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The Parliamentary Ombudsman
Annual Report 2008
Summary in English



The Parliamentary Ombudsman
Norway



Introduction

This summary is an abridged version of my Report to the Storting for 2008. The summary provides information and statistical data concerning the Ombudsman's activities in 2008. It also contains an overview of cases investigated and processed during the course of the year.

The texts of Article 75 litra 1, of the Constitution of the Kingdom of Norway, the Act concerning the Storting's Ombudsman for Public Administration and the Directive to the Storting's Ombudsman for Public Administration, are included at the end of the summary.

The full text of the Ombudsman's annual report is available in Norwegian on the Ombudsman's website, www.sivilombudsmannen.no.

Oslo, May 2009

Arne Fliflet



Photo: Bård Ek

Parliamentary Ombudsman Arne Fliflet

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Preface

Exercising the right to submit complaints can result in sensible and reasonable solutions and can serve to improve public administration

Some people are of the opinion that our present-day culture is characterised by complaints and fault-finding and that this is a negative trend. Complaints are regarded as an expression of grievance and dissatisfaction. This viewpoint is oversimplified. A complaint is frequently necessary in order to support a right or to correct an injustice. Those who wish to point out an error or injustice on the part of the authorities can only do this by submitting a complaint. Complaints may lead to the detection of system faults and can be a useful contribution and a catalyst promoting new lines of thought and innovation in public administration, thereby providing a basis for positive changes and reforms.

The right to submit a complaint is not just a right to have a decision re-examined. The right to complain can also be used to react against errors and omissions. Public administration covers all public authorities and agencies and their factual actions. In other words, the right to complain is not limited to decisions passed by a public agency. Citizens may submit complaints against all types of treatment of the general public by a public agency. For example citizens may complain that the conduct of an agency has been unfriendly, impolite, unkind and unforthcoming, reserved, slow, unavailable or prejudiced.

Public administration agencies must have an efficient system for dealing with complaints so that both re-examination cases and complaints concerning dissatisfaction can be registered and dealt with in a wide

sense. The larger agencies should therefore have bodies or institutions that can investigate complaints on an independent basis. There is little help in merely referring a complainant to the officer responsible for the case in question.

The Parliamentary Ombudsman is not a part of public administration and can investigate complaints, not only concerning decisions, but in all aspects of public administration. When a public agency does not operate as it should, fails to reply, leaves cases unprocessed, draws out case processing, or if conduct is arrogant, impolite or inconsiderate, citizens may send a complaint to the Ombudsman. Complaints of this nature make it possible for the Ombudsman to investigate whether the systems or the processing of complaints by a public agency are suitable and whether the agency's instructions on this point have been fulfilled.

The norms that form the basis for the Ombudsman's investigations and recommendations are first and foremost the statutes. The Ombudsman can also base his investigations and recommendations on good administrative practice. The instructions to the Ombudsman state that "he shall ensure that public administration does not commit any injustice against the individual citizen and that civil servants and others in the service of public administration are not at fault or neglect their duties". The norms on which the Ombudsman's organisation is built are therefore rooted in strict judicial law. Norms that are based on basic values and general ethical principles shall also be a deciding factor for the Ombudsman. Such principles are closely linked to the rules of law, but extend further than statutory provisions. When the Ombudsman's scheme was established it was intended that the Ombudsman should have the powers to extend his remit further than

the strict statutory provisions. The fact that the Ombudsman is not limited to strict statutory provisions is important but must be exercised with caution. It is important because it allows the Ombudsman to investigate matters that must be improved and corrected without raising any issue of illegality.

This access for the Ombudsman to take matters further than provided by strict judicial provisions is important for building confidence in both public administration and in the institution of the Ombudsman. When processing individual cases,

this access can provide the Ombudsman with the opportunity of contributing towards reasonable solutions without involving any infringement of the law. It has been said that “the highest form of justice is the greatest injustice”. That is to say that which is formally and judicially correct may be ethically or morally unjust. In our form of government, the Ombudsman, when processing individual cases can contribute towards reducing the incompatibility that may arise between statutory provisions and the requirement for a just and sensible solution.

Activities in 2008

1. What does the Ombudsman do?

The Ombudsman makes investigations and expresses a legal opinion on whether public authorities have acted in an erroneous manner or if any injustice has been committed against citizens. Almost all public administration and public agencies may be controlled by the Ombudsman. This supervisory role also encompasses respect of human rights on the part of public agencies and whether case processing is in accordance with good administrative practice.

Investigations are first and foremost initiated following complaints from individuals, organisations or other legal entities. The Ombudsman may also carry out investigations on his own initiative, that is to say without any basis in a submitted complaint. The Ombudsman may express an opinion on cases that have been investigated, but may not pass legally binding decisions. However, the authorities invariably comply with the statements made by the Ombudsman.

The Ombudsman's remit is not limited to decisions passed by public agencies, his right to investigate and examine includes actions, omissions and other matters connected with the operation of a public agency. When a public agency fails to

reply to written applications, when case processing is slow or when civil servants in administrative positions behave in an improper or insulting manner, citizens may complain to the Ombudsman. This provides citizens with a practical and reasonable opportunity for obtaining a neutral and objective legal investigation and evaluation of their case or of the problem they are experiencing with the public authorities. An investigation by the Ombudsman can be a useful and practical alternative to the courts. It is also important that individual citizens can submit a complaint to the Ombudsman without the need to use expert assistance, for example a lawyer.

The staff at my office comprises 32 members of the legal profession and an administrative organisation comprising 13 persons. The office is divided into five divisions, each division being responsible for a specialist area. Dividing the institution into specialist areas provides the heads of division and myself with a continuous overview of the case portfolio, thus streamlining priorities and efficiency in case processing.

All complaints submitted are read by me personally and I express an opinion in all cases that are raised with a public agency, and also cases terminated without further investigation, whenever the situation demands.

Fig. 1.1 Overview of divisions and specialist areas



2. Complaints in 2008, case processing procedures and the results of processing

In 2008, a total of 2,469 complaints were received. This was an increase of 343 complaints compared with 2007 and an increase of 442 complaints compared with the figure for 2006.

Of the complaints received, 1,174 were rejected on a formal basis. These include for example complaints against bodies, institutions and other independent legal entities that do not form a part of the public administration and that are not encompassed by the Ombudsman scheme. Moreover, if no appeal has been lodged with an appellate body in public administration or if the complaint has not previously been raised with the agency concerned, the complaint will normally be rejected. The reason for this is that the control by the Ombudsman is mainly based on re-examination, that is to say that the public agency concerned must first have the opportunity to process and decide on the issue that forms the basis for the complaint. Complaints will also normally be rejected if they are submitted after the cut-off date for submitting complaints to the Ombudsman. Complaints must be submitted no later than one year after the action or event that

caused the complaint took place, or ceased to take place.

If a complaint is to be processed, the first step is to obtain the case documents from the public agency. The complaint, the case documents submitted by complainant and the case documents from the agency are then studied. At this preliminary stage the aim is to find out whether there is any indication of maladministration or injustice against complainant. So far in the process, it is correct to say that all complaints are investigated. However, the content of the complaint and the details in the case documents will decide the scope of the investigation and the further processing of the case. It will then be evaluated whether there are sufficient grounds for processing the complaint. Even if it is established that an error has been made, the gravity of the error will decide whether there is sufficient reason to take the matter further. Minor errors and errors that can be categorised as non-recurring will not normally be accepted for further processing. In some cases such as this I may pass the case on to the agency concerned requesting them to take due note of complainant's comments and recommending how the agency should organise matters in the future.

It is intended that the Ombudsman's investigations shall be implemented fairly quickly. Case processing must obviously be thorough. Both complainant and the

public agency must have the opportunity of submitting statements and relevant material, but case processing should not be too detailed. This is not due process before the courts. The case processing requirements must conform to the object of the Ombudsman scheme, that is to say it is to be secure and at the same time efficient, simple and inexpensive. Investigations must be limited to a study of the case documents and other written documents. The Ombudsman cannot normally question parties or witnesses, and it is not usual to carry out inspections. Moreover, control by the Ombudsman is first and foremost a legal supervision. This means that cases in which the result of processing in a public agency are based on evaluation of evidence of a factual or discretionary nature, and where documents in the case do not provide further instructions, are less suitable for processing by the Ombudsman. In such cases, action before the courts may be a better alternative.

Of the cases that were taken up for further investigation in 2008, 868 were terminated following a study of the complaint and the case documents submitted by the public agency, without the case being submitted to, or taken up with the agency. In 598 of these cases, it was shown that, following a study of the complaint and the case documents it was obvious that the complaint could not succeed. In the other 270 cases, a telephone call to the public agency concerned was sufficient to settle the matter. These cases mainly concerned extended case processing time or failure to reply on the party of the agency.

In one case that concerned rights pursuant to the provisions of the Sami Act, a study of the complaint showed that there was no basis for legal criticism of the public agency concerned. However, I found that there was reason to pass the case on to the Sami Parliament in order to draw attention to the problem that had been raised.

