FOLKETINGETS OMBUDSMAND

Parliamentary Commissioner
for Civil and Military Administration
in Denmark

SUMMARY
Annual Report
2001

SCHULTZ GRAFISK

This booklet summarises my Annual Report 2001 to the Folketing (the Danish Parliament).

Part I concerns staff, inspections, travels, conferences attended, visitors from abroad, other activities, and some statistics.

Part II contains summaries of cases.

Copenhagen, September 2002

HANS GAMMELTOFT-HANSEN

SUMMARY
ANNUAL REPORT 2001

PART I

Staff and Office

The structure of the Office was as follows:

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

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

Mr. *Kaj Larsen*, Deputy Permanent Secretary, was in charge of staffing and recruitment, budgetting and other administrative matters.

Mr. *Jon Andersen*, Deputy Permanent Secretary, Mr. *Karsten Loiborg*, Chief Legal Adviser, and Mr. *Jens Olsen*, Chief Legal Adviser, dealt with general questions of public administrative law as well as investigations undertaken on my own initiative. They also participated in the processing of individual complaint cases.

The Office had five Divisions with the following persons in charge:

General Division
Deputy Permanent Secretary Mr. *Kaj Larsen*

First Division
Head of Division Mrs. *Kirsten Talevski*

Second Division
Head of Division Mrs. *Bente Mundt*

Third Division (inspections division)

Deputy Permanent Secretary Mr. *Lennart Frandsen*

Fourth Division
Head of Division Mr. *Morten Engberg*

Fifth Division
Head of Division Mrs. *Vibeke Riber von Stemann*

The 76 employees of my Office included 13 senior administrators, 24 investigation officers, 16 administrative staff members and 12 law students.

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Inspections

Thirty-five inspections have been carried out during the reporting year. Part IV of the Danish Report provides details of the inspections.

Travels and conferences attended

– On 1st March 2001 Chief Legal Adviser Mr. Jens Olsen and I participated in a conference for the Ombudsmen of the Baltic countries. The conference was held in Copenhagen.
– Om 19th – 20th March 2001 I visited the Albanian People’s Advocate in connection with our cooperation concerning practical assistance to the Albanian People’s Advocate Office.
– On 10th – 13th May 2001 I attended a Westnordic ombudsman meeting hosted by the Icelandic Althing Ombudsman Institution.
– On 18th – 19th May 2001 Head of Division Mr. Morten Engberg participated in a workshop on the role of the ombudsman within the field of environmental protection. The event took place in Athens and was hosted by the Greek Ombudsman, Professor P. Nikiforos Diamandouros.
– On 2nd June 2001 Chief Legal Adviser Mr. Jens Olsen attended a conference in Riga on the possible formation of an ombudsman office in Latvia. The conference had been ar-

ranged by The Nordic Council of Ministers.

- On 25th – 30th June 2001 I visited the Ministry of Supervision in China. The visit had been arranged by the Danish Ministry of Foreign Affairs in cooperation with the Chinese Ministry of Supervision.
- On 20th – 21st September 2001 Deputy Permanent Secretary Mr. Jon Andersen and I participated in a seminar for national and international ombudsmen. The seminar was held in Brussels and was hosted by the European Ombudsman.
- On 23rd – 25th September Chief Legal Adviser Mr. Jens Olsen and I attended a conference on *"Work and Co-operation of Ombudsmen and National Human Rights Institutions in the EU, Latinamerica and the Caribbean"* in Copenhagen. The conference was arranged by the Danish Ministry of Foreign Affairs and the Danish Centre for Human Rights.
- On 17th – 21st October I participated in a workshop with the Greek Ombudsman, Professor P. Nikiforos Diamandouros.
- On 8th – 9th November Chief Legal Adviser Mr. Jens Olsen, IT Manager Christian Møller and I visited the Ombudsman Office in Lithuania.
- On 21st – 23rd November 2001 I participated in the 7th Round Table Meeting for European Ombudsmen. The meeting was held in Zurich and was arranged by the Council of Europe in cooperation with the Swiss Association of Parliamentary Ombudsmen.
- On 17th November – 1st December 2001 Chief Legal Adviser Mr. Jens Olsen and IT Manager Mr. Christian Møller was in Ethiopia on a fact-finding mission in connection with the formation of an Ethiopian ombudsman institution.
- On 4th – 5th December 2001 Deputy Permanent Secretary Mr. Jon Andersen attended an international OECD seminar in Paris on the subject *"Management Responses to Changing Student Expectations"*.

Visitors from abroad

As in previous years the guests we received during 2001 had very different backgrounds. However, their common goal was to learn more about the Ombudsman institution and its role in a modern democratic society. Therefore, my Office always offers general information about the Ombudsman institution and its history with a view to a subsequent exchange of experiences and reflections.

Some of our guests in 2001 were:

- On 8th January 2001: A group of Chines lawyers in connection with an EU–China programme.
- On 25th – 26th January 2001: A group of Albanian judges and lawyers.
- On 21st February 2001: The Managing Director for the Judcial Administration Training Institute in Bangladesh, Mr. Justice Mohammed Badruzzaman.
- On 16th March 2001: Federal Ombudsman Dr. Herman Wuyts, Belgium.
- On 21st March 2001: Two committee members from the Greenland Home Rule Government (Grønlands Landsting).
- 22nd March 2001: A study group from 3rd world countries and new democracies in Eastern and Central Europe.
- 17th April 2001: Six members of the Mie Prefectural Assembly, Japan.
- 22nd – 28th April 2001: A study group from the Albanian People's Advocate Office.
- 26th April 2001: Twelve Slovakian civil servants.
- 23rd May 2001: Four guests from Bhutan.
- 31st May 2001: A group of Albanian students from the School of Magistrates, Tirana, Albania.
- 19th June 2001: Permanent Undersecretary Director General Mr. V. Pikoli, South Africa.
- 4th July 2001: A group of civil servants from Seoul City Hall, South Korea.
- 13th July 2001: A group of Chinese public prosecutors.
- 31st July 2001: The Vietnamese Minister for Planning and Investment, Mr. Tran Yuan Gia.
- 16th August 2001: A group from the Republic of Georgia.
- 27th September 2001: A group of Chinese lawyers.
- 3rd – 4th October 2001: A study group from the Albanian People's Advocate's office.
- 8th October 2001: A Vietnamese delegation from Ho Chi Minh National Political Academy.
- 23rd – 27th October 2001: A study group from the Albanian People's Advocate's office.
- 30th October 2001: Twenty-five Russian politicians.

- 12th – 16th November 2001: A study group from the Albanian People's Advocate's office.
- 29th November 2001: A delegation of eight Vietnamese judges.
- 5th December 2001: Dr. José Luis Soberanes, President of the National Commission on Human Rights of Mexico.

Other activities

During the year some of my senior administrators and investigation officers and I myself gave several lectures on general and more specific subjects related to my activities as Danish Ombudsman; together, we also lectured at various courses in public administrative law.

At the request of the Minister of Justice, and with the approval of the Danish Parliament's Legal Affairs Committee, I have undertaken to chair the government's Public Disclosure Commission. The Commision's task will be to describe current legislation concerning public disclosure and to deliberate on the extent to which changes are required to the Access to Public Administration Files Act, and to make proposals to such changes. The Commission's secretarial function will be handled by the Ministry of Justice together with the Parliamentary Ombudsman Institution and, in such areas as is deemed relevant, the Ministry of Finance. High Court Judge Mr. John Vogter from the Danish Western High Court has been appointed vice-chairman, and Deputy Permanent Secretary Mr. Jon Andersen from the Parliamentary Ombudsman Institution has been appointed secretary to the Commission.

During the period of 1999 – 2000, the Deputy Ombudsman Mr. Jens Møller chaired the Justice Ministry's task group on revision of the Liability in Damages Act, etc. The resulting report contained a number of proposals for change to the Act. During the period of 2000 – 2001, Mr. Jens Møller chaired the Justice Ministry's task group on compensation to dependents on bereavement, which also resulted in a report.

In the spring of 2002 the Minister for Justice appointed Deputy Ombudsman Mr. Jens Møller as chairman of the government's Due Process Commission, which will be making proposals for changes to the current legislation with a view to advancing the legal rights of individuals, particularly in connection with the authorities' supervision and inspection activities whereby access to private dwellings and companies is obtained without a warrant.

The Minister for Defence has appointed Deputy Permanent Secretary Mr. Lennart Frandsen as member of the committee, which is charged with examining the military penal code and administration of justice act with the attendant administrative provisions with a view to a revision of the existing legislation. The committee was appointed by the Minister of Defence in 1999.

Complaints received and investigated

3,560 new complaints were received during 2001. In comparison, the corresponding figure for 2000 was 3,390 new cases.

To compare the development in the total number of cases registered during the past ten years, please see the figures below:

Year	Cases
1992	2,926
1993	2,943
1994	2,937
1995	3,030
1996	2,914
1997	3,524
1998	3,630
1999	3,423
2000	3,498
2001	3,689

One hundred individual cases were taken up on my own initiative, jf. Section 17, subsection (1) of the Ombudsman Act. Some individual cases taken up on my own initiative were not fully investigated. Through media debate I had often come across circumstances in the public area, which might require closer investigation. After obtaining relevant information from the administrative bodies involved, I decided whether to undertake an Ombudsman investigation. A few cases concerned merely a look into the legal basis for the administrative practice applied.

In 2001 a general investigation of sixty cases from the Patients' Complaints Board was commenced as an own-initiative investigation.

The Ombudsman may carry out inspections of public institutions and other administrative bodies. Of the 3,560 new cases in 2001, 29 were inspection cases. The majority of the registered inspection cases relates to institutions managed by the police and the prison service (remand cen-

tres, county goals, prisons, etc.) and psychiatric institutions. However, inspections of other administrative bodies were also carried out, for example the Danish Immigration Service and the Copenhagen Central Library.

1. Cases rejected after a summary investigation

2,855 complaints registered by my office during 2001 were not investigated for the reasons mentioned below. 1,367 of these cases were referred to another administrative authority, and an additional complaint may therefore be lodged with my office at a later stage.

I did not investigate the above 2,855 cases for the following reasons:

– Complaint had been lodged too late. .	91
– Complaint concerned judgments or the discharge of judges' official duties. ...	122
– Complaint concerned other matters outside my jurisdiction including legislation issues and matters of private law.	222
– Complaint not clarified or withdrawn	188
– Inquiry not involving a complaint.	209
– Inquiry involved an anonymous and manifestly ill-founded complaint.	588
– Cases on my own initiative and not investigated.	33
– Complaint had been lodged too late with a superior authority.	35
– Complaint had not been lodged with a superior administrative authority.	1,367
	2,855

2. Cases investigated

Two cases were investigated by an Ombudsman (High Court Judge Mr. Holger Kallehauge) appointed *ad hoc* by the Legal Affairs Committee, because I had declared myself disqualified to investigate them. Cases for which I have declared myself disqualified are not included in the statistics for the Ombudsman's pending cases, case processing time or cases closed.

