

Summary

Annual Report 2004

Folketingets Ombudsmand

Parliamentary Commissioner for Civil
and Military Administration in Denmark

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Preface

This booklet summarizes my Annual Report for 2004 to the Folketing (the Danish Parliament).

In 2002, the Parliament decided to introduce a yearly public meeting on the Report at Christiansborg Castle (where the Danish Parliament resides), and the booklet includes my introduction to the public meeting on the 2004 Report.

Part 1 of the Summary contains the presentation of the Annual Report for 2004 to the Legal Affairs Committee.

Part 2 contains information about organisation, staff and office, international relations, travels and visitors, own initiative projects and inspections and other activities and the budget.

Copenhagen, November 2005

HANS GAMMELTOFT-HANSEN

PART 1

Annual Report
2004

The Ombudsman's Presentation of the Annual Report for 2004 at the Legal Affairs Committee's Public Meeting on 2 November 2005

By way of introduction, I would like to thank once again the Legal Affairs Committee for this event. As I have mentioned on previous occasions, the public meeting about the Annual Report is an excellent opportunity to discuss and clarify the functions of the Ombudsman institution and the issues concerning law, administration and the ethics of administration that the cases and the work reflected in the Annual Report touch on invariably.

I will start by briefly introducing the Report and the key figures presented in it. Director General Jens Møller will then present a selection of the more significant cases, and finally Head of Inspections Lennart Frandsen will conclude our brief introduction by presenting the inspections. In order to leave as much space as possible for dialogue and questions, we will confine ourselves to some brief remarks.

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Although the Report only covers the calendar year 2004, it is natural for me to mention the 50th Anniversary of the Ombudsman institution which was celebrated on 1 April and the days immediately before and after. First and foremost, I would like to take this opportunity to thank once again the Danish Parliament for the backing and support which became so evident in connection with the Anniversary. Thus, the fundamental significance to the Ombudsman of the Parliament's support was made clear during the celebration of the Anniversary also.

I will not spend any more time on the Anniversary, but merely mention that we have published two books and hope to complete our trilogy of books published on the occasion of the 50th Anniversary by the end of the year. And I should probably mention that since the Anniversary many of our international

guests have thanked us for a successful event – expressions of appreciation that I would also like to pass on to the Parliament.

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Compared to last year, the only innovation in terms of form in the Annual Report is that this year we have attached a CD-rom. We thereby hope to have created, in a technical sense, a possibility for the Report to become available to yet another level of employees in the State and the municipalities – and preferably also those employees who are in daily contact with the citizens.

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Next, I will go through some of the key figures in the Annual Report for 2004:

The number of new cases in 2004 was 4,093. In 2003, the corresponding number was 4,298.

During the same period, the number of applications from complainants dropped from 3,956 to 3,883; a decrease of 73 cases, or almost 2 per cent.

We have experienced such variations in the number of applications and newly established cases before. From 1998 to 1999 the number of new cases dropped from 3,630 to 3,423. However, the decrease only lasted until 2000, and in 2001 we were, once again, above the 1998 level.

Thus, in the history of the Office there have always been fluctuations in the number of applications and new cases. It has never been possible to explain these minor variations in the number of applications from citizens. In my opinion, they are to some extent a matter of coincidence.

This year, however, the drop in the number of newly established cases can be explained to a wide

extent by the fact that the number of own initiative projects in 2003 was 165 compared to 40 in 2004. This decrease is partly due to the fact that the number of inspection cases has been halved from 46 in 2003 to 23 in 2004. It should be noted that this in no way reflects that inspections have been given lower priority. A level of about 20 annual inspection cases is normal and what we intend; however, for various reasons the number of inspection cases in 2003 was “unnaturally” high.

In 2004 we concluded 3,964 cases. Last year we concluded 4,094 cases.

There are undoubtedly many explanations to the variation in the number of concluded cases also.

The most important and certain is that we here have a way of measuring the utilization of the 23 full-time investigation officer positions estimated in our budgets for 2003 and 2004. In 2003, the actual capacity was 23.06, and in 2004 it was 21.01 – that is to say, two investigation officers less in 2004. The primary explanation to this difference is that we have not done a sufficient job of filling the holes in the organization left by maternity leaves and other leaves of absence et cetera.

This actual reduction of our capacity is also evident from the fact that in 2004 there was a reduction of 190 concluded, investigated cases compared with 2003 (from 1,011 to 921 cases).

I will add, however, that we consider the cases to be increasingly complicated. Under no circumstances will I go so far as to conclude on this basis that the administration’s cases are becoming more complicated in general – obviously, we still only see few of the administration’s total number of cases. But maybe there is a basis for assuming that the citizens – quite naturally – apply to the Ombudsman to an ever larger degree because the complexity of their cases, legally and/or factually, has been increasing steadily in the last fifteen to twenty years.

In 147 of the total 921 investigated cases the Ombudsman voiced a criticism and/or recommendation. This number should be compared with the fact that in 33 cases the authorities chose to resume the treatment of the case as a consequence of the Ombudsman’s request for a statement. The 33 cases are entered in the Report statistics as rejected cases because the Ombudsman discontinued the treatment on this background. But if the cases were included, it would become evident that the Ombudsman’s interference has had immediate consequences in about 19 per cent of the investigated cases.

The number of cases awaiting the Ombudsman’s investigation was 103 in 2004.

The average case processing time was 153 days – a drop compared with 2002 and 2003 when the numbers were 181 and 164 days, respectively. As I mentioned last year, it should probably be added that in my opinion the Office can control the development of this number to a certain degree only. Of course, compared with the fact that we received fewer new cases and also investigated and concluded fewer cases the numbers seem right: a small decrease in the number of cases, but also a shorter case processing time.

I now give the floor to Jens Møller.

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On the lines of my presentations at the previous meetings, I have selected a couple of cases which in our opinion are representative of general and important matters concerning the relationship between citizens and administration. At the last two public meetings I focussed my selection of cases on what is demanded of the case processing and what is demanded of the substance or legality of the decisions made by the administration.

This year, I have selected a couple of cases in which the Ombudsman – as the basis of his understanding of the case – also refers to the concept of *good administrative practice*; that is, the demands made

not according to legislation but to generally accepted norms of administrative ethics concerning what the relationship between citizen and administration should be.

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The case presented on page 498 (case 17-1) is from the Ministry of Foreign Affairs' domain, but on the general level actually concerns important consequences in the area of administrative law which do not rarely arise in connection with citizens' personal appearance at public offices.

During his stay in a foreign country a Danish citizen applied to the local Danish embassy. According to the explanations given by the authorities, the citizen had contacted a family and offered to help arrange the family's reunification case for money. Supposedly, the family had paid the money, but they did not subsequently wish to file a police report.

When the Danish citizen returned to the embassy at a later stage, he was told that he was not welcome on the embassy area and would not be given access, but apart from this could get the service from the embassy that he and everybody else were entitled to.

The complainant did not agree with the embassy's description of the sequence of events.

First and foremost, the complaint to me dealt with whether the embassy had the right to deny the complainant access to the embassy. However, the Ombudsman institution is not suited for clarifying matters concerning proof – therefore, in cases like this where it is disputed what took place, the Ombudsman cannot make a final decision on the crucial question concerning whether the embassy had the right to deny the citizen personal access to the embassy.

Apart from this central problem of the extent to which authorities have the right to establish rules concerning access to and the use of public buildings (*the authority over public buildings*), the case poses a question of no small significance to the daily work of

authorities – that is, to what extent the rules in the Public Administration Act and the Access to Public Administration Files Act about the duty to make notes are to be applied in situations where the citizens are expelled or denied access. How this question is to be answered depends on whether the decision to deny access can be viewed as an *administrative decision* that falls within the meaning of the term in the Public Administration Act.

The Ombudsman stated in the case that in his understanding such decisions are administrative decisions that fall within the meaning of the term in the Act, and it is therefore mandatory to make a note regarding the sequence of events, just as it may also be mandatory to hear parties and give grounds and guidance on appeals, depending on the circumstances.

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The next case I would like to mention here – case 20-2 on page 525 and forward – also dealt with the authorities' access to establish rules concerning use of public institutions. The case comes from the Danish National Hospital, specifically the waiting room at the sexological clinic.

The waiting room is reserved for patients, relatives and others who have business at the clinic. Although the room is not specially designed to promote or exchange information relating to medical treatment, various publications were lying about. Until 2002 there was also material from various patient associations.

In the beginning of 2002 a patient association asked the sexological clinic to place a folder promoting the association in the waiting room. The sexological clinic refused the request. The association complained to the hospital management who maintained the refusal with reference to the hospital's right to regulate the terms of access to the institution – including the matter of what material is to be displayed

– as part of the daily running of the hospital (*the authority over public buildings*, mentioned in the previous case), assuming that the regulation is based on reasonable arguments. The hospital found that the folder which the patient association wanted displayed might affect the patient group negatively, thus complicating the treatment. The regional hospital authority added in connection with the case (and I quote) that *the consideration for the treatment of patients should outweigh the association's wish to display the folder in the waiting room...* The regional hospital authority also wrote in its answers to the Ombudsman that it was irrelevant to implicate a consideration for the association's freedom of speech in the assessment of the case.

The Ombudsman did not agree with this concept of law, and in the case he referred to, among others, Section 77 in the Danish Constitution and Article 10 in the European Human Rights Convention and stated that a consideration for the freedom of speech should be implicated also in cases about the use of the authority over public buildings.

Like the previous case, this case shows that the administration's use of the authority over public buildings should have a legal framework. A framework that, in practice, is not immaterial to the citizens' legal rights.

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Last, I would like to mention case 20-1 which is presented on page 517. In the case, a municipality confirmed to a citizen that it had received two letters from him. (The citizen later complained to the Ombudsman). At the same time, the municipality explained that the letters would be answered in about four weeks along with two previous letters which posed a number of questions regarding a social case that was being treated by the municipality.

After the four weeks, the municipality sent another letter, repeating that the letters would be answered

– now with a new time-limit of approximately four weeks.

However, at the expiration of the time-limit the municipality informed the citizen that after having assessed his applications the municipality now found that the questions posed had already been answered – and as for any questions that the citizen might consider unanswered the municipality added that it had demonstrated its intention of answering, but that it had proven impossible for the municipality to motivate the citizen to specify his questions. Since the municipality saw no opportunity for obtaining satisfactory answers or decisions from the citizen, it stated that it would not be able to answer any further applications.

In consequence of the case the Ombudsman stated that it would have conformed best with good administrative practice if the municipality, while going through the correspondence, had checked up on whether it had previously answered the letters in question as well as some former letters which supposedly had not been answered. Basically, to accord with good administrative practice the authorities should, as far as possible, answer the citizens' questions – obviously with certain exceptions. For instance, one cannot demand that an authority answer a question which was answered recently, or, under normal circumstances, that the authorities give answers that are fully adequate in terms of content to questions that require a quite significant effort from the authorities in order to clarify certain matters.

The Ombudsman recommended that the municipality reopened the case with a view to establishing to what extent the municipality had already answered the questions and letters at issue, and that the municipality consequently made a decision regarding the extent to which the letters/questions ought to be answered.

Lennart Frandsen will now give a brief introduction to the Office's inspections:

In 2004, 27 inspections were performed. The inspections are distributed thus:

- 2 prisons
- 5 county gaols
- 1 Prison and Probation Service hostel
- 1 secure institution for juveniles
- 4 remand centres
- 5 police waiting rooms
- 4 psychiatric hospitals
- 2 homes for the mentally disabled
- 2 public buildings inspected concerning access for the disabled
- 1 municipality

The choice of places inspected and what has been accomplished overall since the present Ombudsman Act was put into force, is explained in more detail in the Annual Report, pages 541 to 646. The only thing that I would like to single out here is that the number of inspections of psychiatric departments has increased from two in 2003 to four in 2004. This is owing to a desire to give higher priority to psychiatry.

As also appears from the Annual Report, the inspections do not only implicate the institution that is being inspected, but also give the Parliamentary Ombudsman occasion to deal with a number of fundamental and general issues raised in connection with inspections.

The cases concerning people from Greenland serve to illustrate this. In later years inspections have been performed at Herstedvester Institution, the Greenlandic ward at Herstedvester Institution, the Greenlandic ward at the Regional Hospital in Vordingborg (now Oringe), and most recently the Greenlandic ward at Århus Psychiatric Hospital.

Among other things, inspections in Greenland of county gaols/remand centres have resulted in a substantial general case concerning the fact that there are nine different regulative bases of detention and that it is unclear which rules apply; for instance concern-

ing the requirements for the physical arrangement of cells et cetera. This was discussed at a meeting between the Legal Affairs Committee and the Parliamentary Ombudsman on 4 November 2004, and recently the Department of Prison and Probation wrote a response which is being treated at present. The Parliamentary Ombudsman also follows the development in the occupation of inmates in prisons in Greenland.