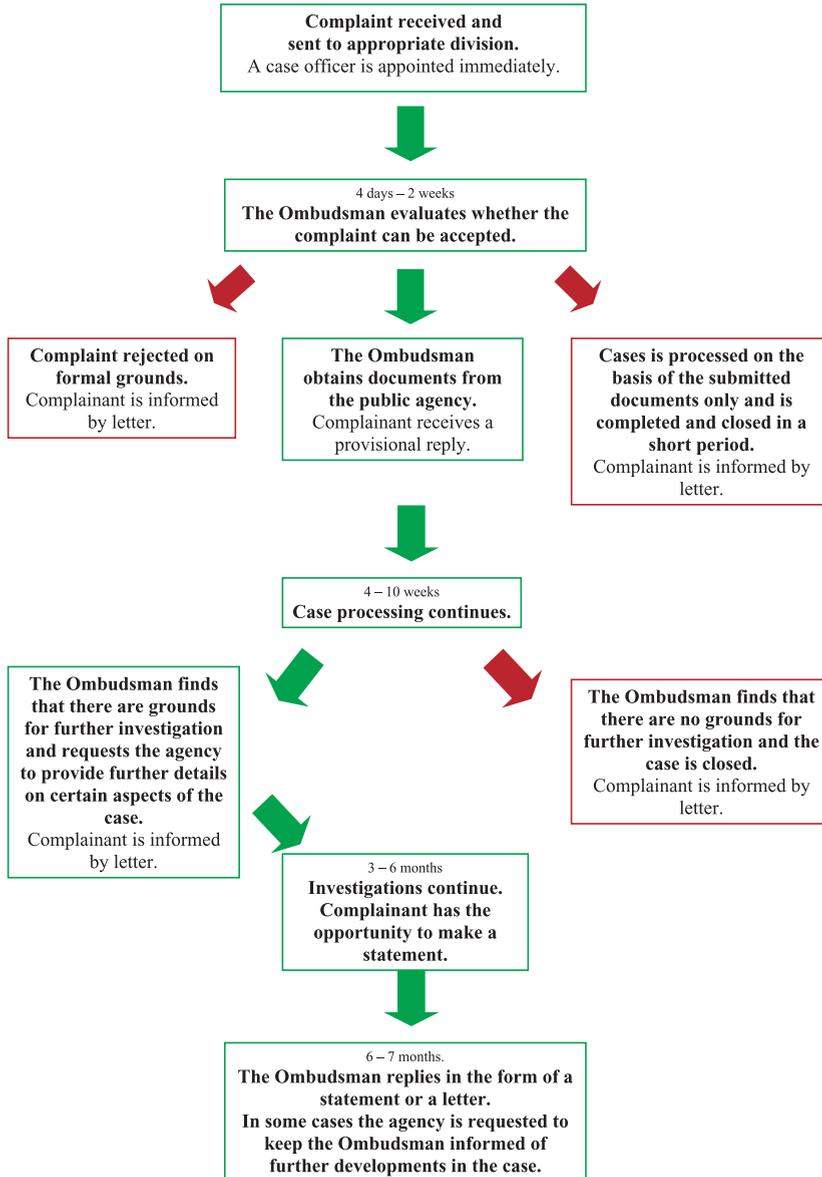
Of all the complaints received, 209 complaints resulted in criticism in one form or another or a request to the public agency. Pursuant to the provisions of Section 10 first subsection of the Ombudsman Act, the Ombudsman “can express his opinion on matters”. In other words the Ombudsman may point out that an error has been committed in case processing or in the application of the law and may also express the opinion that a decision must be considered to be invalid, clearly unreasonable or in contravention of good administrative practice. Moreover, the Ombudsman may express the view that compensation should be made if this is indicated in view of the error on the part of the agency. It is also important that the Ombudsman can point out that there is reasonable doubt with regard to decisions that form the subject of the complaint. Such doubt may apply both to factual and legal matters.

When I am of the opinion that an act has been incorrect or an injustice has taken place, I will normally request the public agency to re-examine or re-process the case in question. Experience has shown that public agencies comply with such requests. Agencies will normally take my opinions as a basis. The main impression is that public administration agencies are loyal when dealing with requests from the Ombudsman. If public administration is not in agreement and fails to act in accordance with the Ombudsman’s request, the Ombudsman may advise the citizen to try the case before the courts. As a consequence of such a recommendation, the citizen is entitled to free legal aid, cf. Section 16 first subsection No. 3 of the Legal Aid Act No. 15 dated 13 June 1980. In 2008 there has been one case in which legal action has been advised.

Chapter V of the Annual Report¹ contains summaries of the most important statements I have made in 2008.

¹ The full Annual Report is available in Norwegian on www.sivilombudsmannen.no

Figure 2.1 Chart showing case processing procedure and approximate processing time at the office of the Ombudsman



3. Case processing time

The time taken to process complaints at the office of the Ombudsman varies depending on what the matter concerns, how comprehensive it is and the type of investigations that are considered to be

necessary to throw sufficient light on the matter.

Complainants will normally receive a provisional reply within one week after the complaint has been received by the office. If the complaint must be rejected

on formal grounds, this will usually be clarified immediately. If there are grounds for further investigations and for raising the matter with the public administration agency concerned, it may take some time before the case can be closed. This is connected with the fact that the public agency concerned must have the opportunity of presenting its viewpoint on the complaint. The reply from the agency will then be sent to complainant for comment and the agency will then reply to complainant's comments. Due regard to the adversary principle and the requirement for as much information as possible will mean that case processing time in such cases may be fairly long. In cases concerning access to case documents and public administration, the case processing time is however shorter than for other types of cases.

Calculations have been made which show the following average case processing time for complaints submitted to the Ombudsman:

- Cases rejected on formal grounds 11 days
- Cases closed without raising the matter with the public agency 5 weeks
- Cases closed after raising the matter with the public agency 6–7 months

The calculations were based on between 80 and 100 randomly selected cases, each within one of the three different case categories. The result of the calculations mainly conforms to the target figures for case processing time. The office is searching for electronic tools that can provide an even more precise overview of case processing time.

The chart in Section 2 above provides an overview of case processing time at the different stages of processing. Figures 4.1, 4.2 and 4.3 in the chapter dealing with statistics provide a more complete

picture of case processing time at this office.

4. Cases raised on own initiative

In addition to investigating complaints from citizens, the Ombudsman may take up issues on his own initiative. The usual reason for dealing with such matters is that during the investigation of a complaint, I may be made aware of aspects in public administration that provide grounds for a separate investigation. Moreover, if several complaints are received concerning the same type of situation, it can be more practical to raise the matter on a general basis on own initiative rather than pursuing the specific individual cases. Other grounds for raising issues on own initiative without reference to a specific complaint may be information from the general public or matters that are raised in the media.

During the year under review, 2008, 23 cases were taken up on own initiative while the figure for 2007 was 41. The following cases taken up on own initiative are also referred to in Chapter V of the Annual Report.

- Case No. 3: Access to a property tax evaluation basis and a property tax evaluation
- Case No. 14: Filing and registration of cases concerning access to documents
- Case No. 20: Appointment of a chief municipal officer – requirement for external announcement of positions in municipal administration
- Case No. 39: The Department of Labour and Welfare. Obligation to provide guidance and information

- Case No. 50: A Child Welfare Officer's duty of care for lone asylum seekers who are minors.
- Case No. 52: Detention in police cells in relation to the directive to transfer within two days etc.
- Case No. 57: Several issues raised in connection with the Ombudsman's visit to Vadsø prison.
- Case No. 58: Follow-up of visit to Skien prison.
- Case No. 60: Visitors visa. The Directorate of Immigration's general experience with regard to failure to return.
- Case No. 72: Control of application of the self-cost principle.

5. Special Reports to the Norwegian Storting

In 2008, I submitted two special reports to the Storting. Such reports may be submitted if the Ombudsman becomes aware of "negligence or errors of major significance or scope" cf. Section 12, second subsection of the Ombudsman Act.

The one case (document No. 4:1 2007–2008) submitted on 20 June 2008 concerned an investigation of tax assessment for the years 2005 and 2006 with regard to deduction of extraordinary medical expenses connected with diabetes. The second case (document No. 4:1 (2008–2009) submitted on 6 October 2008) referred to individual matters concerning case processing by the Norwegian System of Compensation to Patients.

Tax processing of deduction claims for extraordinary medical expenses resulting from diabetes

In 2007, I received a disturbingly large number of complaints in which it was held that discrimination had taken place in the tax assessments for 2005 and 2006 with regard to documentation requirements for the granting of a special tax reduction for extraordinary medical expenses in connection with diabetes. The investigation confirmed the information submitted by the many complainants and by the Norwegian Diabetes Association. In the income years 2005 and 2006 there appears to have been differential treatment concerning the tax deduction for extraordinary medical expenses resulting from diabetes. This differential treatment must, to a large extent, be assumed to be the result of the guidelines issued by the central tax authorities which provided excessive scope for discretionary decisions by the local tax authorities when checking taxpayers' claims for deduction of such expenses.

The investigation showed clearly that application of the rules concerning special deduction for extraordinary medical expenses almost invariably represented major challenges both for taxpayers claiming deduction due to diabetes and for the tax assessment authorities. The result of the investigation clearly showed the importance of uniform interpretation of the Tax Act and the Tax Assessment Act irrespective of where the taxpayers live and which tax office and case officer is handling the assessment. Moreover, the investigation underscored the requirement for detailed guidelines for the tax assessment authorities enabling them to issue correct and clear information to the taxpayers concerned.

For 2007, clear guidelines were adopted showing how the additional expenses for diabetic dieting could be measured

against ordinary diet expenses. I considered that these guidelines were necessary in order to ensure uniform application of the tax deduction rules with regard to additional expenses for diabetics. It was unfortunate that such guidelines had not been prepared in time for the income tax return cut off date and for the ordinary tax assessment for the income year 2005.