214 individual cases lodged with my office before 1st January 2001 were still pending on 1st June 2002. 122 of the pending cases awaited the Ombudsman's decision, while 92 cases awaited responses from the authorities or the complainants. Two own–initiative investigations concerning rehabilitation assistance (a total of 75 cases distributed among five local authorities) and the Central Customs and Tax Administration (fifty disclosure cases) were also pending on 1st June 2002.

160 of the pending individual cases were registered in 2001 and 54 dated from previous years. For some of the pending individual cases, only a statement from the relevant authority or from the complainant was needed in order to close the case, or general responses from a complainant or from an authority were awaited.

On 27th November 2001 the Government effected an extensive re-organization of the ministries' responsibilities. The following survey takes this into account.

All cases (regardless of registration date) concluded during the period 1st January – 31st December 2001, distributed per main authority, and as the result of the Ombudsman's case processing

Table 1: All concluded cases 1/1 – 31/12 2001 Authority, etc.	Cases in total	No criticism or recommendation, etc.	Criticism and recommendation, etc.
A. State Authorities			
1. Ministry of Labour[1)]			
- Department of Labour	5	4	1
- Labour Market Appeal Board	32	32	0
- Directorate General for Employment, Placement and Vocational Training	1	1	0
- Labour Market Councils, Total	6	5	1
- Public Employment Services	1	1	0
- National Directorate of Labour[2)]	1	1	0
- The Labour Market Supplementary Pension Scheme	1	1	0
Total	47	45	2
2. *Ministry of Employment*[3)]			
- Labour Market Appeal Board	2	2	0
Total	2	2	0
3. *Ministry of Housing and Urban Affairs*[4)]			
- Department of Housing and Urban Affairs	2	2	0
Total	2	2	0
4. *Ministry of Business and Industry*[5)]			
- Department of Business and Industry	1	1	0
- Auditors Commission	2	1	1
Total	3	2	1
5. *Ministry of Finance*			
- Department of Finance	1	1	0
- Agency for Financial Management and Administrative Affairs	3	3	0
- State Employees' Authority	2	2	0
Total	6	6	0
6. *Ministry of Information, Technology and Research*[6)]			
- Department of Information, Technology and Research	3	2	1
Total	3	2	1

Table 1: All concluded cases 1/1 – 31/12 2001 Authority, etc.	Cases in total	No criticism or recommendation, etc.	Criticism and recommendation, etc.
7. *Ministry of Defense*			
- Department of Defense	3	0	3
- Defense Command Denmark	1	0	1
- Home Guard	1	0	1
Total	5	0	5
8. *Ministry of the Interior*[7)]			
- Department of the Interior	58	54	4
- Central Office of Civil Registration	2	2	0
- The Refugee Board	1	1	0
- Danish Immigration Service	4	4	0
- Regional State Authorities (Statsamter), Total	5	3	2
- (Regional) Supervisory Boards, Total	17	14	3
Total	87	78	9
9. *Ministry of the Interior and Health*[8)]			
- Department of the Interior and Health	3	3	0
- Regional State Authorities, Total	1	0	1
- (Regional) Supervisory Boards, Total	1	1	0
Total	5	4	1
10. *Ministry of Justice*			
- Department of Justice	30	23	7
- Adoption Board	2	1	1
- Department of Private Law	91	81	10
- Data Protection Board	2	2	0
- Danish Prison and Probation Service	53	37	16
- State Prisons	17	15	2
- Greenland County Prisons	1	0	1
- County Prisons	16	11	5
- Victim Compensation Board	3	3	0
- Danish Medico-Legal Council	1	0	1
- Director of Public Prosecutions	5	5	0
- Police	1	1	0
- Chief Constables	13	3	10
- Public Prosecutors, Total	18	14	4
Total	253	196	57
11. *Ministry of Ecclesiastical Affairs*			
- Department of Ecclesiastical Affairs	10	7	3
- Parish Councils	1	1	0
Total	11	8	3
12. *Ministry of Culture*			
- Department of Culture	2	1	1
- Danish National Library Authority	1	1	0
- DR Radio	2	1	1
- TV 2	1	0	1
Total	6	3	3

Table 1: All concluded cases 1/1 – 31/12 2001 Authority, etc.	Cases in total	No criticism or recommendation, etc.	Criticism and recommendation, etc.
13. *Ministry of Environment and Energy*[9)]			
- Department of Environment and Energy	2	2	0
- Danish Energy Authority	1	1	0
- Danish Environmental Protection Agency	3	3	0
- Nature Protection Board of Appeal	21	21	0
- Danish Forest and Nature Agency	10	6	4
Total	37	33	4
14. *Ministry of the Environment*[10)]			
- Department of the Environment	1	1	0
- Nature Protection Board of Appeal	1	1	0
Total	2	2	0
15. *Ministry of Food, Agriculture and Fisheries*			
- Department of Food, Agriculture and Fisheries	6	2	4
- Directorate for Food, Fisheries and Agro Business[11)]	2	1	1
- Danish Veterinary and Food Administration	1	1	0
- Danish Plant Directorate	1	1	0
- Danish Non-Food Research Committee	1	1	0
Total	11	6	5
16. *Ministry of Refugee, Immigration and Integration Affairs*[12)]			
- Department of Refugee, Immigration and Integration Affairs	3	2	1
Total	3	2	1
17. *Ministry of Science, Technology and Innovation*[13)]			
18. *Ministry of Taxation*			
- Department of Tax	3	2	1
- National Tax Tribunal	15	15	0
- Central Customs and Tax Administration	6	6	0
- Regional Customs and Tax Administration	3	3	0
Total	27	26	1
19. *Ministry of Social Affairs*			
- Department of Social Affairs	3	2	1
- National Board of Industrial Injuries	2	1	1
- Social Appeals Board	46	37	9
- National Social Security Agency	3	3	0
- Danish Supervisory Board of Psychological Practice	1	1	0
- (Regional) Social Boards of Appeal, Total	93	72	21
- The Danish Gender Equality Board	1	1	0
Total	149	117	32

Table 1: All concluded cases 1/1 – 31/12 2001 Authority, etc.	Cases in total	No criticism or recommendation, etc.	Criticism and recommendation, etc.
20. *Prime Minister's Office*			
- Department of the Prime Minister's Office	3	3	0
Total	3	3	0
21. *Ministry of Health*[14)]			
- Department of Health	2	2	0
- National Board of Health	1	1	0
- Patients' Complaints Board	17	16	1
- Psychiatric Patients' Complaints Board, in total . .	1	1	0
Total	21	20	1
22. *Ministry of Transport*			
- Department of Transport.	13	12	1
- Valuation Commission	1	1	0
- Road Safety and Transport Agency	4	4	0
- Danish Road Directorate.	9	5	4
- Road Transport Council	1	0	1
Total	28	22	6
23. *Ministry of Foreign Affairs*			
Total	0	0	0
24. *Ministry of Education*			
- Department of Education	3	1	2
- National Authority for Institutional Affairs	2	2	0
- National Education Authority.	7	3	4
- Students' Grants and Loan Scheme Appeal Board	1	0	1
- Universities, etc.	2	0	2
Total	15	6	9
25. *Ministry of Economic Affairs*[15)]			
Total	0	0	0
26. *Ministry of Economic and Business Affairs*[16)]			
Total	0	0	0
State Authorities, Total	726	585	141
B. Local Government Authorities Total	103	75	28
C. Administrative authorities under the jurisdiction of the Ombudsman, Total	829	660	169
D. Institutions, etc., outside the jurisdiction of the Ombudsman, Total	197	197	0
E. Cases not related to specific institutions, etc.	170	170	0
A - E Total	829	660	169

1) Now Ministry of Employment
2) Formerly Directorate of the Unemployment Insurance System
3) Formerly the Ministry of Labour
4) Abolished by royal decree of 27th November 2001 and 4th December 2001, cf. government order No. 1107 of 20th December 2001. The ministry's responsibilities have with certain exceptions been transferred to the Ministry for Economic and Business Affairs
5) Now the Ministry for Economic and Business Affairs
6) Now Ministery for Science, Technology and Innovation
7) Now Ministry for the Interior and Health
8) Created by merging the former Ministry of the Interior and the former Ministry of Health
9) Now Ministry of the Environment
10) Formerly Ministry of Environment and Energy
11) Formerly the EU Directorate and the Danish Non-Food Research Committee
12) Created by royal decrees of 27th November 2001 and 4th December 2001 (cf. government order No. 1107 of 20th December 2001). The ministry's responsibilities have primarily been transferred from the former Ministry of the Interior
13) Formerly the Ministry of Information, Technology and Research
14) Now the Ministry of the Interior and Health
15) Now the Ministry for Economic and Business Affairs
16) Established by merging the former Ministry of Economic Affairs and the former Ministry of Business Affairs

3. Case Processing Time

As stated above, 2,855 complaints were rejected (corresponding to 77.5% of the complaints received during 2001). A majority of these cases had been closed within ten days at receipt of the complaint.

829 cases were submitted to an actual investigation. In most of these cases the complainant and the authorities involved had been notified within 10 days that an investigation would be undertaken.

The average case processing time was about 5.4 months (165 days).

4. Graphics

The following graphics illustrate the development of cases registered during the past ten years (Figure 1), categories of cases investigated to conclusion (Figure 2), categories of cases containing criticism or recommendation (Figure 3), categories of closed cases (Figure 4), reasons for rejection in categories (Figure 5), and total of municipal cases closed in 2001 in categories (Figure 6).