The inspection of the Greenlandic ward at Herstedvester Institution has provided the basis for effecting an arrangement for translating into Greenlandic letters from public authorities and criminal sentences as a service to the Greenlandic inmates who do not understand Danish. The establishment of an arrangement for Greenlandic prison officers to be employed in the ward (as part of a stationing system) was also the Ombudsman's suggestion. I would also mention – as discussed at the meeting on 4 November 2004 as well – that it has now been guaranteed that Greenlandic inmates who are convicted in accordance with the Danish penal code have the opportunity of going on holiday in Greenland along the lines of inmates convicted in accordance with the Greenlandic penal code.

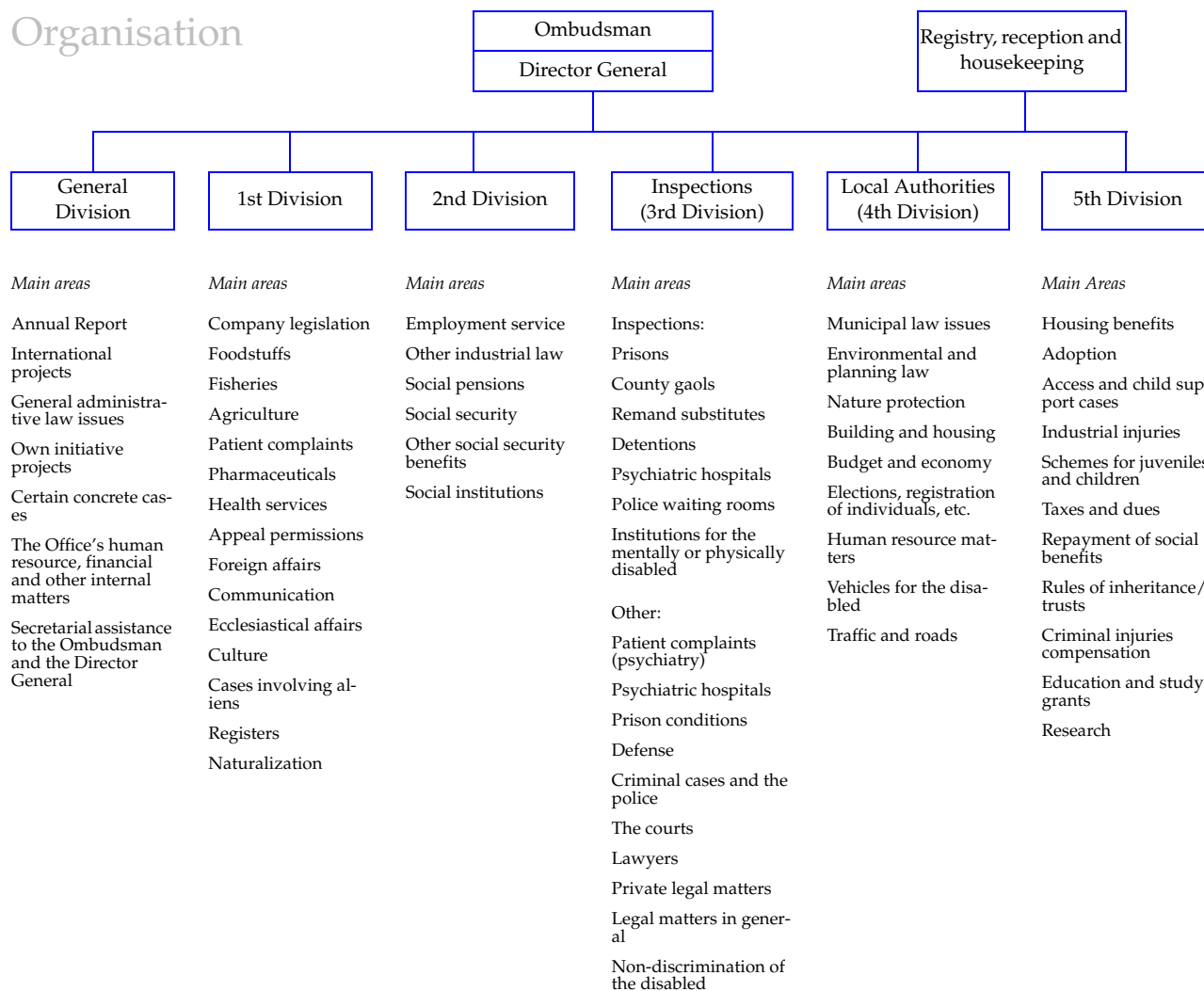
The inspections of the Greenlandic wards at the Regional Hospital in Vordingborg and Århus Psychiatric Hospital have resulted in a case concerning the responsibility of bringing psychiatric patients back to Greenland after their treatment has been concluded, some cases concerning pensions, and most recently the Parliamentary Ombudsman has, in connection with the inspection of Århus Psychiatric Hospital, discovered that the annual holidays for Greenlandic patients at the hospital have been axed. This matter is now being treated by the Greenlandic Ombudsman. Finally, I may mention that questions have been raised concerning the legal basis for compulsory detention of psychiatric patients from Greenland in Denmark.

I mention these cases to illustrate that individual inspections also give rise to questions that do not specifically concern the institution which is being inspected.

PART 2

YEAR
IN
REVIEW

Organisation



Staff and Office

The structure of the Office was as follows:

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

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

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

Mr. Jon Andersen, Deputy Permanent Secretary, Mrs. Vibeke Riber von Stemann, 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 Mr. *Karsten Loiborg*

The 78 employees of my Office included among others 14 senior administrators, 21 investigation officers, 21 administrative staff members and 13 law students.

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International Relations

During 2004, as in previous years, the guests we received had very different backgrounds. However, generally their common goal was to learn more about the (Danish) 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.

Travels and visitors

January

Copenhagen

12 Human rights course participants from Asia and Africa.

Abroad

February

Copenhagen

18 Vietnamese and Chinese course participants via the Danish Institute for Human Rights.

26 Three lawyers from Bhutan in connection with a Danish aid programme on good government, Director of the Legal Affairs Office Kuanley Tshering, District Court Judge Lungten Dubgyur and High Court Registrar Kinley Namgay.

Abroad

March

Copenhagen

16 A parliamentary delegation from Saudi Arabia.

22–26 Two vice-ombudspersons from Indonesia, Ms. Luhulima and Mr. Winarso.

29 Course participants from Vietnam and China via the Danish Institute for Human Rights.

Abroad

29 March–2 April International Relations Director Mr. Jens Olsen took part in a conference on the Ombudsman concept in Alexandria, Egypt. The conference was organised by SIDA and the Swedish Embassy in Cairo.

April

Copenhagen

13 The European Commissioner for Human Rights, Mr. Alvaro Gil-Robles.

Abroad

May

Copenhagen

10 Staff from the Norwegian Ombudsman institution headed by the Norwegian Ombudsman, Mr. Arne Fliflet.

17 The Tasmanian Ombudsman, Mrs. Jan O'Grady.

Abroad

12–13 Head of Division Mr. Morten Engberg attended a seminar on the protection of human rights organised by the European Human Rights Commissioner, in Capadocia, Turkey.

June

Copenhagen

10 A delegation from Ghana.

14–16 A delegation from PICCCR (Palestinian Independent Commission for Citizens' Rights) headed by Commissioner General Mr. Mamdouh Aker.

14–18 A delegation from Jordan headed by the Minister for Information and Communication Technology and for Administrative Development, Dr. Fawaz Zu'bi.

24 A delegation from the Constitutional Commission of Zambia via the Danish Ministry of Foreign Affairs.

25 A course group of Iranian civil servants via the Danish Institute for Human Rights.

Abroad

21 I took part in the celebration of the 24th Anniversary of Home Rule for Greenland, in Nuuk, Greenland.

25–26 I participated in the Founder's Workshop in connection with the 10th Anniversary of the Establishment of the European Ombudsman Institution, in Strasbourg, France.

July

Copenhagen

7 The Ambassador of Bolivia, Señora Barbera Canedo Patiño.

Abroad

August

Copenhagen

4 A group of journalists from Afghanistan via Danida.

17–20 A delegation from Jordan, Judge Abdul Karim Pharaon, Judge Nawal Al Jawhari and Member of Parliament Hashem Quasi.

19 A delegation headed by the Public Prosecutor from Vietnam.

25 A delegation from Vietnam headed by the Vice Minister for Justice, Ms. Le Thi Thu Ba.

Abroad

September

Copenhagen

2 Evaluation team from GRECO (Group of States Against Corruption, Council of Europe).

7 An Iraqi human rights course participant, Maitham H. Shareef Al Gizzy, via the Danish Institute for Human Rights.

20–21 Two persons from the Egyptian NGO National Council for Women, headed by Dr. Fatma Khafagy.

30 A group of human rights course participants from Asia and Central and Eastern Europe via the Danish Institute for Human Rights.

Abroad

7–10 I attended the International Ombudsman Institute's VIII Conference, in Québec, Canada.

October

Copenhagen

6 Mr. Janardan Prasad Tripathi and Mr. Biswa Raj Pandey from the Ministry of Taxation in Nepal.

14–15 Two ombudspersons from Thailand with staff on a study visit.

26 15 judges from Vietnam via the Danish Institute for Human Rights.

Abroad

5–8 Various associates and I took part in a regional conference in Amman, Jordan, in connection with the establishment of an Ombudsman institution in Jordan. Apart from Jordan and Denmark, representatives from other European countries and countries in the region participated.

22 I delivered a lecture to Norsk Selskap for Kirkerett (the Norwegian Canon Law Association), in Oslo, Norway.

26–27 I took part in a Western Scandinavian Ombudsman Meeting, in Reykjavík, Iceland.

November

Copenhagen

2 Seven members of CEMI (the Monitoring Center, an NGO from Montenegro).

3 Members of the Advisory Committee on the Framework Convention for the Protection of National Minorities, Council of Europe.

15 A delegation from Heilongjiang, China.

26 A group of Fellowship students via Danida.

29 Course participants from Cambodia via the Danish Institute for Human Rights.

Abroad

17–18 Head of Section Mrs. Rikke Ilona Ipsen took part in an Ombudsman conference organised by CBSS (Council of the Baltic Sea States), in Warsaw, Poland.

December

Copenhagen

6–10 A delegation from Ghana headed by the Acting Ombudsman of Ghana, Mrs. Anna Bossman.

7 A group of public prosecutors from Vietnam via the Danish Institute for Human Rights.

Abroad

10 I delivered a lecture to the Helsinki Legal Association, in Helsinki, Finland.

Own Initiative Projects and Inspections

Two own initiative projects were concluded in 2004. 23 inspections were performed during the reporting

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

Other Activities

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

At the request of the Minister of Justice and with the approval of the Danish Parliament's Legal Affairs Committee, I have undertaken to chair the Government's Public Disclosure Commission. The Commission's task is to describe current legislation concerning public disclosure and to deliberate on the extent to which changes are required to the Access to Public Administration Files Act and make proposals for such changes. High Court Judge Mr. Oliver Talevski, the High Court of Eastern Denmark, is appointed vice-chairman, and Mr. Jon Andersen, Deputy Permanent Secretary at the Parliamentary Ombudsman Office, is secretary to the Commission.

In the fall of 2004 Mr. Jens Møller, Director General of the Parliamentary Ombudsman Office, was appointed chairman of the Ministry of Justice's Committee on the Electronic Law Gazette. The Committee's task is to examine the legal, administrative and practical problems that will arise in connection with the publication of the Law Gazette in electronic form. The Committee is to evaluate whether law amendments will be necessary, and prepare proposals for any such amendments.

The National Board of Social Services has appointed Director General Jens Møller and Mrs. Bente Mundt, Head of Division at the Parliamentary Ombudsman Office, members of a reference group for a project about the processing of cases concerning the elderly.

Mrs. Kirsten Talevski, Head of Division at the Parliamentary Ombudsman Office, has been appointed member of the Committee on Public Employees' Freedom of Speech and Right to Inform by the Minister of Justice. The Committee's tasks are, among others, to describe the rules in force regarding the freedom of speech of public employees and evaluate whether there is a need for further legislation on the freedom of speech of public employees. The Committee will also go through the rules in force concerning public employees' access to give the press or other external parties information in cases about potentially illegal administration or other misconduct in the public administration, including apparent abuse of public means. Furthermore, the Committee is to consider whether there may be a need for adopting new legislative rules concerning communication of such information to the press. The Committee was set up in 2004.

In the fall, Head of Division Bente Mundt was appointed member of the Committee on Due Course in Cases Concerning Placement of Children by the Ministry of Social Affairs.

Budget 2004

Salary grade		Operating expenses	
Salary for civil servants	6,547,000	Travels, etc.	301,000
Salary for employees under a collective wage agreement	18,493,000	Expenses, visitors to the Office	130,000
Contributions for civil service retirement pensions	726,000	Staff welfare	20,000
Pension contributions	2,048,000	Printing, book binding expenses	551,000
Salary for other temp. workers	156,000	Telephone subsidy	17,000
Maternity reimbursement, etc.	- 421,000	Cost of office space	3,325,000
Wage pools	359,000	Maintenance, fixtures and fittings	753,000
Additional work/overtime	272,000	External services	58,000
Wage drift budget account	1,154,000	Office expenses	557,000
Special holiday allowance	20,000	Library	643,000
Payroll total	29,354,000	Office machines, fixtures and fittings	220,000
		IT services	220,000
		IT operations and maintenance	726,000
		IT purchases	608,000
		Operating budget adjustment acc.	0
		Transfer costs	2,223,000
		Continuing education	691,000
		Subsidy, Ministry of Foreign Affairs	- 713,000
		Operating charges total	10,330,000
		TOTAL	39,741,000

Civil servant retirement pays

Retirement pays for former civil servants	789,000
Benefits	3,000
Civil servant retirement contributions, income	- 735,000
Retirement payments total	57,000

PART 3

CASE
STATISTICS

Complaints Received and Investigated

1. New Cases

4,093 new cases were registered during 2004. The corresponding figure for 2003 was 4,298 new cases.