The investigation showed therefore that the central tax authority's preparations for the implementation of the statutory documentation requirements, including diabetics, had not been satisfactory. In the case of material changes in taxation rules that can be of relatively major importance for a many taxpayers, good administrative practice means that the taxpayer groups affected must be informed of these changes and their consequences in a proper manner and at the "right" time. The amendment of the documentation requirements in section 6–83 of the Tax Act (Norway) in the income year 2005 mainly affected non-professional taxpayers. In general, the information issued by the tax authorities must be more comprehensive than in a situation in which the changes only affect professional taxpayers.

After this special report had been submitted to the Storting, the Directorate of Taxes took the initiative for a meeting with me, the aim of which was to acknowledge that the viewpoints raised in my report would be taken seriously.

Case processing in the Norwegian System of Compensation to Patients

The grounds for this investigation were numerous complaints received over a period of time concerning case processing by the Norwegian System of Compensation to Patients (NPE). NPE is a national public agency under the Ministry of Health and Care Services. NPE processes and passes decisions on compensation claims relating to injury as a result of tre-

atment under the Norwegian Public Health service. The complaints referred to NPE's case processing time, the queue system for new cases and the handling of inquiries or requests during case processing.

I found that there were grounds to point out that case processing time in NPE was unacceptably long and in this connection I reminded the agency that these cases were of major importance for the applicants. The measures that NPE has put into effect did not in themselves appear to be sufficient to reduce the length of the waiting list and I therefore expressed the opinion that NPE, in cooperation with the Ministry of Health and Care Services should further intensify the work of reducing case processing time.

I also pointed out that there were obvious doubts with regard to the queue system that NPE had established as part of their case processing system and I assumed that the agency would work actively to wind up the scheme as soon as possible. NPE were requested to remedy the weak points in the scheme and establish routines to ensure that written enquiries received while a case is waiting in the queue are acknowledged by NPE. Finally, I emphasised that information letters, reports of delays and provisional replies should be sent, thereby satisfying the requirements laid down in section 11 A, second subsection of the Public Administration Act (Norway).

The Ministry of Health and Care Services have subsequently expressed the view that they share my viewpoint concerning the extended case processing time in NPE and that a reduction of processing time must be given priority. The Ministry also agrees that the queue system for new cases should be discontinued as quickly as possible. The Ministry state that in cooperation with NPE they will chart the resource situation in NPE and revert to this matter in the revised national budget for 2009.

Subsequent to my report, NPE has prepared and revised the information letters and the notices of delays that are sent to applicants or their representatives while the case is being processed. My critical remarks on this point have therefore had the desired effect.

I will continue to keep myself informed of development of the points that have been subject to criticism in NPE's case processing.

By request, I submitted a report on these to cases to the Storting's Standing Committee on Scrutiny and Constitutional Affairs.

On 27 November 2008 the Committee presented its recommendation to the Storting. Innst. No. 74 17 November (2008–2009) concerning investigation of tax assessment processing for the years 2005 and 2006 regarding deductions for extraordinary medical expenses resulting from diabetes. This was dealt with by the Storting on 16 December 2008. Recommendation, Innst. S. No. 75 (2008–2009) concerning case processing time and routines in the Norwegian System of Compensation to Patients was dealt with by the Storting by 18 December 2008.

6. Statements sent out for comment

In 2008, the Ombudsman received 107 consultation letters from public administration agencies containing proposals for new or changed regulations. The basis for the Ombudsman's investigations is statutory law and re-examination of the appraisals made by the lawmakers is not included in the Ombudsman's remit. With the exception of cases that directly concern the institution of the Ombudsman in matters that have previously been processed by this office, earlier ombudsmen and

I have on grounds of principle therefore shown restraint in expressing opinions with regard to proposed legislation. In 2008 I made two statements in the consultation process.

The one case concerned amendments to legislation concerning payment of maintenance. It was proposed that the scheme with regard to deduction for visits to be continued and there was no reason for me to comment on the appropriateness at this point. Complaints received by this office have however thrown light on problems connected with the burden of evidence and the requirements for submission in writing. Changes were proposed on both these points and I stated that the proposals for amendment must be assumed to relieve the problems raised on the points on the complaints. I included a reminder of my statement dated 4 February 2008 in a case concerning a special subsidy where I found that there was no legal basis for the ruling administration practice whereby the special subsidy is only granted once for the same purpose.

The second case concerned a proposed amendment in the regulations concerning medical reports to the police on deaths from unnatural causes and similar matters. I had no comment to the proposed amendment to the regulations but I found that there were grounds to emphasise that investigation at the place of death under the auspices of the health service in all cases of sudden and unexpected death of children - that was the reason for the amendment in the regulations - should be subject to thorough appraisal. Among other aspects, article 8 of the European Human Rights Convention and Section 102 of the Norwegian Constitution should be taken into consideration. I also questioned whether the scheme as such should be subject to a standard consultation process, if this was not current practice.

7. International issues and human rights

In 2008, human rights and international issues have received a great deal of attention. I regard this as a natural part of the terms of reference conferred upon me by the Storting. A separate resource group has been established at the Ombudsman's office with the object of monitoring international issues and acting as my representative in different international forums and networks.

International directives and decisions – follow-up by public administration agencies

Pursuant to the provisions of section 3 of the Ombudsman's Act, the duties of the Ombudsman include monitoring and control to ensure that public administration "respects human rights". Part of this task is to ensure that judgements passed by the European Court of Human Rights against Norway are duly followed up by the public agencies concerned. This is particularly relevant when a decision by the Court of Human Rights entails the rearrangement of the Norwegian regulations for administrative practice in order to prevent future similar infringement of the European Convention on Human Rights.

In 2008, the European Court of Human Rights has passed certain decisions against Norway, but none of these cases have required any further steps on the part of this office in relation to public administration.

The Ombudsman's human rights seminar

In November 2008, the Parliamentary Ombudsman's human rights seminar was arranged for the second time. In this year's seminar, entitled "Enforcement with the best intentions" focused on

human rights challenges in connection with the use of enforcement measures in the welfare sector. More than 100 persons from public administration, academies, private law firms and special interest organizations participated at this seminar.

A cooperation project between Nordic and Central American Ombudsman's institutions. (CANO)

In 2008 the Ombudsman has contributed to a cooperation project between the Nordic and the Central-American ombudsmen's institutions as part of the Nordic institutions work of promoting democracy and human rights in Central-America. This project is a so-called twinning project between the institutions in which capacity building between the newer institutions in Central-America and the more well established ombudsmen's institutions in the Nordic countries play a leading role.

In November, the Ombudsman received a delegation from ombudsman institutions in Guatemala, Nicaragua, Honduras, Panama, El Salvador, Costa Rica and Bolivia. These institutions also have status as national institutions for human rights in their respective countries. The delegation was given an introduction into the Norwegian context in which parliamentarianism and the different control functions of the Norwegian Storting were studied. The delegation also received a detailed presentation of the organization and work of the parliamentary ombudsman and visited the Norwegian Centre for Human Rights, the office of the Auditor General of Norway and the equality and anti-discrimination ombud. The leading themes for this visit included access to documents in public administration, anti corruption methods and human rights. The authority and the role of the institution in strengthening the general public's confidence in the authorities and in pro-

moting good administrative practice were also leading subjects.

This project was initiated by DANIDA (Danish International Development Agency) in Guatemala in cooperation with the Danish Ombudsman and is to continue for several years.

Strengthening human rights in China

A member of the Ombudsman's legal staff who is conversant with the Chinese language and China in general was again placed at disposal at the Ministry of Foreign Affairs in connection with the Norwegian initiative for strengthening human rights and building a state based on rule of law in China. In this connection the Ombudsman's office, during the year under review has received several delegations from the Chinese Authorities. The Norwegian Ombudsman's scheme, the rights of prisoners and arrested persons and basic human rights pursuant to Norwegian and International standards were all themes during these visits. The Ombudsman's representative also welcomed a delegation of Chinese attorneys on a study tour in Norway following an invitation from the Human Rights Committee of the Norwegian Bar Association. The background for this visit is the new Law Practitioners Act which came into force in China on 1 June 2008. The Chinese lawyers wished to have first hand information on Norwegian and International standards governing working conditions for lawyers to ensure just and impartial trial procedures. They also requested information on the most basic principles of Norwegian Public Administration Law.

Following an invitation from the United Nations Office of the High Commissioner for Human Rights (OHCHR), the Ombudsman's representative participated in a two day International Seminar on Human Rights protection for detainees and Development of Police Training in

China. This seminar formed a part of the cooperation between OHCHR and the Ministry of Public Security in China (MPS) for the prevention of torture/mistreating of persons under investigation and improving conditions for those held in custody.

The Ombudsman's office again participated in a human rights dialogue between Norway and China under the auspices of the Ministry of Foreign Affairs. The rights of young offenders and alternative punishment were subjects that were dealt with in this year's working group for prisoners' rights, in which the Ombudsman's representative participated.

In December the Ombudsman arranged a seminar in cooperation with the Supreme People's Procuratorate in China (SPP) on the protection of arrested persons' rights in Chong Qing. A delegation of four Norwegian lecturers comprising a judge from Oslo District Court, a defence lawyer, a police lawyer and the Ombudsman's representative discussed the matter from different viewpoints.

Other activities connected with human rights and international issues

Throughout 2008, the international group at my office and I have made a special point of participating at seminars, courses and other forums where international issues have been discussed.

Together with the Norwegian Centre for Human Rights the Ombudsman participates in a network with the European Human Rights Commissioner and other national human rights institutions in the European Council Membership states. The national institutions each appoint a member of the staff as contact person. In 2008 the network organized a round table conference in Dublin in September and a meeting of contact persons in Strasbourg in November. There has also been a

steady flow of correspondence within the network throughout the year.