Figure 1
Number of cases registered for the past ten years

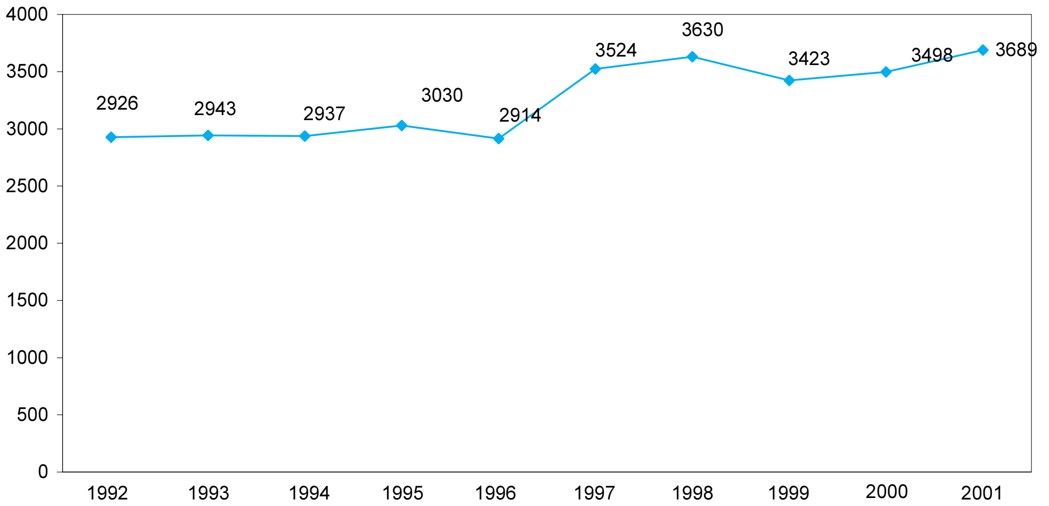


Figure 2
Categories of cases investigated to conclusion (2001)

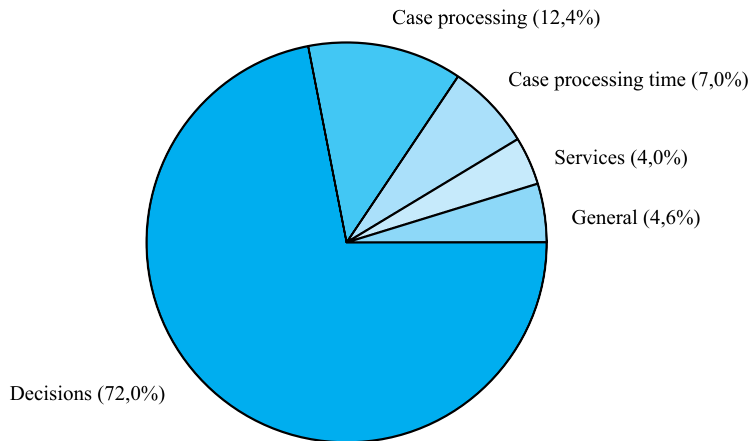


Figure 3
Categories of cases in which criticism or recommendations were expressed (2001)

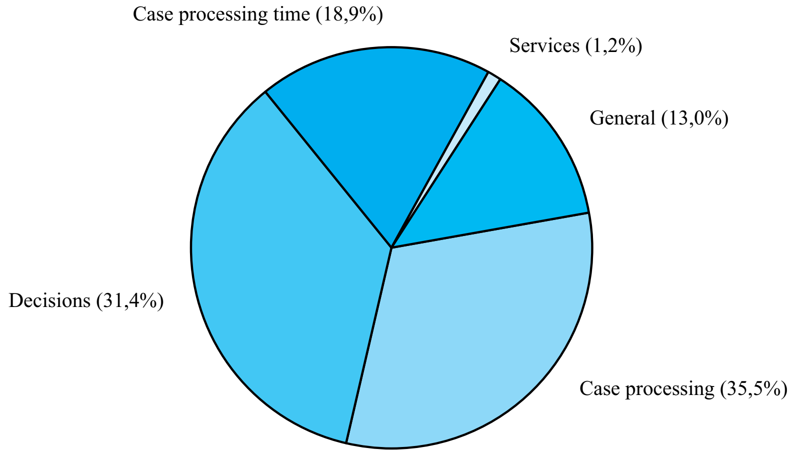


Figure 4
Cases closed, in categories (2001)

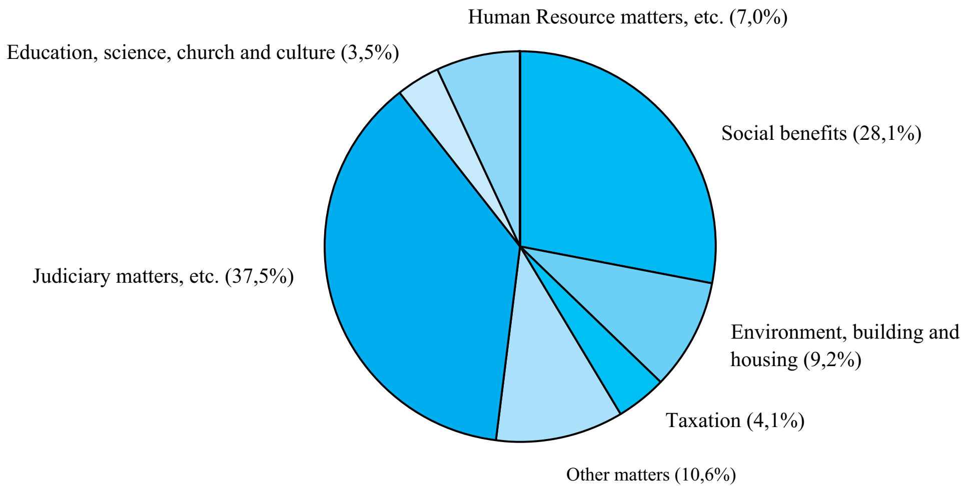


Figure 5
Reasons for rejection, in categories (2001)

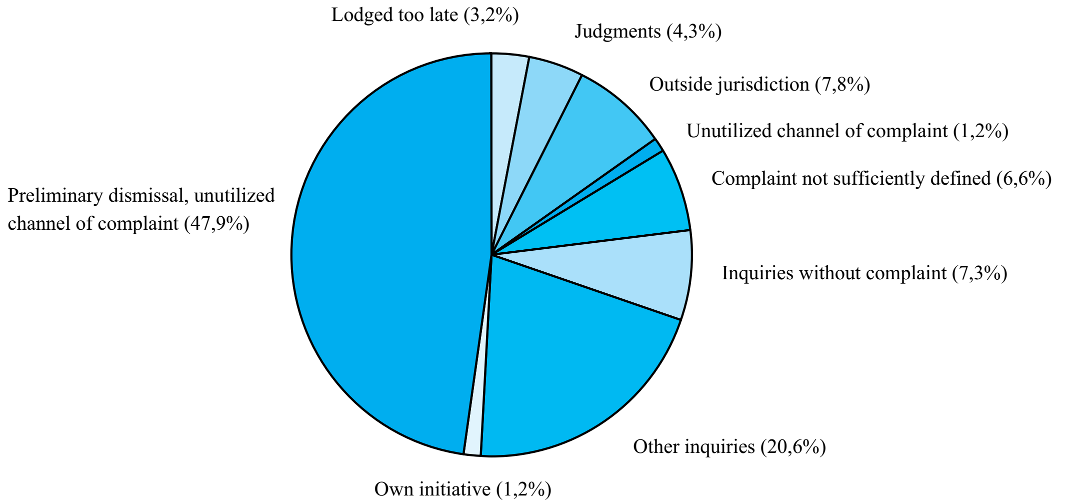
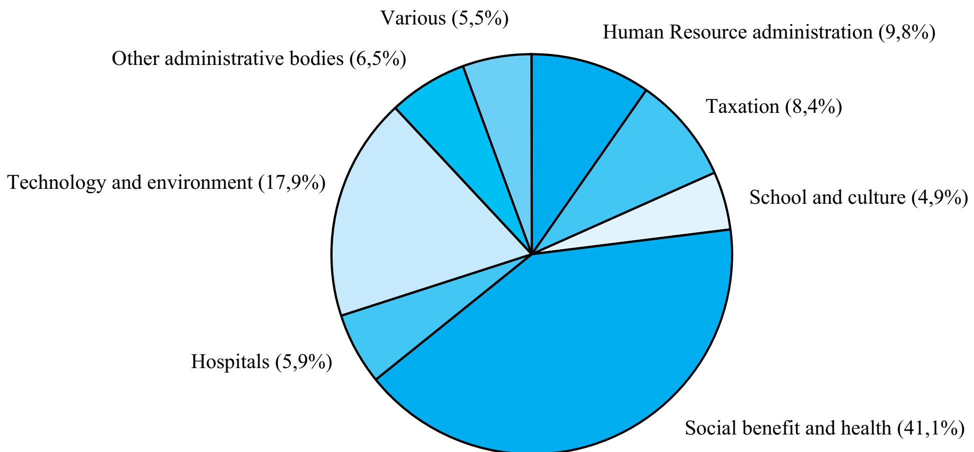


Figure 6
Total of municipal cases closed in 2001, in categories



1-1. Repayment of unemployment benefit

A public servant was dismissed due to illness following a work-related accident. The public servant suffered a 15% loss in her ability to work, and as a consequence of this she was awarded an industrial injuries disablement benefit in accordance with the Public Servants Superannuation and Pensions Act, Section 8, subsection (1). However, the compensation for the loss of ability to work was annulled in accordance with Section 39, subsection (1) of the Industrial Injuries Insurance Act because of the injury-related benefit.

The public servant lodged a complaint with the Ombudsman concerning a decision by the Labour Market Appeal Board whereby the Board affirmed two decisions made by the Directorate of the Unemployment Insurance System (now the National Directorate of Labour). The National Directorate of Labour had approved some decisions by the public servant's unemployment fund on repayment of unemployment benefit, which the unemployment fund considered that she had wrongfully received.

In a preliminary statement the Ombudsman noted i.a. that an industrial injuries disablement benefit under the rules governing deductions in unemployment benefit is at least partly comparable to compensation in accordance with the Industrial Injuries Insurance Act. The Ombudsman stated that on those grounds he was prepared to recommend that the Labour Market Appeal Board reconsider the decision on repayment. The Ombudsman further stated that he would also recommend to the National Directorate of Labour that the directorate clarify the statutory order on deduction in unemployment benefit with regard to industrial injuries disablement benefits. The Labour Market Appeal Board then repealed its former decision.

The Ombudsman decided not to pursue his investigation. However, he did request that the National Directorate of Labour keep him informed of the result of the directorate's general considerations (Case No. 1998-1971-080).

1-2. Revocation of decision on extension of sickness benefit. Duty to take notes. Hearing of parties

A man lodged a complaint concerning the decisions of a local authority and a social committee to revoke a previous decision to extend the payment of sickness benefit.

The Ombudsman could not set aside the authorities' assessment that the conditions for payment of sickness benefit were no longer met, nor could he criticise the revocation of the previous decision.

However, the Ombudsman recommended that the committee reconsider the case with regard to whether the revocation had been carried out with a reasonable notice and, if not, how long a notice should be.

The Ombudsman stated that the local authority should have taken notes on the particulars of a meeting with the man's physician.

The Ombudsman further stated that the local authority should have heard the man concerning a meeting that was held with his physician prior to a decision being made.

Finally, the Ombudsman criticised the local authority's giving of grounds, which did not fulfil the requirements in Section 24 of the Public Administration Act.
(Case No. 1999-3630-025).

4-1. A local authority disclosing information to a private school. Consent requirements. Duty to take notes

A parent applied to a private school to have his son admitted as a pupil. The school consequently applied to the local authority for access to various files concerning the boy with a view to assessing whether the school would be in a position to offer him the appropriate teaching options. The school informed the local authority that the parent had consented to the school obtaining the relevant files from the local authority. Accordingly, the local authority handed over various documents to the school for perusal. The parent subsequently contested that he had consented to the school obtaining the information.

The parent complained about the local authority, first to the board of supervision and then to the Ministry for the Interior and Health. Neither the board of supervision nor the Ministry for the Interior and Health were of the opinion that there were grounds for saying that the local authority had committed an unlawful act in disclosing the information.