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

1995	3,030	2000	3,498
1996	2,914	2001	3,689
1997	3,524	2002	3,725
1998	3,630	2003	4,298
1999	3,423	2004	4,093

The numbers of cases for 2002 and 2003 have been corrected in the 2004 Annual Report. The reason is that by mistake the cases treated in the own initiative projects initiated in 2002 and 2003 were left out of the figures in those years' Annual Reports.

3,883 of the total number of 4,093 new cases were complaint cases.

I took up 147 individual cases on my own initiative, cf. Section 17, subsection (1) in the Ombudsman Act.

The Ombudsman may carry out inspections of public institutions and other administrative authorities. Of the 4,093 new cases in 2004, 23 were inspection cases. Most of the inspection cases relate to institutions under the jurisdiction of the police and the prison service (remand centres, county gaols, prisons, etc.) and psychiatric institutions. However, inspections of other administrative authorities were also carried out, e.g. Århus City Hall and Musikhuset

Århus (a municipal concert hall) – both to assess the access for people with disabilities. Furthermore, the Regional Municipality of Bornholm was inspected in November 2004. (The inspection cases are described in more detail in the Annual Report. In addition, all inspection reports are available in Danish on the Ombudsman's website www.ombudsmanden.dk).

1.1. Own Initiative Projects

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

The cases examined in connection with the own initiative projects are not included in the number of cases registered or in the following statistics for cases closed in 2004.

One own initiative project was initiated in 2004. The project concerns an examination of 40 complaint cases from the National Tax Tribunal and is still pending.

Several own initiative projects were initiated in the previous years, and three of these projects were still pending in 2004. One of the projects involved the examination of 75 cases concerning the police authorities' refusal of payment by instalments, postponement or remission of fines. This project was concluded in May 2005, and the report is included in the Annual Report, page 569. Another project, involving the examination of 30 cases from a regional psychiatric patient complaint board, was also concluded in May 2005. The last project, which concerns the examination of 50 cases concerning right of access to documents from the Central Customs and Tax Administration, is still pending.

2. Cases Rejected after a Summary Investigation

3,043 complaints lodged with my Office during 2004 were not investigated for the reasons mentioned below. In 1,492 cases, the complaint had not been appealed to a higher administrative authority and a fresh complaint may therefore be lodged with my Office at a later stage.

The 3,043 cases were not investigated for the following reasons:

Complaint had been lodged too late	98
Complaint concerned judgments or the discharge of judges' official duties	144
Complaint concerned other matters outside my jurisdiction including legislation issues and matters of private law	235
Complaint not clarified or withdrawn	148
Inquiry not involving a complaint	280
Inquiry involved an anonymous or manifestly ill-founded complaint	542
The authority has reopened the case following my preliminary request for a statement	33
Cases on my own initiative and not fully investigated	43
Complaint had been lodged too late with a superior authority	28
Complaint had not been lodged with a superior administrative authority	1,492
<i>Total</i>	<i>3,043</i>

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

I declared myself disqualified from investigating one complaint case in 2004. As High Court Judge Holger Kallehauge declared himself disqualified also, the Legal Affairs Committee assigned the case to High Court Judge Hans Würtzen. Cases in which I have declared myself disqualified are not included in the statistics for the Ombudsman's pending cases, case processing time or closed cases.

Neither the Faroese Lagting, nor the Landsting in Greenland, has asked me to act as ad hoc Ombudsman in 2004.

4. Pending Ombudsman Cases

213 individual cases submitted to my Office before 1 January 2005 were still pending on 1 June 2005. 103 of the pending cases were awaiting my decision, while 110 cases were awaiting responses from the authorities or the complainants.

190 of the pending individual cases were submitted in 2004, and 23 dated from previous years. Some of the pending individual cases required a statement from the relevant authority or the complainant to be closed, while others were awaiting general responses from a complainant or an authority.

As mentioned above, two own initiative projects were also still pending on 1 June 2005.

5. Case Processing Time

As mentioned above, 3,043 complaints were rejected (corresponding to 76.8 per cent of the cases closed in 2004). The majority of these cases were closed within ten days of receipt of the complaint.

921 (23.2 per cent) of the closed cases were subjected to a full investigation. In most of these cases,

the complainant and the authorities involved were notified within ten days that an investigation would be undertaken.

The average processing time for cases subjected to a full investigation in 2004 was 5.1 months (153 days).

■ Tables

Table 1 All cases (regardless of registration date) concluded during the period 1 January – 31 December 2004, distributed per main authority and the result of the Ombudsman’s case processing

Table 1: All concluded cases 2004 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
A. State authorities				
1. Ministry of Employment				
Department of Employment	13	9	3	1
Labour Market Appeal Board	33	8	25	0
Directorate General for Employment and Placement	8	6	2	0
Working Environment Appeal Board	2	1	1	0
The Labour Market Occupati- onal Diseases Fund (AES)	1	1	0	0
Danish Labour Market Supplementary Pension (ATP)	4	2	2	0
Labour Market Councils, total	11	9	1	1
Public Employment Services	9	9	0	0
Danish Working Environment Authority	4	4	0	0
The National Directorate of Labour	8	8	0	0
Contact Point Denmark	1	1	0	0
LD Pensions	1	1	0	0
National Board of Industrial Injuries	21	21	0	0
<i>Total</i>	116	80	34	2

Table 1: All concluded cases 2004 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommendation etc.	Criticism, recommendation etc.
2. Ministry of Finance				
Department of Finance	4	3	0	1
Financial Administration Agency	1	1	0	0
State Employer's Authority	4	1	2	1
The Palaces and Properties Agency	2	2	0	0
The Danish Agency for Govern- mental Management	1	1	0	0
The Christiania Committee	1	0	0	1
<i>Total</i>	13	8	2	3
3. Ministry of Defence				
Department of Defence	13	10	2	1
The Air Force	2	2	0	0
Royal Danish Defence College	2	1	1	0
Defence Command Denmark	3	2	0	1
Regiment	1	1	0	0
Admiral Danish Fleet	1	1	0	0
<i>Total</i>	22	17	3	2
4. Ministry of the Interior and Health				
Department of the Interior and Health	62	35	24	3
Regional State Authorities, total	43	37	6	0
Regional State Authority supervision of local councils	58	33	23	2
(Regional) Supervisory Boards, total	1	1	0	0
Danish Medicines Agency	3	3	0	0
National Board of Health	11	9	1	1

Table 1: All concluded cases 2004 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
Medical Health Officers, total	1	1	0	0
National Board of Patient Complaints	40	25	13	2
Psychiatric Patient Complaint Board, total	3	3	0	0
<i>Total</i>	222	147	67	8
5. Ministry of Justice				
Department of Justice	71	44	21	6
The Danish National Board of Adoption	1	1	0	0
The Department of Private Law	111	51	56	4
Civil Affairs Agency	11	3	8	0
Data Protection Board	13	11	2	0
Danish Prison and Probation Service	207	130	67	10
State prisons	74	63	8	3
County gaols	78	52	16	10
Prison and Probation Service hostels	1	0	0	1
Prison and Probation Service subdivision	1	1	0	0
Criminal Injuries Compensation Board	7	1	3	3
Danish Medico-Legal Council	1	1	0	0
Director of Public Prosecutions	43	28	15	0
The National Commissioner	15	12	2	1
Chief constables	81	59	8	14
Public prosecutors, total	73	46	24	3
<i>Total</i>	788	503	230	55

Table 1: All concluded cases 2004 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommendation etc.	Criticism, recommendation etc.
6. Ministry of Ecclesiastical Affairs				
Department of Ecclesiastical Affairs	20	18	1	1
Bishops	3	3	0	0
Sexton's Office	1	1	0	0
Parish councils	5	5	0	0
<i>Total</i>	29	27	1	1
7. Ministry of Culture				
Department of Culture	6	5	1	0
The Library Book Royalties	1	1	0	0
Danish National Library Authority	1	1	0	0
DR (Danish Broadcasting Corporation)	12	10	2	0
TV 2 Region	1	1	0	0
Danish Film Institute	1	1	0	0
The Royal Library	1	1	0	0
The Danish Cultural Heritage Agency	2	1	1	0
Regional archive	1	1	0	0
Danish State Archives	1	1	0	0
<i>Total</i>	27	23	4	0
8. Ministry of Environment				
Department of Environment	11	6	5	0
National Survey and Cadastre	1	1	0	0
Environmental Protection Agency	9	6	1	2
Nature Protection Board of Appeal	37	16	21	0

Table 1: All concluded cases 2004 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
Forest and Nature Agency	22	19	2	1
Forest district	1	1	0	0
<i>Total</i>	81	49	29	3
9. Ministry of Family and Consumer Affairs				
Department of Family and Consumer Affairs	2	2	0	0
The Family Agency	25	9	14	2
The National Consumer Agency	1	1	0	0
The Consumer Ombudsman	1	1	0	0
<i>Total</i>	29	13	14	2
10. Ministry of Refugee, Immigration and Integration Affairs				
Department of Refugee, Immigration and Integration Affairs	316	238	73	5
Refugee Board	37	37	0	0
Immigration Service	137	127	8	2
<i>Total</i>	490	402	81	7
11. Ministry of Food, Agriculture and Fisheries				
Department of Food, Agriculture and Fisheries	9	7	2	0
Danish Institute of Fisheries Research	1	0	1	0
Danish Directorate for Food, Fisheries and Agri Business	9	5	4	0
The Fisheries Inspectorate	1	1	0	0
Genetic Resources Committee	1	1	0	0
Danish Plant Directorate	1	1	0	0
<i>Total</i>	22	15	7	0

Table 1: All concluded cases 2004 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommendation etc.	Criticism, recommendation etc.
12. Ministry of Science, Technology and Innovation				
Department of Science, Technology and Innovation	25	19	5	1
Cirius Denmark (international education and training authority)	1	0	1	0
Risø National Laboratory	1	0	1	0
National IT and Telecom Agency	2	2	0	0
Learning Lab Denmark	1	0	1	0
Danish National Research and Education Buildings	1	1	0	0
The Danish Research Council for the Social Sciences	1	1	0	0
The Danish Committees on Scientific Dishonesty	3	3	0	0
Universities and institutions of higher education	33	28	5	0
<i>Total</i>	68	54	13	1
13. Ministry of Taxation				
Department of Taxation	15	15	0	0
National Income Tax Tribunal	17	13	4	0
Central Customs and Tax Administration	35	18	13	4
Regional Customs and Tax Administration, total	31	24	5	2
Assessment authorities (motor vehicles)	1	1	0	0
<i>Total</i>	99	71	22	6

Table 1: All concluded cases 2004 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
14. Ministry of Social Affairs				
Department of Social Affairs	14	12	1	1
Social Appeals Board	103	58	39	6
National Social Security Agency	22	21	1	0
(Regional) Social Boards of Appeal, total	252	122	117	13
<i>Total</i>	392	213	159	20
15. Prime Minister's Office				
Department of the Prime Minister's Office	13	10	2	1
The High Commissioner of the Faroe Islands	1	1	0	0
The High Commissioner of Greenland	2	2	0	0
<i>Total</i>	16	13	2	1
16. Ministry of Transport				
Department of Transport	20	15	3	2
DSB (national railway company)	3	1	1	1
Road Safety and Transport Agency	6	3	2	1
Danish National Railway Agency	1	1	0	0
The complaints boards for allotment of places of call in harbours	1	1	0	0
Civil Aviation Administration	1	1	0	0
Road Transport Council	8	2	4	2
<i>Total</i>	40	24	10	6

Table 1: All concluded cases 2004 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
17. Ministry of Foreign Affairs				
Department of Foreign Affairs	17	11	5	1
Danish delegations abroad	2	2	0	0
<i>Total</i>	19	13	5	1
18. Ministry of Education				
Department of Education	14	13	0	1
National Authority for Institutional Affairs	13	5	8	0
National Education Authority	15	10	5	0
Student's Grants and Loan Scheme Appeal Board	7	1	5	0
State Educational Grant and Loan Agency	5	5	0	0
Adult education center (VUC)	3	3	0	0
Various institutions of higher education	1	1	0	0
The Complaints Board for Extensive Special Education	2	2	0	0
<i>Total</i>	60	40	18	2
19. Ministry of Economic and Business Affairs				
Department of Economic and Business Affairs	12	7	5	0
Danish Commerce and Companies Agency	5	5	0	0
National Agency for Enterprise and Construction	5	3	2	0
Commercial Appeal Board	1	1	0	0
Danish Consumer Agency	1	1	0	0
Danish Competition Council	4	4	0	0
Danish Energy Authority	4	3	1	0
Energy Board of Appeal	3	2	1	0
Danish Energy Regulatory Authority	5	5	0	0