The Ombudsman also participates in a network established between the European Ombudsman and the national Ombudsman's institutions in Europe. I have appointed a member of my staff as contact person in this network. The network has established an internet based forum for the exchange of information and similar matters. A meeting of contact persons was arranged in June 2008, in Strasbourg.

Following an invitation from the International Association of Anti-Corruption Authorities (IAACA), the Ombudsman's office participated in the Third Annual Conference and General Meeting in Kiev, held in October. The theme for this conference was Criminalization and Law Enforcement. IAACA was established with the object of strengthening implementation of the UN Convention against corruption which has been ratified by Norway.

In June, two members of the international group went on a study tour to Strasbourg. The object was to strengthen our knowledge of the European Council and the European Court of Human Rights.

As Ombudsman I am a member of the advisory committee that has been established by the Norwegian Centre for Human Rights in conjunction with a national institution for human rights. Two meetings of the committee were held in 2008.

Information on cases I have processed in 2008 concerning one or more human rights conventions can be found in the subject and keyword register at the end of the report under the heading "Human Rights" or in the register of acts under "conventions".

8. Meetings, visits and lectures

During the year under review my staff and I have held meetings with many different organizations and public bodies. Such meetings are important and provide opportunities for exchange of viewpoints and information and provide useful insight to public administration and a better basis on which to deal with the cases received by this office.

Meetings were held with the County Governor of Møre and Romsdal, the County Governor of Hedmark, the County Governor of Oslo and Akershus and the County Governor of Oppland. In addition to a mutual exchange of information, subjects dealt with at these meetings included general public administration issues and issues concerning the processing of cases pursuant to the Act relating to social services, the Child Welfare Act and the Planning and Building Act. I also visited Engerdal Municipality where I had the opportunity of meeting representatives from surrounding municipalities. Right of access, cases concerning civil servants, duty of loyalty and freedom of speech for civil servants were amongst the subjects raised.

Visits to locked institutions form an important part of the Ombudsman's work. This year I visited the prison in Tromsø. I again visited the police detention centre at Trandum, following up my visit there in 2006. My visit resulted in a report that also took the form of a special report to the Storting. The purpose of this second visit was to gain first hand knowledge of the conditions at the detention centre, with special emphasis on the improvements that have taken place since my first visit.

During the year under review, my staff and I have participated at several seminars and courses and have held numerous

talks and lectures for both public administration and for citizens in general. I gave talks at the Academy for Senior Citizens in Moss, the Senior University in Asker and the Senior University in Ytre Ryfylke. Giving lectures is an important part of spreading information on the Ombudsman organisation and making citizens aware of the services offered. It also provides me with the opportunity of having interesting meetings and talks with the people I meet on these occasions.

Delegations from many countries have visited us. These include visits by parliamentarians from Angola, the Chinese Directorate of Public Prosecutions and representatives for the authorities in Bangladesh. There is a high level of international interest in the assignment, functions and operation of the Norwegian Ombudsman's office. Contact with foreign institutions also provides us with information that is of value for our own operation. In 2008 I continued to have close contact with the other Nordic Ombudsmen. In addition to participating at two West Nordic Ombudsman meetings, I hosted a Nordic Ombudsman meeting in Oslo. These meetings form useful opportunities for discussing specific cases and exchanging experience.

I participated at a seminar on deprivation of liberty in Paris in 2008. This seminar was hosted by the French Ombudsman and the Commissioner of the European Council for Human Rights. The theme at the seminar was "Deprivation of Liberty and Human Rights. The prevention of torture in Europe. On two occasions I have also participated at conferences in order to monitor developments in the area of human rights: The Human Rights Law Conference 2008 under the auspices of the Justice Organization in London which was held in October, and a seminar on control of the courts and public administration also held in London, in November. During the year under review, my staff and I have also held numerous meetings with citizens who have submitted com-

plaints and with others wishing to present their case and to receive guidance and information on how the case may be processed by the Ombudsman. I take a positive view of personal meetings with complainants and I try to fit in such meetings as far as possible.

9. The Ombudsman and the authorities

The Ombudsman has an important assignment in ensuring the right of citizens to have access to documents in public administration. Several complaints dealt with in chapter V of the annual report deal with such issues. I was therefore very glad when the Ombudsman received the FLAVIUS award presented by the Norwegian Press Association every Autumn to individuals, organizations and others who have contributed towards promoting transparency and right of access and/or who have contributed towards changing or developing the regulations or practice for transparency and right of access in Norwegian Society. In the jury's reasoning it was stated that the award for 2008 "is presented to an institution that has clearly done more than that can be reasonably be expected, in order to achieve greater transparency in public administration and to make it clear to public agencies and those who work there that freedom of speech for civil servants is clearly more comprehensive than many people realize. In addition to defending a wide scope of freedom of speech and public administration in numerous separate cases, the institution has repeatedly drawn up important general guidelines making it necessary for many public agencies to re-organize their practice in a more liberal direction".

Citizens also have right of access to the Ombudsman's case documents. The regulations governing such access are detailed in Section 9 of the Ombudsman's Act, cf. Section 11 of the Directive to the

Transparency in the organisation is a prime objective, the main rule being that the Ombudsman's documents are public. However, the Ombudsman also has an important duty in relation to complainants who are entitled to confidentiality concerning sensitive information, and the duty of confidentiality may therefore mean that some requests for access must be rejected either wholly or partially. In 2008, we have registered 531 requests for access to case documents compared with 622 in 2007. Access was granted in 422 cases and partial access in 91 cases. 18 requests were rejected.

Normally, a request for access to documents at the office of the Ombudsman will be answered on the same day and no later than three days from receipt. The register of publicly available information on documents that have been sent to or from the Ombudsman are listed on our website www.sivilombudsmannen.no, and there is also a facility for ordering access to case documents on this website.

10. New website and other communication with citizens

The new website

On 1 October 2008, the Parliamentary Ombudsman launched a new website – the result of a requirement to be available to all user groups, irrespective of physical functional abilities, age or cognitive abilities. In preparing this website, importance has been attached to creating a good source of information presented in a clear and simple manner in order to contribute towards increased understanding of the Ombudsman's work and to improve availability of the Ombudsman scheme for citizens. The new website has been developed in accordance with WAI (Web Accessibility Initiative) guidelines for accessibility and is user-friendly and available to everyone. The website can be

used by people who are blind or who have impaired vision by means of a speech synthesiser for automatic reading of the pages, and explicit function or typescript size and technical adaptation of contents. In order to make the site available, to more non-native speakers, information on the Ombudsman scheme is available in French, Spanish, German, Arabic, Urdu, Polish, Chinese and Russian in addition to standard Norwegian, new Norwegian, Sami and English.

New website technology has been used to improve accessibility to the Parliamentary Ombudsman on the part of users. This includes a complaint form which may be downloaded and which can further contribute towards simplifying the complaints procedure. The website also provides access to the public register and includes a function for placing orders for access to cases on file with the Ombudsman. The search function for statements by the Ombudsman has been considerably improved. Statements that are currently published on the website are now arranged in subject categories, making it an easy task for users to find relevant cases.

The Directorate of Public Administration and Equal Pay (TAFE) awarded www.sivilombudsmannen.no with five out of six possible stars in its annual quality evaluation of public websites in 2008.

Publication of statements on the Ombudsman's website

As mentioned above, the Ombudsman's statements are published on the website. "A statement" comprises a report on the investigation I have carried out in a case which has been submitted to the public agency concerned and which includes my final opinion. The original statement in a case handled by the Ombudsman is the statement that is sent to the parties involved in the case. Before a statement is published, it is anonymised and edited to a

lished, it is anonymised and edited to a certain extent, although in such a way that the section of the statement in which I express my view of the case is normally published in its entirety. When a statement is published on the website, it is normal to report any material developments in the case after my statement was made.

Statements that are published on the website are subject to a certain selective process. This will generally depend on a specific evaluation of the statement and whether it will be of importance in other cases. Publication of a statement is particularly relevant if the statement can contribute towards clarifying legal issues and principles connected with the case processing practice in public agencies.

Applications made by e-mail and telephone

I receive an increasing number of enquiries by e-mail. In 2008, the office received approx. 8,000 e-mails, about half of which are registered on cases. E-mails should not contain sensitive personal information and my office will normally only supply information and reply to general questions on this medium. When complaints are received as e-mail, the complainant is requested to send a signed complaint by ordinary mail.

Many people also contact the office by telephone. In 2008, at least 1,430 telephone calls were received. When we receive telephone enquiries, my staff and I can, in the first instance, provide guidelines on how a complaint can be submitted to the Ombudsman and how the complainant should proceed. In most cases, we can also provide guidance on who the complainant can apply to if the case cannot be dealt with by the Ombudsman, for example because no appeal has first been made to the public agency concerned.

Some enquiries concern general questions of a legal nature connected with public administration, or there may be requests for advice on how to proceed in an ongoing case with a public agency. My staff and I can only reply to such enquiries to a limited extent, among other reasons because it is not part of the Ombudsman's remit to act as a representative for individual citizens in respect of the authorities, neither is it within his remit to discuss general legal issues that are not connected with a complaint registered with the Ombudsman.

11. Special issues – the Ombudsman and public administration

The Ombudsman and cases that have been processed by the King in Council.

Pursuant to the provisions of Section 4, litra b of the Ombudsman's Act, decisions passed at a Cabinet Meeting are not covered by the Ombudsman's terms of reference. Attention was focused on the scope of this exception in a case during the Autumn where numerous media complained that they had been refused access to a memorandum prepared at the Office of the Prime Minister. Some media had also complained against sections of the decision to the King in Council and the Ombudsman could not therefore take the matter up. This case served to show that difficult borderline cases may arise where it is unclear whether a case lies within or outside the terms of reference for the Ombudsman. Details of this specific case can be found in Chapter V, Case 1, in the Annual Report.