The Ombudsman found that it would have been in accordance with good administrative behaviour if the local authority had obtained written consent from the parent before passing on the information to the school. The Ombudsman informed the board of supervision and the Ministry for the Interior and Health of his opinion, but his statement was not a criticism of the authorities.

The Ombudsman was of the opinion that, based on general principles of law, the local authority was obligated to take notes on the information given by the school, namely that the parent had given his verbal consent to the school obtaining the information about the boy. Furthermore, the Ombudsman held that the local authority was obligated to take notes on the nature of the information disclosed to the school in connection with the school's application. (Case No. 2000-1416-703).

5-1. Obligation to prove the intentions of a donor concerning the administration of a monetary gift to a minor

Between 1988 and 1996 two parents gave several monetary gifts to their daughters. The sums were deposited on an ordinary bank account and not in a trust department. The father died in 1996, and in 1999 the Department of Private Law under the Ministry of Justice decided that the monetary gifts should be deposited on an account in a trust department in accordance with of the legislation then in force on the disposition of a minor's funds.

In his preliminary statement on the case the Ombudsman stated that the inquisitorial principle in administrative law and general principles of evidence must be decisive in determining a donor's intentions.

In the Ombudsman's opinion the fact that donor and guardian were identical very strongly indicated that the guardians had acted in accordance with the clear intentions of the donors at the time when the gift was made.

The Ombudsman stated further that the Department of Private Law's strict demands for proof of the donors' intentions were not very much in keeping with developments of judicial opinion as to the principles of the law.

The Ombudsman concurred with the Department of Private Law in that the donor of monetary gifts must at the time of making the donation be in a position to know the conditions upon which the gift is given. In this case, however, the protection considerations underlying the relevant sections of the Act on the Depositing of Minors' Funds seemed less relevant, as the donor was not a 'third party' but also the guardian. Obviously, the guardians must be supposed to have acted in accordance with the wishes of the donors.

Based on the information in the actual case the Ombudsman was of the preliminary opinion that the basis for the Department of Private Law's decision was contrary to general legal evidence principles, and that the department's decision appeared to be unreasonable in its content. (Case No. 1999-2525-650).

5-2. Case processing time at the Ministry of Justice in a case concerning disclosure of files, and the ministry's insufficient keeping of own deadlines, etc.

A married couple applied for access to the minutes from meetings in the Wamberg Committee. The committee refused the application, and the couple complained to the Ministry of Justice. The Ministry of Justice treated the case as a matter of the ministry's powers vis-à-vis the Wamberg Committee.

In several instances the Ombudsman forwarded letters from the couple concerning the ministry's case processing time to the ministry for comments, and he later instigated an investigation into the ministry's case processing time. The Ministry of Justice concluded their case processing at the same time as the ministry replied to the Ombudsman's inquiry concerning the case processing time. At this point the case had been with the ministry for more than two years.

As far as the Ombudsman was informed, an internal note from the ministry's legal department formed the basis for the ministry's decision. The Ombudsman criticised that more than six months had elapsed from the time when the legal department had formulated the note until the ministry made its decision.

Furthermore, the Ombudsman stated that it was very regrettable that the Ministry of Justice had not informed the couple to a reasonable extent as to why the case processing dragged on. The background for this was that the ministry at no point kept the deadlines for the processing of the case, which the ministry itself had given the couple in seven instances – nor did the ministry follow up on the exceeded deadlines with new deadlines. The Ombudsman stated that the indication of a deadline for the completion of the processing of a case makes no sense unless the deadline is either kept or the authority follows up on an exceeded deadline with a new deadline when it becomes clear that the original deadline cannot be kept.

Finally, the Ombudsman was of the opinion that it was very regrettable that the Ministry of Justice in several instances had not replied to the couple's reminders.

Despite the very inadequate case processing of this case the Ombudsman did not think that there were grounds for instigating a general investigation of the case processing time(s) at the office in question. The Ombudsman assumed that such a defective processing of a case constituted an isolated incident and that the course of events would cause the ministry to consider the need for a tightening of case processing routines, etc., in the office in question. (Case No. 2001-1626-600).

5-3. Assessment of child maintenance from prison inmate

On 9th June 1999 a woman gave birth to a son. On 18th March 1999 the child's father had been arrested and subsequently sentenced to prison for 1 year and 9 months. Following the birth of the child the woman asked the state country to assess child maintenance.

On 29th October 1999 the state county decided that the woman's application for child maintenance could not be granted. On 5th January 2000 the Department of Private Law endorsed the state county's decision. It appeared that the department based its decision on the assessment that the relationship between the woman and the child's father had not

ceased due to internal incompatibility, and that the department had attached decisive importance to that assessment.

The Ombudsman stated that in the assessment of whether both parents fulfil the maintenance liability in accordance with the Children's Act, it may enter as a criteria whether a separation is not due to incompatibility but to other circumstances. However, the decision of whether the non-cohabiting parent fulfils his or her maintenance liability in accordance with the act must always rely on a specific assessment in each individual case of the said parent's fulfilment of the liability seen in relation to his or hers ability to pay the maintenance. A specific assessment of whether a prison inmate fulfils the maintenance liability to the best of his or her ability must also be made in cases where he or she (regardless of the ability to pay or not) are normally supposed to fulfil the maintenance liability in accordance with the Children's Act where the relationship with the other parent has not been terminated due to incompatibility. The Ombudsman agreed that the question of whether a parent is considered a single parent in relation to other legislation is immaterial to the assessment of whether the other parent fulfils his or her maintenance liability in accordance with the Children's Act.

The Ombudsman criticised the giving of grounds and the case evidence given by the state county and the Department of Private Law in connection with the decisions. Furthermore, the Ombudsman criticised the case processing time at the Department of Private Law.

In view of the available evidence the Ombudsman did not find sufficient grounds for criticising the result of the authorities' decisions, and therefore the Ombudsman did not have sufficient reason to ask the authorities to re-open the case.
(Case No. 2000-0830-652).

5-4. Police complaints commission case suspended. Giving of grounds

A chief crown prosecutor postponed the processing of a police complaints commission case until a criminal case against the complainants had been concluded. The Ombudsman did not think that there were sufficient grounds for criticising the decision to postpone the processing of the police complaint commission case.

Nor was the Ombudsman of the opinion that there were sufficient grounds for assuming that the Public Administration Act's regulations on the giving of grounds applied to a decision to postpone a case. He did, however, state that in his opinion it would have accorded best with good administrative behaviour if the prosecutor had informed the parties of the grounds for his decision in accordance with the principles of the Public Administration Act.

Finally, the Ombudsman stated that consideration for the parties in such a case dictates that where a case is postponed in order to await the outcome of another case the prosecutor should pay particular attention to any delays that might cause this second case to drag on and thereby have a detrimental effect on the postponed case. Should the criminal case drag on to a significant degree, the prosecutor must continuously weigh his or her decision to postpone the complaints case. (Case No. 2001-0925-611).

5-5. Prolonged placement in solitary confinement due to risk of escape

An inmate complained that the Department of Prisons and Probation upheld the state prison's decision that he was to serve his sentence in solitary confinement, and that the state prison was making the decision to keep him in solitary confinement on a weekly basis. The reason given for these decisions was the risk of escape. Since 1996 the inmate had been placed in solitary confinement for long periods of time because of several escapes from other prisons in the past. The inmate also complained that, as a special condition for the placement in solitary confinement, the department had revoked his permission to spend a limited time with other inmates with reference to considerations of security. The state prison had granted the inmate a dispensation to have a computer in his cell and permission to participate in editing the prison inmates' magazine.

The inmate maintained that it is the state prison and not the department, which has the power to make decisions on whether or not he should be placed in solitary confinement. Furthermore, he also contended that the state prison was not sufficiently acquainted with him, thereby making the decision on an inadequate basis.

The Ombudsman stated that the power to make decisions concerning placement in solitary confinement is delegated from the Department of Prisons and Probation under the Ministry of Justice to the individual institutions, and that, as the person accountable, the minister may revoke this delegation both generally and in specific cases. Therefore, the Ombudsman found no grounds for criticising the department for taking back its power to make decisions on the relaxation of the conditions under which the inmate served his sentence.

With regard to the decisions on the establishment and continuous maintenance of the placement in solitary confinement the Ombudsman stated that the decisions rested on a concrete assessment and balancing of the risk of escape. In such cases the Ombudsman cannot express criticism unless there are special circumstances, including a lack of sufficient information, on which to make the decision. The Ombudsman did not find such special circumstances when he investigated the decision to place the inmate in solitary confinement, nor with regard to the determination of the conditions for the solitary confinement.

With regard to the procedure in connection with the weekly decisions on whether to maintain the solitary confinement the Ombudsman criticised that the state prison had not kept the duty to take notes, as the state prison's weekly notes did not contain any concrete information on the prison's considerations in this regard. There was no written material on the conversations between the inmate and the prison staff. Furthermore, the Ombudsman criticised that it was only following his intervention that the department called attention to the state prison's non-compliance with the duty to take notes. The Ombudsman informed the department that he assumed that the department would keep track of the inmate's condition and continuously appraise the possibility of relaxing the terms of the sentence. (Case No. 2001-1520-625).

6-1. Dismissal of organist on the grounds of other paid occupation

An organist was dismissed on the grounds that he had another paid occupation. The dismissal was made with referral to a statement from the Ministry of Ecclesiastical Affairs. The ministry said that when an organist is paid in accordance with the wage grade system, it is the practice to disallow an employment percentage exceeding 115% of a full-time occupation.

The Ombudsman stated that the ministry's practice could not be seen as compatible with the Civil Servants Act or corresponding guidelines for people employed on terms similar to those of civil servants.

The Ombudsman criticised that the Ministry of Ecclesiastical Affairs had not asked the parochial church councils to carry out a concrete assessment of whether the additional job was compatible with a conscientious execution of an organist's duties and with the respect and confidence required for the position. The question of whether the parochial church councils had considered the additional job to be compatible with the position as organist had to be taken into account when assessing the legality of the dismissal. Furthermore, the Ombudsman criticised the failure to keep the duty of hearing of parties and the giving of grounds.

The Ombudsman recommended that the Ministry of Ecclesiastical Affairs change its practice. (Case No. 1999-2210-813).

6-2. Remuneration for a clergyman without a service tenancy. Hearing of parties. Duty to take notes. Discretion. Authority

A clergyman complained that she only received the minimum remuneration for working from home. The Ministry of Ecclesiastical Affairs refused to grant a higher remuneration on the grounds that there was an office in the church.

The Ombudsman stated that the Ministry of Ecclesiastical Affairs should have heard the clergyman in relation to the information that there was an office in the church. The ministry should also have taken notes on the information.

Furthermore, the ministry has failed to carry out a concrete assessment of whether the clergyman was able to use the said office. The ministry had only referred to usual practices.

The Ombudsman did not criticise the actual decision, but recommended that the ministry endeavour to clarify the stipulations in a future revision of the rule basis.
(Case No. 2000-1798-811).

