/3169)
53. *Case processing time in the Directorate of Immigration* (Case 2004/3128)
59 *The reasonings of the tax committees in decision concerning tax relief* (Case 2005/831)

3.4 Access to the Ombudsman's case documents

During the course of 2005, 360 requests for access to the Ombudsman's case documents were registered, compared with 362 requests in 2004, and 183 requests in 2003. Access was granted in 317 of the 360 requests, and in 68 of these cases only partial disclosure was allowed. 43 requests were rejected. The rules governing document disclosure at the office of the Ombudsman are governed by the provisions of Section 9 of the Ombudsman Act, and Section 11 of the Instructions to the Ombudsman. Replies to requests for access to documents are normally sent on same day, and not later than between one to three days.

The public register is available on the Ombudsman's website www.sivilombudsmannen.no, and the website also provides the opportunity of requesting access to the Ombudsman's case documents. As was the case in 2004, the public register was unavailable on the website for a period due to updating work in connection with the introduction of a new filing system in 2004.

The Ombudsman's evaluation of some administrative law issues of general interest

1. Civil rights legislation

1.1 Introduction

This section deals with civil rights legislation providing citizens with individual rights directed against public administration. Fundamental issues connected with civil rights have been dealt with in many connections in recent years and have been the subject of public reports.[1]

The Ombudsman must safeguard due process of law for the individual citizen in relation to public administration, cf. Section 75 1 of the Norwegian Constitution and Section 3 of the Ombudsman Act. Many of the complaints submitted to this office raise the question of whether citizens' individual rights have been fulfilled on the part of the administrative agency concerned. In most cases, this is linked to legal examination and control of the public administration decisions submitted to the Ombudsman. The work involved in these individual cases gives rise to a requirement for some general comments on civil rights legislation.

The following comments will be linked to problems concerning the individual citizen and case processing by administrative agencies. The aim is to present some observations on civil rights legislation from the viewpoint of the Ombudsman.[2]

> "... there is a certain tension between the wording of the Act and citizens' expectations, and the factual state of the law.

1.2 General comments

In the processing of complaints at this office we frequently find that civil rights legislation can tend to boost the expectations of citizens concerning their legal rights and their legal claims against public administration. Looking at this from a legal viewpoint, there is a certain tension between the wording of the Act and citizens' expectations, and the factual state of the law. This applies in particular to civil rights legislation concerning resource dependent rights. Due to limited public resources, rights can be made more conditional and there is a risk that the expectations of the individual citizen cannot be fulfilled.

Many complaints submitted to this office illustrate this fact. In this connection, some areas stand out in particular:

- social welfare services
- schooling
- legal aid

Civil rights legislation in these areas is largely subject to discretionary assessment and legislation is frequently interpreted according to the practice followed in the administrative agency concerned. The central administration will frequently

[1] NOU 2003: 19 Power and Democracy. Final report from the Power and Democracy Study, Storting Report No. 17 (2004-2005) Power and Democracy. Innst. S. No. 252 (2004-2005) by the Special Committee appointed by the Storting on 18 March 2005 for the processing of Storting Report No. 17 (2004-2005) Power and Democracy. NOU 2005: 6 Cooperation and Confidence – The State and Local Democracy.

[2] Political and social science comments on civil rights legislation will not be dealt with. The Norwegian Association of Local Authorities has applied to this office concerning general legal problems connected with municipal self-government. This subject will not be raised in this report.

issue guidelines concerning practice and interpretation, but these guidelines cannot cover all the cases that occur in practice. The same applies to discretionary decisions. In addition to the principle of reasonableness, discretionary decisions must often be based on professional appraisals and evaluations of the factual situation. The importance attached to these factors by an agency will not always be predictable for an applicant, and the reasoning given for an administrative agency decision will not always enable a lay person to understand the decision. In many complaints, public administration is criticized for failing to fulfil the reasoning obligation in Section 25 of the Public Administration Act. The complaints received by this office illustrate the importance of this provision to enable citizens to understand the decision, thereby increasing confidence in public administration. For this reason there are a number of cases that the Ombudsman has raised with administrative agencies in order to point out this aspect, even if from a legal viewpoint there can be no objection to the decision. Section 25 of the Public Administration Act is a minimum rule. Even if there is no obligation to comment on all the party's arguments, it can be advisable for pedagogical reasons to show that the argument has been duly considered. This is particularly relevant in the case of discretionary decisions, where citizens are not always aware of all aspects relevant to the case.

The general administrative law principle that similar cases shall be processed equally is also directly linked to citizens' expectations. In many complaints it is held that an administrative agency has practised unfair differential treatment. This is frequently due to misunderstandings concerning the scope of the principle. Firstly, cases must be directly comparable. Even if a case is similar to another case on many points, they may differentiate on an important point whereby they must be evaluated differently. Neither is there any ban against all forms of differential treatment. There is access to differentiate when this is reasonable, for example based on the circumstances in the case and in the light of the intention behind the act concerned, and the considerations that must be taken into account.

Section 25 of the Public Administration Act is a minimum rule. Even if there is no obligation to comment on all the party's arguments, it can be advisable for pedagogical reasons to show that the argument has been duly considered.

The right to appeal against a decision is an important civil right. Pursuant to the provisions of Section 28 of the Public Administration Act, decisions may be appealed to a superior administrative body, and Section 34, second sub-section, contains provisions on the competence of the appellate authority. The appellate authority may examine all aspects of the case and take due regard to new circumstances. These rules give rise to expectations of a full re-examination of the decision passed by the first body. When decisions are based on discretionary evaluation, this is not always the case. Pursuant to Section 34, second sub-section, last sentence, in the case of government re-examination of municipal decisions, due regard shall be taken to municipal self-government when reviewing free discretionary decisions. In connection with some complaints received by this office, I have criticized the fact that county governors have had a tendency to downgrade their re-examination powers with reference to this provision. Moreover, in some cases there are special provisions limiting the competence of the appellate authority.

In NOU 2004:18 Overall planning in the social and healthcare services, the majority of the committee proposed that the rule in Section 8-7 of the Social Services Act concerning the county governor's limited re-examination powers should be withdrawn. I supported this proposal in a consultation statement dated 7 April 2005. I referred to the fact that an arrangement that does not conform to the main rule of the Public Administration Act concerning full re-examination rights requires special reasoning. Cases dealt with under the provisions of the Social Services Act are of considerable importance for the parties concerned, both personally and in relation to welfare, and due process of law should be a weighty argument against limiting the powers of the appellate authority.

According to the provisions of the Ombudsman Act, the access for the Ombudsman to re-examine discretionary decisions shall be limited. The Ombudsman may investigate whether case processing regulations have been complied with, whether all available information in the case has been presented, whether the agency has interpreted the law correctly, and whether all matters required by law have been taken into consideration. The Ombudsman may only criticize the discretionary decision when there has been an error in the discretionary assessment, for example that importance has been attached to an irrelevant matter or that a decision has been biased or is «clearly unreasonable». I apply this comment relatively seldom. In discretionary decisions of this type, I more frequently find reason to draw the attention of the agency to the fact that there are «grounds for doubt in respect of matters that are of importance in this case», cf. the Ombudsman Act dated 22 June 1962 No. 8 Section 10, second sub-section, final sentence.

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1.3 Comments on specific types of case

In addition to these general comments on the aforementioned case areas, I will present some specific comments with regard to certain areas in relation to civil rights issues.

1.3.1 Social services

A number of cases connected with the Social Services Act are linked to the poverty problem. This applies in particular to complaints concerning financial social aid. Complaints concern rejections, and the fixing of social assistance. There are many complaints concerning expenses for dental treatment. Such expenses can be high when dental care has been neglected because funds for treatment were not available. Cases governed by the provisions of the Social Services Act also illustrate that there is a group which falls outside the employment market in such a way that they are not entitled to National Social Insurance benefit from the National Insurance authorities or unemployment benefit from Aetat (The Norwegian Public Employment Service). They have difficulty in conforming to working life, and many have expectations with regard to financial social benefits. However, the provisions of the Act prescribe that financial social benefit shall be sub-

sidiary to other possibilities open to the applicant for earning an income. Moreover, it is intended that such assistance shall be a temporary arrangement.

Many people have been granted rights pursuant to the Social Services Act as they are physically challenged or have unduly heavy care burdens. Section 4-2 of the Act refers to several different types of service. In Section 8-4 there is a provision on client participation, worded as follows:

> «*Duty to consult the client.*
> The service offer shall as far as possible be prepared in cooperation with the client. High importance shall be attached to the client's opinion.»

In many of the complaints received by this office, it is held that the agency has not complied with this provision, neither in relation to case processing nor with regard to the content of the decision. The provision is in the Act's general chapter on case processing. It is therefore an important case processing rule that the client shall be given the opportunity to make a statement before a decision is passed on a specific offer of services. In several cases I have pointed out that there is an error in case processing when an administrative agency has failed to obtain a statement from the client, guardian or next-of-kin which would be relevant, for example for mentally challenged persons. Such deficient case processing can mean that all information in the case is not forthcoming, cf. Section 17 of the Public Administration Act, and this could thus have an effect on the final result, cf. Section 41 of the Public Administration Act. Another aspect of this case processing rule is that it must be said to place greater demands on reasoning and documentation on the part of the social services in cases where client's wishes are put aside. The provision is an example

Legislative requirements shall ensure that the client is treated with proper respect. In order to fulfil this requirement the agency must also provide relevant and necessary guidance.

that there can be tension between the wording of the Act and citizens' expectations – and the factual state of the law.

Many people interpret the provision as a right for the client to choose the offer of services, cf. the wording «High importance shall be attached to the client's opinion». However, the Social Services Act provides that the municipality shall carry out an overall evaluation to find the best solution or the best offer of services, where in addition to the client's requirements and wishes, due regard shall also be taken to expert assessments, the resources available in the municipality and the overall distribution of services to those entitled to such services in the municipality. Proper consideration must therefore also be given to the financial situation and to equality. The result of a discretionary assessment can therefore frequently deviate from what the client or next-of-kin regard as the best solution, and many people feel that their arguments have been disregarded. However, the provision means that the agency shall consult the client and shall attach importance to the opinions of the client in the overall evaluation. Legislative requirements shall ensure that the client is treated with proper respect. In order to fulfil this requirement the agency must also provide relevant and necessary guidance.

It is not unusual for municipalities to offer their own services in the form of institutions or practical home services, while clients require a scheme involving a user-managed personal assistant or that a

family member should receive remuneration for nursing and care. Remuneration for nursing and care is in a special position in relation to the other services pursuant to Section 4-2. This benefit is not mentioned in Section 4-3 as one of the services that those requiring assistance are entitled to. It is therefore frequently emphasized on the part of public administration that remuneration for nursing and care is not a right. Inasmuch as the other welfare services go directly to the person requiring assistance, and remuneration for nursing and care is paid to another person, this is viewed differently from a legal viewpoint. This would appear to be a technical point of law. When this is pointed out by the administrative agency, it creates the impression that an application for remuneration for nursing and care ranks considerably lower from a legal viewpoint than other offers of services. A complainant in a nursing and care payment case stated in the complaint: «It is nothing less than stupidity to pass an act concerning a remuneration that no one is entitled to.» I agree that the wording of the Act is unfortunate and misleading. The Ministry of Labour and Social Affairs is at present examining the nursing and wages scheme.

1.3.2 Schools

Cases concerning schools that are brought before the Ombudsman deal with several subjects, including awarding of marks, the closing down of schools, expenses for driving children to school, the proximity principle, and special education. The two latter types of cases in particular provide a basis for comment in relation to the problems of civil rights legislation.

The right to attend the school closest to the home is laid down in Section 8-1, first sub-section, of the Education Act. The Ombudsman receives a number of complaints that refer to this provision. Many children are prevented from attending the school nearest to their homes as there are no vacancies at this school. A natural understanding of the wording of Section 8-1, first sub-section, first sentence, is that the individual primary school pupil has a civil right to attend the school that is geographically closest to the pupil's home. In the preparatory works to the Act, however, geographical proximity to the school is not an unconditional deciding point (a «conditional proximity principle», cf. NOU 1995:18 page 132). Geographical proximity is a basis for an overall appraisal in which due consideration can be given to whether the child has siblings at the same school, whether the child is exposed to traffic hazards on the way to school and the capacity of the school concerned.

In the experience of the Ombudsman, this is yet another provision where citizens experience that there is a gap between the legal right expressed in the wording of the Act and the legal rules that are derived from the provision. The problem was raised by this office with the Ministry of Education and Research at the end of 2004, asking if the Ministry saw a requirement for amendment or clarification of the provisions of the Act to prevent situations in which citizens formed incorrect opinions with regard to their rights. The Ministry replied in January 2005 that they had received so few complaints of problems in this connection that for the time being it would not be natural to propose an amendment. The Ministry stated that the matter would be currently evaluated and I therefore duly noted this and emphasized that I would monitor this civil rights issue in the time ahead.

Over the years the provisions of the Education Act with regard to the right to special education, Section 5-1 et seq., have

also been the reason for a number of complaints to this office. The complaints usually refer to the scope of special education – parents are of the opinion that their child does not receive sufficient special education, and for this reason their rights are not fulfilled. The individual pupil's requirement for special education is based on a professional evaluation that is difficult for the Ombudsman to examine. However, many case processing regulations have been issued to ensure that the scope of special education is satisfactory. In the investigations, attention has been focused on these case processing rules in particular.

In 2002, I completed a systematic survey of such cases in a municipality, cf. the Annual Report for 2002, page 153. Many weaknesses in case processing were revealed. The Norwegian school information service found that my report was of such principal interest that an edited extract of the report was published as a guide manual for the processing of such cases. The office now appears to receive fewer complaints in this area. The Ministry of Education and Research, and with effect from 15 June 2004 the Directorate of Education, have followed up the problems of processing these cases. In Ot. Prop. No. 57 (2004-2005) a number of amendments were proposed in the Act concerning special education. The proposal was processed by the Storting in 2005, but was not adopted. Following this, the Directorate has stated that a circular letter will be prepared in order to clarify the regulations.

1.3.3 Legal aid

The legal aid scheme is described as a social welfare measure to help those who are unable to pay for legal aid themselves. It is intended that the legal aid scheme shall be reserved for persons who do not have any other possibilities for covering their legal aid expenses, that is to say that the scheme is to be subsidiary in relation to other rules that cover such expenses, for example the Public Administration Act and National Social Insurance legislation, and for example legal aid insurance.

The provisions of the Legal Aid Act with regard to the granting of legal aid are to a great extent discretionary – it must be evaluated whether it is «reasonable» for the public purse to pay for legal aid. To a certain extent this also applies to case areas that have priority in the legal aid system, for example National Social Insurance cases where it is frequently assumed that the National Social Insurance authority's duty of guidance and information is so well established that it is neither necessary nor reasonable that public funds should also pay for the services of a lawyer.

Those who appeal against administrative agency decisions in such cases are of the opinion that it is «reasonable» that they should be granted free legal aid. Public administration practice is however restrictive.

In a circular letter, the Ministry of Justice has issued guidelines advising strict practice in connection with several provisions of the Act. In a case included in the Annual Report for 1999 on page 246, I discussed on page 248 whether the Ministry's guidelines were in contravention of the Legal Aid Act, and concluded that this was not the case. The legislator's intention appears to be that a restrictive practice should be followed with regard to when it is «reasonable» that legal aid should be paid from public funds. Several of the problems that arise in relation to the Legal Aid Act must be defined as a legal political issue, not a ruling law

issue. The Ombudsman's commission refers only to ruling law.