Table 1: All concluded cases 2004 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommendation etc.	Criticism, recommendation etc.
Danish Financial Supervisory Authority	1	1	0	0
Danish Patent and Trademark Office	1	1	0	0
The Danish Safety Techno- logy Authority	1	1	0	0
Danish Maritime Authority	2	2	0	0
<i>Total</i>	45	36	9	0
<i>State authorities, total</i>	2578	1748	710	120

Table 1A: All concluded cases 2004 Authority etc.	Cases in total	Cases Rejected	Investigated	
			No Criticism	Criticism
A.State authorities	2578	1748	710	120
B. Local government authorities	929	839	63	27
C. Other authorities under the jurisdiction of the Ombudsman	1	0	1	0
D. Administrative authorities under the jurisdiction of the Ombudsman, total	3508	2587	774	147
E. Institutions etc. outside the jurisdiction of the Ombudsman, total	261	261		
F. Cases not related to specific institutions etc.	195	195		
<i>Year total</i>	3964	3043	774	147

● Graphics

Figure 1

Number of cases registered for the past ten years

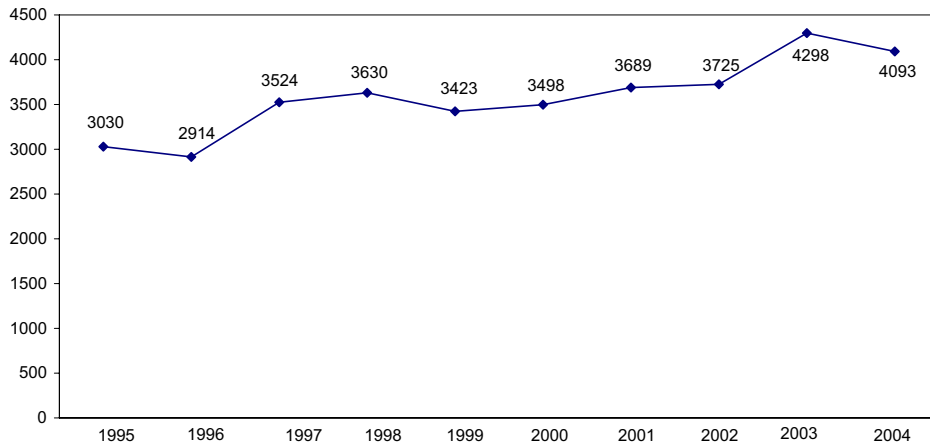


Figure 2

Categories of cases investigated to conclusion (2004)

A. Case processing	10.6 %
B. Case processing time	5.0 %
C. Services	6.3 %
D. General.....	6.4 %
E. Decisions.....	71.1 %

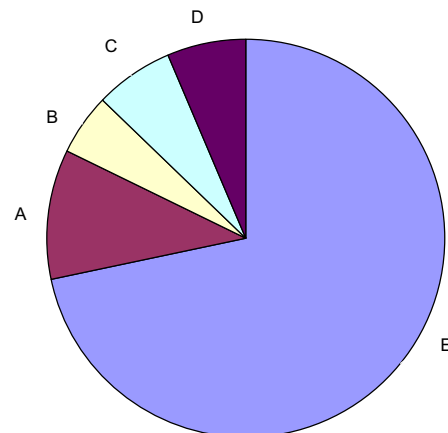


Figure 3
 Categories of cases in which
 criticism or recommendations
 were expressed (2004)

A. Decisions.....	35.4 %
B. Case processing time	5.4 %
C. Services	1.4 %
D. General.....	24.5 %
E. Case processing	33.3 %

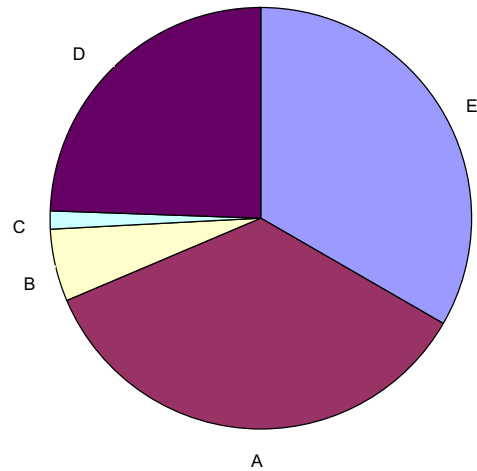


Figure 4
 Cases rejected, in categories (2004)

A. Decisions.....	55.1 %
B. Services.....	1.4 %
C. Case processing	11.2 %
D. Miscellaneous.....	10.8 %
E. Case processing time	14.5 %
F. General.....	7.0 %

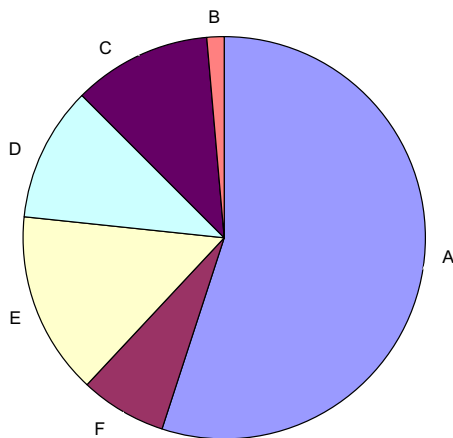


Figure 5

Cases closed, in categories (2004)

A. Social benefits	26.2 %
B. Environment, building and housing	6.9 %
C. Taxation	2.9 %
D. Other matters	9.7 %
E. Judiciary matters, etc.	43.9 %
F. Education, science, church and culture	4.0 %
G. Human resource matters, etc.	6.3 %

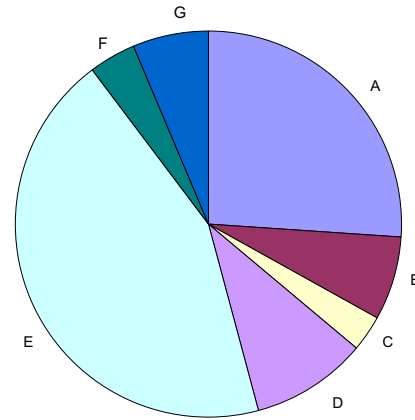


Figure 6

Reasons for rejection, in categories (2004)

A. Lodged too late	3.2 %
B. Judgments.....	4.7 %
C. Outside jurisdiction.....	7.7 %
D. Final rejection – unused channel of complaint	0.9 %
E. Complaint not sufficiently defined	4.9 %
F. Inquiries without complaint.....	9.2 %
G. Other inquiries.....	17.8 %
H. Reopened after hearing	1.1 %
I. Own initiative	1.4 %
J. Preliminary rejection – unused channel of complaint	49.0 %

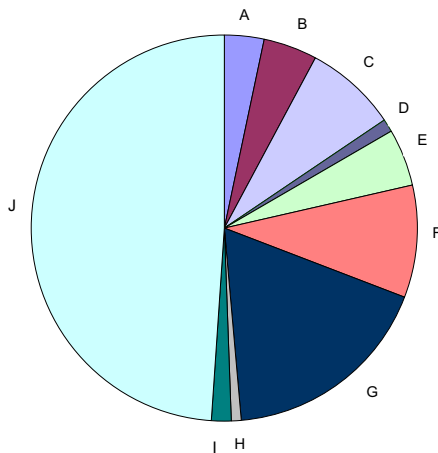
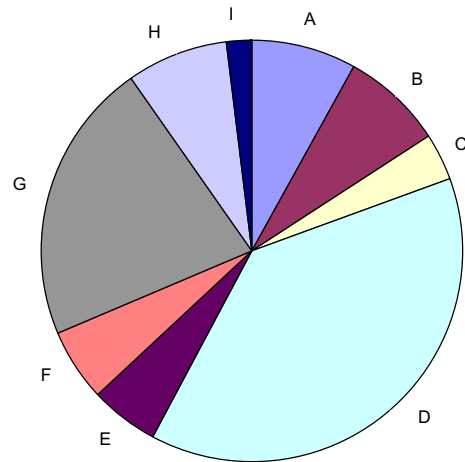


Figure 7

Total of municipal cases closed in 2004,
in categories

A. Human resource administration.....	8.0 %
B. Taxation	7.9 %
C. Schools and culture.....	3.5 %
D. Social benefits and health	38.4 %
E. Social and psychiatric services.....	5.1 %
F. Hospitals.....	5.8 %
G. Technology and environment	21.6 %
H. Other administrative bodies.....	7.7 %
I. Various.....	2.0 %



Part 4

SUMMARIES

1. Ministry of Employment

Of 116 cases closed in 2004, 36 were investigated. Criticism was expressed in two cases. One case is summarized below.

1. Dismissal on the grounds of anticipated cost-cutting

Giving of grounds

A job centre employee was dismissed on the grounds of anticipated cost-cutting requirements during the following year. The reason for anticipating cost-cutting requirements was the Budget, which proposed cuts within the employment and company services sector.

The Ombudsman did not criticise that the dismissal, which occurred before the Appropriation Act had been passed, had been made on the background of anticipated cost-cutting requirements.

The selection of the employee as one of those who had to be dismissed was made with reference to his

reluctance to act on his own initiative. In the Ombudsman's opinion, information explaining the background to this assessment should have been obtained in the case, including specific details illustrating how this reluctance to act on his own initiative manifested itself.

The Ombudsman also criticised that the grounds given for the dismissal decision did not specify that it was the notice rules of the Salaried Employees Act which had been applied. (J.no. 2002-3629-831).

2. Ministry of Finance

Of thirteen cases closed in 2004, five were investigated. Criticism was expressed in three cases. Two cases are summarized below.

1. Refusal to disclose of the government climate strategy

A fund lodged a complaint against the Ministry of Finance, which had refused access to the files of a committee working on the government's climate strategy. The Ministry of Finance chaired the committee.

The Ombudsman agreed with the Ministry of Finance that the committee was an independent authority within the meaning of the Access to Public Administration Files Act. On that background, he

could not criticise that the Ministry of Finance exempted notices of meetings, notes etc. from the committee meetings from disclosure. The Ombudsman did not believe the background notes prepared by the authorities represented on the committee could be exempted from disclosure pursuant to Section 7 of the Access to Public Administration Files Act concerning "internal documents".

On the other hand, the Ombudsman agreed with the Ministry of Finance that draft chapters, background notes, policy proposals etc. which had been prepared for presentation of the committee's work to the ministers could be exempted from disclosure pursuant to Section 10, subsection (1) of the Access to Public Administration Files Act.

The Ombudsman did not agree with the Ministry of Finance that information about projections or assessments of future circumstances generally is not subject to the extraction obligation. To the extent the

documents exempted pursuant to Section 10 and Section 10, subsection (1) in the Access to Public Administration Files Act included significant statements or evaluations from external sources, these were in the Ombudsman's opinion subject to the extraction obligation.

The Ombudsman recommended that the Ministry of Finance reconsider the case and make a fresh decision in the light of his comments. (J.no. 2003-1242-101).

2. Disclosure of director contracts in general Personnel Administration case

The Personnel Administration refused a journalist's request for access to director contracts included in a general case. The reason given by the Administration was that contracts in personnel cases may be exempted from disclosure pursuant to Section 2, subsections (2) and (3) of the Access to Public Administration Files Act and that decisive importance must be attached to the considerations behind the provision in Section 2 when considering whether to grant access to the files of the general case. The refusal was made pursuant to Section 13, subsection (1.6) of the Access to Public Administration Files Act. Subsequently 27 directors granted access to their contracts.

The Ombudsman stated that the circumstances behind directors' final salaries may be exempted from disclosure pursuant to Section 2. When assessing whether a request could be refused pursuant to Section 13, subsection (1.6), the Personnel Administration should have obtained a statement from the directors in question. As the journalist had himself sub-

sequently contacted the directors, the Ombudsman took no further action on this issue.

The Ombudsman recommended that the Personnel Administration reconsider the case with regard to the contracts to which the relevant directors had not granted access to establish whether access could be granted to parts of the contracts.

Furthermore, the Ombudsman criticised the grounds given for the refusal and the Personnel Administration's failure to comply with the ten day deadline in Section 16, subsection (2) of the Access to Public Administration Files Act.

In a letter of 2 November 2004, the Personnel Administration informed the Ombudsman that it had taken note of his statement and was reconsidering the case as recommended. In a letter of 26 April 2005, the Administration informed the Ombudsman that the complainant had now been granted access to the remaining director contracts in toto. (J.no. 2003-3629-801).

3. Ministry of Defense

Of 22 cases closed in 2004, five were investigated. Criticism was expressed in two cases. One case is summarized below.

1. Allowance for defence personnel stationed abroad

In 1999, the Ministry of Defence adjusted the allowance for personnel stationed abroad. For some of the personnel, this adjustment resulted in a considerable reduction of their allowance. For personnel who were already stationed abroad when the adjustment came into force, the Ministry later readjusted the child allowance which formed part of the foreign allowance. As a result the former child allowance rates were to be applied until the end of 2001. This period was later extended until 1 November 2002.

