

S₁OM

The Parliamentary Ombudsman
Annual Report 2007
Summary in English



The Parliamentary Ombudsman Norway



Introduction

This is a summary in English of my Annual Report to the Storting (The Norwegian Parliament) for the year 2007. The summary contains information and statistics on the activities of the Parliamentary Ombudsman's office in 2007. It also contains an overview of cases of general interest processed during the course of the year.

Article 75, litra l) of the Constitution of the Kingdom of Norway, the Act concerning the Storting's Ombudsman for Public Administration and the Directive to the Ombudsman are included at the end of the summary.

The full report to the Storting in the Norwegian language is available on the Parliamentary Ombudsman's website www.sivilombudsmannen.no.

Oslo, May 2008

Arne Fliflet



Photo: Jo Michael

Parliamentary Ombudsman Arne Fliflet

Contents

FOREWORD: Some thoughts on how the Parliamentary Ombudsman can contribute towards improving protection accorded by the law and increase respect for citizens and their rights in public administration	5
ACTIVITIES IN 2007	
1. What is the role of the Parliamentary Ombudsman?.....	8
2. Complaints in 2007 and the results of case processing at the Ombudsman's office	9
3. Own initiative inquiries by the Ombudsman.....	11
4. Special Report to the Storting	11
5. Meetings and visits.....	12
6. Consultation issues.....	13
7. Ensuring that human rights are respected	13
8. Case processing time at the office of the Ombudsman	16
9. Access to case documents at the office of the Ombudsman	17
10. The Ombudsman's website and communication with complainants by e-mail and telephone	17
11. Organization and personnel.....	18
STATISTICS	
1. Introduction.....	19
2. Cases dealt with during the year under review	20
3. The outcome of cases.....	20
4. Geographical distribution of cases.....	23
CASES OF GENERAL INTEREST	
1. Slow case processing	24
2. Duty of guidance in public administration	25
3. Impartiality	26
4. Registration of e-mail	27
5. Legal competence requirements in municipalities	27
6. An overview of cases included in Annual Report	28
LEGAL TEXTS	
1. Section 75 1 of the Constitution of the Kingdom of Norway dated 17 May 1814.....	35
2. The Act concerning the Storting's Ombudsman for Public Administration.....	36
3. The Directive for the Storting's Ombudsman for Public Administration.....	40

Foreword

Some thoughts on how the Parliamentary Ombudsman can contribute towards improving protection accorded by the law and increase respect for citizens and their rights in public administration.

Activities throughout 2007 have been comprehensive, and experience throughout the year has again confirmed the importance of the Parliamentary Ombudsman's supervisory role for ordinary citizens who encounter problems in public administration. The cases referred to in the Report reflect the wide scope of issues investigated and commented on by the Ombudsman. Processing of cases shows that the problems people encounter in dealing with public agencies are recurring routine issues. The letters and questions received by the Ombudsman serve to show that citizens hold protection of the law in high regard. Whenever there is a case of maladministration or incorrect application of the law on the part of a public agency, it is the public authorities that are negatively affected. In this foreword I would like to present some thoughts on how the control of public administration by the Parliamentary Ombudsman can be strengthened.

Firstly, it is time now to ask whether the Ombudsman should have the same right as others to voice an opinion on the use of discretionary decisions in public administration. Can any purpose be served by continuing to have a clause in the Ombudsman's Act stating that the Ombudsman may only criticize discretionary decisions when they are clearly unreasonable? This curbing of the Ombudsman's access to voice opinions can have negative consequences and should be removed.

The Ombudsman's right to voice opinions on discretionary decisions in public administration is important, as legislation has provided public agencies with greater powers in relation to citizens. In almost all areas nowadays, the authorities may lawfully intervene in matters where citizens were previously free to do as they wished. Today, the right to intervene in the rights and obligations of citizens is largely based on discretion. Moreover, the law has now provided citizens with more rights than before, and these rights are also based on discretion. To ensure that statutory rights are in fact a reality for citizens, it is important to have an efficient, independent and unbiased body that citizens can apply to if they are exposed to unfair execution of power.

By and large, public agencies act conscientiously and correctly. However, the wide-reaching authorities and the common practice of making exemptions from acts can easily become a source of concern that random and arbitrary decisions may be passed, and that this could result in misuse of power, differential treatment and corruption. Several recent cases have shown that these concerns may actually be founded on fact.

The considerations and situations on which public administration bases its discretionary decisions is now more complicated than was previously the case and control and re-examination is difficult. The requirements for an independent and unbiased body that can raise objective

and relevant objections, express doubt and raise reasoned questions on the exercising of discretion is now greater than ever. The Ombudsman should now be given an unrestricted right to express an opinion, also when a discretionary decision in public administration is unreasonable or difficult to accept by an outside body that has investigated the case.

To enable the Ombudsman to have better control of discretionary decisions by public agencies, the limitations in the Act which states that he may only react to decisions that are “clearly unreasonable” should now be removed. This limitation clause was included when the Ombudsman’s scheme was established in 1962, as at that time public administration was concerned that the Ombudsman could intervene in the so-called free discretion. There is no longer any valid reason for retaining this restriction. Denmark has never had such a restriction, and the first Danish Ombudsman, Stephan Hurwitz, warned the Norwegians against including this reservation in the Act. He was of the opinion that limiting freedom to voice opinions on the part of the Ombudsman would weaken the preventative effect of the Ombudsman scheme.

Moreover, this restriction was unnecessary as the Ombudsman would himself know when to intervene and re-examine a discretionary decision. This is also normal practice today. The Ombudsman does not re-examine a professional or local discretionary decision when this is based on correct interpretation of the law or factual circumstances that there is no reason to question. This type of restriction in an act is therefore no more than an unnecessary and negative signal to the nation’s citizens and the outside world, and it is an unreasonable constraint on the Ombudsman’s right to express his opinions.

I am often asked what measures the Ombudsman has at his disposal to promote good public administration and to create a higher degree of respect for citizens and their rights. The Ombudsman’s scheme as it stands at present authorizes the Ombudsman to instigate investigations and to give an opinion on the actions of public agencies. The Ombudsman cannot change public administration decisions or pass legally binding decisions. This is how it should be.

If a public agency does not act in accordance with the Ombudsman’s recommendation, he may recommend that the complainant should bring legal action before the courts. In such cases a complainant will receive free legal aid. Advising someone to take a case to court may seem like sound advice, but there are also negative sides to this. Even when a complainant receives free legal aid, it is a difficult process to take legal action against public administration. The citizen must present his own case. The Ombudsman cannot help the citizen in this connection. Advising legal action may thus be quite futile. If there is a case of maladministration, the only sanction is criticism on the part of the Ombudsman. The citizen will not receive any financial damages.

Citizens are fined if they drive too fast and for other infringements of the rules of the road. Public authorities may infringe processing regulations, but such infringements have no financial consequences unless the legal conditions for compensation or remedy can be said to be fulfilled. A complaint to a superior authority may be a measure that can be used in certain cases, but reporting a case to the police and the public prosecutor can only be valid if the conditions for penalty are fulfilled. Should this situation be allowed to continue?

One idea could be to authorize the Ombudsman to advise the public agency that has breached the public administration regulations to pay the injured party compensation or remedy for reasons of fairness, and not only when the provisions for compensation or remedy can be said to be fulfilled. Advice of this type from the Ombudsman must in such a case give the public agency the right to pay damages to the party concerned without being criticised by the Auditor General or the Municipal Auditor. A measure such as

this could serve to increase respect for the provisions of the Public Administration Act, the Freedom of Information Act and the principles for good public administration. Such a scheme could also have the effect that the public authorities would show greater respect for citizens in the case of maladministration. It would also contribute towards strengthening confidence in public administration and would also improve the efficiency of the Ombudsman's supervisory control.