6-3. Change of church regulations not revocation of favoured administrative act. Authority. Duty to take notes

A bishop changed the regulations of a church district. The parochial church council thought that the change constituted a deterioration in relation to the previously existing arrangement. A lawyer complained on behalf of the council and wrote in that context that the change in the regulations should be carried out in accordance with the rules on revocation of favoured administrative acts.

The Ombudsman stated that the regulation was a general administrative act, and that therefore the rules on revocation of favoured administrative acts were not applicable. Furthermore, the Ombudsman was of the opinion that the bishop's execution of the regulation was authorised by the legislation concerning the parochial church councils and membership, respectively.

However, the Ombudsman did criticise the bishop's failure to keep the duty to take notes on the information and points of view that emerged at a negotiation meeting.
(Case No. 1999-1531-074).

7-1. **Deadline for hearing of parties in a case of dismissal. Wording of hearing letter**

It appeared from the daily press that the television company TV 2 intended to dismiss a substantial number of employees. When approached, TV 2 explained that the relevant employees were informed of the impending dismissal on 31st May 1999 with a deadline for reply on 2nd June 1999. The Ombudsman decided to investigate the case on his own initiative after he had received copies of some of the hearing letters and a comment on whether the deadline for reply could be considered reasonable.

The Ombudsman stated that he was mostly inclined to think that the deadline for reply was in contravention of the Public Administration Act. The Ombudsman stated moreover that it would have been more considerate, and would have accorded best with good administrative behaviour, if the hearing letters had not been worded in a way, which together with the short deadline for reply could give the impression that the hearing was solely a formality. (Case No. 1999-1696-804).

7-2. **Delegation to an institution of the Ministry of Culture's authority to determine rules. Form of announcement of regulations issued by the institution. Guidance**

A student at the School of Architecture under the Royal Danish Academy of Fine Arts lodged a complaint about the decisions and case processing of the Ministry of Culture and the school in connection with his complaints concerning the course of a study sojourn in South Africa. Among other things, he had complained that he received a negative certificate of study activity for the semester when the sojourn took place.

The Ombudsman stated that in his opinion the delegation to the schools of architecture of the Ministry of Culture's statutory authority to determine specific rules on, among other things, certificates of study activity was legal. The method of announcement for these rules, which were not published in the Law Gazette but printed in the school's handbook, did not give the Ombudsman occasion for comments.

The Ombudsman was of the opinion that, on the student's return, the school should have given him guidance on the possibilities of changing the negative certificate of study activity. (Case No. 2000-0470-712).

8-1. **Designation of public watercourse as a natural watercourse. Authority**

A consultancy centre lodged a complaint about part of a public watercourse being designated as a natural watercourse, thereby implying a reduction of the county's duty of maintenance.

The Ombudsman stated that there was no basis for assuming that the county had the authority to designate a public watercourse as a natural watercourse. Thus, the regulations should stipulate specific demands for the shape of the watercourse, meaning that there had to be fixed specifications for the bottom width, the bottom level and the slope or to the flow capacity of the watercourse.

As the regulations in question did not contain such fixed demands, the Ombudsman recommended that the case be reconsidered. (Case No. 1999-1494-143).

8-2. Right to complain in accordance with the Watercourse Act. Decision principle Giving of grounds

The Environmental Protection Agency and the National Forest and Nature Agency refused to process a complaint on the grounds that the pronouncement concerning the case given by the county in question with reference to the Watercourse Act could not be brought before the agency.

The county had declared that a resumption of the right to dam the water for any other than the original purpose would require approval. This had been entered as a stipulation in the regulations for the watercourse in question.

The Ombudsman stated that the county's pronouncement must be considered a binding decision. There were no grounds for assuming that there had been deviation from the decision principle in administrative law when the decision was made to determine the right of complaint in accordance with the Watercourse Act. The right of complaint subsequently included the decision. As it concerned an establishing administrative act, the question was, however, subject to some uncertainty.

The Ombudsman recommended that the National Forest and Nature Agency considered reopening the case and worked towards a clarification of the issue in connection with an upcoming change in the Watercourse Act.

Furthermore, there was an inadequate giving of grounds for the decisions of the Environmental Protection Agency and the National Forest and Nature Agency.
(Case No. 1999-2374-143).

9-1. Residence permit for unaccompanied child refugee under the Aliens Act

A 17-year old Sri Lankan boy entered Denmark and applied for asylum but was refused. His application for a residence permit under Section 9, subsection (2.4) of the Aliens Act was also refused. The Ministry of the Interior wrote among other things that they did not have certain proof that the boy's family was not in the native country. The boy was suffering from a post-traumatic stress reaction.

The boy's lawyer had previously stated that the boy had been told through the Red Cross that his father's brother in Sri Lanka had had no contact with the family since 1996.

The practice of the authorities with regard to residence permits under Section 9, subsection (2.4) for unaccompanied child refugees is to ensure that the child is not placed in actual danger if he or she is not granted a residence permit. A residence permit is thus granted if the parents are dead or if there is reliable information to the effect that they cannot be located, and when there is no other safe family or social support besides. Furthermore, in some cases a residence permit may be granted if the child needs special care and assistance due to illness.

In light of the inquisitorial principle and the practice on residence permits for unaccompanied child refugees, the Ombudsman asked the Ministry of the Interior for a statement on, among other things, who is responsible for procuring information on any remaining family members in the native country. Furthermore, the Ombudsman asked the ministry to state whether the boy's illness could justify a residence permit under Section 9, subsection (2.4).

The Ministry of the Interior then granted the boy a residence permit under Section 9, subsection (2.4) of the Aliens Act. (Case No. 2001-0111-643).

9-2. Residence permit for unaccompanied child refugee under the Aliens Act

A 15-year old Sri Lankan boy entered Denmark and applied for asylum but was refused. His application for a residence permit under Section 9, subsection (2.4) of the Aliens Act was also refused. In the grounds for the refusal the Ministry of the Interior wrote among other things that they did not have certain proof that the boy's family was not in the native country.

The boy's lawyer had previously informed the authorities that the boy had tried in vain to trace his parents through the Red Cross after his arrival in Denmark.

The practice of the authorities with regard to residence permits under Section 9, subsection (2.4) for unaccompanied child refugees is to ensure that the child is not placed in actual danger if he or she is not granted a residence permit. A residence permit is thus granted if the parents are dead or if there is reliable information to the effect that they cannot be located, and if there is no other safe family or social support besides.

In light of the inquisitorial principle and the practice on residence permits for unaccompanied child refugees, the Ombudsman asked the Ministry of the Interior for a statement on, among other things, who is responsible for procuring information on any remaining family members in the native country.

The Ministry of the Interior then granted the boy a residence permit under Section 9, subsection (2.4) of the Aliens Act. (Case No. 2001-0108-643).

10-1. Disclosure of auditing report

The Directorate for Structural Development employed an auditing firm to investigate a case concerning state subsidies for a private company's implementation of an organic development project. The auditing report was drawn up as a result of, among other things, an approach from a former member of the private company's board of directors. The purpose of the auditing report was to assess whether the basis for granting the subsidy was assessed correctly, including whether the recipients or their accountant were guilty of fraud or negligence.

The Directorate for Structural Development and the Ministry of Food, Agriculture and Fisheries refused the former board member access to the auditing report with reference to Section 12, subsection (1.2) and Section 10, subsection (4) of the Access to Public Administration Files Act.

The Ombudsman found that the authorities had not carried out a concrete evaluation of whether the refusal of the disclosure application might have a substantial financial significance for the private company. From the information presented to him, it was not possible for the Ombudsman to assess whether the ministry acted lawfully when they refused the disclosure application with reference to Section 10, subsection (4) of the Access to Public Administration Files Act. The Ombudsman therefore recommended that the Ministry of Food, Agriculture and Fisheries reconsider the application for disclosure.
(Case No. 1999-3606-301).

10-2. Reply to application for study leave communicated via electronic mail

In a letter an employee at the Danish Market Management and Intervention Board applied to the board for study leave. The board refused the application in an e-mail communication. The employee denied having received the e-mail.

The Ombudsman stated that the regulations and preparatory works of the Leave Act told against regarding the board's e-mail as a decision in accordance with the Public Administration Act. Instead, the e-mail must be considered a private disposition.

In the Ombudsman's opinion he could not on the present basis criticise the Danish Market Management and Intervention Board for replying to the application for study leave through electronic mail. However, the board should either have kept a printout of the e-mail or saved the e-mail electronically.

The Ombudsman's general opinion was that good administrative behaviour normally requires the appointing authority to provide the employee with the grounds on which they refuse an application for study leave. The Ombudsman had no comment on the grounds given by the board for the refusal, namely that the weeks allocated for study leave had been spent. (Case No. 1999-0370-819).

11-1. Complaint concerning refusal of access to documents about the Danish Committees on Scientific Dishonesty. Recourse

Two journalists at a radio station lodged a complaint with the Ombudsman against the decision by the Danish Committees on Scientific Dishonesty to refuse a request for access to documents. The Ombudsman sent the complaint to the Ministry of Science, Technology and Innovation for processing. The ministry returned the complaint on the grounds that the ministry did not have the authority to process complaints concerning the Danish Committees on Scientific Dishonesty,

Based on the Act on Public Research Councils and Committees and its preparatory works, the Ombudsman was of the opinion that the Ministry of Science, Technology and Innovation had the authority to process complaints lodged against the committees. The Ombudsman therefore recommended that the ministry consider the complaint.
(Case No. 1999-2401-701).

11-2. Several public charges. Disqualification

A company, which among other things undertook translation work, lodged a complaint against a decision by the Ministry of Science, Technology and Innovation that a certain member of the Danish Research Council for the Humanities was not disqualified in connection with the council's processing of the company's project application. The council member was also a board member at the national public sector research institution, Centre for Language Technology (CST), which was a possible competitor to the company. CST had not, however, applied for grants in connection with the round of applications in which the said project application was processed.

The Ombudsman stated that there was no basis for assuming that the council member was disqualified according to the regulation in Section 3, subsection (1.3) of the Public Administration Act. However, in the Ombudsman's opinion the council member might be disqualified according to Section 3, subsection (1.5) of the Act if the council member participated in the processing by the Danish Research Council for the Humanities of an application from CST. Due to the competitive condition between the applicant and CST, it could not be ruled out that the council member might be disqualified according to Sec-

tion 3, subsection (1.5) of the Public Administration Act when processing an application from the company submitted in the same round of applications as an application from CST. However, the Ombudsman agreed with the Ministry of Science, Technology and Innovation that the potential interest in rejecting an application to ensure that CST might be better placed in a subsequent round of applications was too remote to give grounds for disqualification according to the regulations in the Public Administration Act, cf. Section 3, subsection (2) of the Act.

Thus, the Ombudsman did not criticise the decision by the Ministry of Science, Technology and Innovation that the council member was not disqualified in connection with processing by the Danish Research Council for the Humanities of the company's project application. (Case No. 2000-3077-709).