The Ombudsman criticised that the Ministry of Defence did not inform all personnel affected by the adjustment in an appropriate way and with reasonable notice. He further criticised that the Ministry in connection with the readjustment of the child allowance failed to consider the justified expectations likely to have been formed by at least some of the personnel who had been ordered abroad, but not yet sent out, before the adjustment came into force.

The Ombudsman recommended that the Ministry of Defence reconsider the case. (J.no. 2002-1079-811).

4. Ministry of the Interior and Health

Of 222 cases closed in 2004, 75 were investigated. Criticism was expressed in eight cases. Two cases are summarized below.

1. Case processing time at the Patients' Board of Complaints and the Board's failure to provide information about the progress of the case

A health sector employee, who was the subject of a complaint to the Patients' Board of Complaints, lodged a complaint with the Ombudsman about the Board's case processing time.

The Ombudsman stated that a total case processing time of almost 20 months afforded grounds for criticism.

Referring to his earlier investigation of 60 cases from the Patients' Board of Complaints, the Ombuds-

man asked for further information about the case processing times at the Board and whether it had introduced procedures to ensure that the processing time was not unnecessarily prolonged for cases requiring the procurement of statements from several unconnected experts.

The Ombudsman criticised that the Patients' Board of Complaints had failed to comply with Items 206 and 207 in the Guide to the Public Administra-

tion Act issued by the Ministry of Justice (1986). In this connection, he asked the Board to provide further details about the procedure for notifying the parties in cases which the Board – according to informa-

tion received – had introduced as a result of the Ombudsman’s investigation of 60 cases from the Board, and when this procedure had been implemented. (J.no. 2004-1255-400).

2. Disclosure of documents concerning marketing approval and other registration documentation for drug

Hearing of parties

On behalf of a client, a lawyer lodged a complaint against the Ministry of the Interior and Health, which had endorsed the Danish Medicines Agency’s refusal to disclose documents concerning the approval of a drug.

The file showed that the Danish Medicines Agency in connection with its consideration of the disclosure request had obtained a statement from the lawyer representing the company which had originally applied for approval of the drug.

The Ombudsman criticised that the Danish Medicines Agency had not considered whether the parties should be heard about the statement obtained, and

that the Agency, if relevant, had failed to hear the parties before making a decision on the disclosure case. He further criticised that the Ministry of the Interior and Health had not evaluated to what extent this failure to hear the parties should influence the Ministry’s further consideration of the case.

The Ombudsman recommended that the Ministry reconsider the case in order to make such an evaluation and make a fresh decision on the case.

The Ministry reconsidered the case, heard the parties and made a fresh decision. Hereupon, the Ombudsman took no further action. (J.no. 2003-3968-401).

5. Ministry of Justice

Of 788 cases closed in 2004, 285 were investigated. Criticism was expressed in 55 cases. Five cases are summarized below.

1. Refusal of compensation to assault victim because of the victim’s failure to contribute to the elucidation of the case

The Compensation Board (Violent Crimes) refused to award compensation to a young man who had been knifed during an attack.

In its refusal, the Compensation Board emphasised that the young man had failed to contribute to the elucidation of the case because his father, accord-

ing to information from the police, had contacted the police and stated that his son wished to withdraw his statement. The Board subsequently refused to reconsider the case on the grounds that there was no proof that the son had been the victim of a criminal offence

because his statement to the police had been withdrawn.

The Ombudsman criticised that the Compensation Board had not heard the young man as a party about the information in the police report material, which had decisive influence on the refusal, before making its decision. In addition, he considered it a matter for criticism that the Board had failed to examine the details of the case, since the Board based its refusal on the withdrawal of the statement to the police at the father's request. In the Ombudsman's opinion, the Board could not without further proof assume that the father had acted on behalf of the son and that it was therefore reasonable to let the son suffer the consequences. Accordingly, he found that the Board had

not obtained an adequate basis for making its decision when refusing the compensation claim.

The Ombudsman further criticised the Board's failure to elucidate the details of the case on the background of approaches from the young man's lawyer. In the Ombudsman's opinion, the Board consequently had not had an adequate basis for refusing to reconsider the case. He also considered the Board's refusal of compensation on the grounds that a criminal offence had not been proven unjustified.

Hereupon, the Ombudsman recommended that the Compensation Board reconsider the case, as he believed the Board's refusals to do so were unwarranted. (J.no. 2002-2045-660).

2. Use of waiting room as sleeping quarters

The Ombudsman received information that a prisoner in custody had had to sleep the night in a police station waiting room before he was brought before the court. The Ombudsman decided to take up the case on his own initiative.

The Ombudsman obtained information from the chief constable about the background to the prisoner's being placed in the waiting room and statements from the chief constable, the National Commissioner of Police and the Ministry of Justice about the use of a waiting room as sleeping quarters.

The Ombudsman stated that he understood the statements by the chief constable, the National Commissioner of Police and the Ministry of Justice to im-

ply that in general the authorities take the view that police waiting rooms cannot be used as sleeping quarters. The Ombudsman declared himself in agreement with this view.

In the circumstances, the Ombudsman did not believe he had fully adequate grounds for criticising the chief constable for the use of the waiting room in the specific case. Among other things, he referred to the fact that at the time of the incident the county gaol was overcrowded and there was no room in gaols nearby as well as to the special situation facing the police and the Prison Service because of EU meetings in the metropolitan area. (J.no. 2001-2411-819).

3. Police civil servant's right to make public statements

A deputy detective superintendent at the National Commission of the Danish Police in charge of the investigation of a murder case spoke publicly about a shortage of personnel to investigate the case. A dep-

uty assistant commissioner of police, also at the National Commission of the Danish Police, informed the deputy detective superintendent that he was not allowed to speak to the press about internal affairs in

a department under the National Commission of the Danish Police. When the deputy detective superintendent asked if he had been “gagged”, the deputy assistant commissioner confirmed this.

Pursuant to the provision in Section 17, subsection (1) of the Ombudsman Act, the Ombudsman initiated an investigation. He made a general statement about the freedom of expression of public employees and said about the specific case that the deputy assistant commissioner did not have the right to restrict the deputy detective superintendent’s access to

speak to the press in the way he had done. The Ombudsman considered it unfortunate that the National Commissioner of Police had not made a comprehensive and legally correct statement on the case on the basis of the rules applying to the freedom of speech of public employees.

The Ombudsman noted that the National Commissioner of Police had undertaken to pay attention to the importance of ensuring that official statements in cases such as the present are conveyed with adequate precision in future. (J.no. 2003-2449-815).

4. Refusal of employment as policeman and disclosure of test documents in the form of copies

An applicant lodged a complaint because he had been refused employment as a policeman on probation five times. Part of the employment procedure consisted in a team test and the assessment was marked with crosses on a form.

The Ombudsman stated that the applicant should have been heard as a party about the assessment form and that the duty to make notes had not been adequately observed. Applicants who were assessed as unsuitable could not be employed. The party hearing therefore had to occur before the final decision that an applicant was unsuitable for employment was made. The Ombudsman also criticised the grounds given in three of the refusals.

In view of the authorities’ information about changes to the procedure, the Ombudsman took no

further action in the matter, apart from recommending that a note about the background to the assessment of the team test was prepared in all cases.

In addition, the applicant complained about a refusal to disclose some of his report exercises in the form of copies. The Ombudsman stated that in normal circumstances the right of access pursuant to Section 15, subsection (1) of the Access to Public Administration Files Act could not be restricted on the basis of purely resource-related considerations and that the grounds given for the refusal were inadequate. However, because of the special circumstances in connection with the conducting of tests, the Ombudsman took no further action in the matter. (J.no. 2002-0406-810).

5. The importance of post-mortem statement in cases involving suicide or death in Prison Service institutions

After a death in a county gaol, the Ombudsman among other things criticised that the Directorate of Prisons and Probation took note of a report of the

death without having seen the preliminary post-mortem statement and before a final conclusion to the post-mortem statement was available. Referring to

the purpose of the Prison Service's internal investigations of deaths in its institutions and to the inquisitorial principle of administrative law, the Ombudsman stated that existing (or anticipated) post-mortem statements must generally be obtained before such investigations are closed.

The Ombudsman also pointed out that in several earlier cases he had criticised the Directorate for closing suicide or death cases without awaiting the final

post-mortem statements and noted that the facts of the present case demonstrated the importance of awaiting the final post-mortem result.

The gaol was also criticised for closing its investigation of the death before the final post-mortem result was available.

The Ombudsman found no grounds for criticising the staff behaviour or other circumstances in connection with the death. (J.no. 2003-0447-626).

6. Ministry of Ecclesiastical Affairs

Of 29 cases closed in 2004, two were investigated. Criticism was expressed in one case. One case is summarized below.

1. Authority disqualification of ministry in case concerning promotion of minister's spouse to a higher grade

Until 2004, the Ministry of Ecclesiastical Affairs was able to promote a rector to Grade 34 by agreement with the Clergymen's Association, provided the rector had been receiving terminal salary for two years and the rector's official circumstances were in every respect satisfactory. Promotion could only happen when a classification within this grade became vacant and generally promotion was possible when a rector had reached or was near the age of 60. In 2004, the Ministry of Ecclesiastical Affairs put a stop to such grade promotions for cost-cutting reasons.

In connection with the consideration of a rector's application for promotion to Grade 34, the Minister for Ecclesiastical Affairs advised the Ministry that her own spouse, who was a rector, had not been promoted to Grade 34, even though he was 67 years old and had been receiving terminal salary since 1989. Subsequently, the Ministry established that five other rectors were in a similar situation. The Minister for

Ecclesiastical Affairs declared herself disqualified in connection with the consideration of her spouse's case and the Ministry of Ecclesiastical Affairs decided to promote the Minister's spouse and the five other rectors to Grade 34 with effect from the time when each of them reached the age of 60.

The Ombudsman took up the case on his own initiative.

The Ombudsman stated that, on the face of it, it was not entirely certain that ministry staff would be completely unbiased when considering a case whose outcome was of considerable financial significance to a person as closely related to their top manager as a spouse. The Ministry of Ecclesiastical Affairs as an authority was therefore disqualified in relation to the issue of promotion of the Minister's spouse to Grade 34 and should have arranged for the case to be considered by another ministry. In the Ombudsman's opinion, it was an error that this had not happened

and for that reason he regarded the Ministry of Ecclesiastical Affairs' consideration of the case as regrettable. The Ombudsman did not, however, find

grounds for recommending that the Ministry reconsider the case. (J.no. 2004-1964-811).

7. Ministry of Culture

Of 27 cases closed in 2004, four were investigated. No criticism was expressed in any of the cases. One case is summarized below.

1. Criticism of employee

The decision concept

An employer expressed criticism of an employee's manners. The criticism did not involve any sanction and did not mention negative consequences in relation to the employment.

The Ombudsman stated that even though a note about the criticism had been placed on the employee

file, there was a strong case for not regarding the criticism as a decision within the meaning of the Public Administration Act. (J.no. 2004-0990-814).

8. Ministry of Environment

Of 81 cases closed in 2004, 32 were investigated. Criticism was expressed in three cases. Three cases are summarized below.

1. Hearing of parties in connection with change of environmental approval

A local authority granted environmental approval to an amusement park. A neighbour of the amusement park lodged a complaint with the Environmental Protection Agency about the approval. The Agency endorsed the environmental approval, but among other things tightened a requirement in relation to noise.

In the Ombudsman's opinion, the rules of the Environmental Protection Act concerning advance notification had not been infringed, but he criticised that the Environmental Protection Agency had not heard the amusement park as a party. The Ombudsman recommended that the Environmental Protection Agency reconsider the case. (J.no. 2002-0594-104).

2. Refusal of permission to build piggery

Authority. Giving of grounds. Guidance on appeal

A farmer asked a local authority for permission to build a piggery.

The local authority refused permission because the distance from the piggery to a proposed housing sector was less than 300 m.

The Ombudsman stated that neither a regional plan nor a proposed municipal plan provided sufficient authority for a refusal. A refusal presupposed an adopted municipal plan and that did not exist until after the refusal had been made. However, as the

municipal plan was adopted on the same day as the refusal was made, in the circumstances the Ombudsman took no further action in the matter.

The Ombudsman further stated that the grounds given for the refusal and the guidance on appeal provided by the local authority were inadequate. In addition, the National Forest and Landscape Agency had not adequately informed the farmer about the case consideration. (J.no. 2003-2721-110).

3. Party status in connection with consideration of environmental approval for a trap shooting range

A neighbour of a trap shooting range lodged a complaint because he was not treated as a party in connection with the local authority case concerning environmental approval for the shooting range.

The file showed that the local authority had provided information about the case consideration to 233 persons living nearby and that many were affected by the noise from the shooting range. The neighbour and five others nearby lived in separate and isolated houses around the shooting range and according to noise measurements they would all be affected by the highest noise level. Although this noise level was within the allowed limit for new shooting rang-

es, the Ombudsman found that the high noise level differentiated these six neighbours from the very large number of other persons living nearby who according to information received were less affected.

Because of the extensive and intense noise impact, the Ombudsman took the view that the neighbour's interest in the case was sufficiently significant and individual for him to be regarded as a party within the meaning of the Public Administration Act. This view was not altered by the fact that the distance between the shooting range and the neighbour's home was approximately 500 metres. (J.no. 2002-0617-110).