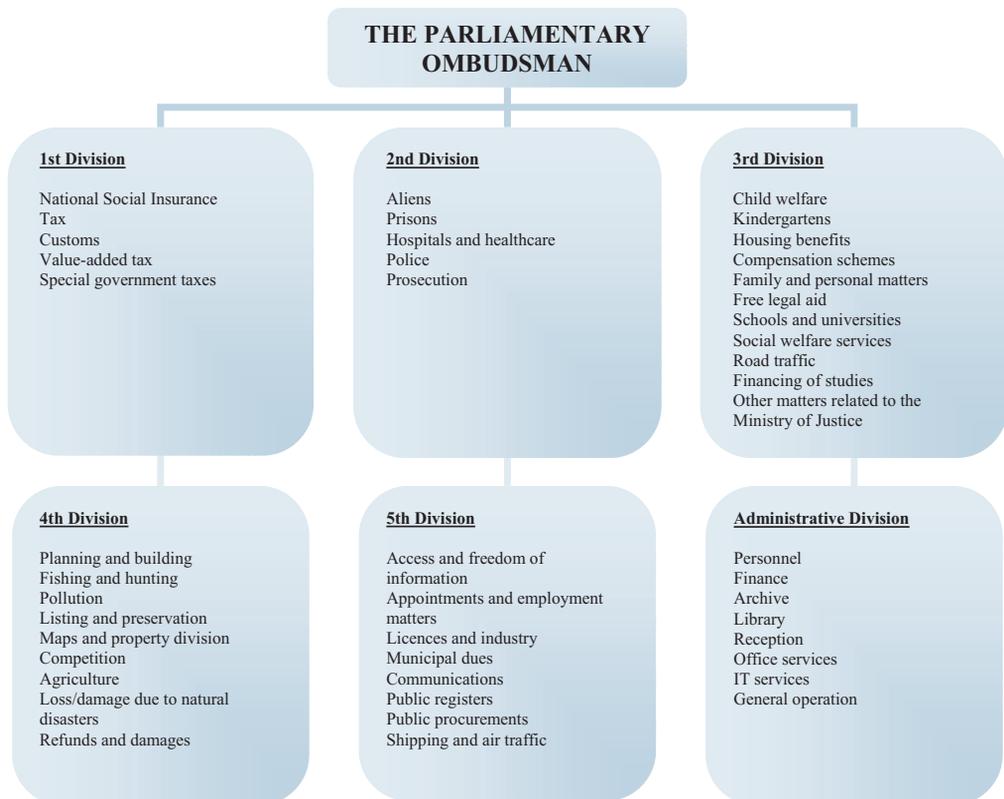
Activities in 2007

1. What is the role of the Parliamentary Ombudsman?

The Parliamentary Ombudsman makes investigations and issues a statement on a legal basis on whether public administration in his view has acted in error or if a citizen's rights have been violated in any way. All public agencies and public administration as a whole may be subject to control by the Ombudsman. He may also evaluate whether the authorities have respected human rights, and whether case

processing has been in accordance with good public administration.

Investigations are mainly implemented following complaints from citizens or corporate bodies. However, the Ombudsman may also instigate investigations on his own initiative that is to say without a specific complaint as a basis. The Ombudsman may pass an opinion in the cases he investigates, but may not make legally binding decisions. However, public agencies will usually conform to the Ombudsman's recommendation.



Through the Parliamentary Ombudsman, citizens are provided with the opportunity of obtaining simple and objective legal investigations and appraisal of the decisions and actions taken by a public agency. The Ombudsman's remit is not limited to the investigation and re-examination of decisions in public administration. He may also control the actions taken by a public agency and any omissions or other maladministration on the part of the agency. When a public agency fails to reply, when case processing is slow, when it is not possible to contact the agency in question or when civil servants in public administration cause offence, citizens may send a complaint to the Ombudsman. The Ombudsman provides citizens with a practical and inexpensive method of having such problems investigated and evaluated. For the individual, investigations by the Ombudsman can be a useful alternative to legal action through the courts. Another important aspect is that the individual citizen may complain to the Ombudsman directly without the necessity and expense of legal assistance.

The Ombudsman's office is staffed by 32 persons with law degrees and the administrative support function is staffed by 13 persons. The office is divided into five specialist divisions, enabling the Ombudsman and the heads of division to have a continuous overview of the current case portfolio and the opportunity to give priority to certain cases and to streamline case processing. The Ombudsman personally reads all complaints that are received and takes a standpoint in all cases that are raised with public administration and if required, in cases that have been closed without further investigation taking place.

2. Complaints in 2007 and the results of case processing at the Ombudsman's office

In 2007, the Ombudsman received 2,126 complaints. 926 of these complaints were dismissed on formal grounds. Complaints against bodies, institutions and other independent judicial persons that are not part of public administration are not encompassed by the Ombudsman's remit, and are dismissed. Cases in which the access to appeal against a decision in public administration has not be utilised, are also normally rejected. As a general rule, control and investigation by the Ombudsman is the final step after other appeal avenues have been utilised. The public agency concerned must have the opportunity of dealing with and deciding on the issue which is the subject of the complaint to the Ombudsman. Finally, there is a time-bar for submitting claims to the Ombudsman. Complaints must be submitted no later than one year after the event that caused the complaint took place.

The Ombudsman must also decide whether there are sufficient grounds for processing the complaint. All complaints are evaluated and a course of action is decided. When a complaint concerns a decision by public agency, the Ombudsman will request the agency to send in the case documents. In such cases all complaints are investigated. The complaint itself and the contents of the case documents will decide how comprehensive the investigation is to be and how case processing will proceed. In the preliminary investigation, the complaint, the case documents submitted by complainant, and the case documents submitted by the public agency are duly studied. The aim is

to reveal any indications of maladministration or injustice against complainant. Even if an error is established, the nature of the error must be sufficiently serious to warrant a reaction. Minor errors and errors that are unlikely to be repeated do not normally provide grounds for further processing. In such cases, the Ombudsman may send the complaint to the authority concerned, requesting they take due note of complainant's comments and a recommendation on how the agency should deal with such matters in the future.

Investigations should be implemented fairly quickly. Processing of complaints must not therefore be too comprehensive. Obviously, case processing must be thorough, but at the same time the investigation should be informal and not too complicated. The complainant and the public agency must have the opportunity of presenting their version and submitting relevant material, but case processing in itself should not be too complex. Case processing by the Ombudsman is not the same as a procedure before the courts. The requirements with regard to case processing must be in line with the object of the Ombudsman's scheme, i.e. secure, but at the same time fast, simple and inexpensive. Investigations must be limited to a study of the case documents, and it is not usual to carry out inspections. The Ombudsman's investigation is first and foremost a legal control. This means that cases in which the decision by the public agency is based on evaluation of evidence of a factual or discretionary nature, and in which the documents in the case do not provide sufficient guidelines, may not actually be suitable for processing by the Ombudsman. In such cases, a better alternative is to bring the case before the courts.

Out of the cases that were taken up for further investigation in 2007, 829 cases were closed following a study of the complaint and the case documents submitted by the public agency, but without taking the matter up any further with the agency. In 570 of these cases, a study of the complaint and the case showed that the case could obviously not succeed. In the remaining 259 cases, a telephone call to the public agency was sufficient to settle the matter. These cases primarily concerned slow case processing or failure to reply on the part of the public agency.

Out of the complaints received, there were grounds for some form of criticism or request to public administration in 178 cases. As stated in Section 10, first subsection, of the Ombudsman's Act, the Ombudsman may "state his opinion in the case". This means that the Ombudsman may point out that there has been an error in case processing or incorrect application of the law, and may express the opinion that the decision must be considered to be invalid, clearly unreasonable or in contravention of good public administration. He may also express the view that compensation should be paid if this is indicated in the individual case. It is also important that the Ombudsman may point out that reasonable doubt exists with regard to decisions on which the complaint is based. Any such doubt may be connected with factual or legal matters. When the Ombudsman is of the opinion that there has been an error or maladministration, he will normally request the public agency concerned to re-examine or re-evaluate the case in question. Experience has shown that public agencies always comply with such requests by the Ombudsman. Normally, the agency will also accept the opinions expressed by the Ombudsman. In cases where the public agency does not share the Ombudsman's viewpoint, the Ombudsman may recom-

mend the citizen concerned to turn to the courts of law. Complainant is entitled to free legal aid, cf. Section 16, first sub-section No. 3, of the Act concerning free legal aid dated 13 June 1980 No. 35. In 2007, there were no cases in which such legal action was advised.

The chapter "Cases of general interest" contains an overview of the most important issues raised in complaints throughout 2007.

3. Own initiative inquiries by the Ombudsman

In addition to dealing with complaints from citizens, the Ombudsman may take up cases on his own initiative. When the Ombudsman decides to use this access, it is usually connected with the processing of a complaint which has served to draw attention to unfortunate circumstances which give grounds for further investigations. If the Ombudsman receives several complaints concerning the same subject, it may also be more practical to take the matter up on a general basis on own initiative rather than pursuing the individual cases. There can also be situations in which investigations are based on information submitted by the general public, or that have been brought to the Ombudsman's attention through the media. The Annual Reports for 2004 and 2005 deal with this important aspect of the Ombudsman's work in more detail

The Ombudsman took up 41 cases on own initiative in 2007, compared with 40 cases in 2006.