The Legal Aid Act itself provides little guidance with regard to cases where free legal aid may be granted. It is difficult to derive from the wording of the Act whether one is entitled to free legal aid or not. The circular letter issued by the Ministry of Justice concerning the application of the Act is comprehensive. As a result of this situation, relatively comprehensive amendments to the Legal Aid Act were adopted by Act dated 14 April 2005 No. 17. These amendments came into force on 1 January 2006. According to Ot.Prop. No. 91 (2003-2004) an important objective of these amendments was to provide more precise conditions for free legal aid and to make it easier for citizens to establish their rights pursuant to the provisions of the Act. The Act now has an objects clause which also reflects the main conditions in the scheme. I will have these amendments under observation and register whether they will result in fewer complaints to this office.

2. The execution and enforcement authorities – the Ombudsman's area of operations

2.1 The Ombudsman and the courts

The Ombudsman's commission is to endeavour to ensure that the individual citizen is not subjected to injustice or maladministration on the part of public *administration*. The activities of the courts are not encompassed by the Ombudsman's area of operations, cf. Section 4, first sub-section, litra c), of the Ombudsman Act dated 22 June 1962 No. 8 and Section 2, fourth sub-section, of the Instructions to the Ombudsman. This means that the Ombudsman cannot process complaints referring to decisions that according to a specific statutory provision can be brought directly before a court of law by means of writ, appeal or other legal remedy, or when a court has passed a decision in a case. There are clear constitutional reasons behind the ruling that the activities of the courts are not encompassed by the Ombudsman's scope of operations. Courts of law pass decisions independently and without the intervention of other government bodies.

The Ombudsman receives a number of complaints that must be rejected pursuant to the provisions of Section 4, first sub-section, litra c), including complaints against court judgments. This also applies to judgments passed by the courts of conciliation, which pursuant to Section 1 of the Courts Act are defined as ordinary courts of law. Some complaints concern other court assignments, such as probate business and official registration. These matters are also covered by the provision that «the activities of the courts» are not encompassed by the Ombudsman's scope of operations. There are some borderline issues which need not be detailed in this report.

> The question is whether there are matters of importance for citizens' due process that are actually not subject to control, either by the Ombudsman or by the courts.

A number of complaints concern the activities of the execution and enforcement commissioners and the activities of other execution and enforcement authorities, for example the Government Collection Agency and the National Social Insurance Collection Agency, all of which carry out enforcement duties. The reason for enforcement may be a private law situation or the implementation of a public administration decision. In respect of the execution and enforcement authority the case may concern forced sale or foreclosure of real estate, or movable property, withholding orders in respect of wages/ National Social Insurance, debt settlement cases, etc. Such cases may be appealed to the district court and basically these cases must also be rejected pursuant to the provisions of Section 4 of the Ombudsman Act. In view of the fact that special borderline issues occur in relation to the courts, I find there is reason to deal with this question specifically. The question is whether there are matters of importance for citizens' due process that are actually not subject to control, either by the Ombudsman or by the courts.

2.2 Cases dealt with by the execution and enforcement authorities

Section 5-16, first sub-section, first sentence, of the Enforcement Act dated 26 June 1992 No. 8 is worded as follows:

> «The decisions and actions of the Execution and Enforcement Commissioner during the course of the enforcement may be appealed to the district court by all those affected by such decisions and actions, provided the execution or enforcement has not been completed.»

Section 5-16, first sub-section, first sentence, of the Enforcement Act thus provides specifically that the decisions and actions of the execution and enforcement commissioner can be appealed to a court. Basically therefore, such cases are not included in the Ombudsman's scope of operations pursuant to the provisions of Section 4, first sub-section, litra c), of the Ombudsman Act.

"... cases can arise in which citizens do not have access to have their objections against case processing evaluated or re-examined. From a due process viewpoint, this can be an unfortunate situation.

Many complaints to this office concern case processing by the execution and enforcement authorities and not the decision itself. Criticisms include failure to reply, slow case processing, or that the commissioner has not investigated the case thoroughly.

When enforcement proceedings are completed, no appeal can be made to the district court. In Ombudsman Case 1999/352 proceedings were discontinued through the depositing of security. A complaint was submitted to this office, maintaining that the commissioner had not followed up the matter by ensuring that an officially registered attachment had been deleted from the register. In this case I criticized the routines for informing the defendant of the possibilities for avoiding attachment proceedings. The case processing and the case processing time required to remove the attachment from the register was also criticized.

With regard to the problem of whether there are issues of importance for due process which cannot be re-examined, it must be established whether there is a «lower limit» for decisions which can be appealed to the district court.[3]

Another question is whether the district court can pass a decision in an appeal against case processing.

Case 2005/964 showed that the district court does not always pass a decision on case processing by the execution and enforcement commissioner despite the fact that an appeal has been lodged. In this case the court's decision is as follows:

> «… it should be noted that the court does not find that there are grounds for dealing with complainant's objections against the execution and enforcement commissioner's case processing in the attachment case. The case is now being processed by the court, and the court has full right of judicial review in this case.»

Complainant applied to this office to have the complaint against case processing

[3] This is discussed on page 299 in Falkanger, Flock and Waaler, The Enforcement Act, comments edition (3rd edition 2002). They are of the opinion that it is doubtful that a lower limit exists. This implies that the district court can deal with practically all appeals against case processing by the execution and enforcement commissioner.

evaluated. The complaint concerned failure to notify and failure to reply to questions in this connection. Complainant perceived the matter as serious. The notification regulations were explained by this office, and concluded that case processing had not been at fault. However, even if this had not been the case, it is doubtful whether the Ombudsman could have followed up the matter in which case there could have been a situation where there was no opportunity to appeal.

Cases concerning municipal dues, e.g. refuse collection fees, also serve to illustrate some dilemmas with regard to the limitation of the Ombudsman's scope of operations. In this case the problem is the question of re-examination of case processing by a municipality and not case processing by the execution and enforcement authorities. Many people complain to this office as they are of the opinion that, for different reasons, the municipality's claim is unjust. Due to the time that has elapsed, the municipality will frequently have taken formal steps through the execution and enforcement commissioner for forced collection of the claim. The case can then be brought before the district court where the objections to the claim can be applied, and the case will then not be encompassed by the Ombudsman's scope of operation. Such cases have their basis in ordinary public administration, which is governed by the Ombudsman's scope of operation, but the deciding factor for whether the Ombudsman can take steps in such a situation can, to put it simply, be whether the complainant has paid the claim or not. If the claim has not been paid, and the municipality instigates forced collection proceedings, the Ombudsman cannot take on the case. It would be neither natural nor appropriate for this office to recommend that the claim be paid to enable the Ombudsman to assess the case.

"... the provision in Section 4, first sub-section, litra c), of the Ombudsman Act must be interpreted in such a way that the Ombudsman can in some cases deal with cases concerning case processing by the execution and enforcement commissioner.

2.3 Summing up

This review shows that cases can arise in which citizens do not have access to have their objections against case processing evaluated or re-examined. From a due process viewpoint, this can be an unfortunate situation. I am therefore of the opinion that the provision in Section 4, first sub-section, litra c), of the Ombudsman Act must be interpreted in such a way that the Ombudsman can in some cases deal with cases concerning case processing by the execution and enforcement commissioner.

In cases where enforcement proceedings are terminated, e.g. because an attachment has been lifted, the case cannot be brought before the district court pursuant to Section 5-16 of the Enforcement Act. It must therefore be obvious that these cases are encompassed by the Ombudsman's area of operation. In such cases, a situation whereby both the court and the Ombudsman are dealing with the same issue, cannot arise.

This must also be the leading viewpoint in the question of whether the Ombudsman can process other complaints against case processing on the part of the execution and enforcement commissioner. The Ombudsman should not therefore deal with complaints concerning slow case processing or lack of case processing by

the execution and enforcement commissioner inasmuch as the commissioner's actions can be appealed to the district court. The situation differs if there is a legally enforceable decision which does not include the alleged case processing errors by the execution and enforcement commissioner, or if an appeal is rejected by the court because it is considered to be below the lower limit for lodging appeals to the district court. In such cases, processing of the same issue by the district court and the Ombudsman could not arise.

It must therefore be correct to interpret the area of application for Section 4, first sub-section, litra c), of the Ombudsman Act in such a way that the Ombudsman can deal with cases when it is clear that the relevant issue cannot be dealt with by the courts.

3. A party's right of access and freedom of information

3.1 Introduction

A party's right of access to case documents is laid down in several sets of rules. A party's right of access may be governed by special acts, for example a patient's right to information according to the Patients Rights Act of 2 July 1999 No. 63, Section 3-2. Moreover, a party may demand access pursuant to the provisions of the Freedom of Information Act dated 19 June 1970 No. 69.

However, the general rules on a party's right of access are laid down in Sections 18 et seq. of the Public Administration Act dated 10 February 1967. As a main rule, a party has right of access to all documents in a case, cf. Section 18, first sub-section, of the Public Administration Act. However, pursuant to Sections 18 and 19 of this Act, there is provision for the administrative agency to make exceptions from a party's right of access in respect of certain documents or in respect of special information in the documents.

Pursuant to Section 2, third sub-section, of the Freedom of Information Act, an administrative agency has an obligation to evaluate whether a document may be publicized even if this document *may* be exempt from publication pursuant to the provisions of the Act, the so-called freedom of information evaluation. There is no equivalent obligation to evaluate public access in the Public Administration Act. The question is however whether an administrative agency *must* evaluate whether a party shall be granted access to case documents even if exemption is allowed.

I have touched on this issue in previous reports to the Storting[4] and during the course of 2005, I have also dealt with cases in which this issue has been raised.[5] The following brief review will deal with the legal background for the requirement for an evaluation of a party's right of access in addition to some comments on the subject for evaluation.

3.2 Obligation to evaluate right of access

The exceptions from a party's right of access in the Public Administration Act are worded in such a way that «a party cannot demand» access. In Recommendation O. No. 50 (1976-77) on page 4, the following is stated concerning choice of wording:

> «In cooperation with the Ministry, *the committee* has amended the wording in Section 18, second sub-section, in such a way that «right to» in the first line of the second sub-section has been changed to «demand». With this amendment, *the committee* wishes to emphasize that even if the party does not have right of access to the type of documents encompassed by the provisions of Section 18, second and third sub-sections, the administrative agency shall in each individual case evaluate whether the party shall nonetheless be granted access to the case documents.»

"... obligation to evaluate public access in the Public Administration Act. The question is however whether an administrative agency *must* evaluate whether a party shall be granted access to case documents even if exemption is allowed.

[4] Cf. for example the Annual Report for 2002 page 133.
[5] Cf. for example page 100 in this year's Report (case 2005/1275).

Act and the Freedom of Information Act means that a party in a case should not be placed at a disadvantage in relation to a person who is not a party in a case and must therefore seek access pursuant to the Freedom of Information Act.[6] The same situation is highlighted in Report No.32 to the Storting (1997-1998). It follows from the context in the regulations that if access pursuant to the provisions of the Public Administration Act is not applicable, the agency must evaluate whether right of access may be granted pursuant to the provisions of the Freedom of Information Act, see inter alia circular letter G-28/98 from the Ministry of Justice.

The exemption provisions in the Public Administration Act must therefore be interpreted in such a way that the agency has a *duty* to evaluate whether the exemption provision shall also apply with regard to access pursuant to the Public Administration Act. The concept of freedom of information is established, and can also describe the evaluation that must take place in respect of a party's right of access.

"... it is difficult to see that there are any good reasons why right of public access pursuant to the Freedom of Information Act should be more far-reaching than a party's right of access pursuant to the provisions of the Public Administration Act.

3.3 The subject for appraisal

The main subject for appraisal pursuant to Section 2, third sub-section, of the Freedom of Information Act is whether the considerations behind the exemption from public disclosure apply to a sufficient degree in the case in question in relation to the considerations in favour of public access. This must be the basis for the evaluation of a party's right of access to the documents.

Weighing the different considerations against each other may give different results depending on which exemption clause is relevant. When, for example, the exemption applies to internal documents, the Storting's Standing Committee on Justice has specifically emphasized that there must be general emphasis in favour of freedom of information.[7]

Based on the objective behind the provision for public access and the clear statements in the preparatory work for the Freedom of Information Act, I have previously taken as a basis that access should only be refused if, in addition to the exemption clause, there are weighty reasons for exempting the document from public access – see i.e. the investigation covering practising of the Freedom of Information Act in the Ministry of Justice.[8] In the proposed new Freedom of Information Act, there is general emphasis that exemption from public access shall only be practiced «in cases where there is a real and objective requirement for this».[9] In all cases therefore, public access should be allowed provided there are no decisive reasons in favour of confidentiality.

As mentioned, it is difficult to see that there are any good reasons why right of public access pursuant to the Freedom of Information Act should be more far-reaching than a party's right of access pur-

[6] See the Ombudsman's Annual Report for 2002 page 133 and for 2004 page 83.
[7] Cf. Recommendation O. No. 4 (1981-82) page 4.
[8] Cf. Special report to the Storting in the report year 1998 (Doc. No. 4:1 (1997-98) page 15).
[9] Cf. Ot.Prop. No. 102 (2004-2005) page 41.

suant to the provisions of the Public Administration Act. Several of the considerations in favour of freedom of information in general also apply to a party's right of access – for example due regard to citizens' confidence in the decisions passed in public administration. Moreover, a party's right of access is frequently an essential condition for the application of other rights. An administrative agency's case preparation and case information can also be dependent on the parties being provided with the opportunity of making a statement on the case documents available. When weighing the pros and cons with regard to right of access, these factors must be taken into account. There are good reasons why the threshold for exempting documents from access due to the circumstances should not be lower than the threshold for applying the exemption provisions in the Freedom of Information Act.

4. Freedom of speech for civil servants

The right to make candid opinions in public is a basic condition for a well functioning democracy. Freedom of speech is laid down in the provisions of Section 100 of the Norwegian Constitution, last amended by constitutional decision of the Storting on 30 September 2004. Moreover, freedom of speech is established internationally in Article 19 of the World Declaration on Human Rights adopted by the UN General Assembly on 10 December 1948, in Article 19 No. 2 of the UN Convention on Civil and Political Rights dated 16 December 1966, and in Article 10 of the European Human Rights Convention of 4 November 1950.

In connection with the adoption of the new Section100, the importance of freedom of speech for civil servants was underscored. However, no special provisions concerning freedom of speech for civil servants was included in the new Section 100 of the Constitution. The provision gives the impression of a paramount and general norm applicable to all aspects of life. In the preparatory work for the constitutional amendment it was stated however that the amendment was to form the basis for wide-reaching freedom of speech for employees, and that weighty arguments were required for any limitations to apply.

In this year's Report, there is reason to emphasize once again that civil servants have the same freedom of speech as other private individuals. Basically, freedom of speech also refers to matters pertaining to the employee's own area of work and that concern their relationship with the employer. Due regard to the public debate and access to exercise real democratic control of activities in society mean that employees must be able to voice their opinions also on matters connected with their own employment situation. This applies even if such statements may be experienced as disagreeable by an employer or by the political authorities, and even if the statements can give rise to unrest and ill feelings in the workplace. Attempts at silencing free expression of opinions voiced by civil servants by issuing official instructions or by introducing disciplinary sanctions in respect of statements that the employer dislikes, must be considered to be an attack on our open society and in contravention of democratic rules. On the other hand, it must be possible to unite freedom of speech and the employee's duty of loyalty. It is my general impression that in recent years, there has been a growing understanding of the importance for providing civil servants with the opportunity of voicing their opinions freely. However, it is still important to focus attention on this situation. It is basically important that the legal restrictions limiting freedom of speech must be subject to clear legal rules and should not be dependent on weighing general considerations against a specific evaluation in each individual case.