11-3. Dismissal of associate professor due to budget cuts. Selection. Disqualification

The Royal Danish School of Pharmacy (DFH) dismissed four associate professors. The dismissals were based on the need for budget cuts and did not involve any evaluation of the associate professors' professional skills. In the school's opinion such an evaluation was not necessary, as the institution had decided to cease its research within the fields of physics, and the four associate professors had physics as their subject area.

One of the associate professors complained, first to the Ministry of Education and then to the Ombudsman, about the dismissal. He submitted that the school should have carried out a professional evaluation in order to be able to select the four associate professors to be dismissed, as there were a total of seven associate professors within the subject area of physics/physical chemistry. In addition, he was of the opinion that the pro-rector, who had been of those making the decision on dismissal, was disqualified because she was one of the seven associate professors.

The Ministry of Education did not think that there were grounds to set aside the decision of dismissal.

The Ombudsman stated that a satisfactory evaluation as to who may most easily be spared in connection with dismissals must involve an assessment of whether the relevant persons, whose dismissal is being contemplated, may give satisfaction within their field in those subject areas which are preserved, and may even be better qualified than other employees within the same subject areas. Such an assessment may cause the focus to be directed towards several persons within the field.

On that basis the Ombudsman was of the opinion that, having selected the subject area of physics as a focus for budget cut-backs, DFH should have carried out a more extensive and professional assessment of who could most easily be spared, seen in relation to this area.

As it was not possible objectively to make the distinction as to who belonged to the 'physics group', the Ombudsman was of the opinion that those employees whose research and teaching obligations were within the areas of physics and physical chemistry might risk being affected by a decision to abolish positions within the subject area of 'physics'.

Partly on this background, the Ombudsman considered that the pro-rector was disqualified in connection with the matter of abolishing positions from the time when the subject area of physics became a focus for the discussions. She should therefore not have taken part in the processing of the case, neither in the academic council, in the budget and steering committees nor as part of the management at DFH.

The Ombudsman recommended that the Ministry of Education reconsider the case and notify the associate professor of a new decision. (Case No. 1996-3000-813).

12-1. Statement by the Minister for Taxation concerning a power plant heating agreement

A local authority complained that in connection with the reading of a Bill the Minister for Taxation had expressed an opinion on the taxation effect of a heating agreement between the local authority and a combined heat and power station despite the fact that this issue had not as yet been looked into by the Customs and Tax Office. With this statement the minister had, in the opinion of the local authority, wrongfully prevented the Customs and Tax Office from making an independent assessment of the agreement's effect on the computation of taxes, as the office in its subordinate capacity in relation to the minister was obligated to follow the minister's declaration when making a decision in the specific matter.

The Ombudsman stated that according to general principles of administrative law a minister may exercise so-called organisational authority within his ministry and may among other things give binding directives to subordinate authorities generally as well as in specific cases. This principle applies unless the law says otherwise. As the customs and tax offices are subject to the minister's instruction in cases concerning coal dues, and are in the circumstances obligated to follow the minister's directive, the Ombudsman found no grounds for criticising the fact that the minister's statements would be able to affect the result of the office's decision.

The Ombudsman commented that the Customs and Tax Office's decision could be brought before the National Income Tax Tribunal whose verdict could be appealed to the relevant High Court. (Case No. 1999-2907-329).

13-1. Failure to provide guidance on appeal in connection with a verbal decision

In November 1991 a local authority decided to discontinue payment for the schooling of an 11-year-old boy at a private school. The local authority had paid for the boy's schooling since 1988. The decision to stop the payment was communicated to the boy's father verbally and without providing any guidance on appeal. In 1995–1996 a social worker applied several times to the local authority on the father's behalf with demands for payment for the expenses that the boy's father had subsequently paid himself in connection with the boy's schooling. In July 1998 the social worker complained to the county's social committee about the local authority's refusal to pay for the schooling. The social committee refused to process the complaint on the grounds that a statutory deadline for appeal had been exceeded. The social worker lodged a complaint with the ombudsman about the social committee's rejection of the case and argued among other things that the father had not known that he could submit an appeal to the social committee.

The ombudsman criticised that in its decision the social committee had only looked at the amount of time by which the deadline had been exceeded and not assessed whether there were any other special circumstances that might cause the committee to process the appeal. The ombudsman then recommended to the social committee that it reopen the case.

The ombudsman also criticised the local authority for its failure to send all the case documents to the committee, both in connection with the social committee's original processing of the appeal and in connection with the committee's hearing reply to the ombudsman. Finally, the ombudsman criticised the social committee for its failure to recognise that the committee did not have all the documents relating to the case.

The social committee stated that it had decided to reconsider the case.
(Case no. 1999-0581-009).

13-2. Adjustment of housing benefit. Giving of grounds

A tenant complained about the authorities' adjustment of his housing benefit. The ombudsman criticised the given grounds for the authorities' decision, as the references to the rules of law given by the authorities in the grounds for the decision were insufficient. With regard to the local authority's statement that the decision was based on a standard letter from KMD (public sector information technology company), which fulfilled the statutory demand to give references to specific provisions, the ombudsman stated that the responsibility for giving correct and adequate grounds for a decision rests solely on the authority making the decision. Where decision models or forms are used, perhaps from an outside source as e.g. KMD, the authority must therefore check these to verify whether any pre-printed parts of the grounds are correct, relevant and adequate in relation to the case in question. If this is not the case, then it is the responsibility of the authority to correct and supplement the pre-printed parts of the decision grounds.

As the authority's decision was based on a standard form from KMD, the ombudsman sent a copy of his statement (made anonymous) to KMD. (Case No. 2000-3908-083).

13-3. Options of the Social Appeals Board in a case concerning the preventive placement of three children outside the home

In January 1999 a local authority's Children and Young Persons Committee decided that the preventive placement outside the home of three children (whose parents came from Jordan) should continue. In April 1999 the Social Appeals Board revoked the committee's decision because of a formal error, but decided that the placement of the children outside the home should continue.

In May 1999 the Children and Young Persons Committee decided that the preventive placement of the children outside the home should end. The following day the appeals board decided to take up the case and later that month the appeals board notified the party representative that the appeals board would consider the case at a meeting in June 1999. On 24th May 1999 the father left Denmark with the two youngest children.

The ombudsman decided to investigate the case on his own initiative based on i.a. the press reports of the case. The ombudsman's investigation was primarily directed towards the role of the Social Appeals Board in the case and the assessment of this role by the Ministry of Social Affairs.

The ombudsman disagreed with the Social Appeals Board when it said that the then current legislation did not give the appeals board the option of ensuring that the children still remained in Denmark when the appeals board held its meeting on 8th June 1999. The ombudsman found it regrettable that the Social Appeals Board had not fully exploited the statutory options for ensuring that the children were still in Denmark at the time of the meeting. He also found it regrettable that in its assessment of the Social Appeals Board's role in the case the Ministry of Social Affairs did not take the aforementioned options into consideration. (Case No. 2000-0721-071).

13-4. Early retirement benefit. Basis of information. Inadequate argument for disregarding specialist's opinion. Assessment of residual earning capability

A social committee awarded a man the intermediate early retirement benefit, but the committee as well as the Social Appeals Board refused the man's application for the maximum retirement benefit.

The ombudsman criticised the committee's and the social board's giving of grounds, which did not fulfil the requirements pursuant to the Public Administration Act. Based on, among other things, two supreme court decisions on early retirement benefit, the ombudsman stated that in his opinion the social board's grounds for its decision did not offer adequate arguments as to the reason why the appeals board had made a different assessment of the man's earning capability from that of the specialist who had monitored the man's health continuously. In the ombudsman's opinion the appeal board's decision still showed a considerable amount of uncertainty as to the man's residual earning capability.

Because of his lack of medical expertise, the ombudsman did not have grounds for criticising the appeal board on this issue. However, the ombudsman recommended that the board consider whether the basis of evidence should be supplemented so that a decision could be made on a new basis.

Furthermore, the ombudsman stated that the committee should have been more specific in its decision regarding the man's residual earning capability.
(Case No. 1999-2679-040).

13-5. Disclosure of statements by medical advisers and discussion paper for committee meeting

An association complained on behalf of a man about the refusal by the social committee and the Social Appeals Board to disclose the committee's presentations for a meeting and a statement by a medical adviser.

In accordance with his previous statements on the right of access to presentations for committee meetings, the ombudsman stated that an actual right to access cannot be presumed.

The case gave the ombudsman occasion to consider more closely whether a complainant has a right to access to files with regard to statements by medical advisers on the basis of the principles of the Legal Protection Act and its preparatory works. In the ombudsman's opinion it would accord best with the principles of the Legal Protection Act and its preparatory works to notify the citizen of the content of the medical adviser's statement prior to making a decision. However, the ombudsman found no grounds for expressing his opinion as criticism of the authorities in question.

The ombudsman further commented that also in cases concerning disclosure in accordance with the principle of increased access to public records, the appeals board has the authority and the obligation to test the decisions of the committee to the same extent as with other discretionary decisions, which means that the board must check that the discretion is exercised lawfully. (Case No. 1999-2095-001).

13-6. Increase of social pension

A woman complained about the refusal by a local authority and its Rehabilitation and Pensions Tribunal to increase her disability pension to intermediate level. Considering that the woman was over 60 years of age at the time of application it could reasonably be supposed that her ability to work in any profession had been reduced to negligible.

The ombudsman criticised the giving of grounds put forward by the local authority and the social committee, as these did not fulfil the requirements of the Public Administration Act. Based on, among other things, two Supreme Court verdicts on the subject, the ombudsman stated that in his opinion the giving of grounds did not sufficiently explain the reason why the committee came to a different conclusion on the woman's ability to work

than the specialist. Thus, in the ombudsman's opinion the committee should have explained what professional grounds it had for disregarding the specialist's assessment. The ombudsman recommended that the committee reconsider the case with regard to elaborating on the giving of grounds for the decision. (Case No. 1999-2966-040).

13-7. Repayment of housing benefit

A legal aide complained on behalf of a woman about a decision by the local authority and the social committee to reduce her housing benefit and to demand repayment of over-paid housing benefit. The grounds for the decision were that the local authority and the social committee considered that the woman was still cohabiting with her husband though he was no longer registered at her address.

The ombudsman stated that there was some evidential uncertainty whether the woman was cohabiting with her husband. As the issue appeared to have been extremely well elucidated to the social committee, and as the assessment of the evidence could not be considered incorrect or fallacious, the ombudsman did not find any grounds for criticising the assessment.

The ombudsman did not find grounds for criticising that there had been no judicial hearing of the woman pursuant to the Administration of Justice Act, as such a hearing must be considered to be contrary to previous practice.

However, the ombudsman considered it to be doubtful whether the information warranted the authorities' assumption that the woman had received housing benefit in bad faith or had submitted false information. The ombudsman therefore recommended that the social committee reopen the case and consider whether the woman could be said to meet the subjective requirements for a repayment demand to be imposed upon her.