Some of these cases are referred to in Chapter IV of the Annual Report.

4. Special Report to the Storting

Pursuant to the provisions of Section 12, second sub-section, of the Act dated 22 June 1962 No. 8 concerning the Parliamentary Ombudsman for Public Administration, I presented a Special Report to the Norwegian Storting on 15 February 2007 (Document No. 4:1 (2006–2007)). This Report concerned an investigation into certain aspects of the Police Immigration Detention Centre at Trandum.

The background for the investigation was a meeting with the Police Aliens Unit which was followed up by a visit to the Immigration Detention Centre in March 2006. The Police Aliens Unit is responsible for operation of the Detention Centre, which is a locked, prison-like institution for certain groups of foreign nationals who are in this country illegally or whose identity has not been clarified. The Centre is sanctioned by the provisions of Section 37 d of the Immigration Act dated 24 June 1988 No. 64, and the courts pass decisions on detention pursuant to the provisions of the Act.

An important part of the investigation concerned the legal regulation of operations of the Centre, and in particular the use of enforcement and control measures against the detainees. The investigation also encompassed the use of hired security personnel, inspection routines, food and activities, detainees' agreement to detention and supervision of the Centre.

As pointed out in Document No. 4:1 (2006-2007), the lack of a legal regulatory framework for operation of the Centre was striking and clearly negative in respect of human rights for the detainees. This was particularly unfortunate in view of the fact that no external supervision of

the Centre had been established. Moreover, the operation and routines at the Centre were not adapted in respect of those detainees who stay there for long periods. I also criticised the catering as it was at the time of my visit, the leisure activities for foreign nationals staying at the Centre for extended periods, and certain aspects connected with the use of hired security personnel without police authority.

Section 37 d of the Immigration Act was amended by the Act dated 29 June 2007 No. 41, which came into force on 1 July 2007, and regulates the rights of detainees and the authority of the police to instigate control measures and to use enforcement. An independent supervisory council is to be established in order to "supervise operations of the Immigration Detention Centre and the treatment of the foreign nationals staying at the Centre". Draft regulations, sanctioned by the provisions of this Act were expected to be submitted shortly. I have also been informed that an activity centre at the Centre has been taken into use, and that the hired security personnel have been replaced by persons employed at the Centre. The food situation was improved even before the Ombudsman had finalised investigations.

I will continue to monitor developments at the Police Immigration Detention Centre and ensure that a supervisory council is established. This requirement was recently pointed out by the UN Committee Against Torture (CAT) after Norway had submitted its fifth periodic report to the Committee.

5. Meetings and visits

During the year under review, meetings have been held with numerous different organizations and public agencies. These

meetings provide the opportunity for exchange of viewpoints and information, and provide my staff and myself with useful insight into public administration and a better basis on which to deal with the cases received by this office.

This year I visited prisons in Skien and Vadsø. These visits gave me the opportunity to meet prisoners and prison staff face-to-face, and to spread information on the Ombudsman scheme. Moreover, it has been useful to receive information on the operation and the challenges in both these prisons. Both visits gave rise to issues that need to be followed up with questions to the prison authorities on different aspects that came to light during the visits.

I have also visited the Psychiatric Division of Haukeland University Hospital, Sandviken. I had meetings with the county governors of Vest-Agder, Troms and Finnmark. In addition to a mutual exchange of information on activities, the meetings also dealt with legal issues in public administration and questions concerning case processing pursuant to the Act concerning social services, the Act concerning protection of children, and the Planning and Building Act.

Throughout the year my staff and I have participated in several seminars and courses, and have also held numerous talks and lectures.

Delegations from many countries have visited us. There is a high level of international interest in the assignments, functions and operation of the Norwegian Ombudsman's scheme. Contact with foreign institutions also provides us with valuable knowledge in respect of our own work. In addition to wide contact with the other Nordic ombudsmen, I have participated in several international meetings including a round table conference on

human rights that the Greek Ombudsman and the Commissioner for Human Rights in the European Council organised in Athens, the sixth international seminar for European ombudsmen which was held in Strasbourg, and the Fifth International Conference of Information Commissioners which took place in New Zealand. As part of the cooperation that Norway has established with China in order to strengthen the human rights issue in that country, I visited Beijing and Shanghai in October 2007.

6. Consultation issues

I regularly receive drafts of new or amended regulations which are submitted for consultation by public administration bodies. In 2007, the office received 97 proposals for consultation. With the exception of cases that directly concern the Ombudsman's institution or matters that the Ombudsman has previously dealt with, the ombudsmen who have preceded me and I have been reticent with regard to consultation statements on law proposals for reasons of principle. The basis for carrying out investigations is current law, and it is outside the Ombudsman's remit to re-examine the appraisals of the lawmaker. I made one consultation statement in 2007.

This consultation case concerned a proposal from the Ministry of Finance on regulations relating to tax appeal boards, and regulations on when a decision passed by a tax appeal board can be submitted for re-examination by the National Review Board.

It is possible that I should be more open in expressing my viewpoints on the situation with regard to the European Convention on Human Rights and other international conventions. This would be more in

accordance with what I today regard as deficiencies in law, regulations and public administration practice, cf. Section 11 of the Ombudsman's Act.

7. Ensuring that human rights are respected

In 2007, international issues on human rights have again been an important part of the Ombudsman's assignments. The work of ensuring that public administration follows up Norwegian commitments in the area of human rights has also been strengthened. The Ombudsman regards this work as part of the general duties of the Ombudsman's office. A separate resource group specialising in information on international issues has been organised.

Amendments to the Ombudsman's Act and the Directive to the Ombudsman with regard to human rights

Both the Ombudsman's Act and the Directive to the Ombudsman were amended in 2007. The background for the amendments was a question raised in the Storting in connection with Resolution 1516 (2006) from the Parliamentary Assembly in the Council of Europe. According to this Resolution, the national assemblies in member states should have the overall responsibility for ensuring that the national authorities implement decisions passed by the European Court of Human Rights (ECHR). In my reply to the Storting I expressed the view that monitoring and control of the following up of judgments passed by ECHR in Norway must be said to be already encompassed by the Ombudsman's remit, and that this control therefore did not strictly require any amendments in the Act or in

the Directive. In order to clarify this, it was quoted from the Directive that the Ombudsman in his Annual Report should submit information on the work of monitoring and controlling that public administration respects and ensures that human rights are practised.

I also proposed amendments to the wording of the objects clause in Section 3 of the Ombudsman's Act in order to harmonize with the Norwegian State's constitutional commitments with regard to human rights as provided in Section 110 c of the Norwegian Constitution. Pursuant to Section 110 c, the authorities shall "respect and observe human rights". Following the proposal for the amendment to Section 3 of the Ombudsman's Act, the work of the Ombudsman shall monitor and control that public administration "respects and observes human rights".

The amendments to the Act and the Directive were adopted by the Storting in accordance with the proposal and came into force on 1 July 2007. The Ombudsman's Act and the Directive as they are worded after the amendment are included at the end of this summary.

International orders followed up by public administration

In connection with the assignment of controlling that public administration follows up judgments passed by the European Court of Human Rights (ECHR) in respect of Norway, I would like to mention a case from 2007: On 29 June 2007 the European Court of Human Rights passed judgment against the Norwegian State in a case concerning the subject religious knowledge and faith. The Court found that the arrangement of limited exemption from instruction in religious knowledge contravened against Article 2 in Protocol No. 1 (the right to education) of the Euro-

pean Convention on Human Rights I have duly noted that on the basis of this judgment, the Ministry of Education and Research has proposed amendments to the Education Act (the Act dated 17 July 1998 No. 61 concerning primary and secondary schools) in a memorandum for consultation issued by Consultation Letter dated 5 December 2007.

I am also aware of the decision passed by the EFTA Court on 30 October 2007 in a case concerning the extended rights of widows who were married to men who were members of the Norwegian State Pension Fund before 1 October 1976. Widows have been exempt from the rule introduced in 1976 providing that pensions shall be reduced if the receiver has income, while widowers who were married to women who became members prior to 1 October 1976 and who have had income, have received a reduced widower's pension. The EFTA Court found that this differential treatment of widowers was in contravention of the Equal Rights Directive from the EU (Rdir 86/378/EEA). The Ministry of Government Administration and Reform has stated that the Government will amend the regulations to conform to the equal rights requirements of the EFTA Court. In order to be currently informed of how public administration follows up the decisions passed by the EFTA Court, I asked to receive a copy of the proposed amendments to the Act submitted for consultation.