> **"The right to make candid opinions in public is a basic condition for a well functioning democracy.**

In the Annual Reports for 2002, 2003 and 2004, I have dealt with the question of freedom of speech for civil servants.[10] The question has also been raised on several occasions this year in matters that have been brought to the attention of the

[10] Cf. inter alia chapter II of these Reports on pages 22, 19 and 28 respectively. ??

Ombudsman. A case that is referred to in the Annual Report on page 112 et seq. applies to a teacher employed in a municipality. She had criticized different municipal bodies in several letters published in the local newspaper. Among other things, she had complained about the level of service at the municipality's service division and at a municipal medical centre.

The municipality reacted by calling in the teacher to a meeting. At the meeting with the teacher, the municipality emphasized that «there was a requirement for a different form of expression in letters to the press, paying more regard to colleagues and the working environment in the municipality». It was my conclusion that

"Due regard to the public debate and access to exercise real democratic control of activities in society mean that employees must be able to voice their opinions also on matters connected with their own employment situation.

the municipality's reaction must be considered to be an official reprimand to the teacher. In the main the teacher had voiced her opinion as a private person, and I found that her statements did not constitute any breach of duty of loyalty to the employer. For this reason, the municipality was criticised for having issued the reprimand. I also found that there was reason to emphasise that basically freedom of speech also applies to situations in the workplace and to the relationship with an employer. In general, civil servants have a wide scope – both in form and content – for expressing their opinions in public on the situation at their workplace.

Another case this year[11] concerned an employee in a municipal nursing home who criticised the conditions at the nursing home in an interview on a local radio station. The statement was spontaneous and was the result of direct encouragement on the part of the journalist who was called to the nursing home following a budget proposal involving a staff reduction – a cook in the kitchen. Following the interview, the employee was called in to several meetings by the municipality and was strongly criticised for disloyal conduct against the employer. I criticised the municipality for having issued this official reprimand as I could not see that her critical statements to the local radio station contravened against her duty of loyalty to the employer. In my opinion, employees must have wide scope for expressing their opinions when they experience that working conditions at their place of work deteriorate. An employer cannot react against an «outspoken statement» by an employee unless the statement has resulted in a clear risk of harm to the employer's interests, which was not found to be the case in this instance.

I have previously criticised Oslo Municipality for the unjustified issuing of an official reprimand to a municipal employee following statements he made on the radio[12]. The Appeals Board has again rejected the Ombudsman's request for re-examination. I have maintained my criticism. In conclusion, it was necessary to point out that public administration must be aware of the importance of freedom of speech on the part of civil servants. I stated that in the future I assume that Oslo Municipality will work actively to strengthen understanding of the importance of providing municipal employees

[11] See page 109 in the Annual Report

[12] See Annual Report for 2003, page 83, the Annual Report for 2004, page 43 and the Annual Report for 2005, page 46 (Cases 2002/872 and 2004/1968)

"The duty of loyalty required on the part of civil servants shall not only be directed towards the interests of the leadership of whatever municipal agency the civil servant works for, but, more importantly, loyalty shall be directed towards the population served by the municipality.

with acceptance, leeway and tolerance of openness and wide freedom of speech. The duty of loyalty required on the part of civil servants shall not only be directed towards the interests of the leadership of whatever municipal agency the civil servant works for, but, more importantly, loyalty shall be directed towards the population served by the municipality.

5. Appointments in public administration

5.1 The scope of cases and the role of the Ombudsman

The Ombudsman plays a leading and important part in the control of cases concerning public appointments. Every year the Ombudsman receives many complaints concerning appointment decisions in government, county and municipal administrative positions. Complaints in these area usually concern case processing in the appointment process and that complainant is of the opinion that he or she has been passed over as they have better formal or practical qualifications than the person who was appointed. In recent years, the number of complaints in this type of case (2000-2005) has varied between 75 and 115 cases per year. An important reason for the relatively high number of complaints in this type of case is assumed to be the fact that decisions in appointment cases are exempt from the provisions of the Public Administration Act concerning reasoning and appeal, cf Section 3 of the Public Administration Act of 10 February 1967. If an applicant to a vacant position in public administration is of the opinion that he/she has been passed over, the person concerned must therefore normally either take legal action before the courts or bring the case to the attention of the Ombudsman.

The basic principle with regard to appointments in public administration is the so-called qualification principle. In an appointment case, the aim is normally to find the person who following evaluation must be regarded as being best qualified to fill the vacant position. In the evaluation, due regard must be taken to the qualification requirements stipulated in the wording of the announcement in addition to any legal and contractual requirements. Important factors will otherwise be education, practice and personal suitability. The qualification principle applies as a non-statutory principle for appointments in public administration in general, whether it be government, municipal or county administration. In certain job categories, the principle is also statutory.[13]

The main consideration behind the qualification principle is to ensure that public administration recruits persons with the best possible competence in relation to the assignments to be performed. Moreover, the decision must be made in a manner that ensures that equal rights are maintained and that decisions are objective and unbiased.

Proper case processing is a condition for ensuring that appointment decisions are correct and is also important for ensuring public confidence and that no ulterior considerations have been taken in the appointment process. In many of the cases received by the Ombudsman, it is shown that the administrative agency has not been sufficiently aware of the case processing rules that apply. Each year a selection of these cases is presented in the Annual Report, but there are also other numerous cases received by the office which have given grounds for criticism. The fact that the Public Administration Act has exempted appointment decisions from the duty of reasoning and from access to appeal has given the Ombudsman a very important role in controlling that the requirements with regard to proper case processing have been followed in cases concerning appointments in public administration.

[13] For example, Section 10-5 of the Education Act of 17 July 1998 No. 61 concerning appointments in primary and secondary schools

"It must be emphasized that although certain case processing rules do not apply in relation to the parties in cases of this type, the requirements with regard to internal case processing in the agency are just as strict as in other cases.

The requirement for proper procedures in appointment cases has also been emphasized in the UN Convention against corruption which has been signed by Norway, cf in particular Article 7 of the Convention. The Ministry of Justice confirms that the Convention has been ratified by a sufficient number of states and that it can therefore come into force on 14 December 2005.

Against this background and in the time ahead, I will be examining the case processing behind official appointments in public administration.

In order to ensure that the aim of the qualification principle is achieved, vacant positions must be announced in such a way that the vacant position is brought to the attention of suitable candidates, providing them with the opportunity to apply. The situation may also be such that the appointing agency must take an initiative to attract the interest of qualified persons and prevail upon them to apply for the vacant position. With regard to government positions, the Civil Servants Act of 4 March 1983, No. 3 provides that vacant offices or positions shall as a general rule be announced publicly. There is no such statutory provision with regard to municipal positions in general. However, the qualification principle means that as a general rule such positions must also be announced publicly in order to reach suitable applicants.

The best qualified applicant will be the person who, following an evaluation and comparison of qualifications between relevant applicants is considered to be the person who is best suited to fill the specific requirements. Firstly, it must be decided which applicants are qualified, thereafter who is *best* qualified for the position in question. Appraising several candidates and making a choice between them will necessarily involve discretionary appraisement. To the extent the decision is based on a professional evaluation of applicants, it would not normally be appropriate for the Ombudsman to carry out legal re-examination. Pursuant to Section 10, second subsection of the Ombudsman Act of 22 June 1962 No. 8, there is little scope for the Ombudsman to criticise discretionary decisions in public administration. It is therefore seldom that I make a statement concerning an official appointment decision, for example on who it must be considered is best qualified for the position in question.

However, it is certainly within in the remit of the Ombudsman to investigate whether there has been any bias or partiality when passing the decision or whether any legal requirements have been ignored. An example of this is the case referred to on page 123[14] of the Annual

"It must be emphasized that the case processing requirements in appointments to positions in public administration must also apply when parts of the appointment process are assigned to private companies.

[14] Case 2004/3073

Report, where I criticised an administrative agency for taking irrelevant matters into consideration. However, in several cases I have found that deficiencies in case processing make it impossible to investigate whether irrelevant matters have been taken into consideration or not.[15]

5.2 General comments on case processing in public appointment cases

Section 2, second subsection of the Public Administration Act provides that public appointment decisions are administrative decisions (in individual cases). Contrary to other types of administrative decisions, the parties concerned do not have access to the reasoning behind the decision, nor do they have the right to appeal. Neither do the ordinary rules of access for a party apply in such cases. The parties do have a certain right to access to case documents in Regulations dated 21 November 1980 No. 13 concerning right to inspect documents in cases dealing with appointments in public administration.

It must be emphasized that although certain case processing rules do not apply in relation to *the parties* in cases of this type, the requirements with regard to *internal* case processing in the agency are just as strict as in other cases. The agency must ensure that all aspects have been thoroughly studied before a decision is passed with regard both to the applicants' formal qualifications and their personal qualities, cf. Section 17, first sub-section of the Public Administration Act. When dealing with appointments, this normally takes place in an interview and by obtaining references after the appointing authority has studied the documentation attached to the candidates' applications. Pursuant to Section 17, second sub-section, any new information in the case providing factual information on the applicant shall be presented to the applicant so that the person concerned can make a statement or confirm the information.[16] In other words, the basis for the decision shall be equally good even if the party does not have the right to see the reasoning for the decision. I would point out that the non-statutory requirement that case processing shall be in writing also applies to appointment cases, cf. the statements below concerning documentation requirements.

The next section deals briefly with certain special case processing issues that have had relevance during the year.

5.3 Certain case processing issues

5.3.1 Documentation requirements

After having carried out many investigations of appointments to public office, it is my experience that case documents frequently provide little information on case procedure and do not show the appraisement made by the appointing authority.

In several cases I have found reason to point out that the exemption from the requirement to disclose reasoning in relation to the parties does not mean that there is no requirement for providing proper reasoning behind the decisions that are passed. It is, for example, important that the appointing authority is aware that they may well have to explain the decision to the Ombudsman, and the agency should then be in a position to submit its reasoning to this office. Good public administration normally requires

[15] For example, Case 2005/817 referred to on page 125 and Case 2005/1461 on page 130 of the Annual Report
[16] For example, the cases on pages 123, 125 and 128 in the Annual Report (Cases 2004/3073, 2005/817 and 2004/2967).

that all case processing in public administration must be in writing. This is essential for the subsequent documentation of the factual basis for a decision and to investigate whether the evaluations made and the considerations taken are fair and unbiased. This will also contribute towards increasing confidence in decisions by public administration.[17] The documentation requirement is particularly important in cases where an appointment is made that does not conform to a previous recommendation or where the authority to decide on the appointment has been assigned to a head of department without the requirement for a recommendation, which appears to be the case to an increasing extent in municipalities and counties. The case documents should at least show what has been the deciding factor behind the decision.

Moreover, it is a condition for granting right of access pursuant to Section 3 of the Right of Access Regulations dated 21 November 1980 No. 13 that all proceedings be in writing. In numerous cases dealt with by this office, the subject has been the obligation to ensure that information submitted to the appointing authority by a reference person[18] is duly registered in writing.

5.3.2 The use of private recruitment agencies

When dealing with complaints I have registered that administrative agencies are to an increasing extent using the services of private recruiting agencies when appointing new employees.[19] There is no objection to this development from a legal viewpoint, but the administrative agency concerned must be aware of its responsibility with regard to case processing.

> "An administrative agency cannot organize its way out of the requirements for processing of appointment cases laid down in the Public Administration Act.

It must be emphasized that the case processing requirements in appointments to positions in public administration must also apply when parts of the appointment process are assigned to private companies. Such companies cannot be considered to be «administrative bodies» pursuant to Section 1 of the Public Administration Act, and the provisions of the Public Administration Act do not apply to the business of such companies. An administrative agency cannot organize its way out of the requirements for processing of appointment cases laid down in the Public Administration Act. The public authority making the appointment is responsible for ensuring that the case processing requirements are fulfilled, even in cases where assistance from private companies has been enlisted. The agency making the appointment cannot solely base its findings on the evaluation of the private company – it is under obligation to carry out an independent appraisement of the case. There has also been reason to emphasise that a private company's evaluations are important documents in the case and must be filed together with the other documents.

5.3.3 Electronic announcement, electronic applications, etc.

A complaint from a group of unions concerned a municipality which made it clear in the announcement of a position that applications must be submitted electronically. After having studied announce-

[17] For example, the case on page 130 in the Annual Report (Case 2005/1461).
[18] For example, the case on page 123 of the Annual Report (Case 2004/3073).
[19] One example is quoted in the Annual Report on page 125 (Case 2005/817).

ments in newspapers and the Norwegian Gazette, I have registered that several other municipalities and several government bodies also require electronic applications or that applications must be sent by e-mail. In several announcements, reference is also made to the website of the public body for the «complete text» of the announcement. This office has also experienced that most of the Ministries now rely upon electronic job applications. In view of this, the situation was taken up on the Ombudsman's own initiative with the Ministry for Modernisation, which is the leading government employing authority.[20]

If an announcement text specifies a requirement for an electronic application or an application by e-mail, this can preclude applicants who are not computer literate. The same applies if reference is made to the website of the body concerned for the complete text of the announcement.

I fully understand that public administration has a requirement for improving efficiency and utilising resources and therefore wishes to apply modern technology in the application process. In general, electronic applications will enable applications to be processed faster in the agency, partly because this facilitates processing of application lists. However, developments have not yet reach the stage where it can be said that *demanding* electronic applications or applications by e-mail can be said to harmonise with the qualification principle. Although it is desirable that applicants make use of electronic services in the application process, there should still be access to submit applications in the traditional manner, on paper. The wording of the announcement should state that paper-based applications are accepted and a postal address should be given for such applications. If it is not emphasized in the wording of the announcement that applications on paper will also be accepted and processed, they should be worded in such a way that does not leave any doubt on this question. Any such uncertainty can be avoided by, for example, using expressions such as *preferably* or *primarily* in respect of applications sent electronically. If it is merely *requested* that applications be sent in electronic form, this can give rise to uncertainty concerning the possibility for submitting an application on paper. Should an agency insist on electronic applications, it should at least provide an offer of guidance in this connection and provide information on this in the text of the announcement.

Announcements that refer to a more detailed announcement text on the website of the agency are also problematic and can exclude applicants who do not have the necessary competence or access to the Internet. If the announcement text does not appear in full in newspapers and in the Norwegian Gazette, an alternative possibility of obtaining access to the full text should be given in addition to referring to the website, for example a telephone number to a contact person in the agency.

[20] Cf. the case included on page 141 in the Annual Report (Case 2005/1108).

6. The Ombudsman's processing of cases concerning event-based supervision of healthcare services

6.1 Introduction

Every year the Ombudsman receives numerous complaints and inquiries that concern the processing of cases concerning adverse events in healthcare services by the Norwegian Board of Health. Most complaints are from patients or next-of-kin who are of the opinion that the Board of Health should have reached the conclusion that the healthcare personnel or the healthcare service have not performed their duties in accordance with the ruling regulations, and that this should result in some form of reaction. However, the office also receives complaints from healthcare personnel who are of the opinion that the Board of Health has expressed unjust criticism and reaction against their actions or activities.