The Ombudsman has interpreted Section 4 litra b of the Ombudsman's Act to mean that the preparatory processing of provisional decisions by a public agency prior to the final decision by the King in

Committee on Justice has supported this interpretation, see Innst. O nr. 15 1979-80 page 5 et seq. The reasoning given is that decisions by the King in Council are passed under a political and constitutional responsibility which also encompasses the preliminary processing of the case.

This exception from the Ombudsman's remit raises the question of how public administration should relate to a complaint submitted to the King in Council. Can public administration have a duty to inform complainant that processing a complaint in a cabinet meeting will have the effect that the Ombudsman can no longer be engaged in the case? Inasmuch as it is mainly decisions passed by the Ministries that can be appealed to the King in Council, this is first and foremost a question of case processing in the Ministry concerned.

When a decision passed by a Ministry is appealed, the Ministry shall re-examine the case. This procedure is laid down in Section 33, second subsection of the Public Administration Act. If the Ministry finds that the complaint cannot be accepted, the impression is that, in practice, complainant is frequently asked whether she/he wishes to uphold the complaint to the King in Council, before the complaint is processed. This appears to be a sensible procedure.

The provisions of the Public Administration Act require that public agencies shall inform a party of the access to appeal against decisions, the deadline for appealing etc. This is laid down in Section 27, third subsection of the Act. The party concerned will therefore receive information about the access to have the decision re-examined by the King in Council. However, there is no general legal duty to provide information on appealing a decision to the Ombudsman. Neither is there any general statutory duty to provide information on the relationship between the Ombudsman's authority and the processing of the case by the King in Coun-

cil. This duty has, however, now been clarified in Section 32, first subsection of the new Freedom of Information Act. This duty of information with regard to access to documents in public agencies is in my view well-reasoned and will contribute towards avoiding difficult borderline cases such as the aforementioned case concerning the Office of the Prime Minister.

Not everyone is aware that processing of appeals in Cabinet Meetings will in practice prevent a complainant from submitting the case to the Ombudsman. For many people, it will therefore be important to receive information on this point so that they can make an informed choice on how they should proceed in order to appeal against a decision. It may be debated whether a public agency's duty pursuant to Section 11 of the Public Administration Act to offer guidance to parties in such a way that they can "take care of their interests in the best possible manner" also includes a duty to provide such information in cases other than access to documents where the provisions of the Freedom of Information Act will apply.

The Ombudsman has previously dealt with this problem in the Annual Report for 1983 on page 156 et seq. In this report, reference was made to a statement issued by the Ministry of Justice stating that Ministries "should normally advise the parties that they cannot appeal the case to the Parliamentary Ombudsman for public administration if they have first made an appeal and the case has been decided by the King in Council".

Irrespective of whether there is a statutory duty to provide such information or not, I am of the opinion that it is positive that information is provided. I therefore request the Ministries to be aware of the problem and to inform parties that an appeal submitted to the King in Council precludes the possibility of appealing to the Ombudsman.

des the possibility of appealing to the Ombudsman.

Challenges connected with electronic case processing by public agencies

Large sections of public administration are now using electronic case processing. This brings with it a number of challenges both with regard to the operation of an administration agency and with regard to the Ombudsman's control of public administration.

The Ombudsman's investigations of complaints from citizens are mainly based on the documents that form the basis for the relevant administration case. It is essential for the operation and for confidence in the statements made by the Ombudsman that public administration provides the Ombudsman with access to all documents that have been involved in the decision-making process in the case concerned. When a public agency uses electronic case processing systems, most of the documents in the case will only be stored and filed electronically under, for example, a case number. Documents that are sent by a public agency will frequently be stored without a signature as the dispatched signed document is not scanned in and inserted in the case file. Documents sent to the Ombudsman will normally contain copies of documents that are stored electronically and do not now take the form of a physical case form with a list of documents on the cover as previously was the case. Documents that are printed out are not numbered chronologically and are sometimes undated, the date of dispatch being frequently entered on the documents by hand. As the documents are not filed physically in a case file with a numbered list of documents, the documents that are sent to the Ombudsman do not provide any possibility of checking that the Ombudsman has received all the documents that are relevant to the case being investigated. This situation can

serve to weaken confidence in the Ombudsman's investigations which should be based on a study of all documents that refer to the relevant public administration case.

Electronic case processing can also involve other challenges in public administration. It is sufficient to mention the duty of registration pursuant to the provisions of the Archives Act and the Archives Regulations, access and transparency with regard to case documents in public administration and the consequences for case processing arising from the wide use of e-mail in communications between public administration and citizens. One specific example in the year under review concerned a case on the use of electronic recruitment tools in the appointment process in a public agency. The case is described in more detail in Chapter V of the Annual Report, Case No. 10. This serves to illustrate the unintentional consequences resulting from the use of electronic tools in respect of maintaining the provisions of Acts and Regulations in Public Administration.

In the future, I will make a point of focusing attention on these challenges.

The Ombudsman's processing of complaints with regard to police conduct

Based on an enquiry from the government-appointed "Committee for the Evaluation of Control Mechanisms for the Police", a meeting was held in October 2008 between the secretary of the Committee and representatives from my office. At this meeting, the Committee wished to obtain more information on the Ombudsman's processing of complaints against police operations.

Every year, the Ombudsman deals with several cases from persons who are dissatisfied with the processing of their complaints against the police. This applies to

have been evaluated by the relevant police district and the Directorate of Police. In certain instances, the case has been evaluated on the basis of both criminal law and civil law. When controlling the operations of the Public Prosecutor, I have been guided by the rule that the prosecuting authority must be a specifically independent administrative body with regard to prosecuting decisions. I am therefore reticent with regard to re-examination of prosecuting decisions.

Prior to this meeting, my staff prepared an overview of complaints processed at this

office during the period 1 January 2005 to 21 October 2008 concerning reports to the special unit for police matters and complaints concerning criticism of police action. The overview was sent to the Committee and was subject to comment at the meeting. More than 30 completed and ongoing complaints were dealt with. None of the completed cases had been taken up with the Public Prosecutor or the Directorate of Police, neither have the cases provided any basis for criticism on my part.

Statistics

1. Introduction

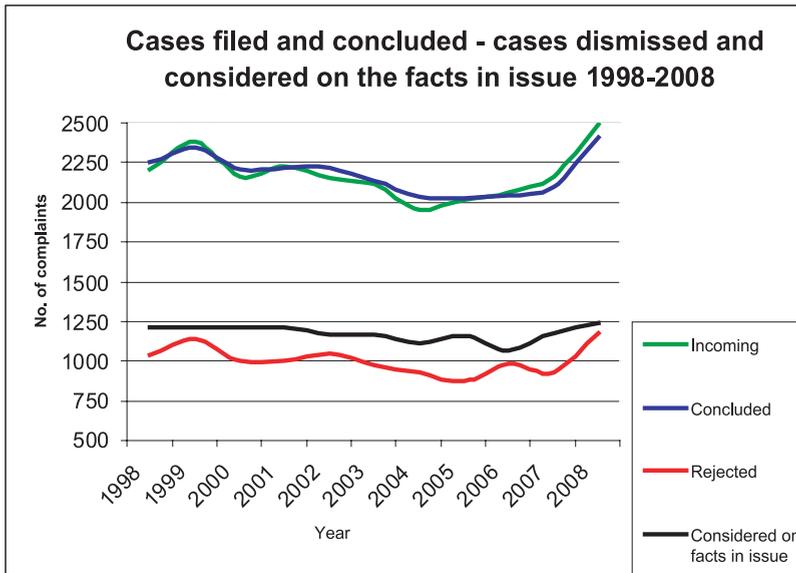
This chapter presents information on the cases the Ombudsman’s office has processed during the year under review. The chapter provides an overview of complaints filed during the course of the year, cases that have been concluded, cases that are still being processed at yearend, the result of processing and case processing time.

Fig. 1.1 provides an overview of complaints filed and concluded, cases rejected 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 20,366 documents were registered during the year under review.

Of these documents, 8,968 were incoming documents and 11,397 were outgoing documents. The number of e-mails received during the course of the year was approx. 8,000 and approx. half of these are registered in specific cases (including administrative cases). In addition, there were approx. 1,430 general telephone enquiries. 51 conferences were held 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 the facts in issue 1998-2008



2. Cases dealt with during the year under review

The basis for the work of the Ombudsman mainly concerns complaints from citizens. However, the Ombudsman can also take up cases 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.

Table 2.1 Types of case received

	2007	2008
Complaints and enquiries	2 126	2 469
Cases taken up on own initiative	41	23
Total	2 167	2 492

Table 2.2 Cases concluded and unresolved cases at yearend

	2007	2008
Cases concluded during the year	2 102	2 411
Unresolved cases at yearend	416	499

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, 49% of the issues brought to the attention of the Ombudsman were dismissed, and 51% were processed on the basis of the facts in issue.

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

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 2008, approx. 18% of the cases were re-opened when complainant reverted to the matter after the case had been closed at this office.

issue. This also applies when case processing has been limited to a preliminary 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 limited to the case processing in the public agency. Many citizens complain that administrative agencies fail to reply to their enquiries or that case processing takes too long. In such cases, processing by the Ombudsman may be limited to a telephone call to the agency concerned.