9. Ministry for Family and Consumer Affairs

Of 29 cases closed in 2004, sixteen were investigated. Criticism was expressed in two cases. No cases are summarized.

10. Ministry of Refugee, Immigration and Integration Affairs

Of 490 cases closed in 2004, 88 were investigated. Criticism was expressed in seven cases. Six cases are summarized below.

1. Case processing time at the Ministry of Refugee, Immigration and Integration

Affairs in connection with application for reconsideration of residence permit case

On behalf of clients, a lawyer asked the Ministry to reconsider a residence permit case. The lawyer repeatedly contacted the Ministry to remind them of the case. The Ombudsman criticised that – apart from a single telephone call to the lawyer’s office – the case was not processed for approximately 16 months, the Ministry did not respond to the lawyer’s reminders

and the Ministry also failed to notify him that the case was making slow progress or inform him why no decision was being made on the case. The Ombudsman was later advised by the Ministry that applications for reconsideration of cases like the present must now as a starting point be processed within a month. (J.no. 2003-2989-643).

2. Case processing time at the Ministry of Refugee, Immigration and Integration

Affairs in connection with application for reconsideration of humanitarian residence permit case

A lawyer lodged a complaint with the Ombudsman about the case processing time at the Ministry of Refugee, Immigration and Integration Affairs in connection with reconsideration of a humanitarian residence permit case.

The Ombudsman investigated the case and found that the case consideration, including the case processing time, provided grounds for severe criticism.

The total case processing time was 33 months – a duration which the Ombudsman after reviewing the case found quite unacceptably long.

The Ministry had not looked at the case for 9½ months. Only at a late stage of the case process did the Ministry initiate an investigation into which

treatment options the applicant, who was ill, had in his own country. The Ministry’s investigations of this were very limited and, apart from just over two months in total, the case processing time was solely due to the Ministry itself.

In addition, it took the Ministry a very long time to decide whether the reconsideration application should be given delaying effect with regard to the departure deadline.

Finally, the Ministry had failed to reply to numerous reminders, to notify the lawyer that the case was making slow progress and to inform him why no decision could be made on the case. (J.no. 2003-4500-600).

3. Refusal of visa

Incorrect information about the legal basis of the decision and about relevant practice

A woman lodged a complaint because her visa extension application had been turned down.

The Ombudsman stated that he had no grounds for criticising that the Ministry of Refugee, Immigration and Integration Affairs had endorsed the Immigration Agency's refusal to extend the visa.

On the other hand, the Ombudsman criticised some of the grounds given by the Ministry in its decision and the fact that the Ministry had given incorrect information in statements to him. (J.no. 2002-3818-644).

4. Decision to lodge alien sentenced to expulsion in asylum centre

Insufficient authority

An alien sentenced to expulsion had lived with his wife for more than two years. The Immigration Agency decided that he must move to the Sandholm Centre. This happened following an amendment of the Aliens Act, whereby provisions stipulating that aliens with so-called tolerated residence must stay at the Sandholm Centre were extended to cover aliens sentenced to expulsion.

The alien's lawyer lodged a complaint with the Ombudsman against the Immigration Agency's decision.

The Ombudsman stated that there was insufficient authority for the Immigration Agency's decision.

Relatively clear authority is required for a decision of such a radical nature to be made. In the Ombudsman's opinion, no such clear authority existed.

The Ombudsman recommended that the Immigration Agency reconsider the case and make a fresh decision.

On 2 March 2005, the Ombudsman received a copy of the Immigration Agency's decision on the case of 9 November 2004. In its decision, the Agency decided that the alien had its permission to return to live with his wife. (J.no. 2004-2600-649).

5. Refusal by the Ministry of Refugee, Immigration and Integration Affairs to grant delaying effect on departure deadline on the basis of verbal application for humanitarian residence permit submitted during the Refugee Appeals Board's consideration of asylum case

During the Refugee Appeals Board's consideration of an asylum case, a lawyer – on behalf of a client – verbally applied for a residence permit pursuant to Section 9b, subsection (1) of the Aliens Act. The Ministry of Refugee, Immigration and Integration Affairs re-

fused to give the application delaying effect on the departure deadline, as the method used in the Ministry's opinion was not sufficient for the condition in Section 33, subsection (4) of the Aliens Act to be regarded as met: according to this provision an appli-

cation for a residence permit pursuant to Section 9b, subsection (1) has delaying effect if the application is made at the time of the announcement of the departure deadline in connection with the refusal of asylum.

The Ombudsman asked the Ministry to state whether it had considered the possible significance of Section 6 of the Access to Public Administration Files Act concerning the duty to make notes and Section 7 of the Public Administration Act concerning the obligation to give guidance or the principles behind these decisions in relation to the refusal before making its decision not to give the application delaying effect.

6. Residence permit for spouse

Inclusion of new facts in the appeal authority's case consideration

On behalf of a client, a lawyer lodged a complaint because the client's spouse had been refused spouse reunification on the grounds that the affinity requirements in the Aliens Act were not met.

Among other things, the file showed that the spouse living in Denmark was granted Danish citizenship after the Immigration Agency had decided on the case. Pursuant to the rules then in force, the affinity requirement in family reunification cases did not apply if the person living in Denmark was a Danish citizen. The Ministry for Refugee, Immigration and Integration Affairs subsequently made a decision on the case and in this connection stated that the fact that the spouse living in Denmark had in the meantime been granted Danish citizenship could not result in a changed evaluation of the case.

The Ombudsman asked the Ministry to expand on the grounds for its conception of law in this respect.

The Ministry of Refugee, Immigration and Integration Affairs responded that on the background of

In a statement, the Ministry indicated that on the basis of the information now available, it considered it most correct to regard the conditions for delaying effect pursuant to Section 33, subsection (4) of the Aliens Act then in force as having been met.

At the same time, the Ministry stated that the Refugee Appeals Board had explained that it was prepared to forward any verbal applications in relation to aliens to the correct aliens authority in the special cases where a person wished to submit the application in connection with the Board consideration – despite guidance on the correct procedure for submitting applications. (J.no. 2003-3604-647).

the Ombudsman's review of the relevant literature, it had decided to change its conception of law in such a way that the granting of citizenship should have been included in the case. The Ministry had therefore reconsidered the case and established that the affinity requirement was no obstacle to granting spouse reunification after Danish citizenship had been granted. The Ministry had therefore returned the case to the Immigration Agency to obtain an assessment of whether the other conditions of spouse reunification had been met.

The Ombudsman took no further action in the specific case, but asked the Ministry for further information about the processing of similar cases at the Ministry.

The Ministry subsequently stated that after reviewing 355 closed complaint cases, it had found grounds for reconsidering 7 cases. (J.no. 2004-0311-643).

11. Ministry of Food, Agriculture and Fisheries

Of 22 cases closed in 2004, seven were investigated. No criticism was expressed in any of the cases. No cases are summarized.

12. Ministry of Science, Technology and Innovation

Of 68 cases closed in 2004, fourteen were investigated. Criticism was expressed in one case. No cases are summarized.

13. Ministry of Taxation

Of 99 cases closed in 2004, 28 were investigated. Criticism was expressed in six cases. Two cases are summarized below.

1. Refusal to disclose tax inspection proceedings

A tax payer, who had taken early retirement but at the same time worked as a musician as a hobby, lodged a complaint with the Ombudsman because he had been refused access to the files of the tax inspection proceedings instituted against him. Among other things, the proceedings had been instituted because the tax administration of the local authority where the tax payer lived had received a number of reports from a particular named individual about the extent of the tax payer's activities as a musician.

The local tax administration summoned the tax payer to a meeting about his tax assessments for three specified years and at the same time asked him to provide various details. The tax payer was not informed of the reports.

Before the meeting, the tax payer asked for access to the material on which the case was based. The local authority refused to grant access to the files. In the local authority's opinion, the interests of not jeopardis-

ing the purpose of the tax inspection meant that the tax payer was not at that time entitled to see the tax administration's inspection information. The local authority later emphasised that the tax payer would of course be granted access to the tax administration's inspection information after he had submitted the necessary material and it had been audited by the tax administration.

The tax payer lodged a complaint with the Customs and Excise Office, which endorsed the refusal of access to the files. The reports were only revealed in connection with the Customs and Excise Office refusal.

The Ombudsman stated that in his opinion there were no considerations which might justify refusing the tax payer immediate access to the files. This applied equally to information about the reports, the reporting person's name, the content of the reports and any other documents with details about the tax pay-

er's income as a musician. The Ombudsman consequently criticised that the Customs and Excise Office had endorsed the local authority's refusal to disclose the files.

In addition, the Ombudsman stated that the grounds given by the local authority for its decision to refuse access to the files did not meet the requirements in the Public Administration Act. In the grounds given for its decision, the local authority should have stated which types of documents and in-

formation it was exempting. The Customs and Excise Office should have criticised the inadequate grounds given by the local authority.

Finally the Ombudsman stated that it would have been most in keeping with the principles of Section 11, Section 16, subsection (4), and Section 21 of the Public Administration Act as well as good administrative practice if the local authority had waited to request information from the tax payer until the disclosure issue had been clarified. (J.no. 2002-2695-201).

2. Refusal to change part-time flexible hours position to full-time flexible hours position

A woman employed by a customs and excise office lodged a complaint against the office and the Central Customs and Tax Administration, which had refused to change her part-time flexible hours position to a full-time flexible hours position with full use of her working capacity and pay for 37 hours a week. The authorities argued that the woman had been employed in an ordinary part-time position at the same workplace before the creation of the part-time flexible hours position. Moreover, they regarded the obligation to offer full-time flexible hours positions as exclusively a matter for the local authority in which the relevant person is resident.

The Ombudsman considered it regrettable that the authorities had turned down the woman's application for a full-time position. He pointed out that the obligation to offer full-time flexible hours positions applies irrespective of whether the person in question was previously part-time employed.

The Ombudsman further stated that the law does not compel an employer to accept an application for a full-time flexible hours position, but that public employers are subject to the ordinary objectivity requirement of administrative law. When the intention of the legislation is that an employee in a flexible hours position shall have the opportunity to hold a full-time position, the requirement of objective administration implies that a public employer must accept an application for a full-time position from an employee in a part-time flexible hours position unless there are objective reasons for turning it down. As the authorities had not mentioned such reasons, the Ombudsman considered the decision unwarranted and he therefore recommended that the Central Customs and Tax Administration reconsider the case with a view to making a fresh decision. (J.no. 2003-1943-809).

14. Ministry of Social Affairs

Of 392 cases closed in 2004, 179 were investigated. Criticism was expressed in 20 cases. Five cases are summarized below.

1. Repayment of housing subsidy as a result of back-payment of pension

A local authority and a social board decided that a pensioner should repay three years' housing subsidy because she had received back-payment of pension without informing the local authority.

As the board did not act on the Ombudsman's request that it obtain a statement from the local authority, he focused his consideration of the case on the social board's case consideration and decision.

The Ombudsman criticised that the board's decision was not warranted by Section 47 of the Housing Subsidy Act, as the board had not examined whether the conditions for demanding that the housing subsidy be adjusted and repaid existed.

The Ombudsman further criticised that the board had not secured an adequate basis of information, as it had not obtained the files of the case and a reassessment from the local authority before making its decision.

Finally the Ombudsman criticised that the social board had not considered whether the local authority had heard the parties before making its decision.

On this background, the Ombudsman recommended that the board reconsider the case. (J.no. 2002-2308-083).

2. Time-limited sick benefit decisions

Possible reconsideration of other cases. Remission practice. The binding effect on the lower authority of appeal authority's decision

A local authority made a time-limited decision on the granting of sick benefit based on prognoses in medical statements about when the person reported sick would be able to return to work.

The Ombudsman stated that in accordance with the inquisitorial principle, the local authority should have obtained current medical information before making its decision on discontinuation of sick benefit.

The Ombudsman added that an appeal authority should include new information in its consideration of a case. When presented with the Ombudsman's preliminary statement, the board described its prac-

tice for including new information. This gave the Ombudsman occasion to state when significant new information provided to the appeal authority should cause the appeal authority to make a final decision on the case without remitting it to the lower authority for reconsideration. In addition, the Ombudsman stated that the starting point is that provided no significant new information has appeared, the lower authority shall be bound by the appeal authority's decision on the points which the appeal authority has considered.

In connection with the presentation of the Ombudsman's preliminary statement to the social board,

the board wrote that the consequence of a possible reconsideration of the case might be that a large number of sick benefit cases also had to be reconsidered. The Ombudsman stated that he had not taken a

position on whether the board needed to reconsider other cases where citizens had not lodged appeals against the decision. (J.no. 2001-1098-025).

3. Higher/lower authority relationship between the Ministry of Social Affairs and the National Board of Social Security and Assistance

A man lodged a complaint with the Ministry of Social Affairs about the case processing time at the National Board of Social Security and Assistance and the Board's refusal to pay his accountancy costs. The man argued that the Board's case processing time had forced him to employ an accountant to look after his interests.

The Ministry of Social Affairs informed the man that it was unable to consider his complaint.