The Ombudsman's human rights seminar

In November 2007 a human rights seminar was arranged, entitled "The protection of human rights for exposed groups in Norway". Just over 100 participants from public agencies, private law firms and different interest organizations participated

at the seminar. A leading theme at this seminar was the protection of human rights in respect of persons residing in this country illegally, and the safeguarding of persons who are dependent on financial and other aid from the public authorities. The Commissioner for the European Council for Human Rights, Thomas Hammarberg, was invited and made the opening speech at the seminar.

Strengthening human rights in China

A member of the Ombudsman's legal staff who is conversant with the Chinese language and China, has also in 2007 been placed at the disposal of the Ministry of Foreign Affairs in order to contribute towards strengthening Norway's work for human rights in China. She has taken part in the organization and arrangement of several meetings, visits, seminars and conferences both here and in China. The rights of prisoners and arrested persons and the basic human rights pursuant to Norwegian and international standards have been a leading theme in these activities. An international seminar under the title "Service Sentences in the Community, the Supervisory Mechanism and the Protection of Human Rights" was held in China, attracting 100 participants. Most of the participants were Chinese public prosecutors, managers from the prisons section at the office of the Chinese Attorney General and representatives from the Chinese Ministry of Justice. The background for the seminar was a request from China for more information on Norwegian legislation and practice with regard to community punishment and other penalties as an alternative to imprisonment.

For several years now my staff and I have participated in the human rights dialogue between Norway and China and in this

way have kept in contact with the Chinese authorities. In October/November 2007 I attended meetings in Beijing and Shanghai accompanied by two of my staff members, meeting representatives of the National Peoples Congress, the Ministry of Supervision, the Ministry of Public Security, the Supreme People's Procuratorate and the Shanghai Municipal People's Congress. I also visited a prison for young offenders in Beijing and held a talk on the Norwegian Ombudsman's scheme at Renmin University Law School in Beijing and at Fudan University Law School in Shanghai. We also visited the Norwegian Embassy in Beijing and the Norwegian Consulate General in Shanghai.

Other activities linked with international issues and human rights

The Commissioner for the European Council for Human Rights has issued an invitation to participate in a cooperation between national ombudsmen and human rights structures in the member states of the Council of Europe. The aim for this cooperation is to exchange information on how the different member states implement the European Convention on Human Rights and decisions passed by the European Court of Human Rights. My representative participated at the first meeting, which was held in Strasbourg in November 2007. At this meeting it was pointed out that ombudsmen play an important part in controlling that member states implement the Convention on Human Rights and decisions by the Court of Human Rights, and that they can provide important feedback to the Commissioner and the European Council. This international cooperation in the human rights area can contribute towards intensifying the work of supervising Norwegian public administration with regard to implementation of European Convention

on Human Rights and decisions against Norway passed by the Court of Human Rights.

In my capacity of Ombudsman, I am a member of the Advisory Committee that the Norwegian Centre for Human Rights has appointed to work with the National Institution for Human Rights, and in this capacity I have participated at two meetings in 2007.

I have also participated at a meeting in the Ministry of Foreign Affairs concerning the situation in the European Court of Human Rights and the reform work in this Court.

In 2007, the International Resource Group at my office went on a study tour to Norway's permanent delegation to the Council of Europe, the European Court of Human Rights, the Commissioner of Human Rights in the European Council, the EFTA Court, the EU Court and the EFTA Surveillance Authority. The object of this tour was to create contacts with the institutions and to gain more knowledge of the work carried out at these institutions.

8. Case processing time at the office of the Ombudsman

The time used to process complaints varies according to the nature of the case, its complexity and what investigations are necessary in order to obtain sufficient information on the matter. Normally, a complainant will receive a reply within a week after the complaint has been received. If the complaint must be rejected on formal grounds, this is usually clarified immediately. If there are grounds for investigating the case and taking the matter up with the public agency concerned, some time may elapse before the case is closed. This is connected with the fact that the relevant public agency must have the opportunity of presenting its viewpoints on the complaint. The report from the public agency will then be sent to THE complainant for comments, which the agency will then reply to. Due regard to the adversarial principle and the requirement for as much information as possible on the case, means that processing time in such cases may be extended. Processing of cases that concern access to case documents in public administration is however shorter than processing of other types of cases.

It can be difficult to give an average time for case processing in respect of all cases that are dealt with by this office. The aim is that case processing time shall be kept within the following framework, depending on how the case is handled:

- Formal rejection:	1 week
- Completion, involving a preliminary investigation of the complaint to clarify if there are sufficient grounds for taking the matter further, i.e. taking up the complaint with the public agency concerned:	4 to 8 weeks
- Completion after the case has been taken up with the public agency (statement):	3 to 6 months

9. Access to case documents at the office of the Ombudsman

Regulations concerning access to documents at the office of the Ombudsman are provided in Section 9 of the Ombudsman's Act, cf. Section 11 of the Directive to the Ombudsman. 622 requests concerning access to case documents were registered in 2007, compared with 426 in 2006, and 360 in 2005. Based on these requests, access was granted in respect of 435 documents, of which partial access applied to 135 documents. 56 requests were rejected. Replies to requests for access are normally sent on the same day and no later than one to three days.

Public records are available on the Ombudsman's website www.sivilombudsmannen.no, and it is also possible to register a request for access to the Ombudsman's case documents on this website.

10. The Ombudsman's website and communication with complainants by e-mail and telephone

The website www.sivilombudsmannen.no provides information on the Ombudsman's scheme and the correct procedures for submitting complaints. Most of my public statements are published on the website together with other relevant news from this office. Earlier statements may also be retrieved on the website.

Our website was developed in 2002-2003 and is therefore in need of updating, both

technically and with regard to content in order to meet present-day requirements with regard to public websites. The work of further developing the website started up in 2007. The aim is to improve the site technically to provide easy access for all user groups and to make it more user-friendly, ensuring that all information is readily available. An important part of this development will be to facilitate searches for earlier statements. The new website will be completed during the course of 2008.

The office receives many e-mails. In 2007, we received approx. 6,000 e-mails, more than half of which are registered in specific cases. E-mails should not contain sensitive personal information, and for this reason only general information and replies to general inquiries are sent by e-mail. Whenever complaints are submitted by e-mail, the complainant will be requested to send a signed complaint by ordinary mail. The work of renewing the website will include an evaluation of whether electronic communication with complainants can be made more secure.

Many people contact us by telephone. In 2007, the office has replied to at least 1,400 telephone calls. On the telephone, my staff and I will in the first instance provide information on whether the case may be submitted to the Ombudsman, and if so, how the complainant should proceed. In addition, we also advise the complainant on how to proceed if the case is of such a nature that it cannot be accepted by the Ombudsman, for example the right to appeal a decision to appeal bodies in public administration has not been fully utilised.

Some citizens have general legal questions connected with a public administration case or they request advice on how they should act in relation to a public

agency in an ongoing case. My staff and I can only give superficial replies to such inquiries in view of the fact that it is not within the remit of the Ombudsman to act as a representative for individual citizens in relation to public authorities, neither may he discuss general legal issues that are not connected with an actual complaint.

11. Organization and personnel

As at 31 December 2007, the Ombudsman's office employed a staff of 42 man-years, including the Ombudsman, six heads of division and one head of administration. 24 man-years applied to legal executive officers, and 10 man-years were linked general administration. IT system support is hired on an hourly basis. A

further position of one man-year was financed by the Ministry of Foreign Affairs with the Ombudsman as formal employer. The person concerned is a member of the legal profession engaged in human rights issues in China, including the specific assignment of promoting the rights of prisoners and functioning as a contact person between the Chinese and the Norwegian authorities.

The office is organized in 5 divisions, each headed by a head of division. On an annual basis, the work is organized in such a way that the number of cases and the workload is distributed between the divisions as equally as possible. By and large, the situation has been satisfactory in 2007. The area covered by the individual divisions is shown in the organization chart in this chapter.