Table 3.1 shows the relationship between cases dismissed and cases processed during the year, compared with the figures for the preceding year. In respect of cases processed, the table shows the result of processing by the Ombudsman. It is not possible to provide a complete review 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 frequently not

announced by the agency before the end of the statistical year. However, such information will appear in subsequent annual reports.

Pie chart 3.2 shows the 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

	2007	2008
Cases rejected	927	1 174
Cases considered on facts in issue	1 175	1 237
1. Unnecessary to obtain statement in writing from the public agency		
a) Case settled by telephone call	259	270
b) Letter of complaint, possibly supplemented by case documents, show that the complaint could not succeed	571	598
2. Obtained statement in writing from the administrative agency		
a) Case settled without the necessity of a final opinion by the Ombudsman	40	50
b) Case closed without criticism or recommendation i.e. complaint not successful	127	110
c) Case closed with criticism or request to reconsider the case and possibly remedy harmful effects	178	209

Fig. 3.2 Cases rejected (49%)

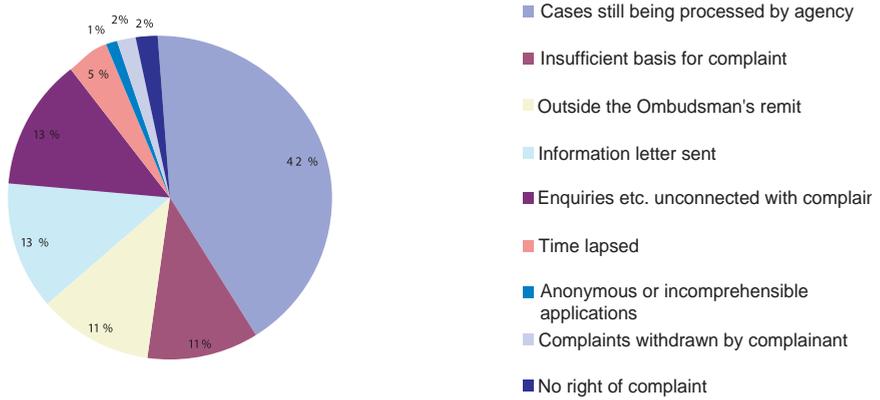


Fig. 3.3 Cases considered on basis of facts in issue (51%)

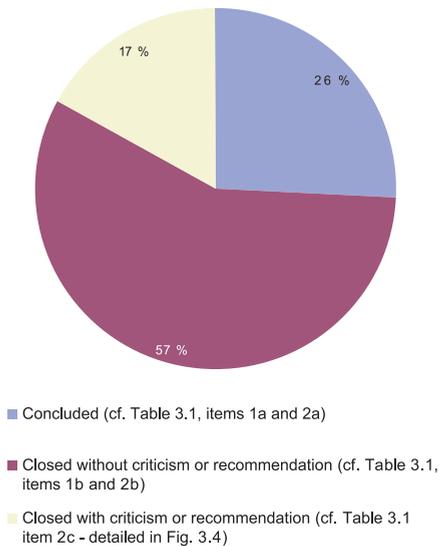
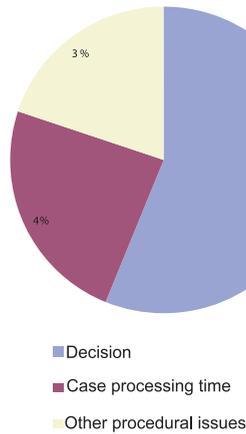


Fig. 3.4 The subject of criticism or recommendation (17%)



4. Case processing time

The table below provides a complete overview of case processing time at this office based on 80 – 100 randomly selected cases in three different case categories – rejected cases, cases not submitted to an

agency and cases submitted to an agency. Case processing time is given in days, weeks and months respectively. As shown, most rejected cases are settled within 10 days, cf. Fig. 4.1. Cases raised with a public agency are usually settled within six months, cf. Fig. 4.3.

Fig. 4.1 Rejected cases

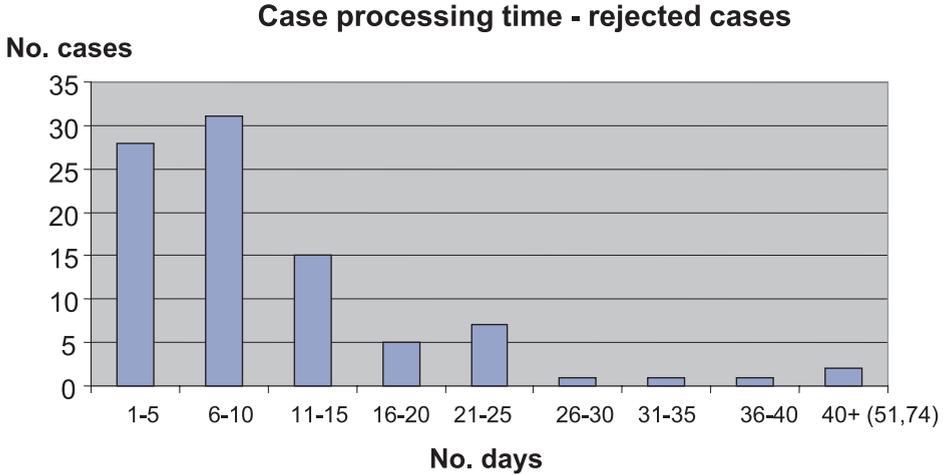


Fig. 4.2 Cases not submitted to an agency

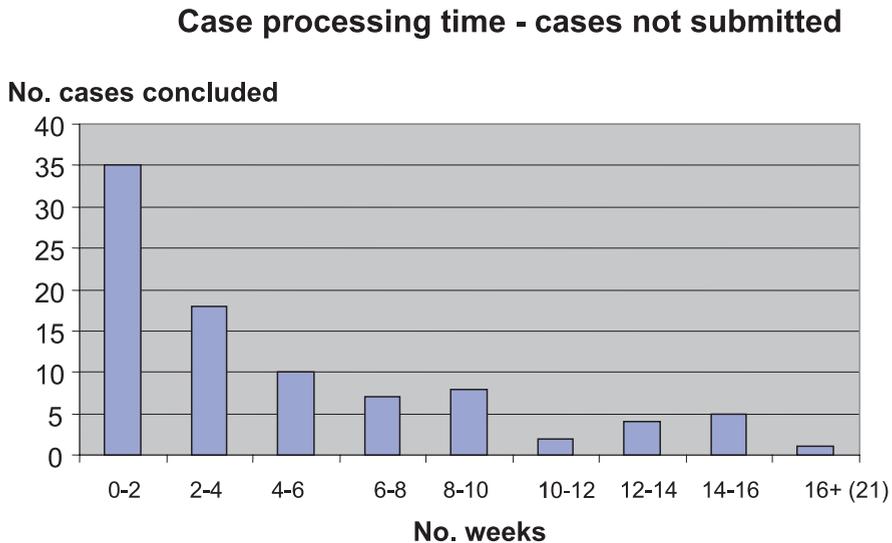
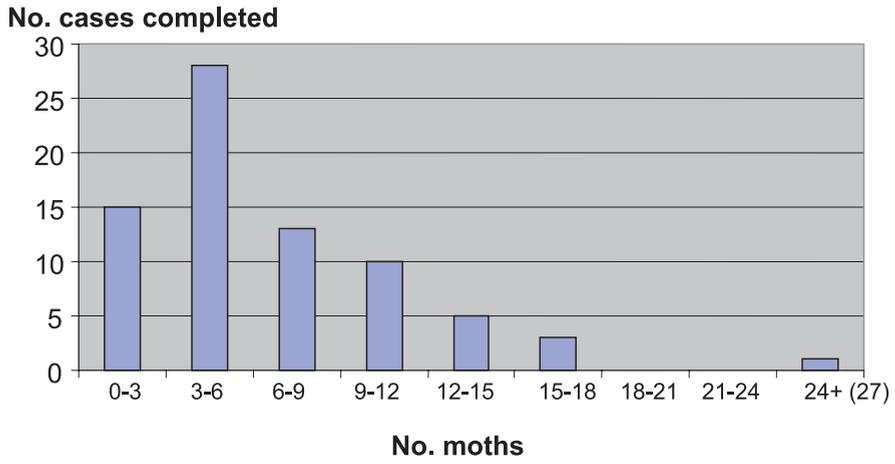


Fig. 4.3 Cases submitted to an agency

Case processing time - cases submitted



Cases of general interest

Introduction

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 guideline for selecting cases for inclusion in the report is whether the case can be considered to be representative for the type of case, if it is relevant as an example of maladministration, if the case is of public importance and is clarifying with regard to the law, and whether the case deals with principle issues of protection afforded by the law.

Cases are largely anonymised due to the provisions concerning duty of confidentiality and having due regard to the privacy of complainants. Inasmuch as reports from these cases are published and made generally available, complainant's names are not normally included. Cases of a particularly private, personal nature and that cannot be fully anonymised are not included in the Annual Report.

The cases are reported in full below. Cases are also published currently on the Ombudsmans's website, www.sivilombudsmann.no and are also transferred en bloc on the Lovdata website, on www.lovdata.no, once yearly.

The day-to-day work on individual cases and my contact with public administration has provided me with general insight into case processing and general procedures 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.

Before presenting the overview of the individual cases, I would like to set forth some subjects of a more general nature which have given grounds for comment during the course of the year.

The duty of providing grounds and the importance of control of decisions passed by administrative agencies

The requirement for giving grounds for decisions is a central part of the general principle of justifiable case processing in public administration. Providing grounds shall ensure that decisions are convincing and accepted as correct and just. The duty of providing grounds also takes due regard to the public agency itself. The requirement for giving grounds for a decision encourages thoroughness and care in processing and deciding on a case. Finally, the duty of giving grounds is also important if a decision passed by a public agency must be re-examined. The duty of giving grounds is therefore of major importance for the Ombudsman's control of decisions passed in public administration.