The Ombudsman stated that the Ministry of Social Affairs should have considered the complaint. He pointed out that there is an ordinary higher/lower

authority relationship between the Ministry of Social Affairs and the National Board of Social Security and Assistance. The Ministry therefore among other things had the authority to consider complaints against the Board unless otherwise stated in the legislation. The option of lodging a complaint with the Ministry of Social Affairs about a refusal of compensation for accountancy costs was not precluded by law. The Ombudsman therefore recommended that the Ministry of Social Affairs consider the complaint. (J.no. 2003-3499-000).

4. Sick benefit

Documentation of posting of letter summoning to follow-up interview. Burden of proof. Proportionality

A man was reported sick due to the consequences of a traffic accident. The local authority summoned the man to a follow-up interview at a time where he was indisputably unfit for work due to illness. When the man failed to appear, the local authority wrote to him on the same day that his sick benefit would be stopped with effect from the following day. The man reported sick stated that he had not received the local authority's letter summoning him to the follow-up interview.

In relation to the calculation of deadlines for complaints and legal proceedings, as a starting point the decision is assumed to have reached the recipient the day after it is sent, in accordance with normal postal

service. In the Ombudsman's opinion, the burden of proof that a letter posted by a public authority can be regarded as having reached the recipient (the day after being posted by first-class mail) lies with the local authority.

The Ombudsman reviewed the existing practice and theory. In the present case, he did not find it indisputable that the local authority had adequately documented its posting of the summons. He stated that the local authority practice of not contacting Post Danmark when a citizen claims not to have received a letter from the authority may imply that the authority is ignoring the inquisitorial principle.

The Ombudsman criticised that the social board had attached importance to information about the postal service during a period which was not relevant to the case and therefore recommended that the social board reconsider the case.

The Ombudsman did not consider the application of the proportionality principle in the present case,

but noted the extremely radical consequence of the man's failure to turn up for the first follow-up interview in so far as the man lost his support basis. He recommended that the board in its reconsideration of the case explicitly consider whether the decision was in keeping with the general proportionality principle of administrative law. (J.no. 2003-0859-025).

5. Date for awarding increased loss of ability to work in industrial injury case

In 1985, a carpenter fell off scaffolding and sustained a back injury. The following year, he was granted early retirement pension and industrial injury compensation because his loss of ability to work was assessed at 50 per cent.

In 2001, the local authority increased his early retirement pension with effect from 1996 (when the man had previously applied for a pension). On the background of the local authority's changed assessment and a Supreme Court judgment of 1999, the industrial injuries authorities in 2002 decided to increase the man's loss of ability to work from 50 to 65 per cent – with effect from the same date as the increased early retirement pension. The change of the loss of ability to work was not motivated by any change in the man's state of health – which had been unchanged since at least 1986 – but exclusively by the local authority's increase of the early retirement pension and the Supreme Court judgment of 1999.

The man lodged a complaint with the Ombudsman because the increase of his loss of ability to work was only backdated to 1996 instead of 1985 when he fell off the scaffolding.

The Ombudsman stated that pursuant to the Industrial Injuries Insurance Act, the industrial injuries authorities must undertake an independent assessment of the citizens' ability to work. In his opinion, this precluded the industrial injuries authorities from using a cut-off date in the industrial injury case based on special rules in the pension legislation without further investigation. The change must consequently be dated back to the time when the man met the conditions for being granted compensation pursuant to the rules of the Industrial Injuries Insurance Act. The Ombudsman therefore recommended that the Board of Appeal reconsider the industrial injuries case. In addition, the Ombudsman criticised the grounds given by the Board of Appeal with regard to the references to rules of law. (J.no. 2003-2928-024).

15. Prime Minister's Office

Of sixteen cases closed in 2004, three were investigated. Criticism was expressed in one case. One case is summarized below.

1. Selective media service

Guidance. Duty to make notes

Through media coverage, the Ombudsman became aware that the Prime Minister's Office had given a particular newspaper access to a speech which the Prime Minister was to give about the EU. The newspaper wanted to print the speech as a feature article the same day as it was made. The preceding day other media, including another newspaper, expressed interest in the text of the speech. In the evening, this newspaper asked the public relations manager at the Prime Minister's Office for access to the text of the speech as well, but this was refused on the grounds that the first newspaper had already been granted access. The Ombudsman took up the case on his own initiative.

The Ombudsman stated that an authority's interest in ensuring that certain messages are communicated in the most effective way and have maximum impact by allowing them to be printed as exclusive stories cannot in itself be said to lack objectivity. However, this consideration cannot be allowed so much weight in relation to the statutory principle of free access to public administration files and the equality principle of administrative law that it can generally justify withholding or delaying disclosure to others.

The Ombudsman stated that the text of the speech lost its internal nature when it was released to the

first newspaper and that the Prime Minister's Office subsequently could not refuse to release it to others pursuant to the provisions in the Access to Public Administration Files Act concerning internal documents.

As the Prime Minister's Office was in touch with several media about the speech on the same day as the text was released to the first newspaper, the Office should in the Ombudsman's opinion on its own initiative have offered these media access to the same information as the first newspaper had received.

The Ombudsman further stated that if an administration authority grants a journalist or others access to one or more documents and/or releases information and this transaction does not appear from the file, it must make a note of it. The note should specify which documents or information have been released, to whom or in which circumstances they were released, the time of the release and any conditions or provisos agreed on or assumed when they were released. When documents or information are released by an authority as part of an exclusive story, the Ombudsman considered desirable that the authority in the note also indicates the interest or interests which it considered significant when deciding to release the information. (J.no. 2003-0322-401).

16. Ministry of Transport

Of 40 cases closed in 2004, sixteen were investigated. Criticism was expressed in six cases. Two cases are summarized below.

1. Insufficient authority for precluding non-statutory recourse by delegation

The Ministry of Transport issued an order delegating the Ministry's powers pursuant to various acts to an administration. At the same time, the order laid down that various decisions made by the administration pursuant to two other acts could not be appealed to the Ministry department.

On his own initiative, the Ombudsman questioned the Ministry about the legal authority for precluding access to appeal to the Ministry department pursuant to the two Acts.

In its statement, the Ministry recognised that there was no legal authority for precluding access to appeal pursuant to the Act concerning Local and Regional Public Transport beyond the Metropolitan Area. The Ombudsman considered it regrettable that this part of the order lacked legal authority and recommended that the Ministry revoke the relevant section of the order as soon as possible.

With regard to the legal authority in relation to the second Act (the Railway Services Act), the Ombudsman stated that both statutory and non-statutory delegation of powers from a ministry department to an administration results in non-statutory access to appeal. Delegation from the Ministry of Transport department to an administration will produce the following appeal route (for cases which can be appealed for instance to the Railway Board of Appeal): admin-

istration – Ministry department – Railway Board of Appeal. Section 24 of the Railway Services Act includes a provision laying down that decisions which can be appealed to the Railway Board of Appeal cannot be appealed to any other administration authority. However, it appears quite uncertain whether this provision refers both to cases where the authority in law rests with an administration and cases where the authority in law rests with the Ministry department and is then delegated to an administration.

In the Ombudsman's opinion, the Act must contain clear indications that it also applies to the latter situation before it can be assumed to warrant precluding non-statutory access to appeal. The legislator cannot predict which of his powers a minister (in relation to the passing of the act) subsequently chooses to delegate. Without clear legal authority, it is therefore not acceptable that a minister precludes the non-statutory access to appeal to the ministry department. In addition, the access to appeal is, precisely, a very important legal reason for the relatively easy and unrestricted access to external delegation. The Ombudsman therefore recommended that the Ministry of Traffic – if it still wished to preclude access to appeal pursuant to the Railway Services etc. Act – attempt to have the legal authority clarified. (J.no. 2003-2503-519).

2. Revocation of transport permission

A trade organisation lodged a complaint with the Ombudsman because the police had revoked the permission granted to a transport firm to convey a broad load on a flatbed truck from Frøslev Border to Grenå Harbour. The reason for the revocation was that another police district on the route had subsequently stated that it had been asked to grant transport permission, but had refused on the grounds of road safety and because the load could be transported by sea instead. The police's decision to revoke the permission was endorsed by the Road Safety and Transport Agency.

The Ombudsman stated that the police evidence and hearing of parties in connection with the transport permission decision were clearly inadequate. In addition, the grounds given for the decision did not meet the requirements in the Public Administration

Act and no guidance on appeal had been given. Overall, the Ombudsman considered the police's decision to revoke the permission so inadequate that the Road Safety and Transport Agency as the appeal authority should have set aside the decision as invalid.

With regard to the decision made by the Road Safety and Transport Agency, the Ombudsman stated that it must be regarded as doubtful whether the Agency's actual weighing of the relevant considerations for and against revoking the transport permission was fully compliant with the general revocation rules of administrative law.

On this background, the Ombudsman recommended that the Road Safety and Transport Agency reconsider the case with a view to making a fresh assessment. (J.no. 2003-2009-512).

17. Ministry of Foreign Affairs

Of nineteen cases closed in 2004, six were investigated. Criticism was expressed in one case. One case is summarized below.

1. Refusal to allow appearance in person at embassy

A Danish embassy abroad decided to refuse to allow a Danish citizen, who was receiving assistance from the embassy in connection with a case, to appear in person at the embassy. This decision was made on the basis of statements from other persons at the embassy, who claimed that the person in question had offered to provide them with Danish residence permits for money. The file furthermore showed that the person in question had allegedly later offered to get a Danish visa for another person, also for money.

In the Ombudsman's opinion, the decision to

refuse to allow the person in question access to the embassy must be regarded as a decision within the meaning of the Public Administration Act and the Access to Public Administration Files Act, and the Ombudsman criticised that the embassy had not observed the duty to make notes in Section 6, subsection (1) of the Access to Public Administration Files Act and had not considered the party hearing obligation in Section 19 of the Public Administration Act. (J.no. 2003-4188-459).

18. Ministry of Education

Of 60 cases closed in 2004, 20 were investigated. Criticism was expressed in two cases. One case is summarized below.

1. Application for State Education grant

Special documentation requirements lacked legal authority

In 2000, a student was enrolled on a two-year post-graduate course at a university. Since 1999, he had been studying political science as a secondary subject at another university. By an error, he failed to renew his annual registration card at the first university in the summer of 2000, leaving it until 4 October 2000, as he believed his State Education grant was linked to his studies at the second university. He subsequently applied for a State Education grant for September 2000, despite his failure to register. The authorities rejected his application on the grounds that he was not receiving education in September 2000.

In connection with the Ombudsman's consideration of the case, it was explained that according to the established practice of the Danish State Education Grant and Loan Scheme Authority students could only be regarded as "receiving education" (and thus

be entitled to a State Education grant) if they were formally enrolled for a particular education and formally registered for this education. Among other things, the Ombudsman stated that the legislation does not include rules concerning documentation requirements etc. which warrant this practice. He further pointed out that an administration cannot without legal authority deviate from ordinary principles of evidence and freedom to consider evidence and also referred to the principle of administrative law prohibiting discretion governed by rule. On this background, the Ombudsman did not believe the authorities had sufficient legal authority for excluding all forms of documentation proving that an applicant was "receiving education" other than formal enrolment and registration for an education. (J.no. 2001-3901-730).

19. Ministry of Economic and Business Affairs

Of 45 cases closed in 2004, nine were investigated. No criticism was expressed in any of the cases. No cases are summarized.

20. Local Authorities

Of 929 cases closed in 2004, 90 were investigated. Criticism was expressed in 27 cases. Four cases are summarized below.

1. Failure to respond to questions from citizen

The local authority informed a citizen that he would receive replies to three letters he had sent to the authority at a specified time. The letters included a series of questions about a case which had been considered by the local authority and also requested replies to several letters previously sent to the local authority. However, the local authority subsequently informed the citizen that it was unable to reply to any further letters from him. Among other things, the local authority argued that it was impossible to clarify the questions which the citizen regarded as unanswered or to procure replies/decisions which the citizen regarded as unsatisfactory.

In the Ombudsman's opinion it would have been most in keeping with good administrative practice if

the local authority when reviewing the correspondence had examined whether it had already replied partly to the questions contained in the three letters, partly to the earlier letters which allegedly remained unanswered. He pointed out that it must be regarded as most in keeping with good administrative practice that an authority replies to the extent possible to the questions it receives from the citizens, though he also made it clear that there are certain exceptions to this rule.

The Ombudsman recommended that the local authority reconsider the case in order to establish to what extent it had failed to respond to any questions or earlier letters and subsequently decide to what extent it should respond to these. (J.no. 2003-0562-100).

2. Display of leaflet in hospital waiting room

A patient association lodged a complaint with the Ombudsman because a clinic at the State University Hospital had refused to allow the association to display a leaflet in the clinic waiting room.

The Ombudsman did not agree with the State University Hospital and the Copenhagen Hospital Corporation that the case should exclusively be considered on the basis of institutional powers and patient treatment considerations. He consequently criticised

that the State University Hospital and the Copenhagen Hospital Corporation had failed to consider the association's freedom of expression. In this connection, he referred to Article 10 of the European Human Rights Convention and the practice of the European Court of Human Rights and recommended that the State University Hospital reconsider the case. (J.no. 2002-3533-429).