The ombudsman criticised that the local authority had not heard the woman prior to the decision being made. The ombudsman further criticised the local authority for making a new decision in the case despite the legal aide's application for party access to files. (Case No. 2000-3485-083).

13-8. Repayment and allocation of housing benefit. Guidance. Hearing of parties

A tenant moved from one tenancy to another in the middle of September 1999 and applied for housing benefit for the new tenancy in October 1999 – more than four weeks after the move. On 1st October 1999 the tenant had telephoned the local authority and in that connection informed the authorities of the change of address. The authorities decided that the tenant had to repay the distributed housing benefit with regard to the previous tenancy for the period 16th September till 1st November 1999. In addition, the authorities allocated housing benefit for the new tenancy from 1st November 1999.

The ombudsman stated that it would have been natural if the local authority, when talking to the tenant on the phone, had provided guidance on the special deadline for submitting an application for housing benefit in connection with a change of address. However, the ombudsman did not find fully adequate grounds for criticising the failure to provide guidance to the tenant.

The ombudsman agreed with the authorities that the tenant was not entitled to housing benefit for the vacated tenancy after his change of address. In order for the authorities to demand the overpaid benefit repaid it was required that the tenant before the time when the payment was made knew (or should know) that the tenant was going to vacate the tenancy, and that the tenant would therefore no longer be entitled to housing benefit. Con-

sequently, in the ombudsman's opinion there were no grounds for imposing a duty of repayment on the tenant for the period 16th September till 1st October 1999.

The ombudsman criticised the local authority for its failure to hear the tenant as a party prior to the decision to demand the housing benefit repaid, which the local authority in the ombudsman's opinion was obligated to do. Furthermore, the ombudsman found it regrettable that the social committee had not considered the local authority's failure to have a hearing of parties.

In addition, the ombudsman criticised the grounds given for the authorities' decisions, as the rules of law referred to in the decisions were inadequate.

The ombudsman asked the social committee to reopen the case and to consider whether the tenant met the subjective requirements for imposing a demand for repayment of the housing benefit for the period 16th September till 1st October 1999.
(Case No. 2000-0358-028).

14-1. Disclosure of item in a speech by the prime minister on emergency measures

A journalist complained to the ombudsman concerning the refusal by the prime minister's department to disclose an item in a speech on emergency measures. The speech item was written by the Ministry of Economic Affairs for use in connection with the prime minister's oral reply to questions put in parliament. The journalist further complained that the Ministry of Economic Affairs had not even mentioned the existence of the speech item in its refusal to grant access to files.

The refusal by the prime minister's department was given with reference to the Access to Public Administration Files Act. In the opinion of the Prime Minister's Department, it was in the necessary interest of the internal political decision-making process to exclude the document in question. The department's decision was based on a concrete assessment, and the department had considered the principle of increased access to public files in the Access to Public Administration Files Act, but did not think that this provided sufficient grounds for granting access to the item in the speech on emergency measures.

The ombudsman stated that were no grounds for criticising the decision made by the Prime Minister's Department. The ombudsman noted in particular that the Prime Minister's Department had made a concrete assessment with regard to the interest of the political decision-making process and to the Access to Public Administration Files Act.

With reference to, among other things, the fact that there were no grounds for criticising the Prime Minister's Department, the ombudsman did not carry out an investigation of the complaint concerning the Ministry of Economic Affairs.
(Case No. 2000-3900-801 and 2001-0825-201).

15-1. Refusal of application for issue of a haulage contractor's licence

With effect from 1st January 1997 mud pumping became included in the authorisation requirements of the Haulage Act. A haulage contractor, who had carried out mud pumping since 1973, applied in the middle of 1998 for a haulage contractor's licence – meaning 18 months after the deadline for such applications. The Committee on Road Transport refused the application on the grounds that the haulage contractor did not meet the good-conduct requirements according to the Haulage Act because of his breach of the authorisation requirement.

The ombudsman stated that, according to an overall assessment of the case, a decision with such far-reaching consequences for the haulage contractor could not be considered

as being in keeping with the principle of proportionality. The legal effects of the decision corresponded to an annulment of a trading licence, and it had severe economic effects for the haulage contractor.

In the ombudsman's opinion, the assessment of the severity of the appropriate penalty ought to include the fact that, due to an oversight, the haulage contractor did not realise that mud pumping was included in the authorisation requirements.

The ombudsman further stated that regard for maintaining the respect for observing the authorisation system of the Haulage Act and the purpose of the authorisation requirement would hardly provide sufficient grounds for a refusal.

The ombudsman recommended to the Committee on Road Transport that they consider re-opening the case. (Case No. 1999-2571-512).

15-2. Distribution of expenses in connection with repair of private communal road. Authorisation

A local authority made a decision to effect repairs of the urban-zone part of a private communal road while leaving un-repaired the rest of the road, which was in the rural zone. However, the plot owners in the rural zone were to pay part of the expenses.

The Road Directorate confirmed the decision. The grounds given by the Road Directorate were a combination of the regulations for roads in urban and rural zones respectively pursuant to the Private Roads Act.

In the ombudsman's opinion the options for deviating from the Act's clear distinction between roads situated in the urban zone and roads situated in the rural zone must be considered listed exhaustively in Section 13 of the Act. As none of these options were relevant in the case in question, the ombudsman did not think that there was any authority for the decision by the Road Directorate, no matter whether the result could be considered appropriate or reasonable. The ombudsman therefore recommended that the case be reopened. (Case No. 2000-0588-516).

17-1. Disclosure of the awarding of marks in primary and lower secondary schools

A newspaper asked the Ministry of Education for access to reports on marks for general proficiency and test results from primary and lower secondary schools. The ministry refused the application with reference to the fact that the reports were meant for statistical purposes and that the information was not a part of administrative case processing. The ministry further argued that parts of the reports contained information on the private circumstances of individuals.

In the ombudsman's opinion, according to the Access to Public Administration Files Act the Ministry of Education did not have the authority to refuse the application for disclosure. In the ombudsman's opinion the extent to which the information could be traced back to individuals was uncertain. The ombudsman pointed to the possibility of making the identifiable information anonymous. The ombudsman further stated that the Ministry of Education should have considered the possibility of granting increased access to public files.

The ombudsman recommended that the ministry make a fresh decision.
(Case No. 2001-0057-701).

17-2. Note from a teaching practice supervisor to the head of a teaching college

A student teacher complained that the Ministry of Education had approved the decision by a teaching college to partly refuse his application for access to all documentation regarding the course of his training so far. The student also complained about the ministry's endorsement of a refusal to his application to let a fellow-student sit in as an observer at an assessment interview concerning his teaching practice placement. The ministry made its decision with reference to the fact that the regulations of the Public Administration Act concerning party representation, etc., were not applicable, as this was not a case involving a decision.

In the ombudsman's opinion no detailed investigation was necessary to determine whether the application for access to the documents should be decided according to the Access to Public Administration Files Act or the Public Administration Act. The ombudsman referred to the fact that, in relation to individuals wanting access to files concerning themselves, it is irrelevant to the scope of the requested access whether the application for access is decided according to the regulations on right of access in the Access to Public Administration Files Act or according to the regulations on party access to files in cases involving a decision in the Public Administration Act.

The ombudsman found it regrettable that during its processing of the case the Ministry of Education had not requested and gone through all the case files to which the student had requested access from the teaching college. The ombudsman recommended that the ministry reconsider this part of the case.

Concerning the issue of allowing an observer the ombudsman stated that the general principle of the right to representation on a non-statutory basis must be considered to apply beyond the scope of the Public Administration Act. Therefore, the Ministry of Education should not have assessed the case solely on the basis of the regulations in the Access to Public Administration Files Act, but also on the basis of the non-statutory legal principle of representation. (Case No. 2000-3677-701 and case No. 2000-3700-709).

18-1. Disclosure of marking guidelines for chartered accountant examination. Internal case material

A student lodged a complaint with the ombudsman about his marks at the final written chartered accountant examination. He also wanted access to the "Guiding comments on censorship", which were used by the censors in connection with marking the examination papers for the said chartered accountant examination. The Board of Chartered Accountants refused access to the files, arguing that the files in question were internal case material.

The decisive issue then had to be whether access to files could still be granted according to the regulations in the Access to Public Administration Files Act on internal case material available in final form. Having received and read the marking guidelines, the ombudsman was of the opinion that the guidelines seen in their entirety were included under documents containing general guidelines for the processing of certain case types, and were therefore basically subject to the right of access to files.

Based on this the ombudsman recommended the Board of Chartered Accountants to reconsider the student's application for right of access to files.
(Case No. 1999-0852-701).

18-2. Licence to build an extension to a summer cottage. Disqualification

A neighbour lodged a complaint against a local authority giving permission for an extension to a summer cottage. The case had been processed by the local authority's Technical and Environment Committee, and one of the committee members who was a cousin of the summer cottage owner had participated in the processing of the case. Furthermore, the committee member had occasionally used the summer cottage in connection with holidays, etc.

In the opinion of the Regional State Authority the committee member was disqualified and should not have participated in the processing of the case. However, the Regional State Authority did not consider the decision invalid.

The ombudsman stated that he agreed with the Regional State Authority in that the committee member was disqualified. However, the ombudsman further stated that prior to making this decision the Regional State Authority should have sought to obtain more details on the role of the committee member during the discussions in the committee.

Even though the member's vote had not been decisive and though he was not the chairman of the committee, it could not be ruled out that he had had a decisive influence on the decision. It had been possible for the summer cottage owner to learn about his cousin's participation in the processing of his case. Therefore, no decisive importance could be attached to the fact that this was an administrative act of benefit to the owner. The disqualification meant that the decision was invalid, and it would have been most correct if the Regional State Authority had nullified the decision. However, as the issue was not totally indisputable, the ombudsman did not state his opinion as a criticism but recommended that the Regional State Authority reconsider the case. (Case No. 1999-2065-160).

19-1. Mail registration practice at social service centre in a case concerning repayment of housing benefit

A person receiving housing benefit lodged a complaint about a demand for repayment of housing benefit for 1997.

The housing benefit recipient argued that he had sent a letter in March 1997 to the social service centre informing the centre of the increase in his income which later led to the demand for repayment. The social service centre in turn maintained that the centre had not received the letter containing the recipient's information.

This, among other things, caused the ombudsman to investigate the social service centre's registration practice for incoming mail.

Subsequently, the ombudsman stated that consideration for the client's interest in being able to prove that the authority had received written information concerning a change in his conditions must result in a systematic registration of incoming mail. After having investigated the case in question, the ombudsman criticised that the social service centre had not carried out a systematic registration of incoming mail, including an immediate recording of all letters on the case information sheet.

During the case the housing benefit recipient had claimed that this was not the first time that the social service centre had mislaid incoming mail from him, and that the social service centre on those occasions had waived their claim for repayment. In the ombudsman's opinion it was unfortunate that there was no accordance between the contents of a previous decision to the client and the centre's statements in connection with the case before the ombudsman.