Statistics

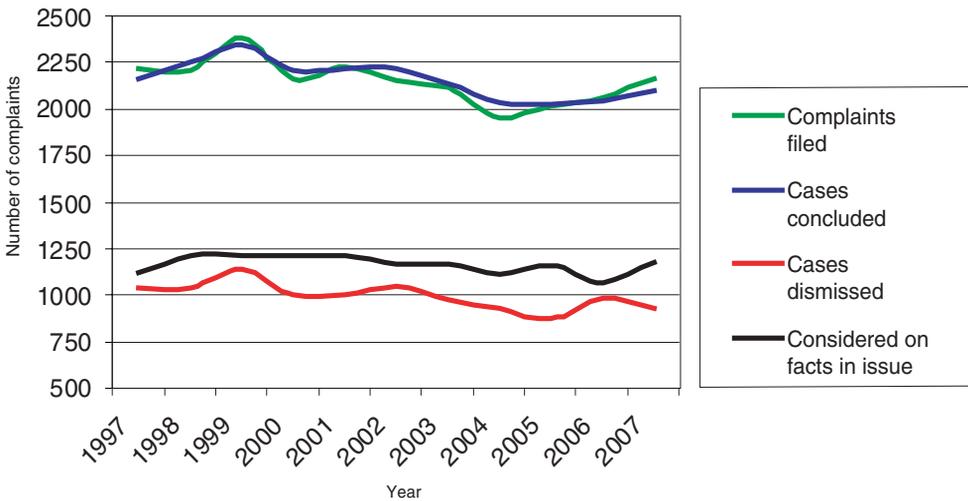
1. Introduction

This chapter presents information on the cases the Ombudsman’s office has processed during the year under review. The chapter provides an overview of complaints filed during the course of the year, cases that have been concluded, cases that are still being processed at yearend, the result of processing and the distribution of cases in relation to location, public agency and subject.

Fig. 1.1 provides an overview of complaints filed and concluded, cases dismissed and cases considered on the facts in issue throughout the last ten-year period. The figures in the diagram are dealt with in more detail in this chapter.

In addition to the presentation of figures in this chapter, it should be mentioned that during the course of the year under review, 17,070 documents were registered of which 7,614 were incoming documents and 9,456 were outgoing documents. The number of e-mails received during the course of the year is approx. 6,000, and more than half of these are registered in specific cases (including administrative cases). In addition, there were approx. 1,400 general telephone inquiries. There were 48 conferences with private individuals who required information on complaint procedures in relation to the Ombudsman.

Fig. 1.1 Cases filed and concluded – cases dismissed and considered on facts in issue 1997-2007



2. Cases dealt with during the year under review

The work of the Ombudsman mainly concerns complaints from citizens. However, the Ombudsman can also take up case on his own initiative, cf. the provisions of Section 5 of the Ombudsman's Act. Table 2.1 shows how many complaints the Ombudsman received during the year and how many cases were taken up on own

initiative. The table also shows developments in cases filed since the previous year under review. Table 2.2 shows the number of cases concluded during the year and the number of cases still not resolved at yearend in comparison with the preceding year.

In 2007, approx. 13% of the cases were re-opened when complainant reverted to the matter after the case was concluded at this office.

Table 2.1 Types of case received

	2006	2007
Complaints and inquiries	2027	2126
Cases taken up on own initiative	40	41
Total	2067	2167

Table 2.2 Cases concluded and unresolved at yearend

	2006	2007
Cases concluded during the year	2047	2102
Unresolved cases at yearend	351	416

3. The outcome of cases

The outcome of cases processed by the Ombudsman can be divided into two main categories: cases dismissed and cases considered on the basis of facts in issue. During the year, 44% of the matters brought to the attention of the Ombudsman were dismissed and 56% were processed on the basis of the facts in issue.

Cases that are processed on the basis of facts in issue comprised all cases that have not been dismissed on formal grounds. This means that the Ombudsman has expressed an opinion in the case. Cases that have been settled for the complainant are also registered as cases pro-

cessed on the basis of facts in issue. This also applies when processing has been limited to a provisional investigation to show whether there are "sufficient grounds" for processing the complaint, cf. Section 6, fourth sub-section of the Ombudsman's Act. In these cases the object of the processing by the Ombudsman will normally be to find out if there is a basis for implementing further investigations. In such circumstances, the facts in issue will only be considered to a limited extent. In many cases investigations are restricted to the case processing on the part of the public agency. Many people complain that administrative agencies fail to reply to their inquiries or that processing takes too long. In such cases, proces-

sing may often be limited to a telephone call to the agency concerned.

Table 3.1 shows the number of cases dismissed and the number of cases accepted for processing during the year, compared with the figures for the preceding year. In respect of the cases considered on facts in issue, the table gives details of the result of the Ombudsman's case processing. It is not possible to provide a complete statement showing the final outcome of the Ombudsman's processing with regard to the number of complainants who were assisted in having decisions reversed, who were

awarded compensation etc., partly because in cases that are re-examined, the new decision is not announced by the agency until after the end of the statistical year. However, such information will appear in subsequent annual reports.

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

Table 3.1 Distribution of cases rejected and cases considered on facts in issue

	2006	2007
Cases rejected	979	927
Cases considered on facts in issue	1068	1175
1. Unnecessary to obtain statement in writing from the administrative agency		
a) Case settled by telephone call	204	259
b) Letter of complaint, possibly supplemented by case documents, showed that the complaint could not succeed	559	571
2. Obtained statement in writing from the administrative agency		
a) Case settled without the necessity of a final opinion by the Ombudsman	40	40
b) Case closed without criticism or recommendation, i.e. complaint not successful	104	127
c) Case closed with criticism or request to reconsider the case, and possibly remedy harmful effects	161	178

Fig. 3.2 Cases rejected (44 %)

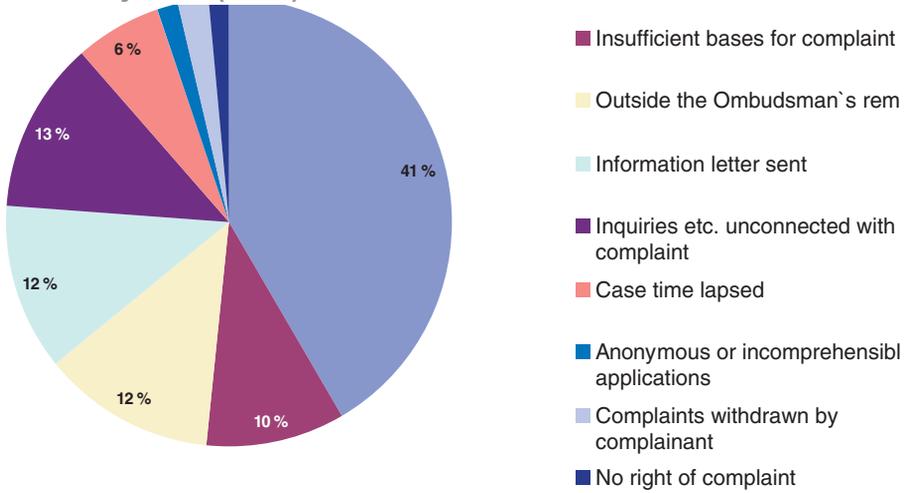
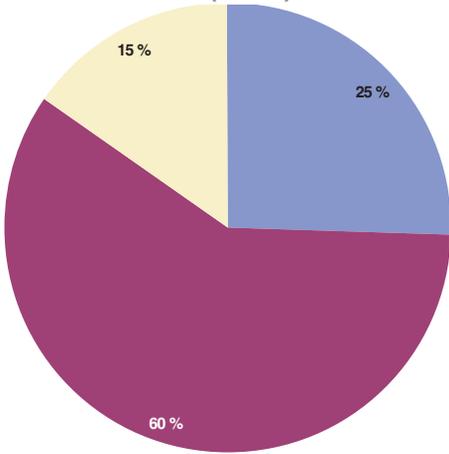


Fig. 3.3 Cases considered on basis of facts in issue (56 %)

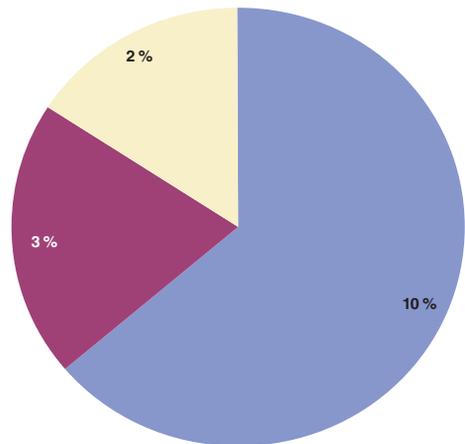


Concluded (cf. table 3.1 items 1a and 2a)

Closed without criticism or recommendation (cf. table 3.1 items 1b and 2b)

Closed without criticism or recommendation (cf. table 3.1 items 2c - Detailed in fig. 3.4)

Fig. 3.4 The subject of criticism or recommendation by the Ombudsman (15%)



Decision

Case processing time

Other procedural issues

4. Geographical distribution of cases

Table 4.1 shows the geographical distribution of cases. Some complainants live

abroad or are in institutions, for example prisons or psychiatric institutions. Some complaints may be anonymous or received by e-mail showing the e-mail address only. These complaints are grouped under “other” in the table.