3. Local authority's case processing time for case concerning marine regulations etc.

A citizen lodged a complaint about a local authority's case processing time.

The citizen first approached the local authority in 1998 and the local authority finally closed the case in 2004. However, the case consideration could not be described as a continuous process. Thus the local authority made two partial decisions on the case in 1998 and 1999. In addition, the case was considered by the county for a period of approximately eight months followed by a period of approximately 11 months when the case was included in a general local author-

ity case and not processed as an actual complaint case. The case was again processed as an actual complaint case from 2001 to 2004.

The Ombudsman stated that the local authority's processing time during the periods when it was considering the case as an actual complaint case must be regarded as very regrettable. He also found it regrettable that the local authority had failed to reply to the citizen's reminders and to keep him informed of the progress of the case. (J.no. 2004-1551-100).

4. Demolition of property and closing down of homes

A local authority granted permission to demolish a property. The local authority had previously granted access to the files to a tenants' association which had protested against the planned demolition on behalf of some of the tenants. The tenants had requested access to the files and asked about the possibility of making a statement to the local authority when the case had been fully elucidated. The local authority informed the Regional State Authority, to which the case had been appealed, that it had given verbal and in relation to the builder tacit consent to the closing down of the relevant homes.

The Ombudsman criticised that the local authority had not given the tenants' association the opportuni-

ty to make a statement and had not announced its consent to the closing down of the homes. He further criticised that the local authority in the demolition case had not reacted against the builder even though consent to the closing down of the homes had not been announced. He also criticised that the Regional State Authority had not pointed out that the local authority had disregarded this obligation. Finally, he criticised the local authority's practice in relation to consent to the closing down of homes and recommended that it change its practice to bring it into line with the Housing Regulation Act. (J.no. 2002-1272-160).

PART 5

ARTICLE

Historical Outline of the Ombudsman from the Islamic Perspective

By *Essam Abu Al-Addas, Judge of Sharee Court Cases of Amman*

In the Name of Allah, the Beneficent, the Merciful

Introduction

Judging in Islam is a pride, and it is said that (*Adl*) Justice is the basis of authority, and Allah called himself the “*Adl*” and the *hakam* which means judge. In the sayings of Prophet Mohammad, He told that heavens and earth were set justly. All people are obligated to be just even with enemies; in His Holy Book, God says:

“O ye who believe! Stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to Piety: and fear Allah. For Allah is well-acquainted with all that ye do.” [Al-Maidah 5:8]

God also says:

“O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin.” [An-Nisa 4:35].

God says:

“Allah doth command you to render back your Trusts to those to whom they are due; and when ye judge between man and man, that ye judge with justice: verily how excellent is the teaching which He gives you! For Allah is He Who hears and sees all things.” [An-Nisa 4:58]

The Holy Prophet of Islam said: “A moment of justice is better than sixty years of worship in which you keep fasting and pass the nights in offering prayers and worship to Allah.” And that is because the ben-

efit of worshipping goes only to the worshipper, while being just and giving back the due rights to their weak owners are matters of common welfare.

Prophet Mohammad himself used to handle judging and when Muslims increased in numbers and at the expansion of Islam, he delegated some of this task to his companions. When the Prophet sent *Mu’ath* to Yemen and ordered him to judge among people he asked him: “What is your reference in judging if you were to judge *Mu’ath*?” *Mu’ath* said: “My reference is God’s Holy book.” The Prophet asked him: “What if you did not find it?” *Mu’ath* said: “With the *sunnah* (teachings) of Allah’s messenger.” The Prophet asked: “What if you did not find it?” *Mu’ath* said: “I will have my own interpretations”, so the Prophet agreed with that.

The rightly guided Caliphs went on with the same method after the death of the Prophet, for they used to judge themselves due to the greatness of this post.

When the Islamic state expanded and the tasks of the Caliph became more varied, they started to assign this job to other men who were known to be wise, pious, have great faith and justice.

In assigning Abu Mosa Al-Ashaari to be a judge, Omar told him in his famous letter (The Principles of the Judiciary System): “The judiciary is a fixed obligation and a followed tradition, so you must understand clearly when they turn to you, because speaking of a right that has no basis is not useful Treat people equally in your presence, in your company and in your decisions so that the weak despair not of justice and the strong have no hope of favour, be aware of anxiety, dullness, hurting people and neglecting opponents.”

And here is Ali Ibn Abi Taleb, writing a letter to his Wali in Egypt (Al ashtar al-Nakh'e) describing the qualities of judges whom he chooses to judge: "Then you should choose the best citizen to judge, someone whom matters would not trouble, challenges would not shock, and someone who would not use his position."

Judges used to have a high position in the country, and their verdicts would be binding for everyone including Walis and commanders. And there are many incidents which are evidence of this, as when the judge Abu Yusuf dismissed the testimony of Al-Fadh-el Ibn Rabe'e – a minister with the Caliph Al-Rash-eed. When the Caliph asked him about that, the judge Abu Yusuf insisted on his opinion and he said: "I heard him saying 'I am a slave for the Caliph', so, if he was honest, we will not accept the testimony of the slave, and if he was lying, then his testimony would be a lie because he is a liar."

Defining the administration of grievances

Al-Mawardi and Abu Ya'ly Al-Fara' define it as "to deter litigants from controverting and repudiating each other and to restrain wrongdoers from contesting and vying with each other". The person who is in charge of administering the grievances is called the "Nathir" (one exercising grievances jurisdiction) and not a judge, because his job is not only judiciary, but also executive, for he might deal with clear matters by execution, settlement or anything that would give the one who has a right his rights.

Evaluation of the Diwan al-Mathalem (Registrar of Grievances)

During the first era of Islam, there was no need calling for the existence of such a registrar. And that was because people had a strong faith, and they were controlled by religious intentions. As a result, conflicts were rare among people, since each one knew his rights and his duties, and that would explain why no

one appealed to Omar Ibn Al-Khattab for two years when the Caliph Abu Baker assigned him to be judge in Medina.

When worldly characteristics became dominant over the Arab and Islamic state from the Umayyad period, people started to declare grievances and conflicts. Preaching was not enough to prevent them from infringing on people's rights, so there was a need to deter the oppressor and defend the oppressed by establishing an administration of grievances which was independent of the judiciary system. Caliphs themselves used to exercise this administration. Afterwards they established the post of a specialised Wali for this task, later a special *Diwan* was established: it was known as the Diwan al-Mathalem (Registrar of Grievances) and it was a supreme court which was headed by the Caliph himself or one of his officials. Its mission was to stop the aggression of high officials and workers in the state and those who were wealthy and well-known citizens.

This Diwan played an important role in the Islamic state, for it was a main pillar in the Islamic system and it had to oversee the execution of the principles of *Shariia* (Islam teachings) and the sovereignty of law. The chief Registrar of Grievances used to be an honourable, well-known man, who had a strong character and a convincing opinion. The first Registrar of Grievances was Ali Ibn Abi Taleb, and one of the Caliphs who assigned a day to address grievances was Abdu Allah Ibn Marwan.

Hilf al-Fudul (the Alliance of Excellence)

Historians trace the history of this system back to the Jahilya (the era before Islam), as they say: "When leaders increased in Quraish (a big tribe in Mecca), they held the *Al-Fudul Alliance*. This incident occurred in the house of Abdullah bin Jad'an between the greatest tribes in Mecca. One of the principles they agreed upon was backing up any oppressed per-

son in Mecca. Regardless of his origin, they vowed to help him regain his rights.

The legitimate origin of the administration of grievances

The legitimate origin of this administration is that it was created to take back the right from the oppressor and the aggressive and give it to its real owner, and this is taken from the teachings of the Quran and *sun-nah*. Allah said in the Holy Book, "The curse of God is on the wrongdoers".

Allah also said:

"Let there arise out of you a group advocating what is good, demanding what is right, and forbidding what is wrong. They are the ones to attain success." [Aal-e-Imran, 3:104]

Allah Himself is absolutely just and has forbidden Himself any form of injustice. Allah said in a *hadith qudsi*:

"O My slaves, I have forbidden Myself oppression and I have made it between you forbidden, so do not oppress one another."

The Prophet warned us about the twin evils of oppression and greed in the following:

"Beware of oppression for oppression is darkness on judgment day and beware of greed for greed destroyed those who were before you. It drove them to spill one another's blood and to violate their sanctity."

Combating an oppressor however brutal he may be, and supporting an oppressed however low he may be, are consistent with the spirit of Islam that enjoins what is right, forbids what is wrong and calls for abiding by the limits set by Allah, and they fall under the framework of advocating what is good and for-

bidding what is wrong. And this is the duty of every Muslim as the Prophet said: "*Whoever amongst you sees an evil should change it with his hand. If he is unable to do that, then with his tongue. If he is unable to do that, then with his heart, and that is the weakest level of Iman (faith).*"

In countries which have order and stable systems, individuals cannot have their rights back unless someone leads the incapable and conveys his issue to the authorised people, because triumphing for and supporting the oppressed and delivering the right to its owners and punishing oppressors is the duty of commanders and Walis or there would be chaos.

The creation of the Registrar of Grievances (the Ombudsman)

The aim of the administration of grievances is to pursue evil and oppression, and especially the oppression by Walis and high officials in the state, so the "Nathir" (one exercising grievances jurisdiction) should be an honourable, well-known man, who has a strong character and a convincing opinion, not greedy, pious and faithful because in his job he needs the might of Walis and the constancy of judges, so he has to have both qualities.

These qualities could be summarised as follows:

- 1 – He should have apparent chastity and virtue, be pious, not greedy, and these qualities relate to the human being and his faith.
- 2 – He should be well-informed and constant in his judging, and these qualities relate to acquiring an education and a wide experience.
- 3 – He should be reputable and have might and these are general psychological characteristics and relate to the authorised person.

So, no wonder that we saw the Caliph himself used to adjudicate grievances.

Assistants of the Registrar of Grievances (the Ombudsman)

Due to the particular nature of adjudicating grievances and the fact that it goes back and forth between judiciary and executive administration, it needs the association of various factors so that it can be accomplished at its best, and these factors are:

- 1 – Assistants: and they are chosen to triumph over everyone who seeks power and aggression or is running from the law.
- 2 – Judges and rulers: and their task is to advise the Ombudsman on some problematic matters.
- 3 – Fuqaha' (jurists): and the Ombudsman seeks their advice on problematic matters.
- 4 – Kuttab (clerks): and their task is to write down what happens between complainants and to prove their rights.
- 5 – Witnesses: and their task is to testify that the verdicts which were issued by the judge are just.

From the creation of the assistants of this Diwan, we see that it is based on mutual institutional work, since the responsibility of the Ombudsman is great and risky, and in his job he needs to have a group of assistants around him. Also, if sometimes he may get furious in his work and that would lead to aggression and oppression, then he would have a team to work with him, advise him and guide him.

Times of holding the sessions for looking into grievances

Some of the Walis used to hold sessions of grievances at any time. Al Mansour Al-Mouahedi used to sit himself to judge in the cases no matter how big or small they were, and nothing used to be hidden from him, until one day two men came to him fighting over half a Dirham (money which was used at that time), so Abu-Yehya the commander told them that this was not a good reason to complain to the Wali.

This incident made Al-Mansour sit to look into grievances on certain days.

Some Walis used to assign a certain day in every week to look into grievances.

Abu Yusuf advised Haroon Al-Rasheed to look into grievances at least once every month or every two months.

Whereas if an Ombudsman was assigned to the post, then he should be available to look into grievances all the time.

Venue of the sessions

The Mosque was the place of judging besides being the place of worshipping. Complainants used to go to the Mosque because they knew that the Caliph would be there at the time of prayers.

Also, complainants used to go to the Caliphs in their homes or in any place they went to. Later, they had buildings and halls and courts to look into grievances.

Al Muhtadi (255-256 Hijri) built a dome which has four doors and he called it the Dome of Grievances and it was for public and private citizens.

Specialisations of the Registrar of Grievances (the Ombudsman)

In their books, Al-Mawardi and Abu Ya'ly Al-Fara' mention the specialisations of the Ombudsman as follows:

- 1 – To look into the aggression of Walis against citizens, so their acts would be reviewed and if they were fair and just he would support them, and if they were otherwise, he would dismiss them.
- 2 – To look into the aggression of the tax officers about the taxes and how much they take from people, and thus he will return the extra money to its owners.
- 3 – To look into the work of clerks or the employees in the state in general and into their complaints

- against their supervisors and high officials in the state.
- 4 – To return unlawfully acquired money to its real owners whether this deed was done by the state or one of its employees.
 - 5 – To execute unexecuted verdicts whether the reason was weakness of judges and their inability to execute them or the authority of the oppressor.
 - 6 – To observe the public morals of the Islamic society and protect the community against any aggression in any way.
 - 7 – To observe worship such as Friday prayers, feasts, Haijj and Ramadan.
 - 8 – To adjudicate between adversaries and rule between opponents in general.
- From reviewing the most important specialisations of the court of grievances, it is clear that it does have religious, administrative and judiciary tasks.
- I would like to present this humble effort to everyone who participates in ending the oppression of any human being and establishing the principles of right, justice and equality.*