Many of the complaints submitted to the Ombudsman concern failure to give grounds for a decision. This does not necessarily mean that the decision by the agency is incorrect, but failure to provide proper grounds for the decision can contribute towards a weakening of confidence in the decision and doubt as to whether it has been passed in a correct and legal manner. It is my impression that

many of these cases could have been solved if the public agency concerned had taken more pains in providing proper grounds for the decision.

In cases where a public agency has given brief and incomplete grounds for their decision but where the conclusion must be considered to be correct, can place the Ombudsman in a difficult situation. If the complaint is accepted and the matter submitted to the agency concerned due to failure to provide proper grounds, this may give the party concerned unrealistic hopes with regard to the result of the Ombudsman's processing. The alternative will be that the Ombudsman himself attempts to "fill in" the agency's grounds. The areas I have registered in which the grounds given can frequently be very brief include cases where those elected by popular vote are in disagreement with the administrative recommendation, for example in building/exemption cases and in the case of appointments. If the result is straightforward and it is obvious that submission to the agency will not result in any change for the party concerned, I would no doubt consider terminating the case without submitting it to the public agency, merely issuing a reminder of the provisions of the Public Administration Act requiring that grounds must be given. In many cases, however, failure to give grounds could result in the case being accepted for investigation.

In multiple public administration cases, it is frequently expressly emphasised that the requirement for giving grounds in the Public Administration Act shall not apply, or only to a limited extent. For example, this could apply to tax-related cases. The reason for the exemption is that comprehensive requirements with regard to providing grounds could jeopardise efficiency and progress when the agency is dealing with a large volume of similar cases. In such cases it must be accepted that the grounds given

// This does not necessarily mean that the decision by the agency is incorrect, but failure to provide proper grounds for the decision can contribute towards a weakening of confidence in the decision and doubt as to whether it has been passed in a correct and legal manner.

by the public agency are very brief. However, even in such cases, the question sometimes arises whether concise grounds should be given. In property tax cases I have therefore expressed the view that a requirement for "brief grounds" pursuant to general administrative principles of law and good administrative practice should be given. Grounds may be provided in general terms and the duty to provide grounds will be particularly valid if there are specific arguments in the complaint which require comment. It may be sufficient for the agency to state that complainant's arguments have been evaluated separately.

In other cases, the duty to give grounds pursuant to Section 25 of the Public Administration Act will apply in full. However, the requirements with regard to the content of the grounds given are not basically very demanding in this provision. It is a different matter in cases that concern the four freedoms in the EEA Agreement or where decisions are passed pursuant to ratified EEA Regulations. In such cases, the EF courts' comprehensive requirements with regard to the reasoning of administrative decisions will apply. Inasmuch as the requirements for giving grounds pursuant to Norwegian law are not basically particularly comprehensive, the question may be raised if it not might be good administrative practice to go beyond the minimum requirements provided by the provisions of Section 25 of the Public Administration Act.

// By placing the decision in a specific case in a wider perspective, the party concerned will then be able to see the conflicting regards that are taken as a basis for the regulation and why the final result cannot be reversed.

Detailed grounds shall contribute towards increasing confidence in the decisions passed by public agencies. As a main rule therefore, the parties' arguments should be repeated and comments made. Moreover, the toning down of the use of standard grounds in public administration should be considered. In many cases it does not require a great deal to individualise the grounds given and this may persuade the party concerned to accept that the decision has been specifically evaluated. Finally, public administration should consider including in the grounds a statement concerning the background and intention of this regulation. By placing the decision in a specific case in a wider perspective, the party concerned will then be able to see the conflicting regards that are taken as a basis for the regulation and why the final result cannot be reversed.

Processing of requests for access

Freedom of information and access to case documents in public administration are of decisive importance for the democratic debate and for controlling the exercising of authority in public administration in general. This is therefore an area that has received a great deal of attention on the part of the Ombudsman in recent years.

It is my impression that the most important challenge in achieving freedom of information is to develop a positive attitude in the individual civil servants. It is therefore important that the heads of public agencies have a positive attitude to freedom of information and access to documents. Fear

of breaching duty of confidentiality is a reality for the individual civil servant. This is of special importance with regard to the protection of personal information but with regard to confidentiality in other matters, civil servants must be allowed wider scope of freedom to provide information to ensure that the freedom of information principle becomes a reality.

Many of the exemptions from the main rule of freedom of information are broadly formulated and allow the case processing officer to influence the degree of access.

I have previously, for example in my consultation statement in respect of the new freedom of information act, held that the change of attitude in public administration that was one of the intentions of the new act has not yet been fully implemented. Many of the complaints I deal with indicate that basic attitudes in public administration do not always conform to the objective in the principle of freedom of information. In Report to the Storting No. 32 (1997-1998) pages 91 and 106-108 the Government has also pointed out that the failure to put the intentions of the act into practice is partly due to the attitude of civil servants in public administration.

There can be many reasons for this. Unwillingness to have actions re-examined, inspection of performance and the fear that access leads to criticism of a decision or of case processing are understandable and are human reactions, but

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they are not acceptable. Civil servants may also fear that there is a risk that information given out may be used in a manner that could give a misleading picture of the case. However, this is crossing bridges in advance and is not acceptable as a guideline for processing requests for access.

In some cases there may also be doubt as to whether a document is subject to confidentiality or for other reasons should not be publicised and the civil servant concerned will not take the risk – it is safer to refuse. At other times, dealing with requests for access may be experienced as a waste of valuable resources to the detriment of the civil servants or the agency's prime assignments.

However, it is important that civil servants in public administration do not lose sight of all the considerations that are in favour of freedom of information. Processing of requests for access are part of the general workload, in the same manner as taking telephone calls. Public access both for parties and for public agencies is important for the public debate. An active democracy depends on openness, access and transparency. Openness and access are also important with regard to responsibility in those exercising authority.

It has been shown that corruption can be a serious problem in the public sector, even in Norway and right of access is an important tool for exposing such situations. Moreover public administration is completely dependent on the confidence of the general public in order to operate in a satisfactory manner. Such confidence is not self-generating, it must be achieved through a policy of openness in processing both in general and in the individual case.

The basis of the Freedom of Information Act – that case documents in public administration are in fact public, must

// Unwillingness to have actions re-examined, inspection of performance and the fear that access leads to criticism of a decision or of case processing are understandable and are human reactions, but they are not acceptable.

be seen in this context. Public administration work involves the community and is not something that does not concern the general public. Freedom of information provides a natural right to check on public administration. All public management takes place on behalf of the nation's citizens – it is the community's values that are being managed. Both the press and ordinary individuals are therefore interested in, and have a right to know what is happening. In some of the complaints submitted to the Ombudsman, I am bound to point out that due regard for openness and transparency must be included as factors when evaluating whether access should be granted or not.

Duty of confidentiality and the freedom of information principle

Just what type of information is encompassed by duty of confidentiality creates some difficulty in practice. The general regulations governing duty of confidentiality are provided in Section 13 et seq. of the Public Administration Act, but there are also numerous provisions concerning duty of confidentiality in different special acts (the Act concerning Healthcare Personnel, the Child Welfare Act, the Social Services Act, the Competition Act etc.). The regulations have one thing in common – they frequently provide for wide discretionary evaluations and it is not always clear whether a document may be made public or is

confidential. In this grey zone it can be easy to take a wrong step.

It is no simple matter to provide general guidelines on whether information is confidential or not as the question will normally depend on a specific evaluation. I will not therefore go into this in any depth but limit my comments to mention that in *borderline cases*, public administration must attach importance to whether there are relevant interests that really should be protected and should not be released for publication.

However there is reason to comment on the case processing of cases concerning access where duty of confidentiality is involved. Breach of duty of confidentiality is a criminal act. For this reason and in connection with the important regards that the duty of confidentiality is to protect, strict demands must be placed on case processing in cases where the confidentiality question arises. Decisions concerning access are not normally individual decisions and the case processing regulations in Chapters IV to VI of the Public Administration Act are not directly applicable. The case processing regulations in the Public Administration Act are however supplemented by the basic principles of acceptable case processing and these requirements are particularly important when private legal persons will be strongly affected by a public administration decision.

I have stated that due regard to good administrative practice indicates that the main points in the evaluation of such cases must be recorded in writing (see for example Case No. 17 in the list of cases). This applies even if the general requirement for submitting grounds for the decision does not apply when deciding on requests for access. Experience indicates that recording proceedings in writing will strengthen awareness on the part of decision makers and contribute towards ensuring that public administration passes the correct decisions on unbiased grounds.

A requirement for putting everything in writing will also facilitate any subsequent control of the decision.

There must also be requirements with regard to information in the case. The public agency must be aware of the consequences of granting access and of the interests to be protected by confidentiality before any decision is passed on granting access to documents or not. In certain cases, this will mean that a statement must be obtained from the party entitled to protection. In other instances, there can be a requirement for special expertise – for example in connection with an evaluation of whether confidentiality is of “competitive importance”, cf. Section 13 of the Public Administration Act.

In addition to the above, I wish to raise a special issue in connection with duty of confidentiality. During the year under review, my office has received several telephone calls from citizens who have criticised the actual physical design of some of the offices in public agencies where discussions are held with members of the public. Those who have telephoned have described open-plan offices where it is difficult to speak openly and observe confidentiality in a satisfactory manner as conversations between users and case officers can be overheard by others. If it is likely that users will have a requirement for passing on confidential information, such designs of customer reception areas represent a problem.