Pursuant to the provisions of Section 2, first sub-section, of the Act concerning Government Supervision of the Healthcare Services dated 30 March 1984 No. 15, the «County Health Supervisory Authority shall carry out supervision of the entire healthcare service and of all healthcare personnel in the county, and in this connection shall provide advice, guidance and information to ensure that the population's requirement for healthcare services are covered». Should the County Health Supervisory Authority find that there are matters «requiring the issuing of a warning or the recalling, voluntary waiver or suspension of authorisation, licence, specialist approval, right of requisition, or limitation of authorisation pursuant to the provisions of Chapter 11 of the Healthcare Personnel Act», the Norwegian Board of Health shall be duly informed, cf. third sub-section. The Norwegian Board of Health shall decide whether any «administrative reactions in relation to healthcare personnel pursuant to the rules in Chapter 11 of the Healthcare Personnel Act» shall be taken, cf. fourth sub-section.

Pursuant to the provisions of Section 7-4 of the Act relating to Patients' Rights dated 2 July 1999 No. 63 and Section 55 of the Healthcare Personnel Act dated 2 July 1999 No. 64, persons who are of the opinion that regulations concerning duties laid down in or pursuant to the Healthcare Personnel Act have been breached in his or her disfavour, may request the County Health Supervisory Authority to consider the matter. The County Health Supervisory Authority shall consider the request and whether an event-based supervisory case shall be opened, i.e. a supervisory case based on information on individual events. If, following an evaluation of the case, the County Health Supervisory Authority finds that a reaction is required pursuant to the provisions of Chapter 11 of the Healthcare Personnel Act, the case shall be forwarded to the Norwegian Board of Health which shall pass a decision in the matter, cf. Section 55, fourth sub-section, of the Healthcare Personnel Act. The Norwegian Healthcare Personnel Board deals with complaints from healthcare personnel concerning sanctions pursuant to Sections 56-59 and 62-65 of the Healthcare Personnel Act, cf. Section 68, second sub-section, of the Healthcare Personnel Act.

The Ombudsman's remit covers the entire public administration area, including this legal area. This means that basically the Ombudsman may investigate and submit an opinion on final decisions passed by

County Health Supervisory Authorities, the Board of Health and the Healthcare Personnel Board. In practice, however, it is the circumstances in this case area that decide which issues the Ombudsman takes up for further investigation and for the depth of the investigation.

6.2 Case processing issues

As a rule, the Ombudsman will be in a position to carry out a full investigation of case processing issues. Such issues can include duty of providing guidance, information in the case, contradiction, case processing time, etc.

Case 2004/3319 included on page 159 of the Annual Report is an example of a case dealing with several case processing issues in a case concerning event-based supervision. Complainant maintained that the requirement with regard to professional responsibility and diligent care pursuant to Section 4 of the Healthcare Personnel Act had been breached in connection with a consultation. The question was raised whether statements made to the Supervisory Authority by the intern who treated the patient and by the medical centre in question should have been submitted to complainant before the supervision case was concluded so that he could have had the opportunity of stating his opinion on the statements. I concluded that this should have been the case. In connection with the investigation of the case, the County Health Supervisory Authority stated that a new practice had been introduced giving complainants/ patients the opportunity of commenting on statements made during the processing of the case. I expressed the view that this change in practice was positive, and emphasized that it is an advantage with regard to both information in the case and complainants confidence in case processing that the person concerned has the opportunity of commenting on such statements.

Case 2994/1688 on page 156 of the Annual Report is another example in which several case processing questions were taken up in a case of event-based supervision. This case was based on a situation where a person committed suicide shortly after being discharged from a psychiatric hospital. According to the regulations ruling at the time, there was a breach in case processing procedure in that the Control Commission had not dealt with the case in the first instance. The reason given for this – in order to wind up the case – is not tenable. I also pointed out that the lack of a written assessment of suicide risk upon discharge was a clear and serious breach of the Registration Regulations. The failure to keep proper records made it difficult to evaluate the actions of the hospital and of healthcare personnel. The Supervisory Authority passed on the criticism with regard to records etc. to the hospital by sending a copy of the letter sent to the next-of-kin. I expressed the view that this criticism should have taken a stricter form.

On own initiative, the Ombudsman implemented an investigation in 2005 concerning case processing time by supervisory authorities in cases concerning event-based supervision and how this affects sanctions imposed pursuant to the provisions of the Healthcare Personnel Act. The investigation was carried out due to numerous complaints from patients, next-of-kin and others concerning cases where a long period has elapsed between the event forming the basis for the case until the case is closed. The time factor has been of significant importance with regard to the form of reaction. The issue is illustrated in a specific case in which it was stated that the Board of Health had concluded that the conditions

for recalling a medical practitioner's licence were fulfilled. However, partly due to the long case processing time involved, the Board found that, according to its own practice, the Board could only impose a milder form of sanction, and the medical practitioner received a warning only. In the case in question, case processing time in the County Health Supervisory Authority was 1 year and 6 months, and in the Board of Health more than 2 years and 4 months.

Case processing time in the Health Supervisory Authorities is also illustrated in another case received by this office. In this case the overall case processing time by the Health Supervisory Authority was more than 3 years. The Board of Health concluded that the medical practitioner concerned had not acted in a professionally responsible manner and had therefore breached the provisions of Section 4 of the Healthcare Personnel Act. Referring inter alia to the long period that had elapsed since the event took place, the Board did not find that it was «appropriate» to issue any sanction pursuant to the provisions of Chapter 11 of the Healthcare Personnel Act. In the communication to this office, complainant pointed out that the medical practitioner was again under investigation for alleged breach of the Healthcare Personnel Act in connection with another patient.

The object of the general investigation by this office is to examine both case processing time by the Health Supervisory Authorities and the practice of attaching importance to long case processing time, when evaluating whether a sanction is to be imposed and, if so, the type of sanction in cases of established breach of duty.

6.3 The realities of the cases

When the Ombudsman examines the realities of the cases (the material issues), the depth of re-examination differs somewhat from pure case processing issues.

Although the Ombudsman basically may also investigate and state an opinion on the legal issues and evaluations, a decision passed in a supervisory case is frequently based on an assessment of a decidedly discretionary and professional nature. In practice, this limits the Ombudsman's investigations. In the above case (2004/3319) I referred to the fact that the requirement for professional responsibility and diligent care pursuant to Section 4 of the Healthcare Personnel Act is a legal standard. This means that the legal rule refers to an evaluation norm outside its own scope as a deciding criterion of whether a provision has been breached. One of the main points of this type of legal regulation is that the content of the provision can vary in different situations and over a period of time. As a supervisory body, the Board of Health has a special role in drawing up the borderlines for «the requirements with regard to professional responsibility and diligent care» which is expected from healthcare personnel at all times and in all situations. For the Ombudsman the question is whether these borderlines are justifiable.

As a supervisory body, the Board of Health has a special role in drawing up the borderlines for «the requirements with regard to professional responsibility and diligent care» which is expected from healthcare personnel at all times and in all situations. For the Ombudsman the question is whether these borderlines are justifiable.

The object of the requirements for professional responsibility on the part of healthcare personnel laid down in the Healthcare Personnel Act is to contribute towards ensuring quality and confidence in the healthcare services. Communications from patients to the supervisory authorities concerning conditions which are possibly open to criticism are in the first instance aimed at ensuring efficient supervision with the healthcare services and preventing similar breaches in the future, cf. Ot.Prop. No. 13 (1998-99), page 197, first column. As a supervisory authority the Board of Health plays an important role in evaluating how these objectives can be achieved in the most efficient manner possible.

Many questions in cases concerning event-based supervision deal with professional medical assessments. The Ombudsman can consider and decide whether sufficient information has been submitted, but obviously he cannot examine the professional medical assessments. I must therefore assume that the Health Supervisory Authorities are in possession of, or have access to the necessary knowledge to make this type of evaluation.

In the above case (2004/3319) complainant expressed the view that the Supervisory Authority should have obtained statements from two head physicians, stating that the treatment provided at the medical centre was unsatisfactory. However, it was difficult to see how, on a legal basis, it could be concluded that there was insufficient information in the case inasmuch as this had not been done. The Health Supervisory Authority had not considered that it was necessary to obtain such statements. I took as a basis that the Health Supervisory Authority considered that the Authority's own competence was sufficient to evaluate the medical sides of the case. In my statement I expressed that it was difficult to examine this type of evaluation or the basis for such evaluation. I underscored however that out of consideration to complainants confidence in the process, it would have been an advantage to obtain statements from the medical practitioners concerned.

One of the objects of the Ombudsman's activities is to endeavour to ensure that individual citizens are not subjected to maladministration by an administrative agency, cf. Section 3 of the Ombudsman Act dated 22 June 1962 No. 8. As a rule therefore, most conflicts are between a citizen and an administrative agency. Cases concerning event-based supervision in the health service are generally based on a conflict between a citizen, typically a patient or next-of-kin, and a medical practitioner or enterprise. According to the circumstances, the medical practitioner or the enterprise may also have a self-interest in letting the matter rest with the result reached by the Supervisory Authority.

If the Supervisory Authority concludes that there is no breach of the provisions of the Healthcare Personnel Act, the Ombudsman can, if there are grounds for this, express criticism and request the administration to re-examine the case in the light of the results of the investigations made by this office. In such cases, the Ombudsman must also take into consideration the situation with regard to the decision of the Supervisory Authority.

6.4 The question of the right to appeal against the standpoint of the Board of Health

A party requesting that a supervisory case be initiated may have a clear factual interest in the result, but is not «a party» in the case pursuant to Section 2, first sub-sec-

tion, litra e, of the Public Administration Act, cf. Ot.Prop. No. 13 (1998-1999) page 198. For this reason, the person concerned does not have any right to appeal against decisions passed by the Board of Health. Section 7-4, last sentence, of the Act relating to Patients' Rights states that the rules in Chapter 7 concerning right to appeal do not apply in relation to the Board of Health's standpoint in respect of requests for appraisal of possible breach of duty on the part of healthcare personnel. It is also stated in the preparatory work with regard to Section 55 (previously Section 72) of the Healthcare Personnel Act that such requests are not embraced by the appeal concept in the Public Administration Act, cf. Ot.Prop. No. 13 (1998-1999) page 253. It is emphasized that the study of the request by the supervisory authorities and any reactions in relation to healthcare personnel shall not have any direct legal effect for the patient, cf. Ot.Prop. No. 14 (2000-2001) page 19. The standpoint of the Board of Health in relation to such a request is not decisive for the patient's rights or obligations, and is not therefore an administrative decision concerning rights and obligations which can be appealed, cf. Section 2, first sub-section, litras a and b, of the Public Administration Act. Cases of this type are therefore mainly between healthcare personnel and the supervisory authority.

Even if no doubt exists with regard to prevailing law, the Ombudsman receives from time to time applications from patients and next-of-kin who are of the opinion that their legal position is weakened as they are not defined as a party in the case and are therefore without any formal right of appeal against decisions passed by the Board of Health. This situation would appear to weaken confidence in the decisions that are passed. I have registered that the country's patient ombudsmen also find the present-day arrangement to be unsatisfactory for patients. In an unpublished case (2004/1514) I expressed the view that there may be good reason to have the Board of Health's standpoint examined by a superior body in order to quality-assure evaluations. On the other hand, it must be taken into consideration that Section 7-4 of the Act relating to Patients' Rights and Section 55 of the Healthcare Personnel Act are of a different nature and have a somewhat different purpose than the other rights in the Act relating to Patients' Rights. As mentioned initially, the purpose in the first instance is to draw the attention of the supervisory authorities to possible malpractice in the performance of healthcare duties or system errors, in order to assure the quality of healthcare offers in the future.

The legislator has taken a standpoint on the appeal issue, and it is therefore outside the remit of the Ombudsman to comment on this, cf. Section 4, first sub-section, litra a, of the Ombudsman Act. The question of whether the right to appeal should apply to cases pursuant to the provisions of Section 7-4 of the Act relating to Patients' Rights and Section 55 of the Healthcare Personnel Act are legislative policy issues which must be raised with the political authorities. I have registered that this step was taken by the Patients' Ombudsmen Organization by letter dated 20 April 2005 to the Ministry of Health.

7. The Ombudsman's work in the field of immigration

In recent years, the Ombudsman has received and processed an increasing number of complaints concerning case processing and decisions by the immigration authorities. In 1995, for example, three cases, dealing mainly with political asylum were dealt with, and only one of these cases was re-examined (the Annual Report for 1995 page 26). In 2005, the number of asylum cases dealt with and closed had reached 23, of which 16 were re-examined (Annual Report for 2005 page 46). In 2004, the figures were even higher. There has also been an appreciable increase in the number of complaints concerning the Norwegian Directorate of Immigration. The number of complaints increased from 10 cases in 1995 to 34 cases in 2000, and 50 cases in 2005.

"The increase in the volume of cases in the field of immigration has required the Ombudsman to devote more attention to case processing by the immigration authorities.

The increase in the volume of cases in the field of immigration has required the Ombudsman to devote more attention to case processing by the immigration authorities. I have monitored the general development over a period of several years through the processing of specific complaints, investigations on own initiative and other sources of information, such as annual reports, websites (for example www.udi.no) and conferences. In the first instance, attention has mainly been focused on case processing time in the Directorate of Immigration in respect of different types of cases. In certain areas the long case processing time has given cause for concern. The Directorate's case processing routines have been examined on several occasions. General comments on certain areas of case processing in immigration administration have been dealt with in the Annual Reports for 2001 pages 37-38, 2002 page 27, 2003 page 20, and 2004 pages 25-26.

Towards the end of 2004, the Directorate of Immigration was requested to report on developments in case processing times in the different areas, the declared objectives of the Directorate, and the measures that have been implemented in order to reduce case processing time. In particular, information was requested on measures for reducing case processing time in cases concerning children. In the report from the Directorate received early 2005, it was stated that there had been an appreciable reduction in the number of unprocessed asylum cases, but that despite this the average case processing time had increased somewhat. Applications from asylum-seekers who were minors and were alone had been given special priority, and the number of unprocessed cases in this group had been more than halved during the course of the year. The Directorate expected that the average case processing time for asylum cases in general would be considerably reduced in 2005. The development in case processing time for the types of cases processed by the Directorate's settlement division, including cases of family reunion, work permits and visas had also shown general positive development. A more detailed account of the Directorate's report, including my own comments, can be found on page 211 of the Annual Report (case 2004/3128). In the time ahead I will continue to carefully monitor developments in case arrears and case processing time in the Directorate. Similarly, I will also keep track of case processing time in the Immigration Appeals Board, which in certain

areas appears to have been extended somewhat during the year.

Visits to relevant administrative agencies contribute towards strengthening the Ombudsman's knowledge of the activities of these agencies, and at the same time provide me with the opportunity of disseminating and updating information on the Ombudsman scheme. Throughout the year I have given priority to visits to agencies dealing with immigration.

In order to obtain more information on the situation for solitary asylum-seekers who are minors, I visited the reception centre at Vårli in Moss in June 2005. Vårli accepts the youngest asylum-seekers, and I met the management of the centre and representatives of the Directorate of Immigration. The subjects we discussed included the healthcare service at the centre, the existing supporting guardian scheme, distribution of responsibility between the immigration authorities and the child care authorities, the work of the authorities in establishing a new supervisory scheme, and the follow-up of disappearances from the centre. Two members of my staff subsequently attended a conference organized by the Directorate of Immigration dealing with experiences on solitary asylum-seekers and refugees who are minors which discussed both the processing of asylum cases and the integration process.