Table 4.1 Geographical distribution of complaints

County	No.com-plaints	Complaints in percent	Percentage of total population 01.01.2007
Østfold	96	5,2	5,6
Akershus	195	10,5	10,9
Oslo	363	19,6	11,7
Hedmark	62	3,3	4
Oppland	37	2	3,9
Buskerud	80	3,3	5,3
Vestfold	105	5,7	4,8
Telemark	45	2,4	3,6
Aust-Agder	44	2,4	2,2
Vest-Agder	71	3,8	3,5
Rogaland	144	7,8	8,6
Hordaland	148	8	9,8
Sogn og Fjordane	35	1,9	2,3
Møre og Romsdal	45	2,4	5,2
Sør-Trøndelag	100	5,4	6
Nord-Trøndelag	35	1,9	2,8
Nordland	92	5	5
Troms	100	5,4	3,3
Finmark	58	3,1	1,6
Svalbard	1	0,1	0
	1856	100	100
Other	270		
Total	2126		

Cases of general interest

Pursuant to Section 12 of the Ombudsman's Directive, the Annual Report to the Storting shall contain "an overview of the processing of individual cases that the Ombudsman considers to be of general interest". The criteria for selecting cases for inclusion in the Report is whether the case can be considered to be representative, if it is relevant as an example of maladministration, if the case is principled and is clarifying with regard to the law and whether the case deals with principle issues of protection afforded by law.

Item 6 below provides a summary of the cases dealt with in the Report. Cases are also published currently on the Ombudsman's website, www.sivilombudsmanen.no, and are also transferred to the Lovdata website, www.lovdata.no, once yearly.

The day-to-day work on individual cases and my contact with public administration has given me general insight into case processing in public administration. There is a risk that my work on the individual cases can give a distorted impression of case processing in public administration in general. Complaints arise from situations in which citizens feel that they have been unfairly treated. Based on the contact I have with public administration through visits and inspections, it is my impression that the cases I have included in this Annual Report are representative on the basis of the aforementioned criteria.

1. Slow case processing

Every year the Ombudsman receives numerous complaints of slow case processing by public agencies. A frequent complaint is that no provisional reply has

been received, reminders remain unanswered or no notification is given of delays in cases when a case cannot be processed in the time indicated. Experience from dealing with these complaints shows that complainants attach great importance to being kept informed of the progress of their case and that extended case processing is easier to accept if complainant is given information on the reason for this and an indication of when a reply can be expected. In 2007, I received 356 complaints dealing solely with slow case processing, failure to send a provisional reply and/or notice of delay by the agency concerned. The equivalent figure for 2006 was 305. In addition, there are complaints that deal with another main issue, but where slow case processing is also mentioned.

// Experience from dealing with these complaints shows that complainants attach great importance to being kept informed of the progress of their case and that extended case processing is easier to accept if complainant is given information on the reason for this and an indication of when a reply can be expected.

Good routines for ensuring proper progress and the issuing of information on case processing time is important to build up confidence in public administration on the part of citizens. In some cases, slow case processing, failure to send notice of delays, etc. can be due to failure to deal with arrears in the public agency concerned, while the cause in other cases can be more complex. The administration of the individual agency is responsible for ensuring that the agency has routines that ensure that case processing time and

information to citizens is in accordance with the provisions of the Public Administration Act and requirements with regard to good public administration. It is important that agencies are always conscious of this requirement and that new staff members are trained accordingly.

Among the cases of general interest this year there are several that concern slow case processing and failure to send provisional replies. It is my general impression that disproportionately long case processing time can be a considerable problem in sections of public administration where there is a high level of contact with the general public.

// It is my general impression that disproportionately long case processing time can be a considerable problem in sections of public administration

2. Duty of guidance in public administration

In several complaints the question is raised as to whether an administrative agency has fulfilled its duty to provide guidance. Complaints include cases of incorrect, misleading or confusing guidance, for example by telephone or in person at an office. Whether this is actually the case is difficult to decide in an investigation by this office. There will frequently be conflicting opinions on the progress of a talk, on what has been said and whether this could be misunderstood. Case processing at this office is in writing, and it is not normal procedure to question parties or witnesses. Disputes and disagreements concerning factual situations are therefore frequently difficult to clarify by means of an investigation in this office.

In cases where there is agreement that guidance given could have been more precise, more comprehensive or similar, the question will be what legal impact, if any, this could have. Each case must be evaluated specifically with regard to type of case and the extent of any loss of rights or financial loss that may be sustained. There is also the question of whether the individual citizen should have played a more active role to obtain the information/guidance he or she required. Numerous other factors will also have an influence.

Many administrative agencies provide useful information and guidance on the Internet. It is important that the information provided in this medium is updated and readily available to those who do not have special expertise in this area. It must also be remembered that many people do not have Internet access readily available. Neither can a reference to a website cover the requirement for individual guidance in specific cases. Public administration must therefore organize its operations in such a way that they take due regard to the fact that many people do not have access to the Internet and ensure that specific individual guidance is available by other means.

Moreover, certain groups of users will have an above average requirement for guidance. This could, for example, include users with poor knowledge of the Norwegian language and the Norwegian systems, persons suffering from mental illness, or certain citizens dependent on social services. The object of the guidance obligation is to "provide the parties and other interested persons with access to look after their interests in specific cases in the best possible manner". For people in a difficult position, an extra effort must sometimes be made to enable them to look after their interests. In such

situations, public administration should be encouraged to adapt its guidance to the requirements of users.

It is my impression that reports on breach of the guidance obligation are invoked more frequently now than in previous years. It is possible that the anticipation of citizens with regard to the scope of guidance that should be given on a problem submitted to an administrative agency has increased. However, the increased determination of rights places higher demands on the guidance that must be given by public administration. In some cases, breaching the duty of guidance can give rise to liability for damages on the part of the agency concerned and a service reprimand to the responsible civil servant.

// the increased determination of rights places higher demands on the guidance that must be given by public administration.

3. Impartiality

In many of the complaints, the question is raised whether a civil servant has been sufficiently impartial to process a case or pass a decision in public administration cases. The rules on impartiality are meant to ensure that decisions in public administration are made by persons who are completely unbiased with regard to the issues concerned. The rules with regard to impartiality also serve to promote confidence in public administration. The rules do not only apply in relation to passing decisions in a case, they also apply in connection with the preparatory work that forms the basis for passing a decision.

It cannot be avoided that civil servants in public administration may have connections which would make it undesirable for them to participate in the processing of a

case. Situations in which partiality could be questioned are something any civil servant may face at some time or other, and there is no reason to question the civil servant's integrity or morals when such a situation arises. To be disqualified on the grounds of partiality in a case does not therefore mean that the civil servant can be blamed in any way for his/her connection with the case. It is only in cases when a civil servant who is not impartial, deals with or passes a decision in a case that there can be grounds for criticism.

// To be disqualified on the grounds of partiality in a case does not mean that the civil servant can be blamed in any way for his/her connection with the case. It is only in cases when a civil servant who is not impartial, deals with or passes a decision in a case that there can be grounds for criticism.

Certain civil servants may find it problematic to declare that they are not impartial in connection with the processing of a case. A civil servant may, for example, regard it as his/her duty to process the case and may be concerned that others will think they are evading their duty by declaring non-impartiality. It is important to keep this perspective in mind when applying the rules of impartiality. Processing of a case may become complicated if a civil servant with special insight and expertise declares non-impartiality. Some may also feel discomfort if they are "disqualified". It is important that impartiality rules are balanced and applied in a manner that ensures proper processing of cases and at the same time does not lead to any lack of confidence in the administrative agency.

Public administration manages the assets of the community and exercises authority

that may have major consequences for the individual citizen. In order to be able to carry out assignments in a satisfactory manner, public administration depends on the confidence of the population. In this light, it may as a whole be a better policy to take impartiality rules slightly further than strictly necessary when appraising impartiality rather than risking subsequent criticism or sanctions.

4. Registration of e-mail

A large part of present-day communications takes place electronically. E-mail is an easy and practical way of communicating and simplifies everyday tasks for the general public and the authorities. The increased use of electronic communications has however created challenges with regard to access and freedom of information. Several cases dealt with by the Ombudsman in 2007 and in previous years indicate that many case-related e-mails are not registered.