// The regulations have one thing in common – they frequently provide for wide discretionary evaluations and it is not always clear whether a document may be made public or is confidential. In this grey zone it can be easy to take a wrong step.

Public administration has a duty to “prevent others from gaining access to or knowledge of” confidential information. This must imply an obligation on the part of public agencies to arrange matters so that it is possible to use public services without risking that unauthorised persons can become party to confidential information. The individual public agency must keep this in mind when designing customer reception areas etc.

If the existing premises do not provide any facility for holding private talks, there must at least be a possibility for holding such talks in another location – for example in a separate meeting room or similar.

An overview of cases included in the Annual Report¹

The Ombudsman’s area of operation

1. The area of operations of the Ombudsman – access to case documents that have been processed by the King in Council.

Freedom of information, right of access to case documents and confidentiality.

2. Access to voting slips used in the election of a mayor.
3. Access to the basis for a property valuation for tax purposes and a property tax valuation.
4. Case concerning access to documents – case processing and freedom of information.
5. Access to documents – “special consultants or experts” release from exemption list and case processing time.

6. Access to internal documents on possible changes in regulations.
7. Case processing time in cases concerning access.
8. Access to list of applicants for the position of personnel manager – processing of complaints.
9. Access to list of applicants for the position of municipal director.
10. Public of list of applicants – the Ministry of Culture and Church Affairs.
11. Access to documents in prison – urine test document.
12. Access pursuant to the Tax Assessment Act – case processing time.
13. Inadequate registration in a case concerning the appointment of the Children’s Ombudsman.
14. Filing and registration of cases concerning access to documents.
15. Duty of confidentiality re test results.
16. Release of case documents – duty of confidentiality.
17. Duty of confidentiality – release of images from inspection of dog-keeping.
18. Patients’ right to appeal against a release order issued to their physician for the release of their medical records.
19. Closing meeting of Stranda Executive Committee.

Appointments in the Civil Service

20. Appointment of chief administrative officer – requirement for external advertising on positions in municipal administration.
21. Appointment in education and research – access to employ in a temporary position.
22. Appointment of a unit leader in a municipal nursing home.
23. Appointment of assistant county medical officer.
24. Appointment of a teacher – statutory qualification requirements.

¹ The unabridged version of the annual report to the Storting in Norwegian is available on www.sivilombudsmannen.no

25. Appointment in an educational position – case processing and the importance of statutory qualification requirements.
26. Appointment in an educational position – lack of educational competence.
27. Identity cards for employees at Norwegian airports. – processing of foreign certificates of good conduct.
40. Withdrawal of claim for support in waiting period.
41. Guidance rates for coverage of cost of living.
42. The right to temporary housing pursuant to the Social Services Act.
43. Calculation of income when fixing supplements for children.
44. Child maintenance – special supplement for spectacles.
45. Child maintenance – discretionary fixing of income.

Operating subsidy, licences and permits

28. Allocation of operating subsidy to a physiotherapist in private practice – case processing and evaluation.
29. Case processing in a case concerning granting of operating subsidy for physiotherapy – inadequate information and evaluation of complaint.
30. Agricultural concession – the question of whether a “property can be used for agricultural purposes”.
31. Adversarial principle inadequate to terminate unlawful legal aid business.
32. Revoking of taxi licence – requirements regarding strength of evidence and duty to investigate and submit grounds.
33. Permit to operate snow scooter – control of legality.
34. Injuring grey herons.
35. Permit to hunt red deer on neighbouring land – legal standing.
36. Reindeer husbandry – transfer of husbandry operation from deceased reindeer owner.

Education and financing of studies

37. Case processing concerning entries to the police college.
38. Grant for living expenses – evening education.

National Insurance benefits and child maintenance

39. Social Security Office – obligation to provide guidance and obligation to issue reports and information.

Health care

46. Processing of an appeal concerning transfer from nursing home to sheltered accommodation on the part of the health supervisory authority.
47. Processing request to erase information in medical records.
48. Statements by the Norwegian Medicines Agency concerning marketing of medicine.
49. Case processing by the Norwegian Medicines Authority in classification cases – questions concerning individual division and amendment of regulations.

Child Welfare

50. The Child Welfare Authority’s duty of care for lone asylum seekers who are minors.
51. Responsibility of the Child Welfare Authorities in relation to the child’s mother for following up the child after transfer of care.

Prison conditions

52. Detainment time in police cells – regulations require transfer after two days etc.
53. Prison conditions for a difficult prisoner – long-term exclusion from the community.
54. Reaction to refusal of urine test – requirements in evaluating individual conditions.

55. Glass partitions as a control measure during prison visits by foreign citizens.
56. Allegation of advance judgment in the rejection of an application for leave of absence from prison.
57. Investigation of the conditions in Vadsø prison.
58. Investigation of the conditions in Skien prison.
69. Taxation of a supplement for living abroad. The time limits for amendments in the Tax Assessment Act when the Ombudsman has recommended that taxpayer's assessment should be re-processed.
70. Stipulation of the number of berths (and seats) in a camper when deciding on the taxation group for non-recurrent tax.

Immigration cases

59. Processing by the Immigration Directorate of applications for citizenship from suspected war criminals – processing time, information and access.
60. Investigation of the Immigration Directorate's general experience with visas and failure to return.
61. Oslo Police District's routines for reception of applications and handling fee in immigration cases – case processing time.
62. Case processing by the police and the Immigration Directorate in an expulsion case.
63. Collection and use of specific national information in an asylum case.
64. The Immigration Authorities' processing of requests for postponement of implementation.

Tax, tax assessment, customs dues and fees

65. Control of operations pursuant to the provisions of Section 46 of the Act concerning Value Added Tax – particularly concerning “mirror copying”.
66. Tax payment in arrears – reversal of invalid rejection.
67. Remission of back taxes – mental illness.
68. The Tax Directorate's rejection of a request for re-examination of a decision by the Tax Appeals Board in the County Tax Supervisory Board.

71. Rejection of an application for exemption from document fee – the provisions in the Registration Act concerning extinguishment.
72. Control of the application of the self-cost principle.

Building and planning cases.

Protection of cultural relics

73. Whether a neighbour who had agreed to building work by signing notification of property development has a legal standing to submit a challenge.
74. Remedy for exceeding the deadline for appeal in a building case.
75. Inadequate processing of a building application pending a decision on temporary prohibition against dividing property and building.
76. Exemption from planning obligation for major building and construction work.
77. Provisional exemption from the area section of the Municipal Plan.
78. Interpretation of the development plan in connection with an application for enlargement of a boathouse area.
79. Conditions in connection with the granting of exemption from Section 17-2 of the Plan and Building Act and the area section of the Municipal Plan in respect of a floating marina.
80. Exemption in respect of rebuilding/extension of a jetty.
81. Exemption from the area section of the municipal plan for demolishing a boathouse and building a new one.

82. Conditions for exemption pursuant to the Planning and Building Act – objective connection and proportionality.
83. Conditions for participation in a common area in a division of property.
84. Exemption from obligation to build a driveway.
85. Exemption for the building of a block of flats.
86. Building of farmers' retirement home in LNF area – insufficient evaluation.
87. Size of handling fee for illegal building work.
88. Calculation of building fee – obligation to document that the fee is in accordance with the self-cost principle.
89. Failure to use sanction against an illegal measure.
90. Access for a municipality to omit to follow up an illegal measure.
91. Investigation order pursuant to Section 9 of the Cultural Relics Act.
94. Payment of legal costs in cancellation of a reversal decision.
95. Claim for damages from National Insurance after refund of benefit arrears.
96. Damages following criminal procedure and free legal counsel.
97. Case concerning compensation of legal fees following seizure in criminal proceedings.
98. Whether participation in an exercise, carried out by a substitute gives the right to occupational injury damages.
99. Time-barred claim for damages following criminal proceedings.
100. Slow case processing of applications for damages following criminal proceedings by the justice secretariats.
101. The Municipal Rural Pension Fund – repayment demand for excess pension payment.
102. Repayment demand of excess damages to a victim of violent crime.

Other

Legal costs, damages and repayment

92. Reduction of claim for legal costs pursuant to the Public Administration Act – the criteria of necessity.
93. Legal costs – the relationship between Section 36 of the Public Administration Act and Section 3 etc. of the Legal Aid Act.
103. Case concerning confiscation of driving licence – processing of complaint.
104. Legal competence for representatives of the employees on the board of an inter-municipal enterprise.
105. Approval of a permanent defence lawyer.

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,
- 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

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.

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 enti-

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

If the Ombudsman finds that there are matters which may entail liability to pay

compensation, he may, depending on the circumstances, suggest that compensation should be paid.

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

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

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

§ 11.

Notification of shortcomings in statutory law and in administrative practice.

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

§ 12.

Report to the Storting.

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

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

§ 13.

Pay, pension, other business.

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

appointed pursuant to the fourth paragraph, second sentence, may be determined by the Storting's Presidium. The Ombudsman's pension shall be determined by law.

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

§ 14.

Staff.

The staff of the Ombudsman's office shall be appointed by the Storting's Presidium upon the recommendation of the

Ombudsman or, in pursuance of a decision of the Presidium, by an appointments board. Temporary appointments of up to six months shall be made by the Ombudsman.

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

§ 15.

1. This Act shall enter into force 1 October 1962

Directive to the Storting's Ombudsman for Public 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 similarly to the extent that they are applicable to the functions of the Ombudsman.

§ 12.

Annual report to the Storting.

(Re § 12 of the Ombudsman Act.)

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

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



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