I also visited the Norwegian Country of Origin Information Centre (Landinfo), which was established on 1 January 2005, replacing the previous scheme of country advisors in the Directorate of Immigration and the Immigration Appeals Board. The Centre is under the administration of the Directorate of Immigration, and the offices are in the same premises as the Directorate, but the Centre is professionally independent of the Directorate, the Appeals Board and the responsible Ministry. Landinfo collects and analyses information on the socio-economic situation and on the human rights situation in countries where the immigration authorities require updated information. Information on countries of origin is frequently essential with regard to decisions passed by the immigration authorities, and it is therefore important that I am conversant with the work of the authorities in collecting, quality assuring, updating and distributing such information when I am dealing with individual cases. During the Ombudsman's visit, the management of Landinfo explained the centre's initiative for a higher degree of public access to information on countries of origin, and the centre intends to publicize this on its website (www.landinfo.no).

In November 2005, I visited the Police Immigration Unit. The Unit's assignments include the registration of all asylum-seekers, clarification of their identity and the implementation of negative decisions in asylum cases, including the forced transport of those concerned out of Norway. The Immigration Unit's work and routines in connection with such transports was a leading subject in Case 2004/1210, which is dealt with on page 218 of the Annual Report. During this visit I was informed of the different sides of the work of the Unit. I was also briefed on the operation of the internment centre at Trandum where persons who are remanded pursuant to the provisions of the Immigration Act are housed. I plan to visit the internment centre during the course of 2006. Also included on my plan is a visit to the transit centre at Tanum, which receives all the newly arrived asylum-seekers after registration by the Police Immigration Unit.

Recently, considerable interest has been focused on the situation for asylum-seek-

In 2005, I issued a consultation statement in connection with the proposed new immigration act in NOU 2004:20. In my statement I expressed criticism of the proposed limitations in the obligations of the authorities to submit information in the case for comment to the different applicants abroad.

ers whose asylum applications have been finally rejected, but who for different reasons continue to stay in the country. During the course of 2004 and 2005, on the basis of complaints and general coverage in the media, I requested reports on the legal position of this group from the Directorate of Immigration and the Ministry of Labour and Social Affairs.

In relation to the Directorate, it was in the first instance the withdrawal of living accommodation in the asylum reception centres that was the issue in focus. In its reply the Directorate stated among other things that the withdrawal of accommodation did not apply to families with children or to solitary minors, and exceptions were also made for those participating in a voluntary return programme under the auspices of International Organization for Migration (IOM). My approach to the Ministry concerned the right to social services for persons without a legal residence permit in Norway. I pointed out ambiguity in the guidelines for the processing of such cases by public administration. The Ministry provided information on its plans for the establishment of a national departure centre, which it is expected will resolve several of the present-day problems connected with the obligation of the social services to help persons without a legal residence permit. These reports did not give grounds for any further initiative by this office. Subsequently, it has been decided to establish a waiting centre for persons who no longer have an offer of accommodation at an asylum centre due to rejection of their asylum application. As a temporary measure, the Government has also decided that until the waiting centre is established, no one shall be evicted from the ordinary asylum centres. It is assumed that these measures will satisfy some of the objections that have been raised, but I will continue to closely monitor the overall situation for this group, inter alia in the light of the human rights obligations ratified by Norway.

In 2005, I issued a consultation statement in connection with the proposed new immigration act in NOU 2004: 20. In my statement I expressed criticism of the proposed limitations in the obligations of the authorities to submit information in the case for comment to the different applicants abroad, cf. Section 17 of the Public Administration Act. Such submission of information is an important guarantee for due process of law, which will ensure good information in cases and a correct result. The application of this provision has been the subject of several complaints, including Case 2005/87, which is dealt with on page 216 of the Annual Report.

I also issued a consultation statement on a draft act concerning representation on behalf of solitary asylum-seekers who are minors in NOU 2004:16 (Guardianship). In my view, consideration should be given to the question of whether the principle of the child's right to be heard and to express his/her viewpoints should be made statutory, cf. Article 12 of the UN Convention on Children's Rights. I also pointed out some ambiguities in the draft act and emphasized that the preparation of the act should be followed up by clarifying guidelines and a system for good

and thorough training of the children's representatives. Moreover, I assumed that the administrative and financial circumstances would be arranged in a manner that would ensure that the intentions behind the draft act were carried out in practice.

Although in the first instance, work in the immigration field has been linked to examination of case processing and decision-making in the Directorate of Immigration and the Immigration Appeals Board, I have also investigated other legal issues in this field. One example is the coverage of legal costs in immigration cases. A case on this subject was dealt with in the Annual Report for 2004, page 229 et seq. I continued work on these questions in 2005, see page 53 of the Annual Report. Other examples include the introduction scheme for newly arrived immigrants, including the question of coordination of payments from Aetat (The Norwegian Public Employment Service) with the introduction benefit (see Case 2005/836, dealt with on page 185). A case concerning secondary accommodation of foreign nationals is dealt with on page 189 (Case 2004/2481).

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8. The tax collection offices – responsibility for instruction and guidance to the tax review boards

Every year the Ombudsman receives a relatively large number of complaints concerning case processing and review of applications for reduction/remission of assessed tax on equity grounds pursuant to the provisions of Section 41 of the Act Concerning Payment of Tax. As there is no access to appeal against these decisions (the general rule in Section 28 of the Public Administration Act concerning the right to appeal to a superior body does not apply, cf. below), it is therefore natural that a number of rejections are submitted to the Ombudsman, requesting his legal opinion on the decision of the Tax Review Board.

As a basic rule, all assessed tax shall be paid and if necessary, enforced collection proceedings shall be initiated using the legal measures available to the tax collection authorities within the statutory framework. A difficult financial situation, illness or other social or situational circumstances for the individual taxpayer do not in general provide any basis for exemption from the duty to pay assessed tax. However, the provisions of Section 41 of the Tax Payment Act dated 21 November 1952 No. 2 concerning remission of tax etc. is an exemption rule or «safety valve», providing an elected board (Tax Review Board) with the authority to reduce or release a party from the payment of assessed tax on a discretionary basis. The case processing rules in the Public Administration Act are not (directly) applicable to such cases pursuant to Section 58 of the Tax Payment Act. The requirements with regard to case preparation in remission cases must therefore be appraised against the background of the tax collectors' and tax review boards' obligation to act in accordance with good administrative practice and the requirements for proper and justifiable case processing. More precise rules giving a more specific definition of these general requirements must be stipulated on the basis of instructions from the Ministry of Finance, the Directorate of Taxes, on practice in individual cases concerning remission and on statements by the Ombudsman. Requirements with regard to case processing must in practice be seen against the fact that the tax appeal boards are made up of laymen, that the boards are collegial bodies and that the guidelines with regard to assessment of reasonableness and overall evaluation in Section 41 of the Tax Payment Act provides for very specific and often complex evaluations of reasonableness.

A matter that has been emphasized in several cases concerns case processing by the tax review boards and in particular the requirements with regard to providing grounds for rejection of applications for remission. Resulting from this involvement, I approached the Directorate of Taxes in the summer of 2005, asking whether it was also the impression of the Directorate that the practice of the tax review boards with regard to giving grounds for rejection was in general not in accordance with the guidelines in the Directorate of Taxes' report No. 12/02 concerning tax relief including interest and costs on the equity principle, section 4.4.3. For further details, see case 2005/831 on page 231 of the Annual Report.

Section 4.4.3 in the Directorate's report No. 12/02 applies to grounds for decisions passed by executive committees/tax review boards. The report states as follows:

> «The Parliamentary Ombudsman has recommended that tax review boards should submit grounds for their decisions. This implies that the decision should refer to Section 41 of the Tax Payment Act, and explain the content of the provision. In addition, the decision should refer to the factual conditions that form the basis for the decision and should explain the main considerations that have been conclusive for the decision.»

The reply from the Directorate of Taxes confirmed that the Directorate's opinion was in line with the experience of the Ombudsman.

Rejections by the tax review boards frequently conclude with the following brief standard wording:

> «Following an overall appraisal of the provisions in Section 41 of the Tax Payment Act, the application is rejected.»

This does not provide the taxpayer with any detailed information on the legal and factual conditions that formed the basis for the rejection of the application. In the experience of the Ombudsman, failure to provide such specific information in a rejection makes it difficult for an applicant to have confidence in the processing of the application by the tax collection authorities and the tax review board and thereby accept the rejection.

By now, the tax collection offices should be well acquainted with the recommendation included in section 4.4.3 in the guidelines in the Directorate of Taxes' report No. 12/02. Despite this, the question must be raised whether the recommendation is followed well enough in practice. I hope therefore that the reminder issued by the Directorate of Taxes and the instructions to the tax collection offices in letter dated 12 December 2005, enjoining the tax collection offices to bring the attention of the tax review boards to my recommendation on how the tax review boards should provide grounds for their decisions, will result in a marked improvement in this practice by the tax review boards.

According to present regulations, tax review boards are municipal boards. When the new Tax Payment Act dated 17 June 2005 comes into force, probably from 1 January 2007, the provisions of Section 15-1 No. 3 of the new act provide that there shall be a tax review board for each tax assessment office. Tax review boards in municipalities that do not have their own tax assessment office will then be merged, but will continue to be municipal boards. The managerial prerogative and instruction authority in individual cases of the Directorate of Taxes will thus continue to be limited if the tax review boards carry out their authority in contravention of the guidelines in the Directorate of Taxes' report No. 12/02. It is my understanding that the new organization of the tax review boards will not involve any changes with regard to the responsibility of the tax collection offices for providing newly elected tax review boards with basic instruction in the processing of applications for tax relief and the passing of decisions.

As the preparatory body for the tax review boards, tax collection offices are also responsible for ensuring that the written recommendation to the tax review board is in accordance with the guidelines in the Director of Taxes' report No. 12/02, section 4.2.3. In the second sub-section it is stated:

> «The recommendation is a presentation of the case which shall provide an overall description of the factual circumstances, the appraisal of the case by the preparatory body and a pro-

posal with regard to a final decision in the case.»

It must be assumed that this paragraph in section 4.2.3 of the guidelines must be interpreted in such a way that a «proposal with regard to a final decision in the case» must be based on reasoning completely in line with section 4.4.3 of the guidelines, detailing how tax review boards should provide grounds for their decisions. This means that the tax collection offices' proposal for a final decision should also be reasoned with reference to Section 41 of the Tax Payment Act and an explanation of this provision. In addition, reference should be made to the factual circumstances forming the basis for the proposal, and the main considerations that have been conclusive for the proposal. Following up the guidelines on how decisions should be reasoned in the tax collector's proposed conclusion of the case must be considered to be an important practical part of the tax collection offices' instruction and guidance responsibility in relation to the tax review boards. If the proposed conclusion is reasoned in line with the guidelines in section 4.3.4, this reasoning will also serve as an on-going reminder to the tax review board on the requirement for giving grounds for its decisions pursuant to section 4.4.3 of the guidelines, as well as a suggestion with regard to the wording of these grounds.

As mentioned in the letter to the Directorate of Taxes of 4 August 2005, the Ombudsman's investigations of complaints with regard to decisions passed by the tax review boards unfortunately gives the impression that the tax collection offices are not fully aware of this practical and important part of their instructional responsibility. If this is the case, it would indicate that the tax collectors have an improvement potential in this area.

In this situation, I am pleased that the Directorate of Taxes has issued instructions to the tax collection offices by letter dated 12 December 2005 to give priority to a review of their case processing routines and examination of the decisions of the tax review boards. The Directorate of Taxes has wide powers of management and instruction in relation to the tax collection offices.

"... the Ombudsman's investigations of complaints with regard to decisions passed by the tax review boards unfortunately gives the impression that the tax collection offices are not fully aware of this practical and important part of their instructional responsibility.

9. The importance of private law in the planning and building authorities' processing of applications

When the planning and building authorities process an application – typically a building application –third parties sometimes lodge protests against the plans arguing that this would be in breach of their rights. In such cases, the question is what consequences such protests have on the plan and building authorities' processing of the application. There is both the question of to what extent the protest should affect the plan and building authorities' decision as well as the question of whether it involves an obligation for the authorities to carry out further investigations of the private law situation.

These questions emerge at regular intervals in connection with cases submitted to the Ombudsman's office. The specific problem will vary considerably from case to case. However, there are two types of case that are more typical than others: 1) Applicant submits an application to carry out building work on own property, and a third party (for example a neighbour) argues that this will be in contravention of an easement. 2) Applicant applies for permission to carry out work on another person's property, and the landowner argues that applicant has no basis in private law for implementing the measure and that this would contravene against the landowner's property rights.

The Annual Report for 2002, page 35, dealt with some aspects of this problem in general. This included the question of the scope of the investigation obligation of the plan and building authorities in relation to applicant's basis in private law. The view was expressed that Section 17 of the Public Administration Act did not constitute any general obligation to investigate underlying private law matters, but that the planning and building authorities cannot refuse out of hand to evaluate applicant's rights in relation to other holders of rights, for example a landowner who protests and maintains that the situation is governed by private law. According to the circumstances, the planning and building authorities can have a limited obligation to investigate the private law basis. In conclusion, the Report drew up some guidelines for the processing of such cases. These guidelines included the recommendation that the planning and building authorities should investigate the private law situation in more detail if it is unclear whether applicant has the right to dispose over the land and it must be possible to reject the application if applicant cannot demonstrate the plausibility of his/her right.

The question of the importance of private law matters on case processing by the planning and building authorities was the central theme in a case (2004/2185) included in the Annual Report on page 272. This case concerned permission for demolishing and rebuilding of a building on another person's land. In this case, the Ombudsman concluded that there was reasonable doubt in relation to matters of importance for the case, and requested the County Governor to re-examine the case. Based on experience from this case, I have found reason to adjust my viewpoint on certain issues concerning the importance of private law matters.

Pursuant to Section 95 No. 2 of the Planning and Building Act, the planning and building authorities shall ensure that «the measures do not contravene against regulations provided in or pursuant to this Act». In other words, the planning and

building authorities must investigate whether the provisions of the Planning and Building Act prevent permission being granted. Basically, if this is not the case, permission shall be granted. Any further clarification of the situation with regard to private law rights will normally not be encompassed by the terms of reference of the planning and building authorities. Neither will a possible permit have any effect in the field of private law. The granting of a permit is based only on planning and building legislation. The planned measure may be unlawful on other grounds – for example should it contravene against private rights. Should there be a dispute in a private law situation, it is the individual rights holders who must protect their rights and any disputes must be decided by the courts.

"Any further clarification of the situation with regard to private law rights will normally not be encompassed by the terms of reference of the planning and building authorities. Neither will a possible permit have any effect in the field of private law.

These basic principles have a solid foundation. They pave the way for a readily understood and predictable system where there is a clear distribution of roles in which the planning and building authorities clarify the situation with regard to planning and building law rules while the situation with regard to private rights is handled by the holders of these rights, possibly with the assistance of the courts. It is not intended that case processing by the planning and building authorities shall clarify the many private law issues that may arise. Such clarification will frequently require the producing of a certain amount of evidence, including statements by witnesses. In many cases, public administration will not have the professional competence for the evaluation of complicated private law issues. This applies particularly in the municipalities where applications are usually processed by persons without legal training.

On the other hand, it would be unfortunate if permits were granted in cases where it is clear or probable that the intended measure will contravene against a third party's rights. In cases where it is obvious that the applicant does not have nor will have the necessary private law basis for the implementation of the planned measure, processing the application would merely be a waste of resources in public administration. In such cases the application should be rejected, referring to the fact that the applicant does not have a legal interest in having this processed. This viewpoint does not only apply in cases where it is obvious that there is no basis in private law, due consideration also indicates that the planning and building authorities should be able to reject applications in a number of cases where the private law basis is unclear and uncertain, and where it would be natural for the applicant to clarify the situation.