Finally, the ombudsman was of the opinion that it was a matter for criticism that the social board did not carry out a more detailed investigation and assessment of the specifics of the case, including especially that they had made no effort to ascertain the registration

practice for incoming mail at the social service centre prior to making a decision in the case.

With regard to the actual question of whether the housing benefit recipient had informed the social service centre of his increased income, this was a evidential matter, which could not be solved through the ombudsman's investigation of the case.
(Case No. 2000-0790-083).

19-2. Disclosure of school principal's personnel file. Manager concept

A reporter complained about a refusal of a request for access to the severance agreement of a school principal. The grounds for the refusal were that the local authority did consider the school principal to be covered by the manager concept pursuant to provisions in the Access to Public Administration Files Act.

Both the Ministry of the Interior and the Ministry of Justice had stated that they were inclined to think that the school principal was included in the provisions.

The ombudsman stated that the school principal's position, both with regard to authority, salary and placement in the administrative hierarchy, could be compared with those positions, which were included in the manager concept according to the preliminaries of the Act. It was unequivocally the ombudsman's opinion that the position of school principal had to be considered to be included in the manager concept. (Case No. 2001-0052).

19-3. Dismissal of psychologist following statements on paedophilia

A psychologist employed by a local authority was interviewed for a monthly magazine in connection with an article on paedophilia. The psychologist was subsequently dismissed on the grounds that the local authority and the citizens in the district no longer had the necessary confidence in him.

In the ombudsman's opinion the psychologist's statements were not unlawful. The ombudsman stated that the effects of lawful statements, including a possible resulting lack of confidence, may form the basis for the use of negative management powers, such as for instance discretionary dismissal; this, however, requires an especially safe basis of evidence. In the light of this, the ombudsman criticised the local authority for failing to have sufficient documentation for the grounds for the dismissal. The ombudsman further criticised the local authority for breaking the provisions on the hearing of parties.
(Case No. 1999-1570-812).

19-4. Dismissal of a social education worker following criticism of the management

A social education worker at a municipal institution sent a letter to her colleagues and the institution's management containing criticism of the management. The ombudsman criticised the management for binding her to secrecy about the letter until a meeting had been held between the management, the social education worker and her union representative.

The management later gave the social education worker an official order to take on a new position at the institution. In the ombudsman's opinion it was very unfortunate that the form of the order was a list of several alternatives, and he considered the order unnecessarily offensive and likely to create concern on the part of the social education worker about her future employment with the local authority. Furthermore, in the ombudsman's opinion the brief deadline for reply gave cause for misgivings.

When the social education worker subsequently did not appear for work, the local authority stopped paying her wages. The local authority considered the employment to be terminated according to the social education worker's application, an assumption that the ombudsman considered to be a matter for severe criticism. The ombudsman also criticised the local authority for not informing the social education worker or her union of the dismissal until the social education worker complained about the case.
(Case No. 2000-2842-812).

19-5. Party hearing in parking charge cases – agreement with local authority that collection of parking charges be suspended during the course of the ombudsman's investigation

A motorist complained that the City of Copenhagen local authority had not heard him before giving him a parking charge. He also complained about the way in which the local authority had given him guidance.

The ombudsman stated that a parking charge is a decision under administrative law. The decision to impose a parking charge is made when the charge is issued and stuck on the vehicle or handed to the motorist. Until the amendment of the Road Traffic Act of 1st June 2000, this would require a hearing of the motorist as a party before the charge could be collected under the Public Administration Act. In a letter to the motorist the local authority had written that the guidance on appeal printed on the back of the charge ticket could "serve as" a party hearing. This was, however, partly legally incorrect and, it turned out, partly inconsistent with the authority's own perception of the legal circumstances.

Furthermore, with no real basis the City of Copenhagen local authority had given guidance to the motorist to the effect that, until the amendment of the Road Traffic Act came into force on 1st June 2001, the ombudsman would take no action in cases concerning parking charges. In the ombudsman's opinion this was a matter for severe criticism. Among other things, the ombudsman referred to the fact that the wording of the guidance was likely to deter the motorist from applying to the ombudsman.

In the light of this case (and a number of other unprocessed complaints about the City of Copenhagen local authority, Copenhagen Parking) a meeting was held in the ombudsman's office. During the course of the meeting the City of Copenhagen local authority stated that the parking department's complaints procedure and reminder system had been tightened.

In order to avoid any problems of authority for the ombudsman during a possible investigation, it was decided that collection in the (relatively few) cases, which the ombudsman decides to investigate, is suspended from the moment the local authority receives the ombudsman's statement. The City of Copenhagen subsequently confirmed this agreement in writing with a view to the possibility of the ombudsman's office making similar agreements with other local authorities. (Case No. 2001-1394-604).

19-6. Extent of a local authority's supervisory obligation under the Water Supply Act. Clarity criteria

A shareholder in a co-operative water company refused to use an external water meter provided by the water company and installed his own indoor meter instead.

On the request of the water company the local authority ordered the shareholder to install the water company's external meter. The order was not obeyed. The shareholder was acquitted at a later criminal case on the grounds that there was a legally installed indoor water meter.

Instead, the water company set the shareholder's consumption in accordance with an estimate. When the shareholder would not pay for this consumption, the water company discontinued the supply of water.

The Consumers Complaints Board did not think that the setting of an estimated consumption was a matter for criticism, and the Environmental Protection Agency and the supervisory board both stated that, basically, the water company was entitled to discontinue the supply of water in the case of non-payment.

The shareholder lodged a complaint with the ombudsman about the fact that the local authority would not report the water company to the police.

The ombudsman stated that the local authority has not neglected its supervisory obligation towards the water company. Among other things, the ombudsman stated that there had been such a degree of doubt as to whether the water company had neglected the provisions of the Water Supply Act that the local authority had been under no obligation to intervene. (Case No. 2000-3368-150).

19-7. Disclosure. Denial of documents' existence

A local authority dismissed a school principal, and the Danish Union of Teachers asked the local authority for disclosure of all documents. The local authority sent some documents to the union and stated (even following a renewed request for disclosure from the union) that there were no other documentation in the case and subsequently no internal notes.

Among other things, the school principal asked for access to a specific note on the local authority's telephone conversations with The National Association of Local Authorities in Denmark concerning the case. The local authority stated that there were no notes in the case except the notes that the school principal had already had access to. When the school principal further specified his request for access to files, the local authority informed him that there was indeed a note concerning contact to the National Association of Local Authorities, but that this note had at no point been a part of the case. The local authority refused to grant access to the note.

In connection with the investigation of a complaint about the dismissal it came to the ombudsman's notice that the local authority might have suppressed or denied the existence of case documents in connection with the requests for access to files. The ombudsman decided to investigate this issue on his own initiative.

The Ombudsman considered it an indisputable fact that two notes in the case with the same dates, including the note to which the school principal had requested access, were part of the documents in the dismissal case. In the ombudsman's opinion the request for access to files made by the National Union of Teachers undoubtedly included both notes, and the school principal's request for disclosure included at least one of the notes.

The ombudsman stated that the local authority had not only been obligated to mention the existence of the notes in its reply to the National Union of Teachers and the school principal, but had also had a duty to incorporate the grounds for refusing the request for disclosure in their written reply. In the ombudsman's opinion the failure to give grounds

was in itself a matter for criticism, but he further stated that the local authority's failure to mention the existence of the two documents when replying to the repeated requests for disclosure from the National Union of Teachers and the school principal was a matter of severe criticism. Finally, the ombudsman stated that the local authority's reply to the school principal (that there were no further documents in the case) indicated a clearly inadmissible suppression and denial of the existence of this note to which he had asked for access.

As substantial mistakes had been made in the case, the ombudsman felt called upon to inform the relevant local council and parliament's Legal Affairs Committee.
(Case No. 2000-0433-401).

19-8. Dismissal of council-employed psychologist

In connection with an evaluation interview with psychologist appointed by the council, a local authority laid down guidelines for the psychologist's future work. Another meeting with the psychologist was held following complaints about his work. At the meeting it was discussed whether the psychologist would resign from his position himself. Following this meeting the psychologist was recommended for dismissal, and a hearing of parties was carried out.

The ombudsman found that information given by the local authority at the first meeting was a verbal warning, which must be considered a decision within the meaning of the Public Administration Act, and he therefore criticised the local authority for its failure to hear the psychologist prior to the warning. The ombudsman also criticised that the psychologist did not receive a written warning first instead of being dismissed, a course of action which would have been in accordance with the local authority's personnel policy. Finally, it was a matter for criticism that, prior to a hearing of parties, the local authority discussed with the psychologist whether he wanted to resign from his position of his own accord, and that the grounds given for the dismissal were inadequate.
(Case No. 2000-1170-813).

19-9. Disclosure, guidance and freedom of speech for public employees

In their reply to a parent's request for access to a critical report on the conditions in a childcare institution, a local authority only gave parts of the report's conclusion to the parent.

The ombudsman stated that it was a matter of severe criticism that the local authority had disclosed all of the report. As the rest of the report's conclusion was strongly critical of the conditions in the institution, the partial access to the conclusion might appear as if the local authority wished to hide something. The transcript disclosed by the local authority erroneously appeared to be the total conclusion, as the transcript gave no indication that several passages had been skipped.

At a meeting with the parents the administration mentioned that any groundless allegations might cause the staff to consider an action for slander.

The ombudsman stated that according to circumstances and in special cases it might be relevant for an authority to give guidance on possible criminal consequences in a case. However, it is of the utmost importance in such cases that the guidance does not appear as an improper threat with the aim of groundlessly keeping back relevant complaints and points of view that have been put forward by the citizens involved. Therefore, the guid-

ance must be given in a strictly legal wording and be so detailed and satisfactory that it covers every eventuality.

The ombudsman criticised that the local authority had issued an official order, which curtailed freedom of speech for the employees and in that context signified that those employees who did not comply with the letter's official order might risk dismissal.
(Case No. 2001-0203-001).

19-10. Local authority's liability for damages in connection with collection of alimony. Obsolescence

A lawyer complained about a local authority's refusal of a compensation claim from a client. The grounds for the claim were the local authority's collection of alimony without a valid maintenance order.

The ombudsman stated that the local authority had made a serious mistake, as the maintenance order had been annulled in consequence of a final separation order. The ombudsman then noted that there was insufficient information for him to be able to ascertain whether the client had suffered a loss as a consequence of the collection. However, the ombudsman was of the opinion that he had no grounds for obtaining any further details, among other things because the demand for compensation would soon be obsolete pursuant to the regulations in the 1908 Act.

The ombudsman recommended that the local authority inform the lawyer immediately as to whether it would waive the right to claim obsolescence during a possible trial (which might be instituted after the expiry of the deadline), or whether the local authority was prepared for the client to institute proceedings now (before the expiry of the deadline). If the local authority waived the right to claim obsolescence during a possible trial, the ombudsman assumed that the local authority would reconsider the case and inform the lawyer of a new decision. The ombudsman was prepared to recommend that the client be granted free legal aid, should he decide to institute proceedings. (Case No. 2001-0545-658).