This is a disturbing trend as registration is a basic condition for ensuring that the general public may use their right of access pursuant to the Freedom of Information Act. If one is not aware of the existence of a document, there will be no provision for gaining access to it.

If an e-mail is defined as "a case document" for a public body or not will depend on a specific appraisal of its content and form. As a basic guideline, an e-mail that contains information or evaluations that can be said to be of importance for the processing of a public administration case, must be considered to be a case document. The fact that the contents of the correspondence may be in more or less informal terms, is not in itself decisive. Case documents, including e-mails, must be registered if they are used in case

processing and if they are to have any value as documentation.

The heads of administration in public agencies are responsible for ensuring that executive officers understand the importance of case documents sent to individual e-mail addresses being registered in the public register. It is my experience that public agencies have frequently organized good guidelines for registration of e-mails. The problem is that these guidelines are frequently not followed in practice. It is important that public administration bodies are clear on this point. Measures should be implemented if required, for example internal training, in order to ensure that registration routines are followed.

// It is my experience that public agencies have frequently organized good guidelines for registration of e-mails. The problem is that these guidelines are frequently not followed in practice.

5. Legal competence requirements in municipalities

I have received information from the Norwegian Association of Lawyers which shows that fewer than 150 of the country's 431 municipalities employ lawyers in public administration. The other municipalities rely on hired legal assistance when they feel that this is required.

The increasing establishment of rights and the general public's growing awareness of their rights mean that a large part of municipal administration must increase focus on clarifying the rights of users. When political decisions are to be implemented,

they must therefore be put into perspective, that is to say from the position of the general public. It is no longer sufficient to organize the work on a financially favourable basis or whatever is most appropriate from an overall perspective. Irrespective of whether this development is welcome or not, the establishment and awareness of citizen's rights will place greater demands on the legal competence of the municipalities. It has been shown that in many cases case processing may suffer due to lack of knowledge of important case processing rules and lack of understanding of the importance of citizen's rights afforded by the law. The work of drawing up local regulations is also important, and this also requires professional legal knowledge to ensure that regulations are properly and legally worded.

// cases case processing may suffer due to lack of knowledge of important case processing rules and lack of understanding of the importance of citizen's rights afforded by the law.

Several cases I have dealt with in recent years have raised doubts in my mind as to whether the municipalities – particularly small municipalities – are able to meet these challenges in an adequate manner. Lack of legal competence in public administration may undermine the protection of citizens afforded by the law, and it is important that the municipalities realize the importance of having and using such competence. Hiring external legal expertise whenever this is felt to be necessary, will not always be sufficient. Municipalities without legal competence in their own organization will not always know when it is necessary to call in legal assistance. Obviously, a great deal can be achieved by internal training of civil servants. It is not always necessary to have fully trained lawyers on the staff in order to ensure that the legal competence requirements are covered.

// Lack of legal competence in public administration may undermine the protection of citizens afforded by the law, and it is important that the municipalities realize the importance of having and using such competence.

In many specialist areas, good solutions can be achieved through local government cooperation. I believe that this can also apply in the legal area. I hope that the municipalities will take this matter seriously and that the smaller municipalities in particular will evaluate what can be done to increase their competence to meet future challenges brought about by establishment and awareness of citizens' rights.

6. An overview of cases included in the Annual Report

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

1. Access to documents concerning development and building in the area previously occupied by the Defence Forces Supreme Command – case processing time
2. Case processing in the appeal stage in a case concerning access to documents
3. Access to hourly rates for consultancy services in the Norwegian Food Safety Authority
4. Access to letter from the Police Security Services to the Ministry of Justice
5. Application of the Freedom of Information Act in respect of documents concerning payment for legal services
6. Access to an Annual Report for 2003 from the Control Committee

- for control of communications – duty of confidentiality
7. Access to documents in INFOFLYT (cooperation on flow of information between the police and the correctional services)
 8. Access to comparative studies on medicinal products for the treatment of osteoporosis
 9. Access to documents on the planning and building of the Hanekleiv tunnel
 10. Access to internal budget memorandum concerning environmentally harmful subsidies
 11. Freedom of information in budget cases – access to an inter-ministry memorandum
 12. The application of the provisions of the Freedom of Information Act on documents seized in a criminal case
 13. Deferred publication pursuant to Section 4 of the Freedom of Information Act – the duty of an administrative agency to renew processing on a question of access when the time-bar is lifted
 14. Rejection of a request for access – report from the Norwegian Gaming Authority
 15. Open meetings in Nesna municipality
 16. Closed budget conference in Hjelmenland municipality
 17. Agenda of the municipal executive committee concerning employment conditions for a chief administrative officer
 20. Failure to interview and obtain reference information in an employment case
 21. Employment of a permanent chairman of Stavanger Public Guardian's Office
 22. Appointment of a professorship – deficiencies in the evaluation of the expert committee
 23. Position of communications adviser – stopping the employment process
 24. Taking absence due to illness into account in an application for extension of a part-time position
 25. Personal advancement to professor according to competence
 26. Priority for a redundant employee to a position involving higher wages than in the previous position
 27. Priority for a redundant employee – the question of whether employment routines had been properly observed
 28. Priority for the position of police inspector – the requirement for an unblemished record
 29. Ban on a second occupation for a radiographer employed in a health institution
 30. Service reprimand – access to the factual basis for the decision

Freedom of speech for civil servants

31. Freedom of speech for a teacher – a proposal concerning the closing down of a school
32. The issuing of a warning in an employment situation and the appointment of a supervisor in a children's home

Appointments in the civil service

18. Appointment of a head nurse – no written reasoning submitted
19. Employment of a school inspector – deficiencies in wording of announcement and report

Authorisation, operating subsidy and other subsidies

33. Authorisation as a dental technician
34. Granting of operating subsidy to a physiotherapist in private practice

35. Granting of 70% operating subsidy for physiotherapy in a company
36. Granting and release of loan from the Norwegian Fishermen's Sales Organization to the Norwegian Fishermen's Association

Education, financing of studies

37. Access for students to attach a reasoning in respect of complaints concerning new sensors
38. Case processing in a decision of non-impartiality in judging the presentation of a thesis for a doctorate
39. A case concerning a language scholarship – interpretation of regulations

National Insurance, support in waiting period, child maintenance

40. Debt settlement in connection with the return of an unsuitable "invalid car"
41. Stoppage of financial support during waiting period – including the question of whether requirements for job application activity were submitted to the recipient in the proper manner
42. Effective date for the granting of rehabilitation money – duty to provide guidance/information
43. Calculation of income when fixing supplements for children

Municipal housing, transport scheme for physically challenged persons

44. Allocation of municipal living accommodation – questions of waiting list, priority and case processing
45. County transport scheme for physically challenged persons – effective date of individual decisions

Healthcare law, mental healthcare, nursing homes, rehabilitation institutes

46. Routines for replying to inquiries and provisional replies at St. Olavs Hospital
47. Requirements for the correction and deletion of information in medical records and complaint against health personnel
48. The processing of a complaint against the health authorities by the Norwegian Board of Health Supervision – complaint concerning rights or request for supervision
49. The Control Commission's processing of a complaint in mental healthcare – guidance duty etc.
50. Calculation of interest on repayment of a fee for a period in a nursing home
51. Coverage of expenses for treatment at drug rehabilitation centres abroad

Child welfare, foster homes

52. Case processing of a temporary decision by the county boards for social services
53. Case processing in a case concerning anonymous notice of cause for concern to the child welfare authorities
54. Status as a foster home when children are placed with relatives

Change of name, registering the Population Register

55. Changing the names of children during a case concerning parental responsibility
56. A population register case on Svalbard – the question of to what extent the impression was given of the

intention of remain outside Svalbard for at least 6 months

Prison conditions

57. Extended case processing time by the correctional services in a case concerning application for leave – failure to provide information during case processing
58. Long waiting periods from the time of passing enforceable judgment to start of imprisonment
59. Use of information from the police by the correctional services in cases concerning leave and transfer to transitional living quarters
60. Partial confinement after an inmate slept in
61. Prevention of suicide and self-inflicted injuries in prisons
62. Transfer of prisoners sentenced to detainment back to Ila prison against the wishes of the detainees
63. The placing of several prisoners in the same cell – doubling up and the use of cells housing several inmates
64. The implementing of urine tests in prison