Public authorities shall not contribute towards the implementation of unlawful measures. In certain cases this means that an application should be rejected due to uncertainties with regard to the private law basis. Even if permission issued by the planning and building authorities does not have any direct private law consequences, it will in practice pave the way for a factual utilisation of the relevant property. The granting of permission means that a major hindrance in the process of implementation has been surmounted. A third party who risks having his/her rights breached will in such a situation normally be required to bring legal action before the courts.

Should it appear probable that the intended measure will contravene against the rights of a third party, it could be more reasonable to transfer the burden of obtaining legal clarification to the applicant. In such cases therefore the planning and building authorities could reject the application until the private law situation is clarified. It would then be up to the applicant to bring action before the courts unless the private parties should reach an amicable agreement. It is not just consideration to third parties that favours such a solution. It would be an advantage for the planning and building authorities as well as from a general socio-economic aspect that private law circumstances are clarified as far as possible before official permission is granted. Should, for example, a building be erected in accordance with a building permit and subsequent legal proceedings show that the party responsible for the project did not have a basis in private law for the building, the consequence could be that the building would have to be demolished. Even if this can be considered to be a risk that the responsible party has been aware of and has been willing to take, avoiding such situations would certainly be preferable.

However, the planning and building authorities cannot reject an application with reference to private law matters. Rejections may only be based on the provisions of the Planning and Building Act. Neither can the planning and building authorities take any private law objections into consideration if the application is accepted for processing. Only circumstances relating to the Planning and Building Act can be clarified. The question of the importance of private law circumstances is thus a question of whether the application should be rejected. The planning and building authorities cannot decide in the private law dispute. They can only evaluate whether the applicant has produced evidence to demonstrate the probability of his right to the extent that the application can be accepted for processing, or whether processing should be deferred until the private law situation has been clarified. In practice therefore, the decision of the planning and building authorities with regard to the rejection issue will place the burden of action on the private parties. This is also a consequence for the scope of investigation obligation on the part of the planning and building authorities. The object of any investigations carried out by the authorities is not to deal with the private law situation, but to find out if the applicant's legal basis appear to be sufficiently clarified to enable the application to be processed.

"The question of the importance of private law circumstances is thus a question of whether the application should be rejected. The planning and building authorities cannot decide in the private law dispute.

Against this background, the following guidelines can be drawn up with regard to processing of cases by the planning and building authorities when objections are raised against applicant's private law basis:

(1) If the private law situation is evident, there is no problem. The situation shall be taken as a basis – whether it is obvious that the necessary private law basis exists or it is obvious that it does not. This means that applicant must at the least claim to have the necessary rights. If, on the basis of applicant's own information it is obvious that he neither has nor will have such rights, the application must be

rejected. Similarly, the planning and building authorities must disregard objections by third parties that are clearly unfounded.

(2) If the private law situation is unclear, this will normally involve an investigation obligation on the part of the planning and building authorities. As shown in the Annual Report for 2002 on page 35, it cannot be expected that the planning and building authorities shall carry out a comprehensive investigation of the private law situation. The investigation obligation covers only those circumstances on which the planning and building authorities can reasonably be expected to pass an opinion. Many complicated private law issues, for example the question of interpretation of ambiguous contract conditions, will not therefore be encompassed by the investigation obligation. As mentioned above, the object of these investigations is not to decide on the private law dispute, but to decide whether the application can be accepted for processing or not. It is therefore unnecessary for the planning and building authorities to reach a conclusion in relation to the private law dispute. If the private law situation is still unclear following the limited investigation by the planning and building authorities, the rejection question must be decided on the basis of a specific evaluation of the preponderance of evidence, cf. section (3) below.

The required investigations must be evaluated specifically in each individual case. This will frequently be dependent on the background for the unclear situation in private law. If the background is a reasoned objection by a third party, the planning and building authorities should normally request applicant's comments to the objection, and possibly request information that could contribute towards demonstrating the plausibility of applicant's right. The investigation obligation can however also arise in cases where there is no objection from a third party. If, for example an application is made for building on another party's property and no information is submitted concerning the private law basis, the planning and building authorities should normally request applicant to submit further information and possibly document the private law basis. Depending on the circumstances, it may also be required that the planning and building authorities notify the landowner of the application.

If the result of the investigations shows that the private law situation is clear, the problem is solved. This can then be taken as a basis when deciding the rejection question.

(3) If, after completion of the investigations it is still unclear whether applicant has the necessary private law basis, the rejection question must be decided by means of specific evaluation of presumptive evidence. If there are no other grounds for evaluation, the question should be decided on the basis of ordinary private law:

- With regard to initiatives on own property, the private law situation is clear, i.e. the owner has full right of disposition. Any party maintaining that there are limitations in the owner's right of disposition over the property, must produce evidence to demonstrate the plausibility of this. This basis should have a consequence for the evaluation of the rejection issue by the planning and building authorities. If the investigations of the planning and building authorities have failed to clarify the private law issue, the application should be accepted for processing unless specific grounds indicate otherwise. In such cases the private law basis provides that it is the third party who must demonstrate the

plausibility of his claim – for example that the initiative will be in contravention of an easement. As long as the plausibility of this has not been demonstrated, the owner's full right of disposition should be taken as a basis.

- If, on the other hand, the application concerns an initiative on the land of another party, the opposite will be the case in private law. In this case it must be taken as a basis that a party does not have right of disposition over another party's property, and the party maintaining that he has such a right must demonstrate that this is possible. In such cases therefore obscurity in the private law basis should indicate rejection of the application.

I must emphasize however that the rejection question must always be decided on the basis of a specific evaluation. Problems linked to obscurities in the private law basis may vary appreciably from case to case. These guidelines will therefore not always be applicable in every case.

"If the application is accepted for processing, the private law objection shall be disregarded.

(4) If the application is accepted for processing, the private law objection shall be disregarded. Case processing shall only clarify the situation with regard to the provisions of the Planning and Building Act. For example, it would not be correct to attach importance to the objection as a factor in a discretionary assessment pursuant to the Act. If permission is granted, it should however be clearly stated in the decision that it applies only in relation to the provisions of the Planning and Building Act and does not constitute any decision on whether the initiative could be in breach of private rights. Similarly, a decision to reject an application should emphasize that the decision does not apply to the private law dispute and that applicant must clarify the private law basis before the application can be processed.

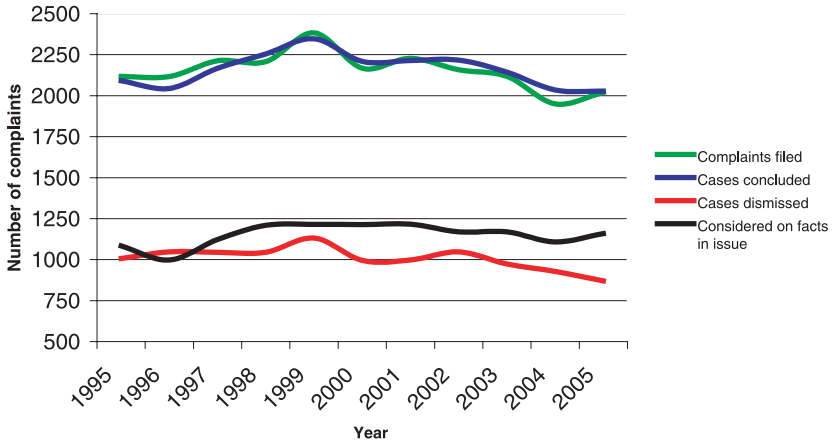
Information concerning complaints and procedures

1. Introduction

This chapter presents information on the cases the Ombudsman's office has processed during the year. The chapter contains an overview of complaints filed during the course of the year, cases that have been concluded, cases that are still being processed at yearend, the result of processing, and the distribution of cases in relation to location, administrative agency and subject. Fig. 1.1 provides an overview of complaints filed and concluded, cases dismissed and cases considered on facts in issue throughout the last ten-year period. The figures in the diagram are dealt with in more detail in this chapter.

In addition to the presentation of figures, it should be mentioned that 1,502 general telephone inquiries were registered during the course of the year. There were 51 conferences with private individuals.

Fig. 1.1 Cases filed and concluded – cases dismissed and considered on facts in issue 1995-2005



2. Cases dealt with during the year

The work of the Ombudsman mainly concerns complaints from citizens. However, the Ombudsman can also take up cases on own initiative, cf. the provisions of Section 5 of the Ombudsman Act. Table 2.1 shows how many complaints the Ombudsman received during the year and how many cases were taken up on own initiative. The table also shows developments compared with the preceding year. Table 2.2 shows the number of cases concluded during the year and the number of cases still not resolved at yearend, in comparison with the preceding year.

Table 2.1 Types of case

	2004	2005
Complaints and inquiries	1932	1956
Cases taken up on own initiative	18	64
I alt	1950	2020

Table 2.2 Cases concluded and unresolved at yearend

	2004	2005
Cases concluded during the year[1]	2035	2028
Unresolved cases at yearend	333	326

[1)] A manual study of approx. 300 cases over a two-month period in 2005 showed that in approx. 15% of the cases, complainant has raised the case again after it was concluded at this office.

3. The outcome of cases

The outcome of cases processed by the Ombudsman can be divided into two main categories: Cases dismissed and cases considered on the basis of facts in issue. During the year, 43% of the matters brought to the attention of the Ombudsman were dismissed, and 57% were processed on the basis of the facts in issue.

Cases that are processed on the basis of facts in issue comprise all cases that have not been dismissed on formal grounds. This means that the Ombudsman has delivered an opinion on the case or has had the matter settled. Cases considered on the basis of facts in issue include cases where processing has been limited to a provisional investigation as to whether there are «sufficient grounds» for processing the complaint, cf. Section 6, fourth sub-section, of the Ombudsman Act. In these cases, the object of the processing by the Ombudsman will normally be to find out if there is a basis for implementing further investigations. In such circumstances the Ombudsman will only have considered the facts in issue to a limited extent. In many cases, the Ombudsman's investigations are restricted to the case processing on the part of public administration. Many people complain that administrative agencies do not reply to their inquiries or that processing takes too long. In such cases, the Ombudsman's procedure may often be limited to a telephone call to the agency concerned.

Table 3.1 shows the number of cases dismissed and the number of cases accepted for processing during the year, compared with the figures for the preceding year. In respect of the cases considered on facts in issue, the table gives details of the result of the Ombudsman's processing. It is not possible to provide a complete statement showing the final outcome of the Ombudsman's processing with regard to the number of complainants who were assisted in having decisions reversed, who were awarded compensation etc., partly because in cases that are reconsidered the new decision is not announced by the agency until after the end of the statistical year.

However, such information will appear in subsequent annual reports.

Pie chart 3.2 shows reasons for dismissal and the percentage-wise distribution of these reasons in the dismissed cases. Pie chart 3.3 shows the percentage-wise outcome of the processed cases. Pie chart 3.4 shows the subject of the Ombudsman's criticism or recommendation.

Table 3.1 Cases dismissed and cases considered on facts in issue

	2004	2005
Cases dismissed	**928**	**870**
Cases considered on facts in issue	**1107**	**1158**
1. Unnecessary to obtain statement in writing from the administrative agency		
a) Case settled by telephone call	204	217
b) Letter of complaint, possibly supplemented by case documents, showed that the complaint could not succeed	552	585
2. Obtained statement in writing from the administrative agency		
a) Case settled without the necessity of a final opinion by the Ombudsman	53	42
b) Case closed without criticism or recommendation, i.e. complaint not successful	137	144
c) Case closed with criticism or request to reconsider the case and possibly remedy harmful effects	161	170

Fig. 3.2 Cases dismissed (43%)

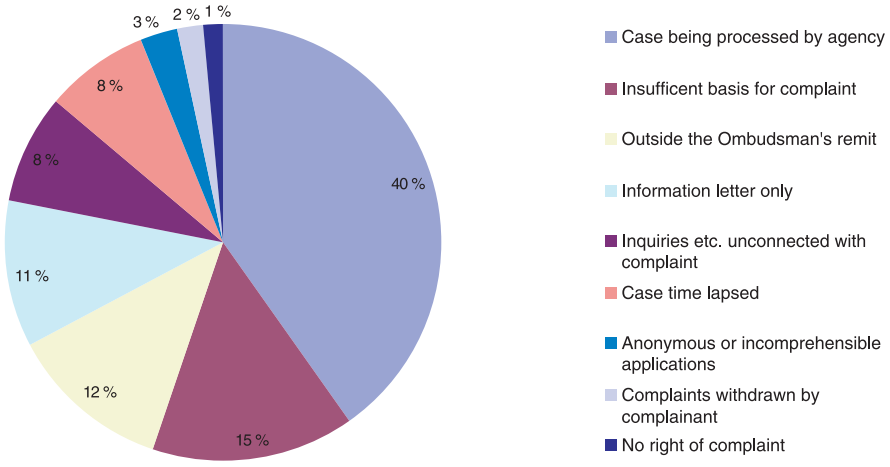


Fig. 3.3 Cases considered on basis of facts in issue (57%)

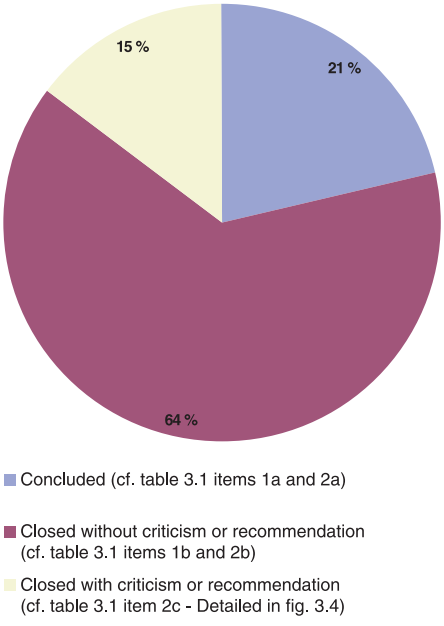
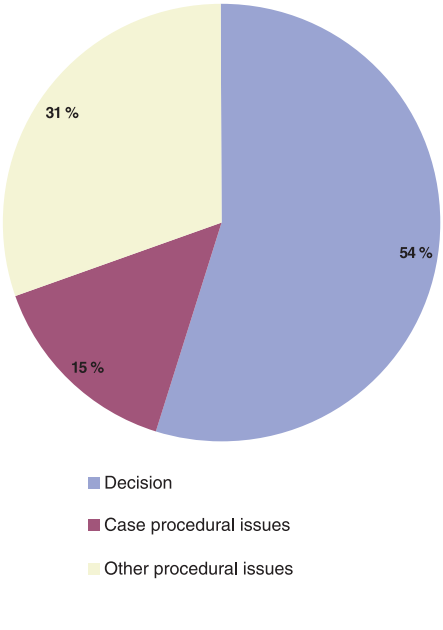


Fig. 3.4 The subject of criticism or recommendation by the Ombudsman



4. Geographical distribution of cases

Table 4.1 shows the geographical distribution of cases. Some complainants live abroad or are in institutions, for example prisons or psychiatric institutions, some complaints may be anonymous or received by e-mail, showing e-mail address only. These complaints are grouped under «other» in the table.

Table 4.1 Geographical distribution of complaints

County	No. complaints	Complaints in percent	Percentage of total population 1 Jan. 2005
Østfold	73	4,2	5,6
Akershus	190	10,9	10,7
Oslo	345	19,8	11,5
Hedmark	60	3,4	4,1
Oppland	36	2,1	4,0
Buskerud	70	4,0	5,3
Vestfold	79	4,5	4,8
Telemark	54	3,1	3,6
Aust-Agder	56	3,2	2,3
Vest-Agder	61	3,5	3,5
Rogaland	131	7,5	8,5
Hordaland	154	8,9	9,7
Sogn og Fjordane	40	2,3	2,4
Møre og Romsdal	65	3,7	5,3
Sør-Trøndelag	82	4,7	5,9
Nord-Trøndelag	34	2,0	2,8
Nordland	88	5,1	5,2
Troms	74	4,3	3,3
Finnmark	47	2,7	1,6
Svalbard	1	0,1	0
	1,740	100	100
Other	216		
Total	1,956		

Cases dealt with in the Annual Report

The Annual Report contains reports on numerous cases, cf. Section 12 of the Instructions. The following is an overview of the cases dealt with in the Report.

Freedom of information, right of access to case documents in public administration

1. Access to report on licensing (alcoholic beverages) – requirement for specific evaluation
2. Access to internal document – review of the handling of the tsunami disaster by the foreign service
3. Access to internal documents concerning Lista Airbase
4. Access to list of Norwegian citizens living abroad
5. Access to case concerning the granting of a pardon
6. Access to case concerning announcement of blocks on Norwegian shelf
7. Secrecy in offer of consultancy services in connection with sale of SND Invest AS
8. Application of Freedom of Information Act in respect of the Control Board for A/S Vinmonopolet's decisions on procurement, etc.
9. Access to list of applicants – processing of complaint
10. Access to list of applicants for the position of Secretary General
11. Practising of the Freedom of Information Act in Vefsn Municipality when appointing a chief administrative officer – access to list of applicants
12. A trustee's right of access to patient records
13. Access to internal documents – freedom of information
14. Case processing time in cases concerning access to patient records
15. Information case dealt with in camera – obligation to keep minutes of meeting of municipal council
16. Breach of provisions of the Local Government Act concerning open meetings

Freedom of speech for civil servants

17. A municipality's reaction following statements to a local radio station – freedom of speech for employees
18. Reaction of a municipality against a teacher following letters to the press – freedom of speech for employees
19. A municipal employee's authority is restricted following statements to the press

Civil service appointments

20. Appointment of district nurse – failure to announce publicly
21. Appointment of a teacher in bakery – irrelevant circumstances taken into account
22. Appointment of chief executive officer in a municipality – insufficient information in the case
23. Appointment – applicant's access to comment on own personal information
24. Appointment of teacher – failure to keep written records of case processing
25. Priority given in an appointment without a legal basis

26. The appointment question when an applicant has applied for several positions in an agency
27. The wording of an appeal decision in a case of termination – content of reasoning
28. Access to apply employer's managerial prerogative to change the assignments of a civil servant
29. Announcement of government positions – demand for electronic applications, etc.
30. Rejection of application concerning secondary assignment for judge

Public offices

31. Control of legality of decision to declare partiality on the part of a council representative in local government

Education

32. Case processing and application of the law in a decision concerning expulsion from a folk high school

Healthcare

33. An inspection case following a death – case processing by the county physician (later by Board of Health) and registration at hospital
34. Case information and contradiction in a supervision case – requirement for proper procedures
35. Duty of confidentiality following a death in a detoxification centre – parents' right of access
36. Failure to notify next-of-kin prior to passing a decision on disposal of payments from National Social Insurance

National Social Insurance, severance pay

37. Case processing routines at the National Social Insurance Office for Nationals Resident Abroad – routines for processing of «service complaints» and routines for eliminating shortcomings that cause cases to remain unanswered/uncompleted over long periods
38. Processing of claims for unemployment benefit – use of discretion regarding income limit and the relationship between electronic and manual case processing
39. Membership in the National Social Insurance Scheme – national insurance contribution
40. Stoppage of benefit – the question of whether complainant had reasonable grounds for failing to attend a meeting – proportionality of sanction
41. Decision concerning repayment claim of benefit paid in error – requirement for advance notice and negligence as conditions for obligation to repay
42. Coordination of payments from Aetat with introductory benefit for newly arrived immigrants

Childcare, social services, child maintenance

43. The importance of parental responsibility for party status in a case concerning childcare
44. Decision concerning secondary accommodation – the question of an administrative decision
45. Documentation requirements pursuant to the Social Services Act
46. Stipulation of child maintenance in the case of a part-time position
47. Processing of cases concerning child maintenance

Police custody, prisons

48. Period of custody in police cells
49. Transfer of persons held in custody to shared cells at Åna prison

50. Follow-up of visit to Ullersmo prison
51. Processing of premature petitions for release on probation from a detainee

Aliens

52. Rejection of application for a visit visa for siblings – requirement for specific and individual evaluation
53. Case processing time in the Directorate of Immigration
54. Contradiction and notification of Dublin procedure in an asylum case
55. Attempted forced expatriation of foreign citizen following negative decision – the question of fitness for transport and proper case processing

Police, driving licences

56. Disposal of weapons by the Police – requirement for proper valuation and the situation with regard to the agency's duty of confidentiality
57. Letter of request concerning transfer of a criminal case to a court abroad – responsibility for loss of case documents
58. Processing of cases concerning «permanent» confiscation of driving licence

Tax, tax assessment, value-added tax

59. The Tax Boards' reasoning in a decision concerning tax relief
60. Property tax – a valuation decision
61. Change in tax assessment without the assessment being based on a complaint from taxpayer – what are «other questions» pursuant to Section 9-5 No.. 6 of the Tax Assessment Act
62. Processing of claim for deduction of legal costs by the tax assessment authorities
63. Collection of tax arrears – requirements with regard to amendment decision and case processing
64. Collection of tax arrears later than ten years after the income year
65. Tax on compensation for non-financial damage paid to an employee in connection with termination
66. Coverage of legal costs for previous case processing by the Tax Review Board when subsequent court judgment is in favour of the taxpayer
67. Repayment of value-added tax – seller is declared bankrupt before delivery

Annual road tax, inheritance tax

68. Exemption from annual road tax when scrapping a car at a recycling plant
69. Inheritance tax on agricultural property – right of allodial succession in will – Section 11 of the Inheritance Act

Legal costs

70. Legal costs pursuant to Section 36 of the Public Administration Act – the necessity criteria and guidance obligation

Trademark registration, lottery

71. Access to reverse a decision in the second division of The Patent Office
72. Case processing and application of the law in a case concerning lottery permission

Nature protection, outdoor leisure activities

73. Rejection of application for landing permission for helicopter in a national park – reasoning requirement pursuant to Section 25 of the Public Administration Act
74. Public right of way map – the relationship between formal planning and actual accessibility

Planning and building cases, pollution

75. The importance of private law matters in case processing by the building authorities
76. The question of whether a municipality's decision not to call for a building permit pursuant to Section 93, litra f, of the Planning and Building Act was an individual decision
77. Building permit for an automatic facility for petrol filling – reasoning requirement
78. Claim for coverage of expenses incurred in connection with a building case pursuant to ordinary law of damages
79. Reduction in shooting periods due to noise nuisance

Agriculture, obligation of residence

80. Section 12, fourth sub-section, of the Land Act – «operating unit»
81. Permanent exemption from residence obligation – the question of whether the property could be «used for agricultural purposes», cf. Section 1 of the Allodial Rights Act
82. Time-limited exemption from residence obligation due to children's schooling

Reindeer husbandry

83. Approval of operating unit – access to reverse decision pursuant to Section 35, third sub-section, of the Public Administration Act – basis for calculation of time limit
84. Operating subsidy to reindeer husbandry for 1999/2000 and 2000/2001
85. Rejection of application for subsidy for operating unit – reasoning requirement

Roads, railway

86. Cancellation of winter maintenance of municipal road
87. Forestry clearance at railway crossing – failure to give notice and information on decision in advance

Business and industry

88. Decision concerning extension of opening and licensing hours – the question of whether neighbours to the establishment are parties in the case
89. Refund scheme to secure employment for Norwegian seamen – tightening up of practice in contravention of the conditions laid down by the Storting during processing of the budget

Free legal aid

90. Free legal aid in connection with a claim for refund of disablement pension – requirement for specific evaluation

The Constitution of the Kingdom of Norway

Article 75 litra l:

It devolves upon the Storting to appoint a person, not a member of the Storting, in a manner prescribed by statute, to supervise the public administration and all who work in its service, to ensure that no injustice is done against the individual citizen.[1]

[1] Addendum by Constitutional provision dated 23 june 1995 No. 567.

Act of 22 June 1962 No. 8 concerning the Storting's Ombudsman for Public Administration[1]

§1.

Election of Ombudsman.

After each General Election the Storting shall elect an Ombudsman for Public Administration, the Civil Ombudsman. The election is for a period of four years reckoned from 1 January of the year following the General Election.

The Ombudsman must satisfy the qualifications prescribed for appointment as a Supreme Court Judge. He must not be a member of the Storting.

If the Ombudsman dies or becomes unable to discharge his duties, the Storting shall elect a new Ombudsman for the remainder of the term of office. The same applies if the Ombudsman relinquishes his office, or if the Storting decides by a majority of at least two thirds of the votes cast to deprive him of his office.

If the Ombudsman is temporarily prevented by illness or for other reasons from discharging his duties, the Storting may elect a person to act in his place during his absence. In the event of absence up to three months the Ombudsman may empower the Head of Division to act in his place.

If the Presidium of the Storting should deem the Ombudsman to be disqualified to deal with a particular matter, it shall elect a substitute Ombudsman to deal with the said matter.

§2.

Directive.

The Storting shall issue a general directive for the functions of the Ombudsman. Apart from this the Ombudsman shall discharge his duties autonomously and independently of the Storting.

§3.

Purpose.

The task of the Ombudsman is, as the Storting's representative and in the manner prescribed in this Act and in the Directive to him, to endeavour to ensure that injustice is not committed against the individual citizen by the public administration and help to ensure that human rights are respected.

§4.

Scope of Powers.

The scope of the Ombudsman's powers embraces the public administration and all persons engaged in its service. Nevertheless, his powers do not include:

a) matters on which the Storting or Odelsting has reached a decision,

[1] Amended by Acts of 22 March 1968 No 1, 8 February 1980 No. 1, 19 December 1980 No. 63, 6 September 1991 No. 72, 11 June 1993 No. 85 and 15 March 1996 No. 13, 28 July 2000 No. 74, 14 June 2002 No. 56 and 16 January 2004 No. 3.

b) decisions adopted by the King in Council of State,
c) the functions of the Courts of Law,
d) the activities of the Auditor General,
e) matters which, as prescribed by the Storting, come under the Ombudsman's Board or the Ombudsman for National Defence and the Ombudsman's Board or the Ombudsman for Civilian Conscripts,
f) decisions which, as provided by statute, may only be made by the municipal council or the county council itself, unless the decision is made by the municipal board of aldermen, county board of aldermen, a standing committee, the municipal executive board or the county executive board pursuant to § 13 of Act of 25 September 1992 No. 107 concerning Municipalities and County Municipalities. Any such decision may nevertheless be investigated by the Ombudsman on his own initiative if he considers that regard for the rule of law or other special reasons so indicate.

The Storting may stipulate in its Directive to the Ombudsman:

a) whether a particular public institution or enterprise shall be regarded as public administration or a part of the state's, the municipalities' or the county municipalities' service according to this Act,
b) that certain parts of the activity of a public agency or a public institution shall fall outside the scope of the Ombudsman's powers.

§5.

Basis for acting.

The Ombudsman may proceed to deal with cases either following a complaint or on his own initiative.

§6.

Further provisions regarding complaints and time limit for complaints.

Any person who believes he has been subjected to injustice by the public administration may bring a complaint to the Ombudsman. Any person who is deprived of his personal freedom is entitled to complain to the Ombudsman in a closed letter.

The complaint shall state the name of the complainant and must be submitted not later than one year after the administrative action or matter complained of was committed or ceased. If the complainant has brought the matter before a higher administrative agency, the time limit shall run from the date on which this authority renders its decision.

The Ombudsman shall decide whether there are sufficient grounds for dealing with a complaint.

§7.

Right to obtain information.

The Ombudsman may demand from public officials and from all others who serve in the public administration such information as he requires to discharge his duties. To the same extent he may demand that minutes/records and other documents be produced.

The provisions of §§ 204-209 of the Civil Disputes Act shall apply correspondingly to the Ombudsman's right to demand information.

The Ombudsman may require the taking of evidence by the courts of law, in accordance with the provisions of § 43 second paragraph of the Courts of Justice Act. The court hearings shall not be open to the public.

§8.

Access to offices in the public administration.

The Ombudsman shall have access to places of work, offices and other premises of any administrative agency and any enterprise which come under his jurisdiction.

§9.

Access to documents and pledge of secrecy.

The Ombudsman's case documents are public. The Ombudsman shall have the final decision with regard to whether a document shall be wholly or partially exempt from public access. Further rules, including the access to exempt documents from public access, are provided in the Directive to the Ombudsman.

The Ombudsman has pledge of secrecy with regard to information he becomes party to during the course of his duties concerning matters of a personal nature. Pledge of secrecy also applies to information concerning operational and commercial secrets. The pledge of secrecy continues to apply after the Ombudsman has left his position. The same pledge of secrecy applies to his staff.

§ 10.

Termination of a complaints case.

The Ombudsman is entitled to express his opinion on matters which come within his jurisdiction.

The Ombudsman may point out that an error has been committed or that negligence has been shown in the public administration. If he finds sufficient reason for so doing, he may inform the prosecuting authority or appointments authority what action he believes should be taken accordingly against the official concerned. If the Ombudsman concludes that a decision rendered must be considered invalid or clearly unreasonable, or that it clearly conflicts with good administrative practice, he may say so. If the Ombudsman believes that there is justifiable doubt pertaining to factors of importance in the case, he may draw the attention of the appropriate administrative agency thereto.

If the Ombudsman finds that there are matters which may entail liability to pay compensation, he may, depending on the circumstances, suggest that compensation should be paid.

The Ombudsman may let the matter rest when the error has been rectified or an explanation has been given.

The Ombudsman shall notify the complainant and others involved in the case of the outcome of his handling of the case. He may also notify the superior administrative agency concerned.

The Ombudsman himself shall decide whether, and if so in what manner, he shall inform the public of his handling of a case.

§ 11.

Notification of shortcomings in statutory law and in administrative practice.

If the Ombudsman becomes aware of shortcomings in statutory law, administrative regulations or administrative practice, he may notify the Ministry concerned to this effect.

§ 12.

Report to the Storting.

The Ombudsman shall submit an annual report on his activities to the Storting. The report shall be printed and published.

If the Ombudsman becomes aware of negligence or errors of major significance or scope he may make a special report to the Storting and to the appropriate administrative agency.

§ 13.

Pay, pension, other business.

The Ombudsman's pay and pension shall be determined by the Storting. The same applies to remuneration for any person appointed to act in his place in accordance with § 1 fourth paragraph, first sentence. The remuneration for any person appointed pursuant to the fourth paragraph, second sentence, may be determined by the Storting's Presidium. The Ombudsman's pension shall be determined by law.

The Ombudsman must not hold any public or private appointment or office without the consent of the Storting or the person so authorized by the Storting.

§ 14.

Staff.

The staff of the Ombudsman's office shall be appointed by the Storting's Presidium upon the recommendation of the Ombudsman or, in pursuance of a decision of the Presidium, by an appointments board. Temporary appointments of up to six months shall be made by the Ombudsman.