Immigration cases

65. Case processing time by the Immigration Directorate in a case concerning a visa and cancellation of ban against entry into the country
66. Reuniting of a family. Sharing domicile – documentation of identity
67. Reuniting of families in respect of children above the age 18 – the question of whether the applicant had a father in the home country
68. Reuniting of families – the head of the household's grounds for staying in the country
69. Processing of questions concerning the identity of foreign citizens by the immigration authorities

Tax, tax assessment, customs dues and fees

70. Property tax on holiday homes – Section 105 of the Norwegian Constitution and the European Convention on Human Rights
71. A case based on the special rules concerning tax deduction under the SkatteFUNN scheme (the creative business scheme) – remission of late payment fee
72. Case processing – use of inspecting auditor to prepare drafts to the tax assessment board in an amended case
73. The tax assessment authorities' access pursuant to Section 4-8 of the Tax Act to request a taxpayer for information of importance for tax assessment before the deadline for submitting income tax returns
74. The question of whether a claim for post-calculated customs dues and fees etc. was time-barred pursuant to Section 58, second sub-section, first sentence, of the Customs Act as the claim was submitted more than three years after the date on which the customs authorities “found the error”
75. The change of practice on the part of the Ministry of Finance with regard to waiving time-bar objections in respect of value-added tax
76. Rejection of application for remission of employer's tax – the importance of the income and assets of both spouses

Legal costs

77. Coverage of legal costs pursuant to Section 36 of the Public Administration Act when the county governor has reversed a municipality's rejection of an application concerning the splitting off of a lot

Building and planning cases

78. The Planning and Building Authority in Oslo municipality – case processing time, the silo scheme (a queue system for distribution to executive officers), replying to inquiries and information on actual case processing time
79. Deadline for start-up of a three-year timeframe in Section 96, first sub-section, of the Planning and Building Act
80. Change of use – holiday home
81. Demolition and rebuilding of a holiday home in Tjøme municipality
82. Application for the building of a jetty and steps
83. The erection of a “wooden tent” on a camping site
84. Permit for the building of a forestry road in Masfjorden, individual decision and time limit for filing objections
85. Requirements concerning evaluation of “special grounds” for exemption from the provisions of Section 7 of the Planning and Building Act
86. Failure to notify the proper authorities with regard to exemption in a case of parcelling out land in an area reserved for agriculture and recreation
87. A case concerning calculation of degree of utilisation – Kilen pier, Sandefjord
88. Inadequate processing of case concerning the building of an apartment building in Arendal municipality
89. Ban against housing development in the catchment area for drinking water – a question of authorization
90. The access to grant a framework permit in building cases when the divisional authorities are negative – whether the provisions of Section 10 No. 4 of the Reindeer Husbandry Act of 1978 provide provision for agreement
91. The handling of a complaint against the stipulation of a fee in a building case
92. Reduction/remission of an enforcement fine – concerning illegal erection of a fence and wind-breaker panel
93. Development plan – evaluation of the consequences for children and young people
94. Testing of the obligation to hold an impact study when processing a complaint against a planning decision
95. Interpretation of planning provisions concerning noise screening

Concession, residence obligation, pollution, animal protection

96. Processing of a non-impartiality issue in a small municipality – a case concerning abolishment of concession conditions
97. A question of residence obligation in agricultural and forestry properties
98. Exemption from residence obligation pursuant to the Concession Act – case processing
99. Rejection of an application for concession – a statement on the interpretation of the term “agricultural and forest property” in Section 5, second sub-section, of the Concession Act
100. Permanent exemption from the residence obligation – appraisal of the exemption pursuant to the Allodial Rights Act
101. The question of whether a decision not to stipulate concession pursuant to the Pollution Act was an independent decision
102. An order to register a restriction on the use of property pursuant to the provisions of the Pollution Act

103. A decision concerning an enforcement fine pursuant to the provisions of the Pollution Act
104. An animal protection case – case processing in connection with putting a dog down

Water and drainage fee

105. Claim for refund of overpayment in water and drainage fees

The Constitution of the Kingdom of Norway

Article 75 litra l:

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

¹ Addendum by Constitutional provision dated 23 June 1995 No. 567.

Act of 22 June 1962 No. 8 concerning the Storting's Ombudsman for Public Administration¹

§ 1.

Election of Ombudsman.

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

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

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

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

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

elect a substitute Ombudsman to deal with the said matter.

§ 2.

Directive.

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

§ 3.

Purpose.

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

§ 4.

Scope of Powers.

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

- a) matters on which the Storting or Odelsting has reached a decision,
- b) decisions adopted by the King in Council of State,

¹ Amended by Acts of 22 March 1968 No 1, 8 February 1980 No. 1, 19 December 1980 No. 63, 6 September 1991 No. 72, 11 June 1993 No. 85, 15 March 1996 No. 13, 28 July 2000 No. 74, 14 June 2002 No. 56 and 16 January 2004 No. 3, 17 June 2005 No. 90 and 29 June 2007 No. 82.

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

The Storting may stipulate in its Directive to the Ombudsman:

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

§ 5.

Basis for acting.

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

§ 6.

Further provisions regarding complaints and time limit for complaints.

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

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

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

§ 7.

Right to obtain information.

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

The provisions of chapter 22 of the Act relating to the Resolution of Disputes, excluding §§ 22-2, 22-6 and 22-7, shall apply correspondingly to the Ombudsman's right to demand information.

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

§ 8.

Access to offices in the public administration.

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

§ 9.

Access to documents and pledge of secrecy.

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

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

§ 10.

Termination of a complaints case.

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

The Ombudsman may point out that an error has been committed or that negligence has been shown in the public administration. If he finds sufficient reason for so doing, he may inform the prosecuting authority or appointments authority what action he believes should be taken accordingly against the official con-

cerned. If the Ombudsman concludes that a decision rendered must be considered invalid or clearly unreasonable, or that it clearly conflicts with good administrative practice, he may say so. If the Ombudsman believes that there is justifiable doubt pertaining to factors of importance in the case, he may draw the attention of the appropriate administrative agency thereto.

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

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

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

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

§ 11.

Notification of shortcomings in statutory law and in administrative practice.

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

§ 12.

Report to the Storting.

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

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

§ 13.

Pay, pension, other business.

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

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

§ 14.

Staff.

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

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

§ 15.

1. This Act shall enter into force 1 October 1962

Directive to the Storting's Ombudsman for Public Administration¹

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

§ 1.

Purpose.

(Re § 3 of the Ombudsman Act.)

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

§ 2.

Scope of Powers.

(Re § 4 of the Ombudsman Act.)

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

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

which have been dealt with by the said Select Committee.

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

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

§ 3.

The form and basis of a complaint.

(Re § 6 of the Ombudsman Act.)

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

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

¹ Updated in accordance with amendments 22 October 1996, 14 June 2000, 2 December 2003 and 12 June 2007 nr. 1101.

§ 4.

Exceeding the time limit for complaints.

(Re § 6 of the Ombudsman Act.)

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

§ 5.

Terms and conditions for complaints proceedings.

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

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

The provisions in the first and second paragraphs are not applicable if the King is

the only complaints instance open to the complainant.

§ 6.

Investigation of complaints.

(Re § § 7 and 8 of the Ombudsman Act.)

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

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

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

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

§ 7.

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

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

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

§ 8.

Cases taken up on own initiative.

(Re § 5 of the Ombudsman Act.)

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

§ 9.

Termination of the Ombudsman's proceedings.

(Re § 10 of the Ombudsman Act.)

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

§ 10.

Instructions for the staff.

(Re § 2 of the Ombudsman Act.)

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

§ 11.

Public access to documents at the office of the Ombudsman

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

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

§ 12.

Annual report to the Storting.

(Re § 12 of the Ombudsman Act.)

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

The report shall contain a survey of the proceedings in the individual cases which the Ombudsman feels are of general interest and shall mention those cases where he has drawn attention to shortcomings in statutory law, administrative regulations or administrative practice or has made a special report pursuant to § 12 second paragraph of the Ombudsman Act. The report shall also contain information on his supervision and control of public agencies to safeguard that the public ad-

ministration respect and ensure human rights.

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

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

§ 13.

Entry into force.

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



**The Parliamentary Ombudsman
for Public Administration - Norway**
Sivilombudsmannen

Visiting address
Akersgata 8, 6th floor
(entrance Tollbugata)

Postal address
P.O. Box 3 Sentrum, N-0101 Oslo

Telephone +47 22 82 85 00
Green number +47 800 80 059
Telefax +47 22 82 85 11
arkiv@sivilombudsmannen.no
www.sivilombudsmannen.no