The Presidium shall lay down further rules regarding the appointments procedure and regarding the composition of the board. The pay of the staff shall be fixed in the same manner as for the staff of the Storting.

§ 15.

1. This Act shall enter into force 1 October 1962

Directive to the Storting's Ombudsman for Public Administration[1]

Laid down by the Storting on 19 February 1980 in pursuance of § 2 of the Ombudsman Act.

§1.

Purpose.

(Re § 3 of the Ombudsman Act.)

The Storting's Ombudsman for Public Administration - the Civil Ombudsman shall endeavour to ensure that injustice is not committed against the individual citizen by the public administration and that civil servants and other persons engaged in the service cf. § 2, first sentence, of the public administration do not commit errors or fail to carry out their duties.

§2.

Scope of Powers.

(Re § 4 of the Ombudsman Act.)

The scope of the Ombudsman's powers embraces the public administration and all persons engaged in its service, subject to the exceptions prescribed in § 4 of the Act.

The Select Committee of the Storting for the Scrutiny of the Intelligence and Security Services shall not be regarded as part of the public administration pursuant to the Ombudsman Act. The Ombudsman shall not investigate complaints concerning the Intelligence and Security Services which have been dealt with by the said Select Committee.

The Ombudsman shall not deal with complaints concerning the Storting's Ex Gratia Payments Committee.

The exception concerning the functions of the courts of law prescribed in the first paragraph, litra c, of § 4 of the Act also embraces decisions which may be brought before a court by means of a complaint, an appeal or some other legal remedy.

§3.

The form and basis of a complaint.

(Re § 6 of the Ombudsman Act.)

A complaint may be submitted direct to the Ombudsman. It should be made in writing and be signed by the complainant or someone acting on his behalf. If the complaint is made orally to the Ombudsman, he shall ensure that it is immediately reduced to writing and signed by the complainant.

The complainant should as far as possible state the grounds on which the complaint is based and submit evidence and other documents relating to the case.

[1] Updated in accordance with amendments 22 October 1996, 14 June 2000 and 2 December 2003.

§4.

Exceeding the time limit for complaints.

(Re § 6 of the Ombudsman Act.)

If the time limit pursuant to § 6 of the Act - one year - is exceeded, the Ombudsman is not thereby prevented from taking the matter up on his own initiative.

§5.

Terms and conditions for complaints proceedings.

If a complaint is made against a decision which the complainant has a right to submit for review before a superior agency of the public administration, the Ombudsman shall not deal with the complaint unless he finds special grounds for taking the matter up immediately. The Ombudsman shall advise the complainant of the right he has to have the decision reviewed through administrative channels. If the complainant cannot have the decision reviewed because he has exceeded the time limit for complaints, the Ombudsman shall decide whether he, in view of the circumstances, shall nevertheless deal with the complaint.

If the complaint concerns other matters which may be brought before a higher administrative authority or before a special supervisory agency, the Ombudsman should advise the complainant to take the matter up with the authority concerned or himself submit the case to such authority unless the Ombudsman finds special reason for taking the matter up himself immediately.

The provisions in the first and second paragraphs are not applicable if the King is the only complaints instance open to the complainant.

§6.

Investigation of complaints.

(Re §§ 7 and 8 of the Ombudsman Act.)

A complaint which the Ombudsman takes up for further investigation shall usually be brought to the notice of the administrative agency or the public official concerned. The same applies to subsequent statements and information from the complainant. The relevant administrative agency or public official shall always be given the opportunity to make a statement before the Ombudsman expresses his opinion as mentioned in the second and third paragraphs of § 10 of the Ombudsman Act.

The Ombudsman decides what steps should be taken to clarify the facts of the case. He may obtain such information as he deems necessary in accordance with the provisions of § 7 of the Ombudsman Act and may set a time limit for complying with an order to provide information or submit documentation etc. He may also undertake further investigations at the administrative agency or enterprise to which the complaint relates, cf. § 8 of the Ombudsman Act.

The complainant has a right to acquaint himself with statements and information given in the complaints case, unless he is not entitled thereto under the rules applicable for the administrative agency concerned.

If the Ombudsman deems it necessary on special grounds, he may obtain statements from experts.

§7.

Notification to the complainant if a complaint is not to be considered.

(Re § 6 fourth paragraph of the Ombudsman Act.)

If the Ombudsman finds that there are no grounds for considering a complaint, the complainant shall immediately be notified to this effect. The Ombudsman should as far as possible advise him of any other channel of complaint which may exist or himself refer the case to the correct authority.

§8.

Cases taken up on own initiative.

(Re § 5 of the Ombudsman Act.)

If the Ombudsman finds reason to do so, he may on his own initiative undertake a close investigation of administrative proceedings, decisions or other matters. The provisions of the first, second and fourth paragraphs of § 6 shall apply correspondingly to such investigations.

§9.

Termination of the Ombudsman's proceedings.

(Re § 10 of the Ombudsman Act.)

The Ombudsman shall personally render a decision on all cases proceeding from a complaint or which he takes up on his own initiative. He may nevertheless author-ise specific members of his staff to terminate cases which must obviously be rejected or cases where there are clearly insufficient grounds for further consideration. The Ombudsman renders his decision in a statement where he gives his opinion on the issues relating to the case and coming within his jurisdiction, cf. § 10 of the Ombudsman Act.

§ 10.

Instructions for the staff.

(Re § 2 of the Ombudsman Act.)

The Ombudsman shall issue further instructions for his staff. He may authorise his office staff to undertake the necessary preparations of cases to be dealt with.

§ 11.

Public access to documents at the office of the Ombudsman

1. The Ombudsman's case documents are public, unless pledge of secrecy or the exceptions in Nos. 2, 3 and 4 below otherwise apply. The Ombudsman's case documents are the documents prepared in connection with the Ombudsman's processing of a case. The Ombudsman cannot grant public access to the Administration's case documents prepared or collected during the course of the Administration's processing of the case.
2. The Ombudsman's case documents may be exempt from public access when there are special reasons for this.
3. The Ombudsman's internal case documents may be exempt from public access.
4. Documents exchanged between the Storting and the Ombudsman and that refer to the Ombudsman's budget and internal administration may be exempt from public access.
5. Right of access to the public contents of the register kept by the Ombudsman for the registration of documents in established cases may be demanded. The Public Records Act (Norway) dated 4 December 1992 No. 126 and the Public Records Regulations dated 11 December 1998 No. 1193 apply similarly to the

extent that they are applicable to the functions of the Ombudsman.

§ 12.

Annual report to the Storting.

(Re § 12 of the Ombudsman Act.)

The annual report of the Ombudsman to the Storting shall be submitted by 1 April each year and shall cover the Ombudsman's activities during the period 1 January-31 December of the preceding year.

The report shall contain a survey of the proceedings in the individual cases which the Ombudsman feels are of general interest and shall mention those cases where he has drawn attention to shortcomings in statutory law, administrative regulations or administrative practice or has made a special report pursuant to § 12 second paragraph of the Ombudsman Act.

When the Ombudsman finds it appropriate, he may refrain from mentioning names in the report. The report shall on no account contain information that is subject to pledge of secrecy.

Any description of cases where the Ombudsman has expressed his opinion as mentioned in § 10 second, third and fourth paragraphs of the Ombudsman Act, shall contain an account of what the administrative agency or public official concerned has stated in respect of the complaint, cf. § 6 first paragraph, third sentence.

§ 13.

Entry into force.

This Directive shall enter into force on 1 March 1980. From the same date the Storting's Directive for the Ombudsman of 8 June 1968 is repealed.

Text of booklet providing information on the duties and activities of the Parliamentary Ombudsman for Public Administration

Introduction

From time to time individual citizens may feel that they have been unjustly treated by the public authorities or that a wrong decision has been passed. In such cases the citizen may request the Parliamentary Ombudsman to investigate the matter.

The Parliamentary Ombudsman for Public Administration is elected by the Storting to defend the rights of the individual citizen. This booklet explains what the Ombudsman can do, how complaints should be submitted, and how complaints are dealt with by the Ombudsman and his staff.

Oslo, May 2003

Arne Fliflet

Parliamentary Ombudsman

What types of cases and issues can the Parliamentary Ombudsman deal with?

The Ombudsman may investigate most types of cases and matters that have been dealt with and decided on by the public authorities. Government administration and the administrations of Counties and Municipalities all come within the scope of the Ombudsman's authority. Complaints may be made against public authorities (administrative bodies), civil servants or others acting on behalf of a public service.

Private disputes fall outside his jurisdiction. For example, the Ombudsman cannot deal with private disputes between neighbours, disputes concerning private contracts or complaints against private organisations. The same applies in many cases where a public body is a party in a purely private legal relationship.

Neither may the Ombudsman deal with:

- cases that have been decided by the Storting or the Odelsting
- decisions made by the King in Council of State
- the functions of the courts of law, including the administrative duties carried out by the offices of the judges, and decisions which in accordance with explicit statutory provisions may be brought before the courts by means of appeal, complaint or other legal remedy, e.g. distraint or compulsory deduction from salary
- the functions of the Office of the Auditor General
- matters which are the concern of the Ombudsman for National Defence or the Ombudsman for Civilian Conscripts

In view of the principle of municipal self-government, not all decisions passed by municipal councils or county councils can be brought before the Ombudsman.

Guidance that may be provided by the Ombudsman and his office

The Ombudsman's office may provide guidance, advice and assistance to those wishing to use the Parliamentary Ombudsman's scheme. The office can also reply to legal questions relating to a specific complaint.

A complaint to the Ombudsman – what is it? What type of complaints can be made? What does it cost?

A person who sends a complaint to the Ombudsman is requesting the Ombudsman to investigate a case or a situation that has already been dealt with by the public administration. The Ombudsman will decide whether the complaint provides sufficient grounds for him to proceed.

A complaint to the Ombudsman and a complaint to a higher administrative authority are two different things. A person complaining to a higher administrative authority will normally have the right to have the case re-examined by the higher administrative authority, and the appellate body may amend or reverse its decision. A person complaining to the Ombudsman is requesting the Ombudsman to investigate a case or a situation in public administration and to express an opinion on his findings. No one may *demand* to have a complaint processed by the Ombudsman. Neither may the Ombudsman reverse decisions passed in public administration.

A complaint to the Ombudsman must refer to something that can be defined as an injustice against the complainant. This will be the case when the complaint concerns an administrative decision that is incorrect, or when a case has been processed in an incorrect or unjustifiable manner by the authorities. A person who is of the opinion that the administration has acted in an inconsiderate, insulting or other inappropriate manner, may lodge a complaint. Complaints may also be made when the administration fails to reply to inquiries or fails to take action in a particular case.

Processing of complaints by the Ombudsman's office is free of charge.

When may complaints be made to the Ombudsman?

Control by the Ombudsman is subsequent to the public administrations` handling of the case, and this means that the public administration itself must be given the opportunity of settling the matter and passing a final decision before any complaint is submitted to the Ombudsman. If the public administration concerned has its own supervisory authority, complaints must normally be submitted to this body in the first instance.

If the complaint concerns a decision passed by a public authority, in many cases there will be a higher authority in public administration to which the case can be appealed for review. This opportunity for re-examination must thus have been applied before the case can be brought before the Ombudsman. For

example, a National Social Insurance case must, as a rule, have been submitted to the National Social Insurance Court, and in a case concerning a building permit or a social security case, the complaint must first be submitted to the County Governor. If, after a final decision has been passed, the complainant is of the opinion that there has been an error in judgment or an injustice, the complaint may be sent to the Ombudsman.

In cases where the King in Council (the Government) is the appellate body, the rule that decisions must be appealed to a higher administrative authority before a complaint can be submitted to the Ombudsman does not apply. This means that decisions initially passed by a Ministry may be appealed to the Ombudsman without an appeal first being made to the King in Council.

The aforementioned applies first and foremost to complaints against decisions that have been passed. In certain cases, complaints may be made to the Ombudsman during case processing by public administration. Such complaints could, for example, apply to the progress of the case (slow case processing).

Time limit for complaint

The time limit for submitting a complaint is one year. The time limit applies from the time of final decision by the public body concerned or from the time of the event to which the complaint applies. Deviations from this rule are only allowed in special cases.

Who may complain?

Any person who believes they have been subjected to an injustice or wrongly treated by the public administration, may complain to the Ombudsman. However, the complainant must personally have been the subject of the error or neglect. The Ombudsman does not normally deal with cases that apply only to other parties.

However, there is nothing to prevent someone from acting on a complainant's behalf. In such cases, an authorisation must be issued by the complainant. An organisation may complain to the Ombudsman on behalf of an individual member. The member concerned should then co-sign the complaint, or a written authorisation should accompany the complaint.

Those who have been deprived of their personal freedom, for example prison inmates, have the right to appeal to the Ombudsman in a sealed letter, i.e. without any form of censorship on the part of the administration of the prison or institution.

The Ombudsman may also take up cases on his own initiative.

How to draft a complaint

A complaint must be in writing and signed by the complainant or by another person authorised by the complainant. An ordinary letter is sufficient, and there are no special requirements with regard to the form of the letter apart from the requirement that the Ombudsman must have confirmation that the complainant is the person he or she purports to be. For this reason e-mail is used only for guidance and information purposes and not as a basis for dealing with a complaint. The complainant should provide an explana-

tion of the injustice or error and preferably enclose any documents relating to the case.

Processing of complaints by the Ombudsman

When it has been clarified that a complaint rightfully comes under the jurisdiction of the Ombudsman, it will first be decided whether there are sufficient grounds for the Ombudsman to process the complaint. In the affirmative, the Ombudsman will ensure that the case is investigated. The Ombudsman decides the scope of the investigation. Documents are obtained as well as information and statements from the administration when necessary. (Investigations normally are limited to a study of the case documents and other written documents, but conferences with the Ombudsman or his staff can be requested.)

Photographs, video films, etc. may also be used to throw light on cases. The Ombudsman does not normally carry out inspections, nor can he himself question parties or witnesses.

The complainant is kept informed of the progress of the case, and the result of the Ombudsman's investigations.

The Ombudsman shall investigate cases in an objective and impartial manner, and he may not therefore act as counsel, attorney or other form of representative on behalf of the individual citizen in relation to the public authorities.

What can the Ombudsman do?

The Ombudsman may express an opinion on matters that are encompassed by his jurisdiction. In other words, investigations made by the Ombudsman may result in criticism of, and requests and recommendations, to the public authorities. The Ombudsman may point out that errors have been made or that there has been neglect on the part of the public body or a civil servant. He may also request the public body in question to correct errors, neglect or bias. The Ombudsman may not himself pass binding decisions or overturn decisions made by public bodies, nor may he issue legally binding instructions to the authorities. In practice, however, the authorities comply with the requests and recommendations of the Ombudsman.

The Ombudsman has only a limited right to criticize discretionary decisions made by public bodies.

The Ombudsman may also draw attention to shortcomings in statutory law, administrative regulations or administrative practice.

Not all cases are suitable for investigation by the Ombudsman

As mentioned in the section concerning the processing of complaints (page 9), certain issues are not suitable for processing and evaluation on the part of the Ombudsman. For example, this could be in cases where an on-the-spot inquiry or verbal explanation could be of importance, as in a number of cases concerning property rights or certain claims for damages.

Would you like to know more about the Parliamentary Ombudsman?

If you need more information on the Parliamentary Ombudsman's scheme, please write or telephone to the office of the Ombudsman. An appointment should be made if you wish to discuss a matter with a member of the Ombudsman's staff.

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